

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-2152
Summary Calendar

MURRAY D. GRANT,

Plaintiff-Appellant,

VERSUS

CITY OF HOUSTON,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 85 6254)

(August 25, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

Per Curiam:¹

Appellant Murray D. Grant appeals the district court's grant of summary judgment for the City of Houston. The district court concluded that Grant's claims of age and race discrimination under 42 U.S.C. §§ 1981, 1982, the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621-34, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e were barred by the applicable statute of limitations and that his retaliation charge must be dismissed for failure to exhaust administrative remedies. We

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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.

BACKGROUND

Grant, a black male, began work for the Defendant City's Department of Public Works, Water Maintenance Branch, on January 28, 1980 and resigned for health reasons seven years later. Grant started as a security officer, but was promoted to the position of utility worker. Grant asserts, however, that during the course of his employment he was not promoted to the position of mechanic III and assistant shop foreman because of his race and age.

In May 1984, Grant filed a grievance with the City to protest his nonpromotions. The hearing examiner upheld the grievance, recommending that Grant be promoted to the position of mechanic III or an equivalent rating. Grant appealed the hearing examiner's decision to the Civil Service Commission, which overruled the recommendation. Grant also filed a complaint with the Equal Employment Opportunity Commission ("EEOC") on August 22, 1984 and amended his charge on October 11, 1984. On November 8, 1985, Grant filed this present civil action.

DISCUSSION

Summary judgment is appropriate if the record discloses "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In reviewing the summary judgment, we apply the same standard of review as did the district court. Waltman v. International Paper Co., 875 F.2d 468, 474 (5th Cir. 1989); Moore v. Mississippi Valley State Univ., 871 F.2d 545, 548 (5th Cir.

1989). The pleadings, depositions, admissions, and answers to interrogatories, together with affidavits, must demonstrate that no genuine issue of material fact remains. Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986). To that end we must "review the facts drawing all inferences most favorable to the party opposing the motion." Reid v. State Farm Mut. Auto. Ins. Co., 784 F.2d 577, 578 (5th Cir. 1986). If the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); see Boeing Co. v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc).

First, Grant argues that there exists a material question of fact whether an unlawful unemployment practice occurred within an actionable period. Grant does not establish, however, anywhere in his depositions, pleadings, or admissions the elements of a prima facie case of discrimination before 1982. See McDonnell Douglas Corp. v. Green, 411 U.S. 801, 802 (1973). For the period after 1982, he does not establish that he was qualified for a certain promotion or that the position was filled by someone with his qualifications. His conclusory statements that he was not promoted in 1984 because of discrimination are insufficient to defeat summary judgment. See Fontenot v. Upjohn Co., 780 F.2d 1190, 1195-96 (5th Cir. 1986).

Because Grant did not establish a prima facie case for discriminatory acts after 1982, his argument that his Title VII claims are not barred by the statute of limitation because of a

continuing violation must fail. See Waltman, 875 F.2d at 474-75 (requiring that plaintiff show that at least one act of actionable discrimination occurred within the 180 days preceding his or her EEOC filing). Title VII claims must be filed with the EEOC within 180 days, or 300 days if first filed with a state agency, after the date of the alleged discriminatory act. 42 U.S.C. § 2000e(1) (Supp. 1993); Mennor v. Fort Hood Nat'l Bank, 829 F.2d 553, 554-55 (5th Cir. 1987). Grant's August 1984 charge was filed with the EEOC more than 300 days after the alleged 1981 or 1982 discriminatory acts, and thus, is barred by the statute of limitations. Grant's reliance on Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974), for support that his filing a grievance with the City extends the statutory period is misplaced because in that case, the plaintiff had filed a timely EEOC charge, id. at 47.

Likewise, Grant's sections 1981 and 1984 claims are barred by the applicable two-year statute of limitations. Price v. Digital Equipment Corp., 846 F.2d 1026, 1028 (5th Cir. 1988). A cause of action in a civil rights case accrues "when a plaintiff knows or has reason to know of the injury which is the basis for the action," Drayden v. Needville Independent, School District, 642 F.2d 129, 132 (5th Cir. 1981), and Grant brought this suit in 1985, over three years after he was aware of the alleged discriminatory acts.

The statute of limitations applicable to claims of age discrimination under the ADEA is also two years, and Grant cannot recover under this act. See 29 U.S.C. § 255; Chapman v. Homco,

Inc., 886 F.2d 756, 757-58 (5th Cir. 1989), cert. denied, 494 U.S. 1067 (1990). Grant argues that the Age Discrimination Claims Assistance Act of 1988 ("Claims Act"), Pub. L. No. 100-238, 102 Stat. 78 (1988), restores his untimely claim under the ADEA. The Claims Act requires, however, that the initial charge of discrimination be timely filed with the EEOC. Id. Because Grant filed his claim more than 300 days after the date of the alleged discriminatory acts, he does not qualify under the Claims Act.

Finally, Grant's only assertion that his retaliation claim is properly before the district court is in the summary of the argument section of his brief. Because Grant has inadequately briefed this issue, he is considered to have abandoned the claim. See Villanueva v. CNA Ins. Cos., 868 F.2d 684, 687 n. 5 (5th Cir. 1989).

For the foregoing reasons, the entry of summary judgment against Grant is AFFIRMED.