

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-6256
Summary Calendar

JOSHUA H. JUMBO,

Plaintiff-Appellant,

versus

MOBIL OIL CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of Texas
(CA 89 3946 H)

(December 22, 1992)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Joshua H. Jumbo sued Mobil Oil Corporation alleging violations of the First, Fifth, and Fourteenth Amendments; 42 U.S.C. §§ 1981, 1983, 1985; and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, et seq. The district court granted Mobil's motion for partial summary judgment and dismissed all of Jumbo's claims except the Title VII demotion and retaliation

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

claims. These claims were tried before a magistrate judge, and after Jumbo presented his evidence, the magistrate judge granted Mobil's motion for involuntary dismissal. Concluding that the appeal of the partial summary judgment is not properly before this court and that the magistrate judge did not err in granting Mobil's motion for involuntary dismissal, we affirm.¹

I

Jumbo is a black citizen of Nigeria who was employed by Station Operators, Inc., a Mobil subsidiary that employs personnel to operate convenience store/gas stations owned by Mobil. Jumbo was initially employed on or about September 16, 1982, and worked until mid-1987 as a cashier at two different convenience store locations. In July 1987, Jumbo submitted a written application for the position of a station manager. Jumbo's supervisor informed him that there were no openings at that time. Shortly after this time, Jumbo's manager was terminated and a manager from another station was transferred to take over this position. Jumbo contacted a lawyer, who wrote Jumbo's supervisor and suggested that racial considerations may have been involved in Jumbo not being selected to fill the position. Jumbo's supervisor met with him and assured him that neither his race nor his nationality was a factor to Mobil.

¹Mobil's motion to strike assorted documents and Jumbo's motion for production of documents are denied as moot by this decision.

Shortly thereafter, the store at which Jumbo was working was transferred to a joint venture formed by Mobil and 7-11, Inc. Jumbo was promoted to manager even though his supervisor had been warned of certain deficiencies in his performance. Jumbo served as manager at this location until December 1988, at which time Mobil dissolved its joint venture and sold the store to an individual owner. Jumbo initially expressed an interest in purchasing a station; however, he later notified his area representative that he was unable to obtain the financing. All managers except Jumbo, all of whom were white, were reassigned as managers at other locations. Jumbo's performance as a manager, however, was below average. Jumbo repeatedly had problems with accounting, recordkeeping, daily reporting, and payroll. Jumbo's supervisor did arrange, however, for Jumbo to transfer to another station as an assistant manager. Jumbo accepted the transfer and began in this position in December 1988.

On January 4, 1989, Jumbo filed an EEOC charge concerning his demotion to assistant manager. Jumbo was hostile and uncooperative with his new manager and refused to perform any duties other than that of cashier. In February of 1989, two customers reported that Jumbo had not rung up their purchases on the cash register. Jumbo's manager asked him about this and gave him a written warning. In response, Jumbo shouted at her, told her it was an insult that she was his boss, and left the station; he never returned.

II

Jumbo sued Mobil on November 16, 1989, asserting violations of the First, Fifth, and Fourteenth Amendments; 42 U.S.C. §§ 1981, 1983, and 1985; and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, et seq. Jumbo alleged that Mobil treated him differently because of his race and national origin and that Mobil retaliated against him for filing an EEOC charge based on the purported discriminatory treatment. Mobil filed a motion for summary judgment or, in the alternative, for partial judgment on the pleadings. On February 28, 1991, the district court granted Mobil's motion for partial summary judgment, and all of Jumbo's claims against Mobil were dismissed except the Title VII claims. The court further held that Jumbo's Title VII failure to promote claim was barred by the statute of limitations, which left only Jumbo's Title VII demotion and retaliation claims.

These claims were tried before a magistrate judge on October 17, 18, and 21, 1991. At the close of Jumbo's evidence, Mobil moved for involuntary dismissal under Fed.R.Civ.P. 41(b). The magistrate judge concluded that Jumbo had no right to relief under Title VII and granted Mobil's motion and dismissed Jumbo's case. Jumbo appeals.

III

A

Jumbo's pro se appeal substantially fails to conform with the guidelines of the Federal Rules of Appellate Procedure;

furthermore, it is unclear not only what Jumbo's argument is but also exactly what issues he is appealing. Jumbo argues that he was entitled to relief under 42 U.S.C. § 1981 because Mobil acted with the purposeful intention of discrimination. He therefore appears to be appealing the district court's granting of Mobil's motion for partial summary judgment. Jumbo also argues that Mobil improperly transferred him, that he established a pattern and practice of discrimination, and that he was discriminated against and forced to abandon his job because he filed an EEOC charge. He therefore also appears to be appealing the involuntary dismissal of his case. Jumbo asks this court to enjoin Mobil from continuing to abridge his rights and the rights of others similarly situated; grant him back pay and all other lost benefits; grant him punitive damages in excess of 4 million dollars; grant him compensatory damages for pain and suffering; and grant him attorneys' fees, costs, and other further relief as appears just and equitable.

B

Mobil argues first that Jumbo has failed to perfect his appeal from the district court's grant of partial summary judgment. Mobil argues that Jumbo correctly designated for appeal the magistrate judge's findings of fact and conclusions of law dated November 5, 1991; however, he did not designate in his notice of appeal the district court's partial summary judgment dated February 28, 1991. Regarding Jumbo's appeal of the involuntary dismissal of his remaining Title VII claims, Mobil argues that Jumbo cannot

challenge the factual findings because he failed to furnish a transcript containing evidence relevant to a particular factual finding. Since Jumbo indicated that a transcript would be unnecessary, Mobil argues that Jumbo is foreclosed from challenging the sufficiency of the evidence supporting the court's factual findings.

IV

A

We must first determine whether Jumbo can appeal the district court's granting of Mobil's motion for partial summary judgment. On his notice of appeal, Jumbo states that he is appealing the findings of fact and conclusions of law of the district court dated November 5, 1991, which concerned only Jumbo's demotion and retaliation claims under Title VII. In Ingraham v. United States, 808 F.2d 1075, 1080 (5th Cir. 1987), this court stated that if an appellant chooses to designate specific determinations in his notice of appeal instead of simply appealing from the entire judgment, only the specified issues may be raised on appeal. See also Pope v. MCI Telecommunications Corp., 937 F.2d 258, 266 (5th Cir. 1991) (same). As such, the requirements of Fed.R.App.P. 3(c) have not been met in regard to the February 28, 1991 summary judgment. We therefore decline to address any of Jumbo's arguments on appeal concerning the district court's granting of partial summary judgment.

B

We next turn to Jumbo's appeal of the involuntary dismissal. The magistrate judge granted Mobil's motion for involuntary dismissal of Jumbo's Title VII demotion and retaliation claims. In reviewing a Rule 41(b) dismissal, the judge's conclusions of law are subject to de novo review, but we may not disturb findings of fact unless they are clearly erroneous. Stephenson v. Paine Webber Jackson & Curtis, Inc., 839 F.2d 1095, 1098 (5th Cir.), cert. denied, 488 U.S. 926 (1988).

The magistrate judge found that neither Jumbo's race nor his national origin was a factor in his reassignment as assistant manager. The magistrate judge further found that Jumbo was not harassed by his manager at this new location because of his race or national origin nor retaliated against by her for having filed an EEOC charge complaining of discrimination. Specifically, the magistrate judge found that Jumbo's performance as a manger was below average, especially in the areas of document accounting and record-keeping, and this was the key factor in his not being given a new position as a manager. The magistrate judge also found that after Jumbo accepted the position as assistant manager, he would have been considered for the next available manager's position, but this never occurred because he quit before there were any openings. Furthermore, the magistrate judge found that Jumbo's manager at the new station had no knowledge of Jumbo's EEOC charge and that Jumbo had a hostile and uncooperative attitude toward this manager.

We can reverse the findings of fact of the court below only if they are clearly erroneous. In this case, Jumbo did not provide a transcript of the proceedings before the magistrate judge, but instead indicated that a transcript was unnecessary for appeal purposes. Since we have no transcript of the proceedings to review, we have no basis on which to conclude that the magistrate judge's findings of fact were clearly erroneous. As such, we conclude that the findings of fact were not erroneous.

We next turn to the magistrate judge's conclusions of law, which we review under the de novo standard. After discussing the method of proving a violation of Title VII, the magistrate judge concluded that even if Jumbo had presented a prima facie case, Mobil had articulated a legitimate, nondiscriminatory reason for its decision concerning Jumbo's transfer to another station as assistant manager. The magistrate judge further concluded that Jumbo offered no evidence to show that Mobil's reasons were pretextual. In addition, the magistrate judge concluded that Jumbo's allegations did not rise to the level of a constructive discharge. We agree with these conclusions. Accordingly, the magistrate judge did not err in granting Mobil's motion for involuntary dismissal.

V

We conclude that Jumbo failed to perfect an appeal of the district court's granting of partial summary judgment to Mobil. We further conclude that the magistrate judge did not err in granting

Mobil's motion for involuntary dismissal on Jumbo's Title VII claims. The decision below is therefore

A F F I R M E D.