FILED
United States Court of Appeals
Tenth Circuit

April 19, 2019

Elisabeth A. Shumaker
Clerk of Court

# UNITED STATES COURT OF APPEALS

## FOR THE TENTH CIRCUIT

MARQUEL SPRATLING,

Plaintiff - Appellant,

v.

SOVEREIGN STAFFING GROUP, INC.,

Defendant - Appellee.

No. 18-3209
D.C. No. 2:17-CV-02145-DDC
(D. Kan.)

## ORDER AND JUDGMENT*

Before **MATHESON**, **McKAY**, and **BACHARACH**, Circuit Judges.

Mr. Marquel Spratling is a former employee of Sovereign Staffing, Inc. He sued under Title VII, claiming racial discrimination and a hostile work environment. Sovereign Staffing moved for summary judgment based on timeliness and a failure to prove discrimination or a hostile work

* Oral argument would not materially help us to decide this appeal. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G). We have thus decided the appeal based on the briefs and record on appeal.

This order and judgment does not constitute binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. But the order and judgment may be cited for its persuasive value under Fed. R. App. P. 32.1(a) and 10th Cir. R. 32.1(A).

environment. The district court agreed with both grounds and awarded summary judgment to Sovereign Staffing.

We affirm. Though Sovereign Staffing urged summary judgment in district court based on timeliness, Mr. Spratling failed to respond to this part of the motion. This failure constituted a forfeiture. *See Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1128 (10th Cir. 2011) (Gorsuch, J.).

Without an argument from Spratling, the district court addressed timeliness and ruled in part that the suit had been untimely. *See* 42 U.S.C. § 20003-16(c) (providing 90 days for a claimant to sue under Title VII after getting a right-to-sue letter from the EEOC). Though Mr. Spratling challenges parts of the ruling, he failed to address timeliness in his initial appeal brief.

He did address timeliness in his appellate reply brief. But even there, Mr. Spratling did not urge plain error, so we decline to consider his new argument on timeliness. *See Richison*, 634 F.3d at 1131 ("the failure to argue for plain error and its application on appeal [] marks the end of the road for an argument for reversal not first presented to the district court"); *see also Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007) ("[W]e routinely have declined to consider arguments that are not raised, or are inadequately presented, in an appellant's opening brief."). The failure to properly challenge the ruling on timeliness is fatal to Mr. Spratling's appeal, so we affirm. *See Bones v. Honeywell Int'l, Inc.*, 366 F.3d 869, 877

(10th Cir. 2004) (holding that the plaintiff waived a challenge to the district court's alternative ground by challenging only the court's first ground for the ruling).[1]

Entered for the Court

Robert E. Bacharach
Circuit Judge

[1] Though Mr. Spratling is pro se, he is subject to the same procedural rules governing other litigants. *See United States v. Green*, 886 F.3d 1300, 1307–08 (10th Cir. 2018) (stating that a litigant's pro se status did not excuse compliance with the general procedural rule); *see also Moore v. Hartley*, 608 F. App'x 714, 715 (10th Cir. 2015) (unpublished) (holding that a pro se litigant's failure to challenge one of two alternative grounds for a ruling is fatal on appeal).