

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1381
Conference Calendar

TERRY GODWIN,

Plaintiff-Appellant,

versus

GARLAND INDEPENDENT SCHOOL
DISTRICT,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. CA3-91-2777-T
- - - - -

March 16, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Access to federal courts is provided to plaintiffs "who lack the financial resources to pay any part of the statutory filing costs." Prows v. Kastner, 842 F.2d 138, 140 (5th Cir.), cert. denied, 488 U.S. 941 (1988). The district court must determine whether payment of all or a part of the fees will cause the plaintiff undue financial hardship in light of her financial resources and liabilities. Id. The court's determination is reviewed for an abuse of discretion. Id. The documents filed by

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Godwin indicate that her monthly liabilities exceeded her monthly income of \$1551.31, but also reflect that she had several hundred dollars in bank accounts. The district court did not abuse its discretion in denying the plaintiff's motion to proceed in forma pauperis in the district court.

Godwin's Title VII complaint, filed on December 20, 1991, was dismissed as time-barred. Upon dismissal of a charge of discrimination, the EEOC is required to notify the aggrieved party and "within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge." 42 U.S.C. § 2000e-5(f)(1). The commencement of an action within ninety days of receipt of the right-to-sue letter is "a nonjurisdictional statutory precondition to suit, [which] may be subject to tolling and waiver." Espinoza v. Missouri Pacific R. Co., 754 F.2d 1247, 1248, n.1 (5th Cir. 1985).

Godwin acknowledged receipt of the right-to-sue letter on August 9, 1991, and submitted the motion to proceed in forma pauperis and her complaint to the court on October 29, 1991. The district court correctly found that the statutory limitation period was equitably tolled pending the court's disposition of the plaintiff's motion. Baldwin County Welcome Center v. Brown, 466 U.S. 147, 151, 104 S.Ct. 1723, 80 L.Ed.2d 196 (1984). However, the limitation period began to run again on the date that the court denied plaintiff's motion. Ynclan v. Department of Air Force, 943 F.2d 1388, 1393 (5th Cir. 1991).

Plaintiff acknowledged that she was notified on December 3 that her motion to proceed in forma pauperis was denied.

However, she contends that the limitation period remained equitably tolled during the period that she was attempting to have the filing fee processed by the court. Equitable tolling of the ninety-day period has been found in circumstances where the EEOC has failed to advise the plaintiff adequately of the statutory time period, where the court has led the plaintiff to believe that she has satisfied all the statutory prerequisites to suit, and where the defendant has lulled the plaintiff into inaction. Espinoza, 754 F.2d at 1251.

Godwin does not indicate that the district court led her to believe that she had fulfilled the statutory filing requirements or that she timely tendered her complaint to the court and there was an improper delay in filing it. Plaintiff does not contend that she was misled by the EEOC or the defendant. "One who fails to act diligently cannot invoke equitable principles to excuse that lack of diligence." Baldwin, 466 U.S. at 151. Plaintiff was advised on several occasions that she was required to file a complaint within ninety days of receipt of the right-to-sue letter and that a filing fee was required. Plaintiff failed to act diligently to insure that her complaint was timely filed and is precluded from invoking equitable tolling.

AFFIRMED.