

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-9079  
Summary Calendar

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EUNA ETASHIA ROBINSON,

Plaintiff-Appellant,

versus

TEXAS DEPT. OF HUMAN SERVICES, ET AL.,

Defendants,

ELAINE THIEROFF, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
from the Northern District of Texas  
(3:91-CV-33-G)

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(January 10, 1995)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Appellant Euna Etashia Robinson, a black woman, commenced this pro se action against the Texas Department of Human Services (TDHS), Elaine Thieroff, a regional director with TDHS, Candice Mallard, a program director for TDHS, and Carol Habiger, a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

supervisor with TDHS. Robinson, who has been employed by TDHS since 1974, alleged that she has been the victim of retaliation and discrimination at TDHS for over ten years. She sought an order removing Thieroff, Mallard, and Habiger from their supervisory positions, \$1.5 million in damages, front pay, and equitable relief. She pleaded claims under Title VII and various federal civil rights statutes. The district court dismissed some claims and granted summary judgment on others. Finding no reversible error, we affirm.

#### **BACKGROUND**

Robinson alleged that she had filed numerous internal civil rights charges against employees of the TDHS, starting with a 1980 race discrimination complaint against Thieroff. Robinson alleged that she filed another race discrimination charge in 1981 as a result of a poor performance review by a white supervisor. Then, in 1987, Robinson was spokesperson for an internal civil rights class action complaint filed by black workers from the Martin Luther King, Jr., office of TDHS. The complaint concerned the absence of black representation in management at that office. Robinson further alleged that she filed three complaints with the EEOC in 1988-89. The first, in January 1988, alleged that Habiger discriminated against Robinson on the basis of her race. The second, filed in May 1988, alleged that Habiger and Mallard retaliated against Robinson for filing the first complaint. The third charge, filed in March 1989, alleged that Habiger, Mallard, and Thieroff retaliated against Robinson for filing her prior

complaints. The EEOC determined that no violation of Title VII had occurred in any of these instances and issued Robinson right-to-sue letters.

Robinson alleged each individual defendant committed numerous acts of harassment and discrimination. She asserted that Habiger discriminated against her by: tape-recording conferences with Robinson; "team-conferencing" Robinson to intimidate her; assigning Robinson's job duties to staff of lower status; restricting black employees' access to the office; confronting Robinson in meetings and training sessions; giving Robinson negative performance evaluations; placing her on corrective action for an extended period of time; and giving her short deadlines on work assignments. Robinson alleged that Mallard participated in the retaliation by: soliciting negative information about Robinson's job performance to include in her performance appraisal; giving Robinson negative feedback at team meetings; using group dynamics to attempt to provoke an outburst from Robinson; requiring Robinson to repeat training sessions; and filing a reverse discrimination complaint against Patricia Nickleberry, who was investigating an internal complaint Robinson had filed against Mallard. Robinson claimed that Thieroff was responsible for the discriminatory acts and retaliation of Habiger and Mallard because of Thieroff's position, her knowledge of these activities, and her failure to take any action. Robinson also alleged that Thieroff used the transfer process to discriminate against Robinson for filing internal complaints between 1980 and 1984, that Thieroff

made false statements about Robinson during the course of an internal investigation, and that in 1990, Thieroff assigned a portion of Robinson's duties to a white employee.

In response to the complaint, the defendants filed a motion to dismiss, or in the alternative, a motion for a more definite statement. TDHS argued that the § 1983 claim was barred by the Eleventh Amendment. The individual defendants argued that dismissal was warranted on the ground of qualified immunity. The motion listed all three individual defendants in the caption, but referred only to Thieroff in the body.

Robinson moved for entry of default judgment against Mallard and Habiger for their failure to respond to the complaint within the requisite time. The clerk entered default against these defendants for failing to answer. Defendants moved to amend their motion to dismiss to include Mallard and Habiger in the body of the motion, moved to reinstate Habiger and Mallard and moved to set aside the entry of default.

The district court granted the defendants' motion to amend the motion to dismiss and reinstated Habiger and Mallard as defendants. The court granted TDHS's motion to dismiss the § 1983 claims against it and denied the individual defendants' motions to dismiss.

The court referred the case to a magistrate judge to act as a special master, to rule on pending pretrial motions, to make recommendations on dispositive motions, to conduct an evidentiary hearing, and to make proposed findings of fact and conclusions of

law, pursuant to Fed. R. Civ. P. 53, 42 U.S.C. § 2000e-5(f)(5), and 28 U.S.C. § 636(b)(1). R. 2, 257. Robinson objected to the referral. The district court overruled the objection.

Defendants then moved for summary judgment on all claims. Robinson opposed the motion. The magistrate judge conducted an evidentiary hearing at which Robinson testified that she did not intend to file a Title VII claim. Following the hearing, the magistrate judge issued a report recommending that the court dismiss the Title VII claim and grant defendants' motion for summary judgment on the remaining claims.

Robinson filed a number of objections to the magistrate judge's report and recommendation. The district court adopted the magistrate judge's recommendation over Robinson's objections.

Issue 1:

Robinson first seems to argue that the district court abused its discretion by setting aside entry of default against Habiger and Mallard. She maintains the district court erred by concluding that she would not be prejudiced by setting aside the default. These arguments are meritless.

Entry of default may be set aside if the party seeking relief shows good cause. Fed. R. Civ. P. 55(c); U.S. v. One Parcel of Real Property, 763 F.2d 181, 183 (5th Cir. 1985). This Court reviews the district court's decision to set aside entry of default for abuse of discretion. In re Dierschke, 975 F.2d 181, 184 (5th Cir. 1992). In determining whether to set aside entry of default, the district court should consider whether the default was willful,

whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented. CJC Holdings, Inc. v. Wright & Lato, Inc., 979 F.2d 60, 64 (5th Cir. 1992).

The district court did not abuse its discretion in setting aside entry of default. The court adequately considered the factors set forth above. The court first determined that the default was the result of a clerical error. The record supports this determination.

The court next stated that setting aside the entry of default would not prejudice Robinson because the other two defendants were contesting the action on the same grounds as Habiger and Mallard. Robinson argues that she was prejudiced because dealing with Thieroff alone would have been a much easier task. Robinson's argument misapprehends the meaning of "prejudice" in this context. "Detriment in the sense that plaintiff will be required to establish the merit of [her] claims does not constitute prejudice in this context." Accu-Weather, Inc. v. Reuters, Ltd., 779 F. Supp. 801, 802 (M.D. Pa. 1991). Rather, "[p]rejudice exists if circumstances have changed since entry of the default such that plaintiff's ability to litigate [her] claim is now impaired in some material way or if relevant evidence has become lost or unavailable." Id. Robinson has made no showing of this type of prejudice. Finally, the district court concluded that Habiger and Mallard had asserted the potentially meritorious defense of qualified immunity. Robinson does not contest this aspect of the district court's order.

Issue 2:

Robinson contends that the district court's referral of the case to the magistrate judge was improper because she did not consent to the referral. This argument lacks merit. The district court referred the case to the magistrate judge to act as a special master with respect to the Title VII claim, pursuant to Fed. R. Civ. P. 53, 42 U.S.C. § 2000e-5(f)(5), and to make recommendations as to all dispositive motions, pursuant to 28 U.S.C. § 636(b)(1). Consent of the parties is not required for such a referral. Gonzalez v. Carlin, 907 F.2d 573, 577 (5th Cir. 1990). As for Robinson's other claims, the referral was authorized by § 636(b)(1), which permits courts to refer such claims to magistrate judges to conduct evidentiary hearings, to submit proposed findings of fact, and to recommend disposition of all pending motions.

Robinson also seems to contend that the magistrate judge's adverse rulings evidenced prejudice against her. Adverse judicial rulings, however, ordinarily will not support a claim of bias and do not support such a claim here. See Liteky v. U.S., \_\_\_ U.S. \_\_\_, 114 S. Ct. 1147, 1157, 127 L. Ed. 2d 474 (1994).

Robinson also complains that the magistrate judge granted the defendants' motion for summary judgment after denying the motion at the evidentiary hearing. Robinson's confusion is understandable, but she is mistaken. The magistrate judge indicated at the hearing that defendants' motion was denied "for purposes of this hearing." At the conclusion of the hearing, counsel for the defendants moved for leave to amend the motion for

summary judgment. The magistrate judge granted that motion. In response to a question from Robinson, the magistrate judge indicated that she would be permitted to respond to the amended motion. The defendants never amended the motion, however, and the magistrate judge subsequently recommended that the court grant the **original** motion for summary judgment. Though the magistrate judge could have explained more clearly the status of the defendants' pending motion, his failure to do so did not prejudice Robinson.

Issue 3:

The rambling and disorganized nature of Robinson's brief makes it difficult to discern exactly what she is arguing concerning her Title VII claims. Robinson's primary contention is that the defendants retaliated against her, in various ways, for filing internal civil rights complaints and her first Title VII claim with the EEOC in January of 1988. Defendants correctly point out that, at the evidentiary hearing, Robinson stated that she did not file her case as a Title VII claim.

In her brief on appeal, however, Robinson argues that she was confused at the hearing and did not intend to dismiss her Title VII retaliation claim. Although Robinson may have been somewhat confused about the legal basis for her Title VII claim because of statements made by the magistrate judge, the record suggests that Robinson understood that she was dismissing her Title VII claim. On that basis alone, this court could affirm.

But even if the court considers the merits of the retaliation claim, the record supports the district court's



conclusion that Robinson failed to show that she suffered any adverse employment actions as the result of the Title VII complaints she filed. Because the magistrate judge considered matters outside of the pleadings to make his recommendation, the order of dismissal is reviewed as an order granting summary judgment. See Fernandez-Montes v. Allied Pilots Ass'n, 987 F.2d 278, 283 n.7 (5th Cir. 1993). This Court reviews a grant of summary judgment de novo. See Abbott v. Equity Group, 2 F.3d 613, 618-19 (5th Cir. 1993), cert. denied, 114 S. Ct. 1219 (1994). Summary judgment is proper if the moving party establishes that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Campbell v. Sonat Offshore Drilling, 979 F.2d 1115, 1118-19 (5th Cir. 1992).

Retaliatory conduct is prohibited under § 704(a) of Title VII, which provides that "[i]t shall be an unlawful employment practice for an employer to discriminate against any of [its] employees . . . because [the employee] . . . has made a charge" under Title VII. 42 U.S.C. § 2000e-3(a). To establish a prima facie case of retaliation, Robinson must show that: (1) she engaged in activity protected by Title VII; (2) an adverse employment action occurred; and (3) there was a causal connection between her participation in the protected activity and the adverse employment action. See Barrow v. New Orleans S.S. Ass'n, 10 F.3d 292, 298 (5th Cir. 1994).

The magistrate judge determined that Robinson failed to establish that any adverse employment action occurred. The

magistrate judge correctly noted that the evidence established that Robinson received a merit increase in her salary in 1989 and a job promotion in 1990. Robinson argues that the following adverse actions occurred after she filed her first EEOC complaint: Habiger lowered her performance evaluation in March 1988; Habiger kept her on corrective action from March 1988, to April 1990; Mallard and Habiger humiliated Robinson in team meetings; Mallard forced Robinson and another black worker to repeat a training session; and Thieroff removed her staff after Robinson filed this action.

The record indicates, however, that these instances of alleged retaliation and harassment were either resolved internally at TDHS or that Robinson failed to provide any evidence establishing a causal relationship between the action and her EEOC complaints. Robinson's reliance on events that occurred after she filed this lawsuit is inappropriate both because those events were not part of her Title VII claim and because she presented no evidence to show their relation to her Title VII charges.

Issue 4:

Robinson makes no specific argument concerning her §§ 1983, 1985, or 1986 claims in either of her briefs. "Fed. R. App. P. 28(a)(4) requires that the appellant's argument contain the reasons [s]he deserves the requested relief with citation to the authorities, statutes and parts of the record relied on." Yohey v. Collins, 985 F.2d 222, 224 (5th Cir. 1993) (internal quotations omitted). Although this Court liberally construes pro se briefs, the Court requires arguments to be briefed in order to be

preserved. Id. General arguments giving only broad standards of review and not citing to specific errors are insufficient to preserve issues for appeal. See Brinkmann v. Abner, 813 F.2d 744, 748 (5th Cir. 1987). This Court "will not raise and discuss legal issues that [the appellant] has failed to assert." Id. These claims are accordingly waived.

For these reasons, the judgment of the district court is **AFFIRMED.**