IN THE UNITED STATES OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3265
Summary Calendar

SHULL AUTIN,

Plaintiff-Appellant,

versus

FIRE PROTECTION DISTRICT NO. 3
OF THE PARISH OF LAFOURCHE,
STATE OF LOUISIANA, AND THE
LAFOURCHE PARISH POLICE JURY
A/K/A LAFOURCHE PARISH COUNCIL,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Louisiana
(91 CV 2462)

(August 17, 1993)

Before JOLLY, SMITH, and WIENER, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:[*]

Before us is the district court's summary dismissal of Shull Autin's constructive discharge action against one of Louisiana's fire districts. The district court granted summary judgment on Autin's federal claims because Autin failed to show that the fire

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

district forced him to resign in order to shield its actions from the scrutiny that would arise in a termination hearing. Finding that the district court did not err, we affirm.

I

In 1985, the Board of Commissioners of Fire Protection District No. 3 of the Parish of LaFourche, Louisiana (the "Fire District") hired Shull Autin as its administrator. In 1990, the chief of the Galliano Volunteer Fire Department pulled the gear of two firemen for disciplinary reasons. Errol Cheramie, a parish councilmen, asked Autin to pressure the Galliano fire chief to return the gear. Autin refused, and Cheramie insinuated that Autin had put his job at risk. Cheramie began to make good on his threats to the extent that Autin believed that the Board of Commissioners was about to fire him. Autin feared that the negative publicity from being fired would hurt his chances of finding a new job. On September 21, 1990, Autin resigned.

II

On July 8, 1991, Autin filed suit against the Fire District and the LaFourche Parish Council. Autin contended that the defendants 1) violated his constitutional due process rights by constructively discharging him without notice or a hearing, and 2) breached his contract of employment. Autin sought declaratory and injunctive relief. Contending that Autin did not have an employment contract or a vested property right in his job, the Fire District moved for summary judgment against Autin's claims. In

September of 1992, the district court ordered the parties to brief the issue of constructive discharge. A month later, the district court, in part, granted the Fire District's motion. In November, Autin moved the district court to either amend its judgment or grant him a new trial. On March 17, 1993, the district court entered final judgment against Autin's federal claims and dismissed his state claims without prejudice. Autin appeals.

III

Autin contends that the district court erred when it granted summary judgment against his federal claims. We review the district court's decision to grant summary judgment de novo, applying the same standards of law as the district court. Advance United Expressways, Inc. v. Eastman Kodak Co., 965 F.2d 1347, 1350 (5th Cir. 1992). To sustain the district court's summary judgment, we must find 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).

A

Autin argues that the district court erred when it concluded that the Fire District did not constructively discharge him. We disagree. As the employee, Autin bears the burden of proving that the Fire District constructively fired him. Boze v. Branstetter, 912 F.2d 801, 804 (5th Cir. 1990). Generally, an employer constructively discharges an employee if the employer "deliberately makes an employee's working conditions so intolerable that the

employee is forced into involuntary resignation." Id.; see also Jurgens v. EEOC, 903 F.2d 386 (5th Cir. 1990). In limited circumstances, an employer can also constructively fire an employee by placing him "between the Scylla of voluntary resignation and the Charybdis of forced termination." Fowler v. Carrollton Public Library, 799 F.2d 976, 981 (5th Cir. 1986). Such a constructive discharge, however, does not violate the due process clause of the Constitution unless the "state agency's motive is to avoid providing the pretermination remedy required by Loudermill [470 U.S. 532, 105 S.Ct. 1487 (1985)]." Id., see also Findeisen v. North East Ind. School Dist., 749 F.2d 234 (5th Cir. 1984); Bueno v. City of Donna, 714 F.2d 484 (5th Cir. 1983).

Autin failed to present sufficient evidence to demonstrate that a genuine fact issue exists as to whether the Fire District constructively discharged him. Nothing in the record indicates that the Fire District forced Autin to resign by making his working conditions unbearable. In fact, Autin does not complain about his working conditions. Autin, instead, contends that the Fire District constructively discharged him by preparing to fire him, thereby placed him between the Scylla of voluntary resignation and the Charybdis of forced termination. Yet, Autin did not present any evidence that suggests that the Fire District hoped to avoid its pretermination remedies. Indeed, Autin admits that the Fire District did not have a system of hearings or other procedural rights that protected him from termination. Thus, even if the Fire

District did force Autin to choose between resigning or being fired, it did not violate his due process right because the Fire District's actions were not motivated by a desire to shield its actions from the scrutiny that would arise in a termination hearing.

B

Autin argues that a public employer who does not provide procedural safeguards should not be allowed to assert that fact as a defense in a constructive discharge action. Be that as it may, Autin must have a property interest in his job before he can make out a § 1983 claim against the Fire District for constructive discharge. Conley v. Board of Trustees of Grenada County Hospital, 707 F.2d 175, 179 (5th Cir. 1983); see also Brown v. Texas A & M University, 804 F.2d 327, 333 (5th Cir. 1986); Paratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908 (1981). A protected property interest in public employment exists only when the employee has "a legitimate claim of entitlement" to continued employment absent some legitimate reason for discharge. Board of Regents v. Roth, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709 (1972). A system of tenure or an employment contract can support a property interest in one's job. Id. Similarly, a state statute, a local ordinance or a rule may be the source of such a property interest.

Autin's argument convinces us that he did not have a property interest in his job. He did not have tenure, an employment contract, or a promise of continued employment. Similarly, Autin

was not entitled to continued employment under any state or local ordinance. Nevertheless, Autin might have had a property interest in his job if the Fire District provided some procedures that protected him from discharge. Autin, however, contends that the Fire District did not provide any procedural safeguards against a discharge. Simply put, Autin's own arguments demonstrate that he was not entitled to continued employment. Because the Fire District could fire him at any time, Autin cannot make out a due process claim against the Fire District.

IV

For all of the foregoing reasons, the decision of the district court is

A F F I R M E D.