No# 18-

Supreme Court of the United States

Jill Capobianco (Appellant- Plaintiff)

v.

Commissioner, Social Security Administration (Defendant - Appellee)

APPENDIX FOR PLAINTIFF

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Eleventh Circuit no. 42-10344

Jill Capobianco
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APPENDIX A

Eleventh Circuit Decision -March 19th, 2025

[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 24-10344

Non-Argument Calendar

JILL CAPOBIANCO,

Plaintiff-Appellant,

versus

COMMISSIONER, SOCIAL SECURITY ADMINISTRATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 2:22-cv-14405-RMM

Before ROSENBAUM, JILL PRYOR, and ABUDU, Circuit Judges.

PER CURIAM:

Jill Capobianco appeals from the district court's order affirming the decision of the Commissioner of the Social Security Administration denying her applications for disability insurance benefits and supplemental security income. After careful review, we affirm.

I.

Capobianco applied for disability insurance benefits and supplemental security income, alleging that she was disabled due to several physical and mental impairments, including chronic migraines.[1] An administrative law judge ("ALJ") held multiple evidentiary hearings on Capobianco's applications.[2] The record before the ALJ included medical records and testimony from Capobianco about her limitations.

The medical records reflected that neurologist Dr. Kathie Kowalczyk treated Capobianco beginning in December 2016. After treating Capobianco for four months, Kowalczyk completed a questionnaire about Capobianco's migraine headaches. She

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[1] Because we write only for the parties, who are already familiar with the facts and proceedings in the case, we include only what is necessary to explain our decision.

[2] In agency proceedings, Capobianco at times was represented by counsel and at times proceeded *pro se*. In the district court, she was represented by counsel but is proceeding *pro se* in this appeal.

reported that Capobianco experienced chronic daily headaches, which were severe enough to cause significant interference with activities throughout the day. The questionnaire asked about the frequency of headaches. Kowalczyk checked two boxes, indicating that Capobianco had headaches "1 time a week" and "2 or more times a week." Doc. 13 at 1639.[3] Above the box for "1 time a week," Kowalczyk added a note, stating "1-2 times." *Id.* She opined that the duration of the headaches was unpredictable, but they could be expected to last more than an hour. Kowalczyk also stated that Capobianco was taking Topamax for the headaches and did not identify any side effects associated with the medication. And Kowalczyk reported that she was unable to identify a "medical, biological, [or] psychiatric basis" for the frequency of Capobianco's headaches. *Id.*

From December 2016 through March 2019, Kowalczyk saw Capobianco eight times. The only records before the ALJ concerning these appointments were after-visit summaries; there were no progress notes. The after-visit summaries showed that Kowalczyk administered Botox injections to Capobianco and that Capobianco took gabapentin, Topamax, and ibuprofen for her headaches. The after-visit summaries included no details about Capobianco's symptoms or the examinations that Kowalczyk performed.

Between June 2019 and March 2021, Kowalczyk saw Capobianco four more times. The record before the ALJ included

[3] "Doc." numbers refer to the district court's docket entries.

progress notes for these appointments. The progress notes showed that at the June 2019 appointment, Capobianco received a Botox injection for her headaches. But the notes for this appointment included no details about Capobianco's symptoms or any other information about her treatment or Kowalczyk's examination. The progress notes for the three other appointments showed that the appointments occurred via telehealth, meaning that Kowalczyk did not physically examine Capobianco. At these appointments, Capobianco reported experiencing headaches between 15 and 20 days a month.

The ALJ also reviewed records from several magnetic resonance imaging ("MRI") scans. An MRI scan of Capobianco's brain showed "unremarkable" results. *Id.* at 2359. MRI scans of her cervical and lumbar spine showed only mild or minimal degenerative disc disease and no significant stenosis.

The ALJ issued a written decision denying Capobianco's applications. Applying the five-step sequential evaluation framework, the ALJ determined that Capobianco was not disabled during the relevant period. At the first step, he found that Capobianco had not engaged in substantial gainful activity. At the second step, he concluded that she suffered from several severe impairments, including cervical migraines. At the third step, he determined that she did not have an impairment or combination of impairments that met or medically equaled the severity of a listed impairment.

The ALJ then assessed Capobianco's residual functional capacity. He concluded that she could engage in light work with certain physical and mental limitations.

In assessing residual functional capacity, the ALJ considered Capobianco's testimony that debilitating headaches prevented her from working and the medical records showing that Kowalczyk had treated Capobianco for migraines. But the ALJ noted that for most of the appointments there were no progress notes. For these appointments, the ALJ found that there was nothing that "discuss[ed] [Capobianco's] symptoms, physical examinations, test results, medication management, or prognosis." *Id.* at 44. And for the later appointments for which there were progress notes, the ALJ observed that these appointments generally were conducted via telemedicine without any accompanying physical examination. He also noted that the results of the MRI scans were generally unremarkable and included no "findings that would relate to [her] reported headaches." *Id.* The ALJ thus concluded that medical records did not corroborate Capobianco's testimony about the frequency, intensity, and duration of her headaches.

The ALJ also considered the migraine questionnaire that Kowalczyk completed. He noted that she filled out the questionnaire four months after beginning to treat Capobianco and that it was "not accompanied by any progress notes that correspond with the statements [Kowalczyk] made regarding [Capobianco's] symptoms." *Id.* The ALJ also found that there were "some inaccuracies in the questionnaire" because Kowalczyk indicated that

Capobianco experienced headaches both two or more times per week and one to two times per week. *Id.*

Based on the residual functional capacity assessment, the ALJ concluded at step four that Capobianco was unable to perform her past relevant work. At step five, the ALJ determined that she could perform occupations that existed in significant numbers in the national economy. He thus concluded that she was not disabled during the relevant period. Capobianco sought review from the Appeals Council, which denied review.

Capobianco filed an action in district court challenging the Commissioner's decision. She raised two issues before the district court: (1) whether the ALJ properly weighed Kowalczyk's medical opinions when assessing her residual functional capacity and (2) whether the ALJ failed to adequately develop the record after recognizing that Kowalczyk's treatment notes for several appointments were missing.[4]

The district court affirmed the Commissioner's decision. It acknowledged that the ALJ did not expressly state the weight given to Kowalczyk's opinions. But the court concluded that it was clear from the record that the ALJ had assigned less than controlling weight to these opinions and why he decided to discount them.

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[4] In the district court, Capobianco also argued that the ALJ erred in giving no weight to the opinion of Dr. Kathleen Jeannot, a physician who performed a consultative examination. Because Capobianco does not raise any argument on appeal challenging the ALJ's assessment of Jeannot's opinions, we do not address this issue.

The court explained that the ALJ determined there was good cause to discount the opinions because Kowalczyk had treated Capobianco for only four months when she completed the questionnaire, Kowalczyk's responses were inconsistent as she opined that Capobianco experienced headaches both two or more times a week and one to two times a week, there were no progress notes that corresponded to the opinions, and the MRI scan of Capobianco's brain showed no abnormalities. The court further determined that substantial evidence supported the ALJ's decision.

The district court then addressed whether the ALJ failed to adequately develop the record by not seeking additional treatment records from Kowalczyk. The court explained that a case should be remanded for failure to develop the record only when there was an evidentiary gap that resulted in unfairness or prejudice to the claimant. The court concluded that there was no prejudice arising from the ALJ's failure to obtain the progress notes because the record contained ample information to allow the ALJ to make an informed decision. Although the ALJ had pointed to the missing notes as one basis for discounting Kowalczyk's opinions in the questionnaire, the court noted that the ALJ also had relied on other grounds to discount the opinions. Given these other grounds, the court concluded that there was no unfairness or clear prejudice to Capobianco. Alternatively, the court determined that there was no reversible error because Capobianco's attorney never asked the ALJ to obtain these records and at the evidentiary hearing represented that the record was complete.

This is Capobianco's appeal.

II.

When, as here, an ALJ denies benefits and the Appeals Council denies review, we review the ALJ's decision as the Commissioner's final decision. *See Doughty v. Apfel*, 245 F.3d 1274, 1278 (11th Cir. 2001). We review the Commissioner's decision to determine whether it is supported by substantial evidence, but we review *de novo* the legal principles upon which the decision is based. *Moore v. Barnhart*, 405 F.3d 1208, 1211 (11th Cir. 2005). Substantial evidence refers to "such relevant evidence as a reasonable person would accept as adequate to support a conclusion." *Id.* "We may not decide facts anew, reweigh the evidence, or substitute our judgment for that of the Commissioner." *Dyer v. Barnhart*, 395 F.3d 1206, 1210 (11th Cir. 2005) (alteration adopted) (internal quotation marks omitted). We must affirm the Commissioner's decision if it is supported by substantial evidence, "even if the proof preponderates against it." *Id.* (internal quotation marks omitted).

III.

We liberally construe Capobianco's appellate brief as raising eight issues. These issues are whether the ALJ: (1) abused his authority by making assumptions about Capobianco's physical impairments and disregarding her concerns that her constitutional rights had been violated; (2) engaged in judicial misconduct by limiting Capobianco's testimony, ignoring her correspondence, and commenting that her cardiologist needed money; (3) misapplied the treating physician rule by relying on the opinions of non-

treating physicians and a consulting psychiatrist over treating physicians; (4) violated Capobianco's constitutional rights as well as her rights under international law; (5) failed to develop and consider a complete record by asking a vague question about Capobianco's pain level, discussing only the parts of the record that supported denying benefits, refusing to allow Capobianco to submit additional evidence after she fired her attorney, and disregarding Kowalczyk's opinions; (6) abused his discretion by limiting Capobianco's testimony, not requiring a physician to answer her questions, ignoring medical evidence that was favorable to her, and questioning her credibility; (7) mischaracterized the record by cherry picking facts and ignoring evidence that showed Capobianco's impairments were more severe; and (8) erred by failing to ask the vocational expert about a hypothetical person with all of Capobianco's limitations and relying on the vocational expert's testimony about the availability of certain jobs in the national economy.

We conclude that Capobianco forfeited all these issues except whether the ALJ erred in failing to give controlling weight to Kowalczyk's opinions. Capobianco forfeited the other issues because she did not raise them in the district court and instead raises them for the first time on appeal. We have "repeatedly held that issues not raised in an initial brief are deemed forfeited and will not be addressed absent extraordinary circumstances." *Raper v. Comm'r of Soc. Sec.*, 89 F.4th 1261, 1274 (11th Cir. 2024) (alteration adopted) (internal quotation marks omitted). Although we "read briefs filed

by *pro se* litigants liberally," the principles of forfeiture still apply. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

It is true that in certain circumstances we will consider the merits of a forfeited issue. But we will do so only when:

> (1) the issue involves a pure question of law and refusal to consider it would result in a miscarriage of justice; (2) the party lacked an opportunity to raise the issue at the district court level; (3) the interest of substantial justice is at stake; (4) the proper resolution is beyond any doubt; or (5) the issue presents significant questions of general impact or of great public concern.

Raper, 89 F.4th at 1274 (internal quotation marks omitted). We cannot say that any of the forfeited issues fall within these exceptions. We thus conclude that the only issue properly before us is whether the ALJ erred in failing to give greater weight to Kowalczyk's opinions.

IV.

To be eligible for disability insurance benefits or supplemental security income, a claimant must prove that she is disabled. 42 U.S.C. §§ 423(a)(1)(E), 1382(a)(1). To determine whether a claimant is disabled, an ALJ applies a five-step sequential evaluation process. In the first three steps, the ALJ considers whether (1) the claimant is currently engaged in substantial gainful activity, (2) she has a severe impairment, and (3) her impairment or combination of impairments meet the requirements of a listed impairment. If a

claimant fails to establish that she is disabled at the third step, the ALJ proceeds to step four and considers her residual functional capacity to determine whether she can perform her past relevant work. 20 C.F.R. § 404.1520(a)(4); 416.920(a)(4). If a claimant establishes at step four that she has an impairment that prevents her from doing the kind of work she performed in the past, the ALJ continues to step five and considers whether the claimant can adjust to other work given her residual functional capacity, age, education, and work experience. *Id.* §§ 404.1520(a)(4); 416.920(a)(4).

In this case, we are concerned with the ALJ's assessment of Capobianco's residual functional capacity. She argues that the ALJ erred by failing to give sufficient weight to the opinions of Kowalczyk, her treating neurologist.

To determine whether a claimant is disabled, an ALJ must consider opinions from acceptable medical sources, including physicians. *Id.* §§ 404.1502(a)(1), 416.902(a)(1) For claims like Capobianco's that were filed before March 27, 2017, an ALJ must give a treating physician's opinions "substantial or considerable weight unless there is good cause to discount them." *Simon v. Comm'r, Soc. Sec. Admin.*, 7 F.4th 1094, 1104 (11th Cir. 2021) (internal quotation marks omitted). Good cause to discount an opinion exists when: (1) the "treating physician's opinion was not bolstered by the evidence," (2) the "evidence supported a contrary finding," or (3) the "treating physician's opinion was conclusory or inconsistent with the doctor's own medical records." *Phillips v. Barnhart*, 357 F.3d 1232, 1241 (11th Cir. 2004). When an ALJ disregards a

treating physician's opinion, he "must clearly articulate" his reasons for disregarding it. *Id.* Still, we have recognized that "there are no magic words" that an ALJ must use when discounting a treating physician's opinion, and "[w]hat matters is whether the ALJ states with at least some measure of clarity the grounds for his . . . decision." *Raper*, 89 F.4th at 1276 n.14 (alteration adopted) (internal quotation marks omitted).

Here, Capobianco argues that the ALJ erred because he did not state the weight assigned to Kowalczyk's opinions set forth in the headache questionnaire. She is correct that the ALJ did not expressly state that he was giving the opinions little weight. But we agree with the district court that the ALJ's thorough discussion of the questionnaire made clear that he found good cause to assign less than controlling weight to Kowalczyk's opinions. Because an ALJ is not required to use magic words and the ALJ's decision clearly shows the basis for why he assigned Kowalczyk's opinions less than controlling weight, we conclude that the ALJ did not err. *See Raper*, 89 F.4th at 1276 n.14.

We now turn to whether substantial evidence supports the ALJ's decision to give Kowalczyk's opinions little weight. As the ALJ noted, when Kowalczyk completed the headache questionnaire, she had been treating Capobianco for only four months; the record did not include other medical evidence, such as progress notes, that corroborated her opinions; and Capobianco's MRI scans were generally unremarkable. Given all of this, we conclude that substantial evidence supported the ALJ's decision to give little

weight to Kowalczyk's opinions. In reaching this conclusion, we emphasize that our review is limited to whether substantial evidence supported the ALJ's decision; we are not deciding whether we would have reached the same decision if we were sitting as a factfinder. *See Dyer*, 395 F.3d at 1210.[5]

AFFIRMED.

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[5] In the district court, Capobianco also argued that the ALJ erred by failing to adequately develop the record because he did not take any steps to obtain the missing progress notes from Kowalczyk. Even liberally construing Capobianco's appellate brief, she has not raised this issue on appeal and thus has forfeited it. *See Raper*, 89 F.4th at 1274 (recognizing that issues not raised in an initial appellate brief are deemed forfeited).

Even assuming Capobianco had adequately raised this issue on appeal, however, we would conclude that she is not entitled to relief. We agree with the district court's treatment of the issue.

APPENDIX B

Eleventh Circuit Decision Denying Petition for En Banc Hearing – June 27th, 2025 and Mandate issued July 7th, 2025

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10344

JILL CAPOBIANCO,

Plaintiff-Appellant,

versus

COMMISSIONER, SOCIAL SECURITY ADMINISTRATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 2:22-cv-14405-RMM

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

Before ROSENBAUM, JILL PRYOR, and ABUDU, 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 40. The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. FRAP 40, 11th Cir. IOP 2.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10344

JILL CAPOBIANCO,

Plaintiff-Appellant,

versus

COMMISSIONER, SOCIAL SECURITY ADMINISTRATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 2:22-cv-14405-RMM

JUDGMENT

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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: March 19, 2025

For the Court: DAVID J. SMITH, Clerk of Court

ISSUED AS MANDATE: July 7, 2025

APPENDIX C

U.S. District Court-Southern District of Florida
Decision. December 14th, 2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 22-cv-14405-McCabe

JILL R. CAPOBIANCO,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
_____/

ORDER AFFIRMING SOCIAL SECURITY DECISION

THIS CAUSE comes before the Court pursuant to 42 U.S.C. § 405(g) to review the decision of the Commissioner of Social Security ("Commissioner") denying the applications of Plaintiff Jill R. Capobianco for Supplemental Security Income ("SSI") benefits (DE 1). This matter presents two issues for review:

1. Whether the Administrative Law Judge ("ALJ") erred by improperly evaluating medical opinions from Kathleen Jeannot, M.D., and Kathie Kowalczyk, M.D.

2. Whether the ALJ erred in failing to further develop the record by locating and including additional treatment notes from Dr. Kowalczyk.

For the reasons set forth below, the Court **AFFIRMS** the Commissioner's final decision.

I. BACKGROUND

On August 14, 2015, Plaintiff protectively filed an application for disability benefits under Title II of the Social Security Act ("SSA"), alleging a date last insured of March 31, 2014, with a disability beginning January 15, 2014 (R. 1018-20, 1091).[1] The application was denied initially and on reconsideration (R. 352-58, 360-68). On March 8, 2018 and October 21, 2019, Plaintiff filed applications for SSI, again alleging a disability beginning January 15, 2014 (R. 1053-63, 1069-77). Following hearings on September 23, 2019 and June 2, 2021, the ALJ issued an unfavorable decision on January 28, 2022 (R. 9-44).

The ALJ's decision analyzed Plaintiff's case following the five-step process set forth in 20 C.F.R. §§ 404.1520(a)(4)(i)-(v) and 416.920(a)(4)(i)-(v). *See Santos v. Soc. Sec. Admin., Comm'r*, 731 F. App'x 848, 852 (11th Cir. 2018) (explaining how the ALJ engages in the five-step process). At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since January 15, 2014 (R. 12). At step two, the ALJ found that Plaintiff suffered from the following severe impairments: degenerative disc disease/osteoarthritis of the lumbar spine, cervical migraines, sleep apnea, asthma, uterine fibroids/ovarian cyst, hypothyroidism, anxiety, depression, bipolar disorder, and post-traumatic stress disorder (R. 18-19).

At step three, the ALJ determined that Plaintiff did not have an impairment or combination of impairments that met any of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (R. 19-23). Next, the ALJ found that Plaintiff had the residual functional capacity or "RFC" to perform "light work" as defined in 20 C.F.R. §§ 404.1567(b) and 416.967(b), except that:

[1] The record on appeal may be found at docket entry 13.

- Plaintiff can lift, carry, push, and pull 20 pounds occasionally and 10 pounds frequently, can stand/walk for 2 hours total of an 8-hour workday, and can sit for 6 hours total in an 8-hour workday.

- Plaintiff can occasionally climb ramps and stairs but can never climb ladders, ropes, or scaffolds.

- Plaintiff can occasionally balance, stoop, crouch, kneel, and crawl.

- Plaintiff can frequently reach, handle, finger, and feel.

- Plaintiff should avoid exposure to dust, gases, fumes, odors, and other pulmonary irritants.

- Plaintiff can occasionally be exposed to unprotected heights and machinery and should avoid working in extreme heat and extreme cold.

- Plaintiff should work in an environment with only moderate levels of noise that is no louder than a busy office or a fast food restaurant during off hours.

- Plaintiff can understand and remember instructions for simple, routine tasks and can maintain concentration, persistence or pace to complete simple, routine tasks over an 8-hour period with scheduled breaks.

- Plaintiff can interact occasionally with coworkers, supervisors, and the public and can adapt to simple routine changes in the workplace and exercise appropriate judgment regarding simple routine work matters.

(R. 23-43).

At step four, the ALJ found that Plaintiff could not perform her past relevant work as a medical clerk or office manager (R. 43). At step five, the ALJ found that other jobs exist in significant numbers in the national economy that Plaintiff can still perform, considering her age, education, work experience, and RFC (R. 31-32). Specifically, the ALJ found Plaintiff can still perform the duties of document scanner, lens inserter, and final assembler (R. 43-44). As a result, the ALJ found Plaintiff not disabled (R. 44).

Thereafter, the Social Security Appeals Council denied review (R. 1-5). This appeal followed pursuant to 42 U.S.C. § 405(g).

II. STANDARD OF REVIEW

"In Social Security appeals, [the Court] must determine whether the Commissioner's decision is supported by substantial evidence and based on proper legal standards." *Winschel v. Comm'r of Soc. Sec.*, 631 F.3d 1176, 1178 (11th Cir. 2011) (cleaned up). A reviewing court must regard the Commissioner's findings of fact as conclusive so long as they are supported by substantial evidence. *See* 42 U.S.C. § 405(g). "Substantial evidence is ... more than a scintilla ... and it must include such relevant evidence as a reasonable person would accept as adequate to support the conclusion." *Foote v. Chater*, 67 F.3d 1553, 1560 (11th Cir. 1995).

A reviewing court "may not decide the facts anew, reweigh the evidence, or substitute [its] judgment for that of the Commissioner." *Phillips v. Barnhart*, 357 F.3d 1232, 1240 n.8 (11th Cir. 2004) (cleaned up). So long as substantial evidence supports the Commissioner's decision, and the Commissioner followed proper legal standards, this Court must affirm, even if the Court would have reached a contrary result as finder of fact, and even if the Court finds that the evidence preponderates against the Commissioner's decision. *See Winschel*, 631 F.3d at 1178; *Mitchell v. Comm'r, Soc. Sec. Admin.*, 771 F.3d 780, 782 (11th Cir. 2014); *Edwards v. Sullivan*, 937 F.2d 580, 584 n.3 (11th Cir. 1991); *Barnes v. Sullivan*, 932 F.2d 1356, 1358 (11th Cir. 1991).

III. DISCUSSION

Plaintiff urges reversal of the ALJ's decision on two grounds, each of which the Court will address in turn.

A. Evaluation of Medical Opinion Evidence

Plaintiff first argues that the ALJ erred in evaluating certain medical opinion evidence. In making disability determinations, ALJs must consider medical opinions from acceptable medical sources. 20 C.F.R. §§ 404.1527(b), 416.927(b).[2] When weighing a medical opinion, ALJs must consider numerous factors, including whether the doctor examined the claimant, whether the doctor treated the claimant, whether the doctor presented evidence and explanations to support the opinion, and whether the opinion is consistent with the record as a whole. 20 C.F.R. §§ 404.1527(c), 416.927(c). Although ALJs must consider each of these factors, they need not "explicitly address" all of them in the final written decision. *Lawton v. Comm'r of Soc. Sec.*, 431 F. App'x 830, 833 (11th Cir. 2011).

ALJs must give "controlling weight" to the opinion of a treating source, provided the opinion is "well-supported and not inconsistent with the other substantial evidence in the case record." *See* 20 C.F.R. §§ 404.1527(c)(2), 416.927(c)(2); *see also* SSR 96-2p, 1996 WL 374184, at *1 (July 2, 1996) (explaining when "treating source medical opinions are entitled to controlling weight"). ALJs cannot discount a treating source opinion absent good cause. *See* 20 C.F.R. § 404.1527(c)(2); *Winschel*, 631 F.3d at 1179. "Good cause" exists when (1) the treating physician's opinion is not bolstered by the evidence, (2) the evidence supports a contrary finding, or (3) the treating physician's opinion is conclusory or inconsistent with his or her own records. *Lawton*, 431 F. App'x at 833.

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[2] On January 18, 2017, the Commissioner revised the regulations governing the assessment of medical opinion evidence for claims filed on or after March 27, 2017. *See* 20 C.F.R. § 404.1520c; 82 Fed. Reg. 5844 (2017); *see also Harner v. Soc. Sec. Admin., Comm'r*, 38 F.4th 892, 896-98 (11th Cir. 2022) (discussing the revised regulations). The Court finds, and the parties agree, that the former version of the regulations apply to this case (DE 31 at 7, DE 38 at 5 n.3).

In this case, Plaintiff assigns error to the ALJ's evaluation of medical opinion evidence from two sources: (1) consultative examiner Dr. Kathleen Jeannot, M.D., and (2) treating neurologist Dr. Kathie Kowalczyk, M.D. (DE 31 at 6-12). As set forth below, the Court finds no error.

1. Dr. Kathleen Jeannot, M.D

Dr. Jeannot, a consultative examiner, evaluated Plaintiff on or about March 16, 2019 and issued two reports, a Functional Assessment/Medical Source Statement ("Functional Assessment") and a Medical Source Statement of Ability to Do Work-related Activities ("Ability to Work Assessment") (R. 1886, 1875-76). The ALJ assigned "little weight" to these opinions, finding them internally inconsistent with one another, explaining as follows:

> The consultative physician rendered two different opinions that were somewhat contradictory based on the same examination, finding that the claimant could perform a limited range of medium work in the body of the examination and what appears to be a limited range of heavy work but with sitting, standing, and walking for two hours each total, which adds up to 6, rather than 8 hours, less than the average workday

(R. 41).

Plaintiff argues that the ALJ's decision lacks substantial support in the record (DE 31 at 6-9). In particular, Plaintiff points out that one of Dr. Jeannot's reports opined that Plaintiff needed to lay down for at least two hours each workday due to her cervical and lumbar spine problems (R. 1876). Plaintiff argues that the ALJ should have given greater weight to this portion of Dr. Jeannot's opinion and should have incorporated this limitation into the RFC (DE 31 at 6-9).

The Court finds no error in the ALJ's assessment of Dr. Jeannot's opinions or in the RFC itself. The Court has reviewed the two reports submitted by Dr. Jeannot and agrees with the ALJ's observation that they are "somewhat contradictory," including the following:

- The Ability to Work Assessment opines that Plaintiff can lift up to 100 pounds occasionally, whereas the Functional Assessment opines that Plaintiff can lift only up to 50 pounds occasionally (R. 1886, 1875).

- The Ability to Work Assessment opines that Plaintiff can lift up to 50 pounds frequently, whereas the Functional Assessment opines that Plaintiff can lift only up to 25 pounds frequently (R. 1886, 1875).

- The Ability to Work Assessment opines that Plaintiff can sit for only two hours per workday, whereas the Functional Assessment opines that Plaintiff has a maximum sitting capacity of six hours per workday (R. 1886, 1876).

- The Ability to Work Assessment opines that Plaintiff can stand for only two hours per workday and walk only two hours per workday, whereas the Functional Assessment opines that Plaintiff has a maximum standing/walking capacity of six hours per workday (R. 1886, 1876).

During the hearing, the ALJ expressed frustration with the two reports on the record, explaining as follows:

> I have a real problem with the CE's evaluation. She gives two different evaluations, neither one of which seem to make a lot of sense to me. The idea that somebody can lift 100 pounds occasionally, 50 pounds frequently and 20 pounds continuously, but only stand and walk for two hours and only sit for two hours just doesn't strike me as – she either made a mistake filling out the form or she just wasn't paying attention.

(R. 292).

The Court finds the ALJ had a "substantial" basis, within the meaning of the standard of review that applies here, to discount the entirety of Dr. Jeannot's opinions, based on their inconsistencies. *See Foote*, 67 F.3d at 1560 (defining substantial evidence). The ALJ had no obligation to assign greater weight to Dr. Jeannot's particular opinion concerning Plaintiff's need to lay down for at least two hours per eight-hour workday, nor did the ALJ have any obligation to incorporate that limitation into the RFC.

To be sure, Plaintiff has pointed the Court to a variety of record evidence that the ALJ might have used to reach different conclusions as to the weight assigned to Dr. Jeannot's opinions. On review, however, the role of this Court is not to reweigh conflicting evidence or substitute its judgment for that of the ALJ. *Mitchell*, 771 F.3d at 782. The mere fact that some of the evidence conflicted with the ALJ's conclusion does not serve as a basis for remand. *See Moore v. Barnhart*, 405 F.3d 1208, 1213 (11th Cir. 2005) ("To the extent that [Plaintiff] points to other evidence which would undermine the ALJ's RFC determination, [Plaintiff's] contentions misinterpret the narrowly circumscribed nature of our appellate review, which precludes us from re-weighing the evidence or substituting our judgment for that of the Commissioner even if the evidence preponderates against the decision.")

Moreover, the Court notes that the ALJ proposed a potential solution during the hearing to resolve the internal inconsistencies within Dr. Jeannot's reports:

> So, we'll discuss what we're going to do after we take the hearing testimony from your client. But, my *thought is to schedule her for another, maybe better [consultive evaluation] or possibly have a [medical examiner] weigh in on this.*

(R. 292) (emphasis added).

Plaintiff's counsel resisted the ALJ's suggestion, shifting focus away from the lumbar spine issues and instead responding that, "[m]y opinion is that she has migraine headaches and psych issues" and that having Plaintiff undergo "another physical [consultive evaluation] would be a waste of the government's money and her time" (R. 292). Plaintiff herself likewise responded to the ALJ's concern, stating that although she had back pain, the "the anxiety and the headaches are what's keeping me down." (R. 293). The Court finds no error under these circumstances.

2. Dr. Kathie Kowalczyk, MD

Dr. Kowalczyk, a neurologist, began treating Plaintiff on December 19, 2016 (R. 1628). Approximately four months later, on April 17, 2017, Dr. Kowalczyk completed a three-page Migraine Headache Questionnaire, which opined, among other things, that Plaintiff suffered from "difficulty concentrating" and "fatigue," which was severe enough to cause "significant interference with activity throughout the day" (R. 1629). The questionnaire also opined that the duration of Plaintiff's headaches was "unpredictable," that headaches could last "more than an hour," and that migraine triggers would cause "no" limitations in "participating in school or extra-curricular activities" (R. 1629). Dr. Kowalczyk continued to treat Plaintiff after completing the questionnaire, and the record included numerous after-visit summaries and some progress notes completed by Dr. Kowalczyk.[3]

The ALJ discussed Dr. Kowalczyk's Migraine Headache Questionnaire, after-visit summaries, and progress notes extensively in the written decision, but failed to assign a specific weight to Dr. Kowalczyk's opinions (R. 28-29). As a general rule, ALJs must state with particularity the weight given to different medical opinions and the reasons for doing so. *Winschel*, 631 F.3d at 1179. In the absence of such a statement, a reviewing court cannot assess whether the ALJ made a rational decision supported by substantial evidence. *Id.* As to treating medical sources, moreover, ALJs must articulate good cause to assign less than controlling weight. *Id.*; 20 C.F.R. § 404.1527(c)(2).

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[3] The record included after-visit summaries, but no progress notes, for office visits made in December 2016, January 2017, April 2017, November 2017, March 2018, September 2018, December 2018, March 2019 (R. 2104-07, 2108-11, 2112-16, 2117-21, 2122-26, 2127-30, 2131-33, 2134-36). The record included after-visit summaries and progress notes for office telehealth visits in June 2020, December 2020, and March 2021 (R. 2645-49, 2650-51, 2655-59).

The Court agrees the ALJ committed error in connection with Dr. Kowalczyk's opinions, but the Court finds the error to be harmless. When the ALJ fails to assign weight to a given medical opinion, a reviewing court may nevertheless affirm when, despite the error, the ALJ's rationale is clear. *See Garcia Travieso v. Berryhill*, No. 17-20021-CIV, 2018 WL 11346677, at *5 (S.D. Fla. Mar. 28, 2018) ("Even where an ALJ assigns no weight to a medical opinion, the error does not result in a reversal if the error is harmless.... The question becomes whether the ALJ provided a sufficiently clear analysis for this Court to review.").

In *Colon v. Colvin*, 660 F. App'x 867, 870 (11th Cir. 2016), for example, the ALJ failed to assign weight to a medical opinion concerning a claimant's mental limitations. Despite this error, the Eleventh Circuit affirmed, explaining as follows:

> We also affirm the ALJ's decision because we are not left pondering why the ALJ made the decision he made. This is not a case like *Winschel*, where the ALJ failed to provide enough information to know how he came to his decision. We do not ignore the rest of the opinion merely because of the ALJ's failure to assign weight as to [the medical opinion at issue]... The ALJ's discussion of [the] opinion is in depth and does not leave us wondering how the ALJ came to his decision. The ALJ's order demonstrates thoughtful consideration of the findings and supports the overall conclusion that [the claimant] is not disabled.

Id. (cleaned up); *see also Hunter v. Comm'r Soc. Sec.*, 609 F. App'x 555, 558 (11th Cir. 2015) (finding that, to the extent the ALJ erred in failing to state with particularity the weight assigned to two different doctors, the error was harmless because it did not affect the ALJ's ultimate determination).

The same logic applies here. Although the ALJ did not specify the weight given to Dr. Kowalczyk's opinions, the ALJ thoroughly discussed Dr. Kowalczyk's questionnaire, the after-visit summaries, and the problems with the questionnaire (R. 33). In the Court's view, the

discussion made clear that the ALJ believed he had good cause to assign less than controlling weight to the opinions. The discussion included the following:

- To begin, the ALJ noted that Dr. Kowalcyzk completed the questionnaire only four months after beginning the treatment relationship (R. 33).
- The ALJ also noted "inaccuracies" in the questionnaire itself, including how often Plaintiff suffered from headaches, i.e., Dr. Kowalcyzk had checked boxes for both "two or more times a week" and "1-2 times a week" (R. 33).
- The ALJ next noted that the questionnaire was "not accompanied by any progress notes that correspond with the statements [Dr. Kowalcyzk] made regarding [Plaintiff's] symptoms" (R. 33).
    - Likewise, the ALJ noted the absence of progress notes for Dr. Kowalcyzk's post-questionnaire office visits in 2018 and 2019 (R. 33).
    - As to progress notes in 2020 and 2021, the ALJ noted these were telemedicine visits, with no accompanying physical examinations (R. 33).
    - The ALJ also noted "there were no abnormalities seen on MRI of the brain" (R. 33).

As in *Colon*, the ALJ did not leave the reviewing court "pondering" as to why he reached his decision or why he failed to give controlling weight to Dr. Kowalczyk's opinions. Rather, the ALJ wrote a lengthy decision that showed thoughtful consideration of the evidence and substantial support for the ultimate conclusion of no disability. *See Brito v. Comm'r, Soc. Sec. Admin.*, 687 F. App'x 801, 804 (11th Cir. 2017) (affirming where the ALJ failed to assign specific weight to treating doctor's opinions, finding the ALJ's discussion of those opinions sufficient to enable

meaningful review); *Brown v. Comm'r of Soc. Sec.*, 680 F. App'x 822, 825 (11th Cir. 2017) (finding ALJ's failure to assign specific weight to treating physician's opinion to be harmless where "the treating physicians' opinions were considered in detail"). As such, the Court finds the ALJ's error to be harmless.

B. Developing the Record

Plaintiff next argues that the ALJ erred in failing to develop a sufficient record. At the conclusion of the hearing, the ALJ noted that the case already had a "significant record" with "over 1,200 medical pages" (R. 253). The ALJ asked Plaintiff's counsel, "[N]othing further that you want to put in, is that correct?" (R. 253). Plaintiff's counsel responded, "Nothing further, Judge" (R. 253). Despite this, Plaintiff now argues that the ALJ committed error by failing to seek out and incorporate into the record Dr. Kowalczyk treatment notes from Plaintiff's pre-2020 office visits (DE 31 at 12-13).

The Court finds no error. Although ALJs have a basic duty to develop a full and fair record, social security claimants bear the ultimate burden of proving disability and producing evidence in support of their claims. *Ellison v. Barnhart*, 355 F.3d 1272, 1276 (11th Cir. 2003). Cases should be remanded for failure to develop a record only when "the record reveals evidentiary gaps which result in unfairness or clear prejudice." *Brown v. Shalala*, 44 F.3d 931, 935 (11th Cir. 1995) (cleaned up); *Robinson v. Astrue*, 365 F. App'x 993, 995 (11th Cir. 2010) ("[A]lthough the ALJ has a duty to develop a full and fair record, there must be a showing of prejudice before we will remand for further development of the record."). "Generally, there is no prejudice when there is sufficient evidence in the record that allows the ALJ to make an informed decision." *Brock v. Comm'r, Soc. Sec. Admin.*, 758 F. App'x 745, 748 (11th Cir. 2018) (cleaned up).

The Court finds no prejudice here because the record contained ample evidence to allow the ALJ to make an informed decision. In the Court's view, the mere fact that the ALJ pointed to missing treatment notes as one of the grounds for discounting Dr. Kowalczyk's opinions does not rise to a level of reversible prejudice. The ALJ also pointed to several *other* grounds in discounting the opinions, including the fact that Dr. Kowalczyk completed the Migraine Headache Questionnaire only four months after first meeting Plaintiff, the fact that the questionnaire itself contained apparent errors, and the fact that Plaintiff's MRI of the brain showed normal findings (R. 33). *See Brock*, 758 F. App'x at 748-49 (rejecting a failure-to-develop-the-record claim where, inter alia, the ALJ gave "other reasons" to support the conclusion at issue). In short, the Court finds the ALJ developed a full and fair record without evidentiary gaps that resulted in unfairness or clear prejudice to Plaintiff.

Moreover, as stated above, at the conclusion of the hearing, the ALJ asked Plaintiff's counsel to confirm the record was complete, and Plaintiff's counsel did so (R. 253). The Court finds no error under these circumstances. *See Larry v. Comm'r of Soc. Sec.*, 506 F. App'x 967, 969 (11th Cir. 2013) (finding no error where "[t]he ALJ then specifically asked [plaintiff] if he had any additional exhibits, and his attorney replied that the record was complete"); *Bischoff v. Astrue*, No. 07-60969, 2008 WL 4541118, at *18 n.9 (S.D. Fla. Oct. 9, 2008) (rejecting a failure-to-develop-the-record claim where claimant "neither produced [the records at issue] nor requested that the Commissioner obtain them," and where, during the hearing, claimant's counsel represented "that the record was 'complete'").

IV. CONCLUSION

For the reasons set forth above, it is **ORDERED AND ADJUDGED** as follows:

1. Consistent with the Court's ruling, Plaintiff's Motion for Summary Judgment (DE 31) is **DENIED**, and the Commissioner's Motion for Summary Judgment (DE 38) is **GRANTED**.
2. The Commissioner's administrative decision is **AFFIRMED**.
3. The Court will separately issue a judgment in accordance with Federal Rule of Civil Procedure 58.

DONE and ORDERED in Chambers at West Palm Beach in the Southern District of Florida, this 14th day of December 2023.

RYON M. MCCABE
U.S. MAGISTRATE JUDGE

Additional material from this filing is available in the Clerk's Office.