In the

# United States Court of Appeals

## For the Seventh Circuit

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No. 20-3005

DONALD A. MILLER & JOHN W. MCGUIRE,

*Plaintiffs-Appellants*,

*v.*

CHICAGO TRANSIT AUTHORITY & DONALD BONDS,

*Defendants-Appellees*.

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Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 1:17-cv-00806 — **Sharon Johnson Coleman**, *Judge*.

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ARGUED OCTOBER 27, 2021 — DECIDED DECEMBER 17, 2021

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Before MANION, WOOD, and BRENNAN, *Circuit Judges*.

MANION, *Circuit Judge*. After being fired from the Chicago Transit Authority (CTA), Donald A. Miller and John W. McGuire sued their former employer and one of its officers, Donald Bonds, alleging racial discrimination and retaliation in violation of federal and Illinois state law. Following discovery, the defendants moved for summary judgment. Despite receiving two extensions, however, Miller and McGuire failed to respond. Finding no persuasive excuse for this fail-

ure, the district court denied a third extension and took up the motion without a responsive pleading. The court concluded that the undisputed evidence did not support the claims and granted summary judgment in favor of CTA and Bonds. Miller and McGuire challenge the district court's denial of their third extension request and its rejection of their retaliation claims. Because the district court did not abuse its discretion in denying an extension, and because evidence of basic elements of a retaliation claim was lacking, we affirm.

During the period relevant to this suit, Miller was one of four general managers overseeing bus maintenance at CTA. He reported to McGuire, CTA's mechanical officer for bus maintenance. McGuire in turn reported to Bonds, CTA's vice president of vehicle maintenance. Miller and McGuire are Caucasian; Bonds is African American.

CTA began receiving several complaints in spring of 2016 regarding "hot buses" in which the cooling systems were not working properly. Despite declarations from general managers that preparations for the summer heat had been completed on 90% of CTA's bus fleet, extensive problems persisted. On one day in early June, 18 of the 25 reported bus cooling issues originated in a garage that Miller managed.

The continuing problems garnered the attention of CTA's president, whose office held numerous meetings on the issue. McGuire took part in at least some of these meetings, and on six occasions Bonds discussed with McGuire concerns raised by the president and his staff.

On July 5 or 6, 2016, Bonds met with other members of CTA upper management, and a decision was made to discharge both Miller and McGuire. Even before the problems

with bus cooling systems arose, Miller had received two written warnings and a 10-day suspension for other infractions. Bonds had suggested to McGuire in January 2016 that Miller should be let go for failing to report dozens of late bus departures from his garages. However, McGuire ultimately did not impose any disciplinary action at all. As for McGuire, high-ranking CTA officials felt that he had given them inaccurate and misleading information in meetings regarding the "hot buses" issue.

Shortly before that July 6 meeting, McGuire and Miller separately contacted Rita Kapadia, the senior manager of CTA's Equal Employment Opportunity (EEO) Programs. On June 28, McGuire complained to her of racially discriminatory treatment by Bonds. On July 5, Miller told Kapadia that he was being "targeted" by Bonds, though he did not ascribe a racial motivation to this targeting. Using her email program, Kapadia set an interview with McGuire for 10 a.m. on July 7 and with Miller for one hour later. However, on the morning of July 7, before either met with Kapadia, Miller and McGuire were called to separate meetings with Bonds, who offered them the choice of resigning or being discharged. McGuire took the former route, Miller the latter. (For purposes of this appeal, we draw no distinction between the manners of their departure.)

Miller and McGuire sued CTA and Bonds under 42 U.S.C §§ 1981 and 1983, Title VII of the Civil Rights Act of 1964, and provisions of the Illinois Human Rights Act (IHRA). They contended that they were fired because of their race or, alternatively, in retaliation for complaining to Kapadia about experiencing racial discrimination.

During discovery, Miller, McGuire, Kapadia, and Bonds were deposed. Miller and McGuire testified that they never heard Bonds use racially discriminatory language when speaking with them, and McGuire further stated that Bonds never mentioned race or displayed racial preferences regarding CTA employees. Both plaintiffs also testified that they did not think the disciplinary actions Bonds took against them were racially motivated. They admitted that they did not tell Bonds or anyone else about the EEO complaints. In fact, Miller conceded that he never cited racial discrimination as an issue in his EEO complaint. Kapadia likewise testified that she did not tell Bonds about the complaints until August 2016, weeks after Miller and McGuire had left. She also stated that Bonds had no access to her email program's records regarding her scheduled meetings with Miller and McGuire. Finally, Bonds averred that he had no idea either man had complained about him to Kapadia until long after their termination.

Following discovery, on October 4, 2019, CTA and Bonds filed their motion for summary judgment and supporting memorandum of law. By prior order of the district court, any response to the motion was due by November 4. But when the due date arrived, Miller and McGuire asked for a 14-day extension based on their counsel's work schedule. The unopposed extension was granted. Two weeks later, they were granted another unopposed 14-day extension, again premised on their attorney's work schedule. The second fortnight extension ended on December 2 without a response, though a few weeks after that Miller and McGuire did contact the clerk's office to set a trial date. CTA and Bonds filed a reply in support of summary judgment on January 8, 2020.

On January 13, the district court received an out-of-time motion for another extension—until January 21—for Miller and McGuire to respond to the summary-judgment motion. In support, their motion cited in addition to counsel's work schedule his difficulties dealing with "a continuing medical condition" and complications caused by the unexpected need in November 2019 to relocate his office.

This time, the extension motion was opposed, and the district court held a hearing on the matter. The court concluded that Miller and McGuire had not offered adequate reasons for neglecting the twice-revised deadline or for failing to seek an extension in a timely fashion. Accordingly, under Local Rule 56.1, the court deemed Miller and McGuire to have conceded the absence of a material factual dispute and proceeded to consider the summary-judgment motion without a response.

After construing the facts in the light most favorable to Miller and McGuire, the district court concluded that they had failed to establish *prima facie* cases for discrimination or retaliation and that Bonds was entitled to qualified immunity. This appeal followed.

We begin with the procedural issue. A district court may, for good cause, extend a party's time to respond to a motion; it may do so even after the time has expired if the party's failure to respond was due to "excusable neglect." *See* FED. R. CIV. P. 6(b)(1). We review a district court's decision not to extend the time to file a responsive pleading for abuse of discretion. *Blue v. Hartford Life & Accident Ins. Co.*, 698 F.3d 587, 593 (7th Cir. 2012). Under this standard, we will only disturb the decision if the district court has "acted unreasonably." *Id.* Overcoming the abuse-of-discretion standard is

hard, especially so in cases where, as here, the district court "is simply exercising its judgment about whether to relieve a party from an unexcused … failure to comply with the rules." *Troxell v. Fedders of N. Am.*, 160 F.3d 381, 383 (7th Cir. 1998).

In determining whether a missed deadline should be excused, a court considers "all relevant circumstances surrounding the party's neglect." *Bowman v. Korte*, 962 F.3d 995, 998 (7th Cir. 2020). Such circumstances include "the danger of prejudice to the [nonmoving party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Pioneer Inv. Servs. Co. v. Brunswick Assocs.*, 507 U.S. 380, 395 (1993); *see United States v. Cates*, 716 F.3d 445, 448 (7th Cir. 2013) ("*Pioneer* applies whenever 'excusable neglect' appears in the federal procedural rules.").

Miller and McGuire contend that, under the *Pioneer* factors, the district court should have granted them a third extension. On the facts before us, however, the district court was well within its discretion to deny the request.

Although the proffered reasons for delay are not the decisive consideration, *see United States v. Brown*, 133 F.3d 993, 997 (7th Cir. 1998) ("*Pioneer* makes clear that the standard is a balancing test, meaning that a delay might be excused even where the reasons for the delay are not particularly compelling."), in a particular case they can be "immensely persuasive" in determining whether neglect was excusable, *In re Kmart Corp.*, 381 F.3d 709, 715 (7th Cir. 2004).

The reasons offered by counsel for Miller and McGuire clearly helped persuade the district court that failure to comply with the deadline was not excusable, and we can see why. First, counsel invoked his busy work schedule. "But neglect due to a busy schedule is generally not excusable," *Cates*, 716 F.3d at 449, and no exceptional circumstance makes that default rule inapplicable in this case.

Counsel next cited health problems as a reason for missing the deadline, but his proffers—both in the motion for extension and at the hearing—were so vague as to be worthless. Understandably, counsel may have wished to avoid public disclosure of certain medical details, but it was his burden to provide the district court sufficient information "to demonstrate that his illness was of such a magnitude that he could not, at a minimum, request an extension of time to file his response." *Keeton v. Morningstar, Inc.*, 667 F.3d 877, 883 (7th Cir. 2012); *see also Acosta v. DT & C Global Mgmt., LLC*, 874 F.3d 557, 560–61 (7th Cir. 2017) (upholding rejection of a "health problems" excuse, given the "lack of corroborating information"). Surely had counsel timely advised the district court of health issues and sought to provide relevant information in a confidential manner, the court would have seriously considered his situation.

Finally, counsel asserted that the sudden need to relocate his office impeded his ability to respond to the summary-judgment motion or to file a timely motion for extension. Yet in *Pioneer* itself, the Supreme Court gave "little weight to the fact that counsel was experiencing upheaval in his law practice." 507 U.S. at 398. We agree with other courts that have found impediments or confusion stemming from office relocations generally not to be persuasive excuses for neglecting

a deadline. *See, e.g.*, *In re Harlow Fay, Inc.*, 993 F.2d 1351, 1352–53 (8th Cir. 1993); *Selph v. Council of Los Angeles*, 593 F.2d 881, 883 (9th Cir. 1979). And inconsistencies in the timelines offered by counsel only reinforce that conclusion here.[1]

Nor do the remaining *Pioneer* factors indicate that the district court abused its discretion. Regarding good faith, "it is not difficult to imagine stronger showings." *In re Kmart Corp.*, 381 F.3d at 716 (brackets omitted). Counsel had received multiple extensions to file a summary judgment response. Yet when the December 2 due date arrived, he submitted nothing. As the district court noted in its order, until mid-January, counsel "made no attempt to address his failure to act," even though in the interim he contacted the court "to set a trial date and schedule pretrial deadlines." Waiting six weeks to seek an extension of a missed deadline does not evidence a good faith effort to cure one's neglect.

Moreover, the potential prejudice to CTA and Bonds was at best a neutral consideration and certainly not a favorable one, as Miller and McGuire argue. *See* Defs.' Br. at 26–27 (asserting burdens that the defendants would bear if opposing counsel's neglect of the deadline were excused). The defendants had already submitted a reply in connection with their summary-judgment motion and detailed in writing for the district court the problems that would result from a further extension for the plaintiffs at that late date.

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[1] In the untimely motion for an extension, counsel indicated that his office move occurred in November 2019. At the hearing before the district court, however, he said he learned of the need to move in September and completed it in late October 2019.

Finally, counsel asserts that his neglect of the December 2 deadline did not have a *significant* effect on judicial proceedings because renewed summary-judgment practice would have been completed long before trial was scheduled to begin. Given the other *Pioneer* considerations, we need not resolve on which side of the balance this factor falls. But we take this opportunity to remind litigants that "district courts must manage a burgeoning caseload, and they are under pressure to do so as efficiently and speedily as they can, while still accomplishing just outcomes in every civil action. Part of that job means that they are entitled—indeed they must—enforce deadlines." *Reales v. Consol. Rail Corp.*, 84 F.3d 993, 996 (7th Cir. 1996) (citations omitted). This onus is why district courts have "substantial discretion as they manage their dockets," *id.*, a point we have made repeatedly. *See, e.g.*, *Wine & Canvas Dev., LLC v. Muylle*, 868 F.3d 534, 539 (7th Cir. 2017) (collecting cases). Blithely asserting that a missed deadline will not disrupt judicial proceedings ignores the fact that trial judges—no less than trial attorneys—must coordinate multiple competing demands on their time.

In sum, because the *Pioneer* factors are either neutral or weigh against a finding of excusable neglect, the district court did not abuse its discretion in denying the untimely third motion to extend the deadline to file a summary-judgment response. The district court was within its rights to treat the statement of material facts in the summary-judgment motion as undisputed and to consider the motion's arguments. *Robinson v. Waterman*, 1 F.4th 480, 483 (7th Cir. 2021). Now, on to the merits.

Summary judgment is appropriate when the facts of record, taken in the light most favorable to the nonmoving par-

ty, show that the moving party is entitled to judgment as a matter of law. *FKFJ, Inc. v. Vill. of Worth*, 11 F.4th 574, 584 (7th Cir. 2021). A district court's grant of summary judgment is reviewed *de novo*. *Id.*

The district court concluded that the racial discrimination claims failed because the undisputed evidence showed that CTA had legitimate (nonracial) reasons for terminating Miller and McGuire's employment and that these reasons were not pretextual. The appellants' opening brief raises no challenge to the district court's discrimination ruling. Rather, the brief confines its substantive arguments to the issue of retaliation and seeks reinstatement only of those counts. Because "arguments not raised in an opening brief are waived," *Tuduj v. Newbold*, 958 F.3d 576, 579 (7th Cir. 2020), we accept the district court's unchallenged conclusion that the firing of Miller and McGuire was not racially motivated.

That leaves only their claims that they were discharged in retaliation for filing EEO complaints about Bonds (regardless of the merits of those complaints). To make out a *prima facie* case for retaliation under Title VII, a plaintiff must show that a reasonable jury could find that (1) he engaged in statutorily protected activity; (2) his employer took a materially adverse action against him; and (3) the adverse action was caused by the protected activity.[2] *Smith v. Ill. Dep't of Transp.*, 936 F.3d 554, 559–60 (7th Cir. 2019) (Barrett, J.).

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[2] Because the analysis for a retaliation claim under Title VII tracks the analyses for retaliation claims under section 1981, section 1983, and the IHRA, we need not separately discuss those statutes. *See Baines v. Walgreen Co.*, 863 F.3d 656, 661 (7th Cir. 2017) (section 1981); *Nicholson v. City of Peoria*, 860 F.3d 520, 523 (7th Cir. 2017) (section 1983); *Volling v. Kurtz Paramedic Servs., Inc.*, 840 F.3d 378, 382–83 (7th Cir. 2016) (IHRA).

Miller's retaliation claims fail initially under the first element. A complaint of discrimination is a protected activity under Title VII only if the discrimination is based on a protected characteristic like race. *See id.* at 561. "Merely complaining in general terms of discrimination or harassment, without indicating a connection to a protected class or providing facts sufficient to create that inference, is insufficient." *Tomanovich v. City of Indianapolis*, 457 F.3d 656, 663 (7th Cir. 2006). Miller stated that he felt he was being "targeted" and treated unfairly by Bonds, but his EEO complaint to Kapadia did not mention a reason for this treatment and certainly did not attribute it to race. Without evidence that he engaged in statutorily protected activity, no reasonable jury could have found for Miller on his retaliation claims.

Nor could a reasonable jury have concluded that Miller and McGuire's EEO complaints about Bonds were the cause of their being discharged. There was simply no evidence that Bonds knew of those complaints. Miller and McGuire testified that they did not tell Bonds (or anyone else) about the complaints. Bonds testified that he did not know Miller or McGuire had complained about him to Kapadia when he fired them in July 2016. And Kapadia testified that she did not tell Bonds about the complaints until August 2016 and that Bonds did not have access to her email program records.

Miller and McGuire stake their appeal entirely on timing. They contend that the most favorable construction of the evidence is that Bonds's meeting with other CTA upper management—in which it was decided to fire Miller and McGuire—occurred on July 6, *after* both Miller and McGuire had submitted their EEO complaints to Kapadia and *after* Kapadia had scheduled to meet with them on July 7. The

appellants further note the undisputed fact that Bonds scheduled their termination meetings at times that preceded their scheduled meetings with Kapadia. This compressed chronology, they argue, permits the inference that Bonds fired them because they filed EEO complaints against him. In their view, this inference was enough to forestall summary judgment. We disagree.

Even in circumstances where "an adverse employment action follow[ing] close on the heels of protected expression" could be *prima facie* evidence of causation in a retaliation claim, a plaintiff must first establish "that the person who decided to impose the adverse action knew of the protected conduct." *Lalvani v. Cook County*, 269 F.3d 785, 790 (7th Cir. 2001). "Suspicious timing is rarely enough to create a triable issue. As a threshold matter, the plaintiff must show that the defendant was aware of the protected conduct." *Khungar v. Access Cmty. Health Network*, 985 F.3d 565, 578 (7th Cir. 2021) (quotation marks and citation omitted). Here, Miller and McGuire could not avoid summary judgment based on suspicious timing alone unless, "[a]t minimum," they first produced evidence supporting a reasonable inference that Bonds knew of their EEO complaints. *Id.* As discussed above, they did not. Thus, summary judgment was appropriate.

The judgment of the district court is AFFIRMED.