UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-2187

ANTHONY DONELL JOHNSON,

Plaintiff - Appellant,

v.

ROWAN HELPING MINISTRIES, Homeless Shelter,

Defendant - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Catherine C. Eagles, District Judge. (1:17-cv-01073-CCE-JLW)

Submitted: October 29, 2020 Decided: November 9, 2020

Before AGEE, THACKER, and QUATTLEBAUM, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Anthony Donell Johnson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Anthony Donnell Johnson appeals the district court's order granting summary judgment to Defendant on Johnson's claims of sex discrimination and retaliation under Title VII of the Civil Right Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, and disability discrimination under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 to 12213. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Johnson v. Rowan Helping Ministries*, No. 1:17-cv-01073-CCE-JLW (M.D.N.C. Aug. 29, 2019). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: November 9, 2020

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Plaintiff - Appellant

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Defendant - Appellee

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ANTHONY DONELL JOHNSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:17-CV-1073
	)	
ROWAN HELPING MINISTRIES,	)	
	)	
Defendant.	)	

ORDER and JUDGMENT

The plaintiff Anthony Johnson worked for the defendant Rowan Helping Ministries as a Shelter Attendant. After he was fired, Mr. Johnson brought this lawsuit alleging that the defendant discriminated against him by terminating him for his disability, Doc. 29 at ¶¶ 17–24, and his gender, *id.* at ¶¶ 25–30, and in retaliation for his complaints about a supervisor's sexual harassment. *Id.* at ¶¶ 31–35.

The defendant has moved for summary judgment, submitting testimony from several witnesses confirmed by documentary evidence that the defendant was terminated because of excessive tardiness, failure to do his job, and repeated complaints by co-workers. *See* Doc. 50 and attachments; Doc. 51 and attachments. In response, Mr. Johnson submitted a brief in opposition that intersperses legal arguments and factual assertions with a few documentary exhibits.

Because there are no disputed questions of material fact and the evidence shows the defendant terminated Mr. Johnson for legitimate job-related reasons, the defendant's motion for summary judgment will be granted.

DISCUSSION

Summary judgment is appropriate where evidence in the record "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); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 323–25 (1986). A genuine dispute of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In a motion for summary judgment, the moving party satisfies its burden by showing "an absence of evidence to support the nonmoving party's case." *Celotex Corp.*, 477 U.S. at 325.

In analyzing a summary judgment motion, the court "takes the evidence and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party." *Henry v. Purnell*, 652 F.3d 524, 531 (4th Cir. 2011) (en banc).[1] In other words, the nonmoving "party is entitled to have the credibility of his evidence as forecast assumed, his version of all that is in dispute accepted, and all internal conflicts in it resolved favorably to him." *Miller v. Leathers*, 913 F.2d 1085, 1087 (4th Cir. 1990) (en banc) (quoting *Charbonnages de France v. Smith*, 597 F.2d 406, 414 (4th Cir. 1979)). If, applying this standard, the court finds "that a reasonable jury could return a verdict for [the nonmoving party], then a genuine factual dispute exists and summary judgment is improper." *Evans v. Techs. Applications & Serv. Co.*, 80 F.3d 954, 959 (4th Cir. 1996).

[1] The Court omits internal citations, alterations, and quotation marks throughout this opinion, unless otherwise noted. *See United States v. Marshall*, 872 F.3d 213, 217 n.6 (4th Cir. 2017).

In response to a motion for summary judgment, "[a] party asserting that a fact . . . is genuinely disputed must support the assertion by . . . citing to particular parts of materials in the record, including . . . affidavits or declarations." Fed. R. Civ. P. 56(c)(1)(A). The responding party "may not rest upon mere allegations or denials of his pleading, but must come forward with specific facts showing that there is a genuine issue for trial." *Emmett v. Johnson*, 532 F.3d 291, 297 (4th Cir. 2008) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)); *see also Felty v. Graves-Humphreys Co.*, 818 F.2d 1126, 1128 (4th Cir. 1987) (noting that there is an affirmative duty for "the trial judge to prevent factually unsupported claims and defenses from proceeding to trial"). "Nor can the nonmoving party create a genuine issue of material fact through mere speculation or the building of one inference upon another." *Emmett*, 532 F.3d at 297 (quoting *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985)).

Mr. Johnson proceeds pro se. Pro se litigants are accorded some generosity in construing their pleadings and filings. *Armstrong v. Rolm A. Siemans Co.*, 129 F.3d 1258 (table), 1997 WL 705376, at *1 (4th Cir. Nov. 13, 1997) ("When reviewing a pro se complaint, federal courts should examine carefully the plaintiff's factual allegations, no matter how inartfully pleaded, to determine whether they could provide a basis for relief."). Yet this does not require the court to ignore clear defects, *Bustos v. Chamberlain*, No. 3:09–1760–HMH–JRM, 2009 WL 2782238, at *2 (D.S.C. Aug. 27, 2009) (pleadings), or to "conjure up questions never squarely presented in the complaint." *Brice v. Jenkins*, 489 F. Supp. 2d 538, 541 (E.D. Va. 2007). Nor does it

require that the court become an advocate for the unrepresented party. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

Pro se litigants, like all litigants, must comply with the Federal Rules of Civil Procedure, especially as they relate to the fundamental requirement of presenting admissible evidence to support claims. In deference to Mr. Johnson's pro se status, the court sent him a *Roseboro* letter on May 7, 2019, informing him that "[his] failure to respond or, if appropriate, to file affidavits or evidence in rebuttal within the allowed time may cause the court to conclude that the defendants' contentions are undisputed." Doc. 52.

The defendant's evidence is undisputed that no one connected with the defendant knew that Mr. Johnson had a disability, *see, e.g.*, Doc. 50 at ¶¶ 13–15; that there were many problems with Mr. Johnson's tardiness at work, Doc. 50 at ¶ 9; Doc. 51 at ¶¶ 17, 24, and failure to complete his job duties, Doc. 51 at ¶ 22; and that several female employees complained about Mr. Johnson's unwanted attention, Doc. 50 at ¶ 16; Doc. 51 at ¶ 20, and his failure to do his share of the work. Doc. 51 at ¶¶ 25, 27. Mr. Johnson received numerous warnings and disciplinary write-ups before he was terminated. *See, e.g.*, Doc. 51 at ¶¶ 17, 20, 21, 22. Mr. Johnson never complained to the Shelter's Executive Director or the Director of Client Services about any sexual harassment by his supervisor. Doc. 50 at ¶ 17; Doc. 51 at ¶ 23.

Despite the *Roseboro* letter and two extensions of time, *see* Docs. 53, 54, Mr. Johnson has presented no affidavits, declarations, deposition testimony, or other evidence to support his claims or to refute the defendant's evidence. A party's brief does not

constitute evidence that the court can consider on a motion for summary judgment. Similarly, statements such as those submitted by Mr. Johnson in his brief that do not subject the author to the penalty of perjury for any misstatements cannot by themselves defeat a summary judgment motion. *See Turner v. Godwin*, No. 1:15cv770, 2018 WL 284978, at *3 (E.D. Va. Jan. 3, 2018); *see also United States v. White*, 366 F.3d 291, 300 (4th Cir. 2004) (explaining that courts should not consider unsworn arguments as evidence in opposition to a summary judgment motion).

In contrast, affidavits that are signed under penalty of perjury, such as those of Sherry Smith, Doc. 51, and Kyna Grubb, Doc. 50, are proper evidence. Moreover, although a verified complaint may serve as an affidavit for summary judgment purposes, *see, e.g.*, *Smith v. Blue Ridge Reg'l Jail Auth.-Lynchburg*, No. 7:17-cv-00046, 2017 WL 6598124, at *2 n.5 (W.D. Va. Dec. 26, 2017), Mr. Johnson submitted only an unverified operative complaint in this case. *See* Doc. 29.

Mr. Johnson did submit some documentary evidence, interspersed with his legal argument in his brief. *See* Doc. 55. Most of the documentary exhibits are duplicates of his performance evaluations that are already in the record, *see* Doc. 55 at 4–17, and there are a few screen shots of text messages that appear to be about scheduling. Doc. 55 at 48–49, 51. Even if these unauthenticated screen shots are considered, they do not create a genuine dispute of material fact; they show only that his supervisor occasionally notified him of shift changes via text.

In the end, even where a motion for summary judgment is not opposed with sufficient admissible evidence to create a dispute of material fact, the court will review

the motion to make an independent determination whether the moving party is entitled to summary judgment as a matter of law. *See, e.g, Robinson v. Wix Filtration Corp. LLC*, 599 F.3d 403, 409 n.8 (4th Cir. 2010). The Court has done so here.

The record is undisputed that Mr. Johnson was fired because he was not a good employee. He was constantly late, he did not meet his job responsibilities, and he did not get along with his co-workers. There is no evidence that he was fired because of his gender or his disability, and there is no admissible evidence that he was retaliated against for complaining of sexual harassment. Therefore, the defendant's motion for summary judgment will be granted.

It is **ORDERED AND ADJUDGED** that the defendant's motion for summary judgment, Doc. 48, is **GRANTED** and this case is **DISMISSED with prejudice.**

This the 29th day of August, 2019.

UNITED STATES DISTRICT JUDGE

U.S. District Court

North Carolina Middle District

Notice of Electronic Filing

The following transaction was entered on 9/25/2019 at 10:51 AM EST and filed on 9/25/2019

Case Name:	JOHNSON v. ROWAN HELPING MINISTRIES et al
Case Number:	1:17-cv-01073-CCE-JLW
Filer:	

WARNING: CASE CLOSED on 08/29/2019

Document Number:	No document attached

Docket Text:

TEXT ORDER issued by JUDGE CATHERINE C. EAGLES: The defendant need not to respond to the Plaintiff's Motions at [61] and [62], pending further order of the Court. (Sanders, Marlene)