

No. 21-

In the
Supreme Court of the United States

JACQUELYN BOUAZIZI,

Petitioner,

v.

HILLSBOROUGH COUNTY CIVIL SERVICE BOARD, and

HILLSBOROUGH COUNTY

Respondents.

APPENDIX OF PETITIONER

JACQUELYN BOUAZIZI, PRO SE

For the Eleventh Circuit

State Court Civil Action Case No. 15-CA-010520

Middle District Court Civil Action Case No. 8:19-cv-00657-VCM-TGW

Appellate Case No. 20-10429F

Jacquelyn Bouazizi,

Petitioner Pro Se

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Petitioner, Pro Se

Dated: August 26, 2021

I. Order of the United States Court of Appeals for the Eleventh Circuit
Entered January 29, 2021, D.C. Docket No. 8:19-cv-00657-VMC-TGW
by Judges JORDAN, NEWSOM, AND GRANT.....Exhibit 1

APPENDIX

- I. Order of the United States Court of Appeals for the Eleventh Circuit
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by Judges JORDAN, NEWSOM, AND GRANT.....**Exhibit 1**
- II. Orders of the United States District Court for the Middle District of Florida by Judge Covington, Doc. 43, Doc. 50, Doc. 68, Doc. 69, Doc. 71, and Doc. 82**Exhibit 2**
- III. Order of the State Court Submitted by Peter Zinober.....**Exhibit 3**
- IV. Attorney Craig Berman Prepared Complaint and Demand for Jury Trial.....**Exhibit 4**
- V. Attorney Del E'toile filed two Amended Complaints, December 15, 2017, Doc. 1-2, page 38 to page 44, page ID48 with the Second Amended Complaint filed January 3, 2018, Doc. 1-2, page 45 to 51, page ID 55 to 61, **Exhibit 5**. Attorney Carl Hayes Second Amended Complaint, **Exhibit 5-A** and Third Amended Complaint...**Exhibit 5-B**
- VI. Damien Tramel lied on Hillsborough County Civil Service Board Application for Employment page 2, when Tramel checked "No", on the question "Have you ever pled guilty, been convicted of OR, pled nolo contendere to any crime? **Exhibit 6**, Felony Charge.....**Exhibit 6-A**
- VII. Memorandum stating that Mr. Tramel is not qualified for the position from the Civil Service Board.....**Exhibit 7**
- VIII. Memo from Camille Blake.....**Exhibit 8**

County's refusal to pay Petitioner while several inexperienced employees were promoted to AO pay grade, 6 pay grades above Petitioner AK pay grade for managing contracts.....**Exhibit 8-A**
- IX. Petitioner EEOC Charge 511-2014-01711.....**Exhibit 9**
- X. Defendant Hillsborough County's Motion For Partial Summary Judgment And Motion To Set Case For Trial On The Remaining Issues Doc. 1-2, page 77 to 84, page ID 87 to 94.....**Exhibit 10**

XI. Defendant Hillsborough County Civil Service Board's Motion To Dismiss The Amended Complaint And Accompanying Memorandum Of Law, Doc. 1-2, page 61 to 70, page ID 71 to 80.....Exhibit 11

XII. Transcript of the July 23, 2018 Hearing..... Exhibit 12

XIII. Emails from Del E'toile stating that he will argue Hammer v. Hillsborough County at the July 23, 2018 hearing, that the County and the Board are different entities.....Exhibit 13

XIV. Petitioner's Motion For Extension Of Time to request Transcript Doc. 44.....Exhibit 14

XV. Petitioner Brief.....Exhibit 15

XVI. Petitioner Petition for Rehearing.....Exhibit 16

XVII. Emails from Attorney Craig Berman.....Exhibit 17

XVIII. Hammer v. Hillsborough County, 927 F. Supp. 1540 (M.D. Fla. 1996) Doc. 1-2, page 116 to 123, Page ID 126 to 133.....Exhibit 18

XIX. Email correspondence between Petitioner and Mr. Carl R. HayesExhibit 19

XX. Copy of the Altered Motion to Amend Notice of Appeal February 4, 2020Exhibit 20

XXI. Petitioner Stamped Notice of Appeal dated February 3, 2020, Doc. 83Exhibit 21

Petitioner receipt paid February 3, 2020, filing fee for Notice of Appeal dated February 3, 2020, in the amount of \$505.00 that Middle District Court alleged Petitioner did not pay.....Exhibit 21-A

Petitioner Credit Card statement filing fee paid in the amount of \$505.00 to FLMDC transaction February 3, 2020.....Exhibit 21-B

XXII. Emails from Attorney Antonio Poulos.....Exhibit 22

XXIII. Petitioner noticed pertinent information on Middle District Court documents transmitted to Appeals Court Doc. 84, pages 1 of 32, page ID 1140 to 1171.....Exhibit 23

XXIV. On page 32, page ID 1171, of the docket sheets, Exhibit 23, show that Petitioner filed her Notice of Appeal February 3, 2020 as Doc. 83, fee not paid, see Exhibits 21-A and 21B.....Exhibit 24

XXV. On pages 2 and 3, page ID 1141 and 1142, of Doc. 84, transmitted to Appeals Court, it shows Petitioner Notice Of Appeal at the top filed February 4, 2020, as Doc. 84, with the same date stamp as the Notice of Appeal Petitioner filed February 3, 2020, and the Certificate of Service is dated February 3, 2020.....Exhibit 25

XXVI. On the Middle District Court Docket Sheet (2) printed from PACER at different times it show a Notice of Appeal as Doc. 85, on page 5/5, was filed February 4, 2020.....Exhibit 26

XXVII. On the Middle District Court Docket Sheet (3) printed from PACER at different times it show an Amended Notice Of Appeal filed February 4, 2020, as Doc. 85.....Exhibit 27

XXVIII. Docket Sheet for the Eleventh Circuit Court of Appeals...Exhibit 28

XXIX. Equal Employment Opportunity Commission EEOC – Complaint Processing Procedure.....Exhibit 29

XXX. Fraudulent – Order Granting Hillsborough County Civil Service Board's Motion to Dismiss the Amended Complaint with Prejudice.....Exhibit 30

XXXI. Rule 60(b).....Exhibit 31

XXXII. CIP Petitioner filed February 18, 2020.....Exhibit 32

XXXIII. CIP which someone altered and wrote on the letter (mailed February 24, 2020), and mailed the exact CIP to the 11th Circuit Court that Petitioner filed February 18, 2020, that the 11th Circuit Court alleged there was a deficiency on the date February 19, 2020, on 11th Circuit Court Docket Sheet Exhibit 42. Petitioner did not receive a letter from the court dated February 19, 2020, alleging that there was a deficiency in the CIP filed February 18, 2020.....Exhibit 33

XXXIV. Letter dated February 11, 2021, from the Eleventh Circuit Court of Appeals granting Petitioner an extension until March 19, 2021 to mail her Petition for Rehearing.....**Exhibit 34**

XXXV. Motion To Review Court File and Motion For Leave To File An Amended Petition.....**Exhibit 35**

XXXVI. Date stamped Notice Of Appeal **Exhibit 36** mailed March 19, 2021, priority mail receipt **Exhibit 36-A** that the Appeals court stated "No Action Taken" in their letter March 25, 2021.....**Exhibit 36-B**
Petitioner's Amended Petition For Rehearing.....**Exhibit 36-C**

XXXVII. Motion for Relief from Judgment under Rule 60, Doc. 81..**Exhibit 37**

XXXVIII. Copy of the envelope the 11th circuit court questioned in its decision 1/29/21, **Exhibit 38** in reference to the date in which Order Doc. 69 was signed, **Exhibit 1**, when Petitioner filed her Notice of Appeal
.....**Exhibit 21**

XXXIX. Gretchen Lehman resubmitted the fraudulent - Order Granting Hillsborough County Civil Service Board's Motion to Dismiss the Amended Complaint with Prejudice.....**Exhibit 39**

XXXX. Family Medical Leave Act FMLA.....**Exhibit 40**

XLI. Correspondence dated April 9, 2021.....**Exhibit 41**

XLII. Correspondence dated April 8, 2021.....**Exhibit 42**

XLIII. Correspondence received from the Court dated April 19, 2021, stating a copy of the Judgment is hereby issued as a mandate of the Court. The Court's Opinion was previously provided on the date of issuance.....**Exhibit 43**

XLIV. Correspondence received from the Court dated May 5, 2021, stating that the case is closed.....**Exhibit 44**

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10429
Non-Argument Calendar

D.C. Docket No. 8:19-cv-00657-VMC-TGW

JACQUELYN BOUAZIZI,

Plaintiff-Appellant,

versus

HILLSBOROUGH COUNTY CIVIL SERVICE BOARD, and
HILLSBOROUGH COUNTY,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(January 29, 2021)

Before JORDAN, NEWSOM, and GRANT, Circuit Judges.

PER CURIAM:

Plaintiff Jacqueline Bouazizi, pro se, filed a third amended complaint in
which she alleged that defendants Hillsborough County and the Hillsborough County Civil Service Board violated 42 U.S.C. § 1983, the Equal Pay Act, and the Equal Protection Clause. She filed this complaint in the United States District Court for the Middle District of Florida, which dismissed her claims as untimely. Unsatisfied, Bouazizi filed multiple motions for relief from judgment and reconsideration, all of which the district court denied. Because Bouazizi has not shown that the district court abused its discretion, we affirm.

I.

About five years before her claims were dismissed as untimely, Bouazizi was employed by the County. She worked in various roles for the County from 1978 to 2014, when she resigned. Even before her tenure with the County ended, Bouazizi had been filing EEOC charges.

The action that forms the foundations of this appeal was filed in 2015. Bouazizi's complaint began in state court, only alleged state causes of action, and only named the County as defendant. But the first amended complaint added the Civil Service Board as a defendant, and the second amended complaint added causes of action under Title VII and the Equal Pay Act. The second amended complaint was filed in February 2019, and was removed to the United States District Court for the Middle District of Florida the following month. The County and the Board then moved to dismiss, and the district court granted those motions as unopposed.

~~Bouazizi filed two motions to reconsider the dismissal, and the district court granted the second one, reopening the case. But the court's permission to file another amended complaint came with caveats: Bouazizi was only allowed to assert § 1983 claims, and was warned not to file a shotgun complaint. And the court noted that if she did not file by the deadline, the case would be dismissed without further notice.~~

Bouazizi filed a third amended complaint in May 2019. In it, she alleged violations not just of § 1983, but also the Equal Pay Act. In orders that same month and the next, the court dismissed the complaint with prejudice, finding that the § 1983 claims were time-barred. As for the Equal Pay Act claims, the court found that there was no permission to raise them in this complaint, and in any event it found that these claims were time-barred as well. That was Bouazizi's last complaint.

But it was not her last filing. In fact, the dismissal of the third amended complaint triggered a rash of efforts by Bouazizi to have the district court reconsider its resolution of her case.

- On December 5, 2019, Bouazizi filed a Rule 60 motion for relief from judgment. This motion was denied on December 27.
- On January 10, 2020, Bouazizi filed a motion to reconsider the December 27 order. This motion was denied on January 13.
- On January 13, 2020, Bouazizi filed an amended motion for reconsideration, asking the court to reconsider its December 27 and January 13 orders. This motion was denied on January 14.

- ~~On January 21, 2020, Bouazizi filed a motion for sanctions against both her own and the defendants' attorneys under Federal Rule of Civil Procedure 11(b), as well as a motion for reconsideration of the December 27, January 13, and January 14 orders. Both of these motions were denied on January 23.~~
- On January 22, 2020, Bouazizi filed an amended motion for sanctions. This motion was denied on January 23.
- On January 23, 2020, Bouazizi filed a motion for clarification of the orders dismissing her third amended complaint. The court responded in a January 27 order, in which the court explained that Bouazizi had no claims pending before it.
- On January 30, 2020, Bouazizi filed a second motion for relief from judgment under Rule 60 as to the December 27 order. This motion was denied on January 31.

The lack of success at the district court prompted Bouazizi to file a notice of appeal on February 4, 2020, in which she listed each of the above district court orders. She argues in her initial brief that the statutes of limitations that barred her complaint should have been equitably tolled, and that the district court erred in denying her motions for relief from judgment and reconsideration under Rules 59 and 60.¹

¹ The Board filed a response brief. The County did not.

II.

We review a district court’s order on a Rule 60(b) motion for abuse of discretion. *Willard v. Fairfield Southern Co., Inc.*, 472 F.3d 817, 821 (11th Cir. 2006). We also review a district court’s denial of a motion for reconsideration for abuse of discretion. *Corwin v. Walt Disney Co.*, 475 F.3d 1239, 1254 (11th Cir. 2007).

III.

A.

The first argument Bouazizi raises before us is that the district court erred in ruling that her third amended complaint was time-barred in the first place. She argues that the district court should have equitably tolled the statutes of limitations that barred the claims in her third amended complaint. To support equitable tolling, Bouazizi alleges that the “negligent acts” of her attorneys and misrepresentations by the defendants’ attorneys constitute “extraordinary circumstances.”

As an initial matter, Bouazizi’s notice of appeal does not list the district court’s orders that dismissed her complaint with prejudice. So it is not clear that Bouazizi is even requesting review of the district court’s dismissal of those particular claims. But even if she is, we lack jurisdiction to review those orders.

We have “a duty to assure ourselves of our jurisdiction at all times in the appellate process,” and review whether we have appellate jurisdiction *de novo*. *Overlook Gardens Props. LLC v. ORIX USA, L.P.*, 927 F.3d 1194, 1198 (11th Cir. 2019). The requirement to file a notice of appeal within thirty days of the entry of

~~final judgment is “mandatory and jurisdictional.” *Rinaldo v. Corbett*, 256 F.3d 1276, 1278 (11th Cir. 2001) (quotations omitted).~~ As relevant for Bouazizi, this time limit can be tolled if a Rule 60 motion for relief from judgment is filed “no later than 28 days after the judgment is entered.” Fed. R. App. Proc. 4(a)(4)(A)(vi). In that case, the thirty-day period does not start until the entry of the order disposing of that motion for relief. *Id.*

That exception to the general thirty-day limit does not save Bouazizi’s appeal. The last order dismissing the third amended complaint was on June 24, 2019. Under Rule 4(a)(7), then, the judgment would become final 150 days later, on November 21. But Bouazizi filed her Rule 60 motion for relief from judgment on December 5, which was within 28 days of the entry of the judgment. That motion was denied on December 27, meaning that Bouazizi had thirty days from then to file a notice of appeal to challenge the dismissal of her complaint. Any notice of appeal, then, could be filed no later than January 26, 2020. Because the earliest notice of appeal in the record was filed on February 3, 2020, she failed to abide by that time limit and an appeal of the disposition of her complaint is not properly before us.

B.

We do, however, have jurisdiction to review the orders disposing of Bouazizi’s post-judgment motions. The only arguments Bouazizi raises in her initial brief contend that relief from judgment is warranted under Rule 60. She argues that she is entitled to relief because of excusable neglect under Rule 60(b)(1), newly discovered evidence under Rule 60(b)(2), fraud or

~~misrepresentation under Rule 60(b)(3), and any other reason justifying relief under Rule 60(b)(6).~~² Bouazizi has not shown that she can succeed under any of these grounds.

Bouazizi spends most of her initial brief arguing that her attorneys committed excusable neglect, and that such neglect justifies relief from judgment. In particular, she alleges that her attorneys were negligent in failing to follow court orders, failing to respond to motions in a timely manner, failing to present evidence, and failing to argue that the complaints were not time-barred. *Id.* Under Rule 60(b)(1), relief from judgment may issue for “mistake, inadvertence, surprise, or excusable neglect.” In this Circuit, “the party seeking relief under Rule 60(b)(1) must provide a justification so compelling that the district court had to vacate the challenged order.” *Architectural Ingenieria Siglo XXI, LLC v. Dominican Republic*, 788 F.3d 1329, 1343 (11th Cir. 2015). But much of what Bouazizi complains of are legal errors, which our precedent forecloses from supporting a claim of “excusable neglect.” *United States v. Davenport*, 668 F.3d 1316, 1324 (11th Cir. 2012). And for the other alleged failings of her attorneys, Bouazizi raises no controlling case law that suggests the district court abused its discretion in finding that those failures did not justify granting relief from judgment.

Bouazizi also argues that she is entitled to relief because she claims to now proffer newly discovered evidence. Under Rule 60(b)(2), “newly discovered

² While Bouazizi’s notice of appeal also raises the denial of her motions for sanctions as well as the order connected with the motion for clarification, there is no substantial discussion of those matters in her initial brief. We consider any related arguments therefore waived. *United States v. Silvestri*, 409 F.3d 1311, 1338 n.18 (11th Cir. 2005).

evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)" can provide reason for relief from judgment. But the only "newly discovered evidence" Bouazizi raises in her brief is a legal theory concerning the Family and Medical Leave Act. That is a legal argument, and she cannot raise it under a Rule 60(b)(2) motion by labeling it as evidence.

The claims that the defendants' and Bouazizi's own attorneys made misrepresentations and committed fraud under Rule 60(b)(3) cannot succeed either. Rule 60(b)(3) states that relief from judgment may issue for "fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." In other words, Bouazizi's claims against her own attorneys under this subsection fail from the start; even if they made misrepresentations, they are not an "opposing party." And her brief's allegations of fraud on the part of the defendants' attorneys are nothing more than conclusory. Bouazizi needs to show "clear and convincing" evidence of fraud in order to merit relief under Rule 60(b)(3). *Stansell v. Revolutionary Armed Forces of Colombia*, 771 F.3d 713, 734 (11th Cir. 2014). That she did not do.

Neither can Bouazizi prevail under Rule 60(b)(6), which provides that relief from judgment may issue for "any other reason that justifies relief." That subsection is only for "cases that do not fall into any of the other categories listed in parts (1)-(5) of Rule 60(b)." *BUC Int'l Corp. v. Int'l Yacht Council Ltd.*, 517 F.3d 1271, 1275 n.4 (11th Cir. 2008). Bouazizi alleges negligence of her attorneys in connection with Rule 60(b)(6). That claim we already addressed under Rule

60(b)(1); having found it unsuccessful there, she cannot resuscitate it under Rule 60(b)(6).

And finally, to the extent Bouazizi argues that the district court's denial of her motions for reconsideration was error, that argument fails too. If she did not show that the underlying denial of relief from judgment was not an abuse of discretion, she can hardly show that a denial of a subsequent motion for reconsideration was an abuse of discretion either. *Cf. Corwin*, 475 F.3d at 1254 (district court did not abuse its discretion in denying a motion for reconsideration because "the record support[ed] the [underlying] grant of summary judgment"). In connection with her motions for reconsideration, Bouazizi only refers to mistakes and negligence by her attorneys, and fraud by both her attorneys and the defendants' attorneys. As with the motion for relief from judgment, Bouazizi has presented no controlling case to us that her often conclusory allegations mandate reconsideration.

IV.

The litigation before us today began in 2015. Three amendments to the complaint, dismissal with prejudice, two motions for relief from judgment, and various motions of reconsideration later, we were presented with this appeal. The orders denying relief from judgment or reconsideration of the district court's orders are reviewed for abuse of discretion. Bouazizi did not show that sort of error.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10429-DD

JACQUELYN BOUAZIZI,

Plaintiff - Appellant,

versus

HILLSBOROUGH COUNTY,

HILLSBOROUGH COUNTY CIVIL SERVICE BOARD,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before JORDAN, NEWSOM, and GRANT, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Jacquelyn Bouazizi is DENIED.

ORD-41

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 20-10429

District Court Docket No.
8:19-cv-00657-VMC-TGW

JACQUELYN BOUAZIZI,

Plaintiff - Appellant,

versus

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Defendants - Appellees.

Appeal from the United States District Court for the
Middle District of Florida

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: January 29, 2021
For the Court: DAVID J. SMITH, Clerk of Court
By: Djuanna H. Clark

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10429
Non-Argument Calendar

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II.

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III.

A.

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B.

We do, however, have jurisdiction to review the orders disposing of Bouazizi’s post-judgment motions. The only arguments Bouazizi raises in her initial brief contend that relief from judgment is warranted under Rule 60. She argues that she is entitled to relief because of excusable neglect under Rule 60(b)(1), newly discovered evidence under Rule 60(b)(2), fraud or

~~misrepresentation under Rule 60(b)(3), and any other reason justifying relief under Rule 60(b)(6).~~² Bouazizi has not shown that she can succeed under any of these grounds.

Bouazizi spends most of her initial brief arguing that her attorneys committed excusable neglect, and that such neglect justifies relief from judgment. In particular, she alleges that her attorneys were negligent in failing to follow court orders, failing to respond to motions in a timely manner, failing to present evidence, and failing to argue that the complaints were not time-barred. *Id.* Under Rule 60(b)(1), relief from judgment may issue for “mistake, inadvertence, surprise, or excusable neglect.” In this Circuit, “the party seeking relief under Rule 60(b)(1) must provide a justification so compelling that the district court had to vacate the challenged order.” *Architectural Ingenieria Siglo XXI, LLC v. Dominican Republic*, 788 F.3d 1329, 1343 (11th Cir. 2015). But much of what Bouazizi complains of are legal errors, which our precedent forecloses from supporting a claim of “excusable neglect.” *United States v. Davenport*, 668 F.3d 1316, 1324 (11th Cir. 2012). And for the other alleged failings of her attorneys, Bouazizi raises no controlling case law that suggests the district court abused its discretion in finding that those failures did not justify granting relief from judgment.

Bouazizi also argues that she is entitled to relief because she claims to now proffer newly discovered evidence. Under Rule 60(b)(2), “newly discovered

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~~evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)" can provide reason for relief from judgment.~~ But the only "newly discovered evidence" Bouazizi raises in her brief is a legal theory concerning the Family and Medical Leave Act. That is a legal argument, and she cannot raise it under a Rule 60(b)(2) motion by labeling it as evidence.

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Neither can Bouazizi prevail under Rule 60(b)(6), which provides that relief from judgment may issue for "any other reason that justifies relief." That subsection is only for "cases that do not fall into any of the other categories listed in parts (1)-(5) of Rule 60(b)." *BUC Int'l Corp. v. Int'l Yacht Council Ltd.*, 517 F.3d 1271, 1275 n.4 (11th Cir. 2008). Bouazizi alleges negligence of her attorneys in connection with Rule 60(b)(6). That claim we already addressed under Rule

~~60(b)(1); having found it unsuccessful there, she cannot resuscitate it under Rule 60(b)(6).~~

And finally, to the extent Bouazizi argues that the district court's denial of her motions for reconsideration was error, that argument fails too. If she did not show that the underlying denial of relief from judgment was not an abuse of discretion, she can hardly show that a denial of a subsequent motion for reconsideration was an abuse of discretion either. *Cf. Corwin*, 475 F.3d at 1254 (district court did not abuse its discretion in denying a motion for reconsideration because "the record support[ed] the [underlying] grant of summary judgment"). In connection with her motions for reconsideration, Bouazizi only refers to mistakes and negligence by her attorneys, and fraud by both her attorneys and the defendants' attorneys. As with the motion for relief from judgment, Bouazizi has presented no controlling case to us that her often conclusory allegations mandate reconsideration.

IV.

The litigation before us today began in 2015. Three amendments to the complaint, dismissal with prejudice, two motions for relief from judgment, and various motions of reconsideration later, we were presented with this appeal. The orders denying relief from judgment or reconsideration of the district court's orders are reviewed for abuse of discretion. Bouazizi did not show that sort of error.

AFFIRMED.

II. Orders of the United States District Court for the Middle District of Florida by Judge Covington, Doc. 43, Doc. 50, Doc. 68, Doc. 69, Doc. 71, and Doc. 82 **Exhibit 2**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JACQUELYN BOUAZIZI,

Plaintiff,

v.

Case No. 8:19-cv-657-T-33TGW

HILLSBOROUGH COUNTY, and
HILLSBOROUGH COUNTY CIVIL
SERVICE BOARD,

Defendants.

ORDER

This matter comes before the Court upon consideration of Defendant Hillsborough County's Motion to Dismiss the Third Amended Complaint (Doc. # 36), filed on May 15, 2019. Plaintiff Jacquelyn Bouazizi responded on May 17, 2019 (Doc. # 37), and the County replied on May 20, 2019. (Doc. # 39). For the reasons that follow, the Motion is granted and the claims against the County are dismissed with prejudice.

I. Background

On November 18, 2015, Bouazizi initiated this action in state court. Bouazizi subsequently filed the Second Amended Complaint, asserting claims under Section 1983, the Equal Pay Act, and Title VII against the County and Defendant

Hillsborough County Civil Service Board on February 20, 2019.

(Doc. # 1-1). Because the Second Amended Complaint raised federal claims for the first time, the County then removed the case to this Court on March 18, 2019. (Doc. # 1). After the case was removed, the County and the Civil Service Board moved to dismiss the Second Amended Complaint. (Doc. ## 4, 10). Bouazizi failed to respond to the motions to dismiss, so the Court granted the motions as unopposed and closed the case on April 11, 2019. (Doc. # 19).

Subsequently, Bouazizi moved for reconsideration of the Court's dismissal order and asked for permission to file a Third Amended Complaint to assert Section 1983 claims against the County and the Civil Service Board. (Doc. # 22). The Court granted the motion to the extent the Court "reopen[ed] the case and permit[ted] Bouazizi to file a third amended complaint solely asserting Section 1983 claims by May 10, 2019." (Doc. # 32).

Bouazizi then filed her Third Amended Complaint on May 9, 2019, asserting claims under both Section 1983 and the Equal Pay Act against the County and the Civil Service Board. (Doc. # 33). In the Third Amended Complaint, Bouazizi alleges she began working for the Hillsborough County Board of County Commissioners in 1990 and was "promoted from a Senior Customer

Service Representative to the position of Solid Waste Coordinator/Franchise Activity Coordinator in June 2004." (Id. at 2). Although Bouazizi remained a Franchise Activity Coordinator until 2014, her pay grade did not increase. (Id.). She first filed an EEOC complaint against the County in 2003 and "continued to file EEOC complaints against [the County and Civil Service Board] until 2014." (Id. at 3).

She alleges the County "intentionally did not promote nor give [her] pay increases because [she] was a Black older Female with a disability and had filed complaints against the [County] for discrimination." (Id.). Bouazizi alleges the County promoted a younger Black man, Damien Tramel, instead of her despite the fact that she outperformed Tramel. (Id.). She lists three other individuals who were promoted or paid higher than her and alleges the failure to treat her the same way as these individuals was based on race, gender, and age discrimination. (Id. at 5). She alleges that male employees were paid better than her for performing the same work. (Id. at 12). Bouazizi also claims that the County discriminated against her by wrongfully discontinuing the disability pay she was receiving during a Family and Medical Leave Act leave she took in August 2013. (Id. at 5-6).

Bouazizi "ended employment with [the County] in 2014 and was 62 years old when she resigned." (Id. at 2). Although she resigned in 2014, Bouazizi claims her "permanent psychological and physical injuries from the discrimination by [the County and Civil Service Board] became apparent in 2015." (Id. at 3).

The County now moves to dismiss the Section 1983 and Equal Pay Act claims against it because these claims are time-barred. (Doc. # 36). Bouazizi has responded (Doc. # 37), and the County has replied. (Doc. # 39). The Motion is ripe for review.

II. Legal Standard

On a motion to dismiss pursuant to Rule 12(b)(6), this Court accepts as true all the allegations in the complaint and construes them in the light most favorable to the plaintiff. Jackson v. BellSouth Telecomm., 372 F.3d 1250, 1262 (11th Cir. 2004). Further, the Court favors the plaintiff with all reasonable inferences from the allegations in the complaint. Stephens v. Dep't of Health & Human Servs., 901 F.2d 1571, 1573 (11th Cir. 1990). But,

[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic

recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal citations omitted). Courts are not "bound to accept as true a legal conclusion couched as a factual allegation." Papasan v. Allain, 478 U.S. 265, 286 (1986). "The scope of review must be limited to the four corners of the complaint" and attached exhibits. St. George v. Pinellas County, 285 F.3d 1334, 1337 (11th Cir. 2002).

III. Analysis

The County seeks dismissal of the Section 1983 claims (Counts I and II) and the Equal Pay Act claim (Count V). The Court will address them separately.

A. Section 1983 Claims

Bouazizi asserts claims for violation of the Equal Protection Clause (Count I) and retaliation (Count II) under 42 U.S.C. § 1983. (Doc. # 33 at 3-8). A Section 1983 claim accrues, and the statute of limitations begins to run, when the plaintiff "know[s] or should know (1) that [she has] suffered the injury that forms the basis of [her] complaint and (2) who has inflicted the injury." Chappell v. Rich, 340 F.3d 1279, 1283 (11th Cir. 2003). "Florida's four-year

statute of limitations applies to such claims of deprivation of rights under" Section 1983. Id.

The County argues that "[i]n public employment cases, claims accrue when an employment decision is made and communicated to the plaintiff." (Doc. # 36 at 2). And it contends that Bouazizi "certainly 'knew or had reason to know' that whatever injury 'she had experienced occurred while she was employed with the County." (Id. at 3). Indeed, the County points out that every allegation of discriminatory or retaliatory conduct in the Third Amended Complaint took place while Bouazizi was still employed with the County. (Doc. # 39 at 2). Thus, the County reasons, Bouazizi knew or had reason to know of her Section 1983 claims based on this alleged discrimination and retaliation before she left her job in 2014. (Doc. # 36 at 3).

The Court agrees. All the discriminatory and retaliatory conduct Bouazizi describes occurred while she was employed by the County and, as such, Bouazizi was aware of this conduct before she left her employment. Indeed, the Third Amended Complaint acknowledges that Bouazizi filed numerous EEOC complaints against the County between 2003 and 2014, showing that Bouazizi was aware of the alleged unlawful treatment in 2014 when she resigned. (Doc. # 33 at 3). Because Bouazizi's

employment ended in 2014, the statute of limitations ran four years later – sometime in 2018. Bouazizi first asserted Section 1983 claims on February 20, 2019 – after the 2018 deadline. Therefore, the Section 1983 claims are time-barred.

Although Bouazizi agrees that a four-year statute of limitations applies, she insists that her Section 1983 claims are timely because she only “discovered that she suffered physical, mental, and psychological injuries in the middle of 2015.” (Doc. # 37 at 2). She argues that “the statute of limitations in [Section] 1983 actions do[es] not begin when the employee is no longer employed” but rather “when the injury is discovered.” (*Id.*).

But neither of the two cases Bouazizi cites in her response support her position. Bouazizi’s reliance on United States v. Kubrick, 444 U.S. 111 (1979), is unavailing. That case dealt with a Federal Tort Claims Act claim for medical injuries the plaintiff claimed were negligently inflicted by V.A. doctors. Id. at 113-14. Although that plaintiff was aware of his injury – partial deafness – and its probable cause – the medical treatment he had received at the V.A. – in 1969, the plaintiff argued the statute of limitations was not triggered until 1971 when a doctor indicated that the V.A.’s medical treatment had been “improper.” Id. at 118-20. The

Supreme Court rejected this argument, explaining that it was "unconvinced that for statute of limitations purposes a plaintiff's ignorance of his legal rights and his ignorance of the fact of his injury or its cause should receive identical treatment." Id. at 122.

And, in Delaware State College v. Ricks, 449 U.S. 250 (1980), the Supreme Court held that the statute of limitations began to run at the time of the alleged discriminatory employment decision that was communicated to the plaintiff employee, even though that alleged discrimination occurred before the plaintiff's termination. Id. at 258 ("[T]he only alleged discrimination occurred - and the filing limitations periods therefore commenced - at the time the tenure decision was made and communicated to Ricks. That is so even though one of the effects of the denial of tenure - the eventual loss of a teaching position - did not occur until later."). Thus, the Supreme Court explained that "[t]he proper focus is upon the time of the discriminatory acts, not upon the time at which the consequences of the acts became most painful." Id. (quoting Abramson v. Univ. of Hawaii, 594 F.2d 202, 209 (9th Cir. 1979)).

The holdings of these case do not support Bouazizi's argument that the statute of limitations should begin to run

in 2015 – when the “permanent psychological and physical injuries from the discrimination . . . became apparent” – rather than in 2014, by which time all the discriminatory acts of which Bouazizi was aware had occurred. The Third Amended Complaint makes clear that Bouazizi was aware that the County allegedly treated her worse than her co-workers and that she had made numerous EEOC complaints during her employment about this treatment. (Doc. # 33 at 2-3). As Bouazizi undoubtedly knew or had reason to know about the alleged unlawful treatment by the County in 2014, the Section 1983 claims are time-barred. Counts I and II are dismissed with prejudice.

B. Equal Pay Act claim

In Count V, Bouazizi asserts a claim under the Equal Pay Act against the County, alleging the County paid Bouazizi less than it paid white male and white female employees in the same Franchise Activity Coordinator position. (Doc. # 33 at 12-13).

The Equal Pay Act makes it unlawful for an employer to “discriminate . . . between employees on the basis of sex by paying wages to employees . . . at a rate less than the rate at which he pays wages to employees of the opposite sex . . . for equal work on jobs the performance of which requires

equal skill, effort, and responsibility, and which are performed under similar working conditions." 29 U.S.C. § 206(d)(1). The statute of limitations for Equal Pay Act claims is set out in 29 U.S.C. § 255(a). Glenn v. Gen. Motors Corp., 841 F.2d 1567, 1572 (11th Cir. 1988). Section 255(a) sets a general two-year statute of limitations but extends that to three years for willful violations of the Equal Pay Act. See 29 U.S.C. § 255(a) (stating that an action "may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued").

As a preliminary matter, the Court notes that Bouazizi did not have the Court's permission to assert an Equal Pay Act claim in her Third Amended Complaint. Rather, in its Order reopening the case, the Court "permit[ted] Bouazizi to file a third amended complaint **solely** asserting Section 1983 claims." (Doc. # 32) (emphasis added). Thus, Bouazizi's attempt to assert an Equal Pay Act claim in her Third Amended Complaint was improper. The Court would be within its authority to dismiss or strike this claim for failure to

comply with the Court's Order. See Gregory v. City of Tarpon Springs, No. 8:16-cv-237-T-33AEP, 2016 WL 7157554, at *5 (M.D. Fla. Dec. 8, 2016) (dismissing second amended complaint that added a new defendant even though the Court's order dismissing the original complaint had only granted the plaintiff leave to amend the existing claims against the existing defendants).

Regardless, the County argues this claim is time-barred under either the two- or three-year statute of limitations for the Equal Pay Act. (Doc. # 36 at 3-4). The Court agrees. Bouazizi's employment with the County ended in 2014 – by which time Bouazizi knew or should have known of the alleged violation of the Equal Pay Act. But she first asserted her Equal Pay Act claim on February 20, 2019. (Doc. # 1-1). Therefore, even if the County's alleged violation of the Equal Pay Act was willful, Bouazizi's claim is time-barred because it was filed over three years after the claim accrued.

Notably, Bouazizi's response to the Motion does not address the Equal Pay Act claim at all. Therefore, it appears Bouazizi agrees that this claim is time-barred and should be dismissed. Count V is dismissed with prejudice.

Accordingly, it is now

ORDERED, ADJUDGED, and DECREED:

- (1) Defendant Hillsborough County's Motion to Dismiss the Third Amended Complaint (Doc. # 36) is **GRANTED**.
- (2) Counts I, II, and V are **DISMISSED** with prejudice.
- (3) The Clerk is directed to terminate the County as a party to this action.

DONE and **ORDERED** in Chambers in Tampa, Florida, this
24th day of May, 2019.

Virginia M. Hernandez Covington
VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JACQUELYN BOUAZIZI,

Plaintiff,

v.

Case No. 8:19-cv-657-T-33TGW

HILLSBOROUGH COUNTY and
HILLSBOROUGH COUNTY CIVIL
SERVICE BOARD,

Defendants.

ORDER

This matter comes before the Court upon consideration of Defendant Hillsborough County Civil Service Board's Motion to Strike the Third Amended Complaint (Doc. # 40) and Motion to Dismiss Counts III and IV of the Third Amended Complaint (Doc. # 41), both filed on May 23, 2019. Plaintiff Jacquelyn Bouazizi responded on June 5 and June 21, 2019, respectively. (Doc. ## 47, 49).

For the reasons that follow, the Motion to Dismiss Counts III and IV is granted and the claims against the Civil Service Board are dismissed with prejudice. In light of the dismissal of Counts III and IV, the Motion to Strike is denied as moot.

I. Background

On November 18, 2015, Bouazizi initiated this action in state court. Bouazizi subsequently filed the Second Amended Complaint, asserting claims under Section 1983, the Equal Pay Act, and Title VII against the Civil Service Board and Defendant Hillsborough County on February 20, 2019. (Doc. # 1-1). Because the Second Amended Complaint raised federal claims for the first time, the County then removed the case to this Court on March 18, 2019. (Doc. # 1). After the case was removed, the County and the Civil Service Board moved to dismiss the Second Amended Complaint. (Doc. ## 4, 10). Bouazizi failed to respond to the motions to dismiss, so the Court granted the motions as unopposed and closed the case on April 11, 2019. (Doc. # 19).

Subsequently, Bouazizi moved for reconsideration of the Court's dismissal order and asked for permission to file a Third Amended Complaint to assert Section 1983 claims against the County and the Civil Service Board. (Doc. # 22). The Court granted the motion to the extent the Court "reopen[ed] the case and permit[ted] Bouazizi to file a third amended complaint solely asserting Section 1983 claims by May 10, 2019." (Doc. # 32).

Bouazizi then filed her Third Amended Complaint on May 9, 2019, asserting claims under both Section 1983 and the Equal Pay Act against the County and the Civil Service Board. (Doc. # 33). In the Third Amended Complaint, Bouazizi alleges she began working for the Hillsborough County Board of County Commissioners in 1990 and was "promoted from a Senior Customer Service Representative to the position of Solid Waste Coordinator/Franchise Activity Coordinator in June 2004." (Id. at 2). Although Bouazizi remained a Franchise Activity Coordinator until 2014, her pay grade did not increase. (Id.). She first filed an EEOC complaint in 2003 and "continued to file EEOC complaints against [the County and the Civil Service Board] until 2014." (Id. at 3).

Bouazizi alleges the Civil Service Board "discriminated against [her] because of her race, gender, and age." (Id. at 9). Bouazizi "requested that her position as a Franchise Activity Coordinator in the Hillsborough County Solid Waste Administration Section . . . be reclassified because she was managing contracts as the General Manager I position required." (Id.). But the Civil Service Board allegedly "refused to reclassify [Bouazizi's] position because of her age, race, gender, and retaliation although it reclassified positions of white men and white females that worked as

Franchise Activity Coordinators." (Id. at 10). Bouazizi alleges the Civil Service Board hired a younger, less experienced man with a criminal record for the position of Special Projects Coordinator, even though she was better qualified and "had the highest interviewing score." (Id.). She further alleges the Civil Service Board hired two men to perform the same work as Bouazizi, yet paid those men six grades higher than her and refused to increase her pay. (Id. at 10-11). She insists that the lower pay she received compared to male employees was "not due to a seniority system, a merit system or a system that measures the difference in pay employee[s] earn[] by the quality and quantity of work." (Id. at 12).

Bouazizi "ended employment with Defendant in 2014 and was 62 years old when she resigned." (Id. at 2). Although she resigned in 2014, Bouazizi claims her "permanent psychological and physical injuries from the discrimination by [the County and Civil Service Board] became apparent in 2015." (Id. at 3).

The County moved to dismiss the Section 1983 and Equal Pay Act claims against it on May 15, 2019. (Doc. # 36). After briefing, the Court granted that motion and dismissed the

claims against the County as time-barred on May 24, 2019. (Doc. # 43).

Now the Civil Service Board moves to strike the Third Amended Complaint or dismiss the two claims asserted against it. (Doc. ## 40, 41). Bouazizi has responded (Doc. ## 47, 49), and the Motions are ripe for review.

II. Legal Standard

On a motion to dismiss pursuant to Rule 12(b) (6), this Court accepts as true all the allegations in the complaint and construes them in the light most favorable to the plaintiff. Jackson v. Bellsouth Telecomms., 372 F.3d 1250, 1262 (11th Cir. 2004). Further, the Court favors the plaintiff with all reasonable inferences from the allegations in the complaint. Stephens v. Dep't of Health & Human Servs., 901 F.2d 1571, 1573 (11th Cir. 1990). But,

[w]hile a complaint attacked by a Rule 12(b) (6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal citations omitted). Courts are not "bound to accept as true a legal conclusion couched as a factual allegation." Papasan

v. Allain, 478 U.S. 265, 286 (1986). "The scope of review must be limited to the four corners of the complaint" and attached exhibits. St. George v. Pinellas County, 285 F.3d 1334, 1337 (11th Cir. 2002).

Additionally, motions to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) may attack jurisdiction facially or factually. Morrison v. Amway Corp., 323 F.3d 920, 924 n.5 (11th Cir. 2003). Where the jurisdictional attack is based on the face of the pleadings, the Court merely looks to determine whether the plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in the plaintiff's complaint are taken as true for purposes of the motion. Lawrence v. Dunbar, 919 F.2d 1525, 1529 (11th Cir. 1990). But, where the jurisdictional attack is factual, the Court may consider "matters outside the pleadings, such as testimony and affidavits" to determine whether jurisdiction in fact exists. Id.

III. Analysis

The Civil Service Board seeks dismissal of the Section 1983 and Equal Pay Act claims against it on various grounds. Specifically, it argues this Court lacks jurisdiction over Bouazizi's claims because "(1) the state court dismissed the Civil Service Board with prejudice and [Bouazizi] failed to

appeal or seek reconsideration; (2) the Civil Service Board has never been Bouazizi's employer; and (3) Bouazizi's claims are time-barred." (Doc. # 41 at 5). Even if these arguments should fail, the Civil Service Board insists dismissal is still appropriate because Bouazizi "also fails to state a plausible cause of action against the Civil Service Board." (Id. at 10).

The Court need only address the arguments that the state court already dismissed the Civil Service Board as a party to this action and that the claims against it are time-barred.

A. Prior Dismissal

The County explains that the state court dismissed with prejudice the Florida Civil Rights Act (FCRA) claims Bouazizi asserted against it in her Amended Complaint. (Id. at 8-10; Doc. # 42-1; Doc. # 1-2 at 45-50). Thus, the Civil Service Board reasons, it "is no longer in the case [and] the claims against [it] alleged in Counts III and IV of the Third Amended Complaint should be dismissed with prejudice." (Doc. # 41 at 9-10).

The Court disagrees with the Civil Service Board. The state court dismissed the FCRA claims against the Civil Service Board with prejudice after it concluded that it lacked jurisdiction over those claims. (Doc. # 42-1). It never

addressed whether Bouazizi could assert the federal claims currently pending. Indeed, the state court's short dismissal order does not state that Bouazizi was not permitted to amend her Amended Complaint to assert new claims against the Civil Service Board.

The Civil Service Board cites no case law for the proposition that dismissal of certain state claims against a defendant precludes a plaintiff from later asserting federal claims against the same defendant in the same case. Thus, the Court finds that it does not lack jurisdiction over the Section 1983 and Equal Pay Act claims.

B. Statute of Limitations

The Civil Service Board also argues that this Court lacks jurisdiction because the claims against it are time-barred. (Doc. # 41 at 7-8). However, statute of limitations arguments are analyzed under Rule 12(b) (6), rather than Rule 12(b) (1). "A Rule 12(b) (6) dismissal on statute of limitations grounds is appropriate 'if it is apparent from the face of the complaint that the claim is time-barred.'" Gonsalvez v. Celebrity Cruises Inc., 750 F.3d 1195, 1197 (11th Cir. 2013) (quoting La Grasta v. First Union Sec., Inc., 358 F.3d 840, 845 (11th Cir. 2004)).

And, importantly, the Court already ruled that the Section 1983 and Equal Pay Act claims against the County were time-barred and dismissed those claims with prejudice. (Doc. # 43). The same analysis from the Court's prior order applies here.

Regarding Count III for violation of the Equal Pay Act, the statute of limitations is either two or three years, depending on whether the violation was willful. Glenn v. Gen. Motors Corp., 841 F.2d 1567, 1572 (11th Cir. 1988) (citing 29 U.S.C. § 255(a)). Bouazizi first asserted her Equal Pay Act claim on February 20, 2019. (Doc. # 1-1). Therefore, even if she alleged a willful violation, the violation must have occurred on or after February 20, 2016, to be timely.

The allegations of the Third Amended Complaint, however, all involve conduct either the County or the Civil Service Board committed before Bouazizi left her employment in 2014. (Doc. # 33 8-9). Therefore, Bouazizi's Equal Pay Act claim is time-barred.

In Count IV, Bouazizi asserts a Section 1983 claim for an alleged violation of the Equal Protection Clause. (Id. at 9-11). A Section 1983 claim accrues, and the statute of limitations begins to run, when the plaintiff "know[s] or should know (1) that [she has] suffered the injury that forms

the basis of [her] complaint and (2) who has inflicted the injury." Chappell v. Rich, 340 F.3d 1279, 1283 (11th Cir. 2003). "Florida's four-year statute of limitations applies to such claims of deprivation of rights under" Section 1983. Id.

Again, all the alleged discriminatory treatment Bouazizi complains of occurred during her employment. Indeed, Bouazizi filed various EEOC complaints about the alleged discriminatory treatment between 2003 and 2014, showing that Bouazizi knew — or at least should have known — about the injury that forms the basis of her claims at the time her employment ended. (Doc. # 33 at 3). And her employment ended in 2014 — over four years before she first asserted a Section 1983 claim in her Second Amended Complaint. (Doc. # 1-1). Thus, the Section 1983 claim against the Civil Service Board is also time-barred and dismissed with prejudice.

Bouazizi's argument to the contrary is unavailing. Regarding this issue, Bouazizi's response merely states — without citation to any legal authority — "the [] Civil Service Board's issue regarding timeliness was addressed in the affidavit filed by [Bouazizi]." (Doc. # 49 at 2). Indeed, Bouazizi submitted an affidavit asserting that her failure to timely bring the federal claims was the fault of her previous two attorneys in this case. (Doc. # 48). Thus, Bouazizi

insists in her affidavit that "this case should not be time-barred" because her prior attorneys "failed to represent [her] in her best interest and in a competent manner." (Id. at 1).

The Court is unpersuaded by this legally unsupported argument. Bouazizi's total failure to support this argument with legal authority justifies the argument's rejection. See Herbert v. Architect of Capitol, 839 F. Supp. 2d 284, 298 (D.D.C. 2012) ("[T]he [defendant] has simply failed to support its argument with any meaningful measure of factual or legal argument. Courts need not consider cursory arguments of this kind, and the Court declines to do so here."). Furthermore, even considering this cursory argument, Bouazizi's past attorneys' conduct would not justify tolling the statute of limitations for her claims. See Williams v. Ga. Dep't of Def. Nat. Guard Headquarters, 147 F. App'x 134, 136 (11th Cir. 2005) ("We have held that attorney error, alone, is insufficient to toll the running of the statute of limitations.").

Therefore, both the Equal Pay Act and Section 1983 claims against the Civil Service Board are dismissed with prejudice as time-barred.

C. Motion to Strike

Because the Court has already determined that the claims against the Civil Service Board are time-barred, the Court need not address the Civil Service Board's Motion to Strike the Third Amended Complaint. (Doc. # 40). The Motion to Strike is denied as moot.

Accordingly, it is now

ORDERED, ADJUDGED, and DECREED:

- (1) Defendant Hillsborough County Civil Service Board's Motion to Dismiss Counts III and IV of the Third Amended Complaint (Doc. # 41) is **GRANTED**. Counts III and IV are **DISMISSED** with prejudice.
- (2) The Motion to Strike the Third Amended Complaint (Doc. # 40) is **DENIED** as moot.
- (3) As all claims in this case have now been dismissed, the Clerk is directed to **CLOSE** the case.

DONE and **ORDERED** in Chambers in Tampa, Florida, this 24th day of June, 2019.



VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

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U.S. District Court
Middle District of Florida

Notice of Electronic Filing
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Case Name: Bouazizi v. Hillsborough County
et al
Case Number: 8:19-cv-00657-VMC-TGW
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WARNING: CASE CLOSED on 06/24/2019

Document Number: 68

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68 (No document attached)

Docket Text:
ENDORSED ORDER: Pro se Plaintiff
Bouazizi has filed a reply (Doc. # [67]) to the motion for reconsideration
(Doc. # [63]) without first seeking leave of Court. This is impermissible.
Local Rule 3.01(c) provides that "No party shall file any reply or further
memorandum directed to the motion or response allowed in (a) and (b) unless
the Court grants leave." Accordingly, the Court directs the Clerk to
strike the unauthorized reply. (Doc. # [67]). Signed by Judge Virginia M.
Hernandez Covington on 12/26/2019. (DMD)

8:19-cv-00657-VMC-TGW Notice has been electronically mailed to:
Peter W. Zinober peter.zinober@ogletree.com, chris.cascino@ogletree.com,
denise.banach@ogletree.com, megan.wade@ogletree.com, shelley.franz@ogletree.com,
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Peter John Grilli peter@grillimeditation.com, candace@grillimeditation.com

Stephen M. Todd todds@hillsboroughcounty.org, ConnorsA@hillsboroughcounty.org,
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Gretchen M. Lehman gretchen.lehman@ogletree.com, lennon.graves@ogletree.com,
tamdocketing@odnss.com

8:19-cv-00657-TGW Notice has been delivered by other means to:

Jacquelyn Bouazizi
3619 E. Caracas St.
Tampa, FL 33610

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JACQUELYN BOUAZIZI,

Plaintiff,

v.

Case No. 8:19-cv-657-T-33TGW

HILLSBOROUGH COUNTY and
HILLSBOROUGH COUNTY CIVIL
SERVICE BOARD,

Defendants.

ORDER

This matter comes before the Court upon consideration of pro se Plaintiff Jacquelyn Bouazizi's Motion for Relief from Judgment or Order under Rule 60, filed on December 5, 2019. (Doc. # 63). Defendants Hillsborough County and Hillsborough County Civil Service Board responded in opposition on December 13 and 19, 2019. (Doc. ## 65, 66). For the reasons that follow, the Motion is denied.

I. Background

On November 18, 2015, Bouazizi initiated this action in state court. Over three years later, Bouazizi filed the Second Amended Complaint, asserting claims under Section 1983, the Equal Pay Act, and Title VII against the County and the Civil

(Id. at 2). Although Bouazizi remained a Franchise Activity Coordinator until 2014, her pay grade did not increase. (Id.). She first filed an EEOC complaint in 2003 and "continued to file EEOC complaints against [the County and the Civil Service Board] until 2014." (Id. at 3).

Bouazizi alleges that the Civil Service Board "discriminated against [her] because of her race, gender, and age" throughout her employment. (Id. at 9). Bouazizi "ended employment with Defendant in 2014 and was 62 years old when she resigned." (Id. at 2). Although she resigned in 2014, Bouazizi claims in the Third Amended Complaint that her "permanent psychological and physical injuries from the discrimination by [the County and Civil Service Board] became apparent in 2015." (Id. at 3).

The County moved to dismiss the Section 1983 and Equal Pay Act claims against it on May 15, 2019. (Doc. # 36). The Court granted that motion and dismissed the claims against the County as time-barred on May 24, 2019. (Doc. # 43). The Court explained that Bouazizi's Section 1983 claim was time barred because it was brought over four years after Bouazizi quit her job with the County, by which time Bouazizi was aware of the allegedly discriminatory treatment. (Id. at 6-9). Likewise, the Court held that Bouazizi's Equal Pay Act claim

was time barred because Bouazizi first asserted this claim over three years after she left her job with the County, "by which time Bouazizi knew or should have known of the alleged violation of the Equal Pay Act." (Id. at 11).

The Civil Service Board then moved to strike the Third Amended Complaint or dismiss the two claims asserted against it. (Doc. ## 40, 41). The Court dismissed the claims against the Civil Service Board with prejudice as time-barred on June 24, 2019, for the same reasons the Court found the claims against the County time barred. (Doc. # 50). Thus, the case was closed on June 24, 2019.

Bouazizi's counsel — Mr. Carl Hayes — was permitted to withdraw from the case on July 9, 2019. (Doc. # 60). Bouazizi, proceeding pro se, has now filed a Motion for Relief from Judgment or Order under Rule 60, seeking to vacate the orders dismissing her claims as time barred. (Doc. # 63). The County and Civil Service Board have responded (Doc. ## 65, 66), and the Motion is ripe for review.

II. Legal Standard

"Federal Rules of Civil Procedure 59(e) and 60 govern motions for reconsideration." Beach Terrace Condo. Ass'n, Inc. v. Goldring Invs., No. 8:15-cv-1117-T-33TBM, 2015 WL 4548721, at *1 (M.D. Fla. July 28, 2015). "The time when the

party files the motion determines whether the motion will be evaluated under Rule 59(e) or Rule 60." Id. "A Rule 59(e) motion must be filed within 28 days after the entry of the judgment." Id. "Motions filed after the 28-day period will be decided under Federal Rule of Civil Procedure 60(b)." Id.

Here, the Motion was filed more than 28 days after the case was dismissed with prejudice, so Rule 60 applies. Rule 60(b) provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

A motion for relief from judgment must be made "within a reasonable time" and if predicated upon subsections 1-3,

must be made within one year of the Order in question. Fed. R. Civ. P. 60(c)(1).

III. Analysis

Bouazizi argues that the Court should vacate its Orders dismissing her claims with prejudice as time barred. (Doc. # 63). According to Bouazizi, her previous counsel, Mr. Hayes, made misrepresentations in the Second Amended Complaint and Third Amended Complaint about when she filed EEOC charges and when she became aware of the psychological damage caused by the County and Civil Service Board's allegedly discriminatory acts. (Id. at 3-7). She insists she was last issued a Right to Sue letter in 2014 and that she had been seeing a psychiatrist and was aware of the psychological issues caused by the alleged discrimination since 2006. (Id.).

Furthermore, Bouazizi alleges defense counsel made misrepresentations to the Court in their motions to dismiss both the Second Amended Complaint and the Third Amended Complaint. (Id. at 1-19). She asks the Court to require defense counsel and Mr. Hayes to submit evidence in support of the allegedly false statements they made in various pleadings and motions. (Id. at 3-19).

None of Bouazizi's arguments warrant reconsideration of the Court's Orders dismissing her claims. The Court dismissed

the Second Amended Complaint after Bouazizi failed to timely respond in opposition. (Doc. # 19). Although Bouazizi later moved to reopen the case and for leave to amend, Bouazizi's counsel tacitly conceded that the Title VII claims were time barred in her second motion for reconsideration because Bouazizi only requested leave to amend the Section 1983 claim on the basis that that claim was timely. (Doc. # 22). Thus, Bouazizi's Title VII claims from the Second Amended Complaint were dismissed because of her failure to timely respond to the motion to dismiss these claims and her decision not to seek leave to amend the Title VII claims. Even if Bouazizi had sought leave to amend the Title VII claims, those claims would have ultimately been dismissed as time barred for the reasons raised by the County and Civil Service Board in their motions to dismiss the Second Amended Complaint. (Doc. # 4 at 2-3; Doc. # 10 at 11-12).

The Section 1983 and Equal Pay Act claims asserted in the Third Amended Complaint are likewise time barred. Bouazizi alleged in the Third Amended Complaint that she quit her job in 2014 because of the discrimination she faced there and the psychological damage that discrimination supposedly caused. The statute of limitations for a Section 1983 claim is four years and begins to run when the plaintiff "know[s]

or should know (1) that [she has] suffered the injury that forms the basis of [her] complaint and (2) who has inflicted the injury." Chappell v. Rich, 340 F.3d 1279, 1283 (11th Cir. 2003). Thus, Bouazizi had four years from – at the latest – the day she quit in 2014 to assert a Section 1983 claim against the County and Civil Service Board. But, for whatever reason, the first complaint of Bouazizi's to assert a Section 1983 claim was her Second Amended Complaint filed in state court on February 20, 2019 – over four years after her employment ended. (Doc. # 1-1). Therefore, Bouazizi's Section 1983 claims are time barred.

The same is true of Bouazizi's Equal Pay Act claims. The Equal Pay Act has – at most – a three-year statute of limitations and begins to run from the time of the alleged violation of the Act. See 29 U.S.C. § 255(a) (stating that an action "may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued"); see also Glenn v. Gen. Motors Corp., 841 F.2d 1567, 1572 (11th Cir. 1988). Again, Bouazizi alleged the County and Civil Service Board violated the Equal

ORDERED, ADJUDGED, and DECREED:

Pro se Plaintiff Jacquelyn Bouazizi's Motion for Relief from Judgment or Order under Rule 60 (Doc. # 63) is **DENIED**.

DONE and **ORDERED** in Chambers in Tampa, Florida, this 27th day of December, 2019.

Virginia M. Hernandez Covington

VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

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et al Order on Motion for Reconsideration

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Middle District of Florida

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Docket Text:
ENDORSED ORDER: Plaintiff Bouazizi
has filed a pro se motion for reconsideration of the Court's December
27 order denying her motion for relief from judgment under Rule 60. (Doc.
[70]). The motion for reconsideration fails to raise any arguments that
warrant reconsideration of the Court's previous order. Accordingly,
the Court denies the motion for reconsideration. Signed by Judge Virginia
M. Hernandez Covington on 1/13/2020. (DMD)

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMRA DIVISION

JACQUELYN BOUAZIZI,

Plaintiff,

v.

Case No. 8:19-cv-657-T-33TGW

HILLSBOROUGH COUNTY and
HILLSBOROUGH COUNTY CIVIL
SERVICE BOARD,

Defendants.

ORDER

This matter comes before the Court upon consideration of pro se Plaintiff Jacquelyn Bouazizi's Motion for Clarification, filed on January 24, 2020. (Doc. # 79). For the reasons that follow, the Motion is granted to the extent the Court clarifies the status of the case as set forth below.

I. Background

On November 18, 2015, Bouazizi initiated this action in state court. Over three years later, Bouazizi filed the second amended complaint, asserting claims under Section 1983, the Equal Pay Act, and Title VII against the County and the Civil Service Board on February 20, 2019. (Doc. # 1-1). Because the second amended complaint raised federal claims for the first

time, the County removed the case to this Court. (Doc. # 1). After the case was removed, the County and the Civil Service Board moved to dismiss. (Doc. ## 4, 10). Because Bouazizi failed to respond to the motions to dismiss, the Court granted the motions as unopposed and closed the case. (Doc. # 19).

Subsequently, Bouazizi moved for reconsideration of the Court's dismissal order and asked for permission to file a third amended complaint only to amend her Section 1983 claims against the County and the Civil Service Board. (Doc. # 22). The Court granted the motion to the extent the Court "reopen[ed] the case and permit[ted] Bouazizi to file a third amended complaint solely asserting Section 1983 claims by May 10, 2019." (Doc. # 32).

Bouazizi filed her third amended complaint on May 9, 2019, asserting claims under both Section 1983 (discrimination and retaliation) and the Equal Pay Act against the County and the Civil Service Board. (Doc. # 33). The County moved to dismiss the Section 1983 and Equal Pay Act claims against it on May 15, 2019. (Doc. # 36). The Court granted that motion and dismissed the claims against the County as time barred on May 24, 2019. (Doc. # 43). The Court explained that Bouazizi's Section 1983 claims were time barred because they were brought over four years after

Bouazizi quit her job with the County, by which time Bouazizi was aware of the allegedly discriminatory and retaliatory treatment. (Id. at 6-9). Likewise, the Court held that Bouazizi's Equal Pay Act claim was time barred because ~~Bouazizi first asserted this claim over three years after she left her job with the County, "by which time Bouazizi knew or should have known of the alleged violation of the Equal Pay Act."~~ (Id. at 11).

The Civil Service Board then moved to strike the third amended complaint or dismiss the two claims asserted against it. (Doc. ## 40, 41). The Court dismissed the claims against the Civil Service Board with prejudice as time barred on June 24, 2019, for the same reasons the Court found the claims against the County time barred. (Doc. # 50). Thus, the case was closed on June 24, 2019.

Bouazizi's counsel - Mr. Carl Hayes - was permitted to withdraw from the case on July 9, 2019. (Doc. # 60). Bouazizi, proceeding pro se, then filed numerous motions seeking to vacate the orders dismissing her claims as time barred. (Doc. ## 63, 70, 72, 74, 75). Because those motions lacked merit, the Court denied them. (Doc. ## 69, 71, 73, 76).

Now, Bouazizi has filed a Motion for Clarification, requesting "that this Court clarify its Orders of May 24,

ORDERED, ADJUDGED, and DECREED:

Pro se Plaintiff Jacquelyn Bouazizi's Motion for Clarification (Doc. # 79) is **GRANTED** to the extent the Court has provided its explanation to Bouazizi herein. This case is closed and shall remain closed.

DONE and **ORDERED** in Chambers in Tampa, Florida, this 27th day of January, 2020.

Virginia M. Hernandez Covington
VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

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Docket Text:
ENDORSED ORDER denying the second
motion for relief from judgment. (Doc. # [81]). This Court already rejected
the arguments contained in the motion when the Court denied Bouazizi's
most recent motion for reconsideration. (Doc. # [75]; Doc. # 76). The arguments
raised in the motion lack merit and are frivolous. The Court--for a third
time--advises Bouazizi that she should not continue to file motions for relief
from judgment or motions for reconsideration of the Court's orders denying
her previous motions for relief from judgment and motions for reconsideration.
"Successive motions for reconsideration raising grounds that were or
should have been known or asserted when the first motion was filed are
improper."

Rasmussen v. Cent. Fla. Council Boy Scouts of Am., Inc., No.
6:07-cv-1091-Orl-19G,
2008 WL 2157152, at *1 (M.D. Fla. May 22, 2008). Nor should Bouazizi continue
filing other frivolous motions such as her motions for sanctions and for
clarification. This case is closed and shall remain closed. Signed by Judge

Virginia M. Hernandez Covington on 1/31/2020. (DMD)

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ENDORSED ORDER denying the second motion for relief from judgment. (Doc. # [81]). This Court already rejected the arguments contained in the motion when the Court denied Bouazizi's most recent motion for reconsideration. (Doc. # [75]; Doc. # 76). The arguments raised in the motion lack merit and are frivolous. The Court--for a third time--advises Bouazizi that she should not continue to file motions for relief from judgment or motions for reconsideration of the Court's orders denying her previous motions for relief from judgment and motions for reconsideration. "Successive motions for reconsideration raising grounds that were or should have been known or asserted when the first motion was filed are improper."

Rasmussen v. Cent. Fla. Council Boy Scouts of Am., Inc., No. 6:07-cv-1091-Orl-19G, 2008 WL 2157152, at *1 (M.D. Fla. May 22, 2008). Nor should Bouazizi continue filing other frivolous motions such as her motions for sanctions and for clarification. This case is closed and shall remain closed. Signed by Judge

Virginia M. Hernandez Covington on 1/31/2020. (DMD)

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