[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10863
Non-Argument Calendar

D.C. Docket No. 0:19-cv-62967-AHS

ODEIU JOY POWERS,

Plaintiff-Appellant,

versus

KIRSTJEN NIELSEN,

Defendant,

U.S. HOMELAND SECURITY,
ACTING SECRETARY KEVIN MCALEENAN,

Defendants-Appellees.

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

(May 12, 2020)

Before WILLIAM PRYOR, JILL PRYOR, and HULL, Circuit Judges.

PER CURIAM:

Odeiu Powers, proceeding *pro se*, appeals the district court's denial of her motion for a preliminary injunction. The government has moved for summary affirmance and to stay the briefing schedule.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). An appeal is frivolous if it is "without arguable merit either in law or fact." *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (quotation marks omitted).

A document filed *pro se* must be liberally construed and *pro se* pleadings must be held to less stringent standards than formal pleadings drafted by lawyers. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200 (2007). Nevertheless, while we read briefs filed by *pro se* litigants liberally, "issues not briefed on appeal by a *pro se* litigant are deemed abandoned." *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). We deem abandoned and will not address the merits of "a legal claim or argument that has not been briefed before the court." *Access Now, Inc. v. S.W. Airlines, Co.*, 385 F.3d 1324, 1330 (11th Cir. 2004).

We review the denial of a preliminary injunction for abuse of discretion. *Bloedorn v. Grube*, 631 F.3d 1218, 1229 (11th Cir. 2011). A court must deny a motion for injunctive relief where the movant cannot establish that: "(1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000). "A delay in seeking a preliminary injunction of even only a few months—though not necessarily fatal—militates against a finding of irreparable harm." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016). A movant's failure "to show any of the four factors is fatal" to her motion for a preliminary injunction. *Am. Civil Liberties Union of Fla., Inc. v. Miami-Dade Cty. Sch. Bd.*, 557 F.3d 1177, 1198 (11th Cir. 2009).

Here, there is no substantial question that Powers abandoned her issue on appeal. Even if she did not abandon the issue, Powers also failed to qualify for injunctive relief because she has not established a substantial likelihood of succeeding on the merits and that irreparable injury would result without the injunction. First, in her initial brief, Powers only addressed the underlying merits of her civil action against the government without referencing the four-prong test

for injunctive relief and failing to make any argument calling into doubt the district court's denial of her motion for preliminary injunctive relief. *See Access Now*, 385 F.3d at 1330. In her reply brief, Powers argues that she did not abandon her issue on appeal because she addressed the reasons why she qualified for injunctive relief in her motion before the district court. However, this Court does not allow parties' briefs to incorporate by reference arguments made before the district court and merely referenced on appeal. *See Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr S.A.*, 377 F.3d 1164, 1167 n.4 (11th Cir. 2004).

Nevertheless, even if Powers did not abandon her issue on appeal, Powers failed to qualify for injunctive relief as she does not cite to any evidence showing she had a substantial likelihood of success on the merits. In fact, Powers' four-year delay in filing her suit and the almost one-year delay between filing the suit and filing her motion for a preliminary injunction belie the notion that irreparable injury would be suffered unless the injunction is issued. *See Wreal*, 840 F.3d at 1248. Therefore, because Powers has failed to show both of those factors, there is no substantial question that the district court did not abuse its discretion in denying her injunctive relief. *See Am. Civil Liberties Union*, 557 F.3d at 1198.

Therefore, because there is no substantial question that Powers abandoned her issue on appeal and was nevertheless not eligible for injunctive relief under the four-prong test, we GRANT the government's motion for summary affirmance.

See Groendyke Transp., Inc., 406 F.2d at 1162. Accordingly, we DENY the accompanying motion to stay the briefing schedule as moot.