

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-7780
Summary Calendar

SUZANNE MAYS,

Plaintiff-Appellant,

VERSUS

CITY OF GRENADA, MS., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
(CA WC91-95-B-D)

(September 1, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Suzanne Mays, a forty-seven year-old female, sued the City of Grenada and Ron Morgan, the city manager, alleging that she was denied a promotion based on her age in violation of the Age Discrimination in Employment Act. The defendants moved for summary judgment asserting that they selected a younger applicant over Mays because the younger applicant scored significantly higher than Mays on a standardized test given to all of the job applicants. Finding that Mays failed to raise a genuine issue of fact that the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

defendant's proffered reason for denying her the promotion was merely a pretext to age discrimination, the district court granted summary judgment in favor of the defendants. We affirm.

DISCUSSION

Summary judgment is appropriate if the record discloses "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In reviewing the summary judgment, we "review the facts drawing all inferences most favorable to the party opposing the motion." Reid v. State Farm Mut. Auto. Ins. Co., 784 F.2d 577, 578 (5th Cir. 1986). If the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

To prevail on a claim of age discrimination, a plaintiff must first establish a prima facie case.² Bodenheimer v. PPG Industries, Inc., 5 F.3d 955, 956 (5th Cir. 1993). If the plaintiff meets this requirement, a presumption of discrimination arises which the defendant must then rebut by producing evidence that the employment action was taken for a legitimate, nondiscriminatory reason. Id. Once the employer satisfies this production burden, the presumption of age discrimination

² To establish a prima facie case of age discrimination, the plaintiff must prove that she (1) was a member of the protected group, (2) was denied a promotion, (3) was qualified for the promotion, (4) the person selected was outside the protected group or is younger than the plaintiff or that the plaintiff was not promoted because of her age. See Fields v. J.C. Penny Co., 968 F.2d 533, 536 (5th Cir. 1992).

established by the employee's prima facie case dissolves. Id. "The plaintiff must [then] prove, through a preponderance of the evidence, that the employer's reasons were not the true reason for the employment decision and that unlawful discrimination was." Id. at 957 (citing St. Mary's Honor Ctr. v. Hicks, 113 S.Ct. 2742, 2749 (1993)).

In this case, the defendants rebutted Mays' prima facie case by asserting that their decision not to promote her was based on test scores. Mays argues that the following facts raise a genuine issue of material fact that the test was a pretext: (1) Mays had experience and qualifications compatible with the advertised requirements for the position and the successful applicant did not; (2) the test score was used to separate the finalist from the other applicants; (3) Morgan admitted that he considered several criteria in making his decision and that Mays satisfied each one; (4) Morgan never cited the test score as the determining factor; and (5) there is no evidence that the test was useful in measuring an applicant's qualifications and abilities.

Although Mays may have raised a genuine issue of material fact as to whether the test was the true reason for the employment decision, she has not raised a genuine issue of material fact as to whether age discrimination was the true reason. In some cases rejection of the defendant's proffered reasons, together with the plaintiff's prima facie case, may suffice to show intentional discrimination. St. Mary's, 113 S.Ct. at 2749. This, however, is not one of those cases. Other than Mays' conclusory assertions,

there is no evidence raising a genuine issue of fact that she was denied the promotion because of her age.

CONCLUSION

For the foregoing reasons, summary judgment is
AFFIRMED.