UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2001
Summary Calendar

ROSE M. COTTRELL,

Plaintiff-Appellant,

VERSUS

CAREER INSTITUTE INC. and
CENTER FOR ADVANCED LEGAL STUDIES,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-91-1401)

May 6, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Rose M. Cottrell, *pro se*, appeals the summary judgment awarded Career Institute, Inc., and the Center for Advanced Legal Studies, in her action, pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, for damages resulting from her alleged racially motivated discharge from employment. 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

From July to November 1987, Cottrell worked as a placement director for the Career Institute. Two days before her dismissal, she complained to the school's directors of discriminatory practices at the Institute, which allegedly led to her termination. After receiving a right to sue letter from the Equal Employment Opportunity Commission, she filed suit, proceeding *pro se* and *in forma pauperis*, in May 1991.

That October, the defendants served her, by certified mail, with requests for admission. Cottrell signed the return receipt card for the requests on October 21, but did not respond to them until December 18, well after the expiration of the 30 days allowed by Fed. R. Civ. P. 36(a). Under that rule, her delay resulted in the automatic admission of the matters requested. *See* Fed. R. Civ. P. 36(a).

Subsequently, in March 1992, the defendants moved for summary judgment, citing the deemed admissions which foreclosed any claim for relief.[2] Cottrell responded to the motion that July, but did not attempt to explain her delay in responding to the requests,[3]

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[2] Among other things, Cottrell was deemed to have admitted that "[n]either Defendant maintained or administered unlawful employment practices", that "[n]either Defendant discriminated against Plaintiff because of race with respect to compensation, terms, conditions, and privileges of employment", and that "Plaintiff has no claim for racial discrimination against the Center for Advanced Legal Studies".

[3] She contended only that the delay resulted from an incorrect address being placed on the Requests. As the district court noted, however, she did not dispute the validity of her October 21 signature on the return receipt card, which establishes that she received the requests. *See* Fed. R. Civ. P. 36(a) (matter of which

and did not move to withdraw her admissions pursuant to Fed. R. Civ. P. 36(b). Consequently, that November, the district court granted summary judgment for the defendants.

II.

The only viable contentions raised by Cottrell are (1) that the district court should have "departed from the `strict letter of the rule' to promote the interests of justice", and (2) that she received inadequate notice and opportunity for hearing on the summary judgment motion.[4]

A.

First, our requisite *de novo* review confirms that the district court did not err in basing summary judgment on the deemed admissions. As it correctly noted in its thorough opinion, facts admitted pursuant to Rule 36 are "conclusively established". *See* Fed. R. Civ. P. 36(a). "An admission that is not withdrawn or amended cannot be rebutted by contrary testimony or ignored by the district court simply because it finds the evidence presented by the party against whom the admission operates more credible". ***American Auto Ass'n v. AAA Legal Clinic***, 930 F.2d 1117, 1120 (5th Cir. 1991). Furthermore, a district court is not free to amend or withdraw Rule 36 admissions *sua sponte*; and Cottrell did not move

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admission is requested deemed admitted unless responded or objected to "within 30 days after *service*" (emphasis added)); Fed. R. Civ. P. 6(e) (where service by mail, three are "added to the prescribed period").

[4] Her remaining contentions address the existence of asserted material fact issues, and the opportunity for further discovery to obtain evidence, the relevance of which is foreclosed by her deemed admissions.

for their withdrawal pursuant to the procedure established in that rule. ***Id.*** Finally, although the district court was cognizant that Cottrell was proceeding *pro se*, it correctly noted that such litigants are not excused from the relevant rules of procedure. *See* ***Birl v. Estelle***, 660 F.2d 592, 593 (5th Cir. 1981).

B.

Second, Cottrell received adequate notice and opportunity to be heard on the summary judgment motion. As noted, Cottrell responded to the motion, and the district court did not rule until almost four months after receiving her response -- approximately eight months after the motion was filed. Fed. R. Civ. P. 56(c) requires that "[t]he motion shall be served at least 10 days before the time fixed for the hearing". This court has recognized that the "hearing" required need not necessarily be an oral one, and that local rules establishing procedures for handling such motions can serve as adequate notice to the opposing parties. ***Hamman v. Southwestern Gas Pipeline, Inc.***, 721 F.2d 140, 142 (5th Cir. 1983); ***Rodriguez v. Pacificare of Texas, Inc.***, 980 F.2d 1014, 1018 (5th Cir. 1993).

Here, the local rules of the Southern District of Texas provide that "[o]pposed motions will be submitted to the judge twenty days from filing without notice from the clerk and without appearance by counsel", and that responses "[m]ust be filed by the submission day". Local Rule (S.D. Tex.) 6(D) & (E). Furthermore, they provide that a party that desires oral argument must request it in the motion or response, which Cottrell did not do. Local

Rule (S.D. Tex.) 5(F). These rules adequately notified Cottrell that the motion could be decided at any time after 20 days from its filing, which fulfills the requirements of Fed. R. Civ. P. 56(c). *See* ***Rodriguez***, 980 F.2d at 1020; ***Hamman***, 721 F.2d at 142.

III.

For the foregoing reasons, the summary judgment is

AFFIRMED.