No. 24A263

IN THE

SUPREME COURT OF THE UNITED STATES

MARQUICE ROBINSON, PETITIONER

v.

MICHAEL HOLMAN, ET AL, RESPONDENTS

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

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

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APPENDIX

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[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 23-11735

Non-Argument Calendar

MARQUICE D. ROBINSON,

Plaintiff-Appellant,

versus

MICHAEL HOLMAN,
AKAL SECURITY, INC
UNITED STATES MARSHALS SERVICE,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

D.C. Docket No. 1:17-cv-03658-WMR

Before NEWSOM, GRANT, and ANDERSON, Circuit Judges.

PER CURIAM:

Marquice Robinson appeals the district court's dismissal of his suit against Akal Security, Inc., the United States Marshals Service ("USMS"), and Michael Holman. We find no error in the district court's orders, and so we affirm.

I.

Robinson was an employee of Akal, which contracted with USMS to provide security for the Richard B. Russell Federal Building in Atlanta, Georgia. He worked as a court security officer for approximately three years before being fired on January 6, 2017. Robinson alleges that during those three years, he and a fellow security officer were harassed because of their sexuality. After complaining to his supervisors, Robinson claims, Akal and USMS retaliated against him in a variety of ways, including by changing his "schedule weekly in an effort to harass him and cause him to violate time rules."

Robinson also claims that he was assaulted by Michael Holman, a lead court security officer. Holman and a supervisor called Robinson into a meeting to discuss his tardiness to work a few days earlier. At this meeting, Robinson claims that Holman, without being provoked, "puff[ed] out his chest" to threaten

Robinson and then struck him in the face, causing Robinson's mouth to bleed.

Robinson—in a counseled complaint—alleged Title VII retaliation claims against Akal and USMS, state-law claims of defamation and false light invasion of privacy against Akal, and state-law claims of battery and assault against both Akal and Holman.[1] Robinson also filed a motion for sanctions for spoliation of evidence against Akal and Holman, arguing that Akal failed to preserve certain audio and video evidence. He later requested leave to add USMS to the motion, which the magistrate judge denied. In a series of orders, the district court granted summary judgment to Akal and USMS on all claims, dismissed Robinson's motion for spoliation sanctions against Akal, and granted Holman judgment on the pleadings. Robinson appealed.

II.

Robinson first argues that the district court erred by denying his sanctions motion for spoliation of evidence. This Court reviews a district court's decision regarding spoliation sanctions for abuse of discretion. *Tesoriero v. Carnival Corp.*, 965 F.3d 1170, 1177 (11th Cir. 2020). Here, the court had already granted Akal summary judgment on all claims by the time it denied Robinson's motion for sanctions. Because the party to be sanctioned was no longer party to the case, the district court dismissed the motion without

[1] Robinson's counsel subsequently withdrew from the case, and Robinson proceeded po se. On appeal, Robinson does not argue that the district court improperly dismissed his defamation and false light invasion of privacy claims.

prejudice. The district court was careful to avoid prejudicing Robinson's case, allowing Robinson to re-file his arguments as a motion *in limine* if the evidentiary issues had any bearing on the remaining claims. This was not an abuse of discretion, and Robinson cites to no authority establishing otherwise.

Robinson argues that, because Akal failed to respond to the sanctions motion, it abandoned any defense and the district court ought to have granted the motion. But as the moving party, Robinson bore the burden of convincing the court that spoliation sanctions were warranted, and he failed to carry that burden. Robinson also takes issue with the magistrate judge's refusal to let him amend the motion to add arguments against USMS. Again, Robinson cites to no authority suggesting that this was a reversible error. What's more, the magistrate judge afforded Robinson ten extra pages in his summary judgment briefing to make additional spoliation sanctions arguments against Akal and USMS. **Doc. 171.** In sum, the district court properly denied Robinson's motion for sanctions without prejudice.

III.

Robinson next argues that the district court improperly granted summary judgment to both Akal and USMS on Robinson's retaliation claims. On appeal, Robinson argues only that the change to his work schedule was a materially adverse action. Because he does not challenge the district court's conclusion that the remaining actions were not materially adverse, he has forfeited those arguments. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th

Cir. 2008). To prevail on a Title VII retaliation claim, "a plaintiff must show that a reasonable employee would have found the challenged action materially adverse." *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006). That test "capture[s] those (and only those) employer actions serious enough to 'dissuade a reasonable worker from making or supporting a charge of discrimination.'" *Muldrow v. City of St. Louis*, 144 S. Ct. 967, 976 (2024) (alteration adopted) (quoting *White*, 548 U.S. at 68). Materially adverse actions must be more than those "petty slights, minor annoyances, and simple lack of good manners" that frequently occur at a workplace. *Terrell v. Sec'y, Dep't of Veterans Affs.*, 98 F.4th 1343, 1356 (11th Cir. 2024) (quoting *White*, 548 U.S. at 68).

Here, Robinson points to only one action as materially adverse. For a period of three months, Robinson's assigned start time frequently varied between 7:45 AM and 8:00 AM, with one week's start time at 9:45 AM—even though he should have always started at 8:00 AM according to the collective bargaining agreement. Robinson claims that Akal intentionally manipulated his work schedule to cause him to be late for work in retaliation for Robinson's complaints about harassment. But Robinson does not argue that he was ever late to work because of those actions. In fact, he has not pointed to any specific way in which the schedule changes caused him any hardship. These minor schedule changes, with nothing more, would not "dissuade a reasonable worker from making or supporting a charge of discrimination." *White*, 548 U.S. at 57. As alleged, they are not materially adverse actions.

Because Robinson has not provided enough evidence to create a genuine issue as to whether Akal took any materially adverse action against him, he has failed to show retaliation. *See id.* The district court therefore did not err when it granted summary judgment to Akal on Robinson's Title VII claim. Robinson also makes the same retaliation claims against USMS, arguing that USMS is liable as his joint employer. But even if USMS was his joint employer, Robinson has still failed to provide enough evidence of retaliatory intent to support his claim. So for the same reasons as with Akal, the district court properly granted summary judgment to USMS on Robinson's Title VII claims.

IV.

Robinson next argues that the district court erred when it concluded that Akal was not liable for Holman's alleged assault under the doctrine of *respondeat superior*. We disagree.

Under Georgia law, "[e]very person shall be liable for torts committed by his . . . servant by his command or in the prosecution and within the scope of his business, whether the same are committed by negligence or voluntarily." O.C.G.A. § 51-2-2. "Two elements must be present to render a master liable under respondeat superior: first, the servant must be in furtherance of the master's business; and, second, he must be acting within the scope of his master's business." *Piedmont Hosp., Inc. v. Palladino*, 580 S.E.2d 215, 217 (Ga. 2003) (alteration adopted) (quotation omitted). The employer is not liable if the tort is committed "not in furtherance of the employer's business, but rather for *purely*

personal reasons disconnected from the authorized business of the master." *Id.* (quotation omitted).

Here, Robinson presented insufficient evidence to show that Holman was acting in furtherance and in the scope of his employment when he struck Robinson. The contract between USMS and Akal stated that lead security officers like Holman did "not have full formal supervisory authority and d[id] not directly supervise other employees." Robinson presents some evidence that he argues shows that Holman was his supervisor and was in charge of scheduling. But even if Holman was Robinson's supervisor, there is insufficient evidence to establish that disciplining (let alone striking) Robinson was part of Holman's employment responsibilities. And just because Holman was responsible for scheduling Robinson's shifts does not mean that Holman was "accomplishing the ends of his employment" when he assaulted Robinson. *Waters v. Steak & Ale of Georgia, Inc.*, 527 S.E.2d 592, 595 (Ga. Ct. App. 2000) (quotation omitted).

The district court did not err by granting summary judgment to Akal on the battery and assault claims.

V.

Finally, the district court correctly concluded that Robinson's assault and battery claims against Holman are precluded by the Georgia Workers' Compensation Act.

We review a district court's grant of judgment on the pleadings de novo. *Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1335 (11th Cir. 2014). "Judgment on the pleadings is appropriate where

there are no material facts in dispute and the moving party is entitled to judgment as a matter of law." *Cannon v. City of W. Palm Beach*, 250 F.3d 1299, 1301 (11th Cir. 2001).

The Georgia Workers' Compensation Act is the exclusive remedy for injuries sustained by an employee based on intentional torts committed by a coworker "unless the tortious act was committed for personal reasons unrelated to the conduct of the employer's business." *Webster v. Dodson*, 522 S.E.2d 487, 489 (Ga. Ct. App. 1999) (citing O.C.G.A. §§ 34-9-1(4), 34-9-11(a)). When the complained of injury "arose out of and in the course of" the plaintiff's employment, it did not occur due to "reasons personal to" the plaintiff. *Hennly v. Richardson*, 264 Ga. 355, 356 (1994) (quotation omitted). "An injury arises 'in the course of' employment when it occurs within the period of the employment, at a place where the employee may be in performance of her duties and while she is fulfilling or doing something incidental to those duties." *Id.* And an injury "arises 'out of' the employment when a reasonable person, after considering the circumstances of the employment, would perceive a causal connection between the conditions under which the employee must work and the resulting injury." *Id.*

Accepting all factual allegations in Robinson's amended complaint as true, Robinson's injuries "arose out of and in the course of" his employment. *See id.* Robinson alleges that Holman and a supervisor held a meeting to discuss Robinson's recent tardiness to work. During the course of that meeting, tensions

steadily rose. Robinson argued that Holman was looking at the wrong schedule, and when Holman disagreed, Robinson began to assert that he was being harassed. Holman reacted by physically threatening Robinson, ultimately striking him in the face. Robinson's injuries arose in the course of his employment because they occurred during working hours, at the workplace, and while Robinson was attending a work-related meeting. His injuries also arose "out of" his employment because there is a causal connection between the work meeting and the resulting injuries.

Robinson argues that "the animosity that gave rise to Holman's assault and battery was unrelated to [his] work performance" because Holman "made discriminatory comments about issues personal to [Robinson]" before the assault. But Robinson does not specifically allege any such discriminatory comments by Hollman in his complaint, and his argument on appeal is too conclusory to stand alone. In short, Robinson's injuries are connected to his work such that the Georgia Workers' Compensation Act is the exclusive remedy. *See Webster*, 522 S.E.2d at 489. The district court did not err when it granted Holman judgment on the pleadings.[2]

[2] Because Holman is entitled to judgment on the pleadings as a matter of law, it necessarily follows that Robinson is not also entitled to judgment on the pleadings. The court therefore properly denied Robinson's motion for judgment on the pleadings.

* * *

The district court did not err when it dismissed Robinson's claims and denied his motion for sanctions. Accordingly, we **AFFIRM**.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MARQUICE ROBINSON, Plaintiff, v. AKAL SECURITY, INC., THE UNITED STATES MARSHALS SERVICE, AND MICHAEL HOLMAN, Defendants.	CIVIL ACTION NO. 1:17-cv-03658-WMR

ORDER

Before the Court are the following motions: Defendant Michael Holman's Motion for Judgment on the Pleadings [Doc. 322]; Plaintiff Marquice Robinson's Motion for an Interlocutory Appeal [Doc. 324]; Plaintiff's Motion for Judgment on the Pleadings [Doc. 334]; and Defendant's Motion for Sanctions [Doc. 337]. Having reviewed the parties' motions, the record, and the governing law, Defendant's Motion for Judgment on the Pleadings [Doc. 322] is **GRANTED**, and Plaintiff's Motion for Judgment on the Pleadings [Doc. 334] is **DENIED**. Likewise, Plaintiff's Motion for an Interlocutory Appeal [Doc. 324] is **DENIED**, and Defendant's Motion for Sanctions [Doc. 337] is **DENIED**.

I. BACKGROUND

The procedural history of this case is lengthy, but the Court summarizes the relevant portions here. Plaintiff, proceeding *pro se*, amended his complaint and brought six counts against the three Defendants. [Doc. 32]. Plaintiff brought the following claims: one count of retaliation against Defendants Akal Security and the United Stated Marshals Service ("USMS") [*id.* at 22]; tort claims of defamation and false light invasion of privacy against Akal Security [*id.* at 24–25]; intentional tort claims of assault and battery against both Defendants Akal Security and Holman [*id.* at 27–28]; and a demand for attorneys' fees from all Defendants [*id.* at 29]. The parties submitted a series of cross-motions for summary judgment, and the Magistrate Judge recommended that the Court grant summary judgment to Defendants on all claims, except Plaintiff's assault and battery claims against Defendant Holman because Holman did not seek summary judgment on those claims. [Doc. 214]. The Court overruled Plaintiff's objections and adopted the R&R as the opinion of the Court. [Doc. 228 at 17]. Because of this, only Plaintiff's assault and battery claims against Defendant Holman remain. [*Id.* at 15].

Plaintiff's remaining claims arise out of a dispute between Plaintiff and his employer, Defendant Akal Security, Inc. [Doc. 322 at 3]. Plaintiff was employed as a Court Security Officer ("CSO") at this Courthouse, the Northern District of Georgia, for three years before being terminated by Akal Security on January 6,

2017. [Doc. 32 at 4]. Akal Security contracted with USMS to provide security services at this Courthouse. [Doc. 214 at 19]. Defendant Holman was also employed by Akal Services as a senior lead CSO. [Doc. 32 at 10].

Plaintiff asserts that he "complained of harassment (unfair and disparate treatment), retaliation, work place bullying, sex discrimination, and a hostile work environment" in August 2019 to a manager concerning Plaintiff's supervisor and Defendant Holman. [*Id.*] Plaintiff further asserts that he was called to a meeting on August 19, 2016, to discuss the fact that he was allegedly late to work on August 17, 2016. [*Id.* at 19:34]. Plaintiff claims that that he attempted to explain at this meeting that he was not late, but that Defendant Holman and his supervisor "were not interested in the truth." [*Id.*] Plaintiff alleges that he told Defendant Holman and his supervisor that he felt he was being harassed, and Defendant Holman "stood up and faced [Plaintiff], puffing out his chest in an attempt to threaten [Plaintiff]." [*Id.*] Plaintiff further alleges that Defendant Holman "then struck [Plaintiff] in the face, causing [his] mouth to bleed," and four other CSOs rushed into the room to separate the two men. [*Id.*] Defendant Holman admits that Plaintiff was called to a meeting with Holman and Plaintiff's supervisor where they discussed that Plaintiff claimed he did not arrive late, but Defendant Holman denies the rest of Plaintiff's account of the assault and battery. [Doc. 58 at 8].

II. DISCUSSION

a. Defendant's Motion for Judgment on the Pleadings

Defendant Holman has now moved for judgment on the pleadings on the basis that Plaintiff's intentional tort claims are barred by the Georgia Workers' Compensation Act (the "Act"). [Doc. 322 at 5]. Defendant Holman argues that the Act bars suits brought by employees asserting work-related injuries. [*Id.* at 5–6]; O.C.G.A. § 34-9-11(a). Defendant Holman further argues that Georgia courts have interpreted this bar to include suits for intentional torts committed by one employee against another. [Doc. 322 at 6]; *see Webster v. Dodson*, 522 S.E. 487, 489 (Ga. Ct. App. 1999) ("This bar also applies to intentional torts committed by one worker against a co-worker, unless the tortious act was committed for personal reasons unrelated to the conduct of the employer's business."). Lastly, Defendant Holman asserts that Plaintiff's assault and battery claims arose out of his employment because Plaintiff pleads that the torts allegedly took place during a meeting to discuss a work-related topic. [Doc. 332 at 8]. Plaintiff responds that his claims are not barred by Georgia law because Defendant waived this defense by failing to raise it earlier in this case. [Doc. 323 at 3].

A party may move for judgment on the pleadings after the pleadings are closed, but it is still early enough not to delay trial. Fed. R. Civ. P. 12(c). The Court may grant a motion for judgment on the pleadings when "no issues of material fact

exist, and the moving party is entitled to judgment as a matter of law based on the substance of the pleadings and any judicially noticed facts." *Andrx Pharms., Inc. v. Elan Corp.*, 421 F.3d 1227, 1232–33 (11th Cir. 2005). The standard for reviewing a motion for judgment on the pleadings is the same as the standard applicable to a motion to dismiss for failure to state a claim under Rule 12(b)(6). *Carbone v. Cable News Network, Inc.*, 910 F.3d 1345, 1350 (11th Cir. 2018). In reviewing the pleadings, the Court "accept[s] the facts in the complaint as true and view[s] them in the light most favorable to the nonmoving party." *Horsley v. Feldt*, 304 F.3d 1125, 1131 (11th Cir. 2002). However, a plaintiff may not merely plead facts in a complaint sufficient to find a claim to relief is conceivable; instead, the complaint must set forth "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

The Court will consider Defendant's motion because it will not delay trial. Fed. R. Civ. P. 12(c). This case only returned to this Court from the Eleventh Circuit in January 2023. [Doc. 327]. Defendant filed the motion before the Court the same month. [Doc. 324]. While the parties have filed their proposed pretrial order [Doc. 332], the pretrial conference has not been scheduled. Likewise, Plaintiff seeks to delay this case further by seeking an interlocutory appeal before proceeding to trial [Doc. 324], and Plaintiff has also filed a motion for judgment on the pleadings [Doc. 334]. Because both parties seek relief before continuing to trial, the Court finds that

consideration of the motions before the Court will not delay trial, and therefore, Defendant's motion [Doc. 324] is properly before the Court.[1]

Here, Defendant Holman is entitled to judgment as a matter of law because Plaintiff's intentional tort claims are barred under Georgia law. Under the Georgia Workers' Compensation Act, "[t]he rights and the remedies granted to an employee by this chapter shall exclude and be in place of all other rights and remedies of such employee . . . and all other civil liabilities whatsoever at common law or otherwise, on account of such injury . . . ." O.C.G.A. § 34-9-11. Georgia Courts and the Eleventh Circuit have consistently held that this means that the Act bars suit for both torts and intentional torts committed a coworker. *See e.g.*, *Dickey v. Harden*, 414 S.E.2d 924, 928 (Ga. 1992) ("the Georgia Workers' Compensation Act is now the exclusive remedy for injuries sustained by an employee during the course of employment resulting from the negligence of a co-worker."); *Webster*, 522 S.E.2d at 489 ("This bar also applies to intentional torts committed by one worker against a co-worker . . . "); *Fortin v. AT&T Servs., Inc.*, No. 21-11047, 2021 WL 4302938, at *2 (11th Cir. Sept. 22, 2021) ("This exclusive remedy provision applies to intentional torts committed by a co-worker . . . ."). In the case of intentional torts, however, "[t]he Act . . . bars an independent action for intentional torts committed

[1] The Court notes that Defendant Holman declined to raise that Plaintiff's intentional tort claims are barred by Georgia law in his motion for summary judgment. [Docs. 162; 214]. Despite this, the Court will consider this argument raised for the first time in a motion for judgment on the pleadings because it will not delay trial here.

by one worker against a co-worker, unless the tortious act was committed for personal reasons unrelated to the conduct of the employer's business." *Doss v. Food Lion, Inc.*, 83 F.3d 378, 379 (11th Cir. 1996) (citing *Murphy v. ARA Svcs.*, 298 S.E.2d 528, 531 (Ga. Ct. App. 1982)). "Whether an injury occurred due to 'reasons personal to' [the plaintiff] depends on whether her injury arose out of and in the course of her employment . . . ." *Hennly v. Richardson*, 444 S.E.2d 317, 329 (Ga. 1994) (quoting *Murphy*, 298 S.E.2d at 530). Likewise, the Georgia Supreme Court further defines this standard holding that "[a]n injury arises 'in the course of' employment when it occurs within the period of the employment, at a place where the employee may be in performance of her duties and while she is fulfilling or doing something incidental to those duties." *Id.* Furthermore, "[a]n injury arises 'out of' the employment when a reasonable person, after considering the circumstances of the employment, would perceive a causal connection between the conditions under which the employee must work and the resulting injury." *Id.*

Here, Plaintiff's sole remaining claims are intentional tort claims for assault and battery against Defendant Holman [Doc. 228 at 15], a senior lead CSO also employed by Akal Security. [Doc. 32 at 10]. Likewise, Plaintiff pleads in his amended complaint that these torts allegedly occurred at work during a meeting discussing work-related topics—Plaintiff's supposed tardiness to work. [*Id.* at 19:34]. Because Plaintiff's intentional tort claims are against a co-worker during a

work-related meeting, "[t]he Act . . . bars an independent action for intentional torts committed by one worker against a co-worker, unless the tortious act was committed for personal reasons unrelated to the conduct of the employer's business." Doss, 83 at 379. Thus, the Court must determine whether the injury was personal to Plaintiff, or the injury arose out of and in the course of his employment. *Hennly*, 444 S.E.2d at 329.

Plaintiff's amended complaint shows that the alleged assault and battery here arose out of and in the course of his employment. Plaintiff pleads that the intentional torts at issue happened during a work meeting in response to a discussion about being late to work. [Doc. 32 at 19:34]. Plaintiff asserts that this meeting became contentious, and Plaintiff told Defendant Holman and a supervisor that he felt he was being harassed. [*Id.*] The entire course of events surrounding Plaintiff's claims occurred at a meeting called to discuss Plaintiff's supposed tardiness to work. This shows that Plaintiff's intentional tort claims arose in the course of his employment because they "occur[ed] within the period of the employment, at a place where the employee may be in performance of [his] duties and while [he was] fulfilling or doing something incidental to those duties." *Hennly*, 444 S.E.2d at 329. Likewise, this shows that Plaintiff's claims arose out of the employment because "a reasonable person . . . would perceive a casual connection" between the work-related meeting

and the intentional torts that allegedly occurred when the meeting became hostile. *Id.*

Plaintiff asserts that these intentional torts were personal to him because they were part of a pattern of retaliation by Defendant Holman and Akal Security for reasons personal to Plaintiff rather than as part of his job. [Doc. 323 at 8]. Plaintiff argues that he had complained of discrimination by Defendant Holman in the past, and that his pleadings show a causal connection between those allegations of discrimination and Defendant Holman's alleged assault and battery. [*Id.*] Plaintiff's amended complaint states that he had sent a letter to Defendant Akal Security in June 2016 alleging retaliation, sex discrimination, and harassment, and that Defendant Holman retaliated in response to this letter by denying Plaintiff all breaks for a full week. [Doc. 32 at 10]. Plaintiff further pleads that he complained to management in August 2016 about Defendant Holman regarding harassment, retaliation, work place bullying, sex discrimination, and a hostile work environment. [*Id.*] Plaintiff also claims that Defendant Holman and a supervisor further retaliated against him in August 2016 by frequently changing Plaintiff's schedule "in an effort to harass him and to cause him to violate attendance rules so that Defendants could build a case against him." [*Id.* at 11]. The meeting that makes up the factual basis of Plaintiff's assault and battery claims occurred on August 19, 2016. [*Id.*] Plaintiff argues that his history of complaints against Defendant Holman in the months directly

proceeding the meeting where Plaintiff alleges Holman struck him creates a "genuine issue of material fact in dispute of whether [Holman's] actions of assault and battery stem from reasons unrelated to Plaintiff's job performance." [Doc. 323 at 8].

However, Plaintiff's arguments are insufficient to survive Defendant's motion because Plaintiff's causation argument still shows that the dispute between Plaintiff and Defendant Holman arose out of and in the course of Plaintiff's employment. All of Plaintiff's allegations about Defendant Holman's conduct are work-related. Plaintiff alleges that Holman wrongfully cut his break time and rearranged his schedule. [Doc. 32 at 10–11]. While Plaintiff alleges that employees of Defendant Akal Security made discriminatory comments about issues personal to Plaintiff—his alleged sexual orientation and relationship with another employee [*id.* at 6–7]—Plaintiff does not allege that Defendant Holman made any of these statements [*see id.* at 6]. Instead, Plaintiff attributes this harassment to other employees not named in this lawsuit. [*Id.* at 7–10]. Likewise, Plaintiff alleges that he complained to management about harassment by Defendant Holman that was not related to Plaintiff's job performance, but Plaintiff's amended complaint does not allege any actions by Holman plausibly pleading harassment "personal to" Plaintiff.[2] Thus,

[2] The Court does not disregard that Plaintiff alleges specific discriminatory statements from other employees. [Doc. 32 at 6–10]. Plaintiff also alleges that he complained about these statements to the management of Defendant Akal Security. [*Id.* at 10, 13]. However, Plaintiff's amended complaint does not connect these statements to Defendant Holman. Instead, Plaintiff concludes

even viewing his allegations in the light most favorable to Plaintiff, he has failed to plausibly plead that the intentional torts at issue here were based on issues personal to Plaintiff rather than work-related issues.

Lastly, Plaintiff also argues that Defendant Holman's motion is barred for procedural shortcomings, but these arguments are also insufficient. First, Plaintiff argues that Defendant Holman waived the right to raise the Act as an affirmative defense because he did not raise it in his motion to dismiss Plaintiff's amended complaint. [Doc. 323 at 2–4; *see* Doc. 37]. Plaintiff is correct that some defenses are waived if not raised in a defendant's first responsive pleading. Fed. R. Civ. P. 12(h). However, an affirmative defense that Plaintiff has failed to state a claim under Rule 12(b)(6) because Plaintiff's claim is barred by state law is not one of these defenses. *Id.* Likewise, Defendant Holman raised this defense in his amended answer to Plaintiff's amended Complaint. [Doc. 58 at 16]. As such, Defendant Holman has not waived this defense. Second, Plaintiff argues that Defendant Holman cannot bring the motion before the Court because the Federal Rules prevent a party from bringing

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that Defendant Holman was aware that Plaintiff complained to management and retaliated against Plaintiff by cutting Plaintiff's breaks and adjusting his schedule. [*Id.*] The Court also recognizes that Plaintiff now argues in response to Defendant Holman's motion that Holman's alleged assault and battery are part of a pattern of retaliation directed at Plaintiff for personal rather than work-related reasons. [Doc. 323 at 9–10]. Again, the Court notes that Plaintiff's amended complaint does not connect Plaintiff's allegations concerning discriminatory conduct to the facts surrounding the alleged assault and battery. Thus, Plaintiff has failed to plead beyond conclusory allegations that the assault and battery at issue here were personal to Plaintiff rather than part of the work-related disputes between Plaintiff and Holman as detailed in his amended complaint.

a second pre-answer motion. [Doc. 323 at 4]. This argument is inaccurate, however, because Defendant Holman's motion is not a pre-answer motion. Defendant filed an answer to Plaintiff's amended complaint [Doc. 57] on November 29, 2018, and filed the motion before the Court [Doc. 322] on January 1, 2023.

Having reviewed the parties' arguments, Defendant's motion for judgment on the pleadings [Doc. 322] is **GRANTED** because Plaintiff's claims arise out of and in the course of his employment.[3] As such, Plaintiff is barred from bringing suit for the assault and battery claims before the Court.

b. Plaintiff's Motion for Judgment on the Pleadings

Plaintiff also moves for judgment on the pleadings on the basis that Defendant Holman failed to raise self-defense as an affirmative defense. [Doc. 334 at 7]. Plaintiff argues that he is entitled to judgment as a matter of law because Defendant Holman failed to raise self-defense in response to Plaintiff's assault and battery claims. [*Id.*] However, this motion is factually flawed because Defendant Holman did plead self-defense in his amended answer to Plaintiff's amended complaint.

[3] If Plaintiff finds this result unfair, the Court understands his point. Viewing the facts in the light most favorable to the Plaintiff, he alleges that a supervisor struck him during a workplace meeting as a result of a culmination of disputes. The Court takes no position on whether Plaintiff's claims are true. Nonetheless, Georgia law deprives Plaintiff of his day in court because these alleged intentional torts arose out of a work-related meeting. While the Supreme Court of Georgia, has interpreted the Act to include work-related intentional torts, this interpretation arguably leads to unjust results when—as in this case—a supervisor allegedly assaults a coworker and the injured party is prevented from vindicating his rights. But, it is not the job of this Court to make the policy decisions on this issue; that belongs to the General Assembly of Georgia.

[Doc. 58 at 15]. Likewise, Defendant also disputed Plaintiff's intentional tort claims by denying that the torts even occurred. [*Id.* at 8:34]. Plaintiff's motion does not address this defense, yet Plaintiff argues that there are no questions of fact that prevent the Court from granting Plaintiff's motion. [Doc. 334 at 5–7]. "[A] plaintiff who bears the burden of proof on an asserted claim is entitled to judgment on the pleadings if the defendant admits allegations establishing liability and fails to offer any pertinent defense." *Vann v. Inst. of Nuclear Power Operations, Inc.*, No. 1:09-CV-1169-CC-LTW, 2010 WL 11601718, at *2 (N.D. Ga. July 15, 2010). Here, Defendant does not concede liability and raises defenses Plaintiff does not address. As such, Plaintiff's motion is not supported by the record, and Plaintiff's motion [Doc. 334] is **DENIED**.

c. Plaintiff's Motion for Interlocutory Appeal

Plaintiff also filed a motion for interlocutory appeal. [Doc. 324]. After this Court granted Defendants Akal Security's and USMS's motions for summary judgment [Doc. 228], Plaintiff sought to appeal that ruling even though it did not fully resolve the case. [Doc. 242]. The Eleventh Circuit dismissed this appeal for lack of jurisdiction because this Court did not certify as final its order granting summary judgment on some but not all of Plaintiff's claims. [Doc. 254]. In response, Plaintiff filed a motion for certification of final judgment. [Doc. 255]. The Court granted this motion [Doc. 264-1], and Plaintiff appealed again. [Docs. 257, 285].

However, the Eleventh Circuit reversed this Court's ruling that there was no just reason to delay appellate review of the Court's grant of summary judgment to Defendants Akal Security and USMS. [Doc. 319]. As such, the Eleventh Circuit remanded the case for resolution of Plaintiff's remaining claims. [*Id.*]

Now, Plaintiff seeks interlocutory appeal to the Eleventh Circuit pursuant to 28 U.S.C. § 1292(b). [Doc. 324]. Plaintiff argues that an interlocutory appeal is appropriate here because it is allegedly necessary to resolve questions regarding the interpretation and application of Title VII of the Civil Rights Act of 1964 to Plaintiff's claims. [*Id.* at 4–5]. Plaintiff further argues an interlocutory appeal is appropriate because that the Eleventh Circuit noted in its opinion remanding this case that the facts of Plaintiff's claims against Defendant Holman are also relevant to the facts of Plaintiff's claims against Defendant Akal Security. [*Id.* at 9]. In the alternative, Plaintiff also asserts that an interlocutory appeal is appropriate under the collateral order doctrine. [*Id.* at 10]. Defendant opposes this motion on the basis that Plaintiff has failed to demonstrate an interlocutory appeal is proper under 28 U.S.C. § 1292(b) or the collateral order doctrine. [Doc. 329].

Certification of an interlocutory appeal under 28 U.S.C. § 1292(b) is an extraordinary measure that is permitted only in exceptional circumstances. *McFarlin v. Conseco Serv., LLC*, 381 F.3d 1251, 1256 (11th Cir. 2004). The Eleventh Circuit has explained that the following five conditions must be met before it will consider

an interlocutory appeal under 28 U.S.C. § 1292: "(1) the issue is a pure question of law, (2) the issue is 'controlling of at least a substantial part of the case,' (3) the issue was specified by the district court in its order, (4) 'there are substantial grounds for difference of opinion' on the issue, and (5) 'resolution may well substantially reduce the amount of litigation necessary on remand.'" *Mamani v. Berzain*, 825 F.3d 1304, 1312 (11th Cir. 2016) (quoting *McFarlin*, 381 F.3d at 1253). The moving party bears the burden to "make the showings necessary to establish a right to interlocutory appeal." *CSX Transp., Inc. v. Kissimmee Util. Auth.*, 153 F.3d 1283, 1286 (11th Cir. 1998).

Plaintiff's motion fails because Plaintiff has not demonstrated that this motion involves pure questions of law or that resolution would reduce the amount of litigation on remand.[4] Plaintiff argues that this case involves two questions of pure controlling law:

[4] Defendant Holman also argues that Plaintiff's motion fails because it is untimely. [Doc. 329 at 1–2]. 28 U.S.C. § 1292(b) states: "When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order . . . ." Defendant argues that this means that motions to certify an order for interlocutory appeal must be made within ten days of the date of the district court order the moving party seeks to appeal. [Doc. 329 at 2]. Some district courts in this Circuit have ruled based on this interpretation of the statute. *See, e.g.*, *Cummings v. Harrison*, No. 4:07CV428-WCS, 2011 WL 13112573, at *4 (N.D. Fla. June 30, 2011), *aff'd on other grounds sub nom. Cummings v. Dep't of Corr.*, 757 F.3d 1228 (11th Cir. 2014); *Williams v. Equifax Info. Servs., Inc.*, No. 5:17-CV-01216-CLS, 2018 WL 9986751, at *1 (N.D. Ala. Jan. 25, 2018). However, the plain language of the statute states that a

> 1. Does a federal statutorily and federally regulated intertwined relationship create a joint employer relationship under Title VII of The Civil Rights Act of 1964 as amended? Such as the relationship here between the Court Security Officer (C.S.O.) and the USMS being significantly intertwined pursuant to 28 U.S.C. § 566 and 28 C.F.R. § 0.112(c).
>
> 2. Does an employee of a private contractor whose relationship is governed by a Collective Bargaining Agreement (C.B.A.) enjoy the rights of a public employee with a property interest in his employment create a joint employer relationship under Title VII of The Civil Rights Act of 1964 as amended when C.S.O.'s are akin to public employees as one Federal Appellate Court has held? Such as the relationship here between the C.S.O. and the USMS because a public employee is defined by federal statute pursuant to 18 U.S.C. § 716(c)(4).

[Doc. 324 at 4–5]. However, these are not pure questions of law.

The Eleventh Circuit has clarified that "[t]he term 'question of law' does not mean the application of settled law to fact. It does not mean any question the decision of which requires rooting through the record in search of the facts or of genuine issues of fact." *McFarlin*, 381 F.3d at 1258. Instead, the Eleventh Circuit held that "what the framers of § 1292(b) had in mind is more of an abstract legal issue or what might be called one of 'pure' law, matters the court of appeals []can decide quickly and cleanly without having to study the record.[]" *Id.* (internal quotations omitted).

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party seeking interlocutory appeal must seek that appeal within ten days of the district court's order certifying an order for appeal, not the order the moving party seeks to appeal. This suggests that a party seeking certification of a district court order for interlocutory appeal can do so more than ten days after entry of the order for which Plaintiff seeks certification. Likewise, no such order certifying the case for interlocutory appeal has been entered in this case, nor is there controlling precedent adopting Defendant Holman's interpretation of the statute. Thus, the Court declines to reach this issue in this case. Lastly, timeliness is not controlling here as Plaintiff's motion does not meet the standard for certification of an interlocutory appeal.

Plaintiff's questions here would require the Eleventh Circuit to apply the law to the facts to determine whether the parties here have the type of relationship Plaintiff alleges. This is evident in the Magistrate Judge's report and recommendation analyzing this issue in which the Magistrate Judge applied the law to the record to determine that Defendant USMS was not Plaintiff's joint employer. [Doc. 214 at 60]. As such, Plaintiff's questions are not pure questions of law and not appropriate for certification for interlocutory appeal.

Furthermore, an interlocutory appeal here would not expedite litigation because the Eleventh Circuit has already declined to consider Plaintiff's Title VII claims until this Court resolves Plaintiff's remaining claims against Defendant Holman. [Doc. 319]. Resolution of Plaintiff's proposed questions of law has no bearing on his intentional tort claims pending before this Court. As such, granting Plaintiff's motion here without first ruling on these claims would be sending the Eleventh Circuit the same case it just declined to consider. Likewise, because the Court has granted Defendant Holman's motion for judgment on the pleadings, Plaintiff is now free to appeal the case as a whole. Thus, granting Plaintiff's motion before ruling on either parties' motion for judgment on the pleadings would only lengthen, rather than shorten, the amount of litigation left in this case.

Plaintiff also argues an interlocutory appeal is appropriate here via the collateral order doctrine. [Doc. 324 at 11]. "The collateral order doctrine . . .

recognizes 'a small category of decisions that, although they do not end the litigation, must nonetheless be considered "final" [and appealable].'" *In re Hubbard*, 803 F.3d 1298, 1305 (11th Cir. 2015) (quoting *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 42 (1995)). "That small category includes only decisions that are conclusive, that resolve important questions separate from the merits, and that are effectively unreviewable on appeal from the final judgment in the underlying action." *Swint*, 514 U.S. at 42. However, this doctrine clearly does not apply here because Plaintiff's questions are immediately reviewable upon appeal of the case as a whole. As such, Plaintiff's motion [Doc. 324] is **DENIED**.

d. Motion for Sanctions

Lastly, Defendant Holman seeks sanctions pursuant to Federal Rule of Civil Procedure 11(c)(2) for having to respond to Plaintiff's motion for judgment on the pleadings. [Doc. 337]. Defendant Holman argues that this motion is frivolous because Holman denied both Plaintiff's intentional tort allegations and raised self-defense in his amended answer. [*Id.* at 3; Doc. 58 at 8, 11–12, 15–16]. Plaintiff responds that his motion is not frivolous because Defendant's affirmative defenses are not plausible because he denied striking Plaintiff. [Doc. 338 at 5].

Under Rule 11, the district court may impose sanctions in response to a motion that a party has raised a frivolous argument before the court. Because Rule 11(c)(1) states that a court "may impose an appropriate sanction[,]" imposing such sanctions

is dedicated to the district court's discretion. *See Peer v. Lewis*, 606 F.3d 1306, 1316 (11th Cir. 2010) (holding that "district courts have broad discretion to determine whether to impose sanctions"). "The objective standard for testing conduct under Rule 11 is 'reasonableness under the circumstances' and 'what was reasonable to believe at the time' the pleading was submitted." *Baker v. Alderman*, 158 F.3d 516, 524 (11th Cir. 1998) (citations omitted). Here, the Court declines to exercise this discretion for two reasons.

First, Plaintiff is proceeding *pro se* and argues that he believes his Motion for Judgment on the Pleadings is both "well grounded in fact" and "legally teneable[.]" [Doc. 338 at 8]; *see Thomas v. Evans*, 880 F.2d 1235, 1240 (11th Cir. 1989) ("Rule 11 applies to pro se plaintiffs, but the court must take into account the plaintiff's pro se status when determining whether the filing was reasonable."). Defendant Holman argues that plaintiff is not an ordinary *pro se* party because "Plaintiff is a graduate of law school and repeatedly claimed in this litigation that his knowledge and legal skills are superior to counsel for Defendant Holman." [Doc. 337 at 4]. Despite this, Plaintiff's motion reveals that it was based on misunderstandings of the law. Plaintiff argues that he is entitled to judgment as a matter of law because Defendant Holman failed to state any facts in his answer showing self-defense in response to Plaintiff's intentional tort claims. [Doc. 334 at 4]. However, Defendant Holman was not required to plead facts in support of self-defense. Instead, it is sufficient that he

raised in his amended answer[5] that the assault and battery at issue never occurred. [Doc. 58 at 8:34]. This demonstrates that Plaintiff misunderstood the basic pleading standards underpinning his legal arguments. Thus, Plaintiff's misconceptions about the law show it was likely reasonable under the circumstances for Plaintiff to believe he had filed a motion in good faith—despite the fact that the motion is meritless.

Second, the Court declines to sanction Plaintiff because it has already granted Defendant Holman the relief he seeks in granting his motion and dismissing Plaintiff's remaining claims. Under Rule 11, the Court has the authority to dismiss Plaintiff's claims as a sanction. By reaching the merits of Plaintiff's claims before reaching Defendant's Motions for Sanctions, the Court has already provided Defendant Holman greater relief than mere attorney's fees. Thus, Defendant's motion [Doc. 337] is **DENIED**.

The Court cautions Plaintiff, however, that Rule 11 applies to *pro se* plaintiffs with equal force to represented parties. *Thomas*, 880 F.2d at 1240. Plaintiff is not the ordinary *pro se* plaintiff as he signs each of his filings by indicating that he has a

[5] Plaintiff also claims that the Court should disregard Defendant Holman's amended answer [Doc. 58] because it was filed without leave of the Court allegedly in violation of Rule 15(a)(2). However, Plaintiff misunderstands that a defendant can amend their answer as a matter of course within 21 days of serving it. Fed. R. Civ. P. 15(a)(1)(A). Here, Defendant Holman filed his answer to the amended complaint on November 29, 2018 [Doc. 57] and filed his amended answer 20 days later on December 19, 2018 [Doc. 58]. This only goes to reinforce that Plaintiff likely filed his motion based on misunderstandings of the law rather than to intentionally raise frivolous arguments.

J.D.—including the motion that Defendant Holman alleges is frivolous. [Doc. 334 at 8]. Courts in this circuit have sanctioned *pro se* parties when they disregard their obligations to the court and possess a legal education. *Morton v. Harris*, 86 F.R.D. 437 (N.D. Ga.), *aff'd*, 628 F.2d 438 (5th Cir. 1980); *Lustig v. Stone*, No. 15-20150-CIV, 2019 WL 11660556 (S.D. Fla. Apr. 29, 2019), *aff'd*, 813 F. App'x 461 (11th Cir. 2020). Thus, if Plaintiff decides to appeal this case, the Court cautions Plaintiff to recognize his duties under Rule 11.

III. CONCLUSION

Because Plaintiff's remaining claims are barred by the Georgia Workers' Compensation Act, Defendant's motion [Doc. 322] is **GRANTED**, and Plaintiff's remaining claims are **DISMISSED**. Likewise, because Plaintiff failed to demonstrate he is entitled to judgment as a matter of law, Plaintiff's motion [Doc. 334] is **DENIED**. Furthermore, Plaintiff failed to demonstrate appellate review is appropriate here, so Plaintiff's motion for interlocutory appeal [Doc. 324] is **DENIED**. Lastly, because Plaintiff's claims are dismissed, Defendant's motion for sanctions [Doc. 337] is **DENIED**.

IT IS SO ORDERED, this 24th day of April, 2023.

William M. Ray II
WILLIAM M. RAY, II
UNITED STATES DISTRICT JUDGE

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-11735

MARQUICE D. ROBINSON,

Plaintiff-Appellant,

versus

MICHAEL HOLMAN,
AKAL SECURITY, INC
UNITED STATES MARSHALS SERVICE,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:17-cv-03658-WMR

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before NEWSOM, GRANT, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Panel Rehearing also is DENIED. FRAP 40.