NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3623

MITCHELL DINNERSTEIN,
Appellant

v.

BURLINGTON COUNTY COLLEGE

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 13-cv-05598)
District Judge: Honorable Noel L. Hillman

Submitted Pursuant to Third Circuit LAR 34.1(a)
August 17, 2018

Before: JORDAN, RESTREPO, and SCIRICA, Circuit Judges

(Opinion filed: March 8, 2019)

OPINION*

PER CURIAM

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Mitchell Dinnerstein, a former employee of Rowan College at Burlington County College (the "College"), appeals from the District Court's order granting summary judgment to the College. For the following reasons, we will affirm.

Because we write primarily for the parties, who are familiar with the background of this case, we discuss that background only briefly. Dinnerstein was hired by the College in July 2007 as a maintenance mechanic-electrician. In December 2013, Dinnerstein filed a complaint in the United States District Court for the District of New Jersey, alleging that the College subjected to him to unlawful discrimination, a hostile work environment, and retaliation based on his religion – Judaism – in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e et seq. Specifically, Dinnerstein claims that he was "slandered, devalued, [and] harassed" by the College, and when he reported acts of anti-Semitism to his supervisor, he was subjected to unwarranted discipline and eventually terminated.

Following a protracted discovery period, the College filed a motion for summary judgment. Dinnerstein initially filed an "objection" to the College's motion with a request for additional discovery, followed by a request for an extension of time to respond to the motion. Shortly thereafter, the College filed a motion for sanctions and to deny Dinnerstein's additional discovery demands and request additional time to respond to the summary judgment motion. By order entered on November 21, 2017, the District Court granted the College's motion for summary judgment, concluding that Dinnerstein

had failed to establish prima facie claims of religious discrimination, hostile work environment, or retaliation, and that the College's nondiscriminatory reason for firing Dinnerstein – several violations of the College's Civility Policy – was not pretext for discrimination. The District Court further denied Dinnerstein's request for additional discovery and time as "unsupported" and "unwarranted," and also denied the College's request for sanctions. Dinnerstein appeals.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291, and exercise plenary review over the District Court's decision granting summary judgment. See McGreevy v. Stroup, 413 F.3d 359, 363 (3d Cir. 2005). Summary judgment is appropriate "if the movant shows that 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).

We agree with the District Court that Dinnerstein has failed to establish prima facie claims of religious discrimination, hostile work environment based on religious harassment, and retaliation.[1] Because Dinnerstein has not introduced direct evidence of

[1] In his appellate brief, Dinnerstein claims that the District Court improperly granted summary judgment before he had time to complete discovery. A court may defer ruling on a summary judgment motion if the "nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition." Fed. R. Civ. P. 56(d). The rule also "requires that a party indicate to the district court its need for discovery, what material facts it hopes to uncover and why it has not previously discovered the information." Radich v. Goode, 886 F.2d 1391, 1393–94 (3d Cir. 1989). Dinnerstein did not clearly address Rule 56(d)'s requirements, either in the District Court or on appeal. See Dowling v. City of Phila., 855 F.2d 136, 139–40 (3d Cir. 1988); see also Hamilton v. Bangs, McCullen, Butler, Foye & Simmons, L.L.P., 687 F.3d 1045, 1050 (8th Cir. 2012). Because Dinnerstein has failed to demonstrate how any additional discovery will allow him to defeat the College's well-supported motion for summary

discrimination, we analyze his claims under the burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973). Under the disparate treatment theory of religious discrimination, "the prima facie case and evidentiary burdens of an employee alleging religious discrimination mirror those of an employee alleging race or sex discrimination." Abramson v. William Paterson Coll. of N.J., 260 F.3d 265, 281 (3d Cir. 2001). Under this framework, a plaintiff seeking to establish a prima facie case discrimination must show that "(1) [he] is a member of a protected class; (2) [he] was qualified for the position [he] sought to attain or retain; (3) [he] suffered an adverse employment action; and (4) the action occurred under circumstances that could give rise to an inference of intentional discrimination." Makky v. Chertoff, 541 F.3d 205, 214 (3d Cir. 2008).

Here, with regard to the fourth factor,[2] the District Court properly determined that Dinnerstein's generalized, subjective beliefs that Jewish members of the College's administration are "going to discriminate against . . . anyone who is not their friend," and "they're not going to listen to you and do what you say if you're Jewish," are insufficient to maintain an unlawful discrimination claim. See Mlynczak v. Bodman, 442 F.3d 1050, 1058 (7th Cir. 2006) ("[I]f the subjective beliefs of plaintiffs in employment discrimination cases could, by themselves, create genuine issues of material fact, then

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judgment, the District Court did not grant summary judgment prematurely or otherwise abuse its discretion in managing discovery.

[2] The first three factors are not in dispute.

virtually all defense motions for summary judgment in such cases would be doomed.") (citation omitted). Moreover, Dinnerstein testified at his deposition to only two comments made by employees or administrators at the College referring to his Jewish faith. First, he claimed that a coworker in the boiler room commented about him that "the Jew doesn't know anything." Second, he testified that "[t]he entire maintenance shop" said that he was hired only because he is Jewish. These "stray remarks," which were not made by or to any of the College's decisionmakers, are insufficient to show discrimination related to Dinnerstein's termination. See Ezold v. Wolf, Block, Schorr & Solis-Cohen, 983 F.2d 509, 545 (3d Cir. 1992).

Dinnerstein's hostile work environment claim based on religious harassment fails for the same reasons. See Abramson, 260 F.3d at 277. Nor has Dinnerstein shown that his termination was motivated by the College's intent to retaliate against him for reporting acts of anti-Semitism. Dinnerstein's deposition testimony that he "thinks" he told the College administrators when he was given his final warning that he was discriminated against because of his Jewish faith does not establish a causal connection between that activity and his termination. See Daniels v. Sch. Dist. of Phila., 776 F.3d 181, 196 (3d Cir. 2015).

Even if Dinnerstein could satisfy his prima facie burden with regard to any of his allegations, nothing in the record suggests that the College's proffered explanation for terminating Dinnerstein – that he violated the College's Civility Policy on several occasions – was pretext. See Fuentes v. Perskie, 32 F.3d 759, 765 (3d Cir. 1994). The

undisputed record shows that the College addressed violations of the Civility Policy with Dinnerstein on several occasions in 2008 and issued him a final warning after he yelled profanities at a coworker in August 2011. Dinnerstein admitted in his deposition that when he was terminated on December 1, 2011, for yelling profanities at his supervisors, he knew that he had been issued prior warnings, understood what the warnings meant, but had nevertheless used profane language with his supervisors in violation of the Civility Policy.[3] Because Dinnerstein has failed to provide evidence from which a factfinder could reasonably infer that the College's proffered reason for terminating him is pretext for discrimination, the District Court properly granted summary judgment to the College as to Dinnerstein's claims.[4]

For the foregoing reasons, we will affirm the District Court's judgment. In light of our disposition, we deny Dinnerstein's motion to expedite the appeal as moot; his motion to file an overlength brief is granted. We note that the Clerk previously granted the

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[3] When asked whether he called his supervisor "the F word" or used other profanities, Dinnerstein replied "Yeah, it's in there," referring to a hearing transcript. He further admitted in his deposition to calling someone a "pantywaist faggot."

[4] Dinnerstein also argues in his appellate brief that he was suspended for refusing to put his electrical license in jeopardy by allowing unqualified co-workers to perform electrical work improperly under his supervision. However, he has failed to demonstrate either in the District Court or here how this discipline is in any way related to his religion and his underlying discrimination claims. Moreover, this allegation, even if true, does not permit a finding that the College's legitimate nondiscriminatory reason for firing Dinnerstein was pretext for discrimination.

College's motion for leave to file a supplemental appendix. To the extent that the College's motion requests further relief, it is denied.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3623

MITCHELL DINNERSTEIN,
Appellant

v.

BURLINGTON COUNTY COLLEGE

(D.C. Civ. No. 1-13-cv-05598)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, MCKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and SCIRICA*, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who

*As to panel rehearing only.

concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Anthony J. Scirica
Circuit Judge

Dated: June 10, 2019
Lmr/cc: Mitchell Dinnerstein
Kelly E. Adler
Carmen Saginario, Jr.

Dinnerstein v. Burlington Cnty. Coll.

Decided Nov 21, 2017

HILLMAN, District Judge

OPINION

APPEARANCES: MITCHELL DINNERSTEIN
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Appearing pro se CARMEN SAGINARIO, JR.
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On behalf of Defendant **HILLMAN** , **District Judge**

This case concerns the termination of Plaintiff Mitchell Dinnerstein's employment with Defendant Rowan College at Burlington County College ("the College"),[1] allegedly on the basis of his Jewish faith. Plaintiff asserts a claim under Title VII of the Civil Rights Act of 1964.
2 Defendant moves for *2 summary judgment, to deny Plaintiff additional discovery and time to respond to Defendant's summary judgment motion, and for sanctions against Plaintiff. The Court will grant summary judgment in favor of Defendant, finding no need for additional discovery, but will, reluctantly and despite the extraordinary circumstances present here, deny the motion for sanctions.

[1] Burlington County College is now known as Rowan College at Burlington County College.

I.

The Court takes the following facts from Defendant's Statement of Undisputed Material Facts, to which Plaintiff filed no response.[2] Plaintiff was hired by the College on July 15, 2007 as a Maintenance Mechanic-Electrician. Plaintiff was an employee within the Physical Plant
3 Department, which is the *3 College's construction and maintenance department.

[2] Defendant notes that Plaintiff failed to comply with Local Civil Rule 56.1(a), which provides, in pertinent part:

> On motions for summary judgment, the movant shall furnish a statement which sets forth material facts as to which there does not exist a genuine issue . . . . The opponent of summary judgment shall furnish, with its opposition papers, a responsive statement of material facts, addressing each paragraph of the movant's statement, indicating agreement or disagreement . . . . [A]ny material fact not disputed shall be deemed undisputed for purposes of the summary judgment motion.

As a result of this violation, Defendant argues the material facts set forth in Defendant's Statement of Undisputed Material Facts must be deemed undisputed in deciding this motion. Plaintiff has clearly violated an important local rule of procedure which greatly facilitates the

> Court's consideration of summary judgment motions. Nonetheless, in light of his pro se status, the Court will consider the record as a whole in determining whether Plaintiff has proffered sufficient evidence of disputed issues of material fact.

The College has a Civility Policy, which provides:

> Burlington County College is a community of individuals. As such, we must always strive to recognize the dignity and worth of each member of our community. It is, therefore, the policy of the college that each individual, regardless of status (student, administrator, support staff or faculty member) must treat every other individual, irrespective of status, rank, title or position, with dignity and respect.
> It will be a violation of the policy for any individual or group of individuals to engage in any of the following types of behavior:
>
> . . . .
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> 2. Use of foul, abusive or demeaning language (written or verbal) or obscene gestures directed towards another (either as a group or an individual) . . . .

The Civility Policy was covered in training sessions, of which Plaintiff attended three - one in 2008, one in 2009, and one in 2010.

Plaintiff's first documented violation of the Civility Policy was in April 2008, when Plaintiff used foul language and yelled at a coworker. In August 2008, Plaintiff again violated the Civility Policy by yelling at another coworker with foul language. Later that month, Plaintiff committed yet another violation and was suspended for three days. As a result of this violation, Plaintiff was informed that future violations would result in further disciplinary action, including potential termination. In January 2010, Plaintiff's superiors confronted him regarding his refusal to perform
4 the work assigned to him, *4 which constituted insubordinate behavior. He was again suspended.

In August 2011, Plaintiff was issued a final warning after again yelling at a coworker and also being insubordinate, resulting in yet another suspension. Plaintiff was told that any further misconduct would result in his termination. Around December 1, 2011, Plaintiff made profane remarks to John Fritsch, the Assistant Manager of Physical Plant; Jay Falkenstein, the Manager of Physical Plant; and Donald Hudson, the Director of Physical Plant. Following this violation, a fact-finding hearing was held, in which Plaintiff admitted to making the profane remarks. On December 8, 2011, Plaintiff's employment was terminated.

Plaintiff received his Notice of Right to Sue from the Equal Employment Opportunity Commission on August 15, 2013. Plaintiff then filed a complaint with this Court on September 18, 2013, suing Defendant for employment discrimination under Title VII of the Civil Rights Act of 1964.[3] Plaintiff asserted discriminatory acts occurred from September 2007 through November 2011. According to Plaintiff, he was harassed, retaliated against, and eventually terminated from his employment based on his religion.

[3] This Court has federal question jurisdiction over this case pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 2000e-5.

The Court entered a Notice of Call for Dismissal on August 22, 2014, requiring Plaintiff to submit an affidavit setting forth his good faith efforts to prosecute this case by September 2, 2014. No such affidavit was filed by Plaintiff. Consequently, the Court issued a September 3, 2014 Order of Dismissal based on Plaintiff's failure to prosecute under Local Civil Rule 41.1.

Plaintiff wrote to the Court on September 4, 2014 and on September 16, 2014, acknowledging he was late in responding to the Notice of Call for Dismissal and requesting the Court reopen the case. Construing this as a motion to reopen pursuant to Federal Rule of Civil Procedure 60(b), the Court found there was "excusable neglect" in Plaintiff's failure to respond to the Notice of Call for Dismissal. Thus, on January 14, 2015, the Court reinstated Plaintiff's complaint and reopened the case.

The case then proceeded through a difficult discovery process. It was difficult largely because of Plaintiff's rude, inflammatory, and slanderous slurs and false accusations against both his adversaries and the Magistrate Judge assigned to this matter. It was also protracted because of Plaintiff's repeated failures to participate in discovery. On December 20, 2016, this Court withdrew the reference to the Magistrate Judge in order to personally oversee discovery and to move the matter forward. Accordingly, the Court held a
6 discovery conference on *6 February 27, 2017 and directed a schedule for the completion of all remaining discovery and a deadline for dispositive motions. On June 12, 2017, the date set by the Court for dispositive motions, Defendant moved for summary judgment. On September 22, 2017, Defendant moved for sanctions against Plaintiff.

II.

Summary judgment is appropriate where the Court is satisfied that "'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any,' . . . demonstrate the absence of a genuine issue of material fact" and that the moving party is entitled to a judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (citing Fed. R. Civ. P. 56).

An issue is "genuine" if it is supported by evidence such that a reasonable jury could return a verdict in the nonmoving party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is "material" if, under the governing substantive law, a dispute about the fact might affect the outcome of the suit. Id. "In considering a motion for summary judgment, a district court may not make credibility determinations or engage in any weighing of the evidence; instead, the non-moving party's evidence 'is to be believed and all justifiable inferences are to be drawn in his favor.'" Marino v. Indus. Crating Co., 358 F.3d
7 241, 247 (3d Cir. 2004) *7 (citing Anderson, 477 U.S. at 255).

Initially, the moving party bears the burden of demonstrating the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323 ("[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact."); see Singletary v. Pa. Dep't of Corr., 266 F.3d 186, 192 n.2 (3d Cir. 2001) ("Although the initial burden is on the summary judgment movant to show the absence of a genuine issue of material fact, 'the burden on the moving party may be discharged by "showing" - that is, pointing out to the district court - that there is an absence of evidence to support the nonmoving party's case' when the nonmoving party bears the ultimate burden of proof." (citing Celotex, 477 U.S. at 325)).

Once the moving party has met this burden, the nonmoving party must identify, by affidavits or otherwise, specific facts showing that there is a genuine issue for trial. Celotex, 477 U.S. at 324. A "party opposing summary judgment 'may not rest upon the mere allegations or denials of the . . . pleading[s].'" Saldana v. Kmart Corp., 260 F.3d
8 228, 232 (3d Cir. 2001). For *8 "the non-moving party[] to prevail, [that party] must 'make a showing sufficient to establish the existence of [every] element essential to that party's case, and on which that party will bear the burden of proof

at trial.'" Cooper v. Sniezek, 418 F. App'x 56, 58 (3d Cir. 2011) (citing Celotex, 477 U.S. at 322). Thus, to withstand a properly supported motion for summary judgment, the nonmoving party must identify specific facts and affirmative evidence that contradict those offered by the moving party. Anderson, 477 U.S. at 257.

III.

Plaintiff's complaint contains little in the way of factual averments or details about his claims. The Court construes Plaintiff's complaints of retaliation, harassment, and the termination of his employment as asserting an unlawful discrimination claim, a hostile work environment claim, and an unlawful retaliation claim under Title VII. The Court first turns to the unlawful discrimination claim.

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) sets forth a burden-shifting framework for Title VII employment discrimination cases. Carter v. Midway Slots & Simulcast, 511 F. App'x 125, 128 (3d Cir. 2013).

> [A plaintiff] has the burden of establishing a prima facie case of discrimination by proving that (1) he is a member of a protected class; (2) he suffered some form of adverse employment action; and (3) this action occurred under circumstances giving rise to an inference
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> 9 *9
>
> of unlawful discrimination that might occur when nonmembers of the protected class are treated differently.

Id. "Once a plaintiff establishes a prima facie case, the employer must provide a legitimate, non-discriminatory reason for the adverse employment action." Id. After this burden is met, "the burden again shifts to the plaintiff to demonstrate that the employer's reason is pretextual." Id.

Defendant concedes, for the purposes of summary judgment, that Plaintiff has satisfied the first two prongs of his prima facie case. Plaintiff is a member of a protected class due to his Jewish religion and he suffered an adverse employment action when his employment was terminated. However, the Court finds that Plaintiff has failed to proffer sufficient evidence on the third prong of his prima facie case, more specifically that his termination occurred under circumstances giving rise to an inference of unlawful discrimination. Without satisfying this burden, Plaintiff's case cannot move forward.

Plaintiff's briefing before the Court relays little in the way of relevant facts in support of his claim. The Court discerns the following: Plaintiff claims that the "disciplinary actions [against him] w[]ere [l]ies," that he "reported acts of anti-Semitism to [his] supervisor at the college and they were not only ignored, but retaliation was swift," and that he "was denied the right to grievance." He further
10 argues he was *10 "slandered," "[d]evalued," and "harassed" by the College. His various other filings with this Court make clear he is alleging multiple instances of discrimination based on his Jewish religion during his employment with the College, leading up to and including his eventual termination.

Plaintiff has not provided this Court with any evidence to support his allegations, even giving the most liberal construction to Plaintiff's filings and granting to Plaintiff every reasonable inference. Courts "tend to be flexible when applying procedural rules to pro se litigants, especially when interpreting their pleadings." Mala v. Crown Bay Marina, Inc., 704 F.3d 239 (3d Cir. 2013). Indeed, this is an "obligation" for district courts, "driven by the understanding that '[i]mplicit in the right of self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training.'" Higgs v. Attorney Gen. of the U.S., 655 F.3d 333, 339 (3d

Cir. 2011) (alteration in original) (quoting Tristman v. Fed. Bureau of Prisons, 470 F.3d 471, 475 (2d Cir. 2006)). Just "because it is difficult to interpret a pro se litigants pleadings" does not mean "it is not necessary to do so." Id.

While Plaintiff argues this Court has "disrespect[ed]" him because he does not express himself "as a trained lawyer would *11 have done," the Court construes his claims with the leniency afforded to pro se litigants. The Court does not expect Plaintiff to advocate in the same way a trained attorney would, and the Court has not previously, and is not now, allowing Plaintiff's pro se status to improperly impact its decision regarding the merits of his complaint.

That being said, "pro se litigants still must allege sufficient facts in their complaints to support a claim." Mala, 704 F.3d at 245. Indeed, "[a]lthough pro se pleadings and filings must be 'construed liberally,' the same summary judgment standard applies to pro se litigants." Bank of Nova Scotia v. Ross, No. 2010-118, 2012 WL 4854776, at *3 (D.V.I. Oct. 12, 2012). "Proceeding pro se does not otherwise relieve a litigant of the usual requirements of summary judgment, and a pro se party's bald assertions unsupported by evidence, are insufficient to overcome a motion for summary judgment." Rodriguez v. Hahn, 209 F. Supp. 2d 344, 348 (S.D.N.Y. 2002) (quoting Parkinson v. Goord, 116 F. Supp. 2d 390, 393 (W.D.N.Y. 2000)).

Plaintiff's bald accusations and unsupported claims are insufficient to raise a genuine issue of material fact as to whether discrimination played a part in the College's decision to terminate Plaintiff's employment. For instance, Plaintiff testified in his deposition that "when you're dealing with *12 prejudice[d] people, they're not going to listen to you and do what you say if you're Jewish." He further testified that even Jewish members of the administration are "going to discriminate against anyone . . . who is not their friend" and that "it happens all the time." These generalized, subjective beliefs are insufficient to maintain an unlawful discrimination claim. Indeed, a "[p]laintiff's mere pronouncement or subjective belief that []he was terminated because of h[is religion] is not a substitute for competent evidence." Martin v. Healthcare Bus. Res., No. 00-3244, 2002 WL 467749, at *6 (E.D. Pa. Mar. 26, 2002).

Moreover, Plaintiff, in his deposition, admits there could have been other reasons for his termination wholly unrelated to religion. For instance, he stated he "th[ought he] was fired for . . . turning in other people robbing copper." He further stated that part of Defendant's motivation for terminating him was "to take care of their political friends," and that the administration targeted him for thinking because "[t]hey just didn't like people thinking."

As for claims of religious discrimination, Plaintiff's vague general allegations are supplemented by only the most meager specific instances of improper discriminatory acts or conduct. From the evidence before the Court, provided in the excerpts from Plaintiff's deposition offered to support *13 Defendant's motion, there were only two comments made by employees or administrators at the College referring to Plaintiff's Jewish faith. First, a coworker in the boiler room allegedly said "the Jew doesn't know anything," referring to Plaintiff. Second, Plaintiff testified " [t]he entire maintenance shop" said he was only hired because he was Jewish.

These isolated, offhand comments (in the latter instance not even attributed to a particular individual) are insufficient to show discrimination linked to Plaintiff's termination. Indeed, neither of the comments appear to have been made by or otherwise communicated to any members of the administration, or other decisionmaker, who would have had a say in Plaintiff's termination. See Ezold v. Wolf, Block, Schorr & Solis-Cohen, 983 F.2d 509, 545 (3d Cir. 1992) ("Stray remarks

by non-decisionmakers or by decisionmakers unrelated to the decision process are rarely given great weight . . . .").

15 Even if Plaintiff were to satisfy his prima facie burden, the Court finds Defendant has provided a legitimate, non-discriminatory reason for Plaintiff's termination, more specifically his repeated violations of the Civility Policy. Plaintiff admitted to this underlying conduct in his
14 deposition.[4] *14 Moreover, it is undisputed that the College enforced the Civility Policy incrementally, progressively, and with proper notice and procedural protections. Further, Plaintiff has failed to meet his burden to demonstrate that this stated, appropriate, and well documented reason for termination was a pretext. Accordingly, the Court will grant summary judgment in favor of Defendant on Plaintiff's unlawful discrimination claim.

[4] Upon being asked whether he used "the F word" or other profanities in speaking to his supervisor, Plaintiff replied "Yeah, it's in there," referring to a hearing transcript. He further admitted in his deposition to calling someone a "pantywaist faggot."

For the same reasons, the Court also finds Plaintiff unable to proceed with a Title VII hostile work environment claim based on religious harassment.

> To survive summary judgment on this claim, [a plaintiff] must show: (1) intentional harassment because of religion, that (2) was severe or pervasive, and (3) detrimentally affected him, and (4) would detrimentally affect a reasonable person of the same religion in that position, and (5) the existence of respondeat superior liability.

Prowel v. Wise Bus. Forms, Inc., 579 F.3d 285, 292 (3d Cir. 2009). For the first prong, "[t]he proper inquiry . . . [i]s whether a reasonable factfinder cold view the evidence as showing that [a plaintiff]'s treatment was attributable to her religious faith and practice." Abramson v. William Paterson Coll., 260 F.3d 265, 277 (3d Cir. 2001). As Plaintiff has proffered no evidence, aside from his own subjective beliefs, that he was harassed due to his Jewish faith, this claim *15 similarly cannot survive summary judgment.

Finally, for an unlawful retaliation claim under Title VII, "a plaintiff must tender evidence that: (1) she engaged in activity protected by Title VII; (2) the employer took an adverse employment action against her; and (3) there was a causal connection between her participation in the protected activity and the adverse employment action." Moore v. City of Philadelphia, 461 F.3d 331, 340-41 (3d Cir. 2006). The Court similarly finds Plaintiff has failed to proffer sufficient evidence to satisfy this claim.

Plaintiff testified at his deposition that, at a meeting with the administration where he was given his final warning, he "thinks" he told the administrators he was discriminated against because of his Jewish faith. Even assuming this to be true and assuming this qualifies as protected activity, Plaintiff has not established a causal connection between that activity and his termination. Plaintiff has not showed that his termination was motivated by an intent to retaliate. See id. at 341 ("The ultimate question in any retaliation case is an intent to retaliate . . . ." (quoting Jensen v. Potter, 435 F.3d 444, 449 (3d Cir. 2006))).

Further, "the familiar McDonnell Douglas approach" also applies to retaliation claims, in which "'the burden shifts to the employer to advance a legitimate non-retaliatory reason' for
16 *16 its conduct and, if it does so, 'the plaintiff must be able to convince the factfinder both that the employer's proffered explanation was false, and that retaliation was the real reason for the adverse employment action.'" Id. at 342 (quoting Krouse v. Am. Sterilizer Co., 126 F.3d 494, 500-01 (3d Cir. 1997)). For the same reasons stated in discussing the unlawful discrimination claim, Plaintiff has

similarly not satisfied that burden here. Accordingly, the Court will grant Defendant's motion for summary judgment on the entirety of Plaintiff's complaint.

IV.

The Court's decision to grant summary judgment is made after full consideration of all submissions made by Plaintiff in opposing Defendant's motion for summary judgment and in support of a claim for more discovery and time to respond to Defendant's summary judgment motion.[5] The
17 Court starts with the proposition *17 that the Federal Rules of Civil Procedure apply to all litigants, even those who proceed pro se. While the Court must afford a pro se litigant certain leeway, the pro se litigant must act with civility, abide by the Court's clear directions, and act in a diligent matter so that the case may proceed in due course. This Plaintiff has failed to do all of these things.

[5] Plaintiff filed by letter what appears to be a timely response to Defendant's summary judgment motion entitled "Objection to Motion for Summary Judgment." The letter was entered by the Clerk on the docket on June 20, 2017, approximately one week after Defendant's motion for summary judgment was filed with the Court. Defendant's reply was timely filed on July 7, 2017. Defendant's motion for summary judgment was therefore ripe for adjudication as of that date. Thereafter, on September 11, 2017, Plaintiff filed another letter with the Court, entitled "Request for time extension to review Documents and legal argument in support of my case." This prompted an opposition brief from Defendant and a motion for sanctions both filed on September 22, 2017. Plaintiff's reply consisted of an October 5, 2017 letter, entitled "Initial response to Plaintiff 'Notice Of motion for Summary Judgment July 17, 2017. And request for the Board of electrical contractors to Clarify there law. Because of dependences, submit ion of Exhibit (L)." Although procedurally improper and untimely, the Court considers all of Plaintiff's submissions in deciding Defendant's motion for summary judgment and for sanctions. --------

More specifically, Plaintiff has continuously ignored this Court's instructions regarding communicating with counsel and the Court. In the Court's December 20, 2016 Order, the Court noted that "the unsubstantiated and false allegations made by Plaintiff in his recent letters [regarding the Court and his adversaries] constitute the type of uncivil, abrasive, abusive, hostile, and obstructive conduct contemplated by the Guidelines [for Litigation Conduct in Appendix R to the Local Civil Rules]." Consequently, the Court prohibited Plaintiff from filing any further letters "in light of Plaintiff's obstructive conduct in repeatedly filing letter applications with the Court that do not relate to the merits of this case."

Further, Plaintiff has failed to participate in
18 discovery *18 in good faith. In his filings objecting to the summary judgment motion, Plaintiff asks Defendant to supply him with "[n]ames and contact information of witnesses, (2) [d]ocuments, [and] (3) a tape [Y]our [H]onor verbally ordered Ms. Adler[] to give me." This request was untimely and violated the discovery schedule set by the Court in its February 27, 2017 Order. That conference itself was necessitated by Plaintiff's failure to participate in discovery and came after Plaintiff had already had a full opportunity to seek discovery and no meaningful effort to do so.

As Defendant points out and the record confirms, Plaintiff never served a discovery request on Defendant either before or after this Court's February 27, 2017 Order. Moreover, Defendant, unlike Plaintiff, acted at all times in compliance with this Court's Orders. To the extent Plaintiff now claims entitlement to additional materials not sought or identified before the June 12, 2017 date set for dispositive motions, he has failed to

demonstrate how any additional discovery will allow him to defeat Defendant's properly supported motion for summary judgment.

It is clear on this record that Plaintiff seeks delay simply for the purpose of delay rather than time to develop additional material facts. Plaintiff has had more than a fair opportunity for discovery and
19 seeks to use that process now *19 simply to harass Defendant and to delay this proceeding without good cause. The Court will deny Plaintiff's unsupported and unwarranted request for additional discovery and additional time to respond to Defendant's summary judgment motion. Fed. R. Civ. P. 56(d)(3).

V.

Finally, the Court addresses Defendant's September 22, 2017 motion for sanctions against Plaintiff based on offensive statements made in Plaintiff's various filings with this Court. Federal Rule of Civil Procedure 11(b) provides:

> By presenting to the court a pleading, written motion, or other paper - whether by signing, filing, submitting, or later advocating it - an . . . unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief
>
> 20 *20
> or a lack of information.

Rule 11(c) further provides that if "the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any . . . party that violated the rule or is responsible for the violation."

"It is well-settled that the test for determining whether Rule 11 sanctions should be imposed is one of reasonableness under the circumstances, the determination of which falls within the sound discretion of the District Court." Brubaker

Kitchens, Inc. v. Brown, 280 F. App'x 174, 185 (3d Cir. 2008); accord Scott Fin. Co. v. Andrews, No. 90-4574, 1991 WL 37883, at *2 (D.N.J. Mar. 18, 1991) ("Broad discretion is granted to the trial court to fashion sanctions under Rule 11."). Further, Rule 11 grants district courts "the power to sanction abusive pro se litigants." Thomas v. Conn. Gen. Life Ins. Co., No. 02-136, 2003 WL 22953189, at *3 (D. Del. Dec. 12, 2003) (quoting Ketchum v. Cruz, 775 F. Supp. 1399, 1403 (D. Colo. 1991), aff'd, 961 F.2d 916 (10th Cir. 1992)). Rule 11 sanctions are "intended to be used only in 'exceptional' circumstances." Ferreri v. Fox, Rothschild, O'Brien & Frankel, 690 F. Supp. 400, 405 (E.D. Pa. 1988).

Defendant has identified numerous inflammatory remarks from Plaintiff in its brief to this Court. The Court acknowledges these statements and
21 their offensive nature, directed at this *21 Court, its judges, Defendant, and Defendant's counsel, and sees no reason to repeat them here.

While the Court acknowledges that the obligations of Rule 11 still apply to Plaintiff and that Plaintiff has engaged in contemptable conduct, the Court declines, in its discretion, to impose sanctions on Plaintiff or to hold Plaintiff in contempt. See, e.g., Kabbaj v. Google, Inc., No. 13-1522, 2014 WL 1369864, at *7 (D. Del. Apr. 7, 2014) (declining to impose sanctions after finding "Plaintiff's filings have included threats of violence, derogatory language, and pornographic photographs"). This Court denies Defendant's motion reluctantly but does so for two main reasons.

First, the threat of sanctions in the past has done nothing to modify or change Plaintiff's behavior. Second, any sanctions and the prospect for further proceedings related to those sanctions will only serve to perpetuate a forum for Plaintiff's scurrilous, slanderous, and inflammatory, but ultimately meaningless, diatribes and ramblings. The simplest, most direct, and most effective remedy for Plaintiff's contemptible conduct is to end this meritless litigation.

Finally, Defendant also requests this Court strike the September 11, 2017 letter from Plaintiff, filed after Defendant's Reply Brief, arguing the letter is an impermissible sur-reply brief. The Court agrees
22 that this submission *22 essentially acts as a sur-reply brief. Local Civil Rule 7.1(d)(6) provides: "No sur-replies are permitted without permission of the Judge or Magistrate Judge to whom the case is assigned." Plaintiff did not ask for or obtain permission from the Court to file such a submission. Given Plaintiff is proceeding pro se, and particularly considering the submission did not present any additional facts or legal arguments which add to the merits of Plaintiff's case, the Court denies Defendant's request to strike the September 11, 2017 letter. See, e.g., Argonaut Ins. Co. v. I.E., Inc., No. 97-4636, 1999 WL 163639, at *2 (E.D. Pa. Mar. 22, 1999) (declining to grant a motion to strike a sur-reply, finding that " [n]either plaintiff nor defendant provided this Court with additional facts nor legal arguments in their respective replies"). The Court also declines to strike any other submissions by Plaintiff despite the inflammatory remarks made in the submissions.

An appropriate Order will be entered. Date: November 21, 2017
At Camden, New Jersey

s/ Noel L. Hillman

NOEL L. HILLMAN, U.S.D.J.

Additional material from this filing is available in the Clerk's Office.