NONPRECEDENTIAL DISPOSITION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 October 22, 2024*
Decided October 29, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 23-2670

BILLY EARL,
Plaintiff-Appellant,

v.

JEWEL FOOD STORES, INC., et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 18 C 8279

Charles P. Kocoras,
Judge.

O R D E R

In this employment-discrimination suit, Billy Earl appeals three rulings: the denial of his motion for sanctions against his former employer, Jewel Food Store, for losing a document; the grant of Jewel's motion for summary judgment; and the award

* 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. FED. R. APP. P. 34(a)(2)(C).

of Jewel's costs. The district court reasonably ruled that the lost document did not warrant sanctions, it correctly decided that Earl did not supply evidence of discrimination, and it properly awarded Jewel's costs. Thus we affirm.

In 2017, Jewel fired Earl from his position as a sanitation worker. Jewel found that in a single year Earl had twice failed to show up for work or receive permission for his absence, conduct that warrants discharge under Jewel's union contract. Earl, however, believed that his supervisor had approved his request to take a vacation day on the second day that Jewel called a "no call, no show." He filed a grievance with his union, and his dispute went to arbitration, at which Earl and Jewel presented competing versions of Earl's vacation-request form. Earl's copy depicted an approved vacation day, while the original from Jewel did not reflect that Earl had even asked to take that day off. The arbitrator ruled that Jewel's form was the true version and denied the grievance. A year later, Earl asked Jewel to rehire him, but Jewel did not respond.

After the arbitration, Earl sued Jewel in district court. The court construed his final complaint as seeking relief against Jewel under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-1 to -17; 42 U.S.C. § 1981 for race discrimination in his discharge (he is Black); and under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621–34, for age discrimination in Jewel's failure to rehire him. (He brought other claims against the union and an insurance-benefits claim against Jewel, but those are not at issue on appeal.) During discovery, Earl received from Jewel a digital copy of the contested vacation-request form. After discovery closed, he asked to see the original because he wanted an expert to inspect it for signs of tampering. Over six weeks, Jewel personnel systematically searched several locations for the original, but despite its normal practice of retaining originals in ongoing disputes, Jewel could not locate the document. Earl moved for sanctions. He argued that Jewel had a duty to preserve the original, that the original's unavailability prejudiced Earl because he could not prove tampering, and that the court could infer Jewel's bad faith from its poor document-retention practices. The district court denied the motion.

The district court later granted Jewel's motion for summary judgment on the employment-discrimination claims. In opposing the motion, Earl stated that his supervisor told him that he was "lazy," union representatives told him that Jewel wanted to fire him, and three non-Black co-workers told him that Jewel rehired them despite having two "no call, no shows." The district court reasoned that none of this was admissible evidence that Jewel fired Earl because he is Black. Likewise, the court further ruled that Earl could not establish a prima facie case of age discrimination based

on Jewel's failure to re-hire him: No evidence showed that Jewel had an open position available when he requested his job back or that it hired someone younger instead of him. Jewel moved for bill of costs and the district court required Earl to pay $4,284.

First, we address the district court's entry of summary judgment on Earl's claims of race and age discrimination. We review that ruling de novo. *Craig v. Wrought Washer Mfg.*, 108 F.4th 537, 540 (7th Cir. 2024). For his race-discrimination claim under § 1981 and Title VII to survive summary judgment, Earl had to present evidence that would permit a reasonable factfinder to conclude that Jewel fired him because of his race. He could attempt to do this by presenting his evidence in a "holistic fashion." *Wince v. CBRE, Inc.*, 66 F.4th 1033, 1040 (7th Cir. 2023) (citing *Ortiz v. Werner Enters.*, 834 F.3d 760, 765 (7th Cir. 2016)). Or he could invoke the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), which requires that he supply a prima face case of discrimination. *Wince*, 66 F.4th at 1040.

Earl's claims do not survive under the holistic approach. He insists that his union said to him that Jewel was out to fire him and that two co-workers said to him that Jewel overlooked their two "no call, no shows." But these statements, which Earl offers for their supposed truth, are inadmissible hearsay. FED. R. EVID. 801, 802. Earl also cites his supervisor's assertions that he was "lazy," which he argues reflect negative stereotypes about Black people. But Earl did not prove that these isolated comments involved a protected trait, nor did he provide adequate context for them. As such, they do not permit an inference that a protected trait motivated his employer's decision to discharge him. *See Golla v. Office of Chief Judge of Cook Cnty.*, 875 F.3d 404, 408 (7th Cir. 2017) (no proof that remark "was referring to … race" or influenced employment decision); *Merillat v. Metal Spinners, Inc.*, 470 F.3d 685, 694 (7th Cir. 2006) (similar). Finally, Earl cites Jewel's failure to produce the original form about Earl's second absence. But as we discuss below in the context of our review of the denial of Earl's motion for sanctions, a factfinder would have no basis from this record to infer unlawful animus against Jewel from its loss of the original.

His claims fare no better under the *McDonnell Douglas* burden-shifting framework. To make out a prima facie case of race discrimination under *McDonnell Douglas*, Earl must present evidence that, among other things, Jewel treated similarly situated employees outside of his protected class more favorably than Earl. *Wince*, 66 F.4th at 1040. Earl points only to his report of the statements to him from the non-Black coworkers, but as we previously stated, because Earl offers these statements for their truth, they are inadmissible hearsay.

Earl also lacked a basis to move past summary judgment on his claim that Jewel refused to rehire him because of his age. To present a prima facie case, Earl needed evidence that Jewel had an open position and that, after it rejected Earl, Jewel kept the position open or filled it with someone younger than him. *See McDonnell Douglas Corp.*, 411 U.S. at 802; *Oliver v. Joint Logistics Managers, Inc.*, 893 F.3d 408, 413 (7th Cir. 2018). Earl argues that Jewel had an open position in 2019 and that it did not hire anyone to fill it after rejecting him, but he furnishes no evidence that substantiates either contention.

That brings us to the district court's order that Earl pay Jewel over $4,000 in costs, a decision that we review for abuse of discretion. *See Lange v. City of Oconto*, 28 F.4th 825, 845 (7th Cir. 2022). Earl contests that decision on two grounds, but both are unavailing. He first argues that the district court should have awarded costs only for the claims that Jewel won at summary judgment, and it did not receive summary judgment on Earl's insurance-benefits claim. But under Federal Rule of Civil Procedure 54(d)(1), full costs are presumptively appropriate where, as here, Jewel prevailed on a "substantial part" of the litigation. *Baker v. Lindgren*, 856 F.3d 498, 502 (7th Cir. 2017). Second, Earl challenges the district court's refusal to consider Earl's indigency. Earl submitted an affidavit in which he stated that he was unemployed, had no "significant" assets, and "occasionally" relies on friends to pay basic expenses. But as the district court reasonably observed, Earl did not explain what he meant by "significant assets" or how he supports himself when he does not receive help from his friends. With insufficient documentation of Earl's claimed inability to pay, the district court did not abuse its discretion by awarding costs to Jewel. *See Rivera v. City of Chicago*, 469 F.3d 631, 636–37 (7th Cir. 2006).

We turn next to Earl's challenge to the denial of his motion for sanctions. We review this ruling for abuse of discretion. *Harrington v. Duszak*, 971 F.3d 739, 741 (7th Cir. 2020). Earl contends that sanctions were warranted because, in his view, the district court had to infer bad faith from Jewel's failure to find the original form. But to infer bad faith from missing evidence, Earl had to present evidence that Jewel hid it for an improper purpose, such as to conceal adverse information. *See Bracey v. Grondin*, 712 F.3d 1012, 1019 (7th Cir. 2013). Earl submitted no such evidence. To the contrary, Jewel presented unrebutted evidence that, although it regularly retains originals, it could not locate Earl's original despite a diligent multi-week, several-person search. The district court (or a factfinder generally) thus had no reason to infer bad faith, and the court reasonably denied sanctions.

One final point. In its appellate brief, Jewel asks that we impose sanctions against Earl under Federal Rule of Civil Procedure 11. Jewel suspects that an undisclosed attorney, rather than Earl himself, wrote his appellate brief. But Jewel cites no circuit precedent suggesting that Rule 11 applies in this context and no evidence that Earl did not write the brief himself. We therefore decline to impose sanctions. Jewel's motion to dismiss for failure to prosecute is also denied. FED. R. APP. P. 31(a)(1).

AFFIRMED