

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CECILIA BALDAZO,

Plaintiff - Appellant,

v.

ELKO COUNTY, ex rel., its Sheriff's
Department; et al.,

Defendants - Appellees.

No. 14-15840

D.C. No. 3:12-cv-00532-LRH-
VPC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted June 14, 2016**
San Francisco, California

Before: CLIFTON and IKUTA, Circuit Judges and LAMBERTH,*** Senior
District Judge.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Royce C. Lamberth, Senior District Judge for the U.S.
District Court for the District of Columbia, sitting by designation.

Cecilia Baldazo appeals from the district court's order granting summary judgment to Elko County, Marvin Morton, Rick Keema, and Brad Hester, on Baldazo's claims for discrimination and retaliation under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq.* and 42 U.S.C. § 1983, and for common law negligence. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The district court did not err in considering the arbitration award and record, which are admissible evidence for purposes of summary judgment. *See Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 59–60 (1974). Because the defendants' motion for judgment on the pleadings and summary judgment was timely under Rule 56(b) of the Federal Rules of Civil Procedure, Baldazo was on notice that the merits of her claims were at issue. Even if Baldazo's opposition to summary judgment were construed as a motion under Rule 56(d) of the Federal Rules of Civil Procedure, Baldazo failed to show how "additional discovery would have precluded summary judgment," *Qualls v. Blue Cross of Cal., Inc.*, 22 F.3d 839, 844 (9th Cir. 1994) (emphasis omitted), and therefore the district court did not abuse its discretion in proceeding to consider the merits of the defendants' motion.

Finally, the defendants provided a legitimate non-discriminatory reason for terminating Baldazo, namely that she was untruthful and insubordinate, and introduced the arbitration award and record as supporting evidence. Baldazo failed

to produce evidence that defendants' reason was pretextual. *See Aragon v. Republic Silver State Disposal Inc.*, 292 F.3d 654, 658–59 (9th Cir. 2002).

Accordingly, the district court did not err in granting summary judgment to the defendants.

AFFIRMED.