

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20311
Summary Calendar

MICHAEL R. NOWROOZI,

Plaintiff-Appellant,

VERSUS

CITY OF HOUSTON, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 92-2951)

(January 12, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:¹

Michael Nowroozi appeals an adverse summary judgment dismissing his complaint filed under 42 U.S.C. § 1983 and Title VII. We **AFFIRM**.

I.

Nowroozi, an employee of the City of Houston, filed this action against the City and his supervisor, Richard C. Scott, contending that he was denied promotions and reclassification consideration because of his race and national origin, and in

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

retaliation for filing an earlier complaint with the Equal Employment Opportunity Commission. In addition to seeking relief under Title VII, he sought relief under § 1983, maintaining that the defendants' actions violated the Equal Protection Clause of the Fourteenth Amendment.

II.

The only issue on appeal is whether the district court erred in granting summary judgment against Nowroozi's § 1983 claim.² When plaintiffs have invoked Title VII, § 1983 and § 1981 in the same action, we have noted that "[i]n this Circuit, specific consideration of these alternate remedies for employment discrimination [§§ 1983 and 1981] is necessary only if their violation can be made out on grounds different from those available under Title VII." **Parker v. Mississippi State Dep't of Pub. Welfare**, 811 F.2d 925, 927 n.3 (5th Cir. 1987); accord **Carpenter v. Stephen F. Austin State Univ.**, 706 F.2d 608, 612 n.1 (5th Cir. 1983); **Rivera v. City of Wichita Falls**, 665 F.2d 531, 534 n.4 (5th Cir. 1982).

In each of these cases, we declined to consider the plaintiffs' § 1983 or § 1981 claims, instead resolving only their Title VII claims. We have rejected, however, any notion that this line of

² Nowroozi does not challenge, nor do we consider, the summary judgment with respect to his Title VII claim. **Abbott v. Equity Group, Inc.** 2 F.3d 613, 627 n.50 (5th Cir. 1993) (court will not consider issues not properly briefed on appeal), *cert. denied*, ___ U.S. ___, 114 S. Ct. 1219 (1994). To the extent that Nowroozi attempts to establish, with respect to the Title VII claim, an issue of material fact in his reply brief, he has waived the issue. **United Paperworkers Int'l Union v. Champion Int'l Corp.**, 908 F.2d 1252, 1255 (5th Cir. 1990) (issues raised for the first time in reply brief are waived).

cases has redesigned Title VII to create an exclusive remedy. In **Hernandez v. Hill Country Telephone Co-Op, Inc.**, we held that the cases do not stand for the proposition 'that a claimant alleging racial discrimination in an employment setting is limited to recovery under Title VII.' 849 F.2d 139, 142-43 (5th Cir. 1988); accord **Gonzalez v. Public Health Trust**, 686 F. Supp. 898 (S.D. Fla. 1988).

... Although Title VII supplements and overlaps § 1983, it remains an exclusive remedy when a state or local employer violates only Title VII. When, however, unlawful employment practices encroach, not only on rights created by Title VII, but also on rights that are independent of Title VII, Title VII ceases to be exclusive.

Johnston v. Harris County Flood Control Dist., 869 F.2d 1565, 1575-76 (5th Cir. 1989), *cert. denied*, 493 U.S. 1019 (1990).

Nowroozi contends the district court erred by ruling that Title VII provides an exclusive remedy. This characterization misconstrues the district court's opinion. The district court entered summary judgment on Nowroozi's § 1983 claim because it was based on the same grounds as his Title VII claim; earlier in its opinion, the district court ruled that Nowroozi failed to rebut the summary judgment evidence put forth with respect to the Title VII claim. Thus, because Nowroozi relied upon the same alleged conduct as in his Title VII claim, and because the district court had granted summary judgment against that claim, the court granted summary judgment on the § 1983 claim. **Merwine v. Board of Trustees for State Insts. of Higher Learning**, 754 F.2d 631, 635 n.3 (5th Cir.) ("When a § 1983 claim is used as a parallel to a Title VII claim under a given set of facts, the elements required to be established for each claim are deemed the same under both

statutes"), *cert. denied*, 474 U.S. 823 (1985); see also ***Knight v. Nassau County Civil Serv. Comm'n***, 649 F.2d 157, 161-62 (2d Cir.) (failure to meet burden of proof in Title VII claim constitutes failure to meet burden of proof in § 1983 claim), *cert. denied*, 454 U.S. 818 (1981). In that Nowroozi has not challenged the ruling on Title VII, the correctness of that unchallenged ruling is applicable to his § 1983 claim.

III.

For the foregoing reasons, the judgment is

AFFIRMED.