UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5412
Summary Calendar

LORETTA EDWARDS,

Plaintiff-Appellant,

VERSUS

KURTHWOOD MANOR NURSING CENTER and AFFILIATED NURSING HOMES, INC.,

Defendants,

AFFILIATED NURSING HOMES, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the Western District of Louisiana (2:91-CV-2458)

(March 18, 1994)

Before KING, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Loretta Edwards challenges the adverse judgment as a matter of law in her employment discrimination case. We **AFFIRM.**

I.

Edwards was employed by the defendants in 1973 as a housekeeper at their nursing home. After three years, she was

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

promoted to housekeeping supervisor. When a peer review of the facility, conducted in preparation for the annual state licensing inspection, noted problems in housekeeping in November 1990, Edwards was promptly fired.

After her complaint to the EEOC was rejected, she commenced this action pursuant to Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000(e), and a bench trial was held. After Edwards presented her case, the defendants' motion for judgment as a matter of law was granted. *See* Fed. R. Civ. P. 50(a). The district court stated its reasons from the bench,[2] and entered final judgment against Edwards.

II.

We review a Rule 50 judgment as a matter of law under our familiar ***Boeing***[3] standard. ***Crosthwait Equip. Co. v. John Deere Co.***, 992 F.2d 525, 528 (5th Cir.), *cert. denied*, 114 S. Ct. 549 (1993); ***Normand v. Research Inst. of Am., Inc.***, 927 F.2d 857, 859 (5th Cir. 1991) (discussing j.n.o.v., now known under Rule 50 terms as judgment as a matter of law); ***Whiting v. Jackson State Univ.***, 616 F.2d 116, 123 (5th Cir. 1980) (discussing standard of review for both j.n.o.v. and directed verdicts, both now judgment as a matter of law).

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[2] The court noted that Edwards' proof showed that she was an "exceedingly diligent hard worker"; who "went beyond the scope of her assigned duties when it was required", but, *inter alia*, it found a failure to present a prima facie case of discrimination, and concluded that "there simply is no evidence of racial motivation on behalf of the defendant".

[3] ***Boeing Co. v. Shipman***, 411 F.2d 365 (5th Cir. 1969) (en banc).

Applying ***Boeing***, we see no need to disturb the judgment. Although Edwards *may* have presented the elements of a *prima facie* case,[4] this alone does not foreclose judgment as a matter of law. *See* ***Jett v. Dallas Indep. Sch. Dist.***, 798 F.2d 748, 757 (5th Cir. 1986) ("We do not suggest that presentation of a *prima facie* case necessarily means that the plaintiff can withstand a motion for directed verdict .... Rather, the issue is whether, on the record as a whole, there is sufficient evidence from which the fact finder may reasonably conclude that race was a substantial motivating factor ...") (citation omitted), *aff'd in part and remanded on other grounds*, 491 U.S. 701 (1989). Edwards' own evidence provided ample, indeed conclusive, support for the defendants' contention that work deficiencies were the reason for her termination; thus, their burden of production after the establishment of a *prima facie* case was met without the presentation of evidence.[5]

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[4] Under ***McDonnell Douglas Corp. v. Green***, 411 U.S. 792 (1973), a Title VII plaintiff has the initial burden of establishing a case of *prima facie* racial discrimination. ***Id.*** at 802. To do so, the plaintiff must show that she: belongs to a protected group; was qualified for the job from which she was terminated, and, after termination, the employer hired a person not in plaintiff's protected class to replace her. *See* ***id.***; *see also* ***Whiting***, 616 F.2d at 120-21. It does appear that Edwards, who is black, was replaced by a white male; therefore, a *prima facie* case may have existed, despite the firing of the white male one month later (apparently).

[5] Edwards' brief often merely references the record, rather than discussing the relevant facts with citation to the record. For example, the brief contains the following passage: "Loretta Edwards[']] testimony was clear cut and convincing. See Transcript Pages 9, 11, 12, 13, 16, 17, 18, 19, 20, 21, 25, 26, 27, 28, 33 and 37." Such enigmatic, indeed cryptical, argument does not conform to the spirit (at a minimum) of Fed. R. App. P. 28(a), which provides, *inter alia*, that an appellant's brief shall contain "a statement of the facts relevant to the issues presented for review,

Edwards was employed by the nursing home for 17 years (14 as supervisor). Her testimony centered on how short-handed her crew was. After testifying that, prior to her termination, she had never received any warnings relating to her work performance, Edwards acknowledged that: as early as 1988, she received a written disciplinary warning notice relating to her job performance, which was described as a "final warning"; a yearly performance review in March 1990 disclosed continuing work deficiencies, particularly regarding her supervisory skills; in July 1990, Edwards was disciplined for allowing her son, who worked under her supervision, to drive a company van that he was not authorized to operate (in fact, he lacked a driver's license); and a September 1990 training statement, signed by Edwards, highlighted additional housekeeping problems, and threatened dismissal if improvements were not made. Most important, the review in November 1990 found dust in the rooms, urine odor, and dirty trash cans; in other words, housekeeping problems abounded.

None of Edwards' witnesses dispelled the fact that she was terminated because of deficient job performance. In fact, two of the three acknowledged that Edwards had been criticized for her job performance. And, one, also black, testified that she had not been discriminated against at the nursing home.

In the face of ample evidence of Edwards' deficiencies as a housekeeping supervisor during the latter stages of her employment,

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with appropriate references to the record" and an argument containing "the contentions of the appellant ... and the reasons therefor". Fed. R. App. P. 28(a)(3,4).

she failed to offer a scintilla of evidence that her firing was the product of racial animus. In sum, although Edwards may have supplied the elements of a prima facie discrimination case, she also adduced substantial evidence that her termination related only to deficiencies in her performance. There was no evidence that the repeated warnings concerning her performance, coupled with her termination following a review that found a number of housekeeping problems, were mere pretexts for discrimination. Because "the facts and inferences point so strongly and overwhelmingly in favor of" the defendants, "reasonable [people] could not arrive at a contrary verdict". *See* ***Boeing***, 411 F.2d at 374. Accordingly, judgment as a matter of law was properly rendered.

III.

For the foregoing reasons, the judgment is

AFFIRMED.