United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
January 5, 2024
Lyle W. Cayce
Clerk

No. 22-30341

SHARLEEN M. MOYE,

Plaintiff—Appellant,

versus

MICHAEL TREGRE, *Sheriff, officially and in his individual capacity*;
MARSHALL CARMOUCHE,
Commander, officially in his individual capacity;
JESSICA ABBATE, *Sergeant, officially and in her individual capacity*;
CONRAD BAKER, *Lieutenant, officially and in his individual capacity*,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:19-CV-13135

Before SMITH, ELROD, and GRAVES, *Circuit Judges*.

PER CURIAM:[*]

Sharleen Moye was employed by the St. John the Baptist Parish Sheriff's Office ("SJBSO") from March to August 2018. She sued various super-

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

visors[1] in their official and individual capacities, asserting disparate treatment, retaliation, and workplace harassment under title VII. The district court granted the supervisors' motions for summary judgment and dismissed Moye's claims. We affirm.

I.

Following an application, interview, and test, SJBSO hired Moye for the position of probationary 911 Dispatch Operator. SJBSO policy requires all new hires to complete a six-month probationary period satisfactorily before SJBSO will approve them for a permanent position. That policy also stipulates that probationary employees may be terminated, transferred, or demoted at any time.

On March 26, 2018, Moye began working at SJBSO. Like other new hires, she was required to attend a series of training programs, including a two-week basic training program and a 911 communications training course. And, as was true for other trainees, SJBSO evaluated Moye's performance through a series of periodic evaluations called Daily Observation Reports ("DORs").

Those DORs reveal—and Moye admits—that she had a tenuous grasp of the most basic aspects of her job. Moye also acknowledges that she showed no improvement in the course of her probationary employment period on multiple work-related tasks.

After Moye received her ninth DOR, Commander Marshall Carmouche ordered her to attend remedial training scheduled on August 6, 2018. In a subsequent exchange, Carmouche reiterated to Moye that she was required to attend that session punctually.

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[1] Michael Tregre, Marshall Carmouche, Jessica Abbate, and Conrad Baker.

Moye never showed up for that remedial training session. She also failed to appear for work the next day. That prompted SJBSO to convene its board for a disciplinary hearing, which Moye was invited to attend. She chose not to appear. At the end of the hearing, the board recommended terminating Moye's employment. Tregre accepted the board's recommendation and fired Moye on August 8, 2018.

Moye sued her former supervisors, asserting claims of race-based discrimination, retaliation, and harassment in violation of title VII. *See* 42 U.S.C. § 2000e *et seq*. Despite admitting that she struggled with aspects of her job, Moye theorizes that she was fired because of her race. To support that theory, Moye points to the following facts:

Two months after Moye started working at SJBSO, she complained to Carmouche that Abbate—the supervisor overseeing the day shift—was discriminating against her. Failing to identify any specific incidents of discrimination, Moye's complaint relied exclusively on her belief that Abbate was paying more attention to "the white trainees." Moye was then transferred to the night shift, which was supervised by Tennika Tassin.

A few weeks later, Moye lodged a second complaint after she learned of a conversation in which Abbate had remarked that Moye "sounded ghetto on the phone." SJBSO immediately disciplined Abbate for that remark.

Then, on June 28, 2018, Baker accidentally copied Moye on an email in which Baker expressed his frustrations about Moye and suggested that she should be transferred to the corrections department. Baker reported the incident to HR; he was suspended for one day without pay. Moye also reported the email to HR and ultimately met with Troy Cassioppi, Commander of HR, and Chief Steven Guidry.

The district court granted summary judgment to the supervisors and dismissed all of Moye's claims. Moye timely appealed.

II.

"Only 'employers,' not individuals acting in their individual capacity who do not otherwise meet the definition of 'employers,' can be liable under title VII." *Grant v. Lone Star Co.*, 21 F.3d 649, 652 (5th Cir. 1994). That means Moye's suit cannot proceed against Tregre, Carmouche, Abbate, or Baker in their individual capacities, but only against Sheriff Tregre in his official capacity as a supervisor for SJBSO.[2]

III.

We begin with Moye's workplace harassment claim. To prevail, Moye must prove that she

> (1) belongs to a protected group; (2) was subjected to unwelcome harassment; (3) the harassment complained of was based on her membership in the protected group; (4) the harassment complained of affected a term, condition, or privilege of employment; and (5) SJBSO knew or should have known of the harassment in question and failed to take prompt remedial action.

Johnson v. PRIDE Indus., Inc., 7 F.4th 392, 399–400 (5th Cir. 2021) (citation omitted) (cleaned up).

We need not address the first four elements, for the last one forecloses Moye's claim. An employer is not liable for workplace harassment under Title VII when it takes "prompt remedial action that is reasonably calculated to end the harassment." *Hudson v. Lincare, Inc.*, 58 F.4th 222, 230 (5th Cir. 2023) (quotation marks and citation omitted).

The only specific incidents supporting Moye's harassment claim are Abbate's "ghetto" remark and Baker's email. In both incidents, SJBSO

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[2] *See Vance v. Union Planters Corp.*, 279 F.3d 295, 299 (5th Cir. 2002) (discussing *Haynes v. Williams*, 88 F.3d 898, 899 (10th Cir. 1996)).

swiftly intervened once it learned about the complained-of conduct: Abbate was immediately disciplined for her "ghetto" remark. And Baker was suspended without pay for his email. In sum, SJBSO "acted swiftly in taking remedial measures and the harassment ceased." *Id.* at 231 (quotation marks and citation omitted).

The district court did not err in granting summary judgment to defendants on Moye's workplace harassment claim.

IV.

Moye's disparate treatment and retaliation claims are analyzed per the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), under which the plaintiff is required first to demonstrate a *prima facie* case before the burden of production shifts to the employer to proffer a legitimate, nondiscriminatory reason for its action. *See Outley v. Luke & Assocs., Inc.*, 840 F.3d 212, 216 (5th Cir. 2016). Once the employer furnishes such a reason, the "presumption of discrimination disappears," and the plaintiff, "who always has the ultimate burden, must then produce substantial evidence indicating that the proffered legitimate nondiscriminatory reason is a pretext for discrimination." *Id.* (citations omitted) (cleaned up).

A. Disparate Treatment

To establish a *prima facie* case of disparate treatment, Moye needs to provide evidence that "(1) she is a member of a protected class; (2) she was qualified for her position; (3) she was subject to an adverse employment action; and (4) others similarly situated were treated more favorably." *Id.* (citation omitted) (cleaned up).

Moye fails to establish that she was subjected to an adverse employment action. There are two components of an adverse employment action: *First*, the action must alter the terms, conditions, or privileges of employ-

ment. *See Harrison v. Brookhaven Sch. Dist.*, 82 F.4th 427, 430 (5th Cir. 2023) (per curiam) (citing *Hamilton v. Dallas Cnty.*, 79 F.4th 494, 502–03 (5th Cir. 2023) (en banc)). *Second*, the harm borne of that action must be material. *See id.* at 431. That means the complained-of action must "involve a meaningful difference in the terms of employment and injure the affected employee," *id.* (citation omitted) (cleaned up), for title VII is not "a general civility code for the American workplace," *id.* (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998)).

Moye alleges that SJBSO subjected her to race-based discrimination when it required her to undergo remedial training. She asserts that Leanne Petit, another probationary 911 operator, did not have to attend remedial training even though her job performance was just "as concerning" as Moye's.

Moye was not injured—even if we assume, without deciding, that SJBSO treated her differentially. The remedial training requirement is, at most, "differential treatment that *helps* the employee." *Harrison*, 82 F.4th at 431 (emphasis added) (quotation marks and citation omitted). It is not an employment action "that injures the affected employee." *Id.* (citation omitted). Moye's disparate treatment claim fails.

B. Retaliation

To establish a *prima facie* case of retaliation, Moye must show that "(1) she engaged in conduct protected by title VII; (2) she suffered a materially adverse action; and (3) a causal connection exists between the protected activity and the adverse action." *Hudson*, 58 F.4th at 231 (citation omitted) (cleaned up). Moye complains that, as a result of her title VII-protected activity, she was (a) transferred to the night shift; (b) encouraged to transfer to the corrections department; (c) required to attend remedial training; and (d) fired.

None but the last is an adverse employment action. Transferring Moye to the night shift did not change the terms, conditions, or privileges of her employment. She was a probationary employee who, per SJBSO policy, could be transferred at any time. Nor is encouraging Moye to transfer departments an adverse employment action. Moreover, no such transfer actually occurred.[3] And, as explained above, remedial training is not an adverse employment action because it was intended to help Moye. *See supra* part IV.A.

As for termination, Moye was aware that Carmouche had ordered her to attend remedial training and that her attendance was mandatory. But Moye never showed up—in direct violation of Carmouche's order. The record plainly shows that Moye was fired for insubordination, which is a legitimate, non-discriminatory reason for her termination.[4]

Moye fails to demonstrate that she would not have been fired but-for SJBSO's retaliatory motive. *See Outley*, 840 F.3d at 219. Moye admits that she was deficient in several aspects of her job. It is also undisputed that she failed to attend remedial training. Her attempt to regurgitate the same facts and allegations from her *prima facie* case proves to no avail. *See Howard v. United Parcel Serv., Inc.*, 447 F. App'x 626, 631 (5th Cir. 2011). In sum, the record is devoid of substantial evidence indicating that SJBSO's reason for termination was pretextual.

The summary judgment is AFFIRMED.

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[3] *See Hudson*, 58 F.4th at 232 ("[A] warning . . . with no accompanying changes . . . is not a 'materially adverse' employment action.").

[4] *See Aldrup v. Caldera*, 274 F.3d 282, 286 (5th Cir. 2001) ("The failure of a subordinate to follow a direct order of a supervisor is a legitimate nondiscriminatory reason for taking adverse employment action." (citation omitted)).