

2018 WL 2149179

Only the Westlaw citation is currently available.

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S. Ct. of App. 11th Cir. Rule 36-2. United States Court of Appeals, Eleventh Circuit.

Gerald Lynn BOSTOCK, Plaintiff-Appellant,

v.

CLAYTON COUNTY BOARD OF COMMISSIONERS, Defendant, Clayton County, Defendant-Appellee.

No. 17-13801

|  
Non-Argument Calendar

|  
(May 10, 2018)

Appeal from the United States District Court for the Northern District of Georgia, D.C. Docket No. 1:16-cv-01460-ODE

#### Attorneys and Law Firms

Thomas J. Mew, IV, Timothy Brian Green, Brian J. Sutherland, Buckley Beal, LLP, Atlanta, GA, for Plaintiff-Appellant

Jack Reynolds Hancock, Freeman Mathis & Gary, LLP, Forest Park, GA, William Hollis Buechner, Jr., Martin B. Heller, Freeman Mathis & Gary, LLP, Atlanta, GA, for Defendant-Appellee

Before TJOFLAT, WILSON, and NEWSOM, Circuit Judges.

#### Opinion

PER CURIAM:

\*1 Gerald Lynn Bostock appeals the district court's dismissal of his employment discrimination suit under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2(a)(1), against Clayton County, Georgia, for failure to state a claim. On appeal, Bostock argues that the County discriminated against him based on

sexual orientation and gender stereotyping. After a careful review of the record and the parties' briefs, we affirm.

"We review de novo the district court's grant of a motion to dismiss under [Fed. R. Civ. P.] 12(b)(6) for failure to state a claim, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff." *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003) (per curiam). Issues not briefed on appeal are deemed abandoned. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (per curiam).

Title VII prohibits employers from discriminating against employees on the basis of their sex. 42 U.S.C. § 2000e-2(a). This circuit has previously held that "[d]ischarge for homosexuality is *not* prohibited by Title VII." *Blum v. Gulf Oil Corp.*, 597 F.2d 936, 938 (5th Cir. 1979)<sup>1</sup> (per curiam) (emphasis added). And we recently confirmed that *Blum* remains binding precedent in this circuit. See *Evans v. Ga. Reg'l Hosp.*, 850 F.3d 1248, 1256 (11th Cir. 2017), cert. denied, — U.S. —, 138 S.Ct. 557, 199 L.Ed.2d 446 (2017). In *Evans*, we specifically rejected the argument that Supreme Court precedent in *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 79, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998), and *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250–51, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989), supported a cause of action for sexual orientation discrimination under Title VII.

As an initial matter, Bostock has abandoned any challenge to the district court's dismissal of his gender stereotyping claim under *Glenn*<sup>2</sup> because he does not specifically appeal the dismissal of this claim. See *Timson*, 518 F.3d at 874. Moreover, the district court did not err in dismissing Bostock's complaint for sexual orientation discrimination under Title VII because our holding in *Evans* forecloses Bostock's claim. And under our prior panel precedent rule, we cannot overrule a prior panel's holding, regardless of whether we think it was wrong, unless an intervening Supreme Court or Eleventh Circuit en banc decision is issued. *United States v. Kaley*, 579 F.3d 1246, 1255–56 (11th Cir. 2009); *United States v. Steele*, 147 F.3d 1316, 1317–18 (11th Cir. 1998) (en banc).

**AFFIRMED.**

**All Citations**

--- Fed.Appx. ----, 2018 WL 2149179 (Mem)

**Footnotes**

- 1 See [Bonner v. City of Prichard](#), 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc) (holding that all decisions of the “old Fifth” Circuit handed down prior to the close of business on September 30, 1981, are binding precedent in the Eleventh Circuit).
- 2 In analyzing an equal protection claim, rather than a Title VII claim, we held that discrimination based on gender nonconformity was sex discrimination. [Glenn v. Brumby](#), 663 F.3d 1312, 1317 (11th Cir. 2011).

---

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.