

No. 19-6794

IN THE
SUPREME COURT OF THE UNITED STATES

LAKESHA SMITH,
Petitioner,
v.
ST. JOSEPH'S/CANDLER HEALTH SYSTEM, INC.,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI

R. Jason D'Cruz
Counsel of Record
BAKER & HOSTETLER LLP
1170 Peachtree Street NW
Suite 2400
Atlanta, Georgia 30309
jdcruz@bakerlaw.com
Telephone: (404) 946-9824
Fax: (404) 459-5734
Attorneys For Respondent

QUESTION PRESENTED

Whether the Court of Appeals properly affirmed summary judgment in favor of St. Joseph's/Candler Health System, Inc.

PARTIES TO THE PROCEEDING

The caption identifies all parties.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, no parent or publicly held company owns 10% or more of the stock of St. Joseph's/Candler Health System, Inc.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINION BELOW	1
JURISDICTION	1
STATEMENT OF THE CASE	2
I. Statement of Facts	2
II. Procedural History	5
REASONS FOR DENYING THE PETITION	8
I. Smith's Argument That The Court Of Appeals Erred In Affirming The District Court's Finding That Her Amended Complaint Was Untimely Merely Asks This Court To Review Factual Findings Or The Application Of Law To The Facts	8
II. Smith Has Not Properly Preserved Any Argument Regarding The Proper Standard For Willfulness In A FMLA Case	11
CONCLUSION	12

TABLE OF AUTHORITIES

	Page(s)
Cases	
Dresdner Bank AG v. M/V Olympia Voyager, 463 F.3d 1210 (11th Cir. 2006)	10
<i>McLaughlin v. Richland Shoe Co.</i> , 486 U.S. 128 (1988)	11
<i>Schreane v. Middlebrooks</i> , 522 Fed. App'x 845, 847–48 (11th Cir. 2013)	10
United States v. Adair, 951 F.2d 316 (11th Cir. 1992)	9
<i>United States v. Jones</i> , 565 U.S. 400, 413 (2012)	11
Statutes	
Family and Medical Leave Act, 29 U.S.C. § 2601, et seq.....	passim
Rules	
S. Ct. R. 10	8, 9, 11, 12
Other Authorities	
29 C.F.R. § 825.209(a).....	10

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1) is available at 770 Fed. Appx. 523.

JURISDICTION

The judgment of the court of appeals was entered on May 7, 2019. (Pet. App. A1). A petition for rehearing was denied on July 29, 2019. (Pet. App. B1). On October 31, 2019, this Court granted Smith an extension of time to file the petition for a writ of certiorari to and including November 26, 2019. Smith's petition for a writ of certiorari was filed on November 25, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

I. Statement of Facts

St. Joseph's employed Smith as a Patient Care Technician. (Doc. 12-3¹ at 1, ¶ 3). She worked thirty hours per week. (*Id.* at ¶ 3). Smith alleged that, on March 20, 2014, she was injured after falling at work. (Doc. 5 at 1). The workers' compensation physician that examined Smith deemed her unfit for duty. (*Id.*). Smith did not return to work until April 14, 2014. (*Id.*).

On April 3, 2014, St. Joseph's sent Smith a letter telling her that human resources had been advised of her need to take a "leave of absence due to work related injury/illness effective 3/28/2014" (the "First Notification Letter"). (Doc. 12-3 at 5). The First Notification Letter informed Smith that (1) she was "required" to submit a Leave of Absence Request Form, (2) she had not used any Family and Medical Leave Act ("FMLA") hours in the previous twelve months, and (3) her FMLA entitlement would expire June 20, 2014. (*Id.*). It also advised her that her "FMLA leave will run concurrent with any Worker's Compensation leave." (*Id.*).

On April 14, 2014, Smith's workers' compensation doctor cleared her to return to work on light duty. (Doc. 5 at 1). On April 14, Smith returned to work for one day, but did not return to work the following day because she was experiencing pain and lightheadedness. (*Id.*).

On April 23, 2014, St. Joseph's sent Smith another letter advising her that human resources had been told of her need to take a "leave of absence due to work

¹ Citations to Doc. ___ are to the docket entries in *Smith v. St. Joseph's/Candler Health System, Inc.*, Case No. CV417-116 (S.D. Ga.).

related injury/illness effective 4/15/2014" (the "Second Notification Letter"). (Doc. 12-3 at 7). The Second Notification Letter informed Smith that (1) she was "required" to submit a Leave of Absence Request Form, (2) she had used 60 hours of her FMLA leave between March 28, 2014 and April 14, 2014,² and (3) her FMLA entitlement would expire June 24, 2014. (*Id.*). It also advised her that her "FMLA leave will run concurrent with any Worker's Compensation leave." (*Id.*).

On April 28, 2014, Smith submitted her first Leave of Absence Request Form (the "First Leave Request Form"). (Doc. 5-1). She attached a copy of the First Leave Request Form to her amended complaint. (*Id.*). The First Leave Request Form advised Smith that she "qualif[ied] for leave under the Family & Medical Leave Act of 1993." (*Id.*). It also noted that the requested effective dates for her leave were "3/28/14 – 4/14/14" and "4/15/14 - ?" (*Id.*). The First Leave Request Form identified the reason for the request as a "work related injury."

By May 2014, the workers' compensation doctor cleared Smith to return to work. (Doc. 12-3 at 2). However, Smith told St. Joseph's that she did not feel capable of doing so and that she would continue her leave of absence. (*Id.*). On May 19, 2014, Smith submitted a second Leave of Absence Request Form (the "Second Leave Request Form"). (Doc. 5-2). Smith also attached the Second Leave Request Form to her amended complaint. (*Id.*). The Second Leave Request Form noted that the requested effective date for the leave request was "5/2/14" and identified the reason

² Because she worked thirty hours per week, the notation that she had used 60 hours of her FMLA leave indicated that she had already used two weeks of FMLA leave. (See Doc. 12-3 at 2, ¶ 9). See also 29 C.F.R. § 825.205(b) (detailing the calculation of FMLA leave for part-time workers).

for the request as “[e]mployee illness/injury preventing functions of normal duties.” (*Id.*). The Second Leave Request Form advised Smith that she qualified for FMLA leave and that she had “240 FMLA hours available.” (*Id.*).

On June 6, 2014, St. Joseph’s sent Smith a final letter advising her that human resources had been notified of her need for a “medical leave of absence effective 5/2/2014” (the “Third Notification Letter”). (Doc. 12-3 at 9). The Third Notification Letter informed Smith that (1) she was “required” to submit a Leave of Absence Request Form, (2) she had used 120 hours (or four weeks) of her FMLA leave between March 28, 2014 and May 1, 2014, (3) her leave had been medically certified through June 19, 2014, and (4) if she needed additional leave beyond June 19, 2014, she would need to submit additional documentation. (*Id.*).

According to St. Joseph’s records, Smith’s FMLA leave was exhausted on June 27, 2014. (Doc. 12-3 at 3, ¶12). At that time, with the exception of one day on April 14, 2014, she had been absent from work since March 20, 2014. (Doc 5 at 1). Despite exhausting her leave, Smith did not return to work. (Doc. 12-3 at 3, ¶ 13).

Because Smith was unable to return to work after she exhausted her FMLA leave, St. Joseph’s terminated her employment. (*Id.* ¶ 14). According to Smith, on July 3, 2014, her supervisor called her to discuss her return to work. (Doc. 5 at 2). Smith told her supervisor that she was still under a doctor’s care and not able to return to work. (*Id.*). Her supervisor then told her that her employment was being terminated but that the supervisor would be willing to rehire Smith when she was feeling better. (Doc. 5 at 2). On July 11, 2014, St. Joseph’s sent Smith a letter

confirming her termination. (Doc. 5-4). Smith waited until almost three years later to file her initial complaint against St. Joseph's. (Doc. 1).

II. Procedural History

On June 30, 2017, Smith filed a "Complaint for Employment Discrimination" alleging that she was improperly terminated in violation of the FMLA, 29 U.S.C. § 2601, *et seq.*, and that she was denied health benefits during her FMLA leave. (Doc. 1 at 7). Because Smith filed her complaint *pro se*, the Magistrate Judge screened her complaint. (Doc. 4). The Magistrate Judge found her allegations to be insufficient. (*Id.* at 3-4). While raising questions about the timeliness of Smith's complaint, among other issues, the Magistrate Judge provided Smith with an opportunity to amend her complaint to address the highlighted deficiencies, but cautioned that she could be subject to sanctions if her claims were frivolous. (*Id.* at 3-5).

On July 28, 2017, Smith filed an amended complaint that provided additional information about her claim that St. Joseph's allegedly violated the FMLA by terminating her employment. (Doc. 5). The amended complaint made no mention of St. Joseph's alleged denial of medical benefits. (*See id.*).

On October 23, 2017, St. Joseph's filed a motion to dismiss, or, alternatively, for summary judgment. (Doc. 12). In that motion, St. Joseph's argued that Smith's claim should be dismissed because it was not properly filed within the two-year statute of limitations provided by the FMLA and because she received the full amount of FMLA leave to which she was entitled before her employment terminated. (*Id.* at 10-18).

On March 21, 2018, the Magistrate Judge issued a report and recommendation. (Doc. 25). In the report and recommendation, the Magistrate Judge converted St. Joseph’s motion to a motion for summary judgment. (*Id.* at 6). The magistrate judge concluded Smith’s claim was time-barred because she filed it more than two years after the events she complained about took place, and she did “not adequately support[] her (implicit) willfulness allegation.” (*Id.* at 6, 10).

Smith objected to the report and recommendation. (Doc. 26). In her objections, Smith alleged St. Joseph’s willfully violated the FMLA and that her various attachments to her objections showed that St. Joseph’s miscalculated her FMLA leave. (*Id.*). St. Joseph’s opposed Smith’s objection to the report and recommendation. (Doc. 27).

On April 26, 2018, the District Court issued an order adopting the Magistrate Judge’s report and recommendation. (Pet. App. C1). The District Court explained that Smith failed to provide any evidence that St. Joseph’s willfully violated the FMLA by terminating her employment. (*Id.* at 2). While she made “vague allegations as to Defendant’s supposed nefarious conduct,” none of her allegations showed that St. Joseph’s willfully violated the FMLA, and even if Smith was correct that St. Joseph’s miscalculated her FMLA leave, such a miscalculation was insufficient to show that St. Joseph’s acted willfully. (*Id.* at 4–5). Therefore, the District Court found Smith’s FMLA claim was subject to the FMLA’s two-year statute of limitations and was untimely. (*Id.* at 5).

Smith filed a motion for reconsideration asserting that her St. Joseph's supervisor "fraudulent[ly]" and "wrongful[ly]" calculated her FMLA hours. (Doc. 30 at 2). Her motion for reconsideration also (1) discussed actions taken by an attorney that Smith hired to represent her in a workers' compensation claim against St. Joseph's, (2) complained about the suspension of her workers' compensation total disability benefits, (3) complained that she was denied access to medical benefits, and (4) alleged that she was being harassed by government officials in retaliation for continuing to pursue her claims against St. Joseph's. (*Id.* at 2). St. Joseph's opposed Smith's motion for reconsideration. (Doc. 35).

While her motion for reconsideration was pending, Smith also filed a notice of appeal and a motion to proceed *in forma pauperis* on appeal. (Docs. 33, 34).

On May 22, 2018, the District Court denied Smith's motion for reconsideration, noting that the court saw no reason to disturb its prior ruling. (Pet. App. D1). The District Court also denied Smith's motion to proceed *in forma pauperis* on appeal because the court found that Smith's "appeal [was] frivolous and not taken in good faith." (*Id.*).

The Eleventh Circuit Court of Appeals affirmed the District Court's grant of summary judgment in favor of St. Joseph's. (Pet. App. A1 at 10). The Eleventh Circuit found that Smith had "not identified evidence raising a genuine issue of material fact about whether St. Joseph's conduct was willful." Instead, she offered only "unsupported allegations that the hospital intentionally miscalculated or misled her about her available FMLA hours and intentionally disrupted her access to health

benefits.” (*Id.*) Such unsupported allegations were not sufficient to establish a genuine issue of material fact. (*Id.*) Because Smith did not show that St. Joseph’s alleged violations were willful, her claims were subject to a two-year statute of limitations. (*Id.*) Because Smith filed her complaint nearly three years after the alleged violations, the District Court found that it was untimely. (*Id.*) The Eleventh Circuit agreed. (*Id.*)

Smith then filed two petitions for rehearing. In both petitions, she argued that the delay in filing her original complaint and her inability to prove willfulness were both caused by the actions of her former attorney, who represented her in connection with a worker’s compensation action against St. Joseph’s. The Court of Appeals denied her petitions for rehearing. (Pet. App. B1 at 2).

REASONS FOR DENYING THE PETITION

The Eleventh Circuit’s opinion correctly applied existing law to affirm the dismissal of Smith’s amended complaint. None of Smith’s arguments in her petition for a writ of certiorari demonstrates that a grant of certiorari would be appropriate in this case. *See* S. Ct. R. 10. Accordingly, this Court should deny Smith’s petition.

I. Smith’s Argument That The Court Of Appeals Erred In Affirming The District Court’s Finding That Her Amended Complaint Was Untimely Merely Asks This Court To Review Factual Findings Or The Application Of Law To The Facts.

Smith devotes the majority of her petition to her argument that the courts below got it wrong when they concluded that she did not show that St. Joseph’s alleged violations of the FMLA were willful. (Petition at 10–16). However, these arguments do not support granting her petition. Instead, they merely ask this Court

to review the lower courts' factual findings and those courts applications of the law to those facts, neither of which is generally a compelling reason for granting a petition for a writ of certiorari. *See S. Ct. R.* 10.

More importantly, nothing in Smith's arguments show error on the part of the Court of Appeals. Smith made vague allegations that the documents provided to her were misleading about the amount of leave she had available and that St. Joseph's miscalculated her available FMLA leave. (Petition at 10–12). However, even if Smith was confused by the notifications relating to her FMLA leave, such confusion on her part does not change that St. Joseph's provided her with more than the statutorily required leave. The evidence in the record demonstrates that Smith was allegedly injured on March 20, 2014. (Doc. 5 at 1). With the exception of one day on April 14, 2014, Smith did not work between March 20, 2014, when she fell at work, and July 3, 2014, when her employment terminated, a period of more than fourteen weeks and well in excess of the amount of time for which the FMLA mandates that an employer provide leave. (*Id.* at 1). And, even if St. Joseph's miscalculated when her leave expired (which it did not), such a mistake does not raise the inference of willfulness Smith needs to avoid the statute of limitations. *See United States v. Adair*, 951 F.2d 316, 319 n.6 (11th Cir. 1992) (“A showing of negligence or mistake is not sufficient to support a finding of willfulness or knowledge”). Accordingly, Smith failed to demonstrate that St. Joseph's alleged violation was willful.

In her petition, Smith also argues that St. Joseph's violated the FMLA by denying her medical benefits during her leave. (Petition at 12–15). Smith raised the

issue of St. Joseph's denial of medical benefits in her original complaint, but she omitted that claim in her amended complaint. (*Compare* Doc. 1 at 7 *with* Doc. 5). An amended pleading "supersedes the former pleading" such that "the original pleading is abandoned by the amendment, and is no longer a part of the pleader's averments against his adversary." *Dresdner Bank AG v. M/V Olympia Voyager*, 463 F.3d 1210, 1215 (11th Cir. 2006) (footnote omitted) (citation omitted). Accordingly, any claim based on St. Joseph's alleged failure to continue Smith's medical benefits was abandoned. *See Schreane v. Middlebrooks*, 522 Fed. App'x 845, 847–48 (11th Cir. 2013) (refusing to consider claims that a *pro se* plaintiff asserted in his original complaint but omitted from an amended complaint). In addition, even if such a claim were properly before the Court, Smith admitted that she did not complete enrollment during St. Joseph's open enrollment period and did not notify St. Joseph's that she was having trouble doing so until after the open enrollment period closed. (*See* Appellant Br. at 11–12, 18). St. Joseph's did not improperly deny Smith medical benefits. *See* 29 C.F.R. § 825.209(a) ("[d]uring any FMLA leave, an employer must maintain the employee's coverage under any group health plan *on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period*'') (emphasis added).

Accordingly, this Court should deny Smith's petition.

II. Smith Has Not Properly Preserved Any Argument Regarding The Proper Standard For Willfulness In A FMLA Case.

In her petition, Smith asks this Court to decide whether this Court should define “willful” in the context of an FMLA case. (Petition at 2). However, she neither preserved this issue below nor offered any argument in support of it in her petition.

The Eleventh Circuit noted in its opinion that the “FMLA does not define ‘willful,’ and neither the Supreme Court nor [the Eleventh Circuit] has expressly defined that term in the context of the FMLA.” (Pet. App. A1 at 8). The Court of Appeals further noted that (1) this Court in *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128 (1988), defined “willful” in the context of the Fair Labor Standards Act (“FLSA”), and (2) five other courts of appeals had applied that definition of “willful” in the context of FMLA claims. (*Id.* at 8–9). However, because Smith did not raise any argument about the proper standard for willfulness, the court declined to decide the issue. (*Id.* at 9). Because Smith did not raise this issue before the Court of Appeals, she forfeited it. *See United States v. Jones*, 565 U.S. 400, 413 (2012) (concluding that a party forfeited an issue where the party did not raise it in the courts below).

Similarly, Smith offers no argument in support of this issue in her petition to this Court. Instead, she states only that the “Supreme Court has the power to put rules and regulations in place for such cases that will face similar circumstances.” (*Id.* at 17.) She has not attempted to show that there is a compelling reason for this Court to address this issue. *See* S. Ct. R. 10. Nor could she. As discussed by the Eleventh Circuit, all of the courts of appeals that have addressed the issue of the

proper definition of “willful” for purposes of the FMLA have reached the same conclusion and applied the definition this Court established for purposes of the FLSA. (Pet. App. A1 at 8). There is no conflict among the circuit courts of appeals for this Court to resolve nor any suggestion that the “court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.” S. Ct. R. 10. Indeed, the Court of Appeals expressly declined to decide the issue at all and instead “assume[d] – as did the magistrate judge, the district judge, and apparently both parties – that *McLaughlin* provides the right standard for assessing Smith’s FMLA claim.” (Pet. App. A1 at 9). Accordingly, because Smith’s petition does not set forth in any compelling reason for this Court to exercise its discretion to review her claims, this Court should deny Smith’s petition.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted this 2nd day of January, 2020.

/s/ R. Jason D'Cruz

R. Jason D'Cruz
Georgia Bar No. 004740
BAKER & HOSTETLER LLP
1170 Peachtree Street, Suite 2400
Atlanta, Georgia 30309
jdcruz@bakerlaw.com
Telephone: (404) 459-0050
Fax: (404) 459-5734
Attorneys for Respondent