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Case: 19-3040 Document: 00713609533

Filed: 05/07/2020 Pages: 3

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

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Teste:

/s/ [illegible]

Deputy Clerk
of the United States
Court of Appeals for the
Seventh Circuit

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 2, 2020*

Decided April 6, 2020

*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).

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Before

Diane P. Wood, Chief Judge
Joel M. Flaum, Circuit Judge
Amy C. Barrett, Circuit Judge

No. 19-3040

IRMA ROSAS,

Plaintiff-Appellant,

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

v. No. 1:19-cv-00005

R.K. KENZIE CORP., et al.,

Defendants-Appellees.

John Roberts Blakey,
Judge.

O R D E R

Irma Rosas brought a lawsuit against four of her previous employers, all restaurants, which, she alleged, discriminated against her based on her race, ages, disability (carpel tunnel syndrome), in violation of Title VII of the Civil Rights Act of 1964,

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in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, the Age Discrimination in Employment Act, 29 U.S.C. §623, and the Americans with Disabilities Act, 42 U.S.C. § 12112. The district court repeatedly warned her that she could not join unrelated claims against different defendants, and then dismissed the suit after she continued to regard those instructions. Because the district court did not abuse its discretion in dismissing the suit, we affirm.

At different points during a nine-month period, Rosas worked for Red Lobster, Olive Garden, and two different McDonald's stores. She sued all four restaurants for employment discrimination, alleging that their failures to accommodate her carpal tunnel collectively worsened her condition, and their race and age discrimination caused mental distress. During the proceedings, the district court advised Rosas several times that she could not bring distinct claims against different defendants in the same lawsuit; twice, the court allowed her to amend her complaint. After striking a third amended

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complaint that Rosas filed without leave, the court encouraged her to look for counsel to help cure the joinder issue. When Rosas could not find an attorney to take her case, the court ordered her to make an appointment with the Hibbler Help Desk, the court's pro se assistance program.

After Rosas amended her complaint a fourth time without addressing the joinder problem, the defendants moved to strike or dismiss the complaint. In a hearing that followed, Rosas admitted that she had not followed the court's order to visit the pro se help desk. The court again warned her that further attempts to join unrelated claims in the same suit would result in dismissal: "You need to find an attorney to help you respond to these motions and correct the problems I've identified for you. If you do not, your case will be over." The court then urged her to "go to the Help Desk" and "either correct the problem or ... litigate the motion to strike."

Rosas responded by filing a fifth amended complaint that mirrored her earlier submissions, which prompted the court sua sponte to dismiss the

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case with prejudice. Reprimanding Rosas for her “stubborn determination to pursue improperly joined claims,” the court found her conduct willful. Because she refused to seek counsel, the court concluded that allowing her another opportunity to amend would be “pointless.”

On appeal, Rosas argues that she properly joined her claims because each instance of discrimination contributed to the same harm. In support, she cites *Diehl v. H.J. Heinz Co.*, 901 F.2d 73, 73-74 (7th Cir. 1990), which recognizes that joint tortfeasors (who each aggravate the same physical injury albeit at different times and in different locations) may be sued in the same complaint “despite the lack of concert between them.” But *Diehl* was a tort case in which both defendants contributed to the same injury. By contrast, Rosa’s [sic] discrimination claims arose from distinct adverse employment actions by separate employers. Unrelated claims against different defendants belong in different lawsuits. See FED. R. CIV. P. 20; *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

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Rosas also argues the district court, acting sua sponte, should have severed her claims or dismissed the complaint without prejudice. True, misjoinder alone is not grounds for dismissal, FED. R. CIV. P. 21; *UWM Student Ass'n v. Lovell*, 888 F.3d 854, 864 (7th Cir. 2018), but the district court dismissed her case based on her repeated failure to cure her complaint's deficiencies. Judge Blakey warned Rosas, over and over, that she courted dismissal of her case if she did not respond to the joinder problem. Even pro se litigants must follow procedural rules. *Cady v. Sheahan*, 467 F.3d 1057, 1061 (7th Cir. 2006). Given Rosas's willful noncompliance with its instructions, the court acted well within its discretion to dismiss her case with prejudice. See FED. R. CIV. P. 41(b); *Salata v. Weyerhaeuser Co.*, 757 F.3d 695, 699-700 (7th Cir. 2014).

We have considered Rosas's remaining arguments, and none has merit.

AFFIRMED

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**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois –
CM/ECF LIVE, Ver 6.3.1
Eastern Division**

Irma Rosas

Plaintiff,

v.

Case No.: 1:19-cv-00005

Honorable John Robert Blakey

RK Kenzie Corporation, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on
Monday, September 16, 2019:

MINUTE entry before the Honorable John Robert Blakey: On 6/25/2019, after advising Plaintiff on numerous occasions that she may not join unrelated claims against unrelated parties in a single complaint and that if she insisted on pursuing a complaint that did so, her case would be

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dismissed, the Court gave Plaintiff one final opportunity to amend her complaint to assert a single, core claim. See [79]. The Court warned Plaintiff (again) that if she failed to cure this deficiency, the Court would summarily dismiss her case. *Id.* Despite this, on 7/15/19, Plaintiff filed a fourth amended complaint [80], which, like the other prior versions, asserted unrelated claims against unrelated parties in violation of *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

Defendants filed another round of motions to dismiss, and the Court ordered Plaintiff to respond to the motions or file a motion for leave to file a fifth amended complaint (with a proposed complaint attached) by 9/5/19. Plaintiff opted for the latter, and filed a motion for leave to amend yet again. But Plaintiff's proposed fifth amended complaint, like the prior versions, still asserts stubborn determination to pursue improperly joined claims, which the Court has told Plaintiff numerous times she may not pursue. At this point, based upon the entire record, the Court finds as a factual matter that Plaintiff's failure to comply

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with the rules of procedure and this Court's orders is willful. Plaintiff has no intention of revising her pleading to comply with this Court's prior orders and no intention of curing the deficiencies this Court has noted numerous times. Worse still, Plaintiff has refused to make efforts to secure counsel and refused to take advantage of the Court's Pro se Assistance Program. In fact, Plaintiff admitted in court on 7/25/2019 that she failed to even visit the Help Desk to seek an appointment, despite the Court's order recommending that she do so. And she admitted that she had made no efforts to find counsel on her own. Such actions bolster the Court's conclusion today that giving Plaintiff more time or an additional opportunity to amend would be pointless. Accordingly, and consistent with the Court's prior orders, Plaintiff's motion for leave to file a fifth amended complaint [92] is denied, and this case is dismissed. Defendants' motion to strike [81], [83], [85] and motion to dismiss [87] are denied as moot. The 9/17/19 Notice of Motion date is stricken, and the parties need not appear. Civil case terminated. Mailed notice(gel,)

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Case: 1:19-cv-00005 Document #: 100 Filed:

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ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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Case: 19-3040 Document: 00713609535
Filed: 05/07/2020 Pages: 1

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Teste:

/s/ [illegible]

Deputy Clerk
of the United States
Court of Appeals for the
Seventh Circuit

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

April 29, 2020*

Before

Diane P. Wood, Chief Judge
Joel M. Flaum, Circuit Judge
Amy C. Barrett, Circuit Judge

No. 19-3040

IRMA ROSAS,

Plaintiff-Appellant,

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

v. No. 1:19-cv-00005

R.K. KENZIE CORP., et al.,

Defendants-Appellees.

John Robert Blakey,
Judge.

O R D E R

Plaintiff-appellant filed a petition for rehearing and rehearing *en banc* on April 14, 2020. No judge¹ in regular active service has requested a vote on the petition for rehearing *en banc*, and all members of the original panel have voted to deny panel rehearing. The petition for rehearing *en banc* is therefore DENIED.

¹ Judge Amy J. St. Eve did not participate in the consideration of this matter.

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No. 19-3040

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

IRMA ROSAS,)	Appeal from the United
Plaintiff-Appellant,)	States District Court for
)	the Northern Plaintiff-
)	District of Illinois,
)	Eastern Division
)	
v.)	NO. 19-CV-0005
)	
R.K. KENZIE)	
CORPORATION,)	
et al.,)	
Defendants-)	
Appellees.)	

**PLAINTIFF-APPELLANT'S MOTION TO FILE
ELECTRONICALLY**

NOW COMES *pro se* Plaintiff-Appellant Irma Rosas and files this motion requesting permission to file electronically pursuant to Federal Rule of Appellate Procedure 25(a)(2)(B)(ii) in the above titled matter and in support states as follows.

By: _____

IRMA ROSAS
Plaintiff-Appellant
6333 South Lavergne Avenue
Chicago, Illinois 60638
(773) 627-8330
irmarosaswebsite@gmail.com

INTRODUCTION

1. Appellees filed their brief on February 02, 2020. (Docs. 18, 19).

2. On February 24, 2020, Ms. Rosas filed a motion to extend time to file a reply brief. The motion read, “[c]urrently, that reply brief is due on March 04, 2020. Plaintiff-Appellant requests a 30-day extension to and including April 4, 2020.” (Doc. 21).

3. That same day, this Court granted the motion. (Doc. 22).

4. Ms. Rosas understood that the Court had granted the motion until April 04, 2020 and since that date falls on a Saturday, she concluded that the reply brief was due the next business day on April 06, 2020.

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5. On March 21, 2020, Ms. Rosas sent this Court another motion for an extension of time via certified mail. (Tracking No. 70190700000115110434). (See Exhibit A). On March 23, 2020, the U.S.P.S. Tracking website indicated that the motion was available for pick-up.

6. Ms. Rosas, still susceptible to illness, ventured out of the house to file the motion in-person on March 30, 2020. (Doc. 23). Ms. Rosas depends on public transportation to get to the courthouse. (See Exhibit B).

7. On April 02, 2020, the U.S.P.S. Tracking website indicated that the motion mailed on March 21, 2020 had been "Delivered, Individual Picked Up at Postal Facility 04/02/2020 8:10am". (See Exhibit A).

8. Later that day on April 2nd, Ms. Rosas received the order denying her motion for an extension of time to file a reply brief in the mail. (Doc. 24). The order also indicated that her reply was "due on March 25, 2020, and this case is now ready for disposition." (*Id.*).

9. Ms. Rosas, having just been released

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from the hospital and still recuperating from flu-like symptoms (possibly COVID-19), concluded that her motion had been fully granted. (Docs. 22, 23, 28).

ARGUMENT

10. Federal Rule of Appellate Procedure 25(a)(2)(B)(ii) provides “[a] person not represented by an attorney ... to file electronically only if allowed by court or by local rule; and may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.” Fed. R. App. P. 25 (a)(2)(B)(ii).

11. **On April 06, 2020**, Plaintiff-Appellant Irma Rosas, (“Ms. Rosas”) boarded the Orange-CTA Rail at Midway Airport. According to the Ventra Transit History for the Ventra account she used that day, she boarded at 10:14:49 AM. (See Exhibit B).

12. It follows that Ms. Rosas filed her motion (Doc. 28) **between 10:14:49 AM and 11:16:18 AM**, when she again boarded the Orange-CTA Rail in the Loop at Washington/Wabash to return home. (*Id.*).

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13. Before walking back home, however, she deposited money into her account at the Orange-CTA Rail at Midway Airport. The time was 11:48:21 AM.

14. As of April 09, 2020, the PACER website indicated several inconsistencies.

15. First, the motion mailed on March 21, 2020 and received on March 23rd was *never* filed. (Doc. 28 at ¶¶ 5, 7). (See Exhibits C).

16. On **April 06, 2020**, the Nonprecedential Disposition PER CURIAM was filed at **12:57 PM**. (Doc. 25). The Final Judgment was filed at **01:04 PM**. (Doc. 26).⁹

17. Ms. Rosas' Motion for Reconsideration: Extension of Time to File Reply Brief was entered on **April 06, 2020 at 02:02 PM**. (Doc. 28). (*Id.*).

18. Ms. Rosas filed her *timely* Motion for Reconsideration *before* the Nonprecedential Disposition and Final Judgment.

19. The Motion for Reconsideration:

⁹ Both documents were neither signed or certified. *Brown v. Fifth Third Bank*, 730 F.3d 698 (7th Cir. 2013).

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Extension of Time to File Reply Brief was denied on April 09, 2020 at 08:41 AM.

20. Given the irregular events, Ms. Rosas requests permission to file electronically.¹⁰

CONCLUSION

Ms. Rosas respectfully requests that the Motion to File Electronically be granted so that she may file a reply brief in this instant matter.

Dated: April 10, 2020

_____/s/_____
IRMA ROSAS
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App'x 22
Chicago, Illinois 60638
(773) 627-8330
irmarosaswebsite@gmail.com

CERTIFICATE OF SERVICE

I certify that on April 10, 2020, the foregoing Motion to File Electronically was filed in the Office

¹⁰ By requesting permission to file electronically, Ms. Rosas, in no way, concedes to the aforementioned irregularities at the Seventh Circuit.

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of the Clerk, United States Court of Appeals,
Seventh Circuit, Everett McKinley Dirksen United
States Courthouse, 219 South Dearborn Street,
Room 2722, Chicago, Illinois 60604. I further
certify that counsel of record in this appeal are
CM/ECF users and will be served via the CM/ECF
system.

Dated: April 10, 2020

_____/s/____

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