

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-10159

LISA A. REED,

Plaintiff-Appellant,

versus

PEDIATRIC SERVICES OF AMERICA INC.,

Defendant-Appellee,

LAURA RHODES,
SHELY GENTRY,

Defendants.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 4:20-cv-00064-HLM

Before JILL PRYOR, BRANCH, and ED CARNES, Circuit Judges.

PER CURIAM:

Lisa Reed is a former employee of Pediatric Services of America Inc. (“Pediatric”). After her employment ended, Reed sued Pediatric for employment discrimination, and the district court later granted summary judgment in Pediatric’s favor. This is Reed’s appeal from summary judgment.

In the district court, the parties disputed the accuracy of a critical part of the record: the transcript from Reed’s deposition. Reed claimed that the transcript was rife with errors. Pediatric said it was not. Based solely on the parties’ dueling written submissions, the district court sided with Pediatric. There is an audiotape of the deposition, but the district court did not review it, it is not in the record, and no one other than an employee of a private-entity court reporter service seems to have heard it. For the reasons set out below, while retaining jurisdiction over this appeal, we vacate the judgment and remand so that the parties and the district court may determine whether the parts of the

21-10159

Opinion of the Court

3

deposition transcript that Reed has identified as inaccurate are in fact inaccurate.

I.

In March 2020, proceeding pro se, Reed filed suit against Pediatric, asserting claims of race and sex discrimination and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2(a) and 2000e-3(a).¹ During discovery, Pediatric took Reed's deposition, which was audiotaped. A court reporter employed by a private company transcribed the deposition and prepared a transcript, which she certified was accurate.

After reviewing her deposition transcript, rather than submit errata-sheet edits under Rule 30(e), Reed filed a motion challenging the transcript's accuracy. Under penalty of perjury, Reed averred that the transcript "stated things [she] did not say," "repeatedly misquoted [her]," "rearrange[d] . . . questions and answers," and "omitted things." Along with her motion, Reed filed an annotated copy of the transcript marking various substantive errors, including numerous colloquies between herself and Pediatric's counsel that she said were "not stated" or "never happened," and other question-and-answer exchanges that she said were excised entirely. Reed asked the district court to review the

¹ Reed also asserted claims against two individual defendants that were later dismissed.

audiotape from her deposition to confirm the transcript's errors, or to simply declare the transcript inadmissible.

In response, Pediatric asserted that Reed's deposition transcript was perfectly accurate, and that her assertions of error were a "wild conspiracy theory." Pediatric submitted an unsworn declaration from an employee of the private-entity court reporter service, in which the employee represented that he listened to the audiotape from Reed's deposition, "compared each word" with the transcript, and concluded that the transcript was accurate.

Relying solely on the parties' written submissions, the magistrate judge denied Reed's motion challenging her deposition transcript's accuracy, stating that he "[found] no credence in plaintiff's assertions." The magistrate judge did not request a copy of or review the audiotape from Reed's deposition, which was in the court reporter service's possession. Reed did not file an objection to the magistrate judge's order.

The parties then filed cross-motions for summary judgment. In her summary judgment filings, Reed again asserted that her deposition transcript was erroneous and that the court should not rely on it. In its summary judgment filings, Pediatric cited heavily to Reed's deposition transcript. Relying significantly on Reed's deposition testimony as set out in the transcript, the magistrate judge recommended that the district court grant Pediatric's motion for summary judgment.

21-10159

Opinion of the Court

5

Reed filed objections to the magistrate judge's summary judgment recommendation, in which she again challenged the accuracy of her deposition transcript. Overruling those objections, the district court adopted the magistrate judge's recommendation and granted summary judgment in Pediatric's favor. In its summary judgment order, the district court expressly considered the merits of Reed's challenge to the accuracy of her deposition transcript, ruling that the magistrate judge "correctly rejected [Reed's] contention" that her transcript was erroneous and "properly resolved the issue." Like the magistrate judge, the district court did not request a copy of or review the audiotape from Reed's deposition transcript. Reed timely appealed from the district court's summary judgment order.

II.

Given all the circumstances of this case, including the fact that the transcript of Reed's deposition is a critical part of the record, we conclude that the district court's judgment should be vacated and the case remanded for a determination of the accuracy of the parts of Reed's deposition transcript that she has marked as inaccurate.² On remand, we instruct the district court to make the

² Pediatric argues that Reed waived her right to appeal the district court's denial of her challenge to the accuracy of her deposition transcript by failing to file an objection to the magistrate judge's original order denying that challenge. Reed's failure to object to the magistrate judge's order on the deposition transcript issue would typically foreclose our review. *See* Fed. R. Civ. P. 72(a) (providing that, when a magistrate judge rules on a

audiotape from Reed's deposition available to the parties. We direct Reed, along with her attorney if she has one at the time, and Pediatric's counsel to listen to the audio recording of Reed's deposition and reach an agreement, if they can, about whether the parts of the deposition transcript that Reed has marked as inaccurate are in fact inaccurate. After the parties have completed that task, if they continue to disagree about the accuracy of any of the marked parts of the transcript, the district court should resolve the matter by comparing those disputed parts of the deposition transcript with the audiotape of Reed's deposition. To be clear, we are not directing the parties or the district court to go through the entire deposition transcript compared to the entire audio recording. The focus should be on the parts of the transcript that Reed has already marked as inaccurate.

On remand, the district court may conduct other proceedings consistent with this opinion as appropriate, including, if necessary, modifying the summary judgment order and

nondispositive matter, “[a] party may not assign as error a defect in the order not timely objected to”); *Smith v. Sch. Bd. of Orange Cnty.*, 487 F.3d 1361, 1365 (11th Cir. 2007) (“[W]here a party fails to timely challenge a magistrate’s nondispositive order before the district court, the party waive[s] his right to appeal those orders in this Court.”). However, given that Reed did timely object to the magistrate judge’s report recommending summary judgment in Pediatric’s favor, that the district court considered the merits of the deposition transcript issue in its order adopting that recommendation, and that Reed timely appealed *that* order, we will consider the issue of whether the transcript of her deposition is accurate.

21-10159

Opinion of the Court

7

reinstating or altering the final judgment based on it. After the district court conducts the proceedings we have directed, we leave to its determination whether to sanction any party, and whether to refer anyone involved in this case—party or otherwise—to the U.S. Attorney’s Office for an investigation into whether any crime, including perjury, has been committed.

Following this remand, the district court shall return the record as modified to this Court for further consideration. This panel retains jurisdiction to resolve this appeal after we receive the district court’s response. *See Ballard v. Comm’r*, 429 F.3d 1026, 1027 n.1 (11th Cir. 2005).

VACATED AND REMANDED.