[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-11593

Non-Argument Calendar

PAUL MCANALLY,
BLAINE SIMMONS,
JASON KIRBY,
DONNIE HOFFMAN,
DANIEL SIMMONS, et al.,

Plaintiffs-Appellants,

versus

ALABAMA PLUMBING CONTRACTOR LLC,
BRENT VACARELLA,

Defendants-Appellees,

VICKY VACARELLA, et al.,

Defendants.

Appeals from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:19-cv-02033-RDP

No. 23-11595

Non-Argument Calendar

JAMES MAY,

Plaintiff-Appellant,

versus

ALABAMA PLUMBING CONTRACTOR LLC,
BRENT VACARELLA,

Defendants-Appellees.

Appeals from the United States District Court
for the Northern District of Alabama

D.C. Docket Nos. 2:21-cv-01176-RDP,
2:19-cv-02033-RDP

Before JILL PRYOR, BRASHER, and BLACK, Circuit Judges.

PER CURIAM:

Paul McAnally, Blaine Simmons, Jason Kirby, Donnie Hoffman, Daniel Simmons, and James May (collectively, Appellants) appeal the district court's grant of summary judgment to Alabama Plumbing Contractor LLC (APC) and Brent Vacarella (collectively, Appellees) in Appellants' action alleging violations of the Fair Labor Standards Act (FLSA).[1] Under the FLSA, covered employers are required to pay non-exempt employees the minimum wage and overtime pay for hours worked more than 40 per workweek. 29 U.S.C. §§ 206(a); 207(a)(1). An employer may not employ an

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[1] As an initial matter, Appellees contend we lack jurisdiction because both cases were brought as collective actions under 29 U.S.C. § 216(b), which limits party participation by providing, "[n]o employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought." Appellees contend that because no Appellant filed a written consent to be a "party plaintiff" in the district court, no Appellant can be considered a class member or be bound by the district court's ruling, and therefore they lack standing. This argument is meritless. The Appellants attempted to get these cases certified as collective actions, but the district court denied their motion. Therefore, any of the provisions in 29 U.S.C. § 216 dealing with opting into collective actions are inapplicable to these cases. All six Appellants in this appeal were named plaintiffs in the operative complaints, and therefore have standing to appeal the judgment of the district court.

employee for a workweek longer than 40 hours unless that employee receives overtime compensation at a rate not less than one and one-half times the regular rate at which he is employed. 19 U.S.C. § 207(a)(1). The Portal-to-Portal Act exempts certain activities from compensation under the FLSA. 29 U.S.C. § 254(a).

Appellants contend the district court erred in determining that Appellees did not violate the FLSA when they did not pay Appellants for hours worked in excess of 40 per week for travel time in the company trucks to and from the shop and jobsites in the company trucks. They contend this time is not subject to the Portal-to-Portal Act's commuting exceptions and should be compensable time. After review,[2] we affirm the district court.

I. BACKGROUND FACTS

Appellants worked for APC as licensed plumbers or plumber's assistants/apprentices. Vacarella owns 49% of APC and is responsible for paying APC's employees. APC had a shop located in Shelby County, Alabama that closed in December 2022.[3] APC kept company-owned trucks and some parts and supplies at the shop.

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[2] We review the district court's grant of summary judgment *de novo*, construing all facts and drawing all reasonable inferences in favor of the non-moving party. *Jefferson v. Sewon Am., Inc.*, 891 F.3d 911, 919 (11th Cir. 2018).

[3] Vacarella stated the closure "has not affected the plumbers' performance of the primary activity they are employed to perform, which is plumb at commercial jobsites."

On October 25, 2019, Vacarella sent a group text message to APC employees stating:

> Guy[s] wanted to make sure everyone is aware and not confused. Time starts when you get to the job. Not when you get to the shop. I have been told that Greg has told someone and we all think that time starts when you get to the shop. Let me know if you['re] confused but I have said repeatedly that time starts at the job!! Let me know if you['re] confused on this[.]
>
> Let's all meet Monday and try to get this strai[gh]t on[c]e and for all it has never changed but let's all make it work for everyone not trying to cheat anyone with time[.]

Appellants testified that prior to a December 2019 FLSA lawsuit filed by another plumber, Matthew Tackett, they were instructed by Vacarella to report to APC's shop in the mornings to, among other things, receive job assignments and instructions, gather supplies and parts, and load or hook up heavy equipment and machinery needed that day to perform their job. Many mornings, plumbing supply companies provided breakfast to APC employees at the shop.

Appellant McAnally testified there were three travel scenarios: (1) a plumber drives his personal vehicle to the shop in the morning, then drives his personal vehicle to the first job site of the day, then drives his personal vehicle from the last job site of the day back to the shop or directly home; (2) a plumber drives his personal

vehicle to the shop in the morning, gets an APC truck and uses that truck to ride from the shop to the first job site of the day, then rides the APC truck from the last job site back to the shop, then uses a personal vehicle to go home; or (3) a plumber drives a personal vehicle directly from home to the first job site of the day, and then drives home from the last job site of the day.

Vacarella testified that plumbers and apprentices were typically expected to be at the commercial jobsites at 7:00 a.m. each day, and that plumbers and apprentices were not required by APC to come to the shop prior to or following a day's work. He also testified that work assignments were communicated at job sites or by telephone or text.

Vacarella testified that about half of APC's plumbers and apprentices drove their own vehicles directly to the jobsites and did not stop at the shop in the mornings, and Appellants do not dispute that some plumbers and apprentices drove personal vehicles directly from home to their jobsites. If a plumber or apprentice opted to use an APC truck for transportation, the employee was expected to return the truck to the shop. APC would have more insurance coverage if the trucks were kept at the shop, and an employee needed permission to take an APC truck home in the evening. The employees' normal work hours were 7:00 a.m. to 3:30 p.m.

II. DISCUSSION

Pursuant to the Portal-to-Portal Act, an employer is not required to pay an employee for:

> (1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and
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> (2) activities which are preliminary to or postliminary to said principal activity or activities,
>
> which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities. For purposes of this subsection, the use of an employer's vehicle for travel by an employee and activities performed by an employee which are incidental to the use of such vehicle for commuting shall not be considered part of the employee's principal activities if the use of such vehicle for travel is within the normal commuting area for the employer's business or establishment and the use of the employer's vehicle is subject to an agreement on the part of the employer and the employee or representative of such employee.

29 U.S.C. § 254(a). The Supreme Court has interpreted the term "principal activity or activities" in § 254 to include all activities that "are an integral and indispensable part of the principal activities." *Steiner v. Mitchell*, 350 U.S. 247, 256 (1956).

Indispensable is not synonymous with integral. *Llorca v. Sheriff, Collier Cnty., Fla.*, 893 F.3d 1319, 1323 (11th Cir. 2018). "The word integral means belonging to or making up an integral whole; constituent, component; specifically necessary to the completeness

or integrity of the whole; forming an intrinsic portion or element, as distinguished from an adjunct or appendage." *Integrity Staffing Sols., Inc. v. Busk*, 574 U.S. 27, 33 (2014) (quotation marks and alterations omitted). "Indispensable means a duty that cannot be dispensed with, remitted, set aside, disregarded, or neglected." *Id.* (quotation marks and alterations omitted). "An activity is therefore integral and indispensable to the principal activities that an employee is employed to perform if it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities." *Id.* "The integral and indispensable test is tied to the productive work that the employee is *employed to perform*." *Id.* at 36. "[C]ommuting time and other preliminary and postliminary activities are compensable only if they are *both* an integral *and* indispensable part of the principal activities." *Llorca*, 893 F.3d at 1324.

The undisputed fact that some of the company's plumbers and apprentices did not report to the shop, but rather traveled directly from their homes to the jobsites, supports the district court's conclusion that reporting to the shop and driving a company truck to and from the jobsite was not indispensable. Since some of the employees "dispensed with, set aside, disregarded, or neglected" to go to the shop before or after the jobsites, reporting to the shop and commuting in a company truck cannot be "indispensable," under the Supreme Court's definition in *Integrity Staffing*. 574 U.S. at 33. Further, APC dispensed with the shop entirely in 2022 and has

continued to perform the principal activity of employment.[4] Therefore, we affirm the district court's conclusion that the time Appellants sought to be compensated for was not compensable work under the Portal-to- Portal Act. Accordingly, we affirm the district court's grant of summary judgment to Appellees.[5]

AFFIRMED.

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[4]While we would not rely on the fact the shop closed after the relevant dates in this case as the sole evidence to support that reporting to the shop was not indispensable, the fact that APC no longer has a shop is further support that meeting at the shop and driving a company truck to and from the jobsite was not an indispensable task.

[5] As we affirm the district court's denial of the FLSA claims, Appellants' appeal of the denial of conditional certification as a collective action is moot. Additionally, McAnally and Hoffman also attempt to appeal their individual claims against Appellees. "We have long held that an 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." *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014). Appellants have abandoned their arguments on these claims by raising them in a perfunctory manner without supporting arguments and authority.