IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10752

United States Court of Appeals
Fifth Circuit
FILED
May 3, 2018
Lyle W. Cayce
Clerk

CID C. MEADOWS,

Plaintiff - Appellant

v.

CITY OF CROWLEY,

Defendant - Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:17-CV-99

Before WIENER, GRAVES, and HO, Circuit Judges.

PER CURIAM:*

Appellant Cid Meadows brought claims against the City of Crowley under 42 U.S.C. § 2000e *et seq.* (Title VII) and 42 U.S.C. § 1983, alleging discrimination, retaliation, hostile work environment, constructive discharge, and violation of the Equal Protection Clause. The district court granted Crowley's motion to dismiss, finding that Meadows stated no plausible claim upon which relief could be granted.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Centrally, Meadows argues that in dismissing her complaint, the district court improperly held her to an "evidentiary standard" as opposed to a "pleading standard." She invokes our holding in *Raj v. Louisiana State University*, 714 F.3d 322, 331 (5th Cir. 2013), that "a plaintiff need not make out a prima facie case of discrimination in order to survive a Rule 12(b)(6) motion to dismiss for failure to state a claim." *Raj*, however, does not exempt a plaintiff from *alleging facts* sufficient to establish the elements of her claims. We held in *Chhim v. University of Texas at Austin*, 836 F.3d 467, 470 (5th Cir. 2016) (per curiam), *reh'g denied* (Oct. 14, 2016), *cert. denied*, 137 S. Ct. 1339 (2017), *reh'g denied*, 137 S. Ct. 2182 (2017), that "[a]lthough [appellant] did not have to submit evidence to establish a prima facie case of discrimination at [the motion to dismiss] stage, he had to plead sufficient facts on all of the ultimate elements of a disparate treatment claim to make his case plausible." Because Meadows has not pled such facts, the district court properly dismissed her complaint.

Furthermore, the district court ably explained how several of Meadows's claims are time-barred, and detailed how Meadows failed to plead sufficient facts on her remaining claims. We agree.[1] And because Meadows did not

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[1] For instance, contrary to what the dissent alleges, Meadows's qualifications did *not* consistently surpass those of the individuals chosen for promotion instead of her. In November 2014, Meadows was deemed ineligible to apply for a lieutenant position based on experience requirements put in place months before her application. And when she applied for a sergeant position in December 2014, Meadows subsequently performed the poorest (out of four eligible candidates) on the assessment governing promotion. Neither of these suggests improper pretext.

The dissent notes that Meadows only made these admissions regarding her comparative performance in her original complaint, and removed these statements from her amended pleading. But we are aware of no rule that forbids us from taking note of her prior filing. "[W]e may affirm for any reason supported by the record, even if not relied on by the district court." *United States v. Gonzalez*, 592 F.3d 675, 681 (5th Cir. 2009); *see also Feagin v. Travis Cty. Sheriff's Office*, No. A-11-CA-702-LY, 2012 WL 5354624, at *5 (W.D. Tex. Oct. 26, 2012) (evaluating a party's amended complaint against their original complaint). Furthermore, in the sergeant promotion process, two other Caucasian male applicants were

formally move the court for leave to amend her complaint a second time, the district court was not required to grant such leave—particularly since amendment would likely have been futile. "[T]he district court may consider factors such as . . . 'futility of amendment.'" *Jacobsen v. Osborne*, 133 F.3d 315, 318 (5th Cir. 1998) (quoting *In re Southmark Corp.*, 88 F.3d 311, 314–15) (5th Cir. 1996)).

Meadows's motion to supplement the record is DENIED. The district court's order granting Crowley's motion to dismiss is AFFIRMED.

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deemed ineligible and excluded from consideration, which implies that promotion requirements were not applied unequally on the basis of race. And the police department's promotion policy explicitly referred to "written exam or assessment testing" that would "count 100%"—undermining any claim by Meadows that she was evaluated according to subjective criteria.

JAMES E. GRAVES, JR., Circuit Judge, dissenting in part:

I disagree with the majority's opinion insofar as it affirms the dismissal of Meadows' failure-to-promote claim under Title VII and the Texas Labor Code.

I.

According to the extensive factual allegations contained in her 36-page amended complaint, Meadows, an African-American woman, was denied promotion to various positions within the Crowley Police Department (CPD) on five separate occasions between May 2013 and January 2015.

In May 2013, Meadows applied for a sergeant position. The job posting stated that a "[m]inimum of 45 hours of college in a related field [was] preferred." Meadows had an associate's degree in criminal justice administration and was pursuing a bachelor's degree. She also had many years of supervisory experience in the military. Three Caucasian men and one African-American man also applied. The African-American man was selected for the job even though he had significantly less supervisory experience than Meadows, no college degree, and had recently been placed on three weeks of administrative leave following a citizen's complaint.

In June 2013, Meadows applied for a detective position. Meadows exceeded the education, experience, and certification requirements listed in the job posting. The only other applicant was a Caucasian man who had no supervisory experience and had worked for the CPD for less than a year. During the selection process, a lieutenant told Meadows that he did not believe she wanted the job and that she had only applied for it because she did not want to work under her current supervisor. The Caucasian man was subsequently chosen for the position over Meadows.

In November 2014, Meadows applied for a lieutenant position. The only other applicant was a Caucasian man named Roach. The job posting stated

that an associate's degree in criminal justice administration or a related field was "preferred" and that a bachelor's degree was "highly preferred." Meadows, having completed her bachelor's degree earlier that year, had both; Roach did not have a college degree at all. The posting also stated that to be eligible for the position, an applicant could not have "any formal disciplinary actions on file during the last year preceding application." Meadows satisfied that requirement; Roach did not. According to Meadows, the lieutenant posting referenced a CPD policy known as the "one-year requirement," which provided that any applicant for a lieutenant position must have "one-year, full-time experience as a paid police supervisor holding a rank of [s]ergeant or higher." Meadows had supervisory experience in a military law enforcement position equivalent to sergeant or lieutenant, but not in an equivalent civilian law enforcement position. However, she alleges that a Caucasian man had recently been promoted to lieutenant without meeting the one-year requirement and that the chief of police did not meet the requirement at the time of his hiring. Meadows conveyed these points to the chief of police, but he told her she was ineligible for the position due to the one-year requirement. Citing a lack of qualified candidates, the chief of police postponed filling the lieutenant position and instead appointed Roach as an "interim lieutenant."

In December 2014, Meadows applied for a "police sergeant" position. The job posting stated that an associate's degree or higher was preferred and that applicants were not eligible if they had faced formal disciplinary action during the preceding year. Meadows satisfied both requirements. Five Caucasian men also applied for the position. Two of them were selected instead of Meadows. One of the men did not have a college degree. The other did not have a college degree but did have a history of disciplinary issues stemming from multiple inappropriate sexual relationships and "being on-call with the CPD and under the influence of alcohol while driving a company vehicle."

In January 2015, when Roach's disciplinary disqualification period had ended, CPD reopened the November 2014 lieutenant position. Meadows sought the position once more but was again told she was ineligible due to the one-year requirement. Roach, the only other applicant, was chosen instead.

II.

Title VII of the Civil Rights Act of 1964 makes it "an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, sex, or national origin . . . ." 42 U.S.C. § 2000e-2(a). Chapter 21 of the Texas Labor Code contains a virtually identical provision, *see* TEX. LAB. CODE § 21.051, which is "evaluated under the same analytical framework as Title VII claims." *Jackson v. Honeywell Int'l, Inc.*, 601 F. App'x 280, 283 n.1 (5th Cir. 2015).

"[T]he 'ultimate question' in a Title VII disparate treatment claim [is] 'whether a defendant took the adverse employment action against a plaintiff *because of* [the plaintiff's] protected status.'" *Raj v. La. State Univ.*, 714 F.3d 322, 331 (5th Cir. 2013) (emphasis added in *Raj*) (quoting *Kanida v. Gulf Coast Med. Personnel LP*, 363 F.3d 568, 576 (5th Cir. 2004)). To satisfy the "because of" element, the plaintiff's protected status—in this case, her race—need only have been "***a*** motivating factor" in the defendant's action; whether "other factors also motivated the [action]" is immaterial. 42 U.S.C. § 2000e-2(m) (emphasis added).

Due to the timing of her EEOC charge, only Meadows' allegations regarding the November 2014–January 2015 lieutenant position and the December 2014 police sergeant position are actionable under Title VII. *See* 42 U.S.C. § 2000e–5(e)(1) (requiring a plaintiff to file a charge with the EEOC within 300 days of an unlawful employment practice); *Juarez-Keith v. US*

Foodservice, Inc., 192 F. App'x 249, 252 n.2 (5th Cir. 2006). Nonetheless, Meadows' allegations concerning the May 2013 and June 2013 positions are relevant "background evidence" that must be considered in determining whether CPD's later refusals to promote her were racially motivated. *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 102 (2002) (Title VII's charge-filing provision does not "bar an employee from using the prior acts as background evidence in support of a timely claim.").

Thus, to state a claim for racial discrimination under Title VII, the facts alleged in Meadows' complaint must plausibly suggest—i.e., they must make it more than "speculative"—that her race was "a motivating factor" in CPD's failure to promote her to the November 2014–January 2015 lieutenant position and/or the December 2014 police sergeant position. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." (citations omitted)).

Meadows easily satisfies this standard.[1] Taking the allegations in her complaint as true, Meadows was denied a promotion five times over the course of just more than a year and a half. Each time, Meadows was the only African-American woman who applied for the job and, with one exception, was the only

[1] There is no question that the district court applied the wrong standard. It used a four-prong "*prima facie*" test derived from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). In *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506 (2002), the Supreme Court unanimously held that a plaintiff does not need to satisfy the *McDonnell Douglas* test at the 12(b)(6) stage. *Id.* at 511 (rejecting the notion that "the requirements for establishing a prima facie case under *McDonnell Douglas* also apply to the pleading standard that plaintiffs must satisfy in order to survive a motion to dismiss"). The district court cited *McCoy v. City of Shreveport*, 492 F.3d 551 (5th Cir. 2007), but that case involved a grant of summary judgment, not a motion to dismiss. *Id.* at 556.

minority applicant.[2] Each time, her qualifications surpassed those of the individuals selected instead of her.[3]

The City asserts that Meadows has pleaded herself out of court by "admitting" she did not meet the one-year requirement. That requirement did

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[2] The fact that an African-American man was selected for the May 2013 sergeant position does not detract from the plausibility of Meadows' claim. *See Jefferies v. Harris Cty. Cmty. Action Ass'n*, 615 F.2d 1025, 1034–35 (5th Cir. 1980) ("[W]e hold that when a Title VII plaintiff alleges that an employer discriminates against black females, the fact that black males and white females are not subject to discrimination is irrelevant and must not form any part of the basis for a finding that the employer did not discriminate against the black female plaintiff.").

[3] The majority asserts that "when she applied for a sergeant position in December 2014, Meadows subsequently performed the poorest (out of four eligible candidates) on the assessment governing promotion." Maj. Op. n.1.

First, Meadows' amended complaint is bereft of any allegations supporting this assertion. Her *original* complaint contains allegations about a January 2015 assessment, but that is not the live pleading in this case. "An amended complaint supersedes the original complaint and renders it of *no legal effect* unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading." *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994) (emphasis added) (citing *Boelens v. Redman Homes, Inc.*, 759 F.2d 504, 508 (5th Cir. 1985)). No authority supports the majority's decision to scour a dead pleading in this way.

Second, even if the original complaint were properly before us, the majority errs by construing its allegations narrowly and in favor of the City, rather than liberally and in favor of Meadows. *See United States ex rel. Rafizadeh v. Cont'l Common, Inc.*, 553 F.3d 869, 872 (5th Cir. 2008) ("On review of dismissal, the allegations in the complaint must be liberally construed in favor of the plaintiff, and all facts pleaded in the complaint must be taken as true." (citation and internal quotation marks omitted)). According to the original complaint, Meadows was one of six applicants for the December 2014 police sergeant position. Two of the applicants failed to even qualify as eligible candidates. Of the remaining four applicants, Meadows was ranked fourth following the January 2015 assessment. But this is only part of the story. As noted above, Meadows satisfied both of the objective criteria mentioned in the job posting (i.e., a college degree and a good disciplinary history over the preceding year). Neither of the two top-ranked candidates (both Caucasian men) had a college degree, and one had a poor disciplinary history. That Meadows was ranked last despite her superior *objective* qualifications becomes even more suspect in light of the fact that the January 2015 assessment was based in part on apparently *subjective* interviews conducted by a mostly non-diverse review board dominated by the police chief's friends. *See Vessels v. Atlanta Indep. Sch. Sys.*, 408 F.3d 763, 769 (11th Cir. 2005) (holding that "subjective criteria have no place in the plaintiff's initial prima facie case" under the even more demanding *McDonnell Douglas* summary-judgment framework, largely because "subjective criteria can be a ready vehicle for race-based decisions").

not apply to the December 2014 police sergeant position, however, so it cannot be a basis for dismissing Meadows' entire claim. Furthermore, while the "motivating factor" standard does not require a showing of pretext, *see Guerra v. N. E. Indep. Sch. Dist.*, 496 F.3d 415, 418 (5th Cir. 2007), nothing in Meadows' complaint forecloses the possibility that CPD used the one-year requirement as a pretext for denying her the lieutenant position. Indeed, pretext is a reasonable inference given the questionable circumstances surrounding CPD's refusal to promote Meadows to other positions, Meadows' suggestion that CPD could have accepted her comparable military experience as a substitute, and the dubious allowance made for Roach.[4]

III.

I would reverse the district court's dismissal of Meadows' failure-to-promote claim and therefore respectfully dissent in that regard. I concur with the majority's conclusion that Meadows' other claims were properly dismissed and that her motion to supplement the record should be denied.

[4] The majority suggests that CPD's reliance on the one-year requirement could not have been pretextual because that rule was "put in place months before" Meadows applied for the lieutenant position. Maj. Op. n.1. The majority's characterization of the requirement's timing is not based on evidence in the record; it is based on evidence attached to Meadows' motion to supplement the record, which the court has denied. Moreover, even if the one-year requirement was legitimately promulgated, that does not mean CPD's subsequent application of it to Meadows was legitimate. In the context of her other allegations, it is plausible that Meadows' race was at least a motivating factor in CPD's decision to use the one-year requirement as a means of barring her from the lieutenant position.