[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10505
Non-Argument Calendar

D.C. Docket No. 1:16-cv-02294-WMR

LAWRENCE F. BUFORD, JR.,

Plaintiff-Appellant,

versus

LIFE STORAGE, LP,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(August 23, 2021)

Before MARTIN, BRANCH, and BRASHER, Circuit Judges.

PER CURIAM:

Lawrence F. Buford, Jr., proceeding *pro se*, appeals the district court's order granting summary judgment to his former employer, Life Storage, LP, on his race-

and gender-based discrimination and hostile-work-environment claims, brought under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §§ 2000e, *et seq*. He also appeals the district court's denial of his cross-motion for summary judgment. Buford argues that the district court erred by (1) deeming Life Storage's statement of material facts admitted and refusing to consider the claims that he raised for the first time in his cross-motion for summary judgment, (2) finding that he had neither suffered a materially adverse employment action nor established that he was treated less favorably than a similarly situated employee outside of his protected class, and (3) finding that the alleged harassing conduct to which he was subjected was not objectively severe or pervasive. We disagree and affirm.

I.

Because this case comes to us on appeal from both a grant of summary judgment and a denial of a cross-motion for summary judgment, we must view the evidence in a light most favorable to Buford in some instances and in a light most favorable to Life Storage in other instances. *See Hardigree v. Lofton*, 992 F.3d 1216, 1221 (11th Cir. 2021).

Buford is a black male who worked as a maintenance worker for Life Storage, a storage facility with several locations throughout Georgia. In an initial civil complaint, he alleged that Life Storage violated Title VII, the Lilly Ledbetter Fair Pay Act of 2009, and the Equal Pay Act of 1963. Specifically, he alleged that: he

was subjected to "racial slurs and harassment" in the workplace, a white female area manager denied him his usual 20% bonus pay for the first quarter of 2015 and reduced it to a 10% bonus while giving "white females and other employees" the usual 20% bonus, that Life Storage committed discriminatory acts against him in retaliation for his filing of an Equal Employment Opportunity Commission complaint against it, he was threatened at a meeting with three managers, he was denied mileage reimbursement in situations where white females were granted reimbursements, and he was cornered in a restroom and "presented with sexual overtures" by a female coworker, Bianca Browne. Life Storage filed a motion to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6), which the district court granted as to Buford's Fair Pay Act, Equal Pay Act, and Title VII retaliation claims. The district court denied the motion as to Buford's Title VII discrimination and hostile-work-environment claims. The district court dismissed the Equal Pay Act and Title VII retaliation claims without prejudice so that Buford could file an amended complaint solely addressing new allegations relevant to those claims.

Buford filed an amended complaint and Life Storage again moved for its dismissal. In the amended complaint, he alleged that the Decatur store manager, Doug Cowan, had retaliated and discriminated against him by, among other things, calling him a racial epithet. The district court dismissed Buford's Equal Pay Act and

Title VII retaliation claims with prejudice, leaving only his Title VII discrimination claims alleging disparate treatment and hostile work environment as a result of race and sex. Life Storage then answered, denied liability, and asserted several defenses. After discovery, the district court notified both parties that, under the Northern District of Georgia's Local Rule 56.1B, "the respondent to a summary judgment motion must include with the response brief a separate response to the movant's statement of material facts [which] must admit or deny each of the movant's numbered facts." The district court also instructed the parties that "[i]f the respondent denies a numbered fact, a concise factual explanation, limited to a brief paragraph, supported by a citation to the record must be offered. Responses in the form of issues, questions or legal conclusions . . . will not be considered by the court."

Life Storage then moved for summary judgment on Buford's remaining claims. It argued that Buford had failed to establish a *prima facie* case of either discrimination or a hostile work environment. As for Buford's hostile-work-environment claim, Life Storage argued that it was entitled to the *Faragher-Ellerth* affirmative defense because it took remedial actions in response to each of Buford's complaints. In support of that motion, Life Storage filed a statement of material facts. Life Storage stated that it had a Non-Discrimination and Harassment Policy that prohibited all forms of discrimination and harassment against employees on the basis

of race and sex. It further stated that Buford was hired to service several facility locations and was originally assigned to work at the Decatur location three days per week and the College Park location two days per week. But he also regularly serviced other locations.

Life Storage stated that, under its mileage reimbursement policy, employees who traveled more than 30 miles to a store or meeting other than their home store may seek reimbursement for mileage accrued over their normal commute. Buford only submitted one mileage reimbursement request while he was employed at Life Storage, and it was approved. Further, Buford was reassigned to work at the College Park location three days a week and the two different Riverdale locations on the other two days, but only because he refused to work weekends. That reassignment did not result in a reduction in work hours. As for bonuses, Life Storage stated that Buford was awarded 15% of the College Park and Decatur locations' bonus distribution, and he did not identify any other employee who received a greater percentage for the first quarter of 2015.

The statement next noted that Browne was placed on administrative leave following Life Storage's investigation into Buford's allegation against her, and that Buford had neither seen nor worked with Browne since he reported her conduct because she never returned to work. Life Storage also investigated Cowan, who was fired after Buford alleged that he called him a racial epithet. As for Buford's third

complaint against an employee who allegedly said that black people are "chicken eaters" and "barbecue-eating folks," Life Storage investigated and determined that there was no evidence of discrimination. Buford did not submit any subsequent complaints against that employee or the investigation.

Buford responded by filing a memorandum opposing Life Storage's motion for summary judgment. In that memorandum, he noted that he had been terminated from his employment. He also raised new claims for worker's compensation, entrapment, and wrongful termination. And he filed an "opposition statement of defendant's statement of undisputed material facts in support of its motion for summary judgment, but in support of plaintiff's statement of undisputed material facts in support of plaintiff's motion for summary judgment." He stated that he was filing the statement "pursuant to Local Rule 56.1B" and responded to each sentence in Life Storage's statement of undisputed facts by noting that he "d[id] not admit to this disputed statement." He also provided argumentative, narrative explanations for why he did not agree with each sentence, but he did not support his arguments with any specific citations to evidentiary material or the record. Instead, he included occasional general references to entire documents in the record.

Buford also filed a cross-motion for summary judgment. In that motion, he reincorporated and restated the arguments and facts raised in his memorandum opposing Life Storage's motion for summary judgment and opposition statement.

He also filed several evidentiary materials in support of his motion, including a sworn post-deposition affidavit. In the affidavit, he stated that Life Storage took no action to remedy the "harassing hostile work environment and disparate treatment against" him. And he stated that he received a "0% bonus" from two of the stores at which he worked for the first quarter of 2015. He also included facts relating to his newly raised entrapment, wrongful termination, and denial of worker's compensation claims.

Life Storage replied that Buford's response was both procedurally and substantively deficient and filed a response to Buford's cross-motion for summary judgment. Buford replied that his cross-motion relied on "genuine facts," whereas Life Storage's relied on "disputed facts." A magistrate judge issued a report and recommendation recommending that the district court grant Life Storage's motion for summary judgment and deny Buford's cross-motion for summary judgment. First, it noted that Buford did not file a separate response to Life Storage's statement of undisputed material facts as required by Local Rule 56.1(B)(2)(a). It next noted that "[m]ost importantly, however, [Buford's] response . . . did not contain individually numbered, concise, non-argumentative responses corresponding to each of [Life Storage's] enumerated material facts." Instead, Buford cited to the court record generally. The magistrate judge explained that it was not the court's responsibility to "scour through discovery materials" to evaluate the merits of

summary judgment disposition. Accordingly, it recommended that Life Storage's proffered material facts be deemed admitted to the extent that they were supported by the record and considered true for the limited purpose of evaluating the parties' respective motions for summary judgment. It also recommended that the court consider Buford's post-deposition affidavit but disregard portions that directly contradicted his deposition testimony. Finally, it noted that Buford's newly raised claims were not before the court because his Title VII retaliation claims had previously been dismissed.

On the merits, the magistrate judge recommended that summary judgment was appropriate. The magistrate judge noted that Buford had failed to establish that he had suffered any adverse employment action or to identify an adequate comparator. He had also failed to otherwise present sufficient evidence to create a triable issue concerning discriminatory intent. Turning to Buford's claim of a hostile work environment, the magistrate judge concluded that Buford had failed to present evidence from which a reasonable fact finder could deem the complained of conduct sufficiently severe or pervasive to alter the terms of his employment and create a discriminatory abusive working environment. And the magistrate judge agreed with Life Storage that its "prompt remedial response" to Buford's complaints entitled it to the *Faragher-Ellerth* defense. Accordingly, the magistrate judge recommended that Life Storage's motion be granted as to both of Buford's claims.

Buford objected to the report and recommendation and argued that the magistrate judge violated his due process rights during the discovery process and by failing to consider his submitted evidence and cross-motion for summary judgment. The district court adopted the report and recommendation over Buford's objections and granted Life Storage's motion for summary judgment, denied Buford's cross-motion for summary judgment, and dismissed Buford's remaining claims with prejudice. We now address Buford's appeal of that judgment.

II.

Buford raises several issues on appeal. We have condensed them down to three: whether the district court erred by (1) deeming Life Storage's statement of material facts as admitted and refusing to consider the claims that he raised for the first time in his cross-motion for summary judgment, (2) granting Life Storage's motion for summary judgment as to Buford's discrimination claims based on the court's findings that Buford had not suffered a materially adverse employment action and had failed to establish that he was treated less favorably than a similarly situated employee outside of his protected class, and (3) granting Life Storage's motion for summary judgment as to Buford's hostile work environment claims based on the court's finding that the alleged harassing conduct was not severe or pervasive. We address each issue in turn.

First, we give great deference to a district court's interpretation of its local rules, and we review a district court's application of its local rules for abuse of discretion. *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1302 (11th Cir. 2009). A district court abuses its discretion by making a clear error of judgment. *Id.* Although we liberally construe *pro se* pleadings, *pro se* litigants are still required to conform to procedural rules. *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007).

Federal Rule of Civil Procedure 56 requires that a party asserting that a fact is genuinely disputed must support that assertion by citing to particular parts of the record. Failure to do so may result in the court deeming the fact undisputed for purposes of the motion for summary judgment. Fed. R. Civ. P. 56(c)(1)(A), (e)(2). Similarly, Local Rule 56.1B provides that a respondent to a motion for summary judgment must include a document with the responsive brief responding to the movant's statement of undisputed facts and containing concise, nonargumentative, individually numbered responses corresponding to each of the movant's numbered, undisputed material facts. N.D. Ga. Local Rule 56.1B(2)(a)(1). Further, the local rule provides that the court will:

> [D]eem each of the movant's facts as admitted unless the respondent: (i) directly refutes the movant's fact with concise responses supported by specific citations to evidence (including page or paragraph number); (ii) states a valid objection to the admissibility of the movant's fact; or (iii) points out that the movant's citation does not support the movant's fact or that the movant's fact is not material or otherwise has failed to comply with the provisions set out in LR 56.1 B(1).

N.D. Ga. Local Rule 56.1B(2)(a)(2).

When applying Local Rule 56.1B, the district court should disregard or ignore evidence relied upon by the respondent, but not cited in the respondent's response to the movant's statement of facts, that yields facts contrary to those listed in the movant's statement. *Reese v. Herbert*, 527 F.3d 1253, 1268 (11th Cir. 2008). "[B]ecause the non-moving party has failed to comply with Local Rule 56.1—the only permissible way for it to establish a genuine issue of material fact at that stage—the court has before it the functional analog of an unopposed motion for summary judgment." *Id.* After deeming the movant's statement of undisputed facts to be admitted, the court must still review the movant's citations to the record to determine if there is actually no genuine issue of material fact. *Id.* at 1269.

Plaintiffs cannot raise new claims at the summary judgment stage. *Gilmour v. Gates, McDonald & Co.*, 382 F.3d 1312, 1314 (11th Cir. 2004). Instead, the proper procedure for plaintiffs to assert a new claim at the summary judgment stage is to amend the complaint under Federal Rule of Civil Procedure 15(a). *Id.* at 1315. Further, a plaintiff may not amend his complaint through argument in a brief opposing summary judgment. *Id.*

Here, Buford has failed to show that the district court made a clear error of judgment in applying Local Rule 56.1B to deem Life Storage's statement of material facts admitted. *See* N.D. Ga. Local Rule 56.1B; *Mann*, 588 F.3d at 1302. Buford's

opposition statement to Life Storage's statement of undisputed material facts did not contain "individually numbered, concise, non-argumentative responses corresponding to each of the movant's enumerated material facts," as required by Local Rule 56.1B.

Moreover, Buford also has failed to establish that the district court erred in refusing to consider the claims that he raised for the first time at the summary judgment stage. Notwithstanding the claims' relations to any claims raised in Buford's initial complaint, the appropriate way for him to have raised any new claims at that stage in the proceedings would have been through an amendment to his complaint under Rule 15(a). *See Gilmour*, 382 F.3d at 1315. Accordingly, the district court did not err in refusing to consider the new claims.

Second, we review a grant of summary judgment *de novo*, viewing all facts in the record in the light most favorable to the nonmovant and drawing all inferences in his favor. *Frederick v. Sprint/United Mgmt. Co.*, 246 F.3d 1305, 1311 (11th Cir. 2001). Summary judgment is appropriate if "there is no genuine dispute as to any material fact." Fed. R. Civ. P. 56(a). A plaintiff cannot defeat summary judgment by relying on conclusory allegations because "this Court has consistently held that conclusory allegations without specific supporting facts have no probative value" at summary judgment. *Jefferson v. Sewon America, Inc.*, 891 F.3d 911, 924–25 (11th Cir. 2018) (cleaned up). Unsupported speculation also does not create a

genuine issue of fact. *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005).

Title VII prohibits employers from discriminating against workers based on their race or sex. 42 U.S.C. § 2000e-2(a)(1). An employee can prove this intentional discrimination using direct, circumstantial, or statistical evidence. *Alvarez v. Royal Atl. Developers, Inc.*, 610 F.3d 1253, 1264 (11th Cir. 2010). When a plaintiff relies on circumstantial evidence, the court generally applies the burden-shifting framework articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) to determine whether summary judgment was appropriate. *Flowers v. Troup Cnty., Ga., Sch. Dist.*, 803 F.3d 1327, 1335 (11th Cir. 2015). Under *McDonnell Douglas*, the plaintiff bears the initial burden of presenting a *prima facie* case of discrimination by showing that he: (1) belonged to a protected class; (2) was qualified for the position; (3) suffered a materially adverse employment action; and (4) was treated less favorably than a similarly situated employee—a comparator—outside of his protected class. *Id.* at 1336. Conduct that alters an employee's compensation, terms, conditions, or privileges of employment constitutes an adverse employment action under Title VII. *Jefferson*, 891 F.3d at 920–21. To be a "comparator" for purposes of the framework, an employee must be "similarly situated in all material respects" to the plaintiff. *Lewis v. City of Union City, Ga.*, 918 F.3d 1213, 1224 (11th Cir. 2019) (*en banc*).

A plaintiff may also survive summary judgment by presenting a "convincing mosaic of circumstantial evidence" that "creates a triable issue concerning the employer's discriminatory intent." *Smith v. Lockheed-Martin Corp*., 644 F.3d 1321, 1328 (11th Cir. 2011). Accordingly, a plaintiff may create a triable issue through non-comparison circumstantial evidence that raises a reasonable inference of intentional discrimination. *Id.*

Analyzing Buford's allegations that Life Storage discriminated against him based on his race or gender under the *McDonnell Douglas* framework, Buford failed to establish that any actions by Life Storage constituted adverse employment actions. *See Jefferson*, 891 F.3d at 921 ("The employee must show a *serious and material* change in the terms, conditions, or privileges of employment so that a reasonable person in the circumstances would find the employment action to be materially adverse." (cleaned up)). Buford also failed to identify with any specificity a comparator who was treated more favorably than he. *See Lewis*, 918 F.3d at 1224. Further, Buford failed to present a "convincing mosaic" of evidence to create a triable issue concerning Life Storage's race- or sex-based discriminatory intent for any action taken against him. *See Smith*, 644 F.3d at 1328. Accordingly, we affirm the district court's grant of summary judgment as to Buford's Title VII race- and sex-based discrimination claims.

Third, to establish a *prima facie* case of a hostile work environment, a plaintiff must show: (1) that he belongs to a protected group; (2) that he has been subject to unwelcome harassment; (3) that the harassment was based on a protected characteristic; (4) that the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment; and (5) that the employer is responsible for such environment under a theory of vicarious or of direct liability. *Miller v. Kenworth of Dothan, Inc.*, 277 F.3d 1269, 1275 (11th Cir. 2002). The requirement that the harassment be "severe or pervasive" contains an objective and a subjective component. *Id.* at 1276. "Thus, to be actionable, this behavior must result in both an environment that a reasonable person would find hostile or abusive and an environment that the victim subjectively perceives . . . to be abusive." *Id.* (cleaned up).

In evaluating the objective severity of the harassment, we will consider: "(1) the frequency of the conduct; (2) the severity of the conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with the employee's job performance." *Id.* Title VII is only implicated in the case of a workplace that is permeated with discriminatory intimidation, ridicule, and insult, not the mere utterance of an epithet. *Id.* at 1276–77.

An employer may avoid liability for a hostile-work-environment claim through the *Faragher-Ellerth* defense by showing that (1) "it exercised reasonable care to prevent and correct promptly any . . . harassing behavior; and (2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities it provided." *Baldwin v. Blue Cross/Blue Shield of Ala.*, 480 F.3d 1287, 1303 (11th Cir. 2007) (cleaned up). *Faragher-Ellerth* is an affirmative defense, therefore, "the employer bears the burden of establishing both of these elements." *Id.* An employer can typically meet that burden "by promulgating an anti-harassment policy." *See Madray v. Publix Supermarkets, Inc.*, 208 F.3d 1290, 1298 (11th Cir. 2000). But to demonstrate the employer's "reasonable care to prevent and correct promptly any . . . harassing behavior," that policy must have been disseminated and must provide a complaint procedure that does not require reporting to the offending supervisor. *See id.* at 1298–99.

Here, the district court did not err in granting Life Storage's motion for summary judgment as to Buford's claim of a hostile work environment because Life Storage established both elements of the *Faragher-Ellerth* affirmative defense. It is undisputed that Life Storage maintains an EEO Policy and Code of Ethics prohibiting discrimination and harassment and that it is disseminated to all employees. Buford acknowledged that he received both at the outset of his employment. And Buford was not required to complain to the offending supervisor

under the policy. Instead, Life Storage's human resources department initiated timely investigations into each of Buford's complaints. Accordingly, Life Storage has met its burden as to the first element of the defense.

Buford did not complain of harassment again after Life Storage acted to promptly correct the harassing behavior. With regards to the Browne incident, Life Storage placed Browne on administrative leave during the investigation, and she never returned. With regards to the Cowan incident, Life Storage terminated Cowan, in part, due to his use of a racial epithet. With regards to the employee who allegedly made general racially derogatory comments, Life Storage conducted an investigation, found no evidence of harassment, and informed Buford of its findings. We cannot say that the investigation was unreasonable under the circumstances. *See Blue Cross*, 480 F.3d at 1305. And it is undisputed that Buford never raised another complaint about the remaining employee or the results of the investigation overall. Accordingly, Life Storage's prompt remedial response to Buford's complaints and his failure to pursue further corrective action under Life Storage's policies entitle Life Storage to the *Faragher-Ellerth* defense. We affirm the district court's grant of summary judgment as to Buford's hostile-work-environment claim.

AFFIRMED.