UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8618
Summary Calendar

JESUS R. VILLARREAL, JR.,

Plaintiff-Appellant,

VERSUS

FALLS COUNTY, TEXAS, (Falls County Road and Bridge Department),

Defendant-Appellee.

Appeal from the United States District Court for the Western District of Texas (W-90-CA-194)

June 7, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Jesus R. Villarreal, Jr., appeals the final judgment in favor his former employer, Falls County, Texas, dismissing for lack of jurisdiction his Title VII action for alleged termination on the basis of race. We **AFFIRM**.

I.

During a bench trial, after hearing most of Villarreal's case-in-chief, including the testimony of Mr. and Mrs. Villarreal, the

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 Pursuant to that rule, the court has determined that this opinion should not be published.

district court dismissed this action for lack of jurisdiction, because Villarreal had not filed his complaint within 90 days of receipt of the right-to-sue letter from the Equal Employment Opportunity Commission, as required by 42 U.S.C. § 2000e-5(f)(1). The EEOC sent the letter by certified mail, return receipt requested, on April 6, 1990. The return receipt, or "green card", signed by Villarreal's wife, is dated as delivered on April 9, 1990, which would render this action, filed on July 11, 1990, untimely by three days. Mrs. Villarreal admitted that the signature was hers, but testified that, regardless of the date on the card, she received the letter on April 12, not April 9, in which case the action was timely filed on the 90th day after receipt. She knew this because she customarily picked up mail from their post office box on Thursdays, and April 9 was a Monday. In fact, she denied placing the April 9 date on the card.

The district court held that the green card created a presumption that the letter was received on April 9. It further stated that Mrs. Villarreal's testimony "is not credible and is not accepted by the Court", because her "demeanor, other testimony, her interest in the lawsuit, and the length of time that elapsed between April of 1990 and the 1992 date of her [testimony] mandates the conclusion that she, in fact, has no distinct memory of the date she signed for the green card, but relies on her custom of picking up her mail on Thursdays". Additionally, it rejected Villerreal's "self-serving testimony" that he first saw the letter on April 12, citing "[h]is demeanor and the fact that the strength

of his voice lowered measurably when asked the critical leading questions", and that he offered "no reason whatever why he would remember that date". Comparing the dated green card with the Villarreals' testimony, the court determined that "it is more likely than not that the right-to-sue letter was received on April 9, 1990, and that therefore this suit is barred".

II.

Villarreal contends that the district court erroneously presumed that the green card was correctly dated, and that, even with such a presumption, the contrary evidence clearly established receipt on April 12. We review the district court's application of the law *de novo*, and its factual determinations for clear error. ***Fiberlok, Inc. v. LMS Enterprises, Inc.***, 976 F.2d 958, 962 (5th Cir. 1992).

This court has noted "the well recognized presumption as to the regularity of the acts of public officials". ***Beverly v. United States***, 468 F.2d 732, 743 (5th Cir. 1972). "The presumption of regularity supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties." ***Id.*** (quoting ***United States v. Chemical Foundation, Inc.***, 272 U.S. 1, 14-15 (1926)).

Here, the green card carries the prominent admonition to postal employees, "Always obtain signature of addressee or agent and DATE DELIVERED". In ***Beck v. Somerset Technologies, Inc.***, 882 F.2d 993, 996 (5th Cir. 1989), we held that a copy of a properly

addressed letter, a certified mail receipt, and signed return receipt cards were sufficient to create a presumption that the letter was received in "the due course of the mail". Likewise, here, the district court correctly presumed that the signed green card indicates the correct date.

Villarreal correctly contends that the effect of a presumption is "to shift the burden of producing evidence with regard to the presumed fact", and that if a party presents evidence to the contrary, the presumption "simply disappears". ***Pennzoil Co. v. F.E.R.C.***, 789 F.2d 1128, 1136 (5th Cir. 1986). Here, however, the district court disregarded the Villarreals' testimony as lacking in credibility, which would render it insufficient to rebut the presumption. Furthermore, even had the presumption been rebutted, the district court still was entitled to consider the dated green card as probative evidence. In weighing the evidence, the district court applied "the same kind of common sense that a jury would use", and, as noted, gave detailed reasons for rejecting the Villarreals' testimony. Its finding that the letter was received on April 9, rather than April 12, is not clearly erroneous; we find no factual or legal error.

III.

For the foregoing reasons, the judgment dismissing the action for lack of jurisdiction is

AFFIRMED.