UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5595
Summary Calendar

ROSLYN AGUIRRE,

Plaintiff-Appellant,

VERSUS

INTELOGIC TRACE, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
(SA-90-CV-1051)

(December 2, 1992)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Roslyn Aguirre appeals from an adverse judgment on her Title VII claim, contending that the district court erred in denying her requests for appointed counsel.[2] We **AFFIRM**.

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[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 Pursuant to that rule, the court has determined that this opinion should not be published.

[2] Aguirre has retained counsel for this appeal.

I.

Aguirre, a Mexican-American, was employed by Intelogic Trace, Inc., from mid-May 1982 until early 1989. Originally hired as a data entry clerk, Aguirre was promoted once and then, after four years, was transferred to the accounts payable department where she worked as a file clerk. She received a poor performance evaluation in this position. Aguirre testified that she was unhappy in that department and sought a transfer. Some time after the transfer was denied, Aguirre was called upon to pull certain documents from the files. She testified that these were documents she "hadn't been pulling previously". Aguirre pulled the documents as requested, but told her supervisor that she "wasn't going to do it in the future". Approximately 45 minutes later, Aguirre was fired.

Shortly thereafter, she filed charges against Intelogic Trace with the EEOC. It determined that Aguirre did not establish a Title VII violation and issued a right to sue letter.

Aguirre then filed a Title VII claim in federal district court, alleging that she was terminated because of her national origin. Intelogic contends that, instead, Aguirre was fired for insubordination.[3] Aguirre twice requested that counsel be appointed for her; but, both requests were denied, each by a different magistrate judge.[4] After a trial on the merits before

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[3] In her original complaint, Aguirre also stated that she "was fired for insubordination" and has never denied telling her supervisor that she would not pull requested documents in the future.

[4] Upon consent of both parties, all proceedings were conducted before a magistrate judge, as authorized by 28 U.S.C. § 636(c).

the magistrate judge, the court concluded that Aguirre was not terminated because of her national origin and thus, could not recover under Title VII.

II.

Aguirre alleges error only in the district court's refusal to appoint counsel.[5]

Section 706(f) of Title VII provides that a court may appoint counsel for a complainant under the Act "in such circumstances as the court may deem just". 42 U.S.C. § 2000e-5(f)(1) (1981 & Supp. 1992). In short, the right to counsel in such a suit is not automatic. ***Caston v. Sears, Roebuck & Co.***, 556 F.2d 1305, 1309 (5th Cir. 1977). Rather, such a determination lies within the broad discretion of the trial court. ***Id***. at 1308. Therefore, we review denials of such requests only for abuse of that discretion. ***Salmon v. Corpus Christi Independent School District***, 911 F.2d 1165, 1166 (5th Cir. 1990).

Aguirre's first request for appointment of counsel was denied by Magistrate Judge O'Connor. After Aguirre's second request, Judge O'Connor conducted a lengthy evidentiary hearing. At that hearing, Aguirre told the judge that she did not think he would be fair and said, "I don't think you're doing this right", and "I heard you were funny". The next day, "in an abundance of caution" and "to avoid even the remotest appearance of partiality", Judge O'Connor recused himself. Magistrate Judge Primomo, appointed in his place, denied Aguirre's second request.

Aguirre contends that she requested appointment on three different occasions and refers to her Objection to the Magistrate's Order and Motion for Stay as the third request. In response to this motion, Judge Primomo reiterated to Aguirre that her requests for counsel had been denied. The motion was not addressed as a renewed request for counsel.

[5] As stated, she has retained counsel on this appeal.

In ***Caston***, this court attempted to "establish some broad guidelines", 556 F.2d at 1308, for determining when counsel should be so appointed and suggested that district courts should consider various factors, including the merits of the claim, the plaintiff's efforts to obtain counsel, and the plaintiff's financial ability to do so. ***Id***. at 1309.

Aguirre contends that the district court erred by analyzing only the merits of her case -- the first of the ***Caston*** suggested factors. Noting that "[n]o one factor is conclusive", she contends that this court has affirmed or reversed district court decisions on the weight of two of the three factors, citing ***Gonzalez v. Carlin***, 907 F.2d 573 (5th Cir. 1990), and ***Caston***.

This rigid "two out of three" analysis is a misinterpretation of our prior holdings. In ***Caston***, this court stated that the "considerations which we deem relevant are merely suggestive rather than exhaustive". 556 F.2d at 1308. The "factors" were never intended to establish a hard and fast test. They are, instead, "simply ingredients in the total mix of relevant information which should guide the discretion of the district court". ***Id***. at 1310. This court vacated and remanded the district court's denial of counsel in that case, not because "two of the three ... factors pointed toward appointment of counsel" as Aguirre contends, but because the record was simply too scant to permit it to "agree or disagree", ***id.*** at 1310, with the appellant's contentions.

Likewise, in ***Carlin***, this court affirmed the district court's denial of counsel, despite its erroneous use of the standard for

appointment of counsel for *in forma pauperis* cases. It did so not solely because the district court had considered at least two of the factors suggested in ***Caston***, but because, on the whole, the district court "did exercise a reasoned and well-informed discretion". ***Carlin***, 907 F.2d at 580.

It is the soundness of that discretion which is the standard here. The factors set forth in ***Caston*** are merely among those which guide our analysis. We conclude that neither magistrate judge abused his discretion in denying Aguirre's requests for counsel.

In addressing Aguirre's requests, the district court did give primary weight to the weakness of her Title VII claim. This, however, was not a rubber stamp of the EEOC's decision, which this court has held would be error, ***Caston***, 557 F.2d 1308, but resulted from each magistrate judge's independent evaluation of the entire record. The court, in each instance, evaluated the case under the guidelines established in ***Caston*** and ***Poindexter v. F.B.I.***, 737 F.2d 1173 (D.C. Cir. 1984).[6] The fact that all of the guidelines were not analyzed in the court's opinions does not mean they were not considered. Aguirre had been granted leave to proceed *in forma pauperis*, from which the court may well have concluded that she demonstrated financial need. Accompanying her requests were also statements that she had attempted to hire several attorneys. Even

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[6] ***Poindexter*** added the additional factor of "the capacity of the plaintiff to present the case adequately without aid of counsel". ***Poindexter v. F.B.I.***, 737 F.2d 1173, 1185 (5th Cir. 1984). In denying Aguirre's second request, the court noted that her pleadings had been "clear and understandable with numerous references to applicable statutory provisions" and concluded that she demonstrated adequate ability to prosecute her case *pro se*.

if the district court assumed that Aguirre established both financial need and an attempt to secure counsel, the weakness of her claim and demonstrated ability to represent herself could have weighed so heavily against appointment of counsel that the court did not deem it just in this case. *See* ***Salmon v. Corpus Christi Independent School District***, 911 F.2d 1165, 1166 (5th Cir. 1990). That reasoned analysis is all that is required of the district court. It clearly took place here; we find no abuse of discretion.

III.

Accordingly, the judgment is

AFFIRMED.