

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 29, 2026

Christopher M. Wolpert
Clerk of Court

PATRICIA HERNANDEZ,

Plaintiff - Appellant,

v.

PUEBLO COUNTY; AFSCME COUNCIL
18 UNION; AFSCME LOCAL 1335
UNION,

Defendants - Appellees.

No. 25-1420
(D.C. Nos. 1:23-CV-02068-PAB-MDB
& 1:23-CV-02413-PAB-MDB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **MORITZ**, and **FEDERICO**, Circuit Judges.

Patricia Hernandez, proceeding pro se,¹ appeals the district court's entry of summary judgment against her and in favor of her former employer, Pueblo County (the "County"), and AFSCME Council 18 and Local 1335 Union (collectively, the

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

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

“Union”). Her lawsuit alleged discrimination and retaliation in violation of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12112(a), 12203(a), and breach of the Union’s duty of fair representation. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

BACKGROUND²

Hernandez worked for the County’s Department of Human Services (DHS) until 2019, when she resigned. While so employed, she took leave in 2017 and 2018 due to severe episodic anxiety. The director of DHS deemed her “not eligible for reinstatement” after her resignation. R. vol. 1 at 108. After she resigned, she sued the County, alleging disability discrimination. The district court granted summary judgment to the defendants in that lawsuit. Hernandez challenged the grant of summary judgment with a motion under Fed. R. Civ. P. 60, but the district court denied the motion and a panel of this court affirmed. *See Hernandez v. Pueblo Cnty., DHS*, No. 22-1354, 2023 WL 4013897, at *1 (10th Cir. June 15, 2023) (unpublished).

When Hernandez first resigned, and to the present day, the Union represented County employees in collective bargaining. Its collective bargaining agreement (CBA) with the County provided an expedited path to reinstatement of past employees who were eligible. In October 2022, Hernandez sought reinstatement with the County, but the DHS director denied this request. Hernandez communicated with

² The facts we recite here are undisputed or, if disputed, construed in the light most favorable to Hernandez. *See Markley v. U.S. Bank Nat’l Ass’n*, 59 F.4th 1072, 1080 (10th Cir. 2023).

the then-president of Local 1335 and requested representation in her reinstatement efforts, but the then-president denied this request on the basis that Hernandez was no longer covered by the CBA.

Then, in June 2023, Hernandez applied for a different position with the County. A three-member panel of County employees interviewed her for the role. She did not tell the interview panel about her disability, nor did she disclose her prior lawsuit to the panel. After the interview phase, the County selected a different applicant who received higher scores during the interview process.

Hernandez sued the County and the Union. In her amended complaint, she asserted claims for “employment discrimination on the basis of disability,” including “failure to hire,” “different terms and conditions of employment,” “retaliation,” and “breach of contract, fraud and defamation.”³ R. vol. 1 at 31. The County and the Union each moved for summary judgment.

A magistrate judge recommended granting both motions. The magistrate judge recommended granting the County’s motion on Hernandez’s discrimination claims because, even assuming she could show legal entitlement to “disabled” status under the ADA, she failed to “adduce[] evidence that she was treated adversely because of her alleged disability.” R. vol. 6 at 38. Further, the magistrate judge concluded Hernandez failed to produce evidence that the circumstances surrounding

³ Hernandez did not appear to be pleading these latter claims as separate causes of action outside her employment discrimination claims. The magistrate judge did not so construe her amended complaint, nor did the district court, and Hernandez’s opening brief does not urge this court to do so either.

the County's actions gave rise to an inference of disability-based discrimination: the denial of her 2022 application for reinstatement was based on her prior designation as ineligible, and the 2023 hiring panel was not aware of her disability or the prior litigation regarding the same. And regarding Hernandez's retaliation claim, the magistrate judge found no causal connection between her 2019 discrimination complaint (which constituted the requisite protected activity) and the decision not to hire her. The magistrate judge also recommended summary judgment in favor of the Union, finding no factual basis to credit Hernandez's discrimination claims against the Union regarding its decision not to represent her in 2022 or 2023.

Hernandez objected to the magistrate judge's recommendation, but the district court overruled her objections, accepted the recommendation, and entered summary judgment for the defendants on all claims. This timely appeal followed.

DISCUSSION

"We review the district court's grant of summary judgment de novo, applying the same legal standard that the district court is to apply." *N.H. Ins. Co. v. TSG Ski & Golf, LLC*, 128 F.4th 1337, 1344 (10th Cir. 2025). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "On appeal, we examine the record and all reasonable inferences that might be drawn from it in the light most favorable to the non-moving party." *Markley*, 59 F.4th at 1080 (internal quotation marks and brackets omitted).

At the summary judgment stage, the court uses the *McDonnell Douglas*⁴ burden-shifting framework to evaluate claims of retaliation and claims of discrimination under the ADA based on circumstantial evidence. *See Lincoln v. BNSF Ry. Co.*, 900 F.3d 1166, 1192 (10th Cir. 2018) (ADA discrimination); *id.* at 1209 (retaliation). Under that framework, for discrimination,

a plaintiff must first establish a prime facie case To demonstrate discrimination, a plaintiff generally must show that [s]he has suffered an adverse employment action because of the disability. If the plaintiff establishes a prima facie case, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for its actions. If the defendant does so, the burden shifts back to the plaintiff to show that the defendant's stated reasons are merely pretextual.

Williams v. FedEx Corp. Servs., 849 F.3d 889, 896 (10th Cir. 2017) (internal quotation marks and citations omitted). Similarly, to make out a prima facie retaliation claim, Hernandez “must show that (1) she engaged in protected opposition to discrimination; (2) a reasonable person would have found her employer’s subsequent action to be materially adverse; and (3) a causal connection exists between her protected activity and the employer’s action.” *Semsroth v. City of Wichita*, 555 F.3d 1182, 1184 (10th Cir. 2009).

The district court concluded Hernandez failed to make a prima facie case either of disability discrimination or of retaliation, principally because of unanswered evidence showing that the decision makers in her 2023 job interview did not know that she was disabled or had previously opposed allegedly discriminatory action by

⁴ This framework is named for *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–04 (1973).

the County. Challenging this conclusion, Hernandez relies on *Schneider v. City of Grand Junction Police Dep't*, 717 F.3d 760, 771 (10th Cir. 2013). She purports to quote *Schneider* for the proposition that “[a]n employer ‘acts through its agents,’ and knowledge held by supervisors, directors, or human resources personnel is imputed to the employer.” Aplt. Opening Br. at 5 (boldface omitted). So, she argues knowledge of her previous employment (and 2019 discrimination claim) should be imputed to the County in 2023. But the quoted phrase does not appear in *Schneider*. Moreover, that case concerned the scope of supervisory and municipal liability under 42 U.S.C. § 1983, *see* 717 F.3d at 770; it did not interpret the ADA.

Hernandez also maintains that the district court “disregarded” the temporal proximity between her protected activity (her initial ADA complaints in 2019) and the adverse employment action (the 2022 denial of reinstatement and 2023 selection of an alternative candidate for a new open position). Aplt. Opening Br. at 6–7. But the court didn’t disregard this factual circumstance. Rather, it noted that the magistrate judge essentially found that the time gap—four years—only added to plaintiff’s burden in demonstrating causation:

Plaintiff argues that the magistrate judge incorrectly held the four-year gap defeated causation. However, the magistrate judge did not find that four-year gap defeated causation, but rather finds the temporal proximity is also an issue for plaintiff in demonstrating causation. Even if plaintiff did show temporal causation, that does not change the fact that plaintiff fails to dispute the County’s assertion that the hiring panel did not know about her 2019 federal lawsuit.

R. vol. 6 at 77 n.6 (internal quotation marks and citations omitted).

Hernandez argues the district court “applied an overly restrictive definition of disability,” Aplt. Opening Br. at 7 (boldface and capitalization omitted), and improperly disregarded her “regarded as” disability claim. But the district court did no such thing. Rather, it concluded Hernandez’s ADA discrimination claim fell short *even assuming* she presented adequate evidence she was disabled.

She also faults the district court for “improperly resolv[ing] pretext and reinstatement issues reserved for the jury,” *id.* at 8 (boldface and capitalization omitted). But the district court didn’t reach the issue of pretext because Hernandez could not make out a *prima facie* case of either discrimination or retaliation, so the court properly granted summary judgment on her ADA claims against the County. *See Swackhammer v. Sprint/United Mgmt. Co.*, 493 F.3d 1160, 1167 (10th Cir. 2007) (“The question of pretext arises only in the third and final step of the *McDonnell Douglas* inquiry, after the plaintiff has successfully established a *prima facie* case of discrimination . . .”).

Finally, Hernandez challenges the district court’s dismissal of her claims against the Union, pointing to the terms of the CBA and arguing the Union arbitrarily refused to represent her in connection with the denial of her reinstatement request in 2022. But while the Union’s duty of fair representation prohibited it from discrimination on the basis of disability, *see* 42 U.S.C. § 12111(2) (defining “covered entit[ies]” under the ADA to include “labor organization[s]”), she offers nothing but conjecture to suggest that her disability played a role in the Union’s decision to decline representation. *See Lincoln*, 900 F.3d at 1209 (holding “speculation,

conjecture, or surmise” inadequate to establish prima facie case of ADA causation (internal quotation marks omitted)). The district court therefore correctly granted summary judgment on Hernandez’s claims against the Union.

CONCLUSION

We affirm the district court’s grant of summary judgment in favor of the County and the Union.

Entered for the Court

Nancy L. Moritz
Circuit Judge