UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10758
Summary Calendar

MARY LOVING BLANCHARD,

Plaintiff-Appellant,

v.

PARSONS BRINCKERHOFF (CENTEC INC.)
/MORRISON KNUDSON dba PBMK,

Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Texas

(3:93-CV-563-T)

(April 28, 1995)

Before DUHÉ, WIENER AND STEWART, Circuit Judges.

PER CURIAM:[*]

Plaintiff-Appellant Mary Loving Blanchard filed suit in federal district court against her former employer, Defendant-Appellee PB/MK, alleging violations of Title VII of the Civil

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Rights Act of 1964, 42 U.S.C. § 2000e *et seq*; 42 U.S.C. § 1981; and a claim of intentional infliction of emotional distress under Texas law. The district court granted summary judgment in favor of PB/MK and dismissed Blanchard's claims with prejudice. Blanchard appeals, arguing that the district court erred in concluding that she failed to produce evidence that would enable a reasonable factfinder to hold in her favor on all of her claims. Our plenary review of the summary judgment evidence leads us to conclude that the district court did not err in granting summary judgment in favor of PB/MK.

I

FACTS AND PROCEDURAL HISTORY

Blanchard, who describes herself as a "black female," was hired by PB/MK in 1990 to work for the PB/MK management team. PB/MK, a joint venture of Parsons Brinckerhoff Quade & Douglas (now Centec, Inc.) and Morrison Knudson, was the prime construction contractor for the Superconducting Super Collider ("SSC") project near Waxahachie, Texas. The United States Department of Energy ("DOE") had assigned the task of designing and building the SSC to University Research Associates ("URA"), which in turn contracted with PB/MK to construct the project.

PB/MK hired Blanchard to control correspondence related to the SSC project and to provide support for PB/MK's Manager of Finance and Administration. Her duties included secretarial tasks as well as tracking and following up on all correspondence related to the SSC. Blanchard's duties eventually increased to the point at which PB/MK divided her job to create two new full-time positions. In June 1991, Blanchard was offered - and accepted - one of those new

positions, Correspondence Control Administrator. This choice resulted in a net increase in Blanchard's salary. PB/MK considered Blanchard's move to Correspondence Control Administrator to be a promotion. Blanchard disputes this, asserting that it was not a promotion because she continued to perform the same functions that she had prior to the change. Regarding increased compensation, Blanchard asserts that her salary increase did not result from her "promotion;" rather that it was implemented in response to her complaints of not being paid at an appropriate salary level in comparison to PB/MK employees with equal or lesser responsibilities.

In late 1991 and early 1992, as a result of budgetary constraints and the need to reduce construction costs, URA directed PB/MK's managers to examine each department within PB/MK and designate personnel positions that could be eliminated without affecting productivity. In response to URA's mandate and its own internal examination, PB/MK transferred the records management function of the Quality Control/Quality Assurance Department to the Finance and Administration Office. Consequently, Blanchard's correspondence control position was consolidated with a records management position. Michelle Prater, who had worked as Quality Control's Document Control Manager, was selected to fill the new, consolidated position. Prater had ten years of experience in records and document management, including experience with the record keeping practices of the DOE, whereas Blanchard had worked for PB/MK for less than two years and had no specific records

management experience. In May 1992, after her correspondence control position was eliminated and no other position could be found for her, Blanchard was laid off by PB/MK.

After notice of her discharge but before her last day of employment, Blanchard filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), alleging that PB/MK had discriminated against her on the basis of race and sex in her compensation and discharge, and had retaliated against her for protesting the unlawful discriminatory conduct of PB/MK relating to her salary. It was not until after Blanchard was laid off that the EEOC issued a "No Cause" (right to sue) letter, stating that Blanchard's allegations did not establish a Title VII violation. Blanchard nevertheless filed suit in federal court, alleging that PB/MK violated Title VII and 42 U.S.C. § 1981 by discharging her on account of her race. Blanchard's district court complaint also alleged that her treatment by PB/MK was outrageous and intentionally designed to cause her emotional stress and distress, but did not assert that PB/MK violated Title VII and Section 1981 by discriminating against her through lesser compensation, as she had alleged to the EEOC.

After first amending her original complaint to correct the name of the defendant, Blanchard moved to amend it a second time to include allegations of sex discrimination in compensation.[1] The district court denied the motion, concluding that it was untimely pursuant to the court's scheduling order. Following discovery,

[1]See n. 21 *infra*.

PB/MK filed a motion for summary judgment which the district court granted, dismissing Blanchard's case with prejudice. In doing so, the court addressed and dismissed all of Blanchard's claims, including her claims of sex discrimination and retaliation, even though these latter claims were not properly before the court. Blanchard timely filed this appeal.

II

ANALYSIS

A. Standard of Review

We review a grant of summary judgment *de novo*, applying the same standards that govern the district court.[2] Summary judgment is appropriate when no issue of material fact exists and the moving party is entitled to judgment as a matter of law.[3] To determine whether there are any genuine issues of material fact, we must first consult the applicable substantive law to ascertain what factual issues are material.[4] We then review the evidence bearing on those issues, viewing the facts and inferences in the light most favorable to the nonmovant. Questions of law are reviewed *de novo*.[5]

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[2]Texas Refrigeration Supply Inc. & Federal Deposit Ins. Corp., 953 F.2d 975, 980 (5th Cir. 1992) (citing Degan v. Ford Motor Co., 869 F.2d 889, 892 (5th Cir. 1989)), reh'g denied, (5th Cir. 1992).

[3]Celotex Corp. v. Catrett, 477 U.S. 317, 323-25 (1986).

[4]King v. Chide, 974 F.2d 653, 656 (5th Cir. 1992).

[5]Id.; Walker v. Sears, Roebuck & Co., 853 F.2d 355, 358 (5th Cir. 1988).

B. THE SHIFTING BURDENS IN DISCRIMINATION CLAIMS

Section 703(a)(1) of Title VII of the Civil Rights act of 1964 provides in relevant part:

> It shall be an unlawful employment practice for an employer-
> (1) . . . to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin;[6]

The burdens of production for establishing and proving a discrimination claim under Title VII are allocated to the parties in a specific sequence. The plaintiff must first establish a prima facie case of discrimination by a preponderance of the evidence.[7] To satisfy this burden in a discriminatory discharge case, the plaintiff must show that she was (1) within a protected class at the time of her discharge; (2) qualified for the job she was performing; (3) discharged; and (4) replaced by someone outside of the protected class or otherwise discharged because of her protected status.[8]

Once established, a prima facie case of discrimination creates a presumption that the defendant-employer unlawfully discriminated

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[6]42 U.S.C. § 2000e-2(a) (1989).

[7]Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981) (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973)).

[8]See e.g., Burdine, 450 U.S. at 253 n. 6 (describing model for prima facie case of racial discrimination; noting that model will vary depending on facts of case); Moore v. Eli Lilly & Co., 990 F.2d 812, 815 (5th Cir. 1993) (articulating model for prima facie case of discriminatory discharge), cert. denied, 114 S.Ct. 467 (1993).

against the plaintiff-employee.[9] The defendant must negate this rebuttable presumption by articulating a legitimate, nondiscriminatory reason for its conduct.[10] If an employer does so - and on summary judgment produces sufficient evidence to support such reason - the burden shifts back to the plaintiff, who must prove by a preponderance of the evidence that the defendant's proffered reason is not true and that it merely served as a pretext for unlawful discrimination.[11] The plaintiff retains at all times the ultimate burden of persuading the trier of fact that he or she was intentionally discriminated against by the defendant.[12]

In meeting the ultimate burden of persuasion at the summary judgment stage, a plaintiff need only produce evidence to create a genuine issue of material fact. Nevertheless, the plaintiff's summary judgment proof "must consist of more than 'a mere refutation of the employer's legitimate nondiscriminatory reason.'"[13] Stated differently, Blanchard had to produce significantly probative evidence, not evidence that is merely

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[9]St. Mary's Honor Center v. Hicks, 113 S.Ct. 2742, 2747 (1993) (citing Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981)); Bodenheimer v. PPG Indus., Inc., 5 F.3d 955, 957 (5th Cir. 1993).

[10]Burdine, 450 U.S. at 253; Bodenheimer, 5 F.3d at 957; Moore, 990 F.2d at 815.

[11]St. Mary's Honor Center, 113 S. Ct. at 2747; Bodenheimer, 5 F.3d at 957.

[12]St. Mary's Honor Center, 113 S.Ct. at 2747; Burdine, 450 U.S. at 253.

[13]Moore, 990 F.2d at 815 (quoting Bienkowski v. American Airlines, Inc., 851 F.2d 1503, 1508 n. 6 (5th Cir. 1988)).

colorable; she had to show some proof that could lead a reasonable factfinder to conclude that a discriminatory factor motivated her employer's actions.[14]

C. BLANCHARD'S CLAIMS

1. Racial Discrimination

The district court assumed that Blanchard established a prima facie case of racial discrimination. As PB/MK does not challenge this assumption, we do not review that precise issue but instead focus our attention first on the reason offered by PB/MK for its termination of Blanchard and then on Blanchard's response.

PB/MK offered several legitimate, nondiscriminatory reasons for discharging Blanchard. PB/MK's client, URA, required PB/MK to devise a plan to reduce construction costs of the SSC, prompting PB/MK to reduce staff and consolidate offices. Accordingly, PB/MK transferred the records function of the Quality Control/Quality Assurance Department to the Finance and Administration Office, in which the records management and correspondence control positions were consolidated. Michelle Prater, a white female with ten years experience in records and document management, including experience in record keeping practices for the DOE, was selected to fill the new position. In comparison to Prater, Blanchard was clearly less qualified by experience: she had been employed by PB/MK for less than two years and lacked a specific records management background. Moreover, because Blanchard's correspondence control position was eliminated, she was not replaced by anyone - black or white, male

[14]Moore, 990 F.2d at 815-16.

or female - as Correspondence Control Administrator. When no other position within PB/MK could be found for Blanchard, she was laid off. And Blanchard was not the only PB/MK employee who was laid off: seven other employees - four whites and three blacks, three of whom were female and of whom four were male - were laid off during the same reorganization period.

Concluding that PB/MK articulated a legitimate, nondiscriminatory reason for discharging Blanchard, we review next whether Blanchard satisfied her burden of producing sufficient evidence from which a reasonable factfinder could conclude that PB/MK's proffered reasons were false and were offered merely as a pretext for a racially motivated discharge. Our review of the evidence leads us to conclude that Blanchard failed to satisfy her summary judgment burden in this regard.

Blanchard bemoans the fact that the burden of proving pretext is heavy. She suggests that this onerous burden is the major cause of plaintiffs' lack of success in employment discrimination cases. She also suggests that, as the issue of pretext is a question of fact, not an issue of law, pretext must always be left to the "trier of fact." Blanchard essentially posits that, as pretext is a factual question, a court can never grant summary judgment in a discrimination case that reaches the pretext step. Regardless of any appeal that this novel theory might have, it ignores completely the consistent lesson of the many cases in which we have affirmed summary judgment due to the plaintiff's failure to provide

sufficient evidence of pretext.[15] If nothing else, *stare decisis* prevents our consideration of this suggestion.

Blanchard next contends that a plaintiff's burden of proof with regard to pretext has been modified by St. Mary's Honor Center v. Hicks.[16] Without discussing Blanchard's interpretation of St. Mary's Honor Center, we note that her reliance on that case is misplaced; it is simply inapplicable to her case. In St Mary's Honor Center, the Supreme Court addressed the issue of whether a plaintiff is entitled to a judgment as a matter of law in a discrimination case once a court rejects the reason or reasons proffered by an employer in defense of its conduct, or to the

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[15]See e.g., Bodenheimer v. PPG Industries, Inc., 5 F.3d 955, 959 (5th Cir. 1993) (affirming summary judgment; concluding that appellant-employee's summary judgment evidence did not raise any issue on which jury could reasonably conclude that employer discriminated unlawfully against employee); Moore v. Eli Lilly & Co., 990 F.2d 812, 819 (5th Cir. 1993) (holding that appellant-employee failed to produce summary judgment evidence capable of showing existence of genuine issue of material fact of pretext), cert. denied, 114 S.Ct. 467 (1993); Waggoner v. City of Garland, Texas, 987 F.2d 1160, 1166 (5th Cir. 1993) (affirming summary judgment on ground that appellant-employee failed to produce element of genuine issue of material fact regarding pretext); Molnar v. Ebasco Constructors, Inc., 986 F.2d 115, 118 (5th Cir. 1993) (concluding that plaintiff's evidence was insufficient to establish pretext; reversing jury verdict rendered in favor of plaintiff); Guthrie v. Tifco Indus., 941 F.2d 374, 378 (5th Cir. 1991) (affirming summary judgment on ground that plaintiff failed to create genuine issue of material fact regarding pretext), cert. denied, 112 S.Ct. 1267 (1992); Amburgey v. Corhart Refractories Corp. Inc., 936 F.2d 805, 813-14 (5th Cir. 1991) (same); Hanchey v. Energas Co., 925 F.2d 96, 99 (5th Cir. 1990) (same); Little v. Republic Refining Co., Ltd., 924 F.2d 93, 96 (5th Cir. 1991) (affirming grant of JNOV in favor of defendant); Laurence v. Chevron U.S.A., Inc., 885 F.2d 280, 285 (5th Cir. 1989) (concluding plaintiff established no genuine issue of pretext).

[16]113 S.Ct. 2742 (1993).

contrary whether the plaintiff still bears the ultimate burden of persuasion in proving discrimination.[17] Clearly, we are not here faced with a situation in which the district court - or this court - disbelieved the defendant-employer's proffered nondiscriminatory reasons for discharging Blanchard, the plaintiff-employee. Regardless of Blanchard's interpretation of St. Mary's Honor Center and its affect on a plaintiff's burden of proof in general, in this particular instance Blanchard first had to offer some proof of pretext in order to survive summary judgment. Quite simply, she failed to do so.

Relying on St. Mary's Honor Center in her appellate brief, Blanchard nevertheless asserts that a court may make a finding of intentional discrimination "without direct proof of intent, or as a permissible inference from proof that the proffered 'nondiscriminatory reasons' were not the correct reasons." Although we are not entirely sure just what it is that Blanchard is asserting, we assume, as discussed below, that she means to advance the position that a court can find discrimination on the basis of a plaintiff's proof that the "legitimate" reason offered by a defendant is false, without requiring the plaintiff to prove both that the reason is false and that the employer's actions were actually motivated by unlawful factors. In support of her effort Blanchard cites cases in which we - and other circuits - have upheld a finding of intentional discrimination based on a

[17] Id. at 2749.

plaintiff's prima facie case and some proof of pretext.[18] These cases are distinguishable from this appeal, however, in that the plaintiffs there presented some proof of pretext; proof sufficient to raise a genuine question of unlawful discrimination. Here, Blanchard has failed to offer any proof of pretext sufficient to survive summary judgment.

Blanchard seems to suggest that a plaintiff's burden of proving pretext can be met by the elements of the plaintiff's prima facie case coupled with proof of pretext only -- that such evidence need not also include proof that unlawful discrimination was the real reason motivating the defendant's conduct. Again, without debating Blanchard's legal theory or her interpretation of precedent, we note simply that her argument is unavailing for the purposes of this appeal. Here, we never reach the question whether Blanchard was required to show that her race was the real reason that PB/MK discharged her, for Blanchard does not clear even the first hurdle of her pretext burden: adducing some evidence on which

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[18]See e.g., Moham v. Steego Corp., 3 F.3d 873 (5th Cir. 1993) (upholding district court's finding that plaintiff's testimony produced credible evidence that defendant's proffered reason was false), cert. denied, 114 S.Ct. 1307 (1994); Washington v. Garrett, 10 F.3d 1421 (9th Cir. 1993) (summary judgment not appropriate when plaintiff establishes prima facie case and raises a genuine issue as to whether proffered reason is true); McNabola v. Chicago Transit Authority, 10 F.3d 501, 514-15 (7th Cir. 1993) (concluding that plaintiff responded to defendant's proffered legitimate non-discriminatory reason with evidence suggesting pretext); Kline v. Tennessee Valley Authority, No. 92-59191, 1993 WL 288280 at 5 (6th Cir. July 29, 1993) (reiterating St. Mary's Honor Center, noting that factfinder's disbelief of reason put forth by employer may, together with prima facie case, suffice to show intentional discrimination) (emphasis added).

a reasonable factfinder could conclude that PB/MK's proffered reasons for dismissing Blanchard were false.

Blanchard offers no evidence on which a reasonable factfinder could determine that PB/MK's reasons for discharging her were both false and pretextual. True, she did present several arguments in her reply to PB/MK's motion for summary judgment attempting to show pretext. For example, in that reply Blanchard stated that she sent a memo to her supervisor expressing her desire to be considered for the new records management position and articulating her subjective belief that, despite her lack of specific experience in that area, her general administrative and supervisory skills would transfer well into the position. She also stated in her reply that she had "done the position" for a year and a half and had been on the management team the entire time. Finally she noted that when PB/MK "reorganized" she was let go and a similarly situated white person - whom Blanchard had trained - was retained.[19]

We are satisfied, however, that none of these arguments establish a genuine issue of fact as to whether PB/MK's articulated reason for dismissing Blanchard - the reorganization of PB/MK, which eliminated Blanchard's job when her duties were consolidated with those of another job to create a new position - was false and that it served as a pretext for dismissing her on account of her race. Our conclusion is supported by the facts that Blanchard's position, in and of itself, was eliminated. By definition, she was

[19]The record indicates that Blanchard trained Michelle Prater on the computer program that Blanchard had developed for controlling correspondence.

not replaced by anyone; rather she was not selected for the new position and the white female employee who was selected was objectively more qualified. As summary judgment is appropriate when "critical evidence is so weak or tenuous on an essential fact that it could not support a judgment in favor of the nonmovant,"[20] we affirm the district court's grant of summary judgment in favor of PB/MK on Blanchard's claim of racial discrimination.

2. Sex Discrimination

Blanchard asserts that the district court erred in concluding that she failed to produce sufficient summary judgment evidence regarding her claim of sex discrimination. Despite the fact that the district court had previously denied Blanchard's motion to amend her complaint to include this particular claim, the court proceeded to consider it and determined that Blanchard did not establish a prima facie case of sex discrimination. We agree.

Blanchard's action stemmed from her discharge from PB/MK. In her appellate brief Blanchard states that she was laid-off from her correspondence control position at PB/MK and was replaced by a similarly situated white female whom she had trained. For purposes of sex discrimination, Blanchard cannot show that she was replaced by a person outside of the protected class (female). The district court thus properly concluded that she failed to prove a prima facie case of sex discrimination.[21]

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[20]Armstrong v. City of Dallas, 997 F.2d 62, 67 (5th Cir. 1993).

[21]With respect to a different sex discrimination claim, Blanchard's EEOC charge did allege that she was denied wages equal to those of her white male counterparts from the time of her

3. Retaliation

The district court also granted summary judgment in favor of PB/MK on Blanchard's retaliation claim. She insists that she was discharged in retaliation for complaining to PB/MK managers about inequities in the salaries and job responsibilities among PB/MK employees and about other discriminatory conduct occurring at PB/MK.

As it does in other disparate treatment discrimination situations, the McDonnell/Burdine standard governs the order and allocations of proof in actions for unlawful retaliation under Title VII. Thus, a plaintiff alleging retaliatory discharge bears the initial burden of showing a prima facie case of the employer's retaliatory conduct, i.e., that (1) the plaintiff engaged in an activity protected by Title VII; (2) an adverse employment action occurred; and (3) a causal connection links the adverse employment

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employment at PB/MK until her discharge. This claim was not raised in either her original complaint or her first amended complaint, however, and her request to amend her complaint a second time to include a claim to this effect was denied. The district court considered only a claim of sex discrimination based on Blanchard's discharge. As Blanchard herself argues on appeal that "her sex was a factor in the decision to terminate her," we, too, limit our review to the claim proffered on that basis.

We take the opportunity to observe that the district court also granted summary judgment in favor of PB/MK on Blanchard's claim of discrimination under 42 U.S.C. § 1981. The court concluded that, as Blanchard failed to prove the elements of her Title VII claim, which are the same elements required to satisfy a § 1981 claim, summary judgment was appropriate. As Blanchard does not raise this issue on appeal, we do not discuss it; although were we to do so we would quite likely affirm the district court's ruling on this issue. See e.g., Whiting v. Jackson State University, 616 F.2d 116 (5th Cir. 1980) (observing that when section 1981 is used as parallel basis for relief with Title VII, plaintiff must satisfy same elements for both claims).

decision with the plaintiff's participation in the protected activity.[22] Once a prima facie case is established, the burden shifts to the employer to articulate a non-discriminatory reason for the employment action. If the employer proffers such a reason, the employee must then prove that the reason is false and is a pretext for unlawful retaliation.

Blanchard established the first two elements of her prima facie case of retaliation: she complained of discriminatory conduct to officials at PB/MK, filed a charge with the EEOC on May 8, 1992, and was terminated from her employment with PB/MK effective May 20, 1992. Our review of the evidence leads us to conclude, however, that other than coincidence of timing and merely conclusionary allegations of causal nexus, Blanchard did not produce any probative summary judgment evidence causally linking her termination to the fact that she had complained about discrimination at PB/MK. As Blanchard thus failed to establish the third element of her prima facie case, summary judgment on this issue is appropriate. Moreover, even if Blanchard had established a prima facie case of retaliation, she did not meet her summary judgment burden of proof regarding pretext; summary judgment is thus fitting at each of those steps in the Burdine minuet.

4. Intentional Infliction of Emotional Distress

To prevail on a claim for intentional infliction of emotional

[22]Anderson v. Douglas & Lomason Co. Inc., 26 F.3d 1277, 1300 (5th Cir. 1994) (citing Shirley v. Chrysler First Inc., 970 F.2d 39, 42 (5th Cir. 1992)), cert. denied, 115 S.Ct. 1099 (1995); E.E.O.C. v. J.M. Huber Corp., 927 F.2d 1322, 1326 (5th Cir. 1991), reh'g denied, 942 F.2d 930 (1991).

distress under Texas law a plaintiff must prove that (1) the defendant acted intentionally or recklessly, (2) the defendant's conduct was extreme and outrageous, (3) the defendant's actions caused the plaintiff emotional stress, and (4) the emotional distress suffered was severe.[23] A claim of intentional infliction of emotional distress in an employment context will not lie for "mere 'employment disputes.'"[24] Moreover, "[t]he range of behavior covered [in these types of disputes] is quite broad,"[25] and "[a]n employer will not be held liable for exercising its legal right to terminate an employee, 'even though he is well aware that such [action] is certain to cause emotional distress.'"[26]

We are convinced that Blanchard cannot sustain a claim for intentional infliction of emotion distress under Texas law. She offers no evidence that PB/MK acted intentionally or recklessly. Likewise, there is no summary judgment evidence to suggest that PB/MK's conduct toward Blanchard was extreme and outrageous or that she suffered severe emotional distress. Blanchard apparently took a disability leave from PB/MK prior to her termination.

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[23] Johnson v. Merrell Dow Pharmaceutical, Inc., 965 F.2d 31, 33 (5th Cir. 1992) (citing Tidelands Auto. Club v. Walters, 699 S.W.2d 939, 942 (Tex. App. - Beaumont 1985), writ ref'd, n.r.e.).

[24] Id.

[25] Id. at 33-34.

[26] Id. at 34 (quoting Diamond Shamrock Ref. and Mktg. Co. v. Mendez, 809 S.W.2d 514, 522 (Tex. App. - San Antonio 1991), writ granted on other grounds)); see also Wornick Co. v. Casas, 856 S.W.2d 732, 735 (Tex. 1993) (noting that when employer acts within legal rights in discharging employee, discharge itself as a matter of law cannot constitute outrageous behavior).

Blanchard's deposition testimony reveals that her medical leave was approved by her physician who told her that she was "stressed out." Also during this same leave period, Blanchard met regularly with a counselor and members of her church, all of whom helped her deal with her "stress," some of which stemmed from non-work related experiences. The severity of this emotional distress, however, does not even approach the level required to be actionable under Texas law. We are satisfied, therefore, that the district court did not err in dismissing Blanchard's claim of intentional infliction of emotional distress.

III

CONCLUSION

We find that Blanchard has failed to show the existence of any genuine issue of material fact that would enable a reasonable factfinder to find in her favor on her claims of discrimination on the basis of race and sex, retaliatory discharge, or intentional infliction of emotional distress. Therefore, the district court's grant of summary judgment in favor of PB/MK, dismissing Blanchard's action with prejudice, is

AFFIRMED.