NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-13823
Non-Argument Calendar

BOBBY GENE LETT,

Plaintiff-Appellant,

versus

POSTMASTER GENERAL
UNITED STATES POSTAL SERVICES,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:22-cv-00102-LMM

Before LUCK, LAGOA, and MARCUS, Circuit Judges.

PER CURIAM:

Bobby Lett, proceeding pro se, appeals the district court's grant of summary judgment to the Postmaster General on his

retaliation and retaliatory-hostile-work-environment claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16(a). On appeal, Lett argues that: (1) the district court erred by not providing him with free transcripts of depositions conducted by the Postmaster General; (2) the court erred by not excluding the testimony of his supervisor, Melody Brock, under Federal Rule of Evidence 403 because she was not a credible witness and her testimony was contradictory; and (3) the court generally erred in granting the Postmaster General's motions for summary judgment on Lett's retaliation and retaliatory-hostile-work-environment claims where United States Postal Service ("USPS") management knew of his supervisor's retaliation, but did not act and allowed retaliatory behavior to persist. After careful review, we affirm.

I.

We review a district court's grant of summary judgment de novo, viewing all evidence and drawing all reasonable factual inferences in favor of the nonmoving party. *Lewis v. City of Union City, Georgia*, 934 F.3d 1169, 1179 (11th Cir. 2019). We consider "only the evidence that was available to the district court at the time it considered the motion." *Holloman v. Mail-Well Corp.*, 443 F.3d 832, 836 (11th Cir. 2006). A district court's evidentiary ruling at the summary-judgment stage is reviewed for abuse of discretion. *Wright v. Farouk Sys., Inc.*, 701 F.3d 907, 910 (11th Cir. 2012). Under the abuse-of-discretion standard, we must affirm the district court's decision unless we find that the district court applied the incorrect legal standard or committed a clear error of judgment. *Knight through Kerr v. Miami-Dade Cnty.*, 856 F.3d 795, 808 (11th Cir. 2017).

A party who does not brief an argument or claim before us on appeal abandons it, and we will not address its merits. *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1330 (11th Cir. 2004). "[A]n 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). Arguments raised for the first time in a reply brief are abandoned. *Id.* at 683. We "may affirm the district court's judgment on any ground that appears in the record, whether or not that ground was relied upon or even considered by the court below." *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007).

II.

First, we are unpersuaded by Lett's claim that the district court erred by depriving him of free transcripts of the Postmaster General's depositions before entering summary judgment. For starters, Lett says on appeal that he "repeatedly requested access" to the depositions, but the record shows that he only requested access *after* the court had entered its judgment and closed his case. Because Lett's inability to access the depositions was not before the court when it granted the Postmaster General's motion for summary judgment, the court did not err in denying his request.

Regardless, Lett has not shown any error nor cited any authority to establish that he was entitled to free copies of the depositions. His appellate brief's citations to 28 U.S.C. §§ 753(f) and 1915 are irrelevant to his appeal. Section 1915 generally stipulates the

rules governing in forma pauperis ("IFP") proceedings, and the district court determined that, based on his financial status, Lett was not entitled to proceed IFP. 28 U.S.C. § 1915. As for § 753(f), it undermines Lett's claims by recognizing that court reporters "may charge and collect fees for transcripts," which would include documents like the Postmaster General's depositions. *Id.* § 753(f) (providing that court reporters "may charge and collect fees for transcripts requested by the parties," unless the appellant has been permitted to proceed IFP on appeal and a judge certifies the appeal is not frivolous but presents a substantial question).

The only remaining authority Lett cites is Rule 10(a), which merely lists the contents of the appellate record. Fed. R. App. P. 10(a) (providing that the record on appeal consists of "(1) the original papers and exhibits filed in the district court; (2) the transcript of proceedings, if any; and (3) a certified copy of the docket entries prepared by the district clerk"). Lett simply has not cited to any authority suggesting that he was entitled to free copies of the depositions, even if he had requested access before the court's grant of summary judgment, which he did not do. We affirm on this issue.

III.

We also find no merit to Lett's claim that the court erred by not excluding the testimony of Brock, his supervisor in its decision. In ruling on summary judgment, the district court may not weigh evidence or make credibility determinations. *Lewis*, 934 F.3d at 1179. However, Federal Rule of Evidence 403 provides that a court

may exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice. Fed. R. Evid. 403.

Here, the district court did not err in failing to exclude supervisor Brock's testimony. As the record shows, the court did not rely on or even reference any statement by Brock in its order granting the Postmaster General's motion for summary judgment. Indeed, the Postmaster General did not even reference Brock's testimony in his motion for summary judgment. Thus, Rule 403 does not apply because the court is not required to exclude statements that it did not consider in its order. Moreover, the record reflects that the court did not make a credibility determination about Brock, which makes sense since credibility determinations are improper at the summary-judgment stage. Accordingly, we can find no error in the district court's order concerning Brock's testimony, and we affirm as to this issue as well.

IV.

Finally, we are not otherwise persuaded that the district court erred in granting the Postmaster General's motions for summary judgment on Lett's retaliation and retaliatory-hostile-work-environment claims. Summary judgment is appropriate when the record demonstrates that there is no genuine dispute as to any material fact, and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). An issue of material fact is not genuine unless a reasonable jury could return a verdict in favor of the non-moving party. *Morton v. Kirkwood*, 707 F.3d 1276, 1284 (11th Cir. 2013). We draw all justifiable inferences in favor of the non-moving

party, but inferences based on speculation are not reasonable, and "mere conclusions and unsupported factual allegations" are insufficient to withstand a summary judgment motion. *Ellis v. England*, 432 F.3d 1321, 1325–26 (11th Cir. 2005).

In the employment context, Title VII provides that "[a]ll personnel actions affecting [federal] employees . . . shall be made free from any discrimination based on race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-16(a). Section 2000e-16(a)'s prohibition against "any discrimination" also prohibits retaliation against federal employees who file charges of discrimination. *Babb v. Sec'y, Dep't of Veterans Affs.*, 992 F.3d 1193, 1203 (11th Cir. 2021). In applying § 2000e-16(a) to a retaliation claim, courts consider whether the plaintiff offered evidence permitting a reasonable jury to find that retaliation played "*any* part" in the federal employer's decision-making process. *Buckley v. Sec'y of Army*, 97 F.4th 784, 798 (11th Cir. 2024). Section 2000e-16(a) also applies to federal employees' retaliatory-hostile-work-environment claims. *Id.* at 799. In applying § 2000e-16(a) to a retaliatory-hostile-work-environment claim, courts consider whether a federal employee established that his employer "created or tolerated a work environment that well might have dissuaded a reasonable worker from making or supporting a charge of discrimination and that environment rose to the level of a personnel action." *Id.* (citation modified).

Under the Federal Rules of Evidence, hearsay is an out-of-court statement offered into evidence "to prove the truth of the matter asserted in the statement." Fed. R. Evid. 801(c).

Generally, hearsay is not admissible. Fed. R. Evid. 802. However, a statement that is offered against an opposing party and "was made by the party's agent or employee on a matter within the scope of that relationship and while it existed" is not hearsay. Fed. R. Evid. 801(d)(2)(D). While a district court generally cannot consider inadmissible hearsay on a motion for summary judgment, it may consider a hearsay statement at the summary judgment stage "'if the statement could be reduced to admissible evidence at trial or reduced to admissible form.'" *Jones v. UPS Ground Freight*, 683 F.3d 1283, 1293–94 (11th Cir. 2012). A typical method for having hearsay testimony reduced to admissible form is to have the declarant of the statement testify to the matter at trial. *Id.* at 1294; *see also McMillian v. Johnson*, 88 F.3d 1573, 1584 (11th Cir. 1996) (rejecting the argument that declarants who had made hearsay statements excluded by the district court on summary judgment could potentially change the testimony in their affidavits and give admissible testimony, since "a suggestion that admissible evidence might be found in the future is not enough to defeat a motion for summary judgment").

Construing Lett's initial brief liberally, he says that the district court erred by granting the Postmaster General's motion for summary judgment on his retaliation and retaliatory-hostile-work environment claims. We disagree.

As for the retaliation claim, Lett has not shown that his Equal Employment Opportunity Commission ("EEOC") case against a former coworker, Shawn Norwood played "any part" in

the actions of his supervisor, Brock. The only fact indicating that Brock knew of the Norwood EEOC case was Lett's statement that he had confronted Brock about whether she had retaliated against him for the EEOC case, to which she responded that she wanted to get mail processed. Lett further admitted that Brock had never told him that his EEOC case motivated her actions.

To the extent Lett still argues that Brock's actions were retaliatory, Lett cites merely to undisputedly objective or irrelevant comments without explaining how they were harassing or done in retaliation. The crux of Lett's complaint was that Brock retaliated by demoting him to a "floater" mail processing clerk ("MPC") position. But his own deposition testimony established that his reassignment to different machines was not a demotion because Brock never changed his job responsibilities, reduced his seniority or his pay, denied him a pay increase or request to switch hours, or took away leave he had earned. Lett's remaining argument was that Brock's reassignment of him to different machines was disrespectful due to his seniority, but he admitted his job description did not mention seniority and she did not assign MPCs to machines based on seniority. Because the undisputed record failed to establish that Lett suffered an adverse employment action, the court properly entered summary judgment against Lett on his retaliation claim.

As for Lett's retaliatory-hostile-workplace-environment claim, he has not shown a genuine issue of material fact that Brock's actions created a work environment that would dissuade a reasonable worker from making a complaint of discrimination.

Indeed, Lett admitted that nothing Brock did or said dissuaded him from filing a grievance against her, and that he would have no reservations doing so if she acted improperly. To the contrary, Lett filed an EEOC complaint against Brock, created a petition that sought her immediate removal because she was "a serious disservice to the post service," and advocated for 23 coworkers to sign the petition over multiple months. On this record, the court correctly granted the Postmaster General's motion for summary judgment on Lett's retaliatory-hostile-workplace-environment claim.

Finally, to the extent Lett seeks to argue that the district court erred by excluding a statement made by Brock's supervisor, Walter Ages, on the basis that it was inadmissible hearsay and presented legal conclusions, Lett did not raise that issue until his reply brief. Thus, he abandoned any challenge to the district court's conclusion that statements made by Brock's supervisor were impermissible hearsay. But even if that issue had been properly raised, the district court did not err in finding that the statement at issue was hearsay, because Lett did not show that he could have reduced the statement to admissible evidence. Accordingly, we affirm.[1]

AFFIRMED.

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[1] We note that the district court opinion cited to § 2000e-3(a), but Lett sued his current federal employer, the USPS, under Title VII, so § 2000e-16(a) governed his claims. 42 U.S.C. § 2000e-16(a). Neither party raised this issue. In any event, we can affirm for any basis supported by the record, and, in this case, summary judgment was proper under § 2000e-16(a)'s standards for retaliation and retaliatory-hostile-work-environment claims.