In the

United States Court of Appeals

For the Seventh Circuit

No. 21-3278

DIANE M. TRAHANAS,

Plaintiff-Appellant,

v.

NORTHWESTERN UNIVERSITY and
STEVEN J. SCHWULST,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 1:15-cv-11192 — **John J. Tharp, Jr.**, *Judge*.

ARGUED SEPTEMBER 20, 2022 — DECIDED APRIL 7, 2023

Before EASTERBROOK, HAMILTON, and BRENNAN, *Circuit Judges*.

BRENNAN, *Circuit Judge*. Diane Trahanas worked as a research technician in a medical lab. After almost three years, she took medical leave and eventually her employment was terminated. Based on statements made to her by her supervising doctor and coworkers, she sued her former university employer and the doctor. She claimed they created a hostile work

environment in violation of Title VII and retaliated against her under the Family and Medical Leave Act and the Americans with Disability Act. She also alleged that, contrary to Illinois law, the defendants defamed her and intentionally caused her emotional distress. The district court granted summary judgment to the defendants, which we affirm.

I.

A. Factual Background[1]

In June 2012, Trahanas began working as a Research Technologist II in Dr. Steven Schwulst's laboratory at the Northwestern University Feinberg School of Medicine. She assisted Schwulst in studying traumatic brain injuries by conducting research experiments on mice. She also helped prepare and present research publications about those experiments.

At times, Trahanas "got along very nicely" with Schwulst. But starting in the fall of 2012, Trahanas claims Schwulst started making verbally abusive and demeaning remarks about her work ethic, mental health, and sexual orientation. In her deposition, Trahanas said Schwulst called her a "typical millennial" and "Princess Diana" to imply she was spoiled or entitled. He also made comments like "Diane is off her meds," "Diane needs psychiatric help," or "Diane is riding the struggle bus again."

Most frequently, Schwulst commented on what he perceived as Trahanas's sexual orientation. During a

[1] Because Trahanas appeals from a grant of summary judgment, we present the facts in the light most favorable to her and draw all inferences in her favor. *Perez v. Staples Cont. & Com. LLC*, 31 F.4th 560, 563 n.1 (7th Cir. 2022).

conversation about workout routines, Schwulst said women who exercise too much, like Trahanas, look "manly" and are "lesbians." Trahanas said Schwulst regularly referred to her as such or as a "softball player," which Trahanas took as a euphemism for a lesbian. He also stated he "hope[d his] baby girl will be a lesbian like Diane" because it would make life easier. Trahanas, a heterosexual woman, told Schwulst on multiple occasions that she was not a lesbian. Trahanas did not report Schwulst's remarks to Northwestern's human resources department or any other administrative employee at the medical school.

Trahanas also contends her lab coworkers made harassing comments to her. Schwulst shared lab space with another research scientist, Dr. Harris Perlman. Perlman's lab manager, Rana Saber, would tell Trahanas to "[s]top messing things up," blame her for "doing everything wrong," and implore her to "take [her] meds." According to Trahanas, Saber and another lab coworker intentionally sabotaged a six-month long research project by giving her an outdated "protocol" used for cell analysis. Trahanas mentioned the protocol incident to Schwulst, but she did not report her coworkers' conduct to HR.

Notwithstanding the lab environment, Trahanas consistently received positive performance reviews from Schwulst. After around two years in the lab, Trahanas spoke with Schwulst about receiving a pay raise and a promotion to Research Technologist III. Schwulst was receptive, and he reached out to the human resources department about that possibility. HR recommended not changing Trahanas's title because her responsibilities remained at the Tech-II level, but Trahanas did receive a 3% merit pay raise. Believing a mistake

had been made about her promised promotion, Trahanas contacted HR. She also expressed her frustration to Schwulst, which prompted him to make additional requests for Trahanas to receive a greater increase in pay. Schwulst notified Trahanas that, to secure another raise, he needed to meet with her for a midyear performance review. Tensions escalated during that performance review meeting, and Trahanas cried. Despite the contentious meeting, Trahanas ultimately received a 15% pay raise.

Trahanas also aspired to attend medical school. Based on her strong work performance, Schwulst wrote a positive recommendation letter in support of her medical school applications in October 2014. She applied to 15 medical schools in the 2014–15 application cycle but was accepted to none. Six of those schools invited her to submit secondary materials, but she failed to do so by the schools' deadlines. Trahanas later applied to 11 medical schools in the 2017–18 cycle, including four from the 2014 cycle. Again, none of the medical schools accepted her.

Trahanas had been diagnosed with attention deficit hyperactivity disorder, depression, and anxiety in 2007. In the months leading up to February 2015, she reported worsening depressive symptoms. Among multiple stressors, her psychiatrist noted persistent, high, or increased job stress. Trahanas's symptoms mildly improved by the start of February 2015. But she told her psychiatrist she planned to take time off work because she felt "burnt out." She did not provide Schwulst or Northwestern with advance notice of her plans to take leave.

On February 16, 2015, Trahanas did not report to work. She emailed Schwulst a day later to inform him she was

taking medical leave and would communicate only with the human resources department. After her psychiatrist submitted supporting paperwork a few days later, a Northwestern administrator approved Trahanas for twelve weeks of leave under the Family and Medical Leave Act.

Schwulst wanted an update on the status of the lab's current mice experiments, so he asked an HR employee to reach out to Trahanas on his behalf. While awaiting a response, Schwulst went to find the mice and check the status himself. Believing that Trahanas had started a lab experiment but seeing no notations on any lab paperwork about its progress, he decided to euthanize the mice. That same day, February 19, Schwulst wrote a letter stating: "I am writing to formally withdraw my prior letter of reference for Ms. Diane Trahanas. I can no longer support her candidacy for admission to medical school." He uploaded the letter to the American Medical College Application Service ("AMCAS"), where he had submitted his initial recommendation letter for Trahanas. The following day, Trahanas responded to the human resources department and indicated she had lost remote access to her work computer.

Trahanas's leave expired in May 2015. She requested Northwestern's leave administrator to close her leave claim in June, but she did not return to the lab. HR asked Trahanas if she intended to resign or extend her leave. If the latter, Northwestern needed additional documentation from her doctor. The university further informed Trahanas that failure to return to work or extend her leave would result in termination. Trahanas responded that her doctor was "not allowing [her] to return to work," but she did not extend leave or return to the lab. Accordingly, Northwestern terminated her

employment. Trahanas applied for other jobs at Northwestern over the next several months. She received one interview but was not hired.

B. Procedural Background

In 2015, Trahanas sued Northwestern and Schwulst. She brought a hostile work environment claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, and a retaliation claim under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101, *et seq.*, against Northwestern. She also brought a claim for retaliation under the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. § 2601, *et seq.*, against Northwestern and Schwulst. Trahanas additionally sued both defendants for defamation and intentional infliction of emotional distress under Illinois law.

In December 2020, the district court granted defendants summary judgment on all claims except the FMLA retaliation claim against Schwulst. The court concluded that Northwestern was not liable for creating a hostile work environment under Title VII for two reasons. First, Trahanas did not experience an adverse employment action. Second, she failed to report Schwulst's and her coworkers' conduct.

Trahanas had alleged that Northwestern retaliated against her for taking FMLA leave in violation of both the FMLA and ADA. Because she provided insufficient evidence, the court granted Northwestern summary judgment on both retaliation claims. Initially, summary judgment was denied for Schwulst on the FMLA retaliation claim because the court found that a reasonable jury could conclude that Schwulst was motivated to withdraw his recommendation letter in part by Trahanas's decision to take FMLA leave. The district court also ruled that

neither Northwestern nor Schwulst defamed Trahanas because they published no false statements about her. On her claim of intentional infliction of emotional distress, the court did not deem the conduct at issue extreme or outrageous.

After Schwulst moved to reconsider, the district court granted him summary judgment on the FMLA retaliation claim in July 2021. The court reasoned that Trahanas had shown no injury and therefore lacked standing, or in the alternative she could not recover damages compensable under the FMLA. Trahanas appeals the district court's grants of summary judgment to Northwestern and Schwulst.[2]

II. Analysis

"We review de novo a district court's grant of summary judgment, viewing the facts in the light most favorable to the

---

[2] In her notice of appeal Trahanas wrote that she appealed the orders "granting summary judgment to Northwestern … on December 23, 2020[,] … and Stephen J Schwulst … on July 8, 2021." Because Trahanas did not mention Schwulst in reference to the December 2020 order, Northwestern and Schwulst argue she failed to appeal the district court's grant of summary judgment in favor of Schwulst on the defamation and emotional distress claims.

Under Federal Rule of Appellate Procedure 3(c), a notice of appeal must "designate the judgment—or the appealable order—from which the appeal is taken." FED. R. APP. P. 3(c)(1)(B). The rule provides that "[a]n appeal must not be dismissed for informality of form or title of the notice of appeal, [or] for failure to name a party whose intent to appeal is otherwise clear from the notice." FED. R. APP. P. 3(c)(7). Trahanas's intent to appeal the entirety of the district court's dispositive orders granting summary judgment in favor of the defendants is apparent from the text of her notice. *See, e.g.*, *Cooper v. Retrieval-Masters Creditors Bureau, Inc.*, 42 F.4th 688, 694 (7th Cir. 2022). We therefore consider all claims resolved in both orders on appeal.

non-moving party." *Fin. Fiduciaries, LLC v. Gannett Co.*, 46 F.4th 654, 668 (7th Cir. 2022) (quoting *Ludwig v. United States*, 21 F.4th 929, 931 (7th Cir. 2021)). Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A genuine issue of material fact exists when "there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Brown v. Osmundson*, 38 F.4th 545, 549 (7th Cir. 2022) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)). But a "mere existence of a scintilla of evidence in support of the [nonmovant's] position will be insufficient" to survive summary judgment. *Parker v. Brooks Life Sci., Inc.*, 39 F.4th 931, 936 (7th Cir. 2022) (quoting *Anderson*, 477 U.S. at 252). We address in order Trahanas's Title VII hostile work environment claim, ADA and FMLA retaliation claims, and state law claims.

A. Hostile Work Environment

Trahanas alleges Northwestern subjected her to a hostile work environment in violation of Title VII. Under Title VII, employers cannot discriminate against employees because of their "race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). This prohibition on discrimination also reaches the creation of a "hostile or abusive work environment … permeated with discriminatory intimidation, ridicule, and insult." *Alexander v. Casino Queen, Inc.*, 739 F.3d 972, 982 (7th Cir. 2014). To establish a hostile work environment claim, a plaintiff must show: (1) the work environment was both subjectively and objectively offensive; (2) the harassment was based on membership in a protected class; (3) the conduct was severe or pervasive; and (4) there is a basis for employer

liability. *Scaife v. U.S. Dep't of Veterans Affs.*, 49 F.4th 1109, 1115–16 (7th Cir. 2022) (citing *Casino Queen*, 739 F.3d at 982)).

Different standards apply in evaluating an employer's liability for a hostile work environment, depending on whether the alleged harasser is the victim's supervisor or coworker. *Paschall v. Tube Processing Corp.*, 28 F.4th 805, 813 (7th Cir. 2022). For supervisors, an employer is strictly liable when a "supervisor's harassment culminates in a tangible employment action." *Vance v. Ball State Univ.*, 570 U.S. 421, 424 (2013). Absent such action, an employer may raise an affirmative defense to avoid liability. *Id.* But when the harasser is a coworker, "the employer is liable only if it was negligent in controlling working conditions." *Id.* We consider Northwestern's liability for the conduct of Trahanas's supervisor Schwulst as well as of her lab coworkers.

1. *Supervisor harassment*

Northwestern's liability for Schwulst's conduct hinges on whether his alleged harassment culminated in a tangible employment action. A tangible employment action is a "significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Vance*, 570 U.S. at 431 (quoting *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998)).

Trahanas argues that Schwulst promised her a promotion but failed to follow the appropriate procedures. To the contrary, Schwulst inquired through the proper channels about promoting Trahanas to a Research Technologist III. Because her work responsibilities lined up with the Research Tech–II position, Schwulst was unsuccessful in getting a title change

approved. But he did succeed in getting Trahanas a 15% pay increase. While tension surrounded discussions about Trahanas's title and pay, Schwulst's conduct did not result in a tangible employment action.

Further, Schwulst took no part in Trahanas's decision to leave the lab. Following the expiration of her leave, Trahanas chose not to return to work. She told Northwestern that her doctor was "not allowing [her] to return to work," but she did not extend her leave. In response, Northwestern released her position. Trahanas's voluntary decision not to return to work or extend leave does not amount to a tangible employment action.

Because Schwulst's conduct did not culminate in a tangible employment action, Northwestern may raise an affirmative defense. Under the *Faragher-Ellerth* defense[3], an employer may avoid liability by showing: "(1) it exercised reasonable care to prevent and correct promptly any sexually harassing behavior;" and "(2) the plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm." *Hunt v. Wal-Mart Stores, Inc.*, 931 F.3d 624, 628 (7th Cir. 2019) (citing *Ellerth*, 524 U.S. at 765).

On the first element, the record shows that Northwestern exercised reasonable care to prevent sexually harassing behavior. "Prevention can involve proactive steps such as

[3] Under this defense, Title VII does not require that employers be held vicariously liable for a hostile work environment created by a supervisor unless that environment is accompanied by an adverse employment action. *Faragher v. City of Boca Raton*, 524 U.S. 775, 805–806 (1998); *Ellerth*, 524 U.S. at 765.

constructing a reporting system for instances of sexual harassment." *Id.* at 629; *see also Shaw v. AutoZone, Inc.*, 180 F.3d 806, 811 (7th Cir. 1999) ("While not required as a matter of law, … the existence of an appropriate anti-harassment policy will often satisfy this first prong."). The parties agree that Northwestern maintained a policy prohibiting discrimination and harassment based on protected legal categories, including sex and sexual orientation. The policy, included in its staff handbook, provided instructions and multiple avenues—including those outside an employee's supervisory chain of command—for filing complaints. This anti-harassment policy is sufficient to satisfy the first prong of the *Faragher-Ellerth* defense.

Second, Northwestern has established that Trahanas "unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm." *Hunt*, 931 F.3d at 628. Trahanas admitted that she received Northwestern's handbook at the start of her employment. She signed an acknowledgement form, which stated that the handbook included "policies that every employee must know regarding … sexual harassment." That form provided that Trahanas could reach out to anyone in the Department of Human Resources with questions about the handbook's policies. Whether Trahanas actually read the handbook is "irrelevant because it is undisputed that she received a copy of the policy and that she was required as a condition of her employment to read and comply with [ ] the policy." *Shaw*, 180 F.3d at 811. This amounts to constructive knowledge of Northwestern's anti-harassment policy. *Id.*

Notwithstanding this knowledge, Trahanas did not report Schwulst's comments to HR or any other administrative

employee. She communicated frequently with administrative employees about her compensation, job title, and FMLA leave. But at her deposition she admitted she did not report Schwulst's behavior to the human resources department. Trahanas says she feared that Schwulst would retaliate by not writing her a recommendation letter if she complained. Any "fear of unpleasantness cannot excuse [Trahanas] from using the company's complaint mechanisms." *Montgomery v. Am. Airlines, Inc.*, 626 F.3d 382, 391–92 (7th Cir. 2010); *Shaw*, 180 F.3d at 813 (concluding that "an employee's subjective fears of confrontation, unpleasantness or retaliation do not alleviate the employee's duty under *Ellerth* to alert the employer to the allegedly hostile environment"). Trahanas's failure to alert Northwestern about the allegedly hostile environment created by Schwulst establishes the second prong of the *Faragher-Ellerth* defense. Northwestern has established an affirmative defense and therefore is not liable under Title VII for Schwulst's conduct.

2. *Coworker harassment*

Trahanas also argues that her coworkers' behavior contributed to creating a hostile work environment. She takes issue with her coworkers "mocking and ridiculing [her] because she is under stress and medical care." For example, Trahanas claims that Saber told Trahanas one time: "dude, take your meds." She also points to the incident where Saber and another lab coworker—both employees in Perlman's laboratory—intentionally sought to sabotage her work by giving her an outdated protocol for cell analysis.

Although Trahanas alleges inappropriate behavior by her coworkers, her allegations do not show that Northwestern is liable. To start, the inappropriate behavior Trahanas

highlights on appeal is not based on her "race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). Comments about her mental health do not give rise to liability under Title VII.[4]

In addition, Northwestern had no knowledge of any alleged coworker harassment. Recall that an employer is liable for coworker harassment "only when the employee shows that h[er] employer has been negligent either in discovering or remedying the harassment." *Paschall*, 28 F.4th at 813 (internal quotation marks omitted). Generally, "[a]n employer's legal duty in co-employee harassment cases will be discharged if it takes 'reasonable steps to discover and rectify acts of [ ] harassment of its employees.'" *Id.* (quoting *Parkins v. Civ. Constructors of Ill., Inc.*, 163 F.3d 1027, 1032 (7th Cir. 1998)). But an employer is not liable "when a mechanism to report the harassment exists, but the victim fails to utilize it." *Id.* at 816 (quoting *Durkin v. City of Chi.*, 341 F.3d 606, 612–13 (7th Cir. 2003)).

Northwestern took reasonable steps to discover employee acts of harassment by implementing an anti-harassment policy and establishing complaint mechanisms. As with Schwulst, Trahanas admitted in her deposition that she did not report her coworkers' comments or conduct to Northwestern. Without knowledge of what Trahanas's coworkers were doing, Northwestern cannot be held liable for failing to

[4] An individual may bring a hostile work environment claim based on disability under the ADA. *Ford v. Marion Cnty. Sheriff's Off.*, 942 F.3d 839, 851–52 (7th Cir. 2019). Trahanas's initial complaint made such a claim. But after the district court dismissed the claim, Trahanas did not reallege it in her second amended complaint, which is the operative complaint on the parties' motions for summary judgment.

rectify the problem. Accordingly, Northwestern is not liable under Title VII for any alleged coworker harassment.

B. FMLA and ADA Retaliation

We next consider Trahanas's retaliation claims. The FMLA requires certain employers to provide their employees with up to 12 weeks of unpaid leave each year for qualifying health conditions. 29 U.S.C. § 2612(a)(1). And the ADA prohibits employers from discriminating against individuals based on disability. 42 U.S.C. § 12112(a). Both acts "prohibit employers from retaliating against employees who assert their statutory rights." *Freelain v. Vill. of Oak Park*, 888 F.3d 895, 900 (7th Cir. 2018) (citing 29 U.S.C. § 2615; 42 U.S.C. § 12203)).

The FMLA and ADA "are legally distinct, but in cases claiming unlawful retaliation, the analyses … overlap." *Id.* Retaliation claims brought under either act "require three familiar elements: (1) the employee engaged in statutorily protected activity; (2) the employer took adverse action against the employee; and (3) the protected activity caused the adverse action." *Id.* at 901. To succeed in showing causation, a plaintiff must demonstrate that "the protected conduct was a substantial or motivating factor in the employer's decision." *Anderson v. Nations Lending Corp.*, 27 F.4th 1300, 1307 (7th Cir. 2022).

1. *Northwestern*

Trahanas argues that Northwestern unlawfully retaliated against her for taking FMLA leave by terminating her employment and failing to hire her for another position at the

university.[5] Because the analysis for the FMLA and ADA retaliation claims overlap, we address them together. The parties agree that Trahanas "engag[ed] in statutorily protected activity by utilizing FMLA leave" for purposes of her FMLA retaliation claim. *Anderson*, 27 F.4th at 1307. For this appeal, we assume without deciding that taking FMLA leave constitutes a statutorily protected activity under the ADA.[6] Consequently, we focus on whether Northwestern took any adverse actions against Trahanas and whether her taking FMLA leave caused those actions.

In the retaliation context, an employer's action is adverse if "the action would have 'dissuaded a reasonable worker from' engaging in protected activity." *Freelain*, 888 F.3d at 901–02 (quoting *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006)). This objective standard is "based on how a reasonable employee might react" in the plaintiff's circumstances. *Id.* at 902. Termination no doubt qualifies as an

---

[5] In her complaint, Trahanas alleged Northwestern retaliated against her for taking FMLA leave by locking her out of her work computer. The district court addressed whether the computer lockout was an unlawful retaliatory action in its summary judgment order. But Trahanas does not argue that the computer incident was adverse on appeal, so we consider the argument waived. *EEOC v. Wal-Mart Stores E., L.P.*, 46 F.4th 587, 598 (7th Cir. 2022) (explaining that "arguments not raised in an opening brief are waived").

[6] To have engaged in an activity protected by the ADA, the employee "must have asserted [her] rights under the ADA by either seeking an accommodation or raising a claim of discrimination due to [her] disability." *Preddie v. Bartholomew Consol. Sch. Corp.*, 799 F.3d 806, 814–15 (7th Cir. 2015). The record provides no evidence that Trahanas asserted her rights under the ADA. Nonetheless, we operate under our assumption for convenience.

adverse action. In fact, the FMLA expressly prohibits discharging an employee for exercising FMLA rights. 29 U.S.C. § 2615(a)(2); *see also Anderson*, 27 F.4th at 1307 (concluding that an employee "experienced an adverse action when she was terminated from her position"). The same goes for a failure to hire. *See Vance*, 570 U.S. at 431 (defining a tangible employment action to include "hiring [or] failing to promote"). Accordingly, we address whether a causal link exists between Trahanas's protected activity and Northwestern's release of her employment and subsequent failure to hire her for other posts at the medical school.

Viewing the facts in favor of Trahanas, she cannot show that her FMLA leave played a motivating factor in Northwestern's decision to terminate her employment. Trahanas could have chosen to return to her position in Schwulst's lab following her leave. Northwestern had held the position open, and Schwulst expected her return. But Trahanas informed Northwestern she would not come back to work, so Northwestern terminated her position. In a letter sent to Trahanas in June 2015, Northwestern stated: "Since you have not returned to work nor have you re-opened your [extended sick time] claim, your position with Northwestern University has been terminated." FMLA leave was not a motivating factor in Trahanas's termination. Northwestern released her position because she neither returned to work nor reopened her leave claim.

Similarly, Trahanas provides no evidence tending to show that her decision to take FMLA leave was a substantial or motivating factor in Northwestern's decision not to offer her another position. After her FMLA leave expired, Trahanas applied to other positions at Northwestern without success.

There is no evidence that those making hiring decisions for these jobs knew she had taken FMLA leave. "[A] superior cannot retaliate against an employee for a protected activity about which he has no knowledge." *Stephens v. Erickson*, 569 F.3d 779, 788 (7th Cir. 2009). Without knowledge of Trahanas's FMLA leave, hiring decisionmakers at Northwestern could not have retaliated against her for that leave. Because Trahanas failed to raise a genuine issue of material fact on causation, the district court properly granted summary judgment to Northwestern on the FMLA and ADA retaliation claims.

2. *Schwulst*

Trahanas also claims Schwulst retaliated against her for taking FMLA leave by withdrawing his letter recommending her for medical school. She contends the withdrawal destroyed her dream of attending medical school, her goal of becoming a doctor, and her professional reputation. Schwulst responds he withdrew his recommendation based on ethical concerns that Trahanas failed to document the status of an experiment involving mice before she took leave. The district court first denied Schwulst summary judgment on the claim because a reasonable jury could find Trahanas's FMLA leave was a motivating factor in Schwulst's decision to withdraw his recommendation. On reconsideration, the district court dismissed the claim against Schwulst because Trahanas failed to allege an injury and thus had no standing. In the alternative, the court granted Schwulst summary judgment because Trahanas had not suffered damages compensable under the FMLA.

Trahanas has standing to bring her FMLA retaliation against Schwulst because in her complaint she alleged an

actual, concrete, and particularized injury in fact—damage to her professional reputation and the denial of her medical school applications. This court therefore has jurisdiction over Trahanas's claim. After discovery Trahanas failed to establish that she suffered an injury in fact. So, her claim fails on the merits, not for lack of standing. *See Bell v. Hood*, 327 U.S. 678, 682 (1946) ("If the court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction."); *United States v. Von Vader*, 58 F.4th 369, 371 (7th Cir. 2023).

The FMLA allows employees to recover for "wages, salary, employment benefits, or other compensation" or "any actual monetary losses" that result from an employer's FMLA violation. 29 U.S.C. § 2617(a)(1)(A)(i)(I), (II). The statute also authorizes courts to provide appropriate equitable relief, such as "employment, reinstatement, and promotion." *Id.* at § 2617(a)(1)(B). But unlike Title VII and the ADA, "FMLA damages don't include emotional distress and punitive damages." *Arrigo v. Link*, 836 F.3d 787, 798 (7th Cir. 2016). To survive summary judgment, a plaintiff must "come forward with evidence from which a jury could conclude that [s]he suffered damages attributable to one of these adverse actions for which the FMLA provides relief." *Hickey v. Protective Life Corp.*, 988 F.3d 380, 388 (7th Cir. 2021).

Trahanas fails to show she suffered damages from Schwulst's alleged retaliation. Schwulst uploaded his second letter withdrawing his support of Trahanas's medical school candidacy to AMCAS on February 19, 2015. Of the fifteen schools Trahanas applied to in the 2014–15 cycle, nine rejected her application prior to February 19. Five of the remaining six

schools considered her application withdrawn before that date because she did not submit secondary materials. The sole remaining school, Florida Atlantic University, labeled her application as "Withdrew Before Accepted" by April 1, 2015. Trahanas cannot recall whether she submitted secondary materials to Florida Atlantic University. Her lack of recollection does not create a genuine dispute of material fact about whether that university considered her application and denied it due to Schwulst's letter. *See Tinder v. Pinkerton Sec.*, 305 F.3d 728, 735–36 (7th Cir. 2002) (concluding that a plaintiff's lack of recollection did not create a genuine issue of material fact). A reasonable juror could not conclude, based on this evidence, that Schwulst's second letter contributed to her rejection.

Trahanas reapplied to four of the same schools in the 2017–18 cycle. Northwestern and Schwulst, through an expert witness, offered evidence that AMCAS does not retain letters of recommendation submitted in earlier application cycles and that medical schools only consider letters written for the application cycle in which they are submitted. Trahanas claims that conversations she had with admissions personnel at various medical schools led her to believe otherwise. But her bare allegations, without more, do not create genuine disputes of material fact. No evidence in the record supports Trahanas's argument that any of the four schools to which she reapplied had access to or relied upon the letters Schwulst submitted in 2015. Because Trahanas fails to show that any medical school rejected her based on Schwulst's withdrawal of his recommendation, Schwulst is entitled to summary judgment on the FMLA retaliation claim.

C. State Law Claims

1. *Defamation*

Trahanas's defamation claim against Northwestern and Schwulst is based on the letter Schwulst wrote rescinding his initial letter of recommendation. The entire letter reads: "I am writing to formally withdraw my prior letter of reference for Ms. Diane Trahanas. I can no longer support her candidacy for admission to medical school."

To establish defamation under Illinois law, a plaintiff must show "the defendant made a false statement about the plaintiff, the defendant made an unprivileged publication of that statement to a third party, and that this publication caused damages." *L. Offs. of David Freydin, P.C. v. Chamara*, 24 F.4th 1122, 1129 (7th Cir. 2022) (quoting *Solaia Tech., LLC v. Specialty Publ'g Co.*, 852 N.E.2d 825, 839 (Ill. 2006)). If a statement's "defamatory character is obvious and apparent on its face," it is considered defamation per se, and damages are presumed. *Bd. of Forensic Document Exam'rs, Inc. v. Am. Bar Ass'n*, 922 F.3d 827, 831–32 (7th Cir. 2019) (quoting *Tuite v. Corbitt*, 866 N.E.2d 114, 121 (Ill. 2006)). Illinois recognizes "words that impute a person lacks ability or otherwise prejudices that person in her or his profession" as defamatory per se. *Solaia Tech.*, 852 N.E.2d at 839.

Defamatory statements "may enjoy constitutional protection as an expression of opinion." *Id.* Whether "a statement is a factual assertion that could give rise to a defamation claim" or an opinion protected by the First Amendment "is a question of law." *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.*, 882 N.E.2d 1011, 1022 (Ill. 2008). In making that legal determination, courts consider "whether the statement has a

precise and readily understood meaning; whether the statement is verifiable; and whether the statement's literary or social context signals that it has factual content." *Solaia Tech.*, 852 N.E.2d at 840. The constitution protects a defamatory statement "only if it cannot be reasonably interpreted as stating actual fact." *Id.*

Schwulst's letter contains non-actionable, constitutionally protected statements of opinion. The statements do not have precise and readily understood meanings. There are numerous reasons why Schwulst may have withdrawn his recommendation. Without additional details, the letter cannot be understood as "precise." *Cf. Hopewell v. Vitullo*, 701 N.E.2d 99, 104 (Ill. 1998) ("'[I]ncompetent' is an easily understood term, [but] its broad scope renders it lacking the necessary detail for it to have a precise and readily understood meaning.").

More fundamentally, the letter does not contain statements that can be objectively verified as true or false. Schwulst's retraction of support implies "undisclosed and unassumed facts that support [his] opinion." *Id.* But based on the letter alone, medical schools have no factual basis from which to verify why Schwulst retracted his recommendation, making it too ambiguous and indefinite to constitute a statement of fact. The vaguer and more generalized the "opinion[,] the more likely the opinion is non-actionable as a matter of law." *Id.* at 104, 105 (holding that the alleged defamatory statement, "fired because of incompetence," was "too vague and general to support an action for defamation as a matter of law"). Because Schwulst's letter does not contain a verifiable factual statement about Trahanas, her defamation claim against him fails. With no liability for Schwulst, Northwestern cannot be held vicariously liable.

2. *Intentional infliction of emotional distress*

Finally, Trahanas brings state-law claims against Northwestern and Schwulst for intentional infliction of emotional distress. Illinois sets a "high bar" for intentional infliction of emotional distress claims. *Richards v. U.S. Steel*, 869 F.3d 557, 566 (7th Cir. 2017). A plaintiff must show that: (1) the defendant's conduct was extreme and outrageous; (2) the defendant intended that his conduct would cause severe emotional distress, or knew that there was at least a high probability that the conduct would inflict severe emotional distress; and (3) the conduct did in fact cause severe emotional distress. *Id.* (citing *Feltmeier v. Feltmeier*, 798 N.E.2d 75, 80 (Ill. 2003)). To qualify as outrageous, the conduct "must be so extreme as to go beyond all possible bounds of decency and be regarded as intolerable in a civilized society." *Richards*, 869 F.3d at 566 (quoting *Feltmeier*, 798 N.E.2d at 80). "[M]ere insults, indignities, threats, annoyances, petty oppressions, or other trivialities" do not suffice. *Id.* Regarding severity, the distress inflicted must be "so severe that no reasonable person could be expected to endure it." *Lifton v. Bd. of Educ. of City of Chi.*, 416 F.3d 571, 579 (7th Cir. 2005); *see also Schweihs v. Chase Home Fin., LLC*, 77 N.E.3d 50, 63 (Ill. 2016).

Liability for emotional distress "is even more constrained in the employment context." *Richards*, 869 F.3d at 567. The "everyday job stresses resulting from discipline, personality conflicts, job transfers or even terminations" do not give rise to emotional distress claims, otherwise "nearly every employee would have a cause of action." *Naeem v. McKesson Drug Co.*, 444 F.3d 593, 605 (7th Cir. 2006) (quoting *Graham v. Commonwealth Edison Co.*, 742 N.E.2d 858, 867 (Ill. 2000)). To obtain relief in the employment context, an employee must

show that an employer "clearly abuses the power it holds over an employee in a manner far more severe than the typical disagreements or job-related stress caused by the average work environment." *Id.*

Viewing the evidence in Trahanas's favor, her emotional distress claims fail. To begin, it is unclear what conduct Trahanas challenges as extreme and outrageous. She notes that, according to her psychiatrist, she experienced worsening depression and anxiety related symptoms during the time she worked in the lab due to "multiple stressors," including "[i]ncreased job stress" and her "boss [ ] not being supportive." Trahanas also points to the performance review meeting with Schwulst, where she became upset and cried. Otherwise, Trahanas fails to highlight other distressing conduct in support of her claim.

Lack of support from a boss and a tense performance review do not constitute extreme and outrageous conduct. Although Trahanas became upset after meeting with Schwulst, that did not produce more than the "job-related stress caused by the average work environment." *Id.* Indeed, "personality conflicts and questioning of job performance are unavoidable … [and] frequently, they produce concern and distress." *Richards*, 869 F.3d at 567. But because the meeting did not go "well beyond the parameters of the typical workplace dispute," it cannot be classified as extreme and outrageous. *Lewis v. School Dist. No. 70*, 523 F.3d 730, 747 (7th Cir. 2008). The same is true for Trahanas's claim that Schwulst did not support her. Any perceived lack of support by Schwulst does not amount to a clear and severe "abuse of power" over Trahanas. *Naeem*, 444 F.3d at 605.

After Trahanas had taken FMLA leave, her psychiatrist recommended that she "not … return to her previous job" because the high-stress work environment would "likely lead to psychiatric decompensation." For Trahanas, this provides evidence of the intentional emotional distress Schwulst and Northwestern caused. Although Trahanas provides evidence of emotional distress, she must still establish that Schwulst and Northwestern's conduct was extreme and outrageous and that Schwulst and Northwestern intentionally sought to inflict emotional distress. She does neither, so her emotional distress claims against Schwulst and Northwestern fail.

* * *

For the reasons stated above, we AFFIRM the district court's grant of summary judgment to Northwestern and Schwulst on all claims.