[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

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No. 21-11225

Non-Argument Calendar

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SHARON BAILEY,

Plaintiff-Appellant,

versus

BOARD OF REGENTS OF UNIVERSITY SYSTEM OF GEORGIA,
d.b.a. Clayton State University,

Defendant-Appellee.

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Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:18-cv-05145-JPB

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Before LUCK, LAGOA, and JULIE CARNES, Circuit Judges.

PER CURIAM:

Plaintiff appeals the district court's order granting summary judgment to Defendant on her claims for race discrimination, sex discrimination, and retaliation under Title VII of the Civil Rights Act of 1964, disability discrimination under the Americans with Disabilities Act ("ADA"), and age discrimination under the Age Discrimination in Employment Act ("ADEA"). After a careful review of the record and the briefing submitted by the parties, we affirm.

BACKGROUND

This case arises from the termination of Plaintiff's employment as a custodian for Clayton State University ("CSU") in August 2017. CSU is a public college that is part of the University System of Georgia, which is overseen by Defendant, the Board of Regents of the University System of Georgia.[1] Plaintiff, an African American female, worked as a custodian for CSU from January 1991 until her employment was terminated in August 2017. Plaintiff was 51

[1] The Magistrate Judge's Report and Recommendation ("R&R") contains a detailed recitation of the underlying facts of this case. To the extent Plaintiff did not object to the facts as set out in the R&R, we have relied on those facts in describing the background of this case. As to any objected-to facts, we have construed the evidence and resolved any material disputed facts in the light most favorable to Plaintiff.

years old and allegedly disabled with a sleep disorder at the time of her termination.

Plaintiff began her employment with CSU in 1991 as a Custodian I in the Building Services department. Her duties in that position included providing cleaning and custodial services for CSU's buildings, classrooms, and other facilities. Plaintiff held the Custodian I position until 2016, when she was reclassified from Custodian I to Custodian II. Plaintiff received a salary increase as a result of the reclassification, but her job duties remained the same. Plaintiff held the Custodian II position until Defendant terminated her employment in 2017.

In February 2016, Charles Bridges was hired as Assistant Director of CSU's Building Services department. To save energy, Bridges changed the schedule of Building Services employees from three shifts to two shifts, the first of which ran from 4:00 a.m. to 1:00 p.m. and the second of which ran from 1:00 p.m. until 10:00 p.m. The work schedule change applied to all Building Services employees, including Plaintiff, regardless of their race, sex, or age. Plaintiff was assigned to the first shift, and she was supervised by Flordeles Brown, who reported to Bridges. The second shift was supervised by Renato Lumacang, who also reported to Bridges.

In October 2016, due to difficulties with insomnia, Plaintiff submitted an ADA accommodation request to CSU asking that she be permitted to start work at 5:00 a.m. instead of 4:00 a.m. CSU approved the request, after which Plaintiff's schedule was adjusted so that she worked from 5:00 a.m. until 2:00 p.m.

Bridges testified, and Plaintiff does not dispute, that all Building Services employees, including Plaintiff, had a one-hour lunch period but no other regularly scheduled breaks. Bridges stated that an employee who needed to sit down for a few minutes to rest outside of the lunch period could do so, but that an employee who needed a longer break while on the clock—for example, "15 or 20 minutes"—had to get permission from her supervisor. Likewise, an employee who became ill after clocking in was required to report the illness to a supervisor, and then clock out and go home.

Bridges made contemporaneous notes concerning the employees under his supervision, including Plaintiff, the contents of which Plaintiff does not dispute. Those notes, submitted in support of Defendant's summary judgment motion, reflect that Plaintiff violated the Building Services break policy several times between February and April 2017. A note from February 8, 2017 states that Bridges spoke with both shift managers on that date about Plaintiff "sitting in the warehouse during working hours" for about an hour before she clocked out. A note from March 23, 2017 indicates that Bridges had been informed by other Building Services employees that Plaintiff was regularly seen sitting in CSU classrooms outside of break time, and that although Plaintiff had denied the report, Bridges asked the shift supervisors to monitor Plaintiff's activities more closely. A note from April 19, 2017 documents an incident in which Plaintiff was found sitting in a classroom watching a video on her tablet during work hours.

Plaintiff had a dispute with Building Services management on April 20, 2017, after she was asked to stand with her coworkers for a group photograph that management planned to post on the CSU website. Plaintiff initially refused to participate in the photograph, but she reluctantly complied after being advised that it was mandatory. Bridges claims that Plaintiff was still "uncooperative" because she refused to pose appropriately, and the photograph, which is in the record and shows Plaintiff looking down while all other staff members face the camera, confirms that his claim is true. Plaintiff explained in her deposition that she was not aware the photograph was mandatory, that being photographed was not in her job description, and that she did not want to be in the picture because her hair was not done that day. According to Bridges, Plaintiff was not disciplined for objecting to being in the photograph, but he considered her refusal to appropriately comply with the request to be insubordinate and "part of a pattern of basically being uncooperative."

On April 28, 2017, Bridges made another note documenting that Plaintiff had received verbal counseling for: (1) taking an unscheduled break without permission from her supervisor, and (2) driving her personal vehicle on campus after she clocked in, a separate violation of Building Services policy.[2] On June 21, 2017,

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[2] Pursuant to the policy, after a Building Services employee clocks in, she can walk or use a facilities vehicle to drive to her work location on campus, but she is prohibited from using her personal vehicle while on duty.

Bridges noted that Plaintiff was again verbally counseled after coworkers complained that she had been seen walking or sitting in areas around campus that were not areas of her responsibility outside of break time. Plaintiff testified that she did not recall being verbally counseled on those dates.

Like Bridges, Plaintiff's immediate supervisor, Flordeles Brown, kept notes about Plaintiff's conduct at work. Again, Plaintiff does not dispute the contents of those notes, which indicate that Plaintiff was found in a classroom watching a video on her tablet during work hours on April 19, 2017, that a co-worker saw Plaintiff walking around campus during work hours on July 13, 2017, that Plaintiff left work without informing her supervisor on July 28, 2017, that Plaintiff did not report to work at 5 a.m. and unilaterally changed her schedule so that she worked from 6 a.m. to 3 p.m. on August 3, 2017, and that Plaintiff was found sitting in her car during work hours on two occasions in August 2017. According to Brown's notes, Plaintiff also arrived late or left work early without permission two times and called in sick four times during the relevant time period.

On August 28, 2017, Bridges signed a letter of separation terminating Plaintiff's employment from CSU. The separation letter described two occasions (August 11 and August 18, 2017) on which Plaintiff's supervisor had found Plaintiff asleep in her car after she had clocked in and was supposed to be on duty. The letter noted that Plaintiff had claimed she was feeling ill when questioned about why she was asleep in her car and not working while she was

clocked in on those days, but that Plaintiff had never reported her illness to management either before or after the incidents. The letter further explained that Plaintiff's clocking in to work and then going to her car to sleep constituted "falsification of time reporting" and that sleeping while on duty was unacceptable conduct. It concluded by advising Plaintiff that she was being terminated because, although she had repeatedly been counseled about the time keeping issue and likewise advised of proper protocol for calling out of work and requesting leave, Plaintiff continued to violate CSU's policies concerning time reporting honesty, attendance, performance, and conduct.

Plaintiff subsequently filed an EEOC charge alleging that CSU had terminated her employment on account of her race, sex, age, and disability, and in retaliation for her request for accommodations based on her sleep disorder. After she received a right to sue letter from the EEOC, Plaintiff initiated this lawsuit. In her amended complaint, Plaintiff alleged that she was terminated on the bases of her race, sex, and age in violation of Title VII and the ADEA, and that she was terminated and otherwise discriminated against on account of her disability in violation of the ADA. In addition, Plaintiff claimed in the complaint that Defendant retaliated against her in violation of Title VII.[3]

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[3] Plaintiff also asserted a claim in her complaint for declaratory judgment, but she abandoned that claim on appeal by failing to explain the basis of or otherwise address the claim in her appellate briefing. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) ("We have long held that an

Defendant moved for summary judgment as to all of Plaintiff's claims, and Plaintiff moved for partial summary judgment solely as to the issue of whether being photographed was within her job description or job duties and whether her reluctance to be photographed was against Defendant's policies. Both motions were referred to a Magistrate Judge, who issued a Report and Recommendation ("R&R") that recommended granting summary judgment to Defendant on all of Plaintiff's claims and denying Plaintiff's motion for partial summary judgment as moot.

Regarding Plaintiff's ADA and ADEA claims, the Magistrate Judge determined that those claims were barred by Eleventh Amendment immunity. The R&R noted that Defendant had relied on Eleventh Amendment immunity in support of its motion for summary judgment as to the ADA and ADEA claims, and that Plaintiff had failed to cite any relevant case law showing that Eleventh Amendment immunity did not apply or otherwise respond to Defendant's argument. The R&R explained further that the Eleventh Amendment bars private claims against a state or one of its agencies (such as Defendant) in federal court unless the state consents to suit or Congress has abrogated immunity, and that Georgia has not waived, nor Congress validly abrogated, immunity for claims arising under the ADA or ADEA.

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appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority.").

As to Plaintiff's Title VII race and sex discrimination claims, the R&R recommended granting summary judgment because: (1) there was no direct evidence of discrimination against Plaintiff, (2) Plaintiff conceded there was no comparator evidence to establish a prima facie case of discrimination under the *McDonnell Douglas* framework, and (3) there was no other evidence in the record that would allow Plaintiff's claims to survive summary judgment under a "convincing mosaic" theory. The R&R determined in the alternative that Plaintiff could not prevail even if she had established a prima facie case of discrimination because she had not shown that Defendant's proffered reasons for terminating her employment—falsifying her time reporting by clocking in and then going to sleep in her car and other attendance and performance issues—were pretextual. The R&R noted that Plaintiff had failed to point to any evidence in the record supporting an inference that race or sex discrimination was the real reason for her termination, rather than Defendant's stated, and well-supported, reasons.

Finally, the R&R recommended summary judgment as to Plaintiff's Title VII retaliation claim, noting that Plaintiff failed to show that she had engaged in any protected conduct under Title VII. The R&R acknowledged that Plaintiff alleged in her complaint that she was "discriminated against for making protected complaints about how she was being treated." Nevertheless, the Magistrate Judge could find no additional facts in the complaint to support that conclusory allegation, nor any evidence in the record to show that Plaintiff had ever engaged in activity protected by Title

VII. On the contrary, Plaintiff testified in her deposition that she never filed a grievance with or otherwise complained to any of her supervisors or HR asserting that she was being discriminated against.

Plaintiff filed partial objections to the R&R, in which she did not challenge the R&R's recommendation as to the Eleventh Amendment immunity issue or otherwise specifically address the basis of her age or disability discrimination claims. As to her Title VII claims, Plaintiff conceded in her objections that she had no direct evidence of discrimination based on her race or sex, and that she likewise had no comparator evidence. Nevertheless, Plaintiff argued that her Title VII claims could survive summary judgment on a "convincing mosaic" theory because: (1) Plaintiff was forced to take a photograph when her participation in that activity was not part of her job duties, which Plaintiff likened to forced labor in violation of the Thirteenth Amendment and false imprisonment under Georgia law, (2) the notes of Plaintiff's supervisors included dates on which Plaintiff legitimately requested vacation leave, and (3) Defendant fired three people in the Building Services department between 2016 and 2017, all of whom were African-American, at a time when African-Americans comprised only 20-30% of the Building Services staff. Plaintiff also arguably objected to the Magistrate Judge's alternative conclusion that she had failed to rebut Defendant's legitimate, non-discriminatory reason for her termination with evidence of pretext.

The district court adopted the Magistrate Judge's R&R and granted summary judgment to Defendant on all of Plaintiff's claims. The court noted that Plaintiff had only objected to the R&R's recommendations as to her Title VII race and sex discrimination claims, and that she had proffered neither direct nor valid comparator evidence of race or sex discrimination. Furthermore, the court agreed with the Magistrate Judge that there was no evidence in the record to sustain Plaintiff's Title VII claims under a convincing mosaic theory.

In particular, the court rejected Plaintiff's attempt to rely on evidence concerning Defendant's request that Plaintiff sit for a staff photograph to show race or sex discrimination, because Plaintiff did not allege that African American or female employees were treated any differently than other employees as to that requirement. As to the supervisor's notes, the court observed that the notes simply documented Plaintiff's full attendance record for all of 2017, including vacation days, sick days, and days Plaintiff arrived late, left early, or went on break while on the clock and without permission. As such, the notes did not show that Plaintiff was treated differently than non-African American or male employees in any way. Finally, regarding the fact that Defendant fired three African American employees—among them, Plaintiff—during the relevant time period, the court noted that Plaintiff had failed to produce any evidence that non-African American employees had engaged in the same conduct as the terminated employees but were disciplined less harshly.

Plaintiff appeals the district court's summary judgment order. On appeal, Plaintiff argues that the district court erred by denying her motion for partial summary judgment because it is undisputed that Plaintiff's job duties did not include posing for a staff photograph. Plaintiff argues further that the district court erred by granting Defendant's motion for summary judgment because there is a convincing mosaic of evidence suggesting discrimination, including the photograph sitting, the supervisor's notes reflecting the days Plaintiff took vacation leave, and the fact that Defendant fired three African American employees during the relevant time period. Plaintiff does not challenge the district court's ruling that her ADA and ADEA claims are barred by Eleventh Amendment immunity, or otherwise address those claims in her appellate briefing.

DISCUSSION

I. Standard of Review

We review the district court's summary judgment ruling in favor of Defendant *de novo*, construing the evidence in the light most favorable to Plaintiff and drawing all reasonable inferences in her favor. *Hamilton v. Southland Christian Sch., Inc.*, 680 F.3d 1316, 1318 (11th Cir. 2012). Applying that standard, summary judgment is appropriate if Defendant shows that there are no genuine issues of material fact and that it "is entitled to judgment as a matter of law." *Id.* (quoting Fed. R. Civ. P. 56(a) (internal quotation marks omitted)).

II. Plaintiff's ADA and ADEA Claims

As discussed above, Plaintiff did not object to the Magistrate Judge's determination in the R&R that her ADA and ADEA claims against Defendant are barred by Eleventh Amendment immunity. Eleventh Circuit Rule 3-1, provides:

> A party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object.

11th Cir. R. 3-1. The notice Plaintiff received with the Magistrate Judge's R&R advised her that she had fourteen days in which to file objections and it explained:

> If no objections are filed, the Report and Recommendation may be adopted as the opinion and order of the District Court, and on appeal, the Court of Appeals will deem waived any challenge to factual and legal findings to which there was no objection, subject to interests-of-justice plain error review. 11th Cir. R. 3-1.

This notice satisfies the requirements of Rule 3-1. *Compare Harrigan v. Metro Dade Police Dep't Station No. 4*, 977 F.3d 1185, 1191

(11th Cir. 2020) (holding that Rule 3-1 was not satisfied by a notice that informed the plaintiff she would waive the right to appeal unobjected-to factual findings but did not mention unobjected-to legal conclusions). Thus, Plaintiff waived her right to appeal the order granting summary judgment on her ADA and ADEA claims by failing to address the Eleventh Amendment immunity issue in her objections to the Magistrate Judge's R&R. *See id.*

Rule 3-1 states that "[i]n the absence of a proper objection, . . . the court may review [a ruling] on appeal for plain error if necessary in the interests of justice." 11th Cir. R. 3-1. But the plain error doctrine "rarely applies in civil cases." *Ledford v. Peeples*, 657 F.3d 1222, 1258 (11th Cir. 2011). *See also Burch v. P.J. Cheese, Inc.*, 861 F.3d 1338, 1352 (11th Cir. 2017) ("In an exceptional civil case, we might entertain [an] objection [that was not raised below] by noticing plain error." (quotation marks omitted)). We find no plain error in the Magistrate Judge's determination that Plaintiff's ADA and ADEA claims are barred by Eleventh Amendment immunity. As noted above, Defendant argued in its summary judgment briefing that Eleventh Amendment immunity bars Plaintiff's ADA and ADEA claims and Plaintiff failed to meaningfully respond to the immunity argument, which is supported by the governing case law. *See Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 67 (2000) (holding that Congress did not validly abrogate Eleventh Amendment immunity for claims arising under the ADEA); *Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 360 (2001) (holding that the Eleventh Amendment bars private suits seeking

damages for state violations of Title I of the ADA).[4] Plaintiff having thus abandoned the immunity issue below and waived the right to raise the issue on appeal, we affirm the district court's order granting summary judgment on her ADA and ADEA claims.

III. Plaintiff's Title VII Claims

Title VII of the Civil Rights Act of 1964 forbids covered employers from "discriminat[ing] against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race . . . [or] sex . . . [.]" 42 U.S.C. § 2000e-2(a)(1). The anti-retaliation provision of Title VII further prohibits an employer from "discriminat[ing] against any individual . . . because he has opposed any practice" made unlawful by Title VII or "made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" under Title VII. 42 U.S.C. § 2000e-3(a). Plaintiff alleges that Defendant

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[4] We note that Plaintiff does not assert a claim under Title II of the ADA, which prohibits the exclusion of a disabled individual from participating in "the services, programs, or activities of a public entity." *See* 42 U.S.C. § 12132. Rather, Plaintiff asserts a disability-based employment discrimination claim under Title I of the ADA, which prohibits certain employers, including a state employer, from discriminating against a "qualified individual with a disability" with respect to the "terms, conditions, and privileges of employment." *See id.* § 12112. This Court recently held that Congress has validly abrogated Eleventh Amendment immunity for claims related to public services arising under Title II of the ADA. *See Nat'l Ass'n of the Deaf v. Florida*, 980 F.3d 763, 774 (11th Cir. 2020). But *National Association of the Deaf* does not apply to Title I ADA claims, such as Plaintiff's claim, which continue to be governed by the rule the Supreme Court set out in *Kimel* and *Garrett*.

violated Title VII because it terminated her employment based on her race or sex. Plaintiff also implies, although she does not outright argue, that Defendant violated Title VII by subjecting her to a hostile work environment based on her race or sex. Finally, Plaintiff claims that her termination was retaliatory.

A. Plaintiff's Race and Sex Discrimination Claims

Plaintiff conceded below that she has no direct evidence of race or sex discrimination against her. The Magistrate Judge thus properly considered whether Plaintiff could sustain her Title VII claims under the *McDonnell Douglas* burden-shifting framework. Pursuant to that framework, the plaintiff first must establish a prima facie case of discrimination by showing that: (1) she belongs to a protected class, (2) she was qualified for her position, (3) she suffered an adverse employment action, and (4) she was replaced by, or treated less favorably than, a person outside her protected class. *See Maynard v. Bd. of Regents*, 342 F.3d 1281, 1289 (11th Cir. 2003). The burden then shifts to the employer to articulate a legitimate, nondiscriminatory reason for its challenged employment decisions. *See Lewis v. City of Union City*, 918 F.3d 1213, 1221 (11th Cir. 2019). Assuming the employer satisfies that requirement, the burden shifts back to the plaintiff to show that the reason offered by the employer was not the real basis for the decision, but a pretext for discrimination, "an obligation that merges with the plaintiff's ultimate burden of persuading the factfinder that she has been the victim of intentional discrimination." *Id.* (alterations adopted and quotation marks omitted).

The Magistrate Judge concluded that Plaintiff could not establish a prima facie case of race or sex discrimination under the *McDonnell Douglas* analysis because she could not show that she was replaced by or treated less favorably than a person outside her protected class—that is, either a non-African American or a male Building Services employee. In other words, Plaintiff failed to produce any valid comparator evidence in support of her discrimination claims. Plaintiff did not object to the Magistrate Judge's conclusion on this point. On the contrary, Plaintiff admitted that she had no valid comparator evidence.

Nevertheless, Plaintiff argued below, and she continues to argue on appeal, that her discrimination claims should survive summary judgment on a "convincing mosaic" theory. It is true that a discrimination claim can survive summary judgment, notwithstanding a plaintiff's failure to establish a *prima facie* case of discrimination under *McDonnell Douglas*, if she presents other circumstantial evidence—sometimes described by courts as a "convincing mosaic" of evidence—that would permit a jury to infer intentional discrimination. *See Smith v. Lockheed Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011) ("[E]stablishing the elements of the *McDonnell Douglas* framework is not, and never was intended to be, the *sine qua non* for a plaintiff to survive a summary judgment motion in an employment discrimination case."). For example, in the absence of valid comparator evidence, a plaintiff may present evidence such as "suspicious timing, ambiguous statements . . . , and other bits and pieces from which an inference of discriminatory

intent" with respect to a challenged employment decision might be drawn. *See Lewis*, 934 F.3d at 1185 (quotation marks omitted).

However, Plaintiff has failed to produce any evidence whatsoever from which a jury could reasonably infer that Defendant's decision to terminate her employment was discriminatory. The only evidence Plaintiff offers to support her theory is: (1) the requirement that Plaintiff sit for a staff photograph, which was not part of Plaintiff's job description, (2) a supervisor's notes documenting the days Plaintiff took leave for vacation, in addition to the days she called in sick, arrived late or left early, and took breaks without permission, and (3) the fact that Bridges terminated three African American employees (including Plaintiff) between 2016 and 2017, when African Americans comprised only twenty to thirty percent of the Building Services staff.

None of the facts cited by Plaintiff support a reasonable inference of race or sex discrimination. As to the photograph, it is undisputed that the requirement was imposed on all Building Services employees, regardless of their race or sex. Plaintiff's allegation that the requirement was not part of her job duties is thus irrelevant to her discrimination claims. Likewise, the supervisor's notes, which simply document Plaintiff's complete attendance record during 2017, do not suggest race or sex discrimination. Finally, regarding the three African American employees who were fired between 2016 and 2017, Defendant cites record evidence—unrebutted by Plaintiff—that each of these employees was fired for violating CSU policies regarding time falsification, attendance, and/or

other performance and conduct standards. A jury could not reasonably infer a racially discriminatory motive behind these termination decisions in the absence of some evidence showing that Defendant treated non-African American employees who engaged in similar policy violations and misconduct less harshly. There is no such evidence in the record.

In short, Plaintiff has failed to present any evidence from which a jury could infer that her termination was discriminatory in violation of Title VII. Plaintiff concedes that there is no direct evidence of race or sex discrimination, and likewise no valid comparator evidence that would allow her to establish a prima facie case under the *McDonnell Douglas* analysis. Furthermore, the record does not support Plaintiff's proffered "convincing mosaic" theory of discrimination. Accordingly, we affirm the district court's order granting summary judgment on Plaintiff's Title VII race and sex discrimination claims.

B. Hostile Work Environment

It is not clear from the pleadings below or from her appellate briefing whether Plaintiff intended to pursue a Title VII hostile work environment claim, but the Magistrate Judge correctly determined that summary judgment was warranted on any such claim. To prevail on a Title VII hostile work environment claim, a plaintiff must show, among other things, that she was subjected to "severe or pervasive" harassment that was motivated by a protected characteristic such as the plaintiff's race or sex. *See Tonkyro v. Sec'y, Dep't of Veterans Affairs*, 995 F.3d 828, 837 (11th Cir. 2021)

(quotation marks omitted). Harassment is sufficiently severe or pervasive to be actionable when it results in a work environment "that a reasonable person would find hostile or abusive and an environment that the victim subjectively perceives . . . to be abusive." *See id.* (alterations adopted and quotation marks omitted). To determine the objective severity of harassment, courts consider several factors, including the frequency and severity of the alleged conduct, whether the conduct is physically threatening or humiliating, and whether the conduct unreasonably interferes with the employee's job performance. *See id.*; *see also Fernandez v. Trees, Inc.*, 961 F.3d 1148, 1152 (11th Cir. 2020) ("A hostile work environment claim under Title VII requires proof that the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." (quotation marks omitted)). The severe or pervasive standard is intended to be "sufficiently demanding to ensure that Title VII does not become a general civility code." *Tonkyro*, 995 F.3d at 837 (quotation marks omitted).

Plaintiff's allegations do not come close to meeting this standard. The only actions Plaintiff cites in support of a hostile work environment claim are: (1) the photograph incident described above, and (2) the fact that Plaintiff's supervisor Flordeles Brown documented in her notes the vacation days requested by Plaintiff. There is no evidence that either of these actions was related in any way to Plaintiff's race or sex and, in any event, they do

not rise to the level of objectively severe or pervasive harassment necessary to sustain a hostile work environment claim. Thus, to the extent Plaintiff intended to assert a Title VII claim based on a hostile work environment, we affirm the district court's order granting summary judgment as to that claim.

C. Retaliation

Like her discrimination claims, Plaintiff's Title VII retaliation claim is analyzed under the *McDonnell Douglas* burden-shifting framework. *See Johnson v. Miami-Dade Cty.*, 948 F.3d 1318, 1325 (11th Cir. 2020). Pursuant to that framework, the plaintiff first must establish a prima facie case of retaliation by showing that: (1) she engaged in statutorily protected conduct—that is, conduct protected by Title VII, (2) she suffered an adverse action, and (3) "there is some causal relationship between the two events." *Id.* (quotation marks omitted). The burden then shifts to the employer to articulate a legitimate, nonretaliatory reason for the adverse action. *Id.* Assuming the employer meets that requirement, "the burden shifts back to the plaintiff to establish that the reason offered by the [employer] was not the real basis for the decision, but a pretext" for retaliation. *Id.* (quotation marks omitted).

Plaintiff's Title VII retaliation claim falters at the first step of the analysis because there is no evidence Plaintiff engaged in any conduct protected by Title VII—that is, there is no evidence that she opposed an unlawful practice under Title VII, made or assisted in a Title VII charge, or participated in a Title VII investigation or proceeding—prior to her termination. Indeed, and as discussed

above, Plaintiff admitted in her deposition that she did not file a grievance or otherwise complain about race or sex discrimination to any individual within Defendant's organization prior to her termination, and it is undisputed that Plaintiff filed her EEOC charge after she was terminated. Accordingly, we affirm the district court's order granting summary judgment to Defendant as to Plaintiff's Title VII retaliation claim.

CONCLUSION

For the reasons stated above, we find no error in the district court's order granting summary judgment to Defendant on Plaintiff's ADA, ADEA, and Title VII claims. Accordingly, we affirm.