

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 28, 2024*
Decided April 5, 2024

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-3193

CHONG LENG LEE,
Plaintiff-Appellant,

v.

NICHOLAS SANCHEZ, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 21-CV-37

William E. Duffin,
Magistrate Judge.

ORDER

Chong Lee sued three correctional officers at Waupun Correctional Institution in Waupun, Wisconsin, alleging that they retaliated against him for exercising his right

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

under the First Amendment to file a grievance. *See* 42 U.S.C. § 1983. The magistrate judge entered summary judgment for the defendants. We affirm.

One evening, after returning to his housing unit from the showers, Lee left his cell to take mail to the mailbox. Officer Trevor Standish told Lee that he was not allowed to leave his cell at that time and directed Lee to return to the cell and “lock in.” (The prison’s handbook says that mail can be deposited only when prisoners leave their cells for scheduled activities like meals and showers and that, upon return from those activities, prisoners must remain in their cells with the doors locked.) Lee returned to his cell but emerged a few minutes later with pen and paper. Standish again directed Lee to return to his cell. Lee refused and, instead, asked for Standish’s name and badge number. Lee asserts that he needed this information to write a grievance against Standish for not letting him access the mailbox. Lee did not tell Standish that he planned to write a grievance, but he assumes Standish knew his intent.

The parties disagree about what happened next. Standish testified that he told Lee his name and that he did not have a badge number. According to Lee, Standish refused to give his name. Standish says he ordered Lee several times to return to his cell, Lee refused and began to shout, and Standish had to escort Lee to his cell. Lee disagrees, saying he complied with Standish’s initial directive to return to his cell and did not yell. Although these narratives differ, the parties agree that the interaction caused other inmates to start yelling.

Standish told Lieutenant David Dingman about the disruption. Dingman decided to place Lee in temporary segregation and instructed Standish to complete a conduct report for Lee’s refusal to obey orders. According to Dingman, he was not aware that Lee was intending to file a grievance about Standish. Lee, however, asserts that Dingman saw him writing the grievance when he came to Lee’s cell to transport him to segregation. Lee also says that he told Dingman he was writing a grievance.

Dingman then told his supervisor, Captain Nicholas Sanchez, about the incident and Lee’s transfer to temporary segregation. Sanchez took no further action. Sanchez testified that he did not know about Lee’s intent to file a grievance. Lee says that he explained to Sanchez that his transfer to segregation was not for disobeying an order.

Lee sued Standish, Dingman, and Sanchez, alleging that they retaliated against him for attempting to exercise his rights under the First Amendment. Standish, Lee claimed, tried to prevent Lee from filing a grievance against him by refusing to give his

name. Dingman, Lee added, placed him in temporary lockup and issued a conduct report because he tried to file a grievance against Standish. Lastly, Lee asserted that Sanchez did nothing after Lee “explained the situation” to him. The defendants moved for summary judgment, arguing that their actions were not motivated by Lee’s attempt to file a grievance against Standish but by Lee’s noncompliant and disruptive behavior.

The magistrate judge, proceeding with the parties’ consent under 28 U.S.C. § 636(c), entered summary judgment for the defendants. He concluded that no reasonable jury could find that Standish engaged in conduct likely to deter a protected activity and that, in any event, Lee suffered no deprivation because he eventually filed a grievance. Next, the magistrate judge determined that summary judgment was proper for Dingman because Lee had presented no evidence from which a reasonable jury could conclude that Lee’s First Amendment activity was a motivating factor in Dingman’s decisions. And because neither Standish nor Dingman violated Lee’s constitutional rights, Sanchez could not be held liable as a supervisor.

We review a summary judgment decision de novo in the light most favorable to Lee, the non-movant. *See Manuel v. Nalley*, 966 F.3d 678, 680 (7th Cir. 2020). To succeed on his First Amendment retaliation claims, Lee requires evidence that (1) he engaged in an activity protected by the First Amendment; (2) he suffered a deprivation likely to deter such activity; and (3) the protected activity was at least a motivating factor in the deprivation. *See id.* The defendants do not contest that Lee satisfies the first prong.

To start, we agree with the magistrate judge that summary judgment for Standish was appropriate. Lee argues that Standish’s refusal to give his name and his instruction that Lee return to his cell amounted to conduct so “chilling” and “intimidat[ing]” that it was likely to deter Lee’s efforts to write and file a grievance. The test for this prong is an objective one: whether the alleged conduct “would likely deter a person of ordinary firmness from continuing to engage in protected activity.” *Douglas v. Reeves*, 964 F.3d 643, 646 (7th Cir. 2020). And, although Lee’s ultimate success in filing his grievance “does not undermine his claim,” *see id.* at 646, Standish’s alleged conduct was not adverse enough to meet this standard. *See Holleman v. Zatecky*, 951 F.3d 873, 882 (7th Cir. 2020) (transferring prisoner to a different prison, absent “some additional aggravating factor,” unlikely to deter protected activity).

Generally, the severity of retaliatory conduct is a question of fact, but we can resolve the issue as a matter of law when the injury alleged is “truly minimal.” *Douglas*, 964 F.3d at 647. Here, Lee asserts that Standish refused to give his name, which, Lee

says, interfered with his efforts to file a grievance. But this conduct is hardly adverse. Lee could have filed the grievance without Standish's name. Indeed, nothing in the Wisconsin Administrative Code requires a prisoner to include in a grievance the name of the officer responsible for the harm. *See* WIS. ADMIN. CODE DOC § 310.07; *see also Jones v. Bock*, 549 U.S. 199, 218–19 (2007) (same under federal law). Moreover, Lee does not explain how Standish's directive that Lee return to his cell at a time when prison rules required it amounted "to a deprivation with some significant deterrent effect" on a prisoner of ordinary firmness. *See Douglas*, 964 F.3d at 647–48.

Next, Lee suggests that Dingman violated his rights and was liable as a supervisor, but these arguments are barely developed in Lee's brief, and so we could consider them waived. *See* FED. R. APP. P. 28(a)(8); *Williams v. DeJoy*, 88 F.4th 695, 705 (7th Cir. 2023). Regardless, they are without merit. Summary judgment was appropriate for Dingman because the undisputed evidence shows that Lee's attempt to write a grievance against Standish was not a motivating factor in Dingman's actions. A "motivating factor" is a "causal link between the activity and the unlawful retaliation," and a defendant can rebut evidence of causation with evidence that the actions would have occurred "regardless of the protected activity." *Manuel*, 966 F.3d at 680. Here, Dingman testified that he had a non-retaliatory motive for placing Lee in temporary lockup and instructing Standish to complete a conduct report: Lee was "disobeying orders and being disruptive." Dingman also testified that he "would have taken the same action" even if he knew Lee was trying to write a grievance. Because Lee offers no evidence to counter this testimony, his retaliation claim fails. *See id.* at 681.

Finally, Lee does not contest the magistrate judge's conclusion that Sanchez can be liable only if Standish or Dingman violated Lee's constitutional rights. Because we agree that no such violation occurred, Lee's attempt to hold Sanchez liable as a supervisor also fails. *See Stockton v. Milwaukee Cnty.*, 44 F.4th 605, 619 (7th Cir. 2022).

AFFIRMED