UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-10714

THOMAS CHESTER,

Plaintiff-Appellant,

VERSUS

AMERICAN TELEPHONE & TELEGRAPH COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Texas
(3:93 CV 98 H)

(September 13, 1995)

Before GARWOOD, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:[1]

Appellant, Thomas Chester, a former AT&T account executive, appeals the district court's grant of summary judgment in favor of AT&T dismissing his Age Discrimination Act claim against AT&T. Appellant basically claims three errors by the district court. First, that he did not receive his notice of discharge until

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

October 21, 1991 and not on July 30, 1991 as the district court found. Second, he contends that genuine issues of material fact exist relating to equitable tolling of the filing period and whether AT&T should be equitably estopped from relying upon limitations. Finally, Appellant contends that his EEOC complaint stating that he was "involuntarily retired" encompassed, and was reasonably related to, his failure-to-transfer claim. Our careful review of the briefs, argument and record convinces us that the district court committed no error on these issues and we affirm.

On July 30, 1991, AT&T gave Appellant notice that he was "at risk of involuntary separation from AT&T" because of a reduction in force. AT&T's letter noted that Appellant could "make use of the resources [AT&T has] coordinated and put in place . . . to assist you as you focus your efforts in the next sixty days on finding another position". The letter went on to unequivocally state, however, that "unless you are notified otherwise, your expected last date of employment will be September 30, 1991." Appellant utilized AT&T's job placement assistance and AT&T extended the period for his job search until October 21, 1991. On that date, however, Appellant had yet not found another position within the Company and was terminated. Appellant alleges that he was thereafter replaced by a younger person.

On July 2, 1992 Appellant filed a discrimination charge with the EEOC stating that he was "involuntarily retired" and that "I believe I have been discriminated against because of my age, fifty-one, in violation of the [ADEA]." Appellant filed his suit on

January 14, 1993.

The district court found that AT&T was entitled to summary judgment because: (1) Appellant had not timely filed his discrimination charge with the EEOC within 300 days of AT&T's notice dated July 30, 1991; (2) Appellant had not raised a genuine issue of material fact regarding the applicability of equitable tolling or equitable estoppel; and (3) Appellant's failure-to-transfer claims were barred as outside the scope of his EEOC discrimination charge.

As noted, Appellant first argues that the date of AT&T's notice stating that he was "at risk of termination" should not be used as the commencement for the 300 day filing period because it did not clearly state that he was to be terminated. We disagree. Supreme Court authority makes clear that the limitations period for filing starts when the employer communicates an adverse employment decision to the employee, and not when the employee feels the consequences of the discriminatory act. See Chardon v. Fernandez, 102 S.Ct. 28, 28-29 (1981). The fact that AT&T made procedures available by which employees who were to be terminated might seek other employment with the Company does not change that result. See Gustovich v. AT&T Communications, Inc., 972 F.2d 845 (7th Cir. 1992).

Appellant next contends that AT&T should be equitably estopped from benefiting from the limitations period by its conduct which led him to believe that he could get another job at AT&T and prevented him from realizing that AT&T had acted discriminatorily

on the basis of age. In Rhodes v. Guiberson Oil Tools, 927 F.2d 876, 878-79 (5th Cir.), cert. denied, 112 S.Ct. 198 (1991), we made clear that equitable tolling involves an employee's excusable ignorance of the facts bearing upon a discrimination claim and that equitable estoppel focuses on the employer's conduct in misleading the plaintiff. Equitable tolling cannot apply here because Appellant admits that he was aware of the filing period for EEOC claims and was even advised by one of his attorneys that he should file his EEOC claim within 300 days of the "at risk notice". Neither are equitable estoppel principles applicable because Appellant admitted that, at the time that he got the notice, he thought that he was being discharged because of his age. This fact makes the cases reaching a contrary result relied upon by the Appellant inapplicable.

Appellant's final argument fails because the scope of the judicial complaint is limited to the scope of the EEOC investigation which can reasonably be expected to grow out of a charge of discrimination. The discrimination charge Appellant filed merely stated that he was "involuntarily retired". The investigation addressed discharge only and not failure to transfer Appellant to other positions within the company.

AFFIRMED.