

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13270
Non-Argument Calendar

MICHAEL EUGENE GRIMAGE,

Plaintiff-Appellant,

versus

A. M. GWARA,

Sergeant,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:23-cv-01032-MMH-SJH

Before ROSENBAUM, GRANT, and BRASHER, Circuit Judges.

PER CURIAM:

Michael Grimage, a Florida state prison inmate proceeding pro se, brought an Eighth Amendment claim against FSP Sergeant

A.M. Gwara. The district court granted Gwara summary judgment, and Grimage appeals. We construe his briefing to raise two issues. First, Grimage challenges the magistrate judge’s denial of his discovery motion. Second, he challenges the district court’s grant of summary judgment based on a filing that came *after* the district court had already granted summary judgment. After careful review, we reject both of Grimage’s arguments and affirm the district court’s grant of summary judgment.

I.

After Gwara used pepper spray on Grimage to prevent him from committing suicide in his FSP cell, Grimage sued Gwara under 42 U.S.C. § 1983. He alleged that Gwara employed excessive force against him in violation of the Eighth Amendment.

After the district court denied Gwara’s motion to dismiss, Grimage filed a request for various discovery materials as well as a set of interrogatories for Gwara. Shortly thereafter, Grimage also filed a motion to compel discovery, in which he sought responses to his interrogatories and production of “documents and rules requested for examination.” Doc. 34 at 1.

Gwara responded to Grimage’s motion to compel discovery, stating that he already responded to Grimage’s requests for production and interrogatories. Gwara also noted that Grimage “mistakenly requested records from [him] which [we]re not in [his] possession (or [we]re equally available to Plaintiff), but we[re] in the possession of the Department of Corrections.” Doc. 40 at 1–2.

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And Gwara filed a motion for summary judgment, along with several exhibits, which included the security video footage from the FSP Q Wing where the incident occurred.

A magistrate judge issued an order denying without prejudice Grimage's motion to compel discovery, noting that the motion "lack[ed] specificity" and was rendered moot in part because Gwara answered his interrogatories and had filed the requested video evidence along with his motion for summary judgment. The magistrate judge, however, further ordered Gwara to file a notice by February 13, 2025, confirming that Grimage was given an opportunity to view the video evidence submitted in support of his motion for summary judgment. And he also provided Grimage with a deadline to file a renewed motion for clarification "should he deem such a motion necessary" due to Gwara's failure to comply with the magistrate judge's order.

After Grimage filed a brief in opposition to summary judgment and Gwara filed a reply, the district court granted summary judgment in Gwara's favor. First, the district court determined that Florida law authorized correctional officers to use force to prevent an inmate from attempting suicide and that Gwara's undisputed account of the events established that he used minimal force to respond to Grimage's suicide attempt. Next, the district court concluded that several factors identified in *Whitley v. Albers*, 475 U.S. 312 (1986)—including the necessity of force, the amount of force used to meet that need, and the extent of the threat to Grimage—

weighed in Gwara's favor. The court also stated that the video recordings showed FSP officers promptly taking Grimage to a decontamination shower after he was sprayed with pepper spray, "which demonstrate[d] an effort made to temper the severity of the response." *Id.* And the court noted that Grimage did not submit any evidence, documents, or sworn affidavits that could contradict Gwara's telling of the incident either. Accordingly, the court concluded that no reasonable jury could find that Gwara used excessive force, and it granted summary judgment in Gwara's favor.

After the district court entered its order, Grimage filed an additional brief in opposition to Gwara's motion for summary judgment and a notice of appeal as to the district court's final judgment and order.

II.

We review discovery rulings for an abuse of discretion. *Smith v. Sch Bd. of Orange Cnty.*, 487 F.3d 1361, 1365 (11th Cir. 2007).

We apply *de novo* review to the district court's ruling on a motion for summary judgment and "apply the same legal standard used by the district court, drawing all inferences in the light most favorable to the non-moving party and recognizing that summary judgment is appropriate only where there are no genuine issues of material fact." *Sutton v. Wal-Mart Stores E., LP*, 64 F.4th 1166, 1168 (11th Cir. 2023).

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III.

Grimage raises two issues on appeal. First, he challenges the magistrate judge's nondispositive discovery order. And second, he challenges the district court's grant of summary judgment in Gwara's favor. For the following reasons, we reject Grimage's arguments.

A.

First, Grimage challenges the magistrate judge's order denying without prejudice his request to compel discovery.

"[W]hen a party fails to timely challenge a magistrate's non-dispositive order before the district court, the party [has] *waived* his right to appeal those orders in this Court." *O'Neal v. Am. Shaman Franchise Sys., Inc.*, 166 F.4th 1274, 1281 (11th Cir. 2026) (citation modified). "This rule of waiver stems from Federal Rule of Civil Procedure 72(a)," which states that "[a] party may not assign as error a defect in the order not timely objected to." *Id.*, citing Fed. R. Civ. P. 72(a).

Here, Grimage waived his challenges to the magistrate judge's nondispositive discovery order by failing to object to that order before the district court. *O'Neal*, 166 F.4th at 1281. The bulk of Grimage's appellate argument is that our Court should compel Gwara to provide records he requested during discovery. But the magistrate judge issued multiple orders denying Grimage's requests to compel discovery, and Grimage failed to object to them. Accordingly, in a straightforward application of *O'Neal*, Grimage's

objections are waived, and we decline to consider them. 166 F.4th at 1281. *See also* Fed. R. App. P. 72(a).

B.

Second, Grimage challenges the district court's grant of summary judgment in Gwara's favor. In reviewing the district court's rulings, we "consider only evidence that was part of the record before the district court." *Selman v. Cobb Cnty. Sch. Dist.*, 449 F.3d 1320, 1332 (11th Cir. 2006). And we consider only issues that a party properly raises in their briefing. "[I]ssues not briefed on appeal by a *pro se* litigant are deemed abandoned." *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

Here, Grimage urges us to "consider review of [his] Brief in Opposition and Declaration (Document 64) for a clear understanding of the excessive and malicious force used in this case." Appellant's Br. at 5. Liberally construing Grimage's initial brief as adequately challenging the district court's grant of summary judgment, his argument fails to persuade us for two reasons. First, Grimage filed Document 64 *after* the district court entered its summary judgment order, so it was not properly before the district court. *Selman*, 449 F.3d at 1332. Second, the record reflects that the district court did not err in granting summary judgment in favor of Gwara on Grimage's Eighth Amendment claim. This Court has noted that pepper spray may be used to subdue an inmate, provided "a valid penological reason supports the use of such force," *Sconiers v. Lockhart*, 946 F.3d 1256, 1266 (11th Cir. 2020), and Florida's administrative code permits a correctional office to use force

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on an inmate when such force is reasonably necessary to “[p]revent an inmate from inflicting any self-injury or from attempting to commit suicide,” Fla. Admin. Code R. 33-602.210(2)(a)(7). The record reflects that the pepper spray in this case was applied in a “good-faith effort to maintain or restore discipline” and not “maliciously and sadistically to cause harm.” *Sconiers*, 946 F.3d at 1265.

IV.

AFFIRMED.