

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20094
Summary Calendar

FESTUS I. UZOWURU,

Plaintiff-Appellant,

versus

WILLIAMS BROTHERS AND W. M. PALM, M.D.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 91 2916)

March 21, 1995

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

Festus I. Uzowuru appeals from the entry of summary judgment against him by the district court. Uzowuru claimed he was denied employment as a "surveyor helper" by Williams Brothers Construction Co., Inc. ("Williams Brothers") and Dr. William M. Palm because of his national origin, Nigerian. Williams Brothers had directed Uzowuru to see Dr. Palm for a routine pre-employment

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

exam. Dr. Palm noted concerns relating to the applicant's borderline acceptable eyesight, but otherwise cleared the applicant for employment. Williams Brothers contends that Uzowuru's poor eyesight and unwillingness to wear corrective lenses were the bases for its decision not to hire him.

Uzowuru, proceeding pro se, sued Williams Brothers and Dr. Palm alleging discrimination in violation of Title VII and causes of action pursuant to 42 U.S.C. §§ 1981 and 1985. The district court granted Dr. Palm's motion for summary judgment of the Title VII claim because Uzowuru presented no evidence that Dr. Palm was an "employer" covered by Title VII's strictures. The court, after having initially denied summary judgment, granted summary judgment for Williams Brothers on the Title VII claim finding Uzowuru had presented no evidence of intentional discrimination. The district court subsequently granted summary judgment against Uzowuru's §§ 1981 & 1985 claims noting that the § 1981 claim required proof of the same essential facts as the Title VII claim which had already been denied, and that the § 1985 conspiracy claim failed because there was no proof of an independent violation of civil rights to be the subject of the purported conspiracy.

Uzowuru appealed the orders granting summary judgment, and the appeals were consolidated. To create a triable fact issue, Uzowuru proffers evidence of a discriminatory statement allegedly uttered by Dr. Palm ("If it were up to me, I wouldn't hire any of you [expletives]") and avers that, because his drivers' license

bears no eyeglasses limitation, his eyesight was a merely pretextual reason for Williams' decision.¹ Even if this evidence were to be believed, summary judgment remains proper. After presuming that Uzowuru could state a prima facie case (without so finding), the district court noted the company's proffered legitimate non-discriminatory rationale and held that Uzowuru had not come forward with evidence of intentional discrimination.

Uzowuru's only evidence of possible intentional discrimination relates to Dr. Palm. Dr. Palm is not an employer, he did not make the employment decision in question, and he is not an agent of Williams Brothers for purposes of making employment decisions. While the statement attributed to Dr. Palm may be evidence of anti-Nigerian or racial animus by Dr. Palm, that statement cannot be used to prove discrimination by Williams Brothers.

Further, Uzowuru's evidence of pretext is insufficient to avoid summary judgment. He alleges two things: that his eyesight is good and that Williams Brothers hires or has employed people for comparable positions with bad eyesight. The only evidence of his good eyesight is that his drivers license has no restriction. This is not probative. His assertion that Williams' policy is not what the company says it is has no support in the trial court record, other than his subjective belief. A plaintiffs' subjective belief

¹ The district court properly disregarded as mere conclusory allegations Uzowuru's statements of his subjective belief relating to the hiring decision. Indeed, the only "evidence" presented to the district court by Uzowuru (other than Uzowuru's own averments) in response to the summary judgment motions was a copy of his EEOC charge.

of pretext, like his subjective belief that discrimination occurred, is insufficient to require a jury trial. Moore v. Eli Lilly & Co., 990 F.2d 812 (5th Cir. 1993).

Because Uzowuru has presented no evidence of pretext or other evidence from which a rational trier of fact could find that "an unlawful discriminatory intent" motivated Williams Brothers' decision not to hire him, the trial court's grant of summary judgment for Williams Brothers on the Title VII and § 1981 claims is affirmed. Because Uzowuru presented no evidence that Dr. Palm is an employer covered by Title VII or that Dr. Palm's statement resulted in discrimination covered by § 1981, summary judgment for Dr. Palm on the Title VII and § 1981 claims is also affirmed. With no § 1981 violations proved against Williams Brothers or Dr. Palm, summary judgment for both defendants on the § 1985 claim was also proper.

Additionally, in his 6th and 10th "points for review," Uzowuru challenges the district court's denial of certain discovery requests. Having reviewed the record, the court finds no abuse of discretion in the district court's handling of discovery. The district court's judgment is **AFFIRMED**.