IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 93-4078
Summary Calendar

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DIANE DUHON,

Plaintiff-Appellant,

versus

COLMESNEIL INDEPENDENT
SCHOOL DISTRICT, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court for the
Eastern District of Texas
(92-CV-23)

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(August 9, 1993)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.*

PER CURIAM:

Plaintiff-appellant Diane Duhon (Duhon) appeals the district court's judgment on the jury's verdict for defendants-appellees that she take nothing against them in her action under 42 U.S.C. § 1983 complaining of the nonrenewal of her employment with

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

defendant-appellee Colmesneil Independent School District. Duhon's state law claims were dismissed prior to trial without prejudice, and she makes no complaint in this respect on appeal. Duhon, who is represented by experienced counsel, as she was at all stages in the district court, complains on appeal only that the evidence at trial establishes as a matter of law that she was entitled to judgment, and that accordingly the judgment for the defendants should be reversed and judgment rendered in her favor or a new trial ordered. No complaint is made of the form or legal effect of the verdict, of the court's charge, of the argument of counsel, of the admission or exclusion of any evidence, of the selection of the jury, of any ruling below on any motion, or of any matter of trial, pre-trial, or post-trial procedure.

Duhon, as she concedes, at no time below made any motion under Fed. R. Civ. P. 50, and did not ever file a motion for new trial (nor did she ever file any motion for summary judgment). Accordingly, Duhon is not entitled to any relief on appeal unless the judgment for defendants amounts to "plain error apparent on the face of the record, that, if not noticed, would result in a manifest miscarriage of justice." *Little v. Bankers Life & Cas. Co*., 426 F.2d 509, 511 (5th Cir. 1970). *See also McConney v. City of Houston*, 863 F.2d 1180, 1186-88 (5th Cir. 1989). This is, of course, a far more stringent and difficult standard for an appellant to meet than even the quite restricted review of a verdict applied where a motion for directed verdict has been made. We note that the evidence reflects, among other things, several

matters respecting Duhon's conduct that would constitute cause for nonrenewal, and that in addition to the February 20, 1990, hearing, at which appellant and her attorney refused the board's offer to enter the closed session meeting, appellant had received an in-person evaluation from the superintendent February 9, 1990, and she was given a hearing and invited to speak in her behalf April 24, 1990, but refused to testify when asked, and did not attend a rehearing scheduled for her May 11, 1990. The burden of proof was on appellant.

Considering the record as a whole, we are not convinced that affirmance would result in a manifest miscarriage of justice, whatever the situation might be had appellant made any Rule 50 motion or motion for new trial. Accordingly, the judgment of the district court is

AFFIRMED.