

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-7011

(Summary Calendar)

ELSIE ROARK,

Plaintiff-Appellant,

versus

DEPOSIT GUARANTY NATIONAL BANK,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(J-90-CV-57-(L)(C))

(January 25, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

EMILIO M. GARZA, Circuit Judge:*

After Elsie Roark was terminated from her employment with Deposit Guaranty National Bank ("the Bank"), she brought this action pursuant to Title VII, 42 U.S.C. § 2000e *et seq.*, alleging unlawful retaliation for her filing of race discrimination charges with the Equal Employment Opportunity Commission. After a bench

* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

trial, the district court entered judgment against Roark. We affirm.

Roark contends that the district court erred in concluding that her termination was not in retaliation for her previous filing of EEOC complaints.¹ The district court based its conclusion on credibility determinations, which Roark also challenges. We review the district court's factual findings for clear error and its conclusions of law for legal error. *Shirley v. Chrysler First, Inc.*, 970 F.2d 39, 41-42 (5th Cir. 1992). When findings are based on determinations regarding the credibility of witnesses, however, we give "even greater deference to the trial court's findings; for only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said." *Anderson v. City of Bessemer City*, 470 U.S. 564, 575, 105 S. Ct. 1504, 1512, 84 L. Ed. 2d 518 (1985).

¹ To establish a prima facie case of retaliatory discharge under § 2000(e)-3(a) of Title 42, a plaintiff must demonstrate (1) that she engaged in activity protected by Title VII, (2) that an adverse employment action occurred, and (3) that a causal link between participation in the protected activity and the adverse employment decision exists. See *Shirley v. Chrysler First, Inc.*, 970 F.2d 39, 42 (5th Cir. 1992). Once a plaintiff establishes a prima facie case, the employer bears the burden of articulating a legitimate, nondiscriminatory reason for its action. *Id.* If the defendant does so, the employee bears the ultimate burden of showing that the reasons given by the employer were a pretext for retaliation. *Id.*

Here, the parties appear to agree that the plaintiff passed the first two prongs of the retaliation test, as she filed EEOC charges and subsequently was terminated from her positions. They disagree, however, about the causal link between her termination and the filing of the EEOC charges. Roark argues that but for the filing of the EEOC complaints, she would not have been fired. The Bank counters by arguing that there is no causal connection between Roark's discharge and her protected activities.

After an extensive review of the record and the district court's thorough order, we conclude that the district court did not clearly err in finding that no causal connection existed between Roark's discharge and her filing of EEOC charges. We also do not find the district court's credibility determinations to be clearly erroneous. See *id.* (noting that "when a trial judge's finding is based on his decision to credit the testimony of one or two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error"); *Lewis v. National Labor Relations Bd.*, 750 F.2d 1266, 1279 (5th Cir. 1985) (holding that when some evidence substantiates a claim of retaliation while other evidence demonstrates that the employer acted for innocent reasons, the district court did not clearly err in rejecting the claim). Accordingly, we reject Roark's claim that the district court erred in entering judgment against her.

For the reasons stated in the district court's opinion, we AFFIRM.