

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11858

DAVID NASCIMBEN,

Plaintiff-Appellant,

versus

FELD ENTERTAINMENT, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:24-cv-00098-WFJ-SPF

Before WILLIAM PRYOR, Chief Judge, and GRANT and LUCK, Circuit
Judges.

PER CURIAM:

This appeal requires us to decide whether a *pro se* litigant may continue to pursue claims of disability discrimination against his former employer. David Nascimben sued Feld Entertainment,

Inc., for violating the Americans with Disabilities Act. The district court granted summary judgment for Feld on the ground that Nascimben's complaint was untimely. Because the district court did not draw reasonable inferences in Nascimben's favor, we vacate and remand for further proceedings.

I. BACKGROUND

David Nascimben began working as a video editor for Feld Entertainment in January 2022. He lost his job three months later. Nascimben believed that Feld discriminated against him on the basis of disability. So he filed a charge of discrimination with the Equal Employment Opportunity Commission.

The Commission dismissed the charge and posted a right-to-sue letter on its portal on August 28, 2023. It also sent Nascimben two emails about the posting—one on August 28, and another on September 5. The letter informed Nascimben that “your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.” See 42 U.S.C. §§ 2000e-5(f)(1), 12117(a). The next sentence stated that “[r]eceipt generally occurs on the date that you (or your representative) view this document.” Nascimben did not download the letter until October 22.

Nascimben sued Feld *pro se* on January 10, 2024. His amended complaint alleged four counts of discrimination and retaliation under the Americans with Disabilities Act. Feld moved to dismiss the amended complaint because Nascimben “failed to file [his] lawsuit within 90 days of receiving the [Commission’s] Notice of Right to Sue.”

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The district court converted the motion to dismiss to a motion for summary judgment. *See* FED. R. CIV. P. 12(d). It instructed Nascimben to “file any factual material or additional argument in opposition to [the] motion” within a month. Nascimben submitted a brief titled “Additional Argument” that denied he received the Commission’s emails and attached four screenshots of his inbox on August 28 and September 5 in support. He contended that the 90-day clock did not start running until October 22 when he accessed the portal.

Nascimben argued in the alternative that the district court should toll the deadline. He asserted that a Commission investigator “assured” him on October 22 that the 90-day period ordinarily begins when the charging party views the right-to-sue letter. And he said the same investigator told him on November 14 that “he had ninety (90) days from October 22 . . . to file his case.” These “confident assurances,” Nascimben contended, “led [him] to believe without question that he had until January 20” to sue.

The district court granted summary judgment for Feld. It declined to credit Nascimben’s “self-serving testimony about non-receipt of the emails” and stated that the screenshots “could be explained in multiple ways.” It also reasoned that Nascimben was on notice to “check the . . . portal” because the Commission had “indicat[ed] [a] proposed finding to him” on August 11. The district court acknowledged that tolling is appropriate when the Commission “affirmatively misinform[s]” a plaintiff about his filing deadline. *Armstrong v. Martin Marietta Corp.*, 138 F.3d 1374, 1393 (11th

Cir. 1998) (en banc). But it ruled that the Commission investigator accurately restated the language of Nascimben's letter. The district court ruled that the limitations period began on August 28 and that Nascimben filed his complaint 45 days too late.

II. STANDARD OF REVIEW

We review a summary judgment *de novo*. *Kerr v. McDonald's Corp.*, 427 F.3d 947, 950 (11th Cir. 2005).

III. DISCUSSION

Pro se litigants, like counseled litigants, may not “oppose summary judgment by the use of . . . incompetent . . . materials.” *Barker v. Norman*, 651 F.2d 1107, 1129 (5th Cir. Unit A July 1981) (citation modified). Yet, the district court treated Nascimben's submissions as competent evidence and ruled that his complaint was untimely. The district court misapplied the summary judgment standard in the process.

A district court may grant summary judgment only when “the movant shows 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). A dispute is “genuine” if “the evidence is such that a reasonable jury could return a verdict for the non-moving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Because juries can make reasonable inferences, a court considering summary judgment must “construe the evidence and draw all reasonable inferences in the light most favorable to the nonmoving party.” *Coley-Pearson v. Martin*, 156 F.4th 1133, 1140

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(11th Cir. 2025) (citation modified). The district court did not heed this directive.

We cannot meaningfully review whether the district court was correct that Feld is entitled to summary judgment. The district court dismissed as “self-serving” Nascimben’s statements that he never received the Commission’s emails. But evidence “may create an issue of material fact and preclude summary judgment even if it is self-serving and uncorroborated.” *Williams v. Radford*, 64 F.4th 1185, 1198 (11th Cir. 2023) (citation modified).

The district court also set aside Nascimben’s screenshots because they “could be explained in multiple ways.” But a court “cannot grant summary judgment” if “one . . . permissible inference[] creates a genuine issue of material fact.” *Sconiers v. Lockhart*, 946 F.3d 1256, 1263 (11th Cir. 2020) (emphasis added). Feld, not Nascimben, must negate alternative inferences because it seeks to secure “judgment as a matter of law.” FED. R. CIV. P. 56(a).

The district court faulted Nascimben for failing to check the portal after the Commission “indicat[ed] its proposed finding to him” on August 11. But the only description of the August 11 communication in the record comes from a Commission log that states an “investigator summarized the evidence upon which the office Director *will* make a determination and *indicate* the proposed finding.” That description does not suggest the investigator told Nascimben a decision was imminent.

In rejecting Nascimben’s tolling argument, the district court equated the investigator’s later statements to Nascimben with the

general language in the right-to-sue letter. But Nascimben contends the investigator did more than repeat that language. According to Nascimben, the investigator told him on November 14 that “he had ninety (90) days from October 22” to sue.

We decline Feld’s invitation to affirm on the alternative ground that Nascimben failed to submit competent evidence. To be sure, Nascimben failed to submit a declaration under penalty of perjury or authenticate the screenshots he provided. But the district court treated his unsworn statements as evidence and assumed his screenshots were admissible. If the district court wanted to do otherwise, our precedent required it to provide “clear notice of the need to file affidavits or other responsive materials and of the consequences of default.” *United States v. One Colt Python .357 Cal. Revolver, S/N T03461 W/Holster*, 845 F.2d 287, 289 (11th Cir. 1988) (describing procedural protections afforded to *pro se* litigants); *Chapman v. Dunn*, 129 F.4th 1307, 1318 & n.7 (11th Cir. 2025) (similar); see also *Barker*, 651 F.2d at 1128–29 (holding that district court “abused its discretion in failing to afford [*pro se* plaintiff] a meaningful opportunity to remedy the obvious defects in his summary judgment materials”); FED. R. CIV. P. 12(d) (granting parties “a reasonable opportunity to present all the material that is pertinent” when a district court converts a motion to dismiss to a motion for summary judgment); *id.* R. 56(f) (requiring “notice and a reasonable time to respond”).

A remand is necessary for the district court to reconsider its ruling after Nascimben receives the required notice and has a

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meaningful opportunity to submit competent evidence. Nascimben assumed that his submissions were competent evidence. Affirming the summary judgment on this ground would extinguish his claims because he “fail[ed] to appreciate the subtleties of modern motion practice.” *Chapman*, 129 F.4th at 1318 (citation modified).

IV. CONCLUSION

We **VACATE** the summary judgment and **REMAND** for further proceedings.