

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-1794  
(Summary Calendar)

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CURTIS WAYNE CARTER

Plaintiff-Appellant,

versus

METRO FORD TRUCK SALES, INC.,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
(CA3:88:3095-T)

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(May 19, 1993)

BEFORE KING, DAVIS, and WIENER, Circuit Judges.

PER CURIAM:\*

In this Title VII action, Plaintiff-Appellant Curtis Wayne Carter appeals the district court's judgment in favor of Defendant-Appellee Metro Ford Truck Sales, Inc. (Metro), challenging both the factual findings of the district court and the legal standard applied. As we find that the district court did not clearly err in its factual determinations and did not apply the incorrect standard, we affirm the take-nothing judgment.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

## FACTS AND PROCEEDINGS

There is no dispute that Carter, an African-American, was an excellent mechanic during his ten years at Metro and, consequently, the highest paid mechanic in the shop. In 1988, however, he was terminated by Metro, and he brought suit under Title VII, alleging that racial motivations prompted his termination.

After a non-jury trial on the merits, the district court entered a take-nothing judgment against Carter, making a series of factual findings and conclusions of law. Most importantly, the court found that Carter was not terminated because of his race, but was terminated because of his repeated disagreements over billing and work assignments. The court also found that Metro's facially legitimate reason for terminating Carter<sup>1</sup> that he physically and verbally threatened a supervisor<sup>1</sup> was not worthy of credence.

In its conclusions of law, the court noted that, because Carter's claims had been fully tried on the merits, the three step analysis in Texas Department of Community Affairs v. Burdine<sup>1</sup> did not apply. Instead, the court stated that Carter could prevail on the merits of his claim only by proving that Metro intentionally discriminated against him because of his race. Carter could meet this burden directly, by persuading the court that discriminatory motivations more likely motivated Metro, or, indirectly, by demonstrating that Metro's explanation for its actions is untrue and is, in fact, a pretext for discrimination. Finding that Carter's race was not a factor in Metro's decisions regarding work

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<sup>1</sup> 450 U.S. 248 (1981).

allocation, payment, or termination, the court concluded that Metro did not violate Title VII. Carter timely appealed.

## II

### ANALYSIS

#### A. Standard of Review

Carter's allegations of error break down into two categories: (1) challenges to factual findings including the ultimate determination of discrimination; and (2) a challenge to the legal standard applied by the district court. "In a Title VII action that has been fully tried on the merits, such that the district court has before it all the necessary evidence to make the ultimate finding of discrimination, the factual inquiry is whether the defendant intentionally discriminated against the plaintiff."<sup>2</sup> Consequently, we review the ultimate finding regarding discrimination for clear error.<sup>3</sup> In reviewing the correctness of the legal standard, we of course apply the de novo standard.

#### B. Findings of Fact

##### 1. Finding Regarding Discrimination

Carter insists that the district court erred in its ultimate finding that race was not a motivating factor in his termination. This erroneous finding resulted, according to Carter, from the district court's refusal to apply Burdine and the court's articulation of a non-discriminatory reason for Metro. Carter

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<sup>2</sup> Davis v. Yazoo County Welfare Dept., 942 F.2d 884, 886 (5th Cir. 1991)(citation omitted).

<sup>3</sup> Anderson v. Bessemer City, 470 U.S. 564, 573 (1985).

misapprehends both the district court's findings and the Burdine standard. Consequently, his arguments on this point are unpersuasive.

In Burdine, the Supreme Court decided "[t]he narrow question . . . whether, after the plaintiff has proved a prima facie case of discriminatory treatment, the burden shifts to the defendant to persuade the court by a preponderance of the evidence that legitimate, nondiscriminatory reasons for the challenged employment action existed."<sup>4</sup> In reaching that ultimate question, the Court established the now familiar process in discrimination cases: A plaintiff must establish a prima facie case; once that is accomplished, the burden shifts to the employer to articulate a facially legitimate reason for discharge; the burden then returns to the plaintiff to prove not only that the articulated reason was pretext, but also that the employer intentionally discriminated against him.

In other words, Burdine establishes the burdens of proof for discrimination cases, with an eye towards "fram[ing] the factual issue with sufficient clarity so that the plaintiff will have a full and fair opportunity to demonstrate pretext."<sup>5</sup> The case also makes clear, however, that once the plaintiff establishes a prima facie case and the employer responds with a facially legitimate reason for dismissal<sup>5</sup>thereby avoiding summary judgment<sup>5</sup>the

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<sup>4</sup> Burdine, 450 U.S. at 250.

<sup>5</sup> Id. at 255-56.

factual inquiry proceeds to a new level of specificity."<sup>6</sup> At this point, the plaintiff's burden to expose the employer's proffered reason as mere pretext "merges with the ultimate burden of persuading the court that she has been the victim of intentional discrimination."<sup>7</sup> Put simply, the plaintiff's burden to prove pretext is intertwined with his burden to prove the ultimate issue, i.e., that the employer's reason is merely a pretext for discrimination.

In its decision, the district court noted that Burdine does not apply to cases after a full trial on the merits. Subsequently, the district court concluded that although the reason proffered by Metro for Carter's termination was not credible, the evidence demonstrated that Carter's incessant complaining<sup>SO</sup>not his race<sup>SO</sup>prompted his termination. Despite Carter's characterization of these two statements as a subversion of Burdine, we conclude that the district court did not err.

Carter received a full trial on the merits. To reach that stage, he necessarily met his burden of establishing a prima facie case and Metro necessarily met its burden of proffering a facially legitimate reason for his discharge. The court then proceeded to consider both Carter's allegations of pretext and the ultimate issue of intentional discrimination. As Burdine states, these two issues merge at this point. Moreover, as the Supreme Court has clarified, at this point "the McDonnell-Burdine presumption `drops

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<sup>6</sup> Id. at 255.

<sup>7</sup> Id. at 256.

from the case.'"<sup>8</sup> In other words, the Burdine requirements have been met, and the court proceeds to determine the ultimate issue of discrimination.

This is exactly what the district court did, ultimately finding Metro's facially legitimate reason unworthy of credence. This does not mean, however, that Carter must win. Neither does it mean that Metro has failed to meet its burden under Burdine; it did that merely by proffering the facially legitimate reason. For Carter to succeed, he must show not only that Metro's reason was pretext, but that it is pretext for discrimination. In other words, even though a plaintiff proves pretext, he must still prove that he was discriminated against based on his race.<sup>9</sup>

The court concluded that Carter did not meet that burden. Instead, it found evidence in the record that he was discharged for his complaints regarding work assignments. We review this determination so that race did not motivate Metro's termination of Carter so for clear error.<sup>10</sup>

Although Carter alleged that white employees were favored in allocation and payment of jobs, he could name only a few incidents, averaging one or two per year for a four or five year period, when white mechanics were given jobs when he was available. In

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<sup>8</sup> U.S. Postal Service Bd of Governors v. Aikens, 460 U.S. 711, 714-15 (1983)(citation omitted).

<sup>9</sup> See Valdez v. San Antonio Chamber of Commerce, 974 F.2d 592, 596 (5th Cir. 1992)(citation omitted).

<sup>10</sup> The court's determination as to why Carter actually was fired is only incidental to the ultimate determination that race was not a motivating factor in Carter's discharge.

addition, there was evidence from several witnesses that the allocation of jobs was based on several criteria, only one of which was availability. Carter also alleged various racial comments by supervisors and other employees, as well as disparate treatment for the African-American employees. These incidents purportedly occurred in front of or were also directed at Alvin Crenshaw, another Black employee. Crenshaw, however, could not recall any of these incidents.

The only other evidence supporting Carter's allegations is the testimony of Matthew Edwards, a former Metro employee. He testified that he had observed work being set aside when Black mechanics were available, while white employees were allowed to pick up work. This activity happened, however, at a time before Carter was even employed by Metro. Edwards did testify that, while Carter was employed, white employees averaged more jobs simultaneously than did the Black employees. Thus, there is little evidence, beyond Carter's conclusionary assertions, that his discharge was racially motivated. Consequently, we conclude that the district court did not clearly err in its decision.

## 2. Finding Regarding Retaliatory Discharge

Carter also challenges the district court's finding that he was not terminated in retaliation for his claims of racial discrimination. Carter's evidence supporting his claim of retaliatory discharge includes his purported conversation with a former manager Jim Brim, in which Carter stated his opinion that Metro had racially biased policies and a meeting held by Metro to

discuss possible prejudices of one of its managers. Carter insists that Metro's failure to rebut this fact requires a remand. We disagree. There is ample evidence in the record to support the district court's finding that Carter was discharged because of his persistent complaints regarding work allocation and payment.

C. Applicable Legal Standard

In addition to challenging the district court's ultimate factual finding regarding discrimination, Carter insists that the court applied the incorrect legal standard. He urges that the district court should have applied the "mixed motive" analysis set forth in Price Waterhouse v. Hopkins.<sup>11</sup> This argument too is unpersuasive. Hopkins establishes that once a plaintiff shows that gender (or here race) motivated the adverse employment decision, the defendant may avoid liability only by proving that it would have reached the same decision without considering the gender or race.<sup>12</sup> Carter, however, has not met his initial burden of demonstrating that race was a motivating factor in his termination. Thus, the burden does not shift to Metro and the standard in Hopkins is inapplicable.

AFFIRMED.

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<sup>11</sup> 490 U.S. 228 (1989).

<sup>12</sup> Id. at 245-46.