NONPRECEDENTIAL DISPOSITION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

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

Submitted August 26, 2020*
Decided August 27, 2020

Before

MICHAEL S. KANNE, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

No. 19-3168

DAVID H. PENNY, *Plaintiff-Appellant,* v. LINCOLN'S CHALLENGE ACADEMY, *Defendant-Appellee.*	Appeal from the United States District Court for the Central District of Illinois. No. 17-cv-2232 Colin S. Bruce, *Judge.*

ORDER

Claiming that his employer fired him because he opposed an act of disability discrimination against a coworker, David Penny sued for retaliation under the

* We have agreed to decide this case without oral argument because the brief 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).

Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12203. The district court entered summary judgment for the employer, explaining that Penny lacked evidence of a causal connection between his opposition and his termination. We see no error in that ruling, so we affirm the judgment.

For reasons we explain below, we draw the facts from the defendant's evidentiary submissions, viewed in the light most favorable to Penny. *See McCurry v. Kenco Logistics Servs., LLC*, 942 F.3d 783, 788 (7th Cir. 2019). Penny held various positions at Lincoln's Challenge Academy, a reform school run by the Illinois Department of Military Affairs, from 2003 to 2017. In June 2015, when he was a "Commandant," the Academy did not renew contracts for several workers, including Jim Hart. Penny asked the academy's director, Peter Thomas, and the deputy director at the time why Hart's contract was not being renewed; he was told: "Because he's out a lot, he's sick a lot, he's got a lot of medical problems." Penny responded, "you really can't do that," and "I don't think that's right and I don't think we should be doing that." In August, Penny sent the human resources department a memo describing a phone call in which Hart "attempt[ed] to elicit information regarding the reason for his non-renewal." Penny "reminded" Hart that he "was not the one who recommended his nonrenewal" and said that whatever the director told him "[was] the reason." In his deposition, Penny testified that two employees from the human resources department later told him that it was "in [his] best interest" to "make that memo disappear."

Penny had "no idea" why human resources "wanted the whole thing gone."

Penny further testified that, after Hart's non-renewal, he experienced a "lot of tension" at work and had "some friction" with Director Thomas. As he stated at his deposition, he "[couldn't] go ten days without getting accused of some racism or something-ism," and his work environment became "pretty hostile." And after Penny had knee surgery, Thomas told him that he was not allowed to return to work until he was fully healed, even though, according to Penny, the Academy had accommodated others in the department with medical restrictions.

At the end of 2015, Penny became the Recruitment, Placement, and Mentorship Coordinator, even though he "didn't apply for [the position] and didn't want it." But he was told that taking it would be "in [his] best interest," which, as Penny later testified, he understood as a veiled threat about his future at the Academy.

About six months later, in June 2017, the Academy terminated Penny's contract. His supervisor, Deputy Director Michael Haerr (who started working at the Academy in late 2016), had recommended the termination. As Thomas explained in a memo, Penny was being let go for "substandard performance," specifically his "inability to . . . meet Academy recruiting goals." According to Penny's deposition testimony, his superiors had imposed goals that they knew "could not be met."

Penny sued the Academy for retaliation in violation of the ADA (and other claims that he does not pursue on appeal). Specifically, he alleged that the Academy terminated his contract because he had opposed Hart's non-renewal, which he saw as an act of disability discrimination. He asserted that he was "coerc[ed] into accepting" a lower status position and that his superiors purposefully set "unachievable" performance goals "to give them an excuse to terminate [him]."

After discovery, the Academy moved for summary judgment. It listed ten "undisputed material facts" and argued that, based on these facts, Penny could not establish a prima facie case of retaliation under the ADA-. In his response, Penny argued that he had met his burden and that, in any event, Federal Rule of Civil Procedure 56 is unconstitutional because it violates the right to a jury trial. In a section labeled "disputed material facts," he responded to six of the Academy's proffered facts. For the most part, his responses add only minor clarifications or challenge the facts' legal significance, rather than the fact itself. Despite attaching 114 pages of exhibits, Penny included only one citation to record evidence in his "disputed material facts" section.

The district court granted the Academy's motion for summary judgment. The court first stated that it drew most of the facts from the Academy's statement of undisputed material facts because Penny's response failed to comply with Central District of Illinois Local Rule 7.1(D)(2). That rule provides, in relevant part,

that each claim of disputed material fact and each additional material fact must be "supported by evidentiary documentation referenced by specific page." C.D. ILL. R. 7.1(D)(2)(b)(2), (5). Penny's response included only a section of "disputed material facts," with no citations. And although he incorporated new facts into his argument, he did not list them in a separate fact section or cite any evidentiary support, as required. Considering the "adequately supported" material facts only, the court concluded that Penny did not have evidence of a causal connection between a protected activity and his termination. It explained, in part, that Penny had "no evidence" that Haerr knew anything about his opposition to Hart's non-renewal, adding that Haerr did not even work at the Academy at the time of Penny's protected activity. The court also rejected his challenge to Rule 56.

On appeal, Penny first challenges the district court's ruling that he failed to comply with the local rules, a decision that we review for abuse of discretion only. *See Hinterberger v. City of Indianapolis*, 966 F.3d 523, 528 (7th Cir. 2020). Citing an earlier version of Local Rule 7.1(D) that exempted pro se litigants from its requirements, *see* C.D. ILL. R. 7.1(D)(6) (2010) (amended 2013), Penny argues that his failure to adhere to the rule was "unintended and accidental" and that he is "at worst guilty of excusable neglect." The current rule, however, does not contain a pro se exemption; it states only that "Local Rule 7.1(D) does not apply to social security appeals or any other case upon the showing of good cause." C.D. ILL. R. 7.1(D)(2)(b)(6)

(2017). Here, Penny did not show (or try to show) good cause to excuse his noncompliance. In his reply brief, he implies that pro se status itself constitutes "good cause," but it does not. We have repeatedly recognized that "district courts may require strict compliance with their local rules," *Hinterberger*, 966 F.3d at 528, and have specifically approved of a court's strict enforcement of Rule 7.1(D) against a pro se litigant, *see McCurry*, 942 F.3d at 787 n.2. The district court did not abuse its discretion in doing so here.

Penny next challenges the entry of summary judgment for the Academy on his retaliation claim. Although we rely on the Academy's statement of undisputed material facts, we still view those facts in the light most favorable to Penny and review the district court's ruling de novo. *See Cady v. Sheahan*, 467 F.3d 1057, 1060 (7th Cir. 2006). To survive summary judgment, Penny needed evidence that (1) he engaged in a statutorily protected activity; (2) he suffered an adverse action; and (3) there is a "but for" causal connection between the two. *Rowlands v. United Parcel Serv. – Fort Wayne*, 901 F.3d 792, 801 (7th Cir. 2018). Only the third element is at issue here. One way to demonstrate it is "by showing that the stated reasons for the firing were pretextual." *Graham v. Arctic Zone Iceplex, LLC*, 930 F.3d 926, 929 (7th Cir. 2019).

Penny raises two principal arguments on this point. First, he contends that Haerr's lack of knowledge about his protected activity is irrelevant because Director Thomas made the ultimate termination decision, and Thomas had a "longstanding vendetta"

against him. Even if we accepted this assertion (which Penny did not substantiate), Penny has not identified evidence that Thomas terminated his contract because of his opposition to Hart's non-renewal two years earlier, rather than his admitted failure to meet performance goals. *See Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 765 (7th Cir. 2016). Penny asserts that these goals were set unrealistically high, but he does not point to any evidence that would support an inference that the reason given for his termination—his supervisor's recommendation based on his performance—was "phony." *Graham*, 930 F.3d at 929. And even if Thomas disliked Penny, as he says, there is no evidence connecting that personal animus with Penny's protected activity.

Second, Penny argues that the Academy "never prove[d] the absence of a genuine issue of fact" and thus was not entitled to summary judgment. But Penny misconceives the burdens of production. At summary judgment, "a party must show what evidence it has that would convince a trier of fact to accept its version of events." *Beardsall v. CVS Pharmacy, Inc.*, 953 F.3d 969, 973 (7th Cir. 2020) (quoting *Johnson v. Cambridge Indus., Inc.*, 325 F.3d 892, 901 (7th Cir. 2003)). That applies to both parties, not just the movant. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986) (explaining burden on nonmoving party); *Parent v. Home Depot U.S.A., Inc.*, 694 F.3d 919, 922 (7th Cir. 2012) (noting "nonmovant must present definite, competent evidence in rebuttal" to defeat summary judgment). Penny contends that he *would* have made this showing through witness testimony at trial and that

he did not take any depositions to present this testimony earlier "due to time and cost." But a party cannot defeat summary judgment with promises to furnish evidence down the line.

Penny alternatively argues that he is entitled to remand on the ground that summary judgment procedures violate the Seventh Amendment's guarantee of a jury trial. He acknowledges that we previously rejected that argument, *see*, *e.g.*, *Burks v. Wis. Dept of Transp.*, 464 F.3d 744, 759 (7th Cir. 2006), but urges us to reconsider. We see no compelling reason to do so. *See Koski v. Standex Intl Corp.*, 307 F.3d 672, 676 (7th Cir. 2002) ("[A]rguing that Rule 56 . . . violates the Seventh Amendment . . . flies in the face of firmly established law."). Because Rule 56 is consistent with the Constitution, we must reject his additional argument that, in promulgating it, the judicial branch exceeded the authority delegated to it by Congress under the Rules Enabling Act, 28 U.S.C. § 2072.

We have considered Penny's other arguments, and none has merit.

AFFIRMED

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[LOGO]

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FINAL JUDGMENT

August 27, 2020

Before: MICHAEL S. KANNE, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

No. 19-3168	DAVID H. PENNY, Plaintiff – Appellant v. LINCOLN'S CHALLENGE ACADEMY, Defendant – Appellee
Originating Case Information:	
District Court No: 2:17-cv-02232-CSB-EIL Central District of Illinois District Judge Colin S. Bruce	

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

form name: **c7_FinalJudgment(form ID: 132)**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

DAVID H. PENNY, Plaintiff, v. LINCOLN'S CHALLENGE ACADEMY, Defendant.	)	Case No. 17-cv-2232

ORDER

(Filed Oct. 4, 2019)

On May 29, 2018, Plaintiff, David Penny, filed a *pro se* Second Amended Complaint of Employment Discrimination (#26). On July 6, 2018, Defendant, Lincoln's Challenge Academy, filed a Motion to Dismiss (#30). Pursuant to the court's Order (#35) ruling on that Motion, the only claim remaining is Plaintiff's claim that he was retaliated against for opposing an act of disability discrimination, in violation of the Americans With Disabilities Act ("ADA").

On August 2, 2019, Defendant filed a Motion for Summary Judgment (#49) and a Memorandum of Law in Support (#50). Plaintiff filed a Response (#52) on August 15, 2019, and Defendant filed a Reply (#55) on September 12, 2019. For the reasons that follow, Defendant's Motion for Summary Judgment (#49) is GRANTED.

BACKGROUND

Even *pro se* plaintiffs must comply with rules of civil procedure, including local rules. *Cady v. Sheahan*, 467 F.3d 1057, 1061 (7th Cir. 2006). Due to Plaintiff's lack of compliance with applicable rules, the facts herein are mainly taken from Defendant's Statement of Undisputed Material Facts and its cited exhibits.

Pursuant to Rule 7.1(D)(2)(b) of the Local Rules of the Central District of Illinois, responses to Undisputed Material Facts must contain separate subsections for (1) undisputed material facts, (2) disputed material facts, (3) disputed immaterial facts, (4) undisputed material facts, and (5) additional facts.

Plaintiff's Response includes only a section for "DISPUTED MATERIAL FACTS." The court has evaluated Plaintiff's claims of disputed facts in accordance with Local Rule 7.1(D)(2)(b)(2), which provides that claims of a disputed fact must be supported with evidentiary documentation referenced by specific page.

Most notably absent from Plaintiff's Response is a subsection for additional facts. Plaintiff's argument references alleged facts that are not included in Defendant's Undisputed Material Facts section, but Plaintiff's Response fails to set forth any of those facts in compliance with Local Rule 7.1(D)(2)(b)(5). Plaintiff's purported facts are not included in a separate section for additional facts, supported by citations to evidentiary documentation.

Plaintiff has not properly offered any additional facts for this court to consider. The adequately supported, material facts are as follows.

Plaintiff began working at Lincoln's Challenge Academy in 2003, in the position of Cadre. In 2013, he was promoted to Shift Leader. At the end of 2014, he went into the position of Commandant. About a year later, at the end of 2015, he went into a recruiting, placement and mentorship ("RPM") position. He was terminated from the RPM position in June of 2017.

All positions at Lincoln's Challenge Academy are contract positions, ranging in length from one to two years.

Plaintiff alleges that he was retaliated against for opposing the discriminatory non-renewal of Jim Hart. Jim Hart was a Cadre. In June of 2015, Hart's contract was not renewed. At that time, Peter Thomas was the Director of Lincoln's Challenge Academy and Plaintiff's supervisor was Deputy Director Colin Waxham.

In a meeting with Thomas and Waxham, Plaintiff asked why Hart was being non-renewed. Plaintiff was told "Because he's out a lot, he's sick a lot, he's got a lot of medical problems." Plaintiff responded: "I don't think we can do that," "you really can't do that," "I don't think that's right and I don't think we should be doing that."

Plaintiff did not know what Hart's medical issues or medical history were, but he knew that Hart "had been out and back and forth" and "had had some

issues." Plaintiff stated that Hart "was still able to function" and did not have attendance issues.

On August 24, 2015, Plaintiff wrote a memo about a phone conversation he had that day with Jim Hart. The memo states:

> TO: HUMAN RESOURCES DEPARTMENT
>
> SUBJECT-LT HART, J. NONRENEWAL EVENT
>
> 1. This morning I received an unexpected call from former LT Hart, Jim. He said he was calling to ask how I was doing after my surgery. Then he brought up the issue of his contract being non-renewed. He was attempting to elicit information regarding the reason for his non-renewal. I reminded him I was not the one who recommended his nonrenewal, and I am not personally aware of what was told him when he was issued his statement by the Director. Which statement if any was given is the reason. Additionally he informed me he has retained legal counsel in the matter. Later in the day he called me back saying he was sorry he had asked me about the issue and to not worry about it. I thought this is significant in light of the fact he said he had spoken to a lawyer. I thought the HR department should know about it.
>
> 2. Should any further communication be attempted with me by Mr. Hart, I will simply refer him to the HR department and not make any comments. In late 2016, Deputy Haer was

hired, and he became Plaintiff's supervisor. Haer

was not employed by Defendant in 2015, when Hart was fired and Plaintiff wrote the memo. There is no evidence that Haer was aware that Plaintiff opposed Hart's firing.

Plaintiff was terminated in June of 2017 after Haer "recommended it up the chain" that Plaintiff be terminated. The reason given for the termination was failure to accomplish recruiting goals.

ANALYSIS

I. SUMMARY JUDGMENT STANDARD

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); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). In ruling on a motion for summary judgment, a district court "has one task and one task only: to decide, based on the evidence of record, whether there is any material dispute of fact that requires a trial." *Waldridge v. Am. Hoechst Corp.*, 24 F.3d 918, 920 (7th Cir. 1994).

"[T]he district court's function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial." *Winters v. Fru-Con, Inc.*, 498 F.3d 734, 744 (7th Cir. 2007). In making this determination, the court must construe the evidence in the light most favorable to the

nonmoving party and draw all reasonable inferences in favor of that party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Singer v. Raemisch*, 593 F.3d 529, 533 (7th Cir. 2010). However, a court's favor toward the nonmoving party does not extend to drawing "[i]nferences that are supported by only speculation or conjecture." *Singer*, 593 F.3d at 533, quoting *Fischer v. Avanade, Inc.*, 519 F.3d 393, 401 (7th Cir. 2008).

"The mere existence of an alleged factual dispute will not defeat a summary judgment motion; instead, the nonmovant must present definite, competent evidence in rebuttal." *Butts v. Aurora Health Care, Inc.*, 387 F.3d 921, 924 (7th Cir. 2004). Summary judgment "is the 'put up or shut up' moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events." *Koszola v. Bd. of Educ. of City of Chi.*, 385 F.3d 1104, 1111 (7th Cir. 2004), quoting *Johnson v. Cambridge Indus., Inc.*, 325 F.3d 892, 901 (7th Cir. 2003). Specifically, to survive summary judgment, "the nonmoving party must make a sufficient showing of evidence for each essential element of its case on which it bears the burden at trial." *Kampmier v. Emeritus Corp.*, 472 F.3d 930, 936 (7th Cir. 2007), citing *Celotex Corp.*, 477 U.S. at 322-23.

II. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

A. Employer Status of Defendant

As a preliminary matter, the court notes that Defendant has included footnotes in its Motion for Summary Judgment, Memorandum in Support, and Reply stating that the court never addressed the argument, from its Motion to Dismiss (#30), that Lincoln's Challenge Academy is an entity of the Illinois Department of Military Affairs, which is "the particular agency of the state that has actual hiring and firing responsibility over Plaintiff." The court notes that it addressed this argument on page seven of its Order (#35) ruling on the Motion to Dismiss, stating:

> Preliminarily, the court notes that Plaintiff has sufficiently alleged that Defendant Lincoln's Challenge Academy was his employer. To argue it was not Plaintiff's employer, Defendant relies on *Hearne v. Board of Educ. of City of Chicago*, 185 F.3d 770, 777 (7th Cir. 1999), in which a school board, not the State of Illinois, was a person's employer where the school board had "actual hiring and firing responsibility." Here, however, Plaintiff alleges that Defendant Lincoln's Challenge Academy had, and used, the authority to hire, promote, demote, and fire employees.

As Defendant's Motion for Summary Judgment does not argue that Defendant was not Plaintiff's employer, the court need not further address this issue.

B. Whether Defendant is Entitled to Summary Judgment

Plaintiff claims that he was retaliated against for opposing an act of disability discrimination. Defendant argues that it is entitled to summary judgment on Plaintiff's ADA retaliation claim because Plaintiff failed to establish a prima facie claim of retaliation.

To establish a prima facie case for ADA retaliation, a plaintiff "must demonstrate that: (1) she engaged in a protected activity; (2) she suffered an adverse employment action; (3) and a causal connection exists between the two." *Tolston-Allen v. City of Chi.*, 2019 WL 4242504, at *2 (N.D. Ill. Sept. 6, 2019), citing *King v. Ford Motor Co.*, 872 F.3d 833, 842 (7th Cir. 2017); *Mobley v. Allstate Ins. Co.*, 531 F.3d 539, 549 (7th Cir. 2008). Defendants argue that Plaintiff has failed to establish that he engaged in protected activity or that his alleged protected activity resulted in his termination.

The anti-retaliation provision of the ADA provides that "[n]o person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing under this chapter." 42 U.S.C. § 12203(a).

The ADA prohibits discrimination against qualified individuals with disabilities, including "in regard to discharge of employees." 42 U.S.C. § 12112(a). The term "disability" is defined as "(A) a physical or mental impairment that substantially limits one or more of

the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(2).

The court finds that Plaintiff arguably engaged in protected activity by opposing the firing of an individual "regarded as" having "a physical or mental impairment that substantially limits one or more of [his] major life activities." Waxham and Thomas told Plaintiff that Hart was being non-renewed "Because he's out a lot, he's sick a lot, he's got a lot of medical problems." Arguably, that explanation shows that Waxham and Thomas regarded Hart as impaired by an illness which substantially limited a major life activity, working.[1] Plaintiff opposed Hart's firing, telling Thomas and Waxham, "I don't think we can do that," "you really can't do that," "I don't think that's right and I don't think we should be doing that." Those statements can be interpreted as Plaintiff opposing the non-renewal on the basis of Hart's perceived disability. Plaintiff's opposition to Hart's non-renewal, based on Hart's being regarded by the employer as having a disability, is protected activity.

Plaintiff's memo does not state any opposition to Hart's non-renewal. It describes a phone call with Hart, without opining on the reason for the non-renewal or Plaintiff's thoughts on the merits of that reason. That Plaintiff found it prudent to file such a memo may further indicate that he believed he had earlier

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[1] Working is a major life activity. See *Sinkler v. Midwest Prop. Mgmt. Ltd. P'ship*, 209 F.3d 678, 684 (7th Cir. 2000).

opposed the firing in his meeting with Thomas and Waxham, but the memo itself does not contain an additional expression of protected activity.

Plaintiff engaged in protected activity when verbally opposing Hart's non-renewal in June of 2015. Plaintiff was terminated in June 2017, an adverse employment action. The question, then, is whether the evidence could support a causal connection between that protected activity and the adverse action. *King*, 872 F.3d at 842, citing *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 764-66 (7th Cir. 2016). In deciding that question, courts "consider the evidence as a whole and ask whether a reasonable jury could draw an inference of retaliation." *Id.*

Plaintiff has not produced any evidence that Defendant took any action because he opposed Hart's non-renewal. The recommendation to terminate Plaintiff's employment came from Deputy Haer. There is no evidence Haer knew anything about Plaintiff's opposing Hart's non-renewal, and Haer was not even employed by Defendant at the time of the protected activity. Plaintiff was not terminated until two years after the protected activity, undermining any inference that the firing was caused by the protected activity. *King*, 872 F.3d at 842.

Plaintiff argues that he has established causation based on a series of harassing events that he alleges created a hostile work environment, culminating in the fabrication of unattainable performance standards used to make it appear as though the termination was

not retaliatory. However, as noted in the Background section above, Plaintiff has not properly presented facts about of any of those events or the reasonableness of the performance standards. Under the facts as the parties have presented them, there is no evidence of the required causal connection between a protected activity and an adverse action.

In the absence of any showing of a causal connection between a protected activity and an adverse action, Defendant is entitled to summary judgment on Plaintiff's ADA retaliation claim.

Plaintiff also argues that summary judgment is unconstitutional. However, this court is unaware of any other court that has agreed with that position. In discussing a plaintiff's argument that, "as a principle of law, summary judgment cannot be squared with the Constitution," the Seventh Circuit stated:

> [W]e previously have rejected arguments that summary judgment violates either the Fifth or Seventh Amendments. *See Koski v. Standex Intl Corp.*, 307 F.3d 672, 676 (7th Cir. 2002). As for the Fifth Amendment, we stated that "[t]he Supreme Court has made it abundantly clear that summary judgment has a proper role to play in civil cases," and thus granting summary judgment does not violate a plaintiff's right to due process. *Id.* We also have stated that summary judgment and Federal Rule of Civil Procedure 56 do not violate the Seventh Amendment, as "this argument . . . flies in the face of firmly established law." *Id.* (citing *Fid. & Deposit Co. of Maryland v.*

> *United States*, 187 U.S. 315, 320, 23 S.Ct. 120, 47 L.Ed. 194 (1902)). The Seventh Amendment does not entitle parties to a jury trial when there are no factual issues for a jury to resolve. *See id.*

Burks v. Wisc. Dept. of Transp., 464 F.3d 744, 759 (7th Cir. 2006). Thus, this court finds that summary judgment is constitutional.

IT IS THEREFORE ORDERED THAT:

(1) Defendant's Motion for Summary Judgment (#49) is GRANTED. Judgment is entered in favor of Defendant and against Plaintiff.

(2) This case is terminated.

ENTERED this 4th day of October, 2019.

s/COLIN S. BRUCE
U.S. DISTRICT JUDGE