

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2483
Summary Calendar

OLUMIDE E. EYIKOGBE,

Plaintiff-Appellant,

v.

TEXAS STATE DEPARTMENT OF HIGHWAYS AND
PUBLIC TRANSPORTATION, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
CA H 91 856

April 7, 1993

Before GARWOOD, JONES, and EMILIO GARZA, Circuit Judges.*

EDITH H. JONES, Circuit Judge:

Olumide E. Eyikogbe appeals a summary judgment in his suit against the Texas State Department of Highways and Public Transportation (TDT) and individual employees of the Department. Finding no genuine issue of material fact in the case, we affirm.

In April, 1991, Eyikogbe, a man of Nigerian ancestry, filed suit in the district court claiming he was not promoted from his position at TDT because of his race and national origin in

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

violation of Title VII of the Civil Rights Act of 1964, 42 USC § 2000e et seq. He also charged that TDT retaliated against him for filing a complaint with the Equal Employment Opportunity Commission, in violation of Title VII.

After discovery ended, TDT moved for summary judgment on Eyikogbe's claims. In support of its motion for summary judgment, TDT attached an excerpt from Eyikogbe's deposition, an affidavit from Eyikogbe's supervisor, and Eyikogbe's responses to TDT's interrogatories and requests for production. Eyikogbe filed no response to TDT's motion for summary judgment; nor did Eyikogbe request an extension of time within which to file a response under Federal Rule of Civil Procedure 56(f). The district court reviewed the uncontroverted summary judgment evidence and granted TDT's motion, dismissing the case.

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed R Civ P 56(c). The moving party bears the initial burden of showing that no genuine issue of material fact exists. Celotex Corp. v Catrett, 477 US 317, 323, 106 S Ct 2548 (1986). Once that burden is met, the non-movant must come forward with evidence that would enable it to survive a motion for directed verdict at trial. Transco Leasing Corp. v United States, 896 F2d 1435, 1444 (5th Cir 1990).

Under Rule 56, a district court is not required to scour the record in search of evidence to support the non-movant; nor is the district court required to concoct arguments in opposition to the movant. That is the non-movant's job. Skotak v Tenneco Resins, Inc., 953 F2d 909, 915 n 7 (5th Cir 1992). This court will not consider evidence or arguments that were not presented to the district court for its consideration in ruling on the motion. Id at 915. Therefore, we will not consider Eyikogbe's argument, pressed for the first time on appeal, that TDT's summary judgment evidence was defective.

The judgment of the district court is **AFFIRMED**.