

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1548
Summary Calendar

VINCENT A. REETZ,

Plaintiff-Appellant,

versus

CITY OF DALLAS,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Texas
(3:92 CV 1338 P)

(October 20, 1993)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:*

In this appeal, Reetz asks this court to apply retroactively Section 101 of the Civil Rights Act of 1991 ("the Act"), which amended 42 U.S.C. § 1981, to conduct that occurred prior to the enactment of the Act. Because we have recently determined that the Act does not apply to conduct occurring prior to its enactment, we

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

affirm the district court's judgment on the pleadings in favor of the city of Dallas.

I

In December of 1990, Vincent A. Reetz, a white police officer employed by the Dallas Police Department, fatally shot an armed but innocent African-American shop owner. The African-American community was troubled about the shooting, and there was considerable publicity over the incident. Reetz was placed on administrative leave pending an internal investigation of the shooting. After the police department completed its internal investigation, the department found that Reetz had acted within the city's policies and within the state laws regarding the use of deadly force. On February 28, 1991, however, Reetz resigned even though the department had not yet determined what action, if any, it would take against Reetz. According to Reetz, he was led to believe that if he did not resign, he would be involuntarily terminated.

II

In June 1992, Reetz filed this lawsuit against the city of Dallas alleging that he was discharged because of his race in violation of civil rights statute 42 U.S.C. § 1981 (1981). The city moved for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c), and the district court granted the city's motion. The district court stated that under the law in effect at

the time the event occurred, Reetz's claim was not actionable. We agree.

III

On appeal, Reetz argues that the district court erred when it entered judgment on the pleadings in favor of the city of Dallas. A motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) is designed to dispose of cases where the material facts are not in dispute, and a judgment on the merits can be rendered by looking to the substance of the pleadings. Herbert Abstract Co. v. Touchstone Properties, Ltd., 914 F.2d 74 (5th Cir. 1990). In this case, the district court held that Reetz's claim was not actionable under the version of 42 U.S.C. § 1981 in effect at the time Reetz claims he was "constructively discharged." At the time Reetz resigned from the police force, § 1981 stated that

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by white citizens. . . .

42 U.S.C. § 1981 (1981). The United States Supreme Court later held that § 1981 "cannot be construed as a general proscription of racial discrimination in all aspects of contract relations, for it expressly prohibits discrimination only in the making and enforcement of contracts." Patterson v. McLean Credit Union, 491 U.S. 164, 176, 109 S.Ct. 2363, 105 L.Ed.2d 132, 150 (1989). In effect, the court held that § 1981 did not apply to post-formation

conduct that did not involve the right to make a contract. Id. at 177. In this case, Reetz argues that his "constructive termination" violated § 1981. However, any claim related to the termination of employment is necessarily a claim arising out of post-formation conduct, and is therefore not actionable under Patterson.

Reetz, however, argues that § 101 of the Civil Rights Act of 1991, which amends 42 U.S.C. § 1981, made his claim for wrongful termination actionable. Section 101 states that "the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981 (Supp. 1993). This amendment was enacted on November 21, 1991, approximately nine months after Reetz resigned from the Dallas Police Department. Thus, the amended version of § 1981 would have to be applied retroactively in order to apply to the conduct of which Reetz complains. We have already decided, however, that § 101 of the Civil Rights Act of 1991 does not apply to conduct that occurred prior to its enactment. Johnson v. Uncle Ben's, Inc., 965 F.2d 1363, 1372-74 (5th Cir. 1992), petition for cert. filed, 61 U.S.L.W. 3356 (U.S. Sept. 29, 1992)(No. 92-737). Because § 101 will not be applied retroactively, Reetz's claim is governed by the law in effect at

the time the complained-of conduct occurred.¹ As such, the district court properly rendered judgment on the pleadings in favor of the city of Dallas.

IV

Based on the foregoing, the district court's judgment on the pleadings is

A F F I R M E D.

¹Reetz argues in the alternative that even if § 101 is not applied retroactively, we should not apply Patterson prospectively. Reetz argues that the passing § 101 demonstrates that the earlier version of 42 U.S.C. § 1981 is "wrong," and that it would be improper for us to extend the use of a principle that has been "disavowed and overturned by Congress." This is simply another means of arguing that we should apply retroactively § 101. We are, however, bound by our precedent.