APPENDIX

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[ENTERED: MAY 23, 2018]

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 17-6192

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

FAYE RENNELL HOBSON,	)
	)
Plaintiff-Appellant,	) ON APPEAL
	) FROM THE
	) UNITED STATES
v.	) DISTRICT
	) COURT FOR
RETIRED GENERAL	) THE MIDDLE
JAMES MATTIS,	) DISTRICT OF
Secretary, Department of	) TENNESSEE
Defense,	)
	)
Defendant-Appellee.	)
	)

O R D E R

Before: SILER and THAPAR, Circuit Judges; HOOD, District Judge.*

Faye Hobson, proceeding pro se, appeals a district court's order granting summary judgment in

* The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

favor of the defendant in part and the district court's subsequent judgment on a jury verdict in favor of the defendant on her remaining claims. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

After filing several Equal Employment Opportunity (EEO) complaints with the Diversity Management and Equal Opportunity Office of the Department of Defense Education Activity (DoDEA), Hobson filed this employment discrimination complaint under Title VII of the Civil Rights Act of 1964 (Title VII) 42 U.S.C. §§ 2000e-2000e-17. She alleged that she was discriminated against when she was not hired for several teaching positions at Fort Campbell High School (FCHS) in Fort Campbell, Kentucky, based on her race (African American) and in retaliation for her filing the EEO complaints.

The Secretary of the Department of Defense (Secretary) filed a motion to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6), and the district court converted it to a motion for summary judgment because the court considered matters outside of the pleadings. *See* Fed. R. Civ. P. 12(d). The court granted the Secretary's motion to the extent that Hobson raised claims that had not been exhausted through the administrative process. However, the court denied summary judgment on the exhausted claims, which related to Hobson's non-selection for the positions of Language Arts Reading Specialist (LARS position) and Advanced Placement English Literature and Composition teacher (AP position) at FCHS.

After lengthy discovery, the Secretary filed a second motion for summary judgment, which the district court granted on Hobson's claims related to the LARS and AP positions. However, the court determined that Hobson could pursue a retaliation claim regarding a third position—teaching Secondary English (Secondary English position)—for which Hobson was not selected because the claim could be "reasonably expected to grow" out of her most recent EEO complaint and investigation. The court denied the Secretary's motion for summary judgment regarding Hobson's claims related to this position, referred to as "RPA 15490."

In Hobson's response to the Secretary's second motion for summary judgment, she presented a new claim of retaliation based on her non-selection for a second Secondary English position. That position, referred to as "RPA 19211," was actually a re-posting of the AP position but without the AP certification requirement. The district court determined that this claim should also be considered, notwithstanding Hobson's lack of exhaustion as to that specific posting, because it was within the scope of Hobson's recent EEO investigation. The court denied the Secretary's motion for summary judgment on Hobson's claim of retaliation relating to this Secondary English job as well.

As a result, Hobson's claims relating to the Secondary English teaching positions RPA 15490 and 19211 proceeded to trial, and the court appointed counsel to represent her. The jury returned a verdict in favor of the Secretary on both

claims, and the district court entered judgment accordingly, disposing of the case. Hobson filed a pro se notice of appeal along with two motions for a default judgment. The clerk denied the motions, noting that, pursuant to Federal Rule of Civil Procedure 55, the proper time for filing such a motion was prior to the jury verdict and that summons was never issued against the Secretary.

On appeal, Hobson appears to argue that the district court erred in failing to grant her motions for a default judgment, that the district court judge was biased and unfair, and that the jury's verdict was either not supported by the evidence presented or was invalid because the jury did not have the opportunity to consider certain evidence

Forfeited Claims

On appeal, Hobson fails to challenge the district court's grant of summary judgment on her claims relating to the LARS and the AP positions. Although pro se pleadings are liberally construed, it is not our responsibility to "identify and address the arguments that [Hobson] could have made but did not." *See Geboy v. Brigano*, 489 F.3d 752, 767 (6th Cir. 2007). Because Hobson failed to address the district court's analysis of her underlying claims of retaliation relating to those two positions, she has abandoned those claims and forfeited any challenge to the district court's grant of summary judgment on the merits. *See Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 311 (6th Cir. 2005); *see also Geboy*, 489 F.3d at 767.

Denial of Motions for Default Judgment

After the district court entered judgment, Hobson filed two motions for default judgment, which the district court rejected. She now attempts to appeal those rejections. Her notice of appeal, however, does not mention those decisions. We therefore lack jurisdiction over this portion of her appeal. *Caudill v. Hollan*, 431 F.3d 900, 906 (6th Cir. 2005) ("We will not . . . , absent specific mention in the notice of appeal, entertain issues raised in post-judgment motions if the notice of appeal states only that the appeal is from the final order or the final judgment.").

Judicial Bias

Hobson has failed to present facts to support her appellate argument that the district court judge was biased and that her court-appointed counsel, along with the court's allegedly biased evidentiary rulings, led to the jury verdict for the Secretary. Hobson speculates that because her counsel once worked for the same law firm as the judge, the appointment was made not in Hobson's best interests but only to ensure a smooth trial with very few issues and objections. She also argues that the judge, who made certain adverse rulings relying on *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), did so based on racial prejudice. Hobson's accusations are mere speculation. As examples of the judge's bias, Hobson points to a certain comment the judge made about evidence from Hobson that was excluded as not credible, the judge's exclusion of fifteen binders that Hobson wanted to bring into the

courtroom, and the "hostile manner" and "tone of voice" that the judge used when addressing Hobson's evidentiary matters.

"[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994); *see Lyell v. Renico*, 470 F.3d 1177, 1186 (6th Cir. 2006). Hobson fails to show that the trial judge's rulings and comments on Hobson's evidentiary requests revealed a "high degree of favoritism or antagonism as to make fair judgment impossible" for a jury. *Liteky*, 510 U.S. at 555. In addition, she fails to explain how the trial court's reliance on *Touhy* was pretext for racial prejudice. Although the trial court may not have ruled as Hobson would have liked, the record reveals that the judge's administration of the trial and the hearing were proper and "within the bounds" of the judge's responsibilities. *See id.* at 556.

Hobson also faults her counsel for failing to object to the district court's exclusion of certain evidence, arguing that counsel's principal interest was to please the judge rather than to represent Hobson. To the extent that Hobson's argument may be construed as alleging ineffective assistance before and during her trial, "[i]t is well-settled that there is no . . . constitutional or statutory right to effective assistance of counsel in a civil case." *Alsobrook v. UPS Ground Freight, Inc.*, 352 F. App'x 1, 3 (6th Cir. 2009) (quoting *Adams v. Vidor*, 12 F. App'x 317, 319 (6th Cir. 2001)). Therefore, her arguments relating to bias, prejudice, and counsel's failure to fairly represent her are meritless.

Jury Verdict

Hobson challenges the jury's verdict as unsupported by the evidence and argues that the verdict may have been different had the jury been presented with other evidence. Hobson points to a witness, Demetrius Thomas, who was a selecting official for the DoDEA and an African American, who she argues had authority in selecting only one of the two positions in question, but who testified as to Hobson's qualifications for both positions. She argues that the jury would have decided differently if another selecting official, Hugh McKinnon, who is Caucasian, testified about her non-selection. Hobson implies that another witness, Bonnie Cameron, who was the candidate ultimately selected for the first Secondary English position (RPA 15490), was coerced into testifying on behalf of the Secretary because she was "new to the DoDEA" and feared retaliation if she did not testify as she was allegedly instructed regarding the selection process. Hobson asserts that "defense counsel spoke for Ms. Cameron and made various false statements," but Hobson fails to articulate the statements or testimony that were allegedly false. Hobson argues that the Secretary should have called Charlotte Windom as a witness, who Hobson states was another selectee. She also believes that the Secretary attempted to persuade one of her witnesses, Keith Henson, to testify falsely against her. Finally, Hobson challenges the Secretary's method of scoring her competencies to determine her qualifications for the open positions, which allegedly conflicted with testimony by two other witnesses, Gordon Harmon

and Leslie McNair, who are DoDEA human resource specialists.

By failing to file a motion for judgment as a matter of law before the case was submitted to the jury, *see* Fed. R. Civ. P. 50(a), and also failing to move for a new trial under Rule 59 after the verdict, Hobson waived her right to challenge the sufficiency of the evidence to support the jury's decision. *See CFE Racing Prods., Inc. v. BMF Wheels, Inc.*, 793 F.3d 571, 582 (6th Cir. 2015); *see also Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 402 n.4 (2006). Therefore, we will not consider Hobson's challenge to the jury's verdict on the grounds she presents, which go to the sufficiency and credibility of the evidence to support it. Moreover, Hobson has failed to explain why the fact that certain witnesses did not testify amounts to an abuse of discretion by the district court, or why any error would not be harmless. *Trepel v. Roadway Exp., Inc.*, 194 F.3d 708, 716 (6th Cir. 1999); *see* Fed. R. Civ. P. 61.

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF
THE COURT

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

[ENTERED: OCTOBER 2, 2017]

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE DIVISION

JUDGMENT IN A CIVIL CASE

FAYE RENELL HOBSON,	)	
	)	
VS.	)	CASE #: 3:14-1540
	)	
RETIRED GENERAL	)	
JAMES MATTIS,	)	
Secretary, Department of	)	
Defense	)	

- **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict as reflected in the verdict form filed on September 28, 2017. (Docket No. 239).

  The jury found that plaintiff did not prove by a preponderance of the evidence that defendant retaliated against plaintiff in not selecting her for the 0310, Secondary English Position posted at RPA No. 13JUN7XHEKY015490 and the 0310, English Position posted at, RPA No. 13JUL7XHEKY019211.

IT IS ORDERED AND ADJUDGED.

KEITH THROCKMORTON, CLERK
/s/Katheryn Beasley
BY KATHERYN BEASLEY
DEPUTY CLERK

DATE: October 2, 2017

[ENTERED: SEPTEMBER 28, 2017]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FAYE R. HOBSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	3:14-cv-01540
	)	Judge Aleta A.
RETIRED GENERAL	)	Trauger
JAMES MATTIS,	)	
Secretary, Department	)	
of Defense,	)	
	)	
Defendant.	)	

VERDICT FORM

The jury must unanimously agree on the answers to all of the questions:

1. Has the plaintiff proved by the greater weight of the evidence that the defendant retaliated against the plaintiff in not selecting her for the 0310, Secondary English Position posted at RPA NO. 13JUN7XHEKY015490?

Yes _____ No __X____

2. If your answer to question 1 is yes, what amount, if any, should be awarded in compensatory damages?

Amount: $_____

3. Has the plaintiff proved by the greater weight of the evidence that the defendant retaliated against Plaintiff by not selecting her for the 0310, English Position posted at, RPA No. 13JUL7XHEKY019211?

Yes _____ No __X__

4. If your answer to question 3 is yes, what amount, if any, should be awarded in compensatory damages?

Amount: $_____

Please sign and date this form and return it to the Court.

/s/_____ 9/28/17_____
Foreperson Signature Date