

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-1875  
(Summary Calendar)

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MARY A. ROBB

Plaintiff-Appellant,

versus

ELECTRONIC DATA SYSTEMS CORPORATION,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
(3:90-CV-1575-P)

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(April 16, 1993)

BEFORE KING, DAVIS, and WIENER, Circuit Judges.

PER CURIAM:\*

In this age discrimination suit, Plaintiff-Appellant Mary A. Robb appeals the district court's grant of summary judgment dismissing her claim against her former employer, Defendant-Appellee Electronic Data Systems Corporation (EDS). As the district court, in an apparent effort to enlighten counsel for Robb, painstakingly crafted a lengthy and explicit opinion correctly

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

setting forth the controlling case law which renders Robb's evidence insufficient as a matter of law, we adopt that court's writing and the reasoning within. We add only a few comments to address the arguments asserted by Robb on appeal.

For the first time on appeal, Robb argues that there is a genuine issue of material fact whether EDS' reason for not transferring Robb to another position within the company is a pretext. We decline to consider issues that have not been presented to the district court unless the issue is a purely legal one and failure to consider it would work an injustice.<sup>1</sup> Robb has failed to demonstrate that our failure to consider this issue would be unjust and we are convinced that no injustice will result. Consequently, we decline to consider this issue that has not been presented to the district court and has not been ruled on by it.

We write also to emphasize that Robb's brief, although correctly formulating the issue on appeal, fails actually to argue that issue. Instead, it argues that "[w]hether EDS has proffered a credible reason for eliminating Robb's position and terminating her is not a question for summary judgment." This is simply wrong. In making this argument, Robb's counsel ignores the well-established case law of this Circuit, which the district court cites in its opinion. Counsel does not attempt to distinguish this case law, but instead chooses to ignore it, relying on Third Circuit case law as support. We remind counsel that, as an officer of the court, failing to cite controlling law<sup>1</sup> especially when one

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<sup>1</sup> Volkswagen of America, Inc. v. Robertson, 713 F.2d 1151, 166 (5th Cir. 1983).

is on notice that controlling precedent exists. It is a breach of duty to this court. A breach that can be sanctionable. We assume no more need be said on this issue.

For the reasons set forth in the district court's opinion, the grant of summary judgment is

AFFIRMED.