IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7395
Summary Calendar

Clifton Davis,

Plaintiff-Appellee-Appellant,

versus

Yazoo County Welfare Department,

Defendant-Appellant-Appellee.

Appeals from the United States District Court
For the Southern District of Mississippi
(CA W88-55 W)

(May 31, 1995)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM*:

This is our second look at this Title VII failure-to-hire case, in which the district court originally found that the Defendant-Appellant, Yazoo County Welfare Department, had discriminated against the Plaintiff-Appellee, Clifton Davis, on the basis of sex. In Davis v. Yazoo County Welfare Dep't[1], we

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

[1]942 F.2d 884 (5th Cir. 1991)(Davis I).

vacated the district court's decision in favor of Davis and remanded the case, holding that the district court clearly erred in making an inference about a telephone call that the Defendant-Appellant's hiring director made to Davis after he applied and interviewed for a job as an eligibility worker. As this erroneous inference influenced the district court's analysis as a "'crucial piece of evidence' on which it relied," we remanded the case to the district court for it to reconsider its finding that the Defendant-Appellant had unlawfully discriminated against Davis.[2] On May 28, 1993, after the remand, the district court issued a judgment finding, once again, that the Defendant-Appellant had discriminated against Davis. The court did not, however, set out any new findings of fact or conclusions of law explaining its reasoning for so finding. On appeal from that judgment, therefore, we have an insufficient basis on which to review the district court's decision and have no choice but to remand the case to the district court.

We note that since the appeal of this case on June 18, 1993, the district court has, in a memorandum opinion issued on November 8, 1994, attempted to reconcile its findings with our conclusions and guidance as expressed in Davis I. As a district court does not have jurisdiction to "alter the status of the case as it rests before the [C]ourt of [A]ppeals,"[3] however, the

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[2]See id. at 886-88.

[3]Coastal Corp. v. Texas Eastern Corp., 869 F.2d 817, 820-21 (5th Cir. 1989).

district court's memorandum opinion, coming as it does after the Defendant-Appellant appealed to this court, is ineffectual as a matter of law.[4] In light of our previous observations in Davis I, therefore, which remain consistent, we vacate the district court's judgment appealed herein and remand with instructions to reconsider its prior decision and issue a new judgment and memorandum opinion setting out findings of fact and conclusions of law.

VACATED and REMANDED with instructions.

[4]See Griggs v. Provident Consumer Discount Co., 103 S.Ct. 400, 402 (1982)(observing that a "federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously"); McClatchy Newspapers v. Central Valley Typographical Union No. 46, 686 F.2d 731, 734-35 (9th Cir. 1982)(district court does not have jurisdiction to enter amended judgment that changes status quo of pending appeal).