

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-5276

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JOYCE ANGELA TURMAN,

Plaintiff-Appellant,

VERSUS

PERRY & CRAWFORD OF TEXAS, INC.,  
d/b/a GORDON-ROBINSON COMPANY,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(6:91-CV-529)

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(August 24, 1994)

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:<sup>1</sup>

Joyce Turman challenges the take-nothing judgment entered by the district court in her action under Title VII and the ADA for discriminatory discharge based on her sex and age. We affirm.

I.

The defendant/employer, Perry & Crawford of Texas, Inc., d/b/a Gordon-Robinson Co. (G-R) is a food brokerage company which represents various manufacturers in Louisiana and northeast Texas.

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<sup>1</sup> 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

The plaintiff, a 55-year-old woman, was hired as an account secretary by G-R in 1976 to work in G-R's Tyler, Texas office. In 1987 when the branch manager of the Tyler office left the employment of G-R, Turman was the only remaining employee in the Tyler office. In January 1989, Turman was assigned a sales territory in the Tyler area. In October of 1989, after G-R lost a number of accounts, G-R laid off six employees, including Turman.

After Turman was laid off, G-R closed its Tyler office and reassigned her sales territory to Ricky Pierce, a 30-year-old employee. One of Turman's principal arguments at trial was that G-R's decision to replace her with Mr. Pierce, an employee with less seniority than she, demonstrated G-R's discriminatory motives.

The case was tried to the court and a jury, with the court sitting as finder of fact on the gender discrimination claim and on the question of reinstatement or front pay on her age discrimination claim. The jury found that G-R discriminated against Turman on the basis of age, but found that she had sustained no damage. The court found that Turman was not discriminated against on the basis of her gender and that Turman was not entitled to reinstatement or front pay on either of her claims of discrimination. The court also denied Turman's claim for attorney's fees and costs.

The only substantial issue on appeal is whether the record supports the jury's finding that Ms. Turman suffered no damages as a result of her employer's action in discharging her on the basis of her age. Because Turman did not move for a judgment as a matter

of law at the close of all the evidence as required by Fed. R. Civ. P. 50, our task is to determine whether the jury's verdict is supported by any evidence. **McCann v. Texas City Refining, Inc.**, 984 F.2d 667, 673 (5th Cir. 1993).

Under this standard, the record supports the jury's verdict. Ms. Turman testified that she did not know precisely how long she waited after being laid off before she began looking for employment. She did testify however that she delayed her job search for a number of months. The reason Ms. Turman gave for delaying her job search was because of emotional distress and depression resulting from her discharge. The jury, however, was entitled to reject that explanation and conclude that Ms. Turman did not take adequate steps to mitigate her damages. Further, the record reveals that Mr. Pierce, the man who replaced Ms. Turman, was himself discharged in June 1990, approximately eight months after Ms. Turman's discharge in October 1989. Mr. Pierce was terminated when the company rehired another employee, who had been laid off earlier, when G-R discovered that it had an employment contract with the other employee. Based on this evidence, the jury was entitled to conclude that if Ms. Turman had been retained in Tyler instead of Mr. Pierce, she nevertheless would have been terminated no later than June 1990 when Mr. Pierce was terminated.

Under the weak standard we apply to review the evidence in this case we are satisfied that the jury was entitled to conclude that if Ms. Turman had vigorously sought to minimize her damages,

she would have found other employment and thus is entitled to no recovery.

Turman also argues that the district court erred in refusing to award her reasonable attorney's fees and costs because she is a prevailing party. Assuming without deciding that Turman can be considered a prevailing party, the district court did not commit error in determining that the only "reasonable" award of attorney's fees and costs was no award at all. **See Farrar v. Hobby**, 113 S.Ct. 566, 121 L.Ed.2d 494 (1992); **see also Equal Employment Opportunity Commission v. Clear Lake Dodge**, 25 F.2d 265 (5th Cir. 1994) (holding that a plaintiff who formally prevailed in Title VII claim should nevertheless receive no attorney's fees at all).

We have considered Turman's remaining arguments and find them meritless.

AFFIRMED.