

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12417
Non-Argument Calendar

JOHN LAPIKAS,

Plaintiff-Appellant,

versus

MARINER SANDS COUNTRY CLUB, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 2:23-cv-14323-AMC

Before NEWSOM, BRASHER, and TJOFLAT, Circuit Judges.

PER CURIAM:

John Lapikas appeals the orders of the District Court granting the motions of Mariner Sands Country Club (the “Club”) for

sanctions and for summary judgment on Lapikas' age discrimination and defamation claims.¹

I. BACKGROUND

A. Employment History

In April 2002, Mariner Sands, a private, member-owned country club located in Stuart, Florida, hired Lapikas as its Greens Superintendent. His responsibilities included managing the Club's golf courses, maintaining them in "optimal playing conditions," and promoting an exceptional golf experience for members and guests of the Club.

In 2021, Lapikas was tasked with overseeing the renovation of one of the Club's golf courses and its pumphouse. During this process, the Club's Chief Operating Officer, Richard Orsi, became concerned about Lapikas' performance. In November 2022, Orsi

¹ Lapikas' complaint presented four claims:

Count I, Violation of ADEA (Discrimination) Count I did not indicate the provision of the ADEA on which it was based. The District Court also made no indication. We assume Count I was based on 29 U.S.C. § 623(a)(1).

Count II, Violation of FRCA (Discrimination) We assume that Count II was based on the Florida Civil Rights Act of 1992, Fla. Stat. § 760.10(1)(a).

Count III, Defamation, and Count IV, Defamation Per Se, were brought under Florida common law.

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filed a corrective action form with the Club's Executive Committee², stating Lapikas had "shown poor performance / decision making with his communication skill set" and highlighting specific requirements for improvement. Lapikas met with Orsi and other staff to review the form and discuss these performance issues. Lapikas' age was not mentioned during this meeting.

In the months that followed, Lapikas' performance still did not rise to meet Orsi or the Executive Committee's expectations. In February 2023, the Executive Committee authorized Orsi to terminate Lapikas. The Executive Committee unanimously testified that the decision was premised on Lapikas' performance issues and a good faith belief that he misrepresented the status of the ongoing renovations. In late March or early April 2023, Orsi met with and fired Lapikas.³

Lapikas asserts that, during the meeting, Orsi told him "the Executive Committee [decided] it was time for [him] to retire." Lapikas relayed this belief to roughly 30 of his colleagues soon afterwards. On April 8, 2023, the Club emailed its members announcing that "John Lapikas will be leaving Mariner Sands Country Club. Please join me in thanking John for his service to our community." The Club circulated another email to members on May 19, 2023,

² The Club maintains a Board of Governors that are responsible for the government and administration of the Club's affairs. The officers of this board make up the Executive Committee, which has the sole authority to terminate its employees.

³ The exact date of this meeting is disputed, but immaterial to our decision.

Lapikas' final day of employment. The email read in part: "We wish [Lapikas] well in the future and much success with his next endeavors." Ten days later, the Club hired Michael Cauley, who is substantially younger than Lapikas, as its new Greens Superintendent.

B. The Litigation

On October 20, 2023, Lapikas sued the Club, alleging one count of wrongful termination in violation of the Age Discrimination in Employment Act of 1967 ("ADEA") and one count of wrongful termination in violation of the Florida Civil Rights Act ("FRCA"). He further alleged one count of defamation and one count of defamation per se, arguing that the Club defamed him by telling members of the Club that he had chosen to retire.

Three months before the close of discovery, Lapikas' counsel learned of a new witness, James Thompson, who was a bag drop employee at the Club, during Lapikas' deposition. However, Lapikas' counsel made a strategic decision not to investigate Thompson further. Lapikas' counsel later learned that Thompson may have overheard Orsi making a comment related to Lapikas' age and termination.

Fourteen minutes before the close of discovery, Lapikas' filed an Amended Initial Disclosure which identified Thompson, along with eleven others, as a witness who was "[b]elieved to have knowledge regarding the discrimination against [Lapikas], including the efforts to push him out of his employment with the Club." The next week, the parties conferred regarding the disclosure of

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these new witnesses, but Lapikas' counsel refused to provide more information about the subject matter these witnesses would address.

A month after the close of discovery, the Club moved for summary judgment on all four claims. The same day, Lapikas filed amended responses to the Club's first set of interrogatories, including a description of Thompson which contained no new information. The next day, Lapikas filed his Second Amended Initial Disclosures, but did not supplement the description. Forty-six days after the close of discovery, Lapikas submitted Thompson's declaration in response to the Club's motion for summary judgment. The declaration alleged that Thompson overheard Orsi and the Board President "say that it was time for [Lapikas] to go because of his age."

The Club moved for sanctions, arguing it was blindsided by the bad faith submission of such critical evidence and was thus unable to depose Thompson or conduct additional discovery. It requested a District Court order striking Thompson's declaration, precluding Lapikas from presenting him at trial, and awarding \$19,082.50 in reasonable attorneys' fees.

On the sanctions motion, the District Court ruled Lapikas' untimely disclosure of Thompson prejudiced the Club and was not substantially justified. This Ruling warranted the exclusion of Thompson's declaration and testimony. The Court also awarded the Club attorneys' fees in the amount requested.

The District Court granted the Club summary judgment on all claims. The Court concluded that the discrimination claims failed under both the *McDonnell Douglas* framework and the “convincing mosaic” framework because Lapikas failed to introduce evidence sufficient to establish pretext or allow a jury to infer intentional discrimination. The Court also concluded that the defamation claims failed because the Club’s communications did not contain any false statements or create an inference of defamation.

C. Arguments on Appeal

On appeal, Lapikas argues that awarding sanctions was inappropriate because his late disclosure of a Thompson’s identity was harmless and did not prejudice the Club. He also argues the Club’s attorneys improperly calculated their fees by billing for work they would have performed absent the challenge.

Lapikas argues the District Court erred by granting summary judgment on his discrimination claims because both direct and circumstantial evidence showed that he suffered discrimination due to his age. He argues that granting summary judgment on his defamation claims was improper because the Club’s communications created a defamatory inference that he had retired.

II. DISCUSSION

A. Sanctions

The District Court imposed discovery sanctions pursuant to Rule 37 of the Federal Rules of Civil Procedure. We review this action for abuse of discretion. *Serra Chevrolet, Inc. v. Gen. Motors*

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Corp., 446 F.3d 1137, 1146–47 (11th Cir. 2006). “A district court abuses its discretion when it misconstrues its proper role, ignores or misunderstands the relevant evidence, and bases its decision upon considerations having little factual support.” *Id.* at 1147.

Under Rule 26(a)(1)(A)(i) of the Federal Rules of Civil Procedure, a party is required to disclose the identity of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses. The disclosing party must also provide a summary of that information. Fed. R. Civ. P. 26(a)(1)(A)(i). A party has a duty to supplement its initial disclosures in a timely manner “if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.” Fed. R. Civ. P. 26(e)(1)(A). If a party fails to identify individuals and/or their knowledge as required by Rule 26(a), or supplement original disclosures as required by Rule 26(e), sanctions are warranted unless the failure was substantially justified or harmless. Fed. R. Civ. P. 37(c)(1).

If a party fails to provide information or identify a witness as required by Rule 26, the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or harmless. *Id.* In deciding whether a failure to comply with Rule 26(a) or (e) is substantially justified or harmless, a court may consider the party’s explanation, the importance of the information, and any prejudice

to the opposing party if the information were admitted at trial. *Romero v. Drummond Co.*, 552 F.3d 1303, 1321 (11th Cir. 2008).

In addition to excluding any information that was not disclosed in a timely manner, a court can award attorneys' fees. Fed. R. Civ. P. 37(c)(1). "The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939 (1983). In determining whether the hours expended were reasonable, a district court may exclude "excessive or unnecessary work on given tasks." *Gray v. Lockheed Aeronautical Sys. Co.*, 125 F.3d 1387, 1389 (11th Cir. 1997).

The District Court did not abuse its discretion in granting the Club's motion for sanctions—in excluding Thompson's declaration and testimony and awarding attorneys' fees. Lapikas' exclusion of Thompson's identity from the initial disclosures prejudiced the Club. Moreover, as the Court found:

Plaintiff offered no legitimate justification to explain why he did not disclose Thompson until fourteen minutes before the discovery cutoff; why Plaintiff did not supplement Thompson's disclosure with any additional information, even when probed by defense counsel; or why Plaintiff waited until his response to Defendant's summary judgment motion to introduce such important evidence

The Court's imposition of sanctions pursuant to Rule 37 was fully within its discretion. The Court found:

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[T]he hourly rate for attorneys Lyons and Craft and the number of hours is reasonable and supported. Lyons, a 27-year partner in employment law, reduced her hourly rate from \$625 to \$285 for this matter. Craft, a 3rd-year associate in employment law, similarly reduced his rate from \$320 to \$235 for this matter. [T]hese rates plainly [were] reasonable in the Southern District of Florida.

Because we find no abuse of discretion, we affirm the Court's decision to impose sanctions excluding Thompson and awarding attorneys' fees.

B. Age Discrimination

We review a district court's grant of summary judgment *de novo*. *Ismael v. Roundtree*, 161 F.4th 752, 758 (11th Cir. 2025). In doing so, we view all evidence and factual inferences reasonably drawn from the evidence in the light most favorable to the non-movant. *Id.* A court may grant summary judgment "if 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." *Id.* (quoting Fed. R. Civ. P. 56(a)).

The ADEA and FRCA prohibit employers from discriminating against persons at least 40 years old due to their age, with respect to their "compensation, terms, conditions, or privileges of employment." 29 U.S.C. § 623(a)(1); Fla. Stat. § 760.10(1)(a). The principles of law applicable to cases brought under Title VII of the Civil Rights Act of 1964 apply to cases brought under the ADEA. *Hairston v. Gainesville Sun Pub. Co.*, 9 F.3d 913, 919 (11th Cir. 1993).

We analyze FRCA claims under the same framework as ADEA claims are analyzed. See *Mazzeo v. Color Resolutions Int’l, LLC*, 746 F.3d 1264, 1266 (11th Cir. 2014).

Plaintiffs may prove discrimination through direct or circumstantial evidence. *Damon v. Fleming Supermarkets of Fla. Inc.*, 196 F.3d 1354, 1358 (11th Cir. 1999). To constitute direct evidence, “the evidence must indicate that the complained-of employment decision was motivated by the decisionmaker’s ageism.” *Id.* at 1359. “Only the most blatant remarks, whose intent could be nothing other than to discriminate on the basis of age will constitute direct evidence of discrimination.” *Id.* An example of direct evidence would be a management memorandum saying, “[f]ire Earley—he is too old.” *Earley v. Champion Int’l Corp.*, 907 F.2d 1077, 1081 (11th Cir. 1990). Evidence merely suggesting discrimination is, by definition, only circumstantial. *Id.* at 1082.

In evaluating claims of discrimination based on circumstantial evidence, courts may use the *McDonnell Douglas* burden-shifting framework. See *Ismael*, 161 F.4th at 759–60, 764. To establish a *prima facie* case of age discrimination under *McDonnell Douglas*, a plaintiff must show he (1) was a member of the protected age group, (2) was subjected to adverse employment action, (3) was qualified to do the job, and (4) was replaced by or otherwise lost a position to a younger individual. *Chapman v. AI Transport*, 229 F.3d 1012, 1024 (11th Cir. 2000). “To establish a claim under the ADEA, ‘a plaintiff must prove that age was the “but-for” cause of the employer’s adverse decision.’” *McCreight v. AubrunBank*, 117 F.4th

1322, 1334 (11th Cir. 2024) (quoting *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 176, 129 S. Ct. 2343, 2350 (2009)).

If a plaintiff establishes a prima facie case, the plaintiff “is entitled to a rebuttable presumption of illicit intent.” *Ismael*, 161 F.4th at 764. At that point, the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for the adverse employment action. *Id.* at 759. If the employer comes forth with evidence and successfully rebuts the presumption, “‘the *McDonnell Douglas* framework—with its presumptions and burdens—is no longer relevant.’ It ‘simply drops out of the picture.’” *Id.* at 764 (citations omitted). When that happens, “the court must proceed to ask whether ‘the record, viewed in a light most favorable to the plaintiff, presents a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination . . . by the decisionmaker.’” *Id.* In other words, “the *McDonnell Douglas* framework and the convincing mosaic approach are two paths to the same destination—the ordinary summary judgment standard.” *McCreight*, 117 F.4th at 1335.

The “convincing mosaic” is a metaphor for the summary judgment standard in which a plaintiff may overcome a motion for summary judgment by presenting circumstantial evidence in any form that creates a triable issue of the employer’s discriminatory intent. *Id.* at 1335–37. In other words, a plaintiff may defeat a summary judgment motion by presenting a “convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker.” *Smith v. Lockheed-Martin*

Corp., 644 F.3d 1321, 1328 (11th Cir. 2011) (quotation omitted). A plaintiff may establish a “convincing mosaic” by pointing to evidence that demonstrates (1) suspicious timing, ambiguous statements, or other information from which discriminatory intent might be inferred, (2) “systematically better treatment of similarly situated employees,” and (3) “the employer’s justification is pretextual.” *Lewis v. City of Union City*, 934 F.3d 1169, 1185 (11th Cir. 2019) (citation omitted).

Evidence that an employer’s nondiscriminatory reason is pretext for discrimination is relevant to this inquiry, but a plaintiff’s inability to disprove the defendants rationale cannot be the sole grounds for summary judgment. *Ismael*, 161 F.4th at 764. To establish pretext, the plaintiff “must demonstrate ‘such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer’s proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence.’” *Gogel v. Kia Motors Mfg. of Ga., Inc.*, 967 F.3d 1121, 1136 (11th Cir. 2020) (en banc) (quoting *Jackson v. State of Ala. State Tenure Comm’n*, 405 F.3d 1276, 1289 (11th Cir. 2005)).

“An employer may fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason.” *Nix v. WLCY Radio/Rahall Commc’ns.*, 738 F.2d 1181, 1187 (11th Cir. 1984). “[T]his framework is simply used to assess whether a plaintiff has presented sufficient evidence to establish pretext—that is, the em-

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ployer has not given an honest explanation of the employer's behavior—and thereby reach a jury on the ultimate question of discrimination.” *Damon*, 196 F.3d at 1363 n.3. The employer is entitled to summary judgment so long as it honestly believed the plaintiff acted improperly. *Id.*

If the plaintiff fails to establish a prima facie case, “the consequence is that the plaintiff must produce enough evidence, on her own and without any helpful evidentiary burdens or presumptions, to demonstrate a material issue of triable fact.” *Ismael*, 161 F.4th at 765. In other words, “the court . . . should advance directly to the convincing mosaic inquiry.” *Id.*

The District Court correctly granted summary judgment for the Club on Lapikas' discrimination claims. The Court meticulously considered and properly rejected each piece of evidence—including comparator evidence that, according to Lapikas, created a material issue of fact. The Court assumed Lapikas established a prima facie case of age discrimination under *McDonnell Douglas* and concluded he nonetheless failed to show that the Club's legitimate, non-discriminatory reason to terminate him was pretextual. *McDonnell Douglas* aside, the Court properly concluded Lapikas failed to establish a convincing mosaic of circumstantial evidence showing his age was the “but-for” cause of his termination. The record, taken as a whole, reflects that the Club fired Lapikas because he had performed poorly during the renovation of the golf course and he had communication issues with his supervisor. In short, there is nothing for a jury to decide.

C. Defamation

Florida common law governs Lapikas' defamation claims. *Turner v. Wells*, 879 F.3d 1254, 1262 (11th Cir. 2018). The elements of defamation under Florida law are: (1) publication; (2) falsity; (3) that the statement was made, at least negligently, on a matter concerning a private person; (4) actual damages; and (5) that the statement must be defamatory. *Id.* (citing *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1105–06 (Fla. 2008)). A publication is defamation per se when it, considered alone, “tends to injure one in his trade or profession.”⁴ *Richard v. Gray*, 62 So. 2d 597, 598 (Fla. 1953).

Even if not literally false, words may still be defamatory if “the defendant juxtaposes a series of facts so as to imply a defamatory connection between them, or creates a defamatory implication by omitting facts.” *Jews for Jesus*, 997 So. 2d at 1108. “Where a statement is subject to two possible interpretation and one is defamatory, it is for the jury to decide whether the statement is in fact defamatory.” *Johnston v. Borders*, 36 F.4th 1254, 1275 (11th Cir. 2022).

At the heart, Lapikas' defamation claims are based on an April 8, 2023 email to the Club's members with this announcement: “John Lapikas will be leaving Mariner Sands Country Club. Please join me in thanking John for his service to our community.”

⁴ Also if “it charges that a person has committed an infamous crime,” “charges a person with having an infectious disease,” or “tends to subject one to hatred, disgust, ridicule, contempt, or disgrace.” *Richard*, 62 So. 2d at 598.

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The email, signed by Richard Orsi, the Club's general manager, indicated that the search for a new greens superintendent had begun. In his deposition, Lapikas admitted that there is nothing in the email that is untrue or that insinuates that he is retiring. The email did not constitute the publication of a false statement that subjected Lapikas to hatred, ridicule, or disgrace. Neither did any statement the Club made injure his business or profession.

The District Court did not err in granting the Club summary judgment on Lapikas' claims of defamation.

III. CONCLUSION

Accordingly, we affirm the District Court's grant of summary judgment in favor of the Club and its imposition of sanctions on Lapikas.

AFFIRMED.