[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 11-12976
Non-Argument Calendar

D.C. Docket No. 8:10-cv-00996-VMC-TGW

CHINELLO EGWUATU,

Plaintiff-Appellant,

versus

BURLINGTON COAT FACTORY
WAREHOUSE CORPORATION,
a foreign corporation,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(September 28, 2012)

Before TJOFLAT, BARKETT and MARCUS, Circuit Judges.

PER CURIAM:

Chinello Egwuatu, proceeding *pro se*, appeals the district court's summary

judgment that dismissed her claim that Burlington Coat Factory Warehouse Corporation ("Burlington") defamed her, under Florida law, when (1) a Burlington cashier accused her of changing price tags on merchandise; and (2) the cashier's manager repeated the accusation to police officers.[1] According to Egwuatu's testimony, a cashier publicly told Egwuatu that she saw Egwuatu changing the price tags of two shirts at a Burlington store. Egwuatu called in the store manager, who became irate with Egwuatu, resulting in Egwuatu requesting that police officers come to record the incident. The officers testified that, upon arriving, the manager informed them that Egwuatu had switched price tags of the merchandise and wanted her to leave the store. Egwuatu denied switching the price tags and the officers told Egwuatu to take up her complaint with Burlington headquarters. After Egwuatu refused the officers' request for her to leave the store, they arrested her for trespassing.

We review the grant of summary judgment *de novo*, applying the same

[1] The district court's order granting Burlington summary judgment also dismissed Egwuatu's claims against Burlington of: (1) false arrest; (2) false imprisonment; (3) invasion of privacy; and (4) intentional infliction of emotional distress. Although we give *pro se* appellants' briefs a liberal construction, Egwuatu waived her right to appeal the dismissal of these claims because she did not raise these issues at all in her appellate briefs. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

To the degree that Egwuatu appeals the district court's denial of her motion for leave to proceed *in forma pauperis*, she did not timely raise this claim because the court did not deny her motion until *after* Egwuatu filed her notice of appeal. *McDougald v. Jenson*, 786 F.2d 1465, 1474 (11th Cir. 1986) (holding that a party cannot establish its intent to appeal an order when the court entered the order after a party filed its notice of appeal).

standards as the district court, *see Info. Sys. & Networks Corp. v. City of Atlanta*, 281 F.3d 1220, 1224 (11th Cir. 2002). Under Florida law, "[t]o recover in a defamation action, a plaintiff must show that the defendant published false and defamatory statements concerning him, without reasonable care as to whether those statements were true or false, which resulted in actual damage to the plaintiff." *Am. Airlines, Inc. v. Geddes*, 960 So. 2d 830, 833 (Fla. Dist. Ct. App. 2007). Defamatory statements include words that "tend to subject one to hatred, distrust, ridicule, contempt or disgrace or tend to injure one in one's business or profession." *Id*. (quotations omitted). A defendant lacks "reasonable care" if the defendant knew or should have known that the statements were false and defamatory. *See Boyles v. Mid-Florida Television Corp.*, 431 So. 2d 627, 634 (Fla. Dist. Ct. App. 1983). Defamatory statements made voluntarily by private individuals to an investigating police officer prior to the institution of criminal charges are qualifiedly privileged. *See Fridovich v. Fridovich*, 598 So. 2d 65, 69 (Fla. 1992). A plaintiff may only overcome this privilege by demonstrating that the defendant made the defamatory statements with the primary intent of injuring the plaintiff's reputation. *Id*.

Egwuatu failed to establish that the cashier lacked reasonable care in accusing Egwuatu of switching price tags. Egwuatu's testimony suggested that the cashier based her accusations upon the cashier's observations of Egwuatu and Egwuatu did

not present any evidence suggesting that the cashier knew or should have known that Egwuatu had not changed the price tags. Even assuming that the manager's repeating of the cashier's accusations were defamatory, the manager's statements were privileged because the manager made them to the officers prior to them arresting Egwuatu for trespassing. Egwuatu cannot overcome this privilege because she did not establish that the manager's primary intent in informing the officers of the accusation was to injure her repuation. Thus, we hold that the court did not err in granting Burlington summary judgment on Egwuatu's defamation claims.[2]

AFFIRMED.

[2] Egwuatu also appeals the district court's denial of her motion to appoint counsel. The district court did not abuse its discretion in denying Egwuatu's motion because the issues presented in her case are neither novel nor complex. *See Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999).