

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1685

SHARON MUNDY,
Appellant

v.

CITY OF PITTSBURGH

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 22-cv-00031)
District Judge: Honorable Marilyn J. Horan

Submitted Pursuant to Third Circuit LAR 34.1(a)
November 27, 2024

Before: SHWARTZ, MONTGOMERY-REEVES, and SCIRICA, Circuit Judges

(Opinion filed: December 5, 2024)

OPINION*

PER CURIAM

Pro se appellant Sharon Mundy appeals from the District Court’s grant of summary judgment in favor of appellee, her former employer, the City of Pittsburgh (“the

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

City”). Because the District Court correctly granted summary judgment to the City, we will affirm.

I.

Mundy was employed by the City as a laborer in the Department of Public Works, from 2008 to 2020. (ECF 78 at ¶1-2.) In 2019 and 2020, Mundy relayed concerns to the City’s Human Resources Department regarding smoking in the workplace. (ECF 78 at ¶3-6.) In 2020, Mundy was approved for intermittent FMLA leave for up to four days a month. (ECF 78 at ¶7.) The City initiated its employment termination process against Mundy after she exhausted her PTO and FLMA leave and failed to report further absences¹ to the City’s third-party FMLA coordinator. (ECF 78 at ¶8-12.) On July 10, 2020, Mundy submitted a doctor’s note requesting that she be excused until July 13, 2020 for asthma, which the City found was “well beyond [her] approved leave duration” under the FMLA and was therefore “not acceptable.” **(ECF 78 at 51.)**

Mundy ultimately signed a Last Chance Agreement to maintain her employment, which required her abstaining from “mood-altering drugs or chemical substance[s].” **(ECF 78 at ¶15-24.)** Shortly after, Mundy tested positive for marijuana and was terminated after the City determined she provided an unsatisfactory response to the positive test. (ECF 78 at ¶25-35.)

In October 2022, Mundy filed her second amended complaint against the City alleging claims of disability discrimination, failure to accommodate, and retaliation

¹ Mundy was absent June 24, 2020 through July 9, 2020 without explanation. **(ECF 78 at ¶8-12.)**

pursuant to the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973.² (ECF 36.) On January 3, 2024, after the close of discovery, the City filed for summary judgment. (ECF 76-78.) On her deadline to respond to the City’s motion for summary judgment, January 31, 2024, Mundy instead filed a motion to extend discovery. (ECF 79.) The District Court denied Mundy’s motion and sua sponte granted her until February 8, 2024, to respond to the City’s motion for summary judgment. (ECF 83.)

On February 8, 2024, Mundy instead filed a document labeled “motion for clarification,” stating that she was not seeking additional discovery, but was instead seeking to have the City comply with earlier discovery requests. **(ECF 84.)** The District Court denied Mundy’s motion, noting she had not raised any issues of noncompliance before the close of discovery. (ECF 85.) Mundy filed a motion for reconsideration of these denials on March 21, 2024. (ECF 86.) On March 22, 2024, the District Court granted the City summary judgment as to Mundy’s claims. (ECF 87-88.) On March 25, the District Court denied Mundy’s motion for reconsideration, reentered summary judgment, and closed the case. (ECF 89). This timely appeal followed.³ (ECF 90.)

² Mundy additionally alleged violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, and 42 U.S.C § 1983. When the City filed a motion to dismiss, the District Court dismissed those additional claims. **(ECF 88.)** On appeal, Mundy forfeited any argument as to their dismissal because she failed to raise them in her brief. See Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist., 877 F.3d 136, 147 (3d Cir. 2017).

³ As Mundy’s April 11, 2024 notice of appeal is timely as to both the District Court’s order granting the City summary judgment and its order denying Mundy’s motion for reconsideration, and because the order denying the motion for reconsideration reentered summary judgment for the City, we construe Mundy’s appeal as challenging both orders.

II.

We exercise de novo review over a District Court's grant of summary judgment. See Wharton v. Danberg, 854 F.3d 234, 241 (3d Cir. 2017). Summary judgment is proper when the record "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 genuine dispute of material fact exists if the evidence is sufficient for a reasonable factfinder to return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The non-moving party "must show where in the record there exists a genuine dispute over a material fact." Doe v. Abington Friends Sch., 480 F.3d 252, 256 (3d Cir. 2007). We review the District Court's denial of Mundy's motion for reconsideration and its discovery rulings for abuse of discretion. Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 673 (3d Cir. 1999); Gallas v. Sup. Ct. of Pa., 211 F.3d 760, 778 (3d Cir. 2000).

III.

On appeal Mundy asserts the District Court abused its discretion in denying her motions to extend discovery and her motion for reconsideration of those denials because it deprived the parties of additional time to resolve the issues through settlement. (CA 13 at 7, 10.) Mundy further asserts the District Court abused its discretion because the City had not opposed a motion extending her time to respond to its summary judgment motion. (CA 13 at 9). Finally, Mundy asserts the District Court erred because her three remaining counts had passed the City's motion to dismiss, and the City had failed to properly respond to her discovery requests. (CA 13 at 11-12.)

“[M]atters of docket control and conduct of discovery are committed to the sound discretion of the district court.” In re Fine Paper Antitrust Litig., 685 F.2d 810, 817 (3d Cir. 1982). We will not disturb “a trial court’s control of its docket except upon the clearest showing that the procedures have resulted in actual and substantial prejudice to the complaining litigant.” Id. (cleaned up). For discovery rulings, an appellant must “show that the district court’s denial of discovery made it impossible to obtain crucial evidence, and implicit in such a showing is proof that more diligent discovery was impossible.” Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass’n, 107 F.3d 1026, 1032 (3d Cir. 1997) (cleaned up).

Having considered Mundy’s arguments, we find no abuse of discretion in the District Court’s discovery rulings. Mundy has not shown that more diligent discovery was impossible, principally because she failed to raise any issues of noncompliance until after the close of discovery. (ECF 84-85.) Further, although the City would not have opposed it, (ECF 86 at 7) Mundy never filed a motion to request additional time to respond to its summary judgment motion, so it was never before the District Court. Finally, a District Court does not abuse its discretion by not sua sponte providing additional time to respond to a summary judgment motion.⁴

⁴ This is particularly so when the record demonstrates the District Court sua sponte granted Mundy an additional week, and Mundy repeatedly disregarded procedural deadlines, failed to file a motion for extended time, and ultimately failed to submit any response to the City’s summary judgment motion, timely or not. (**See ECF 89 at 2-3.**)

IV.

The District Court properly granted summary judgment to the City on all three of Mundy's claims under the ADA and the Rehabilitation Act. Mundy asserts the District Court erred by considering only the City's evidence when granting the summary judgment motion. We find the District Court did not err because Mundy never filed contrary evidence. Further, even absent contrary evidence, the District Court properly considered whether the record demonstrated any genuine issues of material fact and the City was entitled to judgment as a matter of law. See United States v. Brace, 1 F.4th 137, 143 (3d Cir. 2021); Fed. R. Civ. P. 56(a).

A.

We agree with the District Court that there is no genuine issue of material fact concerning Mundy's asthma-related ADA and Rehabilitation Act disability discrimination claims. At summary judgment, a plaintiff bears the burden of making a prima facie showing of disability discrimination. Wishkin v. Potter, 476 F.3d 180, 185 (3d Cir. 2007). That is, she must provide evidence "that [she] was disabled, was qualified for the job, and suffered discrimination because of [her] disability." Gibbs v. City of Pittsburgh, 989 F.3d 226, 229 (3d Cir. 2021). If a plaintiff makes a prima facie showing of discrimination and the employer provides evidence of non-discriminatory reasons for the adverse action, the plaintiff has the burden to provide evidence that the employer's reasons were pretextual. See Wishkin, 476 F.3d at 185. We agree Mundy offered no evidence that she was suspended, terminated, or suffered discrimination because of having asthma. (See ECF 78 at 47, 51-52, 56-60.) We further agree that, even if

Mundy had made out a prima facie case of disability discrimination, Mundy offered no countervailing evidence to the City's evidence of non-discriminatory reasons for her suspension and termination. (See ECF 78 at 42-45, 47, 51-52, 56-60.)

B.

We likewise agree with the District Court that there is no genuine issue of material fact concerning Mundy's asthma-related ADA and Rehabilitation Act failure to accommodate claims. To support a prima facie failure to accommodate claim under the ADA, a plaintiff must provide evidence that "(1) [s]he was disabled and [her] employer knew it; (2) [s]he requested an accommodation or assistance; (3) [her] employer did not make a good faith effort to assist; and (4) [s]he could have been reasonably accommodated." *Armstrong v. Burdette Tomlin Mem'l Hosp.*, 438 F.3d 240, 246 (3d Cir. 2006). We agree that Mundy offered no evidence that the City knew of Mundy's asthma before her initial suspension or that Mundy ever requested an accommodation in writing from Human Resources relating the worsening of her asthma to smoking in the workplace.⁵ (See ECF 78 at 38, 48-50, 54) To the extent that evidence of Mundy's approved intermittent FMLA leave functioned as a reasonable accommodation request, the City made a good faith effort to assist by approving her FMLA leave. See *Capps v. Mondelez Global, LLC*, 847 F.3d 144, 156-57 (3d Cir. 2017).

⁵ We note the City's proffered evidence shows Mundy made complaints regarding smoking, but the documents indicate Mundy made complaints because of the City's ordinance prohibiting smoking in the workplace. (**See ECF 78 at 22-24, 38, 48-50, 54.**) Mundy offered no evidence the City understood Mundy to be making an ADA accommodation request through those complaints. (**See ECF 78 at 22-24, 48-50, 54.**)

C.

Finally, we agree with the District Court that there is no genuine issue of material fact concerning Mundy's retaliation claim under the ADA. At summary judgment, a plaintiff must provide evidence of "(1) protected employee activity; (2) adverse action by the employer either after or contemporaneous with the employee's protected activity; and (3) a causal connection between the employee's protected activity and the employer's adverse action." Krouse v. Am. Sterilizer Co., 126 F.3d 494, 500 (3d Cir. 1997). We agree that Mundy offered no evidence of "a causal connection" between any accommodation request she may have made and the adverse action of her employment suspension and eventual termination. We further agree that, even if Mundy had made out a prima facie case of retaliation, Mundy again offered no countervailing evidence to the City's evidence of non-discriminatory reasons for her suspension and termination. (See ECF 78 at 42-45, 47, 51-52, 56-60.)

IV.

Since the record does not support a prima facie claim on Mundy's disability discrimination, failure to accommodate, or retaliation claims under the ADA and Rehabilitation Act, we will affirm the District Court's grant of summary judgment as to all claims.