[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

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No. 24-10158

Non-Argument Calendar

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CARLA MCCRAY,

Plaintiff-Appellant,

versus

MIAMI DADE COUNTY PUBLIC SCHOOLS,
UNITED TEACHERS OF DADE,

Defendants-Appellees.

____

Appeal from the United States District Court
for the Southern District of Florida

D.C. Docket No. 1:21-cv-23728-KMW

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Before NEWSOM, GRANT, and HULL, Circuit Judges.

PER CURIAM:

Plaintiff Carla McCray, *pro se*, appeals the district court's dismissal of her second amended complaint. In that complaint, McCray alleged that her former employer, the School Board of Miami-Dade County ("School Board"), violated her rights under the Family and Medical Leave Act ("FMLA") and Americans with Disabilities Act ("ADA"). McCray also alleged a state law claim for breach of fiduciary duty against her union, the United Teachers of Dade.

I. DISCTRICT COURT'S ORDER

The district court dismissed with prejudice McCray's FMLA interference claim under Federal Rule of Civil Procedure 12(b)(6) on two independent grounds: (1) failure to plead facts showing she gave her employer notice of her need for FMLA leave; and (2) failure to plead facts demonstrating her alleged mental impairment was a "serious health condition," as defined by the FMLA. The district court dismissed with prejudice McCray's ADA claim as time-barred.

The district court then declined to exercise supplemental jurisdiction over McCray's state law breach of fiduciary duty claim against her union and dismissed that state law claim without prejudice.

II. FMLA CLAIM

On appeal, McCray's opening brief challenges only the dismissal of her FMLA claim against the School Board. Furthermore, her challenge is only to the district court's second ground for dismissal: that she failed to sufficiently plead a "serious health condition," which is an element of an FMLA interference claim. *See Drago v. Jenne*, 453 F.3d 1301, 1306 (11th Cir. 2006); 29 U.S.C. § 2612(a)(1)(D). McCray's initial brief makes no argument about the district court's first ground for dismissal: that her second amended complaint did not adequately plead notice to the School Board of her need for FMLA leave, which is required under the FMLA. *See* 29 U.S.C. § 2612(e)(2)(B) (requiring 30 days advance notice when the need for leave is foreseeable); *Cruz v. Publix Super Mkts., Inc.*, 428 F.3d 1379, 1382 (11th Cir. 2005) (providing that for unforeseeable leave, the employee, as soon as practicable, must give "notice sufficient to make the employer aware that her absence is due to a potentially FMLA-qualifying reason, and the anticipated timing and duration of the leave"); 29 C.F.R. § 825.302(c).

An appellant's failure to raise an issue in the initial brief is treated as a forfeiture of that issue. *United States v. Campbell*, 26 F.4th 860, 873 (11th Cir.) (en banc), *cert. denied*, 143 S. Ct. 95 (2022). Further, "when an appellant fails to challenge properly on appeal one of the grounds on which the district court based its judgment, [s]he is deemed to have abandoned any challenge of that ground, and it follows that the judgment is due to be affirmed." *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014).

Here, even liberally construed, McCray's opening appeal brief challenged only one ground for dismissal of her FMLA claim. Thus, McCray forfeited any challenge to the district court's other ground for dismissal—that her second amended complaint failed to allege notice to her employer required by the FMLA, and dismissal is due to be affirmed on the unchallenged ground. *See id.*

We do recognize, however, that McCray's reply brief argues for the first time that the record shows the School Board had "constructive notice" of her need for FMLA leave. This Court generally will not address arguments advanced for the first time in the appellant's reply brief. *Id.* at 683. While we may exercise our discretion to consider forfeited issues under certain limited exceptions, none of those exceptions apply here. *See Campbell*, 26 F.4th at 873.

Alternatively, even if we were to address the "serious health condition" issue McCray raised in her opening brief, she has not shown any error in the district court's dismissal of her FMLA claim for failure to state a claim. McCray's second amended complaint alleged only that she had a "mental impairment that did substantially limit her life activity of being a security staff member at a public high school" and that she had a "substantial mental lapse that was apparently not self-resolving." But she did not allege any facts indicating that her condition "involve[d] . . . inpatient care in a hospital, hospice, or residential medical care facility" or "continuing treatment by a health care provider," which is necessary to meet the FMLA's definition of a "serious health

condition." *See* 29 U.S.C. § 2611(11). Thus, McCray's second amended complaint did not allege sufficient factual matter to state a claim for relief under the FMLA. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (explaining that to survive under Rule 12(b)(6), the plaintiff must allege factual allegations that "raise a right to relief above the speculative level" and that "formulaic recitations of the elements of a cause of action will not do"). Even liberally construed, McCray's second amended complaint fails to state a plausible FMLA interference claim.

III. ADA AND STATE LAW CLAIMS

Finally, McCray's opening appeal brief did not raise any issue as to the district court's dismissal of her ADA claim or the district court's decision not to exercise supplemental jurisdiction over her state law breach of fiduciary duty claim. In her reply brief, McCray even expressly stated that she did not address the district court's handling of her state law claim because it was a "non-issue." Thus, McCray has forfeited her challenges to the district court's dismissal of her ADA and state law claims as well. *See Campbell*, 26 F.4th at 873.

Accordingly, we affirm the district court order dismissing with prejudice McCray's FMLA and ADA claims against the School Board and dismissing without prejudice her state law claim against the union for breach of fiduciary duty.

AFFIRMED.