

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

KEIAN BUTTS, SR.,

Plaintiff,

v.

CENTIMARK CORPORATION,

Defendant.

CIVIL ACTION FILE

NO. 1:20-CV-1578-MHC-CMS

ORDER

Presently before the Court is Magistrate Judge Catherine M. Salinas's Final Report and Recommendation ("R&R") [Doc. 53], recommending that Defendant CentiMark Corporation ("CentiMark")'s Motion for Summary Judgment [Doc. 39], be granted. The Order for Service of the R&R [Doc. 54] provided notice that, in accordance with 28 U.S.C. § 636(b)(1), the parties were authorized to file objections within fourteen (14) days of the receipt of that order. Plaintiff Keian Butts, Sr. ("Butts") filed timely objections to the R&R ("Pl.'s Objs.") [Doc. 55].

In reviewing a Magistrate Judge's R&R, the district court "shall make a de novo determination of those portions of the report or specified proposed findings

or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). “Parties filing objections to a magistrate’s report and recommendation must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court.” United States v. Schultz, 565 F.3d 1353, 1361 (11th Cir. 2009) (internal quotation marks omitted) (quoting Marsden v. Moore, 847 F.2d 1536, 1548 (11th Cir. 1988)). Absent objection, the district court judge “may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge,” 28 U.S.C. § 636(b)(1), and need only satisfy itself that there is no plain error on the face of the record in order to accept the recommendation. See United States v. Slay, 714 F.2d 1093,1095 (11th Cir. 1983). In accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Federal Rules of Civil Procedure, the Court has conducted a de novo review of those portions of the R&R to which objections have been made and has reviewed the remainder of the R&R for plain error. See Slay, 714 F.2d at 1095.

I. OBJECTIONS

A. Objection to Granting of Motion to Strike

Local Rule 7.1B of this Court requires responses to motions for summary judgment to be filed no later than twenty (21) days after service of the motion.

LR7.1B, NDGa. CentiMark filed its motion for summary judgment on December

21, 2020, and Butts timely filed his response to the motion for summary judgment on January 13, 2021 [Doc. 42]. However, on February 4, 2021, over three weeks past the time for filing a response, Butts filed the following documents: “Amended and Supplemental Pleadings” [Doc. 48] and “Memorandum in Support of Plaintiff’s Response to Defendant’s Motion for Summary Judgment” [Doc. 49]. Butts did not seek or receive permission to file these documents out-of-time. Accordingly, Judge Salinas granted CentiMark’s Motion to Strike [Doc. 50] Butts’s untimely materials filed in response to its motion for summary judgment. R&R at 4-6.

In his “Objections to Preliminary Issues,” Butts first “responds” to CentiMark’s Motion to Strike by citing to Federal Rule of Civil Procedure 60(a), which provides for the correction of clerical mistakes in an order, and Rule 60(b), which provides grounds for relief from an order. Pl.’s Objs. at 3-4. Butts then claims that there has been no showing that the evidence he intends to present “would confuse the issues” and his failure to file in time was due to “excusable neglect.” Id. at 5.

A magistrate judge is permitted to hear and determine any non-dispositive pretrial matter pending before the court, including discovery matters, and the decision of the magistrate judge is a final decision. 28 U.S.C. § 636(b)(1)(A)

(2012). With respect to a magistrate judge's non-dispositive order, Federal Rule of Civil Procedure 72(a) states that a "party may serve and file objections to" such a non-dispositive order, and "[t]he district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or contrary to law." FED. R. CIV. P. 72(a); see also Addison v. Gwinnett Cnty., 917 F. Supp. 802, 808 (N.D. Ga. 1995) (holding that "[u]nder 28 U.S.C. § 636(b)(1)(A), this court may reconsider a magistrate judge's order on a pretrial matter where the order is clearly erroneous or contrary to the law). The standard for overturning a magistrate judge's non-dispositive order is "a very difficult one to meet." Faircloth v. Baden, No. 1:11-CV-86 WLS, 2012 WL 3574353, at *1 (M.D. Ga. Aug. 16, 2012) (quoting Thornton v. Merchantile Stores Co., 180 F.R.D. 437, 439 (M.D. Ala. 1998)); see also Graham v. Mukasey, 247 F.R.D. 205, 207 (D.D.C. 2008) (holding that magistrate judge's ruling in discovery dispute "is entitled to great deference"). Such orders "should not be disturbed absent a clear abuse of discretion that leaves the reviewing court with the 'definite and firm conviction that a mistake has been committed.'" Rowlin v. Ala. Dep't of Pub. Safety, 200 F.R.D. 459, 460 (M.D. Ala. 2001).

Butts has failed to establish that Judge Salinas clearly abused her discretion in granting CentiMark's motion to strike. As Judge Salinas stated, it is undisputed

that Butts filed the two documents after the deadline set in this Court's local rules and Rule 60 does not apply to the late filing. R&R at 5-6. Pro se litigants are required to follow the same procedural rules as other litigants and must adhere to time requirements. Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1989). A misunderstanding of the rules or a mistake does not constitute excusable neglect. Cordel v. Pac. Indem. Co., 335 F. App'x 956, 960 (11th Cir. 2009) (citing Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'Ship, 507 U.S. 380-391-92 (1993)). Indeed, when a party files a motion to extend the time for filing a document after the time has expired (which Butts never did), arguing that the party failed to act because of excusable neglect pursuant to Rule 6(b)(1)(B), the rule does not compel the district court to accept the filing. Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 896 & n.5 (1990). Other than missing the deadline, Butts gives no reason as to what prevented him from doing so. Therefore, Judge Salinas did not clearly abuse her discretion in striking the late-filed documents, and Butts's objection is **OVERRULED.**

B. Objections to Granting of Motion for Summary Judgment

In her R&R, Judge Salinas acknowledged that there was no dispute that Butts satisfies three of the four prongs for establishing a prima facie case of discrimination in that he belongs to a protected class, was subjected to an adverse

employment action, and was qualified to perform the job in question. R&R at 12-13 (citing Lewis v. City of Union City, 918 F.3d 1213, 1220-21 (11th Cir. 2019) (quoting McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800-02 (1973))). However, Judge Salinas concluded that Butts failed the fourth prong – that CentiMark treated similarly situated employees outside his class more favorably than it treated Butts. Id. at 13-14. In his response to the motion for summary judgment, Butts identified James Streetman (“Streetman”), a white CentiMark employee, who he claimed was a valid comparator. Mem. in Supp. of Pl.’s Resp. to Mot. for Summ. J. [Doc. 42-1] at 4, 6-7, 18. However, it is undisputed that Streetman had fourteen years of experience as opposed to Butts’s two years of experience to be a Service Salesman. R&R at 8, 14. Moreover, Butts struggled in training and was disciplined for failing to complete assignments. Id. at 14 (citing Doc. 39-1 at 4-5, 14).

In his objections, Butts now states that Patrick McKenzie (“McKenzie”) “was also showed favoritism” and “was given my area.” Pl.’s Objs. at 7. The only mention of McKenzie by Butts is a one-sentence reference in his Complaint [Doc. 1 at 5]. In his response to CentiMark’s motion for summary judgment, the only comparator mentioned by Butts is Streetman. This Court “has discretion to decline to consider a party’s argument when that argument was not first presented

to the magistrate judge.” Williams v. McNeil, 557 F.3d 1287, 1290-92 (11th Cir. 2009). Butts never identified McKenzie as a comparator in his argument made to Judge Salinas, and this Court exercises its discretion not to consider an argument not made to the magistrate judge. Even if the Court considered the argument, it would still overrule the objection because Butts presents no evidence to indicate that McKenzie was a similarly situated employee.

Butts continues to argue that the employment of Streetman “created a discriminatory effect.” Pl.’s Objs. at 11. But, as previously discussed, Streetman was not a proper comparator. Butts makes no other objection which shows that Judge Salinas erred in concluding that he did not establish a prima facie case of discrimination. His objection to Judge Salinas’s conclusion that he failed to satisfy the fourth prong of the McDonnell Douglas test is **OVERRULED**.

Butts also contends that, assuming he established a prima facie case of discrimination, CentiMark has failed to articulate a legitimate, nondiscriminatory reason for its actions. Pl.’s Objs. at 14. However, as discussed by Judge Salinas, even if Butts had made out a prima facie case, “CentiMark has met its burden of articulating a race/color-neutral reason for its decisions—i.e., that Butts was demoted because he declined an opportunity to redo the ‘tech’ing’ portion of training, that he failed to complete assigned tasks, and that Butts was terminated

for failing to come to work.” R&R at 15. Butts has presented nothing in his objections which calls into question this conclusion, so his objection is **OVERRULED**. Moreover, Butts present no valid objection to Judge Salinas’s conclusion that Butts failed to offer any evidence of pretext. Id. at 15-16.

III. CONCLUSION

Therefore, after consideration of Plaintiff Keian Butts, Sr.’s objections and a *de novo* review of the record, it is hereby **ORDERED** that the Objections to the R&R [Doc. 55] are **OVERRULED**.

The Court **APPROVES AND ADOPTS** the Final Report and Recommendation [Doc. 53] as the opinion and order of the Court. It is hereby **ORDERED** that Defendant CentiMark Corporation Motion for Summary Judgment [Doc. 39] is **GRANTED**.

The Clerk is **DIRECTED** to close this case.

SO ORDERED this 29th day of June, 2021.



MARK H. COHEN
United States District Judge