NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

LESLIE J. REYNARD

Petitioner,
v.

WASHBURN UNIVERSITY OF TOPEKA

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

APPLICATION TO THE HONORABLE NEIL GORSUCH FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Leslie J. Reynard
791 E. 1217 Road
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Phone 618-616-7379
Petitioner, Pro Se

To the Honorable Neil Gorsuch, Associate Justice of the Supreme Court and Circuit Justice for the Tenth Circuit:

Pursuant to Supreme Court Rules 13.5, 22, and 30, Applicant Leslie J. Reynard respectfully requests that the time to file a Petition for a Writ Of Certiorari in this matter be extended by 59 days, up to and including Friday, April 12, 2024. In support thereof, Applicant states as follows:

1. The judgment from which review is sought is *Leslie J. Reynard v. Washburn University of Topeka*, Case No. Civil No. 19-cv-4012-HLT, Lead Case [consolidated with Civil No. 19-cv-4061-HLT and Civil No. 20-cv-02219-HLT] in the Tenth Circuit. Order and Judgment in that case was entered on October 2, 2023. A copy of that decision is attached as Appendix 1. Applicant timely sought rehearing or rehearing *en banc* by the Tenth Circuit Court of Appeals, which was denied on November 15, 2023. A copy of the Tenth Circuit's Order denying rehearing is attached as Appendix 2.

2. The current deadline for filing a petition for writ of certiorari is Tuesday, February 13, 2024. This Application is being filed at least 10 days prior to that date pursuant to Supreme Court Rule 13.5.

3. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

4. This matter, an employment suit involving three separate causes of action under the Americans With Disabilities Acts and its amendments, presents important and substantial questions that affect the rights, employment, and quality of life of tens of thousands of disabled Americans, including the Applicant.

5. Applicant hopes to receive the Court's consideration and determination as to the propriety of applying a McDonnell Douglas burden-shifting standard to ADA cases such as this, review of EEOC procedures and tolling provisions in place when this suit was filed, and determination whether the lower court properly applied the provisions of the ADA to the three separate claims Applicant raised.

6. Applicant, who has been *pro se* for virtually the entirety of this suit (nearly five years) has been diligently researching the issues identified above and reviewing the large record on appeal, has good cause to request this extension of time.

7. Applicant has been managing serious and debilitating medical conditions since 2015 (including myalgic encephalomyelitis/CFS, fibromyalgia, and complex migraine); she began experiencing vision loss and loss of visual acuity in 2019, and subsequent eye surgeries have not resolved those issues. She is able to read or use the computer no more than six or seven hours in a given (good) day.

8. Since 2021, Applicant has experienced two bouts of COVID and was diagnosed with Long Covid Syndrome in 2023; she currently is part of clinical trials in Kansas City.

9. In 2022, Applicant was diagnosed with appendix cancer and underwent surgery in November, 2022. As part of the surveillance and follow-up for that cancer, Applicant has undergone scans and bloodwork every three to six months; she had a second follow-up surgery for appendix cancer in late 2022.

10. On November 10, 2023, regular CT and bloodwork showed need for Applicant to undergo additional tests and procedures, which resulted in a diagnosis of a second

primary cancer in the colon. Applicant has been scheduled for a resection surgery in mid-February, 2024, likely requiring substantial recovery time.

11. Since Applicant is a *pro se* party, she has had little access to needed online research technology and databases. She has gained some access to The University of Kansas Law Library, but it does not include online access to databases. Also, she must use the facility in person during limited hours when the Library is open to the public.

12. The public resources at the Douglas County, Kansas, courthouse are always even more restricted, since a higher number of citizens are trying to use these. This situation was worsened for all users when, in mid-October 2023, a security breach (apparently by foreign computer hackers) took down multiple systems necessary to the operations of Kansas courts. Even attorneys had to use paper filing for about two months and they systems still are not fully operational in at least Douglas and Osage counties.

13. Applicant also is engaged in several other pressing matters, including being the sole source of care for her husband (who was diagnosed with Stage 4 esophageal cancer in 220), professional work as a researcher and writer, and duties as *pro se* Plaintiff in one related case in Douglas County District Court.

14. Finally, Applicant is seeking amici and paralegal help to develop and complete her Writ for Certiorari, especially since the diagnosis of the second cancer was a surprise and the surgery will dimmish her already-tightly-stretched resources.

14. Applicant contacted the attorney of record for Washburn University asking if her client would object to this extension of time; Washburn's counsel stated that her client would object to an extension of time.

15. Applicant submits that the requested extension of time would neither prejudice the Respondent nor result in undue delay in the Court's consideration of the petition, and that good cause has been shown to grant the requested extension.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that an Order be entered extending the time for filing her petition for writ of certiorari to and including Friday, April 12, 2024.

Dated: February 2, 2024

Respectfully submitted,

Leslie J. Reynard
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LJRvWU@protonmail.com
Phone 618-616-7379
Petitioner, Pro Se

CERTIFICATE OF MAILING

I hereby certify that on the 2ND day of February, I mailed and emailed the foregoing Application for Extension of Time to counsel for Respondent:

Susan M. Mauch, Esq.
Goodell Straton Edmonds & Palmer LLP
515 Kansas Avenue
Topeka, Kansas 66603

Applicant / Petitioner

APPENDIX I

FILED
United States Court of Appeals
Tenth Circuit

October 2, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

LESLIE J. REYNARD,

Plaintiff - Appellant,

v.

WASHBURN UNIVERSITY OF TOPEKA,

Defendant - Appellee.

No. 22-3248
(D.C. Nos. 5:19-CV-04012-HLT, 5:19-CV-04061-HLT & 2:20-CV-02219-HLT)
(D. Kan.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **HARTZ** and **PHILLIPS**, Circuit Judges.

Leslie Reynard, proceeding pro se,[1] appeals the district court's grant of summary judgment to Washburn University of Topeka ("Washburn") in her suit alleging violations of Title VII of the Civil Rights Act of 1964, the Age

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[1] Because Dr. Reynard proceeds pro se, we construe her arguments liberally, but we "cannot take on the responsibility of serving as [her] attorney in constructing arguments and searching the record." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

BACKGROUND[2]

Dr. Reynard was a tenured professor in the Communication Studies Department at Washburn. She suffered from chronic migraines. Those migraines could become so severe as to cause transient ischemic attacks (known more commonly as "mini strokes"). Triggers for Dr. Reynard's migraines included fluorescent light. Normally, Dr. Reynard and other professors from the Communication Studies Department taught classes in Morgan Hall, which did not use fluorescent light. But in the summer of 2017 before fall-semester classes began, Washburn scheduled Dr. Reynard and other Communication Studies professors to teach in Henderson Hall, which did use fluorescent light. One professor noticed the change in classroom assignment right away and requested that Washburn move his class back to Morgan Hall. Washburn accommodated this request. Dr. Reynard, though, did not notice the change until later.

On August 19, 2017, Dr. Reynard sent an email to Dr. Mary Pilgram, then the department chair, stating: "This is a formal ADA request that my courses and that my classes be assigned to Morgan Hall in future semesters unless there is a compelling reason why they cannot be." Aplt. App. vol. 2 at 389. Dr. Reynard and

[2] The facts we set forth here are undisputed or, if disputed, construed in the light most favorable to Dr. Reynard, the non-moving party. *See T-Mobile Cent., LLC v. Unified Gov't of Wyandotte Cnty.*, 546 F.3d 1299, 1306 (10th Cir. 2008).

Dr. Pilgram exchanged emails between August 23 and 25, 2017. In those emails, Dr. Pilgram passed along a request from Teresa Lee, Washburn's Human Resources Director, that Dr. Reynard complete a "Disability and Impairment Assessment Form," which required information from a healthcare provider. Dr. Reynard expressed that she had already provided the relevant information to Washburn as part of the paperwork she completed in connection with a 2015 request under the Family and Medical Leave Act (FMLA). The FMLA paperwork, however, did not include any information about light sensitivity or lighting restrictions. Dr. Reynard completed and emailed Ms. Lee the requested documents on September 20, 2017, and, on September 28, Washburn moved Dr. Reynard's fall-semester classes to Morgan Hall by displacing another professor previously assigned there.

In the final 16 months of Dr. Reynard's employment with Washburn, it placed her on two performance improvement plans (PIPs). The first was in September 2018. The second was in April 2019. Dr. Reynard successfully completed the first, but she did not successfully complete the second. Washburn terminated Dr. Reynard's employment on January 8, 2020.

Dr. Reynard filed three charges with the Equal Employment Opportunity Commission (EEOC). The filing dates were August 14, 2018; November 15, 2019; and January 13, 2020. She eventually filed three suits against Washburn. The district court consolidated them all. By the time the parties reached the pre-trial order stage, Dr. Reynard limited her claims to three: (1) retaliation under Title VII, the ADEA, and the ADA for actions Washburn took after she filed EEOC charges;

(2) discrimination under the ADA; and (3) failure to accommodate under the ADA. Washburn moved for summary judgment. The district court granted the motion, concluding, inter alia:

- Dr. Reynard's claims for retaliation under the ADEA and ADA failed because neither compensatory nor punitive damages are available under those statutes, Aplt. App. vol. 2 at 1439–40;
- Dr. Reynard did not establish a prima facie case of either Title VII retaliation or ADA discrimination, *id.* at 1441–45, 1449;
- Dr. Reynard's claim of discrimination under the ADA was "time-barred because it was resolved before October 18, 2017 (300 days before [Dr. Reynard] filed her EEOC charge)," *id.* at 1448; and
- Dr. Renard's failure-to-accommodate claim under the ADA was also time-barred, *id.* at 1451.

This appeal followed.

DISCUSSION

We review the grant of summary judgment de novo. *May v. Segovia*, 929 F.3d 1223, 1234 (10th Cir. 2019). 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). "We examine the record and all reasonable inferences that might be drawn from it in the light most favorable to the

non-moving party." *T-Mobile Cent., LLC v. Unified Gov't of Wyandotte Cnty.*, 546 F.3d 1299, 1306 (10th Cir. 2008) (internal quotation marks omitted).

Even liberally construing Dr. Reynard's appellate briefs, we note initially that she does not dispute the district court's conclusion that her claims for retaliation under the ADEA and ADA, and her claims for punitive damages, were not viable under those statutes. Her failure to contest those conclusions waives any such argument on appeal. *See Becker v. Kroll*, 494 F.3d 904, 913 n.6 (10th Cir. 2007) ("An issue or argument insufficiently raised in the opening brief is deemed waived.").

Dr. Reynard identifies four issues. In her first issue, she argues the district court erred by "applying a burden-shifting formula that relies on showing of an adverse employment action to analyze [her] ADA claims." Aplt. Opening Br. at 24. In her second and fourth issues, she argues the district court misapplied Federal Rule of Civil Procedure 56 when it granted Washburn's motion for summary judgment by overlooking genuine disputes of material fact. And in her third issue, she argues the continuing-violation and equitable-tolling doctrines should have applied to remove the time bar from her claims.

We do not consider the arguments Dr. Reynard raises in her third issue because she did not raise them before the district court. *See EFLO Energy v. Devon Energy Corp.*, 66 F.4th 775, 792 (10th Cir. 2023) ("[W]e typically do not address arguments raised for the first time on appeal."). We therefore consider in turn the arguments Dr. Reynard raises in the first issue and in the second/fourth issues.

A. The district court did not err in concluding Dr. Reynard failed to establish Washburn took adverse employment action against her.

Considering the arguments raised in the first issue, Dr. Reynard does not refute the district court's conclusion that several of her claims failed because she could not show Washburn took any adverse employment action against her. Such a showing is a prima facie element of her ADA discrimination and her retaliation claims. *See EEOC v. C.R. Eng., Inc.*, 644 F.3d 1028, 1037–38 (10th Cir. 2011) (ADA claims); *Burlington N. & Santa Fe Ry. Co. v. White*, 548U.S. 53, 68 (2006) (retaliation claims).

Dr. Reynard did not challenge her termination in this lawsuit, which "deals only with pre-termination acts." Aplt. Opening Br. at 3 n.4. So, the only potential adverse employment actions left for the district court to consider—in any context—were (1) the investigation of student complaints and the resultant PIPs and (2) the Henderson Hall assignment. But "[i]n our circuit, a PIP, standing alone, is not an adverse employment action." *Ford v. Jackson Nat'l Life Ins. Co.*, 45 F.4th 1202, 1226 (10th Cir. 2022) (internal quotation marks omitted). And the Henderson Hall assignment cannot predicate a claim for retaliation because it occurred in 2017, *before* Dr. Reynard initiated any EEOC complaints or otherwise alerted any officials at Washburn of her intent to do so.

B. Alternatively, the district court correctly granted summary judgment on Dr. Reynard's retaliation claims on the basis of causation.

We also agree with the district court that, even if the PIPs were materially adverse, Dr. Reynard did not establish a prima facie case of causation—i.e., that

Washburn instituted the PIPs under circumstances "that justify an inference of retaliatory motive." *Ward v. Jewell*, 772 F.3d 1199, 1203 (10th Cir. 2014) (internal quotation marks omitted). Washburn investigated the student complaints regarding Dr. Reynard's teaching per standard protocol, and although Dr. Reynard strongly disagreed with the students' criticisms of her teaching, she presented no evidence that Washburn solicited or manufactured the complaints.

The district court also considered Dr. Reynard's statements that Washburn's motive for instituting the PIPs was her objections to the academic standards in the Communication Studies Department. *See* Aplee. Suppl. App. at 29 (asserting in the pretrial order that "the EEOC issue only partially triggered the termination process in April 2018. The other, more critical element was expressing concern that [the Communication Studies Department was awarding] . . . degrees to students who did not complete curriculum requirements."). On appeal, Dr. Reynard does not refute but rather confirms that, in her view, the motivation for Washburn in instituting the PIPs was her objections to practices within the Communication Studies Department. *See* Aplt. Opening Br. at 14–15 (outlining Dr. Reynard's objections to "[a]ssessment, curriculum requirements, and other measures of degree quality" and asserting "[a] reasonable person could conclude that there is a connection between Dr. Reynard . . . raising issues and concerns with the persons assigned to manage those and the adverse actions she experienced"). We agree with the district court that Dr. Reynard's "position is admirable but not actionable under Title VII (or the ADA or ADEA). The retaliation must be responsive to protected activity related to

[Dr. Reynard's] gender, disability, or age—not [her] crusade to improve higher education standards at Washburn." Aplt. App. vol. 2 at 1445.

C. The district court correctly concluded Dr. Reynard's claims stemming from the Henderson Hall assignment were time-barred.

Although it could not form any part of a retaliation claim because it occurred before Dr. Reynard filed her EEOC charges, the district court nonetheless analyzed the Henderson Hall assignment in connection with Dr. Reynard's discrimination and failure-to-accommodate claims under the ADA. But there, too, the claims fell short: Because the Henderson Hall assignment (and eventual reassignment to Morgan Hall) occurred before October 17, 2017, any resulting ADA claim was time-barred. Other than her contentions related to equitable tolling and the continuing-violation doctrine, which we do not consider because she did not raise them before the district court, Dr. Reynard does not address this holding on appeal, so we affirm it. *See Starkey ex rel. A.B. v. Boulder Cnty. Soc. Servs.*, 569 F.3d 1244, 1252 (10th Cir. 2009) ("When an appellant does not challenge a district court's alternate ground for its ruling, we may affirm the ruling.").

D. The district court correctly applied the summary judgment standards in analyzing Washburn's motion.

We reject Dr. Reynard's arguments in her second and fourth issues on appeal that the district court misapplied Federal Rule of Civil Procedure 56 and ignored genuine issues of material fact when it granted Washburn's motion for summary judgment. Her arguments in this respect are perfunctory. She asserts the district court should have more liberally construed the facts and her allegations. But the

district court's summary judgment order is well-supported by citations to the relevant law and record evidence. Absent specific examples of error, we cannot disturb its ruling.

Dr. Reynard also asserts "[t]he merits of [her] suit were recognized when the district court denied Washburn's motion to dismiss." Aplt. Opening Br. at 31 (italics omitted). But motions to dismiss and motions for summary judgment present fundamentally different inquiries. In reviewing a motion to dismiss, the district court takes as true all of the well-pleaded facts the plaintiff alleges. *See Waller v. City & Cnty. of Denver*, 932 F.3d 1277, 1282 (10th Cir. 2019). "On summary judgment, however, the plaintiff can no longer rest on the pleadings, and the court looks to the evidence before it . . . ." *Behrens v. Pelletier*, 516 U.S. 299, 309 (1996) (citation omitted); *see also Com. Iron & Metal Co. v. Bache & Co.*, 478 F.2d 39, 41 (10th Cir. 1973) ("The ultimate purpose of summary judgment is to pierce the allegations of the pleadings to show there are no genuine issues of material fact."). So, there is no conflict between the district court's grant of summary judgment and its earlier denial of Washburn's motion to dismiss.

CONCLUSION

We affirm the judgment of the district court.

Entered for the Court

Gregory A. Phillips
Circuit Judge

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
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Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

October 02, 2023

Leslie J. Reynard
791 East 1217 Road
Lawrence, KS 66047

RE: 22-3248, Reynard v. Washburn University of Topeka
Dist/Ag dockets: 5:19-CV-04012-HLT, 5:19-CV-04061-HLT, and 2:20-CV-02219-HLT

Dear Appellant:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of Court

cc: Susan L. Mauch

CMW/at

APPENDIX 2

FILED
United States Court of Appeals
Tenth Circuit

November 15, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

LESLIE J. REYNARD,

Plaintiff - Appellant,

v.

WASHBURN UNIVERSITY OF TOPEKA,

Defendant - Appellee.

No. 22-3248
(D.C. Nos. 5:19-CV-04012-HLT, 5:19-CV-04061-HLT & 2:20-CV-02219-HLT)
(D. Kan.)

ORDER

Before **HOLMES**, Chief Judge, **HARTZ**, and **PHILLIPS**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Appellant's "Motion to Formally File Documents Submitted with Appellant's Opening Brief" is denied as moot.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
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