

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-30073  
Summary Calendar

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RAMASAMY ODAIYAPPA,

Plaintiff-Appellant,

versus

BOARD OF SUPERVISORS OF  
LOUISIANA STATE UNIVERSITY AND  
AGRICULTURAL AND MECHANICAL  
COLLEGE, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court for the  
Eastern District of Louisiana  
(92-CV-4005-H)

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(July 25, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

The question in this appeal is whether the district court erred in concluding that Odaiyappa's wrongful-discharge claims were not filed timely with the EEOC or in the district court and in

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

concluding that the doctrine of equitable tolling should not be applied.

The facts are uncontested. In August 1988, the University of New Orleans hired Ramasamy Odaiyappa as an assistant accounting professor in a non-tenured, non-civil service position pursuant to a three-year contract. Mindful that Odaiyappa's contract would expire in May 1991, the tenured professors of the accounting department met in November and December 1990 to discuss the possible renewal of Odaiyappa's contract and decided that it should not be renewed. On December 7, 1990, in accordance with university policy (which mandated that all non-tenured faculty members with expiring contracts be issued one-year terminal appointments), the chairman of the accounting department gave written notice to Odaiyappa (which he personally delivered to him on December 12th) that the department decided not to renew his contract and the 1991-1992 academic year would be his terminal appointment. On October 2, 1991, Odaiyappa asked the university to "cancel the termination of my appointment and to reappoint me for subsequent years." On October 21, 1991, Odaiyappa was notified that his request was denied.

On March 26, 1992, Odaiyappa filed an employment-discrimination charge with the Equal Employment Opportunity Commission ("EEOC") in which he claimed discrimination based on national origin, color, and age with respect to his salary and termination. On December 4, 1992, Odaiyappa brought this action.

In a determination dated December 31, 1992, the EEOC found, inter alia, that Odaiyappa's wrongful-discharge claim was untimely because he did not file the charge with the EEOC within 180 days of his notification on December 12, 1990, that the 1991-1992 academic year would be his final year of employment.

On December 10, 1993, the district court granted summary judgment in favor of the defendants. The court held that (1) Odaiyappa's wrongful-discharge claims under § 1981 and the LADEA were time-barred because they were not brought within the applicable limitations period and (2) Odaiyappa's ADEA and Title VII claims were barred because he failed to satisfy the statutory prerequisites to suit, the timely filing of an EEOC complaint. The district court also rejected Odaiyappa's argument that the limitations periods should be equitably tolled pending the university's denial of his October 1991 reconsideration request because "[m]ere assurances that a termination decision will be reviewed do not warrant application of equitable tolling."

On February 3, 1994, the parties moved the court to dismiss with prejudice all claims except for the wrongful termination, which had already been dismissed by the court. The motion was granted and final judgment was entered. On February 7, 1994, Odaiyappa noticed his appeal.

Odaiyappa argues that the district court's determination that his wrongful-discharge claims were untimely was error because the court "ignore[d] plaintiff's affidavit statement that the Dean told

him that the November 1990 appointment was not a `termination decision,'" and that the limitation period should have been equitably tolled because Odaiyappa "had been informed by the chairman that the 1990 decision was not final."

We review a grant of summary judgment de novo. Abbott v. Equity Group, Inc., 2 F.3d 613, 618-19 (5th Cir. 1993), cert. denied, 114 S.Ct. 1219 (1994). Summary judgment is proper if the moving party establishes that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Campbell v. Sonat Offshore Drilling, Inc., 979 F.2d 1115, 1118-19 (5th Cir. 1992). The party opposing a motion for summary judgment must set forth specific facts showing the existence of a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256-57, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). On appeal from summary judgment, we examine the evidence in the light most favorable to the non-moving party. Salas v. Carpenter, 980 F.2d 299, 304 (5th Cir. 1992).

Odaiyappa contends that the defendants discharged him in violation of Title VII, the ADEA, § 1981, and the LADEA. Title VII requires the filing of a complaint with the EEOC "within one hundred and eighty days after the alleged unlawful employment practice occurred." 42 U.S.C. § 2000e-5(e)(1). "The EEOC filing requirement functions as a statute of limitations rather than a jurisdictional prerequisite. It is a pre-condition to filing suit in district court, but it is not related to the subject matter

jurisdiction of the court." Rhodes v. Guiberson Oil Tools Div., 927 F.2d 876, 878 (5th Cir.) (internal quotations and citation omitted), cert. denied, 112 S.Ct. 198 (1991). The ADEA similarly provides that no civil action may be commenced thereunder until sixty days after a charge has been filed with the EEOC, which "shall be filed within 180 days after the alleged unlawful practice occurred." 29 U.S.C. § 626(d). The timeliness of an EEOC complaint depends on the date of the alleged unlawful employment practice. Delaware State College v. Ricks, 449 U.S. 250, 257, 101 S.Ct. 498, 66 L.Ed.2d 431 (1980). In the context of the termination of non-tenured professor's contract, the EEOC filing period commences on the date the tenure decision is made and communicated, "even though one of the effects of the denial of tenure - the eventual loss of a teaching position - did not occur until later." Ricks, 449 U.S. at 258. "[T]he pendency of a grievance, or some other method of collateral review of an employment decision, does not toll the running of the limitations periods." Id. at 261.

Odaiyappa concedes that he did not file his EEOC claim within 180 days of receipt of the December 1990 termination letter; he argues instead that the district court should have calculated the 180 days from date of denial of request for reconsideration. Because the pendency of a review of the termination decision does not toll the limitations period, the district court's calculation was correct, and Odaiyappa has failed to raise a specific fact

showing the existence of a genuine issue for trial. The district court's grant of summary judgment on the Title VII and ADEA claims was appropriate.

The timeliness of Odaiyappa's commencement of the instant civil action raising his § 1981 and LADEA claims can be similarly analyzed. In Taylor v. Bunge Corp., 775 F.2d 617, 618 (5th Cir. 1985) (per curiam), we held that the timeliness of a suit in district court alleging violations of § 1981 should be analyzed by reference to the Louisiana statute of limitations for delictual actions, which provides for a one-year limitations period. See La. Civ. Code Ann. art. 3492 (West Supp. 1994). An action alleging a violation of the LADEA must also be commenced within the one-year period established by article 3492. Jay v. International Salt Co., 868 F.2d 179, 180 (5th Cir. 1989). The filing of an EEOC charge does not toll the running of the one-year period, Taylor, 775 F.2d at 618-19, nor does the pendency of a grievance or some other method of review unless that procedure has induced the employee to refrain from exercising his rights. Amburgey v. Corhart Refractories Corp., 936 F.2d 805, 810 n.14 (5th Cir. 1991). If the employee knew or should have known that the discriminatory act had occurred and was not lulled into complacency by his employer, no basis for equitable tolling exists. Id.; see also, Cervantes v. IMCO, Halliburton Services, 724 F.2d 511, 513-14 (5th Cir. 1984).

Odaiyappa's argument that he did not understand the effect of the December 1990 terminal appointment is belied by his

reconsideration request in October 1991 to "cancel the termination of my appointment and to reappoint me for subsequent years." Odaiyappa's request demonstrates unequivocally that he understood the import of a terminal appointment, the allegedly discriminatory act. Because he knew that the act had occurred, and has set forth no specific facts to show that he was induced by his employer to refrain from exercising his rights, the limitations period started to run on the date the termination decision was made and communicated to him. Any § 1981 or LADEA claims that Odaiyappa wished to pursue should have been instituted no later than December 12, 1991. Odaiyappa did not commence this action until December 4, 1992, almost one year after the expiration of the limitations period. The district court's determination that the § 1981 and LADEA claims were barred was not error, and its judgment in all particulars is

A F F I R M E D.