IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3014
Summary Calendar

GLENN R. DEBARTOLO,

Plaintiff-Appellant,

VERSUS

CHEVRON CHEMICAL COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Louisiana
CA 88 754 A M2

June 28, 1993

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Glenn Debartolo sued his former employer, Chevron Chemical Company ("Chevron"), for age discrimination under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 et seq., after the Equal Employment Opportunity Commission found no basis for a finding of age discrimination. The district

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 Pursuant to that rule, the court has determined that this opinion should not be published.

court granted Chevron's motion for summary judgment and issued an opinion, entered September 21, 1992, entitled Ruling on Motion for Summary Judgment. We affirm essentially for the reasons stated by the district court.

I.

The district court noted that Debartolo was 42 years old when his position was eliminated by Chevron as part of a reduction in force and that the company retained a 40-year-old and a 39-year-old. The court agreed with Chevron that Debartolo could not show that the retained employees were "sufficiently younger . . . to permit an inference of age discrimination." Bienkowski v. American Airlines, 851 F.2d 1503, 1506 (5th Cir. 1988) (citation omitted). Accord Fields v. J.C. Penney Co., 968 F.2d 533, 536 n.2 (5th Cir. 1992) (per curiam) (holding that there must be a "sufficient difference in the age of the two parties").

Based upon these authorities, the district court correctly concluded that "[t]he replacement of a 42 year old engineer with a 40 or 39 year old gives rise to no inference of age discrimination." Thus, as the court reasoned, there is only an "attenuated possibility that a jury would infer a discriminatory motive . . . ." Amburgey v. Corhart Refractories Corp., 936 F.2d 805, 814 (5th Cir. 1991) (quoting Thornbrough v. Columbus & Greenville R.R., 760 F.2d 633, 647 (5th Cir. 1985)).

II.

Debartolo appeals both the summary judgment and the district court's order denying his motion for new trial based upon newly discovered evidence. The district court, in its Ruling on Motion for New Trial entered December 4, 1992, properly observed that Debartolo failed to exercise reasonable diligence in presenting the evidence prior to entry of summary judgment. Also, the court stated that the purported evidence, related not to Debartolo but to two job applicants who never were hired, "has no significant bearing on plaintiff's claim for termination." We affirm the denial of a new trial essentially for the reasons stated by the district court.

AFFIRMED.