

IN THE
Supreme Court of the United States

CRYSTAL GAYLE JORDAN,

Petitioner,

v.

ATLANTA PUBLIC SCHOOLS,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Eleventh Circuit Court of Appeals erred in affirming judgment in Respondent's favor on Petitioner's FMLA retaliation claim.

PARTIES TO THE PROCEEDING

The Petitioner is Ms. Crystal Jordan, *pro se*. The Respondent is the Atlanta Independent School District, a/k/a Atlanta Public Schools (“APS”).

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INTRODUCTION

After a four-day bench trial on her FMLA retaliation claim against APS, Ms. Jordan could not prove her case by a preponderance of the evidence. She did not show that any pertinent decisionmakers knew of her FMLA leave or that APS's reasons for terminating her were pretext for retaliation. The district court therefore entered judgment in favor of APS.

On appeal to the Eleventh Circuit, Ms. Jordan made it clear she thought the district court got it wrong, but she did not address any of the grounds for its judgment. She simply complained about the result. The Eleventh Circuit therefore held that she abandoned any challenge to the judgment on appeal, and it affirmed.

Still unhappy with the outcome, Ms. Jordan now petitions this Court for a writ of certiorari, but she has identified no valid basis for revisiting the lower decisions. She has simply rehashed the contentions that the lower courts found unpersuasive. And as she did when appealing the district court's judgment to the Eleventh Circuit, Ms. Jordan does not even address the reason the Eleventh Circuit ruled against her.

Ms. Jordan has not shown that the Eleventh Circuit's decision conflicted with any prior decision of this Court or any other United States court of appeals. Likewise, Ms. Jordan has not shown that the lower courts deviated from the accepted and usual course of judicial proceedings justifying this Court's exercise of its supervisory power. Instead, the purported errors asserted in the Petition amount to baseless claims that the Eleventh Circuit misapplied well-established, properly stated rules of law.

Beyond that, this case concerns a fact-bound dispute whose resolution will affect no one other than the immediate parties. Under this Court’s rules, cases like this rarely justify a writ of certiorari. Consistent with that practice, this Court should deny the writ Ms. Jordan seeks.

STATEMENT OF FACTS

I. Factual background.

This case concerns Ms. Jordan’s allegations that APS retaliated against her for taking FMLA leave by (i) cancelling her health insurance benefits, (ii) paying her inconsistently, (iii) reassigning her to a different class she was not qualified to teach, (iv) reassigning her to telework, (v) reporting her to the Georgia Professional Standards Commission (“PSC”), and (vi) terminating her employment. [ECF No. 2 ¶ 1; 172 at 4.]¹ None of the APS decisionmakers who were involved in those actions knew of her FMLA leave. [ECF No. 172 at 5-11.]

And none of the reasons for those actions was related to her FMLA leave. [*Id.* at 11.] The cancellation of her health insurance benefits was related to an electronic system error. [*Id.* at 5-6, 11.] The inconsistencies in salary were attributable to a pay-step miscalculation and different coding of telework. [*Id.* at 6-7, 11.] She was certified (and therefore qualified) to teach the class she was reassigned to. [*Id.* at 7-8, 11.] She was reassigned to telework while APS investigated safety concerns with Ms. Jordan

¹ Some documents filed in the district court and Eleventh Circuit are not contained in Petitioner’s Appendix. Respondent will refer to those documents by their Electronic Case Filing (ECF) number available on PACER.

leaving students unattended. [*Id.* at 9.] And APS reported her to the PSC and eventually terminated her because those student supervision problems also violated board policy. [*Id.* at 9-11.]

II. Procedural history.

Ms. Jordan sued APS in the U.S. District Court for the Northern District of Georgia, proceeding in forma pauperis. [ECF Nos. 1, 2.] After conducting a frivolity review under 28 U.S.C. § 1915(e)(2), the district court dismissed all of Ms. Jordan's claims but her FMLA retaliation claim. [ECF Nos. 3, 6.] After a four-day bench trial on that remaining claim [ECF Nos. 150, 151 152, 153], the district court entered judgment in favor of APS. (Petitioner's App. B.)²

Ms. Jordan appealed the district court's decision to the Eleventh Circuit. [ECF No. 175.] The Eleventh Circuit affirmed the district court's decision, reasoning that Ms. Jordan had not challenged the grounds on which the district court granted judgment and therefore abandoned those arguments on appeal. (Petitioner's App. A at 3-4.)³

The Eleventh Circuit began its opinion by discussing the reasons the district court granted judgment to APS. (*Id.* at 3.) To begin, Ms. Jordan failed to prove retaliatory causation, because she "provided no evidence that the relevant

² The final judgment of the U.S. District Court for the Northern District of Georgia in favor of Respondent is not published. Respondent will cite to it as "Petitioner's App. B" followed by the page number within the Appendix.

³ The Opinion of a per curiam panel of the U.S. Court of Appeals for the Eleventh Circuit (Rosenbaum, Grant, and Brasher) affirming the district court's judgment is not published. Respondent will cite to it as "Petitioner's App. A" followed by the page number within the Appendix.

decisionmakers responsible for each employment action raised knew [she] had taken FMLA leave at the time each decision was made.” (*Id.*) “And even assuming such knowledge, the district court explained that [Ms. Jordan] presented ‘no evidence’ that her FMLA leave was related to any of the employment actions raised.” (*Id.*) Furthermore, “[t]he district court explained that her claims also failed because APS had shown non-discriminatory reasons for each of the alleged adverse actions, and she failed to show that APS’s proffered reasons were pretextual.” (*Id.*)

The Eleventh Circuit then determined that Ms. Jordan did not “meaningfully challenge, let alone address the district court’s reasoning on the merits of her FMLA claims.” (*Id.*) Nor did she “intelligibly explain her position as to any of the myriad ancillary issues she mention[ed] in her brief.” (*Id.*) “Instead, she provide[d] a stream of incoherent arguments insisting that the district court erred.” (*Id.*) The Eleventh Circuit held that, as a result, “she abandoned any challenge to the district court’s order” on appeal. (*Id.*)

REASONS FOR DENYING THE WRIT

This Court should deny Ms. Jordan’s Petition because she presents no proper basis for this Court to revisit the Eleventh Circuit’s judgment. This Court issues writs of certiorari not as a right, but as a matter of judicial discretion, which “will be granted *only for compelling reasons.*” U.S. Sup. Ct. R. 10 (emphasis added). This Court rarely grants petitions “when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” *Id.*

Rather, compelling reasons include when the court of appeals has issued a decision:

- (i) “in conflict with the decision of another United States court of appeals on the same important matter”;
- (ii) “so far depart[ing] from the accepted and usual course of judicial proceedings, or sanction[ing] such a departure by a lower court, as to call for an exercise of this Court’s supervisory power”;
- (iii) on “an important question of federal law that has not been, but should be, settled by this Court”; and
- (iv) on “an important federal question in a way that conflicts with relevant decisions of this Court.”

Id. at 10(a) & (c).

This case presents none of those reasons. The legal principles governing Ms. Jordan’s claims are well-settled and non-controversial. And she has shown no error in the Eleventh Circuit’s rationale, especially not one that would warrant this Court stepping in. The Petition should therefore be denied.

I. This case presents no novel or unsettled legal question or opportunity for law clarification.

The law governing Ms. Jordan’s FMLA retaliation claim is familiar and well-trodden. To make a *prima facie* case of retaliation, the employee must show three elements: (1) she engaged in statutorily protected activity under the FMLA; (2) she suffered an adverse employment action; and (3) there was a causal connection between the protected activity and the adverse employment action. *Hicks v. City of Tuscaloosa, Ala.*, 870 F.3d 1253, 1257 (11th Cir. 2017).

To establish *prima facie* causation, the “plaintiff must show that the relevant decisionmaker was aware of the protected conduct, and that the protected activity and the adverse actions were not wholly unrelated.” *Jones v. Gulf Coast Health Care of Del., LLC*, 854 F.3d 1261, 1271 (11th Cir. 2017). Temporal proximity between the protected activity and the adverse action might be enough to suggest causation—but only if the decisionmaker knew about that protected activity. *Brungart v. BellSouth Telecomms., Inc.*, 231 F.3d 791, 799 (11th Cir. 2000); *cf. Clark Cnty. Sch. Dist. v. Breeden*, 532 U.S. 268, 273 (2001) (Title VII context). After all, it is “common sense” that a decisionmaker “cannot have been motivated to retaliate by something unknown to him.” *Brungart*, 231 F.3d at 799.

If the employee makes a *prima facie* case, the burden shifts to the employer to proffer a legitimate, non-retaliatory reason for the adverse action. *Walker v. Elmore Cnty. Bd. of Educ.*, 379 F.3d 1249, 1252 (11th Cir. 2004). If the employer does so, the employee then must prove that the proffered reason was pretextual. *Id.*

The law governing Ms. Jordan’s appeal to the Eleventh Circuit is also well-established. “On appeal from a judgment in a bench trial,” the Eleventh Circuit reviews the district court’s legal conclusions and application of the law to the facts *de novo*. *U.S. Commodity Future Trading Comm’n v. S. Tr. Metals, Inc.*, 894 F.3d 1313, 1322 (11th Cir. 2018). But it reviews the district court’s findings of fact only for clear error. *Id.* The Eleventh Circuit will not find clear error unless its “review of the record leaves [it] with the definite and firm conviction that a mistake has been committed.”

Id. And if a plaintiff fails to brief an issue on appeal, that issue is abandoned, even if the plaintiff is pro se. *Timson v. Sampson*, 518 F. 3d 870, 874 (11th Cir. 2018).

Ms. Jordan neither quarrels with these bedrock legal principles nor suggests there is a split of authority on a material issue. And even though she lists seven enumerations of error, she addresses none of them in her brief. (*See generally* Petition at 3-13.) Ms. Jordan's only legal argument is based on her misreading of *Jones v. Gulf Coast Health Care of Delaware, LLC*, 854 F.3d 1261 (11th Cir. 2017)—a summary judgment case and the only case she cites in her Petition. (*Id.* at 3, 6, 9, 11, 12.) Ms. Jordan cites *Jones* for the proposition that any adverse action less than 90 days after FMLA leave is automatically retaliatory. That is not at all what *Jones* said.

Instead, *Jones* directed courts how to measure temporal proximity when determining whether a plaintiff has shown *prima facie* causation *in opposing summary judgment*. *Jones*, 854 F.3d at 1270-73. The *Jones* court reiterated the common-sense notion that the plaintiff must show decisionmaker knowledge to prove *prima facie* causation. *Id.*; *see Brungart*, 231 F.3d at 799. It did not hold that temporal proximity was enough to show pretext. *See generally* *Jones*, 854 F.3d at 1274-76. And it did not hold that mere evidence of temporal proximity demanded a plaintiff's verdict in a bench trial. *See generally id.*

Thus, Ms. Jordan's reliance on *Jones* is misplaced. *Jones* was not a blockbuster opinion that turned FMLA retaliation jurisprudence on its head. Nor did it automate

the judge’s fact-finding process during a bench trial. If anything, *Jones* is consistent with the well-settled case law the lower courts relied on.

Aside from *Jones*, Ms. Jordan cites no other case law in her Petition. She has not shown a circuit split on any relevant legal principles, that the district court departed from the accepted and usual course of judicial proceedings, or that the lower rulings conflicted with any of this Court’s precedents. This Court need not review this case simply to confirm that Ms. Jordan has misread *Jones*.

II. Ms. Jordan points to no error that warrants this Court’s supervisory authority.

Ms. Jordan points to no error in the Eleventh Circuit’s judgment, much less one egregious enough for this Court to exercise its supervisory authority. Under this Court’s rules, “erroneous factual findings or the misapplication of a properly stated rule of law” will “rarely” justify issuance of a writ of certiorari. U.S. Sup. Ct. R. 10. And “[e]rror correction is ‘outside the mainstream of the Court’s functions.’” *Barnes v. Ahlman*, 140 S. Ct. 2620, 2622, 207 L. Ed. 2d 1150 (2020) (Sotomayor, J. dissenting) (quoting S. Shapiro, K. Geller, T. Bishop, E. Hartnett & D. Himmelfarb, Supreme Court Practice § 5.12(c)(3), p. 5–45 (11th ed. 2019)).

Ms. Jordan points to no error in the Eleventh Circuit’s analysis. In fact, she does not even address the specific grounds on which the opinion rested. The Eleventh Circuit held that, by failing to challenge the rationale behind the district court’s judgment, she had abandoned any challenge to the judgment on appeal. (Petitioner’s App. A at 3.) In petitioning for certiorari, she does not question that “abandonment” rationale. (*See generally* Petition.) Instead, she erroneously argues that the lower

courts should have reached a different result based on a non-existent legal proposition from *Jones*.

Even if Ms. Jordan could point to an error, this case presents no unique considerations meriting an exception to this Court’s customary practice of denying writs for mere error correction. This case involves the routine question of whether, during a bench trial, Ms. Jordan proved the essential elements of her FMLA retaliation claim by a preponderance of the evidence. As the fact-finder, the district court found that she had not met her evidentiary burden. (Petitioner’s App. B.) Ms. Jordan simply disagrees with that determination.

The Court should not depart from its “mainstream . . . functions” to assume the role of a third-generation fact-finder, a clear example of “error correction.” *See Barnes*, 140 S. Ct. at 2622. Thus, Ms. Jordan’s request should be denied.

CONCLUSION

Ms. Jordan seeks certiorari simply because she did not like the outcomes below. Rule 10 describes the “compelling reasons” that warrant review on a writ of certiorari. U.S. S. Ct. Rule 10. None of those “compelling reasons” is present here. There is no split of authority among the courts of appeals on the same important matter. *Id.* 10(a). Nor did the Eleventh Circuit “so far depart [] from the accepted and usual course of judicial proceedings, or sanction [] such a departure by a lower court, as to call for an exercise of this Court’s supervisory power.” *Id.* No lower court decided an important question of federal law that conflicts with relevant decisions of this Court or that should otherwise be settled by this Court. *Id.* 10(b, c). Nor has Ms.

Jordan pointed to a departure from the accepted and usual course of judicial proceedings that would justify exercise of this Court's supervisory powers. *Id.* 10.

In the end, her request for certiorari hinges on baseless assertions that the lower courts misapplied properly stated rules of law to the particular facts of this case. For all these reasons, the Petition for Writ of Certiorari should be denied.

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