NONPRECEDENTIAL DISPOSITION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 May 24, 2023*
Decided May 25, 2023

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-1296

GREGORY D. JONES,
Plaintiff-Appellant,

v.

DUSTIN BAYLER,
Defendant-Appellee.

Appeal from the United States District Court for the Central District of Illinois.

No. 17-1344-EIL

Eric I. Long,
Magistrate Judge.

O R D E R

Gregory Jones, incarcerated in Illinois, contends that after he helped police investigate the death of another inmate, a guard harassed him in retaliation. The district court granted the guard's motion for summary judgment. The court reasoned that,

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* This appeal is successive to case nos. 19-2323 and 18-1352 and is being decided under Operating Procedure 6(b) by the same panel. 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).

because more than six months had elapsed between Jones's role in the investigation and the alleged harassment, a jury could not infer causation. This ruling, and the other procedural orders contested on appeal, were correct, so we affirm.

Background[†]

Jones believes that Dustin Bayler, a guard at Jones's prison, is out to get him because he participated in a police investigation of the October 2015 death of a prisoner. Within a month of the death, police interviewed Jones, who said that he saw guards kill the prisoner. Bayler escorted Jones to and from the interview and gave Jones a "menacing glower." Over the next several months—according to unsworn prison grievances that Jones filed—Bayler "accost[ed]" him, targeted him for "shakedowns," continued to give him "threatening looks," rifled through and threw away his medication and legal mail, and challenged him to fights. Jones is specific about only three events: In May 2016, about six months after Jones's police interview, Jones filed a grievance complaining that Bayler and another guard put Jones in a cell with a prisoner who wanted to harm Jones. Then, in March 2017, about 15 months after the interview, Jones filed a grievance accusing Bayler of strip searching him and saying, "he'll strip search [Jones] every chance he gets." These are the only two claims that Jones fully exhausted. Finally, about a year and a half after the interview, Jones filed a grievance asserting that Bayler told a guard to assault him sexually while Bayler stood as lookout.

Jones sued prison staff under 42 U.S.C. § 1983, alleging, among other things, that they retaliated against him for exercising his First Amendment rights. The case moved in stages. First, we dismissed an interlocutory appeal. *See Jones v. Bayler* (*Jones I*), 756 F. App'x 635 (7th Cir. 2019). Later, a magistrate judge, presiding by consent, entered summary judgment for the defendants, reasoning that Jones had failed to exhaust administrative remedies. We reversed in part, ruling that Jones could proceed only with his retaliation claim, only against Bayler, and only regarding the cell assignment and strip search events. *See Jones v. Bayler* (*Jones II*), 834 F. App'x 283, 285 (7th Cir. 2021).

On remand, the case continued to progress. First, the district court reopened discovery. Jones responded with motions to compel documents he said he had sought before remand about Bayler and the alleged sexual assault. Bayler argued that he had

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[†] The district court deemed most of the defendant's proposed facts in his summary judgment motion undisputed because of Jones's noncompliance with local rules. We recount those facts, and those in genuine dispute, in the light most favorable to Jones. *See McCurry v. Kenco Logistics Servs., LLC*, 942 F.3d 783, 786–87 (7th Cir. 2019).

produced them, and Jones replied he had never received them. Scattered throughout these motions were filings styled under 28 U.S.C. § 144, seeking to disqualify the magistrate judge because of supposed partiality. The court denied all these motions.

Next, the district court set a dispositive-motion deadline of September 3, 2021. One week after that deadline, Bayler moved for an extension of time, explaining that a four-month-long ransomware attack on the Office of the Illinois Attorney General prevented file access until August 18. (Bayler did not say why he filed his motion three weeks after August 18.) Before the district court ruled, Bayler moved for summary judgment. In a two-sentence order, the court granted Bayler his requested extension and reset the deadline to receive Bayler's motion for summary judgment. In his response to that motion, Jones contended the district court should have denied Baylor's requested extension because Bayler had filed it after the original deadline. *See* C.D. ILL. R. 6.1. (Jones attached what purported to be a timely objection to the extension motion, but it does not appear that the district court received it.)

The district court later entered summary judgment for Bayler, accepting one of his principal arguments. He had argued that the time between Jones's police interview and the housing assignment (six months) or the strip search (15 months) was too long by itself for a reasonable jury to infer a causal connection. Jones did not engage with this argument. Instead, he reargued that the court should have granted his discovery and recusal motions. The court agreed with Bayler's argument and entered summary judgment for him.

Analysis

On appeal, Jones challenges the decisions (1) to grant Bayler the extension of time, (2) to grant Bayler's motion for summary judgment, (3) to deny Jones's motion to compel, and (4) to deny Jones's motion to disqualify the magistrate judge.

Bayler's Motion for Extension of Time

Jones argues the district court was required to deny Bayler's request for more time because Bayler made this request after the deadline of September 3, 2021, and, under the court's local rules, "[m]otions [for extension of time] filed out of time *will* be denied." C.D. ILL. R. 6.1 (emphasis added). But Jones's reading of this local rule would put it at odds with Rule 6(b)(1)(B) of the Federal Rules of Civil Procedure. The federal rule says that a district court may grant an extension motion filed after the deadline "if the party failed to act because of excusable neglect." This means that courts have

discretion to grant a post-deadline motion. *See Nartey v. Franciscan Health Hosp.*, 2 F.4th 1020, 1024 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 2770 (2022). And we interpret the local and federal rules to operate consistently. *See* FED. R. CIV. P. 83(a)(1); *Marcure v. Lynn*, 992 F.3d 625, 632 (7th Cir. 2021).

The issue is thus whether the district court abused its discretion when it ruled that Bayler showed excusable neglect and gave him more time. We conclude that it did not. District courts "enjoy wide latitude" when determining whether a litigant has shown excusable neglect, and we do not "micromanage" judges' decisions regarding their dockets. *Nartey*, 2 F.4th at 1024. Jones is correct that for three weeks after the end of the ransomware attack, Bayler neglected to ask for more time. But "[t]he point of the excusable-neglect standard is that neglect is assumed." *Mayle v. Illinois*, 956 F.3d 966, 968 (7th Cir. 2020). And the district court could reasonably conclude that Bayler's motion—coming only one week after the deadline, following a months-long cyber-attack, and causing Jones no prejudice—was excusably late. *See id.* (neglect excusable when an extension motion came two days after the deadline); *cf. Bowman v. Korte*, 962 F.3d 995, 997–98 (7th Cir. 2020) (neglect inexcusable when filing came almost two years after deadline). The order granting the motion was terse, but we can affirm an unexplained exercise of discretion when, as here, the record discloses a reason for the court's discretion. *Mayle*, 956 F.3d at 696.

Bayler's Motion for Summary Judgment

The district court ruled that no reasonable jury could find that Jones's protected activity of participating in the police investigation was "a motivating factor" for adverse actions by Bayler. *FKFJ, Inc. v. Vill. of Worth*, 11 F.4th 574, 585 (7th Cir. 2021). The court reasoned that, without other evidence, the two events subject to the remand order (cell assignment and strip search) occurred too long (six to 15 months) after the investigation to infer causation. *See id.* at 586–87 (two-to-three-month gap by itself insufficient to infer retaliation).

Jones responds that the district court overlooked other evidence. He contends that Baylor conducted a "campaign of retaliation" beginning almost immediately after the investigation and culminating in events like the cell assignment and strip search. It is true that "an ongoing pattern of retaliation" can support a retaliation claim even if the apex of the retaliation came months after the protected activity. *Carlson v. CSX Transp., Inc.*, 758 F.3d 819, 829 (7th Cir. 2014). But for two reasons, Jones's theory of a "campaign of retaliation" fails.

First, Jones waived this argument by not raising it in the district court. *See Bradley v. Vill. of Univ. Park*, 59 F.4th 887, 897 (7th Cir. 2023). His summary judgment response—even when read liberally, *see Atkins v. Gilbert*, 52 F.4th 359, 361 (7th Cir. 2022)—focused on discovery, disqualification, and the extension-of-time issue. Jones barely discussed the merits of his retaliation claim, and he never mentioned his new "campaign" theory.

Second, waiver aside, this argument fails because the record does not contain sufficient admissible evidence of a campaign. Jones references his grievances, where he accuses Bayler of glowering, shaking him down, challenging him to fights, and rifling through possessions. But evidence cited at summary judgment must be admissible at trial. *Igasaki v. Ill. Dep't of Fin. & Pro. Regul.*, 988 F.3d 948, 955–56 (7th Cir. 2021); *see* FED. R. CIV. P. 56(c)(2). The grievances—unsworn statements not subject to the penalties of perjury—are, however, inadmissible. *See Vaughn v. King*, 167 F.3d 347, 354 (7th Cir. 1999); FED. R. EVID. 801(c), 802; *accord United States v. Caraway*, 534 F.3d 1290, 1295 (10th Cir. 2008). Jones's deposition testimony, though admissible, is too vague. There, he describes several events, but he does not date them. In any case, it was neither the district court's job nor is it ours to "scour the record … for factual disputes." *Burton v. Bd. of Regents of the Univ. of Wis. Sys.*, 851 F.3d 690, 695 (7th Cir. 2017).

We address two final points related to summary judgment. First, Jones stresses that the district court "ignored" his allegations that Bayler directed another guard to sexually assault him. But in one of the prior appeals, we affirmed the court's dismissal of that claim because Jones failed to exhaust it. *See Jones II*, 834 F. App'x at 285. Thus, the court properly treated that claim as outside the scope of the suit on remand. Second, in his reply brief, Jones includes an affidavit from another prisoner who swears he heard Bayler admit that he was retaliating against Jones. But we do not consider this evidence because it was not part of the summary judgment record and because Jones only belatedly raises it for the first time in his reply brief. *See Bradley*, 59 F.4th at 897.

Jones's Motion to Compel

Jones next challenges the denial of his motion to compel documents about Bayler and the sexual assault. But Jones omits a necessary element from his argument: how the denial prejudiced him. *See Kuttner v. Zaruba*, 819 F.3d 970, 974 (7th Cir. 2016). He does not explain how these documents could have possibly addressed the problem with the gap of time between the protected activity and the cell assignment and strip search. Accordingly, he gives us no reason to disturb this ruling.

Jones's Motion to Disqualify

Jones argues last that the magistrate judge should have recused himself. Judges must recuse themselves if, in addition to other procedural requirements, a party files an affidavit detailing the judges' "personal bias or prejudice." 28 U.S.C. § 144; *United States v. Betts-Gaston*, 860 F.3d 525, 537 (7th Cir. 2017). Jones contends the affidavit he filed detailed the magistrate judge's prejudice against him and favor for Bayler, so the judge should have removed himself from the case. We independently review the judge's decision not to remove himself. *Hoffman v. Caterpillar, Inc.*, 368 F.3d 709, 713 (7th Cir. 2004). Because § 144 requires that a judge be removed from a case if a party's affidavit is sufficient, we strictly enforce the statute's procedural requirements. *Betts-Gaston*, 860 F.3d at 537.

The magistrate judge did not err in denying Jones's motion to disqualify because Jones's affidavit lacked necessary detail. An affidavit under § 144 must contain "facts that are sufficiently definite and particular to convince a reasonable person that bias exists; simple conclusions, opinions, or rumors are insufficient." *Hoffman*, 368 F.3d at 718 (internal citation omitted); *accord United States v. Sypher*, 684 F.3d 622, 628 (6th Cir. 2012); *see generally* 13D CHARLES ALAN WRIGHT, ARTHUR R. MILLER, ET AL., FEDERAL PRACTICE & PROCEDURE § 3551 (3d ed. 2008 & Supp. 2022). Jones filed many documents he labeled as "affidavits," but the one that targets the magistrate judge's supposed prejudice is too conclusory. He asserted that the district and magistrate judges in his case "have demonstrated blithe bias and favor for the defense" and thus "have demonstrated their allegiance as enemies of civil rights." This is the opposite of the concrete facts that a § 144 affidavit must contain to force a judge's removal from a case. The closest Jones gets to specifics is to refer to the times the magistrate judge ruled against him. But adverse rulings alone are generally insufficient evidence to show prejudice, *see Liteky v. United States*, 510 U.S. 540, 555 (1994), and we do not see sufficient evidence to depart from that rule here.

AFFIRMED