

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4821
Summary Calendar

HUEY NEWMAN, SR.,

Plaintiff-Appellant,

VERSUS

FIRST BAPTIST CHURCH OF WEST MONROE,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(CA-90-2092)

(January 6, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Huey Newman appeals from the summary judgment granted First Baptist Church of West Monroe. Finding no genuine issue of material fact, and that First Baptist is entitled to judgment as a matter of law, we **AFFIRM**.

I.

Newman, a black male, was terminated from his position as grounds and building maintenance supervisor on September 29, 1989;

¹ Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

he was 51 years old. Herschel Cassey, a black male, replaced Newman as building and grounds supervisor; he was 62 years old.

After Newman charged his employer, First Baptist, a private non-profit religious organization, with employment discrimination, the Equal Opportunity Commission ("EEOC") dismissed Newman's charge on the merits. He then brought suit against First Baptist seeking damages and injunctive relief for alleged violations of constitutional and statutory prohibitions against discrimination on the basis of age and race.

Upon completion of discovery, First Baptist moved for summary judgment, submitting in support the depositions of Cassey, David S. Sanders, Newman's former supervisor and Cassey's current supervisor, and Newman. In opposition, Newman submitted no evidence, other than to refer to pages of his deposition. The court granted summary judgment, dismissing his constitutional claims and statutory claims under 42 U.S.C. §§ 1981 and 1983 for failure to allege state action, his request for injunctive relief for failure to show irreparable injury, and his race and age discrimination claims due to the fact that his replacement was an older man of the same race.

II.

Newman only contests the district court's dismissal of his statutory claims of age and race discrimination. We review a summary judgment *de novo*. ***Degan v. Ford Motor Co.***, 869 F.2d 889, 892 (5th Cir. 1989). Summary judgment is appropriate if the movant demonstrates that there is an absence of genuine issues of material fact, and that the movant is entitled to judgment as a matter of

law. Fed. R. Civ. P. 56(c); **Topalian v. Ehrman**, 954 F.2d 1125, 1131 (5th Cir.), *cert. denied*, ___ U.S. ___, 113 S. Ct. 82 (1992). "To avoid a summary judgment, the nonmoving party must adduce admissible evidence which creates a fact issue concerning the existence of every essential component of that party's case. Unsubstantiated assertions of an actual dispute will not suffice." **Thomas v. Price**, 975 F.2d 231, 235 (5th Cir. 1992).

To establish a prima facie case under both the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.* ("ADEA") or Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* ("Title VII"), Newman must show that he was replaced by a person who is not a member of a protected group. See **Valdez v. San Antonio Chamber of Commerce**, 974 F.2d 592, 596 (5th Cir. 1992); **DeLoach v. Delchamps, Inc.**, 897 F.2d 815, 818 (5th Cir. 1990).

Here, First Baptist submitted depositions indicating that a protected member of an age and racial group, *i.e.*, a 62-year-old black male, replaced Newman. In opposition, Newman asserts that Cassey replaced him in name only; that his real duties were taken over by Sanders and one of the white maids. But, in support, he refers only to hearsay statements contained in his deposition and does not provide any basis for their admissibility.² See Fed. R. Evid. 803. Accordingly, because he fails to create a fact issue through the submission of admissible evidence, we hold that the

² He states that a man named Henry Johnson and a former maid named Sandra Kyles told him that his duties had been assumed by Mr. Sanders and a white maid.

district court properly granted First Baptist's motion for summary judgment.

III.

For the foregoing reasons, the judgment is

AFFIRMED.