

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-30441  
Summary Calendar

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HELENA J. CHALUBIEC,

Plaintiff-Appellant,

versus

WAL-MART STORES, INC.,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
(CA-92-639)

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(February 14, 1995)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

EDITH H. JONES, Circuit Judge:\*

Helena Chalubiec appeals the district court's grant of summary judgment in favor of Wal-Mart Stores, Inc. disposing of all of her causes of action. The district court found that the one year prescriptive period under Louisiana law expired before Chalubiec filed her petition for damages. Because we find that summary judgment was properly granted, we affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

## BACKGROUND

The relevant facts are not disputed. Chalubiec was hired by Wal-Mart in October of 1988 as a maid in the Baton Rouge store. In April of 1989, Chalubiec was transferred at her request to the Gonzales store where she worked in the night receiving department. In late 1990 or early 1991, Chalubiec was transferred, again at her request, to the health and beauty aids department within the Gonzales stores where she worked until she terminated her employment on July 15, 1991. Chalubiec alleges that for the two years she worked at the Gonzales store, she was continually harassed and defamed by her co-workers.

On July 13, 1991, the last day Chalubiec worked for Wal-Mart, she was issued a written warning advising her to take concrete steps to get along with her co-workers or face termination. She was also given a "decision-making day"<sup>1</sup> on July 14, 1991. On July 15, 1991, Chalubiec voluntarily terminated her employment with Wal-Mart. Chalubiec filed a petition for damages on July 14, 1992 against Wal-Mart alleging defamation, sexual harassment, invasion of privacy, and other intentional torts. Wal-Mart removed the action to federal court invoking diversity jurisdiction.

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<sup>1</sup> A "decision-making day" is a paid day of leave given to Wal-Mart employees when continuous performance issues arise. The "decision making day" is usually the final step in the disciplinary process prior to termination.

## DISCUSSION

Under Louisiana law, "[d]elictual actions are subject to a liberative prescription of one year." La. Civ. Code art. 3492. It is undisputed that all of the causes of action asserted by Chalubiec are subject to the one year prescriptive period. The dispute centers on when the prescriptive period began to run. Chalubiec argues that the measuring date should be July 15, 1991 - the day she terminated her employment with Wal-Mart. Wal-Mart, on the other hand, asserts that the measuring date should be July 13, 1991 - the last possible date that any of the alleged wrongful conduct could have occurred.

As in many states, Louisiana has adopted the continuing tort doctrine as a corollary to the prescriptive period. See Bustamento v. Tucker, 607 So.2d 532, 542 (La. 1992). Chalubiec's reliance on the continuing tort doctrine in this case is unavailing. Under the continuing tort doctrine, when the wrongful acts or conduct occur on a continuing basis over a period of time and become actionable because of the cumulative impact, "then prescription does not commence until the last act occurs or the conduct is abated." Id. Chalubiec insists that the alleged wrongful conduct was not abated until she terminated her employment because her distress continued through that time. While this is a novel argument, we are not persuaded.

Bustamento does not help Chalubiec. In Bustamento, the last instance of harassment fell within the one year prescriptive period. Id. at 543. Conversely, Chalubiec can not demonstrate,

nor does she even allege, that she was harassed within one year of filing her petition. None of the other authority cited by Chalubiec persuades us that the motion for summary judgment was improperly granted. **AFFIRMED.**