

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt  
Clerk

100 EAST FIFTH STREET, ROOM 540  
POTTER STEWART U.S. COURTHOUSE  
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000  
[www.ca6.uscourts.gov](http://www.ca6.uscourts.gov)

Filed: March 01, 2018

Mr. Christopher M. McLaughlin  
Jones Day  
901 Lakeside Avenue, E.  
Cleveland, OH 44114-1190

Mr. Emmett Robinson  
Jones Day  
901 Lakeside Avenue, E.  
Cleveland, OH 44114-1190

Mr. Travis L. Shackelford  
Law Office  
22142 W. Nine Mile Road  
Southfield, MI 48033

Re: Case No. 17-3795, *Tammy Turner v. Experian Information Solution*  
Originating Case No. : 3:16-cv-00630

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Jennifer Earl  
Case Manager  
Direct Dial No. 513-564-7066

cc: Ms. Sandy Opacich

Enclosure

Mandate to issue

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**

No. 17-3795

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
**Mar 01, 2018**  
DEBORAH S. HUNT, Clerk

TAMMY TURNER,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR
	)	THE NORTHERN DISTRICT OF
EXPERIAN INFORMATION SOLUTIONS, INC.,	)	OHIO
an Ohio corporation,	)	
	)	
Defendant-Appellee.	)	

ORDER

Before: NORRIS, ROGERS, and STRANCH, Circuit Judges.

Tammy Turner, represented by counsel, appeals the district court’s judgment granting Experian Information Solutions, Inc.’s (Experian) motion for summary judgment, and denying her motion for summary judgment, on her claims under the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681i(a)(1)(A) and 1681e(b). The parties have waived oral argument, and the panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Turner retained Go Clean Credit (GCC), a credit repair organization, to help her improve her credit rating. Turner obtained a copy of her credit report, which GCC reviewed with her, and identified some derogatory items reported by Experian. In June 2015, GCC sent a letter to Experian that Turner did not draft, review, or sign, but which did include her partial electronic signature, that contested nine items on her report: (1) a CBNA account with an allegedly incorrect payment history; (2) accounts with Bank of the West, Macy’s, and Kohl’s that reported late payments; (3) accounts with Chase, Chase Auto, and Comenity Bank that allegedly reported

No. 17-3795

- 2 -

obsolete information, i.e., information that was more than seven years old; and (4) two accounts with Capital One that she claimed were not hers. GCC selected the items to dispute and the reasons why to dispute them, but it did not submit any documents or evidence to support its claims.

The letter asked Experian to reinvestigate the disputed items and delete them if it could not verify the information. Experian, however, flagged the letter as a suspicious request for Turner's personal credit information and sent her a letter that stated that it would not initiate a dispute based on suspicious correspondence and invited her to validate her dispute by visiting its website or calling a customer service representative. Instead of validating her dispute, Turner sued Experian, alleging that it committed negligent and willful violations of the FCRA by not conducting a reasonable investigation into her dispute, 15 U.S.C. § 1681i(a)(1)(A), and by not following reasonable procedures to ensure that it was reporting accurate information, 15 U.S.C. § 1681e(b).

As the case progressed in the district court, Turner conceded that Experian accurately reported the status of her CBNA, Comenity, and Chase accounts. Turner also conceded that she had no evidence to show that she had not been late on her accounts with Bank of the West, Macy's, and Kohl's. Finally, Turner admitted that the information about her Chase Auto account was not obsolete, that the two Capital One accounts were hers, and that she had no evidence that Experian inaccurately reported the status of the Capital One accounts. According to the record, in other words, all of the items that Turner attempted to dispute had been accurately reported by Experian.

The parties filed cross-motions for summary judgment on Turner's claims. Turner's motion did not challenge the accuracy of the items in the dispute letter that GCC sent to Experian. Instead, for the first time, Turner argued that in October and November 2015, Experian inaccurately reported the status of her Bank of the West account. First, Turner argued that Experian inconsistently reported that the account was opened in December 2013, but that Bank of the West filed its first status report on the account in November 2013. Second, Turner

No. 17-3795

- 3 -

claimed that the payment summary for September 2015 was incorrect because it reported “ND,” for no data received during the time period, when it should have been reported as “OK,” in order to be consistent with Bank of the West’s last update, in February 2015, which reported that the account was “OK.” Turner claimed that this evidence showed that Experian failed to follow reasonable procedures to ensure the accuracy of the information it was reporting. Turner also argued that Experian’s policy of rejecting disputes it deems suspicious violated her right to a reasonable investigation when she notified Experian of her dispute.

The district court interpreted § 1681i(a)(1)(A) as requiring the plaintiff to prove that the information contained in her credit report was inaccurate in order to prevail on a claim that a consumer reporting agency violated its duty to reinvestigate disputed information. The district court concluded that Turner could not establish a violation because the information she disputed was accurate or, alternatively, because she failed to show that the information was inaccurate. The district court also concluded that Experian was entitled to summary judgment because Turner did not prove that she was damaged by the alleged violation and because, by employing GCC, she did not dispute the alleged inaccuracies with Experian “directly,” as the court construed § 1618i(a)(1)(A) to require. As to the alleged inaccuracies that Turner raised for the first time in her summary judgment motion, the district court held that the items were either technically accurate or only minor inaccuracies that were not cognizable FCRA violations. Similarly, the district court concluded that Experian was entitled to summary judgment on Turner’s § 1681e(b) claim because it did not report inaccurate information, because it employed reasonable procedures to ensure that the information it reported was accurate, and because Turner failed to prove damages. The district court therefore granted Experian’s motion for summary judgment and denied Turner’s motion for summary judgment.

Turner filed a timely notice of appeal. She argues that the district court erred in finding that she failed to directly notify Experian of her dispute, that Experian did not report inaccurate information, that Experian followed reasonable procedures to ensure its information was accurate, and that she failed to prove damages.

No. 17-3795

- 4 -

We review a district court's order granting summary judgment de novo. *See Rose v. State Farm Fire & Cas. Co.*, 766 F.3d 532, 535 (6th Cir. 2014). 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). A court reviewing a summary judgment motion must draw all reasonable inferences in favor of the nonmoving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Before proceeding further, we note that Turner's appellate brief does not challenge two important aspects of the district court's judgment. First, Turner does not contest the district court's conclusion that in order to prevail on her § 1681i(a)(1)(A) claim, she had to prove that her credit report was inaccurate. Second, Turner does not dispute the district court's finding that she failed to show that the items listed in her dispute letter were inaccurate. By not developing any argument in her brief, Turner has waived appellate review of the district court's judgment on these two issues. *See Puckett v. Lexington-Fayette Urban Cty. Gov't*, 833 F.3d 590, 610-11 (6th Cir. 2016).

Section 1681i(a)(1)(A) provides that if a consumer disputes the accuracy of any item of information contained in her file, the consumer reporting agency, in this case Experian, must "conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and record the current status of the disputed information, or delete the item from the file." As just stated, the district court interpreted § 1681i(a)(1)(A) to require the consumer to prove that her credit report was inaccurate to establish a violation. We have not decided whether § 1681i(a)(1)(A) has an inaccuracy element, *see Dickens v. Trans Union Corp.*, 18 F. App'x 315, 319 (6th Cir. 2001), but we have stated that "damages would be almost impossible to prove without it." *Salei v. Am. Express Travel Related Servs. Co.*, No. 96-1799, 1997 WL 809956, at \*3 (6th Cir. Dec. 19, 1997); *see also Deandrade v. Trans Union LLC*, 523 F.3d 61, 67 (1st Cir. 2008) ("[T]he weight of authority in other circuits indicates that without a showing that the reported information was in fact inaccurate, a claim brought under § 1681i must fail."). In any event, because Turner does not challenge the district court's holding that inaccuracy of the

No. 17-3795

- 5 -

information is an element of a § 1681i claim, we need not resolve this issue. Additionally, Turner does not challenge the district court's finding that she failed to prove that the items that she listed in her dispute letter were inaccurate. And although Turner belatedly raised two issues concerning her Bank of the West account in her summary judgment motion, she did not notify Experian that she disputed the accuracy of those two items. *See Nelski v. Trans Union, LLC*, 86 F. App'x 840, 847 (6th Cir. 2004) ("Prior to being notified by a consumer, a credit reporting agency generally has no duty to reinvestigate credit information." (quoting *Casella v. Equifax Credit Info. Servs.*, 56 F.3d 469, 474 (2d Cir. 1995))). Turner therefore failed to create a genuine issue of fact on an essential element of her claim. Accordingly, we affirm the district court's judgment on Turner's § 1681i(a)(1)(A) claim. Given this conclusion, we do not need to decide whether Turner "directly" notified Experian of her dispute.

Section 1681e(b) requires that when a consumer reporting agency prepares a consumer report, "it shall follow reasonable procedures to assure maximum possible accuracy of the information about whom the report relates." To prevail on a § 1681e(b) claim, the plaintiff must prove that the report was inaccurate. *See Spence v. TRW, Inc.*, 92 F.3d 380, 382 (6th Cir. 1996). A consumer report agency, however, is not strictly liable for inaccuracies in its report; it is liable only for those inaccuracies caused by its failure to follow reasonable procedures to ensure maximum accuracy. *See Bryant v. TRW, Inc.*, 689 F.2d 72, 78 (6th Cir. 1982). Information that is technically accurate, though perhaps misleading or incomplete, is not inaccurate within the meaning of § 1681e(b). *See Dickens*, 18 F. App'x at 318.

As discussed, Turner failed to show that the items she complained about in her dispute letter were inaccurate. Turner therefore failed to establish a violation with respect to those items. As the district court correctly concluded, the two alleged inconsistencies in Turner's Bank of the West account were technically accurate. If, as Turner claims, Bank of the West's previous update of her account occurred in February 2015, then it was technically accurate for Experian to report that it received no data about the account in September 2015. Although Experian inconsistently reported (albeit based on information provided by Bank of the West) that the

No. 17-3795

- 6 -

account was first reported in November 2013, but that the account was not opened until December 2013, Experian also reported that the account was current in November 2013, which was technically accurate and also non-derogatory. Accordingly, Turner failed to establish a § 1681e(b) violation and we affirm the district court's judgment on this claim.

In conclusion, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT



---

Deborah S. Hunt, Clerk