[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 23-12983

Non-Argument Calendar

HAYDEE VALDES,
individually, and on behalf of others
similarly situated,

Plaintiff-Appellant,

versus

KENDALL HEALTHCARE GROUP, LTD.,
d.b.a. HCA Healthcare,
d.b.a. HCAFlorida Kendall Hospital,
d.b.a. Kendall Regional Medical Center,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cv-22046-KMM

Before BRASHER, ABUDU, and MARCUS, Circuit Judges.

PER CURIAM:

Haydee Valdes appeals from the district court's grant of summary judgment in favor of her former employer, Kendall Healthcare Group ("Kendall"), where Valdes worked as a Magnetic Resonance Imaging ("MRI") technician. Valdes's complaint alleged age discrimination under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 623(a)(1), and the Florida Civil Rights Act ("FCRA"), Fla. Stat. § 760.10(1)(a); and retaliation under the ADEA, FCRA, the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, and the Florida Whistleblower's Act ("FWA"), Fla. Stat. § 448.103(1)(a).

On appeal, Valdes argues that the district court erred in granting summary judgment against her on her age discrimination claims because: (1) she made a *prima facie* showing that she is a member of a protected class, she suffered adverse employment actions ("AEA"), and there was a causal connection between her age and the AEAs; (2) the discontinuation of her paid mammography training and her constructive discharge were AEAs; (3) several related events should have been treated as a single AEA; and (4) the record shows that her firing was pretextual. In addition, Valdes

argues that the district court erred in granting summary judgment against her on her retaliation claims because: (1) she exercised protected rights, under the ADEA, FCRA, FLSA, and FWA; (2) she made a *prima facie* showing of a causal connection between exercising her protected rights and the AEAs; and (3) the district court should have applied different legal standards to her retaliation and discrimination claims based on *Burlington Northern's*[1] controlling authority. After careful review, we affirm.

"We review *de novo* a district court's grant of summary judgment." *Liebman v. Metro. Life Ins. Co.*, 808 F.3d 1294, 1298 (11th Cir. 2015). Summary judgment is appropriate only when the movant shows that no genuine issue of material fact exists and that she is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

First, we are unpersuaded by Valdes's argument that the district court erred in granting summary judgment to her former employer on her age discrimination claims. The ADEA and FCRA prohibit employers from discriminating against any individual with respect to her "compensation, terms, conditions, or privileges of employment" because of her age. 29 U.S.C. § 623(a)(1); Fla. Stat. § 760.10(1)(a). Age discrimination claims under the ADEA and Florida's FCRA statute are analyzed under the same framework as claims brought under Title VII. *See Jones v. United Space Alliance, L.L.C.*, 494 F.3d 1306, 1310 (11th Cir. 2007) (FCRA); *Hairston v. Gainesville Sun Pub. Co.*, 9 F.3d 913, 919 (11th Cir. 1993) (ADEA).

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[1] *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006).

The prohibitions under the ADEA are limited to individuals who are at least 40 years old. 29 U.S.C. § 631(a). "To assert an action under the ADEA, an employee must establish that [her] age was the 'but for' cause of the adverse employment action." *Liebman*, 808 F.3d at 1298. This can be shown through either circumstantial evidence or direct evidence. *Id.*

To evaluate ADEA claims that are based on circumstantial evidence of discrimination, we typically use the burden-shifting framework laid out by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Id.* When proceeding under *McDonnell Douglas*, the plaintiff bears the initial burden of establishing a *prima facie* case of discrimination by showing that (1) she is in a protected class; (2) she faced an AEA; (3) she was qualified for the job; and (4) similarly situated employees outside her class were treated more favorably by her employer. *Lewis v. City of Union City*, 918 F.3d 1213, 1220–21 (11th Cir. 2019) (*en banc*). If an employee makes a *prima facie* case of discrimination, the burden shifts to the employer to rebut the presumption by articulating legitimate, non-discriminatory reasons for the challenged employment actions. *Liebman*, 808 F.3d at 1298.

If the employer provides legitimate, non-discriminatory reasons, the burden shifts back to the employee to show that the proffered reasons were pretextual. *Id.* The pretext "inquiry . . . centers on the employer's beliefs, not the employee's beliefs and, to be blunt about it, not on reality as it exists outside of the decision maker's head." *Gogel v. Kia Motors Mfg. of Ga., Inc.*, 967 F.3d 1121,

1148 (11th Cir. 2020) (*en banc*) (quotations omitted). "If the plaintiff does not proffer sufficient evidence to create a genuine issue of material fact regarding whether each of the defendant employer's articulated reasons is pretextual, the employer is entitled to summary judgment on the plaintiff's claim." *Chapman v. AI Transport*, 229 F.3d 1012, 1024–25 (11th Cir. 2000) (*en banc*). Showing pretext requires the employee to "cast sufficient doubt" on the articulated nondiscriminatory reasons to "permit a reasonable factfinder to conclude that [the employer's proffered legitimate reasons] were not what actually motivated its conduct." *Phillips v. Legacy Cabinets*, 87 F.4th 1313, 1323–24 (11th Cir. 2023) (quotations omitted).

Here, regardless of whether Valdes made a *prima facie* case under the *McDonnell Douglas* framework, the district court did not err in granting summary judgment to Kendall on Valdes's claims of age discrimination because Valdes failed to show that Kendall's stated reasons for its adverse employment actions (or AEAs) were pretextual.[2] According to Valdes, the first AEA occurred after one of her supervisors, Erika Romero, complained in a meeting with Human Resources ("HR") that Valdes had administered an MRI

[2] Because Valdes has failed to show that Kendall's reasons for the AEAs were pretextual, we need not address any other issues involved in the age discrimination inquiry. *See, e.g.*, *Rojas v. Florida*, 285 F.3d 1339, 1342 (11th Cir. 2002) (assuming without deciding that the plaintiff had established a prima facie case where the defendant had "met its burden of presenting a legitimate, nondiscriminatory reason for its act," and the plaintiff had "failed to create a genuine issue of material fact on the question of whether [the employer's] proffered reasons for her termination were pretext").

exam on Romero's knee, and in so doing, Valdes had acted with "abuse, rudeness, carelessness, and lack of compassion." In response, Kendall's Vice President of HR, Knicole White, suspended Valdes without pay for two weeks, and later explained that Romero's account was sufficient to sustain the allegation that Valdes had failed to provide compassionate care to Romero. Lorena Rodriguez, another Senior HR employee who assisted with the investigation, confirmed this account, testifying that Valdes was disciplined based on Romero's vivid recollection of the events.

The undisputed record thus reveals that underlying Kendall's decision to suspend and discipline Valdes was the two HR employee's opinions that Valdes's treatment of Romero did not meet Kendall's standards for patient care. At the pretext inquiry, whether the opinions of Kendall's employees were correct is irrelevant, and so too is Valdes's belief that she was discriminated against because of her age. *See Gogel*, 967 F.3d at 1148. Rather, Valdes needed to offer evidence to show that the HR employees' belief about Valdes's conduct was pretextual, and she has not done so. *See Liebman*, 808 F.3d at 1298.

The second alleged AEA occurred when Valdes returned from her two-week suspension and Kendall changed her "on-call" schedule to require her to be on-call between her Saturday and Sunday shifts. Lester Yiris, Valdes's other supervisor, testified that he had changed Valdes's schedule to the weekend because the tech who had worked that shift was no longer able to do so and Yiris thought it would benefit Valdes to only have to work on the

weekends. Again, Valdes has not put anything forward to show that Yiris did not honestly believe that he was doing Valdes a favor by only scheduling her on weekends or that Kendall's reason for changing her schedule was otherwise pretextual. *Id*.

The third alleged AEA occurred after Valdes filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), when Kendall discontinued Valdes's participation in a mammography clinic, which Valdes needed to achieve a certification that would benefit her professional development. According to the undisputed record, HR told Valdes that it was discontinuing the training due to accreditation issues and low-patient volume. And again, Valdes has provided no evidence to show that the proffered reasons for ending the training were pretextual. *Id*.

In short, Valdes failed to meet her burden of establishing that Kendall's proffered non-discriminatory reasons were a pretext for discrimination, so the district court did not err in granting summary judgment for Kendall on Valdes's ADEA discrimination claim.[3] Further, because FCRA claims are analyzed under the same

[3] We recognize that a plaintiff alleging discrimination is not limited to satisfying the *McDonnell Douglas* framework. *See Tynes v. Fla. Dep't of Juv. Just.*, 88 F.4th 939, 945–47 (11th Cir. 2023) ("[T]he *McDonnell Douglas* framework is not, and never was intended to be, the *sine qua non* for a plaintiff to survive a summary judgment motion."). Instead, we may analyze a plaintiff's claim by reviewing all relevant direct and circumstantial evidence to determine if a convincing mosaic of evidence -- including, *e.g.*, "(1) suspicious timing, ambiguous statements, or other information from which discriminatory intent may be inferred, (2) systematically better treatment of similarly situated employees, and (3) pretext" -- has been presented to allow a reasonable juror to find intentional

framework as claims brought under Title VII, Valdes's state claim fails as well. *See Jones*, 494 F.3d at 1310.

We also are unconvinced by Valdes's argument that the district court erred in granting summary judgment to Kendall on her retaliation claims. The ADEA prohibits retaliation against employees who complain of age discrimination. *See* 29 U.S.C. § 623(d). A plaintiff alleging retaliation establishes a *prima facie* case by showing that (1) she engaged in a statutorily protected expression; (2) she suffered an adverse employment action; and (3) there was a causal link between the protected expression and the adverse action. *Hairston*, 9 F.3d at 919. Retaliation claims brought under the FLSA and the FWA are analyzed similarly. *See Sierminski v. Transouth Fin. Corp.*, 216 F.3d 945, 950 (11th Cir. 2000) (FWA); *Wolf v. Coca-Cola Co.*, 200 F.3d 1337, 1342–43 (11th Cir. 2000) (FLSA).

To prove a causal connection, a plaintiff need only demonstrate that the decision-makers learned of the protected conduct, and there was a close temporal proximity between the awareness and the adverse action. *Higdon v. Jackson*, 393 F.3d 1211, 1220 (11th Cir. 2004). Our Court has held that a one-month period between the protected activity and the adverse action is not too protracted, but a 3-to-4-month delay is too long. *Id.* Yet, "mere temporal

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discrimination. *Id.* at 946 & n.2 (quotations omitted). Sometimes, a plaintiff's failure to make a *prima facie* case under *McDonnell Douglas* "often also reflects a failure of the overall evidence." *Id.* at 945. We are satisfied of this result here. Valdes's failure to put forth evidence of pretext (or other relevant evidence) amounts to a failure to present a case in which a reasonable jury could find that Kendall discriminated against her because of her age.

proximity, without more, must be very close." *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007) (quotations omitted). Moreover, if the alleged retaliatory conduct occurred *before* the employee engaged in protected activity, the two events cannot be causally connected. *See Cotton v. Cracker Barrel Old Country Store, Inc.*, 434 F.3d 1227, 1233 (11th Cir. 2006).

Here, Valdes says that she engaged in protected activity by complaining about missing wages from August 2020 through December 2020, and thereafter she suffered several AEAs. But one AEA -- when Kendall discontinued her mammography training in February 2022 -- occurred *over a year* after her last complaint, which is not close enough to establish a causal connection. *See Higdon*, 393 F.3d at 1220. Her other AEAs -- the disciplinary investigation, her suspension and her schedule change -- were closer in proximity, occurring about three months after her last complaint, which means they were not close enough to establish a causal connection "without more." *Id.*; *see also Thomas*, 506 F.3d at 1364. But Valdes has offered no evidence of something "more" that would show that Kendall retaliated against due to her complaints about not getting paid in a timely manner. Instead, the undisputed record reflected that her supervisor, Romero, tried to assist Valdes with collecting her wages, that the delay was the result of payroll issues stemming from the COVID-19 pandemic, and that HR was not even aware of the delay in payment, so it did not affect HR's investigation into Valdes's alleged mistreatment of Romero.

As for Valdes's second protected activity -- when she filed charges of discrimination with the EEOC -- the disciplinary investigation and suspension and the schedule change occurred *before* Valdes filed her first charge of discrimination, which cannot establish causation. *See Cotton*, 434 F.3d at 1233. Finally, we recognize that Kendall's discontinuation of Valdes's mammography training was close enough to the charge to establish a causal connection. Nevertheless, we've already explained that Kendall offered reasons for discontinuing Valdes's training and nothing in the record indicates that Kendall's stated legitimate reasons were pretextual.[4] And because Valdes's ADEA retaliation claim fails, her remaining retaliation claims also fail. *See Jones*, 494 F.3d at 1310; *Sierminski*, 216 F.3d at 950; *Wolf*, 200 F.3d at 1342–43.

Accordingly, the district court did not err in granting summary judgment in favor of Kendall on both Valdes's discrimination and retaliation claims, and we affirm.

AFFIRMED.

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[4] As we recognized in the discrimination context, a plaintiff relying on circumstantial evidence of retaliatory intent also may survive summary judgment by presenting evidence of a convincing mosaic of circumstantial evidence that would allow the jury to infer intentional retaliation by the employer. *See Berry v. Crestwood Healthcare LP*, 84 F.4th 1300, 1311–12 (11th Cir. 2023). But again, since Valdes has not put forth anything close to suspicious timing for many of her alleged AEAs or pretext for the remaining ones -- or other compelling evidence of retaliation -- we cannot say that she came forward with sufficient evidence to survive summary judgment under a convincing-mosaic theory. *See Tynes*, 88 F.4th at 946.