[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 15-13452

D.C. Docket No. 0:14-cv-61505-FAM

JOSE SANTIAGO,
individually and on behalf of himself
and all other similarly situated employees,

Plaintiff - Appellant,

versus

DALE SANDERS,
individually,
DALE'S WHEELS AND TIRES DIRECT, INC,
Florida Corporation a.k.a Dale's Wheels,

Defendants - Appellees.

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

(August 8, 2017)

Before JORDAN, ROSENBAUM, and SILER,[*] Circuit Judges.

PER CURIAM:

Plaintiff-Appellant Jose Daniel Santiago worked as a tire technician and wheel-rim painter for Defendant-Appellee Dale Saunders's[1] garage business, Dale's Wheels and Tires Direct, Inc. ("Dale's Tires"). He sued Dale[2] and Defendants-Appellees Dale's Tires and Dale's Properties and Investments, Inc. (collectively, "Defendants"), claiming that Defendants failed under the Fair Labor Standards Act ("FLSA") to pay him required overtime during his employment.[3] Following a one-day trial, the district court granted Defendants' Rule 50 motion for judgment as a matter of law. Santiago appeals the district court's grant of Defendants' Rule 50 motion. For the reasons that follow, we affirm.

I.[4]

Santiago began working as a tire technician and wheel-rim painter for Dale's Tires in July 2011, and he left his employment with Defendants in April 2014. He testified that he worked Monday through Friday when the shop was open, and he

[*] Honorable Eugene E. Siler, Jr., United States Circuit Judge for the Sixth Circuit, sitting by designation.

[1] The docket spells the Defendants' name as "Sanders," but the briefs and transcripts spell it as "Saunders." We use the spelling for which the briefs and transcripts show a preference.

[2] Both Dale Saunders and his wife Linda Saunders are referenced in this opinion. To avoid confusion, we refer to the Saunderses by their first names.

[3] Santiago also filed a retaliation claim, but he voluntarily dismissed it during trial.

[4] Under Rule 50(a), Fed. R. Civ. P., we review the trial evidence in the light most favorable to the non-moving party. *Doe v. Celebrity Cruises, Inc.*, 394 F.3d 891, 902 (11th Cir. 2004). For this reason, we do not recount all evidence of record.

worked one full Saturday each month. Although Santiago provided testimony regarding the hours and days he was supposed to and did in fact work, he could not recall the exact days and hours for which he was missing pay.

Defendants did not keep all required FLSA records of the hours that Santiago worked. Nevertheless, they did maintain weekly payroll registers that set forth the number of hours Santiago was paid for each week, including regular and overtime wages. These records show that for most of the weeks during which Santiago worked, he was paid for 50.5 hours of work from Monday through Friday—40 of regular time and 10.5 of overtime. Based on the payroll-register records, the parties agreed that during the entirety of his employment, Santiago was paid for less than 50.5 hours during 47 weeks.[5] Of these 47 weeks, the records reflect that for five of these weeks, Santiago was paid for 0 hours. For the remaining 42 weeks, he was paid for between 21 and 46.5 hours.

Santiago conceded that he did not bring the alleged deficiencies in—and in five of the 47 weeks, complete absences of—his paychecks to Defendants'

[5] Counsel for Santiago referred to the parties' having agreed that Santiago was paid for less than 50.5 hours in 49 weeks. But in Plaintiff's Exhibit 3, Santiago identified the specific weeks in which he was paid for less than 50.5 hours. Only 47 weeks are identified. Nor do Plaintiff's Exhibits 1 and 2, Defendants' payroll-register records, show that Santiago was paid for less than 50.5 hours for 49 weeks. Plaintiff's Exhibit 88 appears to include fewer than all the payroll-register records for the period it purports to cover (though each page of the document identifies the document as containing a total of 28 pages, pages 14-16, 19-20, and 23-24 are not contained in the exhibit). Indeed, the payroll-register records show only 32 weeks where Santiago was paid for less than 50.5 hours. And we have found no evidence in the record to support the conclusion that Santiago was paid for less than 50.5 hours for more than 47 weeks.

attention. When asked why, Santiago testified that he had been without work for a year before joining Dale's Tires, and he needed to provide for his family. He also said that he "didn't want any confrontation with [Dale]," that Dale used to get "very angry" and Santiago "didn't want to deal with that."

Despite the concerns Santiago testified he had about Dale, one to two weeks near the end of Santiago's employment with Defendants, Santiago approached a supervisor, Erik Oliphant, and told him that he was not getting paid overtime. After Oliphant reported this information to Linda, the Saunders who was actually responsible for payroll matters, she approached Santiago and told him "that's not a problem." Linda instructed Santiago to write down his hours if he needed to stay late, and Santiago understood that she would pay him. Despite this direction, Santiago failed to keep such a record and provide it to Linda.

Linda recounted one occasion when Santiago informed her that she made a mistake in calculating his pay and that he was owed an additional $35.00. After acknowledging the error, Linda immediately handed over to him $35.00 in cash. The record is unclear whether this interaction occurred at the same time Linda told Santiago to maintain a list of his overtime. Nevertheless, Santiago offered no testimony to explain why he was able to bring this error to Linda's attention during this particular week but no others. Nor did he explain why, in advising her of the short, he did not also tell her about the purported shorts for the prior weeks.

Santiago described Linda as "approachable" and as somebody [he] could talk to," and he conceded that she did not have a temper.

II.

After the jury was released to conduct its deliberations, Defendants moved again for judgment as a matter of law under Rule 50, Fed. R. Civ. P.[6] The following day, the district court granted a mistrial in the case and took under advisement Defendants' motion for judgment as a matter of law. A week later, the district court granted Defendants' motion for judgment as a matter of law. Santiago now appeals.

III.

We review de novo the district court's grant of judgment as a matter of law, applying the same standard as the district court. *Thosteson v. United States*, 331 F.3d 1294, 1298 (11th Cir. 2003). Under Rule 50, a court should render judgment as a matter of law when no legally sufficient evidentiary basis exists for a reasonable jury to find for the opposing party on that issue. Fed. R. Civ. P. 50. We can affirm on any ground supported by the record. *See, e.g.*, *Trustees of Atlanta Iron Workers, Local 387 Pension Fund v. S. Stress Wire Corp.*, 742 F.2d 1458, 1459 (11th Cir. 1983).

[6] The district court denied Defendants' motion for judgment as a matter of law, made at the close of Santiago's presentation of his case but left the door open to reconsidering it after hearing Defendants' case.

On review of judgment as a matter of law, an appellate court reviews all of the evidence in the record and must draw all reasonable inferences in favor of the nonmoving party, taking into account that "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Reeves v. Sanderson Plumbing Prod.*, 530 U.S. 133, 148-151 (2000); *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713, 724 (11th Cir. 2012). "[A]lthough the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe." *Reeves*, 530 U.S. at 151. Judgment as a matter of law is appropriate "only if the facts and inferences point overwhelmingly in favor of one party, such that reasonable people could not arrive at a contrary verdict." *Ash v. Tyson Foods, Inc.*, 664 F.3d 883, 892 (11th Cir. 2011).

IV.

The FLSA requires employers to pay their employees at least one-and-a-half times their regular wage for every hour worked in excess of forty per week. 29 U.S.C. § 207(a)(1). Under the FLSA, the employee-plaintiff must shoulder the burden of proving that he did not receive proper compensation for work that he performed. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 686-87 (1946), *superseded by statute*, 29 U.S.C. § 254 (West 1996), *as recognized in Integrity Staffing Sols., Inc. v. Busk*, __U.S.__, 135 S. Ct. 513, 516-17 (2014); *see* 29 U.S.C.

§ 216(b). To make a prima facie showing, a plaintiff must demonstrate that (1) he was employed by the defendant; (2) the defendant was engaged in interstate commerce; (3) he worked more than 40 hours in a week; and (4) the defendant knew of the plaintiff's work and failed to pay him overtime wages for such hours. *See Morgan v. Family Dollar Stores, Inc.*, 551 F.3d 1233, 1277 n.68 (11th Cir. 2008) (citing 29 C.F.R. § 207(a)); *Allen v. Bd. of Pub. Educ. for Bibb Cty.*, 495 F.3d 1306, 1314-15 (11th Cir. 2007). The parties here stipulated to the first two elements.

Because Santiago has not established the fourth element, we do not need to address the third element. Here, Santiago failed to demonstrate that his employers knew or should have known he was owed overtime pay. Santiago admitted that he never told either of the Saunderses that they owed him overtime, except on a single occasion, just before he resigned. At that time, Linda told him it was not "a problem" to pay him overtime and instructed him to write down and keep track of his hours owed. But Santiago failed to do so and never followed up.[7]

[7] It is not clear whether Santiago's testimony and Linda's testimony about their discussion of overtime pay reflect two reportings of a single conversation or whether Linda's testimony that she paid Santiago $35 on one occasion when he complained he had been shorted allegedly occurred in a second discussion. Under Rule 50(a), Fed. R. Civ. P., we view the evidence in the light most favorable to Santiago, as the non-movant. In an abundance of caution, therefore, we assume only one conversation occurred. Of course, if two happened and Linda told Santiago twice to advise her if he worked unpaid hours, our conclusion would be the same. In any case, it is clear that Santiago never subsequently informed Linda of any money owed and even failed to follow up about his pay after he resigned.

Nor did Santiago present evidence from which a jury could infer that Defendants should have otherwise known that Santiago was allegedly owed overtime pay. Accordingly, Defendants neither knew nor had any reason to know that Santiago was owed overtime. As a result, Santiago did not satisfy his burden under the FLSA, and the district court did not commit reversible error in granting judgment on the pleadings.

V.

For these reasons, the judgment of the district court is affirmed.

AFFIRMED.