IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-9155

Summary Calendar

ROY KEVIN DRYBREAD,

Plaintiff-Appellant,

v.

GRAND PRAIRIE INDEPENDENT
SCHOOL DISTRICT, DALLAS COUNTY,
and DAVID CRITTENDEN,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(3:93-CV-1019-T)

(August 30, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Roy Kevin Drybread brought a claim against Grand Prairie Independent School District, Dallas County (school district) and David Crittenden for sex discrimination pursuant to 42 U.S.C. §

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

2000e et seq. The district court granted summary judgment for the defendants. Drybread appeals. We affirm.

I.

Drybread was originally hired by the school district as a courier in 1984 and subsequently terminated in 1986. In April of 1990, the school district decided to rehire Drybread as a courier based on his representation that he was more mature. Upon his rehire, Drybread was counseled by his supervisor, David Crittenden, that the school district would not tolerate the job performance level which he had demonstrated during his previous tenure as courier. Generally, the duties of courier require the individual to relieve administrative personnel of certain tasks which would otherwise take them away from their administrative duties.

According to the school district, Crittenden began receiving complaints concerning Drybread's job performance beginning in April of 1990. The school district contends that these complaints related to Drybread's attitude and unsatisfactory performance of his duties. Also, the school district asserted that Crittenden received several complaints concerning Drybread's operation of a school district vehicle. In June of 1990, the school district, because of repeated complaints concerning Drybread's operation of a school district vehicle, placed Drybread on suspension with partial pay for one week. Subsequently, because of Drybread's poor job performance, the school district placed him on probation in August of 1990.

Further, the school district asserted that on March 13, 1991, Drybread failed to show up for work without notifying the school district that he would be absent. Finally, because of the numerous complaints against Drybread, the school district terminated him on July 11, 1991. Apparently, the final straw occurred when Drybread refused to take some newspapers to the trash. Instead of disposing of the newspapers, Drybread placed the papers on the desk of the administrator who had made the request. He refused to dispose of the papers because he believed that the administrator could have taken the newspapers to the trash just as easily as he. After Drybread was fired, the courier position was filled by another male.

In May of 1993, Drybread brought suit against the school district and David Crittenden alleging that he had been terminated because of his sex. Specifically, Drybread alleged that he was terminated because he did not "spoil" the female administrative personnel and because he did not have enough "medieval chivalry." In support of his allegations, Drybread asserts that the school district had sufficient reasons to fire many of the female administrative personnel but did not do so. For example, he states that one of the female administrative personnel attacked him but was not fired. According to Drybread, the female employee shoved him into a wall and grabbed his right bicep, leaving scratch marks on his arm.

On October 20, 1993, the school district and Crittenden filed a motion for summary judgment. On November 15, 1993, the

district court granted the defendants' motion for summary judgment because Drybread did not produce any evidence to enable the court to find that the defendants had intentionally discriminated against him. Drybread did not file a response to the defendants' motion for summary judgment until the day after the district court granted the defendants' motion. Drybread did not request the district court to consider his untimely response to the defendants' motion for summary judgment; instead, he appealed the district court's judgment.

II. STANDARD OF REVIEW

We review the granting of summary judgment de novo, applying the same criteria used by the district court in the first instance. Conkling v. Turner, 18 F.3d 1285, 1295 (5th Cir. 1994). First, we consult the applicable law to ascertain the material factual issues. King v. Chide, 974 F.2d 653, 655-56 (5th Cir. 1992). We then review the evidence and inferences to be drawn therefrom in the light most favorable to the nonmoving party. Lemelle v. Universal Mfg. Corp., 18 F.3d 1268, 1272 (5th Cir. 1994). Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). In the instant case, the question before us is whether the evidence in the summary judgment record establishes a material issue of fact concerning whether the school district

discriminated against Drybread on the basis of his sex. See Armstrong v. City of Dallas, 997 F.2d 62, 66 (5th Cir. 1993).

III.

Initially, we note that the district court properly granted Crittenden's motion for summary judgment. Drybread attempted to hold Crittenden individually liable under Title VII because Crittenden discriminated against him on the basis of his sex. However, Title VII does not provide for liability against employees who do not otherwise qualify as employers. Grant v. Lone Star Co., 21 F.3d 649, 650 (5th Cir. 1994).

Drybread implicitly complains of the district court's failure to consider his belatedly filed response to the defendants' motion for summary judgment. In his brief before this court, Drybread alleges that his response was filed late because the school district destroyed evidence which he had sought in a motion for production. Further, in his notice of appeal, Drybread asserts that the evidence which he was unable to obtain was an accident report from the Texas Department of Public Safety, and a Texas Employment Decision.

Apparently, Drybread believes that by showing he did not receive a ticket for an accident which occurred while he was driving a school district vehicle, he can prove that the school district's reasons for firing him were a pretext for sexual discrimination. The other piece of evidence on which Drybread relies is Crittenden's testimony before the Texas Employment Commission in which Crittenden states that "there are duties that

we are all expected to do around here that we don't highly favor, some of them we do because various personnel in this building have become spoiled." Crittenden further admitted that one of the administrative employees, which Drybread alleged the school district had sufficient reason to fire, is "spoiled." This latter evidence supposedly demonstrates that he was discharged because of his sex.

After considering the entire record, even Drybread's belatedly filed evidence,[1] we conclude that the district court did not err in granting the defendants' motion for summary judgment.

IV.

For the foregoing reasons, we AFFIRM the judgment of the district court.

[1] By considering this evidence, we are not holding that the district court should have considered the evidence or that this court must consider evidence not properly a part of the summary judgment record.