

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-30093
(Summary Calendar)

STACY BATISTE,

Plaintiff-Appellant,

versus

CONN APPLIANCES, INC.,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Louisiana
(95-CV-2226)

October 24, 1997

Before Wiener, Barksdale, and Emilio M. Garza, Circuit Judges.

PER CURIAM:*

In this employment discrimination case filed pursuant to Title VII,¹ Plaintiff-Appellant Stacy Batiste contests the district court's grant of summary judgment in favor of Defendant-Appellee

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

¹Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.

Conn Appliances, Inc., finding that no reasonable juror could conclude that Batiste was fired because of his race. Even accepting the district court's generous arguendo assumption that Batiste established a prima facie case,² our review of the record and briefs of the parties satisfies us that the ruling of the district court in granting Conn's motion for summary judgment of dismissal was correct. In our de novo review we find that no genuine issues of material fact exist. Accordingly, the district court's summary judgment is

AFFIRMED.

²To establish a prima facie case in a typical disparate treatment discharge case, the plaintiff must show that: (1) he is a member of a protected group; (2) he was qualified for the job formerly held; (3) he was discharged; and (4) after his discharge, the position that he held was filled by someone not within his protected class. Singh v. Shoney's Inc., 64 F.3d 217, 219 (5th Cir. 1995); Vaughn v. Edel, 918 F.2d 517, 521 (5th Cir. 1990). We note in passing that in this individual employment action conclusionally alleging disparate treatment but not advancing a theory of hostile work environment or termination in connection with a reduction in force, the absence of allegations or evidence that Batiste's position was filled by someone who is not a member of the protected class was likely fatal to establishing a prima facie case.