NOT FOR PUBLICATION

In the United States Court of Appeals
For the Eleventh Circuit

No. 24-13013
Non-Argument Calendar

ROBERT BAILEY,

Plaintiff-Appellant,

versus

FULTON COUNTY SCHOOL DISTRICT,
DR. MICHAEL LOONEY,
in his official and individual capacities,
DR. EMILY BELL,
in her individual capacity,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:22-cv-02907-MHC

Before NEWSOM, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

Robert Bailey appeals the district court's order granting summary judgment to Fulton County School District (FCSD) and its superintendent, Michael Looney, on (1) his retaliation claim under 42 U.S.C. §§ 1981 and 1983 and (2) his mixed-motive race-discrimination claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(m). With respect to his retaliation claim, Bailey argues that liability attaches to FCSD even if Superintendent Looney didn't know that Bailey complained of race discrimination, and that Looney's failure to investigate Bailey's race-discrimination complaint—which, unknown to Looney, was revealed in an interview with FCSD's Internal Affairs unit—constituted a materially adverse action. With respect to Bailey's mixed-motive race-discrimination claim, Bailey contends that the district court erroneously found that racial bias didn't "play[] some part" in his demotion. We disagree with Bailey's contentions and affirm.[1]

The facts are known to the parties; we repeat them here only as necessary to resolve the case.

I

"We review the district court's grant of summary judgment *de novo*, viewing all evidence and drawing all reasonable factual inferences in favor of the nonmoving party." *Strickland v. Norfolk S.*

[1] Bailey also brought a retaliation claim and a race-discrimination claim against FCSD's Chief Information Officer Emily Bell in her individual capacity under 42 U.S.C. §§ 1981 and 1983. While the district court also granted summary judgment for Bell on both of these claims, Bailey doesn't contest them on appeal.

Ry. Co., 692 F.3d 1154, 1154 (11th Cir. 2012). "Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law." *Id.*; *see* Fed. R. Civ. P. 56(a). "A genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Quigg v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227, 1235 (11th Cir. 2016) (citation modified).

A

We begin with Bailey's § 1981 retaliation claim against Looney in his official capacity.[2] Section 1981 guarantees everyone "in the jurisdiction of the United States . . . the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens." 42 U.S.C. § 1981(a). To state a prima facie case of retaliation under § 1981, the plaintiff must prove (1) "that he engaged in statutorily protected activity," (2) that "he suffered a materially adverse action," and (3) that "there was some causal relation between the two events." *Goldsmith v. Bagby Elevator Co.*, 513 F.3d 1261, 1277 (11th Cir. 2008). After the plaintiff establishes his prima facie case, "the employer has an opportunity to articulate a legitimate, nonretaliatory reason for the challenged employment action." *Id.* The plaintiff then bears the burden of proving "that the reason provided by the employer is a pretext for prohibited

[2] Bailey also brought a retaliation claim against Looney in his individual capacity, which the district court dismissed on the magistrate judge's recommendation.

retaliatory conduct," and that, therefore, the employer engaged in retaliatory conduct by a preponderance of the evidence. *Id.*

If a plaintiff sues a public official in his official capacity, we treat it as a suit against the local government entity the official represents. *Salvato v. Milev*, 790 F.3d 1286, 1295 (11th Cir. 2015). Therefore, we treat Bailey's claim against Looney as a claim against FCSD.

A § 1981 suit against a government entity is enforceable only under 42 U.S.C. § 1983. *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 733 (1989) ("[T]he express cause of action for damages created by § 1983 constitutes the exclusive federal remedy for violation of the rights guaranteed in § 1981 by state governmental units."). And under § 1983, a municipal employer is liable for its employee's misconduct only when execution of its "official policy" injures the plaintiff. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). A plaintiff can identify an "official policy" for municipal-liability purposes by pointing to (1) an official policy, (2) an unofficial but widespread custom, or (3) a "municipal official with final policymaking authority whose decision violated the plaintiff's constitutional rights." *Chabad Chayil, Inc. v. Sch. Bd. of Miami-Dade Cnty.*, 48 F.4th 1222, 1229 (11th Cir. 2022).

Bailey argues that Looney's decision not to investigate Bailey's race-based complaint, which arose during his interview with FCSD's Internal Affairs unit, was retaliatory conduct in violation of § 1981. And, Bailey continues, because Looney had final policymaking authority in FCSD, his decision not to investigate counts as

FCSD's official policy, exposing FCSD to liability. Bailey's prima facie case amounts to the following: (1) his interview with Internal Affairs, which revealed a race-based complaint, was a protected activity; (2) Looney's failure to investigate Bailey's race-based complaint, which Looney didn't know about, was a materially adverse action; and (3) there was a causal connection between the interview and Looney's failure to investigate. As we will explain, Bailey's retaliation claim fails because it neither states the elements of a prima facie case nor establishes FCSD's liability.

First, Looney's failure to investigate Bailey's complaint isn't a materially adverse action. A "materially adverse action" is conduct that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (citation modified). But Bailey doesn't explain how Looney's inaction dissuaded him—or would have dissuaded a reasonable worker—from making a race-discrimination claim. Instead, he argues that we should abandon this standard altogether.[3] Because we lack the authority to do

[3] Bailey's argument for discarding *Burlington* is based on his perceived inconsistency between *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024) (holding that a plaintiff need only show "some harm" to state a Title VII discrimination claim), and *Monaghan v. Worldpay U.S. Inc.*, 955 F.3d 855, 861 (11th Cir. 2020) (noting that the standard for retaliation claims "is more easily satisfied—than the standard [for] discrimination" claims). In Bailey's view, *Monaghan* held that retaliation claims are more easily established than disparate-treatment discrimination claims, so if *Muldrow* lowered the standard for discrimination claims, then we must accordingly lower the standard for retaliation claims. But no such inconsistency exists. *Muldrow* itself clarified that it didn't affect

so, we conclude that Bailey hasn't established the materially-adverse-action element of his prima facie retaliation claim.

Second, Bailey hasn't established a causal connection between his protected activity (the Internal Affairs interview) and the alleged materially adverse action (Looney's failure to investigate) because Looney didn't know that Bailey had made a race-based complaint at the time that he decided not to investigate. Instead, Looney's decision not to investigate was based on information he received separately from Bell and Ron Wade, FCSD's head of human resources, who informed him that Bailey was demoted because of performance problems. Bailey points to no evidence that Looney was even aware of Bailey's protected activity. And if Looney didn't know that Bailey engaged in protected activity, Bailey can't show that that activity was causally connected to Looney's allegedly adverse action.

Because of Looney's lack of knowledge, FCSD can't be held liable. Though "Section 1983 itself 'contains no state-of-mind

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the standard for retaliation claims, which was, as *Burlington* states, "meant to capture those (and only those) employer actions serious enough to 'dissuade a reasonable worker from making or supporting a charge of discrimination.'" *Muldrow*, 601 U.S. at 357. And even if, as Bailey counters, *Muldrow*'s clarification is dictum, Bailey still misreads *Monaghan*. *Monaghan* states that the retaliation standard "is more easily satisfied" because it covers a broader scope of misconduct and isn't confined to workplace harms, not that retaliation claims are easier to prove. *See Monaghan*, 955 F.3d at 861 (explaining that, "[i]n contrast to the disparate-treatment provision, . . . the retaliation provision is not limited to discrimination with respect to compensation, terms, conditions, or privileges of employment").

requirement independent of that necessary to state a violation' of the underlying federal right," "the plaintiff must establish the state of mind required to prove the *underlying* violation." *Bd. Of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 405 (1997) (emphasis added). Thus, "[w]here a plaintiff claims that the municipality has not directly inflicted an injury, but nonetheless has caused an employee to do so, rigorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employee." *Id.* As already explained, Looney couldn't have had the culpable state of mind to commit race-based retaliation if he didn't know that Bailey made a race-based complaint in the first place.

B

We next consider Bailey's Title VII mixed-motive race-discrimination claim against FCSD. "Title VII prohibits employers from intentionally discriminating against their employees based on 'race, color, religion, sex, or national origin.'" *McCreight v. AuburnBank*, 117 F.4th 1322, 1326 (11th Cir. 2024) (quoting 42 U.S.C. § 2000e–2(a)(1)). "An employee can succeed on a mixed-motive claim by showing that illegal bias . . . 'was a motivating factor for' an adverse employment action, 'even though other factors also motivated' the action." *Quigg v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227, 1235 (11th Cir. 2016) (quoting 42 U.S.C. § 2000e–2(m)). A "plaintiff need only show that an illegal reason played a part in the decision—not that it had a dispositive role." *AuburnBank*, 117 F.4th at 1331. Mixed-motive discrimination "allows for liability when an employment decision motivated by a *legitimate* reason—usually

poor work performance—is also infected by an *illegitimate* reason—illegal discrimination." *Id.* at 1326 (emphasis in original).

At the summary-judgment stage, the question is "whether a plaintiff has provided sufficient evidence for a reasonable jury to infer intentional discrimination."[4] *Id.* at 1331. For example, in *Quigg*, a mixed-motive sex-discrimination case, we held that statements by members of the school board expressing their preference for hiring men to the office of the superintendent constituted circumstantial evidence of sex discrimination because they "establish[ed] a jury issue as to whether sex or gender-based bias was a motivating factor" for the board. 814 F.3d at 1241–42.

Bailey relies on the following allegations to show that racial bias "played some part" in his demotion: (1) Bell's pattern of "belittling" him at meetings; (2) other black employees' complaints about Bell's treatment of them; (3) Bell's failure to hire or promote black employees; and (4) the reassignment of his responsibilities to white personnel in the department. As we will explain, this isn't enough to survive summary judgment because Bailey hasn't

[4] Though Bailey tries to operationalize the "convincing mosaic" standard to establish his mixed-motive discrimination claim, the "convincing mosaic" approach merely restates the summary-judgment standard. *See AuburnBank*, 117 F.4th at 1335 ("The convincing mosaic approach is—in its entirety—the summary judgment standard."). The convincing mosaic "is a metaphor, not a legal test and not a framework." *Id.* (quoting *Berry v. Crestwood Healthcare LP*, 84 F.4th 1300, 1311 (11th Cir. 2023)).

offered enough evidence to establish a jury issue as to whether race was a motivating factor for Bailey's demotion.

The main problem with Bailey's race-discrimination claim is that the evidence doesn't suggest that Bell treated Bailey or other black employees *worse* than she treated non-black employees. "This is a classic example of the Vince Lombardi rule: someone who treats everyone badly is not guilty of discriminating against anyone." *Alvarez v. Royal Atl. Devs., Inc.*, 610 F.3d 1253, 1267 (11th Cir. 2010). "It would be paradoxical to permit a plaintiff to prevail on a claim of discrimination based on indiscriminate conduct." *Id.* (quotation omitted).

The record indicates that Bell upbraided all employees regardless of race. White employees Anne Sexton and James Stewart testified that Bell regularly raised her voice at everyone, without regard to their race. In an internal investigation, FCSD interviewed 24 unidentified employees and found that "most" interviewees described Bell as "'toxic,' 'hostile,' and 'harassing.'" Its corresponding report concluded that "Bell's leadership style may be considered a violation of Fulton County Schools Board Policy," but it wasn't discriminatory. Additionally, the complaints by other black employees didn't allege that Bell treated them differently because of their race, and there's no evidence showing that her conduct towards them was discriminatory.

Further, Bailey's argument that Bell didn't hire black candidates or promote black employees is entirely speculative. First, because multi-person panels make personnel decisions, Bell's ability

to have undue influence on any given panel is limited. Though Bailey alleges that it was "understood" that Bell had influence over the panels, Bailey provides no evidence corroborating this claim. Second, Bailey offers no information on the race and qualifications of applicants before panels involving Bell. And third, Bell did hire or promote 11 black employees during her tenure at FCSD.

Bailey's remaining argument is that Bell reassigned his duties, which revolved around the rollout of ATLAS, an online platform that would host many of the school district's core business functions. But there is ample evidence, corroborated by other employees, including Wade, Stewart, Sexton, and ATLAS Program Manager Thomas Fantroy, that the reassignments were based solely on problems with Bailey's performance, and that his race was not a "motivating factor." To take a few examples: Bailey failed to work with Sexton on FCSD's transition to a new content-management system, as Bell instructed him to do; Bailey designated certain personnel to handle ATLAS support requests, but then failed to train them to operate the ATLAS system or manage support requests; Bailey failed to facilitate a smooth transition for the creation of new user accounts on ATLAS; Bailey decided to set up a call center for handling ATLAS-related issues on short notice, "leaving too little time to properly train the new staff"; and Bailey failed to develop a systematic way for FCSD employees to access their data from the pre-ATLAS system.

Altogether, there's simply not enough circumstantial evidence to establish a jury issue as to whether race was a motivating

factor for Bailey's demotion. While Bailey provided evidence that Bell was a difficult supervisor, that evidence doesn't indicate that she acted in a discriminatory manner; she berated her employees indiscriminately. We don't assess whether this approach is advisable—all we can say is that it's not illegal. Because Bailey hasn't provided enough evidence to show that race played a part in his demotion, the district court didn't err in granting summary judgment against Bailey.

AFFIRMED.