NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-13267
Non-Argument Calendar

RISHI ARORA,

Plaintiff-Appellant,

versus

MIAMI-DADE COUNTY, FLORIDA,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:23-cv-20962-MD

Before JILL PRYOR, KIDD, and TJOFLAT, Circuit Judges.

PER CURIAM:

Rishi Arora appeals the District Court's order granting Miami-Dade County's (the "County") motion for summary judgment. Arora, an Asian American of Indian origin, alleged that the

County discriminated and retaliated against him in the workplace in violation of Title VII and the Florida Civil Rights Act ("FCRA"). Proceeding pro se at both the District Court and now on appeal, Arora appeals the District Court's orders granting summary judgment for the County and denying his motion requesting the District Court Judge to recuse, and he appeals this Court's order denying his motion to correct the record on appeal. We affirm the District Court's grant of summary judgment on the retaliation claims. But we vacate the grant of summary judgment on the discrimination claims and remand for further proceedings.

I.

Arora has been employed by Miami-Dade County as an Enterprise Portfolio Manager in the County's Information Technology Department ("IT Department") since 2015. Within the IT Department, he is responsible for providing leadership in best practices and managing the operational needs of the Enterprise Program Manager Office ("EMPO"). His starting salary was $140,000 annually, and by the time he filed his initial complaint, his base salary had risen to $173,458.88—the maximum for his current classification.

On December 14, 2021, Arora's supervisor, Maria Johnson, gave Arora an overall "satisfactory" rating on his performance evaluation for the period of November 2, 2020 through October 31, 2021.

On February 15, 2022, Johnson directed Arora to lead the Quality Assurance Office Design and Implementation Plan

("Quality Assurance Initiative"), which sought to introduce the quality assurance function into the IT Department. Arora was chosen because of his background and experience, and because he had personally recommended adding the functionality to the IT Department. He, however, disputes that he was best suited for the assignment, asserting that he lacked a background in quality assurance and experience in the director level role, both of which he believed were required to lead such a large undertaking. Johnson advised Arora that the Quality Assurance Initiative would be his sole focus for its duration, and that she would assume his duties, including supervision of his direct reports, in the interim.

Despite being informed that the Quality Assurance Initiative would be his sole focus, Arora continued to hold staff meetings with his direct reports. As a result, Arora received a Record of Counseling for failure to follow directions on March 30, 2022.

Then, on April 25, 2022, Arora filed a charge of discrimination (the "Initial Charge") based on national origin, race, and religion with the Equal Employment Opportunity Commission ("EEOC"). Arora indicated that the earliest discriminatory event took place on February 15, 2022 and that the discrimination was ongoing. In the Initial Charge, Arora claimed that Johnson, an African American woman, discriminated against him in the following ways: (1) requiring him to meet with her weekly; (2) assigning him to the Quality Assurance Initiative; (3) giving him his worst rating ("Satisfactory") since he joined the Miami-Dade IT Department; (4)

verbally threatening him; and (5) giving him the Record of Counseling.

Six months later, Johnson assigned Arora as the IT Department Program Manager for the Call Center Modernization program (the "Call Center Initiative"). Johnson claims that she assigned Arora to the initiative because of his certifications and experience, but Arora disputes this, claiming that his credentials were insufficient to give directions to his superiors in the IT Department.

On October 26, 2022, Arora filed a supplement to his Initial Charge (the "Supplemental Charge") with the EEOC. In the Supplemental Charge, Arora claimed that Johnson: (1) assigned him to lead the Call Center Initiative despite his belief that only Assistant Directors could succeed in such an initiative; (2) failed to restore him to his previous position after he completed his work on the Quality Assurance Initiative; (3) failed to restore him to a role where his subordinates directly reported to him after he completed his work on the Quality Assurance Initiative; (4) barred him from speaking with his direct reports; (5) told his direct reports to create EMPO artifacts and kept him out of discussions related to progress at the EMPO; and (6) excluded him from hiring positions that would directly report to him.

Then, on March 10, 2023, Arora filed his complaint in the District Court asserting eight causes of action: discrimination on the basis of national origin, in violation of Title VII and the FCRA ("Counts I and II"); discrimination on the basis of race, in violation of Title VII and the FCRA ("Counts III and IV"); discrimination on the basis of religion, in violation of Title VII and the FCRA ("Counts V and VI"); and retaliation, in violation of Title VII and the FCRA ("Counts VII and VIII").

On February 2, 2024, the County filed a motion seeking summary judgment for Arora's claims of discrimination and retaliation. A month later, Arora's counsel filed a motion seeking to withdraw from representing him, which the Court approved on April 24, 2024. The District Court gave Arora fourteen days to either retain a new counsel, or proceed pro se. Arora elected to proceed pro se.

The District Court heard argument from both parties on the County's motion for summary judgment. Two days later, Arora filed a motion requesting Judge Melissa Damian recuse herself, which the Court denied. The Court then granted the County's motion for summary judgment, finding that Arora failed to allege facts sufficient to create a genuine issue of material fact as to whether he suffered an adverse employment action.

Arora raises three issues on appeal. First, Arora challenges the District Court's grant of summary judgment in favor of the County, arguing that he was entitled to a jury trial under the Seventh Amendment and that there was a genuine dispute of material fact. Second, Arora argues the District Court erred by denying his motion requesting Judge Damian recuse herself because her impartiality might reasonably be questioned. And, finally, Arora argues that this Court erred in denying his motion to correct the record on appeal. Additionally, the County requests that we strike the facts section from Arora's initial brief for failing to follow Florida appellate procedural rules. First, we consider the County's request to strike the facts section from Arora's initial brief, then we consider Arora's appeals.

II.

The County argues in its appellee brief that Arora's statement of facts must be stricken for failure to comply with Florida Rule of Appellate Procedure 9.210. Since this case is before us under federal question jurisdiction, the Federal Rules of Appellate Procedure govern—not Florida's procedural rules.

However, the County does raise a valid concern that Arora includes argumentation in his facts section. Rule 28(a) of the Federal Rules of Appellate Procedure requires that the appellant's brief contain "under appropriate headings and in the order indicated" several categories of information. *See Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1330 (11th Cir. 2004) ("Any issue that an appellant wants the Court to address should be specifically and clearly identified in the brief."). Rule 28(a) standardizes briefing materials for the court and gives notice to the appellees as to what issues and arguments they are expected to respond to. We "deem an appellant to have abandoned an argument where she makes only passing references to it in the background sections of her brief." *LaCourse v. PAE Worldwide Inc.*, 980 F.3d 1350, 1360 (11th Cir. 2020) (internal quotation marks omitted). Although we liberally construe pro se filings, *Winthrop-Redin v. United States*, 767 F.3d 1210, 1215 (11th Cir. 2014), "we cannot act as de facto counsel or rewrite an otherwise deficient pleading to sustain an action." *Bilal v. Geo Care, LLC*, 981 F.3d 903, 911 (11th Cir. 2020).

Therefore, although we do not strike Arora's fact section as the County asks us to, we do not consider any arguments raised by Arora outside of his initial brief's argument section.

III.

Arora provides two arguments for why the District Court erred in granting summary judgment for the County. First, that the District Court deprived him of his Seventh Amendment right to a jury trial. Second, that there was a genuine dispute of material fact.

A.

Arora argues that since the District Court granted summary judgment in favor of the County, his lawsuit was unable to proceed to trial, and therefore that he was denied his right to a jury trial under the Seventh Amendment.

"The Supreme Court made clear long ago that summary judgment does not violate the Seventh Amendment." *Jefferson v. Sewon Am., Inc.*, 891 F.3d 911, 919 (11th Cir. 2018) (quoting *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 336, 99 S. Ct. 645, 654 (1979)) (internal quotation marks omitted). Arora makes no argument why his Seventh Amendment rights were violated beyond the fact that his claim against the County was not heard by a jury, nor does he attempt to distinguish the present action from other actions where summary judgment would not violate the Seventh Amendment. This argument is without merit and, accordingly, denied.

B.

We now consider Arora's claim that the District Court improperly granted summary judgment because a genuine issue of material fact remained. He argues the District Court did not properly consider the numerous exhibits he provided to the Court and improperly weighed credibility in making its determination. Specifically, he argues a factual dispute remained regarding discriminatory intent and retaliation.

While Arora does not frame his appeal this way, he is really appealing two separate District Court holdings from its order granting summary judgment.[1] The District Court ruled against Arora for both discrimination and retaliation. In order to properly evaluate Arora's appeal, we address each separately.

1.

Title VII and the FCRA prohibit employers from discriminating against an employee on the basis of race, religion, or national origin. 42 U.S.C. § 2000-e-2(a)(1); Fla. Stat. § 760.10(1)(a). A plaintiff may prove discrimination through either direct or circumstantial evidence. *Scott v. Suncoast Beverage Sales, Ltd.*, 295 F.3d 1223, 1227–29 (11th Cir. 2002). If, as is the case here, only circumstantial evidence is available, courts apply the *McDonnell Douglas* burden-shifting framework. *Id.* at 1228. Initially, the plaintiff must make a

[1] The District Court's order has a third holding, that Arora's failure to promote claim is time barred. Arora fails to raise this issue on appeal, so we do not address it.

prima facie case[2] of disparate treatment discrimination by showing (1) he is a member of a protected class, (2) he suffered an adverse employment action, (3) his employer treated similarly situated employees outside of the protected class more favorably, and (4) the plaintiff was qualified to do the job. *Id.* (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817 (1973)). Once the plaintiff has established a prima facie case, the burden shifts to the defendant to "articulate a legitimate, nondiscriminatory reason for the adverse action." *Id.* Then, if the defendant has done so, the burden shifts again to the plaintiff to show that the defendant's articulation is merely a pretext for discrimination. *Id.*

We review "a district court's grant of summary judgment de novo, applying the same legal standards applied by the district court." *Valley Drug Co. v. Geneva Pharms., Inc.*, 344 F.3d 1294, 1303 (11th Cir. 2003) (citations omitted). "We view the summary judgment record in the light most favorable to the non-moving party and we draw all reasonable inferences in favor of the non-moving party." *Stanley v. City of Sanford Fla.*, 83 F.4th 1333, 1337 (11th Cir. 2023). Summary judgment is appropriate only when no genuine

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[2] This Court has held that the *McDonnell Douglas* framework, properly understood, is an evidentiary framework that shifts the burden of production between parties to figure out the true reason for an adverse employment action, not a set of elements that the employee must prove to survive summary judgment. *Tynes v. Fla. Dep't of Juv. Just.*, 88 F.4th 939, 941 (11th Cir. 2023). However, failure to establish a prima facie case is still fatal where it reflects a failure to put forth enough evidence for a jury to find for the plaintiff on the ultimate question of discrimination, including in instances where the court finds that there was no adverse employment action. *Id.* at 947.

issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Signor v. Safeco Ins. Co. of Ill.*, 72 F.4th 1223, 1227 (11th Cir. 2023).

We begin with whether Arora established a prima facie case of employment discrimination. As the record shows, Arora is a member of a protected class. The question of whether Arora suffered an adverse employment action is closer.

We previously held that to establish an employment action is adverse, the employee must show a "*serious and material* change in the terms, conditions, or privileges of employment." *Davis v. Town of Lake Park, Fla.*, 245 F.3d 1232, 1239 (11th Cir. 2001) (emphasis in original), *overruled on other grounds by Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 126 S. Ct. 2405 (2006). We explained that adverse employment actions consist of "things that affect continued employment or pay—things like terminations, demotions, suspensions without pay, and pay raises or cuts—as well as other things that are similarly *significant* standing alone." *Monaghan v. Worldpay US, Inc.*, 955 F.3d 855, 860 (11th Cir. 2020) (emphasis added) (citations omitted).

After the parties fully briefed the summary judgment motion in the District Court, the Supreme Court decided *Muldrow v. City of St. Louis*, in which it clarified a plaintiff's required showing for an adverse employment action under Title VII's anti-discrimination provision. 601 U.S. 346, 144 S. Ct. 967 (2024). The Supreme Court explained that a plaintiff "need show only some injury respecting [his] employment terms or conditions," or, in other words, a "disadvantageous change in an employment term or condition." *Id.* at 359, S. Ct. at 977 (citation modified). But the harm need not be "significant," "serious," or "substantial." *Id.* at 355, S. Ct. at 974.

Because the District Court did not consider the Supreme Court's decision in *Muldrow* when it decided the summary judgment motion, we vacate the grant of summary judgment on the Title VII discrimination claim and remand to allow the District Court to determine, in the first instance, whether Arora suffered an adverse employment action.

2.

We also use the *McDonnell Douglas* burden-shifting framework when analyzing Title VII retaliation claims. In order to make a prima facie case for retaliation, the plaintiff must show: "(1) that he engaged in statutorily protected expression; (2) that he suffered an adverse employment action; and (3) that there is some causal relationship between the two events." *Johnson v. Miami-Dade Cnty.*, 948 F.3d 1318, 1325 (11th Cir. 2020) (internal quotation marks omitted).

Arora asserts that, after he filed the Initial Charge with the EEOC on April 25, 2022, at least some of the actions he takes issue with were done in retaliation for his EEOC filing.

Filing a complaint with the EEOC is undoubtedly statutorily protected conduct. *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 173, 131 S. Ct. 863, 867 (2011). We thus turn to whether Arora suffered an adverse employment action. In *Muldrow*, the Supreme

Court made clear that the standard for an adverse employment action for a retaliation claim is more demanding that the standard for a discrimination claim. The Court explained that for a retaliation claim, a plaintiff must show "that the retaliatory action is materially adverse, meaning that it causes significant harm." 601 U.S. at 357, S. Ct. at 976 (internal quotation marks omitted).

Arora failed to satisfy this standard. Arora proffers evidence that after he complained about discrimination, his supervisor micromanaged his daily tasks and reassigned him to the Call Center Initiative. However, the record shows that during the time the alleged discrimination took place, Arora retained the same title, salary, and benefits. Arora's argument is that by placing him on the Call Center Initiative, the County was setting him up for failure, which would result in his termination or demotion. Arora fails to explain why that is the case. Employees are routinely assigned to special projects, and in many instances, such assignments are an opportunity to positively distinguish oneself within the organization.

Because Arora failed to demonstrate that he suffered a material adverse employment action, he failed.to make a prima facie case for retaliation, and we need not address steps 2 and 3 of the *McDonnell Douglas* framework.

* * *

Thus, we vacate the district court's grant of summary judgment on the employment discrimination claim but affirm the grant of summary judgment on the retaliation claim.

IV.

Arora also appeals the District Court's order denying his motion to recuse. He claims that Judge Damian's personal and professional affiliations with opposing counsel created an appearance of bias requiring recusal. Arora offers the following evidence of Judge Damian's alleged bias: denying his request for an extension to find legal representation (although partially granting it), imposing a three-week deadline to submit pre-trial documents despite Arora being pro se, ruling against Arora in summary judgment, refusing to agree with Arora's legal argument regarding *Illinois v. Gates*, and Judge Damian's alleged personal relationship with opposing counsel. As proof of Judge Damian's personal relationship, Arora puts forth that Judge Damian and Miami-Dade County Attorney Geraldine Bonzon-Keenan both graduated from the University of Miami School of Law in the same year and that they are both of Hispanic origin.

"Any district judge shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." *Jenkins v. Anton*, 922 F.3d 1257, 1271 (11th Cir. 2019) (citations omitted). "The standard . . . is whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." *Id.* (quoting *United States v. Torkington*, 874 F.2d 1441, 1446 (11th Cir. 1989)) (internal quotation marks omitted). A judge's decision not to recuse herself is reviewed for an abuse of discretion. *Id.* When applying the abuse of discretion standard, "we must affirm unless we find that the district court has made a clear error of judgment or has applied the wrong legal standard." *United States v. Frazier*, 387 F.3d 1244, 1259 (11th Cir. 2004).

Arora's argument is completely without merit and not well taken. The fact that Judge Damian ruled against Arora on various motions is irrelevant—in fact that is her job. *See Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct. 1147, 1157 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion."). Judge Damian and County Attorney Bonzon-Keenan graduating law school together is likewise insufficient. Arora fails to allege that they have ever even met each other, let alone that they have a personal relationship that rises to the level that Judge Damian's impartiality might reasonably be questioned. And finally, Arora's allegation that Judge Damian and County Attorney Bonzon-Keenan's shared Hispanic ethnicity, without additional evidence of impropriety, somehow creates a reasonable appearance of partiality is totally meritless. Finding this argument frivolous, we deny Arora's appeal.

V.

Finally, Arora argues that the District Court erred by failing to correct the record on appeal. Citing Federal Rule of Appellate Procedure 10(e), Arora argues that an appellate court must ensure that the record is complete and accurate.[3] He requests that we order a review of the transcript against the official audio recording and require necessary corrections before further proceedings.

Rule 10(e)(1) states that if "any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly." We have previously held that the appellate record need not be supplemented when "the record truly discloses what occurred in the district court." *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1271 (11th Cir. 2021) (quoting *Hoover v. Blue Cross & Blue Shield of Alabama*, 855 F.2d 1538, 1543 n.5 (11th Cir. 1988)) (internal quotation marks omitted).

Arora references several locations in the transcript he claims statements were omitted, but fails to identify what the statements themselves, nor does he explain how those purportedly omitted statements are material. Such vague assertions do not warrant a reexamination of the transcript, and the alleged omissions did not impact Arora's ability to appeal the District Court's judgment. Therefore, we deny his request to order a review of the transcript.

[3] Arora already filed a motion to correct the record on appeal with this Court, which we denied. However, we have the power to alter, amend, or vacate a ruling on a motion or other interlocutory matter. CTA11 Rule 27-1(g).

VI.

In summary, we affirm the District Court's order granting summary judgment in favor of the County on Arora's retaliation claim. But we vacate the District Court's order granting summary judgment on the discrimination claim and remand for further proceedings.

AFFIRMED IN PART, VACATED IN PART.