

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 01-30731

BARBARA BAILEY PICHON

Plaintiff - Appellant

VERSUS

MURPHY OIL USA, INC.

Defendant - Appellee

Appeal from the United States District Court
For the Eastern District of Louisiana, New Orleans
00-CV-2355-C

March 8, 2002

Before GARWOOD, JOLLY and DAVIS, Circuit Judges

PER CURIAM*

The district court dismissed this action filed under the Family Medical Leave Act, 29 U.S.C. § 2611 *et seq.*, on grounds that the plaintiff failed to produce summary judgment evidence establishing that her sinusitis prevented her from performing the functions of her employment. After reviewing the summary judgment

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

record, we are satisfied that Pichon produced sufficient evidence to defeat summary judgment on this issue.

Pichon's summary judgment evidence included deposition testimony by her physician, Dr. Hardges, along with absentee forms signed by Dr. Hardges stating that Pichon was unable to work for several days in September 1998 and March 1999 because of her sinusitis. Dr. Hardges's testimony was more equivocal than the absentee forms, but the combination of the two was sufficient to defeat summary judgment.

The district court did not rule on the Act's second requirement, that an employee's incapacity be caused by a "serious health condition," and we do not reach this issue.

The judgment of the district court is therefore vacated and the case is remanded for further proceedings consistent with this opinion.

VACATED AND REMANDED.