In the

United States Court of Appeals

For the Seventh Circuit

No. 21-2913

CATRINA BRAGG,

Plaintiff-Appellant,

v.

MUNSTER MEDICAL RESEARCH FOUNDATION INC., d/b/a COMMUNITY HOSPITAL,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.
No. 2:19-cv-00209 — **James T. Moody**, *Judge*.

ARGUED SEPTEMBER 8, 2022 — DECIDED JANUARY 17, 2023

Before WOOD, ST. EVE, and JACKSON-AKIWUMI, *Circuit Judges*.

WOOD, *Circuit Judge*. After completing a 90-day orientation program for newly licensed nurses, Catrina Bragg was denied a fulltime position as a Registered Nurse (RN) at Community Hospital, which is operated by Munster Medical Research Foundation. Community then transferred her to Hartsfield Village, another of Munster's facilities, where her pay

was lower. (As the parties do, we refer to the employer as Community unless the context requires otherwise.) Bragg, who is Black, believes that these adverse employment actions were based on racially discriminatory evaluations of her performance and were retaliatory. She sued Munster under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, but the district court granted summary judgment in favor of the defendants.

We realize that Bragg's reports of racial insensitivity are typical of the challenges Black women face in the workplace. See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 149–50 (explaining that the needs of Black women in the workplace have been inadequately addressed by current "discrimination discourse"). Nonetheless, we must decide cases based on the record before us. And our evaluation of the record here convinces us that Bragg failed to proffer evidence that would allow a trier of fact to conclude that Community denied her a fulltime position and transferred her for impermissible reasons, rather than for its stated concern about deficiencies in her performance. We therefore affirm the district court's judgment.

I

Bragg began Community's orientation program for its acute care renal center on September 10, 2018. The program was run by experienced RNs, who served as preceptors and were responsible for training, supervising, and evaluating the work of orientees. As part of that process, the preceptors filled out Orientee Progress Forms, in which they graded orientees in five categories using a 1–5 scale, for a total possible score of

25 points, and recorded notes and goals for the orientee. Preceptors and orientees also attended bi-weekly Orientation Progress Meetings with RN Manager Samantha Kranz, RN Director Carla Meyer, and Educator Daniel Heredia. These Progress Meetings were memorialized in forms that documented the orientee's progress from the perspective of the orientee, the preceptor, and the supervisors.

Bragg had three different preceptors during her 90-day orientation; she describes racially charged incidents with all three. She asserts that her first preceptor, Erin Wysocki, intentionally race-matched patients, giving Bragg responsibility for one Black and one Latinx patient while removing a white patient from Bragg's care. After Bragg objected, Wysocki began treating Bragg differently, sometimes ignoring her and at other times getting disproportionately irate with her over small mistakes. Wysocki also tried to blame Bragg for an IV-line disconnection that Bragg contends was not her fault. Bragg reported her concerns about Wysocki to Heredia and Kranz, who promptly assigned her to another preceptor. Before the reassignment, Wysocki filled out one Progress Form in which she gave Bragg a score of 12 out of 25. Wysocki also attended one Progress Meeting where she reported that Bragg needed to work on managing IV tubing, in an apparent reference to the IV-line disconnection for which Bragg denied responsibility.

Bragg's next preceptor was Brittany Arrigo. Bragg asserts that Arrigo played rap and hip-hop music, containing sexually explicit language, at the nurses' station when Bragg was present and would make graphic dance moves and hand gestures. Bragg felt this was targeted at her because Arrigo connected rap music to Black people. When white nurses were

there, Arrigo would play pop and country music that was less explicit. Bragg also described an incident in which Arrigo laughingly called a Black patient's amputated limb a "skinny, brown stick," alluding to the patient's skin color.

Arrigo filled out a Progress Form in which she gave Bragg a score of 14 out of 25. The two also attended three Progress Meetings together. In all three meetings, Arrigo expressed concerns about Bragg's progression through the orientation program, describing issues with workflow awareness, military time, recognizing critical potassium levels, IV administration, insulin medication, and patient safety. Bragg contests some of Arrigo's accounts, saying that Arrigo was misrepresenting what happened in an effort to make Bragg look bad.

Bragg's final preceptor was Kim Raddatz, who Bragg alleges also attempted to blame her for errors that she did not commit. Worse, Bragg thought that Raddatz made an inappropriate reference to lynching when an oxygen line got wrapped around a Black patient's neck and Raddatz remarked "let's not have a hanging tonight." Raddatz wrote two Progress Forms about Bragg and gave her a score of 12 out of 25 on both forms. Bragg attended two Progress Meetings with Raddatz, where the reports of Bragg's poor performance continued. In Bragg's final meeting, Bragg was informed that the next two weeks were critical and that she needed to make big strides, with the goal of being able to manage five patients independently as soon as possible.

Bragg's orientation ended on December 12, when Kranz and Meyer informed her that she was not going to be offered a fulltime position at Community. Instead, they had organized her transfer to Munster's Hartsfield affiliate (a facility

for retirees who need continuous care). On December 20, Bragg submitted a written complaint to Community's Human Resources department, detailing many of the concerns she raises in this lawsuit. HR determined that further action was not warranted since Bragg was no longer an employee at Community.

Bragg filed a complaint with the EEOC and received a right-to-sue notice dated March 12, 2019. She followed up with this lawsuit, alleging that she was transferred to Hartsfield because of her race and as punishment for objecting to racially derogatory conduct in the workplace. The district court granted summary judgment across the board. For the discrimination claim, it found that, in the face of Community's robust evidence that Bragg's performance consistently fell below expectations, Bragg had not pointed to enough evidence to permit a trier of fact to conclude that her transfer to Hartsfield was motivated by her race. The court was troubled by the allegations of Wysocki's race-matching practice, but it found that the limited, six-day pattern was not sufficient to create a dispute of material fact in light of Bragg's performance problems. The district court also found that Bragg had no evidence that would support a retaliation claim. Bragg then appealed.

II

We consider the district court's decision *de novo*, viewing all disputed facts and drawing all reasonable inferences in favor of Bragg as the nonmoving party. *Sublett v. John Wiley & Sons, Inc.*, 463 F.3d 731, 735 (7th Cir. 2006).

A

A plaintiff asserting a Title VII claim for race discrimination must present enough evidence to "permit a reasonable factfinder to conclude that [her] race … caused the … adverse employment action." *Ortiz v. Werner Enterprises, Inc.*, 834 F.3d 760, 765 (7th Cir. 2016). The plaintiff may accomplish that task in several ways, including by use of the indirect method offered by the *McDonnell Douglas* burden-shifting framework. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–03 (1973). That is the route Bragg has chosen. It requires her to establish that "(1) she is a member of a protected class, (2) she performed reasonably on the job in accord with her employer['s] legitimate expectations, (3) despite her reasonable performance, she was subjected to an adverse employment action, and (4) similarly situated employees outside of her protected class were treated more favorably by the employer." *David v. Board of Trustees of Community College Dist. No. 508*, 846 F.3d 216, 225 (7th Cir. 2017) (quoting *Andrews v. CBOCS West, Inc.*, 743 F.3d 230, 234 (7th Cir. 2014)). Once the plaintiff makes this initial showing, the burden shifts to the employer to "articulate a legitimate, nondiscriminatory reason for the adverse employment action, at which point the burden shifts back to the plaintiff to submit evidence that the employer's explanation is pretextual." *Id.* (internal quotations omitted).

Where "the issue of satisfactory performance and the question of pretext overlap" because the employer has raised the employee's performance as the reason for the adverse employment decision, the court "may skip the analysis of the *prima facie* case and proceed directly to the evaluation of

pretext." *Everroad v. Scott Truck Sys., Inc.*, 604 F.3d 471, 477–78 (7th Cir. 2010). In this case, Community asserted subpar performance as its reason for transferring Bragg to Hartsfield. That was enough to shift the burden of production back to Bragg, who needed to offer evidence that Community's stated reason was pretextual in order to defeat the motion for summary judgment. Pretext is "[a] lie, specifically a phony reason for some action," not "'just faulty reasoning or mistaken judgment on the part of the employer.'" *Barnes v. Board of Trustees of Univ. of Ill.*, 946 F.3d 384, 389–90 (7th Cir. 2020) (quoting *Argyropoulos v. City of Alton*, 539 F.3d 724, 736 (7th Cir. 2008)).

Community had abundant evidence of Bragg's substandard performance, documented in the Progress Meetings and Progress Forms. Bragg responds with several arguments for why a factfinder could nonetheless determine that Community was lying about its reasons for transferring her. First, she says that Community did not keep her adequately apprised of the concerns with her performance and did not clearly communicate the reasons for her transfer to Hartsfield. An opaque or nonexistent explanation can raise an inference of pretext to the extent that it creates the appearance of post-hoc rationalization by the employer. See *Peirick v. Indiana Univ.-Purdue Univ. Indianapolis Athletics Dep't*, 510 F.3d 681, 692–93 (7th Cir. 2007) (finding sufficient evidence of pretext where employer never warned employee of performance concerns and did not promptly address those concerns as they happened).

Bragg did not show, however, that Community's communications with her left any room for doubt. The hospital produced four Progress Forms and records from six Progress Meetings, dating between October 1 and December 9, 2018. Bragg's signature is on the first three Progress Forms but

missing from the last one; her signature is on the first three Progress Meetings but missing from the last three. Bragg asks us to infer from the absence of her signature that Community never discussed the four unsigned forms with her.

Even if we give Bragg the benefit of the doubt, however, the record is still devoid of evidence that would permit a reasonable jury to find that Community failed to alert her to the performance problems that led to the denial of a position at the hospital. There is too much other evidence that Bragg knew of Community's concerns with her performance. One of the more pointed notes from Bragg's preceptors was written by Raddatz on the back of a November 26 Progress Form. This form *was* signed by Bragg and in the note, Raddatz opined that, even though Bragg's training was scheduled to end in two weeks, Bragg needed "no less than eight more weeks of orientation." Raddatz explained that Bragg still required prompting to complete basic tasks, had never completed a patient admission, still needed to develop critical thinking skills to anticipate patient needs, and was not yet managing a full patient load. Bragg signed this form, which means that two weeks before her dismissal in December, she was aware of Raddatz's critical feedback. That timeline also rules out any suggestion that Community fabricated its criticism of Bragg's performance after the fact.

Moreover, the three sets of Progress Meeting notes that Bragg did not sign cannot bear the weight Bragg assigns to them. She does not appear to dispute the fact that these meetings occurred. Indeed, she admitted in her deposition that she had "several meetings" with her preceptors and supervisors, and she recalled the discussions from the November 9 Progress Meeting even though she did not sign that form.

Furthermore, while it is odd that, as Bragg neared the end of her orientation program, her supervisors stopped reviewing the Progress Meeting notes with her, Bragg cannot claim general unawareness of the concerns with her performance. The Progress Meeting forms that Bragg did sign up until early November also discuss deficiencies, including the note from a November 1 meeting at which everyone present recognized Bragg as being "off schedule from the standardized orientation progression." In short, Bragg has not pointed to a dispute of material fact over how and when Community informed her about her performance deficiencies.

Bragg's next argument for why a jury might find that Community's proffered explanation is pretextual rests on the fact that it ultimately chose to transfer rather than fire her. In Bragg's view, if Community really believed that she could not perform the job of an RN, then it made no sense to transfer her to another facility where her responsibilities were largely the same. Community responds that it informed Bragg that she had not met its standards, was apparently ill-suited to the pace of acute care, and might do better in a long-term care facility such as Hartsfield. It encouraged her to apply for positions at Community after she had more experience. Bragg disputes that she received such a detailed explanation of the transfer. She contends instead that she was told only that she was being transferred to Hartsfield and she had no choice in the matter.

But, transfer or no transfer, Bragg cannot avoid the records Community provided—records that stand unrebutted. Bragg testified that she exceeded expectations at Hartsfield, but there is no analogous evidence of her satisfactory (or better) performance at Community. As a result, even taking as true

Bragg's contention that Community never adequately explained the reasoning behind her transfer to Hartsfield, Bragg has provided no evidence to establish that Community was lying about her performance or about its reasons for transferring her.

Bragg's final argument for why Community's reasoning is pretextual is a direct attack on the substance of the evaluations. That is a nonstarter, in the absence of any evidence indicating that Community had reason to doubt their accuracy. Bragg points us to a comparator, Mary Anderson, who is white and scored higher in her evaluations despite having more severe performance deficiencies. But the comparison falls short because Anderson, even with her higher scores, *failed* the orientation program and was (like Bragg) denied a fulltime position at Community.

B

Bragg also asserts a cat's-paw theory of liability. "[W]hen a biased subordinate lacks decision-making power to fire an employee, but 'uses a formal decision maker as a dupe in a deliberate scheme to trigger a discriminatory employment action,' we will consider the biased subordinate's actions as direct evidence of discrimination." *Nichols v. Michigan City Plant Planning Dep't*, 755 F.3d 594, 600 (7th Cir. 2014) (quoting *Johnson v. Koppers, Inc.*, 726 F.3d 910, 914 (7th Cir. 2013)). This theory required Bragg to show that: (1) the biased subordinate "actually harbored discriminatory animus against [her]"; and (2) "[the subordinate's] input was a proximate cause" of the adverse employment decision. *Id.* at 604. Bragg argues that her preceptors' racial animus led to the negative evaluations upon which the Community supervisors based their decision not to offer her a fulltime position.

Bragg's cat's-paw theory does not fill the evidentiary gap, no matter which of her three preceptors we consider. Looking first at Wysocki, the problem is that Bragg has no evidence indicating that Wysocki's input caused her transfer. Wysocki filled out only one Progress Form and attended one Progress Meeting at the very beginning of Bragg's training. Community provided unrefuted evidence that the most important evaluations were the ones at the end of Bragg's orientation period. Bragg has presented no evidence that Wysocki colluded with Arrigo or Raddatz and tried to affect their evaluations negatively. At oral argument, Bragg suggested that her deposition did provide evidence linking the preceptors and permitting the inference that there was collusion, but this exaggerates the nature of the relationships described in Bragg's testimony. The fact that the preceptors were co-workers who may have interacted at work does not indicate that they schemed against Bragg.

Ultimately, Wysocki's evaluations were completed over two months before Bragg's transfer, and they were superseded by weightier reviews from Arrigo and Raddatz. Those evaluations are therefore "too remote … or indirect" to support an inference of causation, regardless of whether Wysocki was racially biased against Bragg. See *Woods v. City of Berwyn*, 803 F.3d 865, 869–70 (7th Cir. 2015) (quoting *Staub v. Proctor Hospital*, 562 U.S. 411, 419 (2011)).

As for Arrigo and Raddatz, Bragg's evidence does not permit a finding that they harbored discriminatory animus against Bragg. This is not to say that they were perfect: Bragg asserts that Arrigo and Raddatz each made a racist comment to or about Black patients—Arrigo mocked a patient's amputated limb on racial grounds, and Raddatz allegedly made a

reference to lynching. Such comments are deeply regrettable. But Bragg does not show that Arrigo and Raddatz's alleged animus was pervasive or that it infected their evaluations of her. Often, in a successful cat's-paw case, the plaintiff provides evidence of racial bias that was directed specifically at the plaintiff. See *Schandelmeier-Bartels v. Chicago Park Dist.*, 634 F.3d 372, 378, 381 (7th Cir. 2011) (reinstating a jury verdict in favor of the plaintiff because a supervisor's "racial tirade" made it clear she was biased against the plaintiff and "only [her] biased voice mattered" in the termination decision). That is not Bragg's theory. Instead, she argues that racial bias directed at others in Bragg's racial class is sufficient to support an inference of bias directed against her in particular. Such circumstantial evidence might support a racial discrimination claim in other cases, but Bragg's evidence falls short of making that connection here.

We acknowledge that there was some evidence that Raddatz wanted to get Bragg fired. Raddatz closely monitored and documented Bragg's work for the purpose of developing a legal record in the event of Bragg's termination. But the critical question is why? For racially discriminatory reasons, or for performance-based reasons? On that point, Bragg did not proffer evidence that would allow a factfinder to connect Raddatz's close supervision to an unlawfully discriminatory motive. The record shows that Arrigo and Raddatz both expressed repeated concerns about Bragg's performance and that both possibly engaged in racist behavior. But Bragg's evidence did not show that her race motivated their evaluations and Raddatz's overbearing attitude.

Finally, Bragg argues that a trier of fact can infer animus because she has identified falsehoods in Arrigo's and

Raddatz's evaluations of her. But "[a] false report …, standing alone, is insufficient to establish discriminatory animus." See *Johnson*, 726 F.3d at 915. Without some evidence that Arrigo and Raddatz expressed racial bias towards Bragg, Bragg does not get past the first step in the cat's-paw theory. We conclude, therefore, that she did not present enough evidence to permit a trier of fact to find that her transfer to Hartsfield was the result of impermissible racial bias.

III

Bragg also alleges that she faced unlawful retaliation after she complained to her supervisors about Wysocki's practice of race-matching patients. In order to survive summary judgment on this theory, she needed to present evidence that would permit a finding that her statutorily protected activity led to a materially adverse action. See *Robinson v. Perales*, 894 F.3d 818, 830 (7th Cir. 2018).

Bragg complained to her supervisors about both Wysocki and Raddatz, but only her complaints about Wysocki's practice of race-matching connect the complained-of discrimination to her membership in a protected class. See *Tomanovich v. City of Indianapolis*, 457 F.3d 656, 663 (7th Cir. 2006) (explaining that, to be "protected activity under Title VII," complaints filed with employers "must indicate the discrimination occurred because of sex, race, national origin, or some other protected [characteristic]"). Bragg accused Raddatz of lying and being mean to her, but those assertions do not, as presented, have any relation to her membership in a protected class. Therefore, we consider only the adverse actions against Bragg that might have flowed from her early complaints about Wysocki's race-matching.

After Bragg complained, Wysocki gave Bragg a low score on her Progress Form and gave negative feedback in a Progress Meeting. These comments included the alleged falsehoods about Bragg's comfort with IV lines. All this happened over a six-day period between September 26 and October 1. That is enough to permit a plaintiff to "establish … a causal link … through evidence that the [adverse action] took place on the heels of protected activity." *Spiegla v. Hull*, 371 F.3d 928, 943 (7th Cir. 2004) (quoting *Adusumilli v. City of Chicago*, 164 F.3d 353, 363 (7th Cir. 1998)). But the causal chain becomes more tenuous almost immediately. In response to Bragg's complaint, Community assigned Bragg to Arrigo. Bragg provides no evidence permitting the inference that Arrigo was motivated by Bragg's complaints about Wysocki. She presented no evidence suggesting that Arrigo knew of Bragg's complaints. Nor did Bragg put forth circumstantial evidence, such as a close friendship between Arrigo and Wysocki, that would fill this gap. The same evidentiary shortcomings plague any argument about Raddatz's motivations.

Because the causal chain breaks after Bragg was removed from Wysocki's supervision, Bragg can prevail on her retaliation claim only if her first two negative evaluations qualify as a materially adverse employment action. An action is materially adverse if "the employee would be dissuaded from engaging in the protected activity." *Roney v. Illinois Dep't of Transp.*, 474 F.3d 455, 461 (7th Cir. 2007). Such a determination depends on "the circumstances of a particular case … 'judged from the perspective of a reasonable person in the plaintiff's position.'" *Burlington N. & Santa Fe Railway Co. v. White*, 548 U.S. 53, 71 (2006) (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998)).

Under this standard, Wysocki's negative evaluations do not amount to a materially adverse action. Bragg was transferred to another preceptor shortly after complaining and did not continue working with Wysocki. Bragg provided no evidence indicating that this first set of bad reviews from Wysocki was fatal to Bragg's future with Community or permanently colored any decisionmaker's perceptions of Bragg. Nor does Bragg sufficiently establish that a reasonable person in her position would have felt silenced. The district court thus correctly concluded that Bragg did not present enough evidence to permit a finding of retaliation.

IV

We AFFIRM the judgment of the district court.