

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-3713  
Summary Calendar

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TIMOTHY PERRY,

Plaintiff-Appellant,

versus

EXXON CHEMICAL AMERICAS,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
(CA-91-406-B-M1)

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(May 18, 1994)

Before POLITZ, Chief Judge, GARWOOD and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Timothy Perry appeals adverse summary judgments dismissing his 42 U.S.C. §§ 1981, 1983 and Title VII claims against Exxon Corporation.<sup>1</sup> We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

<sup>1</sup>Perry named as defendant Exxon Chemical Americas. The district court noted that the proper defendant was Exxon Corporation.

Perry, a black male employed in security by Exxon for several years, was terminated after a spate of citations for several instances of misconduct.<sup>2</sup> Having filed previous charges with the EEOC, Perry filed the instant suit alleging that the disciplinary actions and his ultimate termination were motivated by racial or retaliatory animus. The district court granted summary judgment to Exxon on the section 1981 and section 1983 claims, finding them time-barred because the suit was filed more than a year after his termination. Ultimately, the court *a` quo* granted Exxon summary judgment on the Title VII claims, finding no disputed material fact and concluding that Exxon was entitled to judgment as a matter of law. Perry timely appealed.

The main thrust of Perry's appeal is that genuine issues of material fact exist precluding summary judgment on his Title VII discrimination and retaliation claims. We review the grant of summary judgment *de novo*.<sup>3</sup> Exxon does not dispute that Perry established a *prima facie* Title VII claim<sup>4</sup> nor does it address the initial plausibility of his retaliation claim. Rather, Exxon

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<sup>2</sup>Factors mentioned in Perry's termination included the exercise of poor judgment, lying to his supervisor, and submitting a false statement during investigation of an accident with a company car. Within three years of his termination Perry was cited for sleeping on the job, signing his supervisor's name on a purchase order without permission, abusing telephone privileges, and lying to the company investigator.

<sup>3</sup>**Krim v. Banctexas Group, Inc.**, 989 F.2d 1435 (5th Cir. 1993).

<sup>4</sup>Perry was a member of a protected group, was qualified for the position he held, was discharged, and was replaced by a white male. See **Valdez v. San Antonio Area Chamber of Commerce**, 974 F.2d 592 (5th Cir. 1992).

points to legitimate, non-discriminatory reasons for firing Perry, offering documentation recording Perry's questionable activities including: signing his supervisor's name to purchase orders without permission, lying to a company investigator, and making lengthy personal telephone calls while on duty. Although Perry disputes the severity of and the reasons for the described conduct, he presents no summary judgment evidence to contest the occurrence of those events nor to demonstrate that Exxon's reasons for firing him were pretextual.<sup>5</sup> Summary judgment on the Title VII claim was appropriate.

Perry maintains that his section 1981 cause of action should not have been dismissed as time-barred. The instant suit was filed more than one year after his termination, placing it outside the Louisiana prescriptive period,<sup>6</sup> which was not tolled during arbitration or EEOC proceedings.<sup>7</sup> The dismissal of the section 1981 claim as untimely was proper.<sup>8</sup>

Finally, in his notice of appeal Perry suggests that the trial judge should have recused himself because his brother is employed by Exxon. This matter is raised for the first time on appeal. We

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<sup>5</sup>See St. Mary's Honor Center v. Hicks, 113 S.Ct. 2742 (1993) (plaintiff bears burden of persuading that reasons for firing were pretextual in Title VII cases).

<sup>6</sup>Jones v. Orleans Parish School Board, 688 F.2d 342 (5th Cir. 1982), cert. denied, 461 U.S. 951 (1983).

<sup>7</sup>Delaware State College v. Ricks, 449 U.S. 250 (1980).

<sup>8</sup>Perry's 42 U.S.C. § 1983 claim was not appealed. It too was untimely filed.

generally do not consider issues first raised on appeal.<sup>9</sup> In this case Perry sets forth neither a factual nor legal basis for the claimed disqualification and the issue is dismissed as meritless.

The judgments appealed are AFFIRMED.

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<sup>9</sup>**Murray v. Anthony J. Bertucci Constr. Co., Inc.**, 958 F.2d 127 (5th Cir.), cert. denied, 113 S.Ct. 190 (1992).