NONPRECEDENTIAL DISPOSITION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 13, 2024*
Decided March 18, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-2215

JENNIFER A. DUNKLEY,
Plaintiff-Appellant,

v.

ILLINOIS DEPARTMENT OF HUMAN SERVICES, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Illinois.

No. 3:18-cv-2189-DWD

David W. Dugan,
Judge.

O R D E R

Jennifer Dunkley sued the Illinois Department of Human Services (her former employer), some of its employees, and her labor union, arguing that they discriminated against her because of her race. The district court entered summary judgment in favor

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* 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. Rule 34(a)(2)(C).

of the individual defendants and the union. After a trial, a jury returned a verdict in favor of the Department. Dunkley appeals the entry of summary judgment and trial-related rulings. But she has not developed any persuasive arguments for disturbing summary judgment, and she has not furnished the required transcripts related to the trial or shown any other errors; therefore, we affirm.

We recount the evidence in the summary judgment record, construing it in favor of Dunkley. *Eaton v. J. H. Findorff & Son, Inc.*, 1 F.4th 508, 511 (7th Cir. 2021). Dunkley began work at the Illinois Department of Human Services in 2015 as a public-aid eligibility assistant at its Montgomery County center. She was the only black employee there. In 2017, Dunkley complained to her union about the center's administrator, who Dunkley said discriminated against her by moving her workstation. Union representatives met with Dunkley and told her that the administrator "can move the office in whatever way they choose." About a month later, a union representative was present when Dunkley received an unfavorable interim evaluation. The representative did not file a grievance, explaining that grievances are not normally filed over such evaluations and the representative had never filed a grievance over an evaluation on behalf of a non-black union member. A few days later, Dunkley received a counseling, and again the union did not take action, reasoning that this conduct was not disciplinary and the union representative had never filed grievances on behalf of non-black employees for a counseling. Later, the union intervened on her behalf. It reversed a suspension, resolved a dispute about an absence, and helped Dunkley transfer to another center. It left intact another suspension after the union could not substantiate Dunkley's charge that it was based on falsified documents.

Later, Dunkley sought a promotion to caseworker. During a probationary period for this promotion, she reported to Kimberly Peltes. Peltes eventually put Dunkley on a month-long corrective-action plan because Dunkley was not finishing work and was making errors. At the end of the month, Peltes recommended that, because of her poor performance, the Department not certify Dunkley as a caseworker. The parties dispute whether Peltes or her supervisor made the final decision; we assume, as Dunkley argues, that Peltes did. The Department then reassigned Dunkley to her previous role.

Unhappy with these events, Dunkley sued. As relevant to this appeal, she accuses the defendants of race discrimination by, among other actions, disciplining her, failing to promote her, and (as to the union) failing to represent her. All defendants other than the Department obtained summary judgment on the basis that no evidence showed racial animus; claims against the Department went to a jury trial. Before trial,

the Department successfully moved in limine to exclude the evidence that Dunkley had used against the individual defendants at the summary judgment stage to argue that they had discriminated against her. In a written order, the court reasoned that these defendants had obtained summary judgment because no rational jury could find that this evidence showed racial discrimination; under the law-of-the-case rule that same evidence could not support liability against the Department on a theory of respondeat superior. Afterward, Dunkley twice sought—to no avail—the judge's recusal, arguing that his ruling on summary judgment and his previous work for the state of Illinois showed bias. Eventually, the jury returned a verdict in favor of the Department.

On appeal, Dunkley attacks these rulings. We start with summary judgment, which we review de novo. *Lewis v. Ind. Wesleyan Univ.*, 36 F.4th 755, 759 (7th Cir. 2022). In her opening brief, Dunkley appears to argue that summary judgment was wrong because she disputed facts in response to the motions for summary judgment. But the mere existence of a factual dispute does not itself defeat a motion for summary judgment. *See FKFJ, Inc. v. Village Of Worth*, 11 F.4th 574, 584 (7th Cir. 2021). The facts must be material. In a discrimination case, the dispute must be about evidence that would allow a reasonable factfinder to conclude that race motivated an adverse employment action. *Lewis*, 36 F.4th at 760. Except one developed argument, Dunkley does not explain how the disputed facts she cites "might affect the outcome of the suit under governing law." *FKFJ, Inc.*, 11 F.4th at 584. Because "[p]erfunctory and undeveloped arguments" are waived on appeal, *Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 717 (7th Cir. 2012), her arguments fail.

Dunkley's only developed argument is her contention that Peltes wrongly stated *who* made the final decision not to certify Dunkley. We have assumed on appeal that, as Dunkley insists, Peltes made that decision. But even so, Dunkley has not created an issue of material fact about *why* she was not certified: She cites no evidence suggesting that the reason relied upon for not certifying Dunkley to caseworker—her poor job performance—was pretextual. And speculation about pretext cannot overcome summary judgment. *See Matthews v. Waukesha County*, 759 F.3d 821, 827 (7th Cir. 2014).

Dunkley next challenges the written ruling granting the Department's motion in limine to exclude at trial certain evidence that she submitted in response to the motions for summary judgment. In her opening brief, Dunkley advanced no discernible ground for disturbing this ruling; thus an attack on it is waived. *See M.G. Skinner & Assocs. Ins. Agency, Inc. v. Norman-Spencer Agency, Inc.*, 845 F.3d 313, 321 (7th Cir. 2017). In her reply brief she accurately observes that the district court did not address her response to the

Department's motion in limine. Yet neither Dunkley's reply brief to us, nor her response to the Department's motion—both of which we have reviewed—give a reason that the district court should have abandoned the earlier summary judgment ruling that this evidence did not evince discrimination. *See Cannon v. Armstrong Containers Inc.*, 92 F.4th 688, 701 (7th Cir. 2024). Thus we still have no reason to disturb the ruling.

Next, Dunkley challenges oral rulings about other motions, but we cannot reach them. Federal Rule of Appellate Procedure 10(b)(2) requires appellants to supply the transcripts of proceedings relevant to oral rulings challenged on appeal. An appellant who violates Rule 10(b)(2) may forfeit arguments about oral rulings because without the transcript, we cannot evaluate or meaningfully review those oral rulings. *See Morisch v. United States*, 653 F.3d 522, 529 (7th Cir. 2011). We have the authority under Rule 10(e) to order the plaintiff to supplement the record with the necessary transcripts. But we have declined to do so where, as in this case, the plaintiff already had ample opportunity and understood the need to obtain the transcripts yet failed to do so. *Id.* at 530. Dunkley is aware of her obligation to obtain the transcripts because she ordered them—she just never paid the required fee to generate them. She was also aware of the consequences of her failure to pay the fee. In their appellate brief, the state defendants pointed out to Dunkley that she violated Rule 10(b)(2) by failing to obtain the transcripts and that, without the transcripts, she forfeited her arguments. Despite that warning, Dunkley still did not obtain them. Finally, we note that, although an appellant who is impoverished may ask for relief from the need to pay for the transcripts, that option is irrelevant here because Dunkley has not proceeded here or in the district court in forma pauperis and has never made a claim of poverty. For these reasons, her arguments that depend on the transcripts are forfeited.

Last, Dunkley argues that the district judge should have recused himself from the trial, citing as evidence of bias his previous work with the state of Illinois and his entry of summary judgment against her. We review the district court's denial of a motion to recuse de novo. *See In re Gibson*, 950 F.3d 919, 923 (7th Cir. 2019). A judge must disqualify himself if "he has served in governmental employment" to a party in that proceeding, or "he has a personal bias." 28 U.S.C. § 455(b). Neither occurred here: Judge Dugan never worked for the Illinois Department of Human Services, and the adverse ruling at summary judgment by itself is not sufficient in this case to show bias. *See United States v. Barr*, 960 F.3d 906, 920 (7th Cir. 2020) ("Judicial rulings alone are almost never a valid basis for a recusal motion.").

AFFIRMED