UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30583
Summary Calendar

BARBARA JUMONVILLE,

Plaintiff-Appellant,

versus

DEPARTMENT OF TREASURY,
Lloyd M. Bentsen, Secretary,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-93-4207-D(1))

(March 16, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:[1]

Barbara Jumonville appeals the dismissal, with prejudice, of her employment discrimination action against the Secretary of the Treasury. We **AFFIRM**.

I.

In December 1993, Jumonville filed, through counsel, a 65-page complaint, containing 215 paragraphs, against the Secretary of the Treasury, asserting claims under Title VII for gender and age discrimination and retaliation in federal employment, as well as

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[1] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

wrongful discharge. The Secretary moved to dismiss the complaint or, alternatively, to strike the portions which did not comply with Fed. R. Civ. P. 8(a).[2] The Secretary attached to his motion a copy of a recently-filed employment discrimination complaint in an unrelated case as an illustration of how Jumonville could state her claims in a more succinct and pertinent manner. The Secretary also noted that "all of Jumonville's claims are fully and *briefly* stated within the first eleven paragraphs of her current complaint" and that the remainder was, "to put it mildly, superfluous". (Emphasis in original.)

Jumonville agreed to amend her complaint; and the district court granted her 15 days, or until May 2, 1994, in which to do so. On May 2, Jumonville filed her first amended complaint, reduced to 54 pages and 128 paragraphs. The Secretary renewed his motion to dismiss or to strike; Jumonville responded that the first amended complaint complied with Rule 8.

On June 13, 1994, the district court ruled that the first amended complaint "is still too repetitive and verbose to satisfy [Rule 8]", and allowed Jumonville until June 27 to file another amended complaint. The court warned, however, that "*failure to comply with Federal Rule of Civil Procedure 8(a)(2) will result in dismissal of this action*". (Emphasis in original.)

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[2] Rule 8(a)(2) provides that "[a] pleading which sets forth a claim for relief ... shall contain ... a short and plain statement of the claim showing that the pleader is entitled to relief". Fed. R. Civ. P. 8(a)(2).

Jumonville filed her second amended complaint, consisting of 36 pages and 88 paragraphs, on June 23. Needless to say, the Secretary again renewed the motion to dismiss; and Jumonville responded, again, that the second amended complaint complied with Rule 8. Noting that Jumonville had "*twice* been given leave to amend and her successive pleadings remain prolix and unintelligible", the district court dismissed the action with prejudice. (Emphasis added.)

Jumonville moved under Rule 59(e) for leave to file a third amended complaint (consisting of 21 pages and 41 paragraphs). The district court denied the motion.

II.

Jumonville contends that the district court erred by dismissing the action with prejudice, and by refusing her Rule 59 motion to file a third amended complaint.

A.

The district court dismissed Jumonville's complaint with prejudice because of her failure to comply with Rule 8, and her failure to comply with its two orders to amend her complaint to comply with that rule. Federal Rule of Civil Procedure 41(b) authorizes a district court to dismiss an action for, *inter alia*, "failure of the plaintiff ... to comply with these rules or any order of court". Fed. R. Civ. P. 41(b). "In reviewing a district court's decision to dismiss under Rule 41(b), we reverse only if we find an abuse of discretion". ***Salinas v. Sun Oil Co.***, 819 F.2d 105, 106 (5th Cir. 1987). But, such "dismissals *with prejudice*

will be affirmed only upon a showing of `a clear record of delay or contumacious conduct by the plaintiff, ... and where lesser sanctions would not serve the best interest of justice.'" ***Id***. (quoting ***Pond v. Braniff Airways, Inc.***, 453 F.2d 347, 349 (5th Cir. 1972)). (Emphasis added.) "Additionally, in most cases where this Court has affirmed dismissals with prejudice, we found at least one of three aggravating factors: (1) delay caused by [the] plaintiff himself and not his attorney; (2) actual prejudice to the defendant; or (3) delay caused by intentional conduct." ***Berry v. CIGNA/RSI-CIGNA***, 975 F.2d 1188, 1191 (5th Cir. 1992) (internal quotation marks and citation omitted; brackets in original).

Obviously, what constitutes a "short and plain statement" for purposes of Rule 8 depends on the circumstances and the type of case, ***Atwood v. Humble Oil & Refining Co.***, 243 F.2d 885, 889 (5th Cir.), *cert. denied*, 355 U.S. 829 (1957); and, the district court "should be given great leeway in determining whether a party has complied with" the rule. ***Gordon v. Green***, 602 F.2d 743, 745 (5th Cir. 1979). Our court has recognized that "[t]here may be cases in which mere verbosity or repetition would justify final dismissal ...." ***Atwood***, 243 F.2d at 889; *see also* ***Gordon v. Green***, 602 F.2d at 744-47 & n.14 (remanding for dismissal without prejudice of verbose and scandalous pleadings of over 4,000 pages that violated Rule 8 as a matter of law, but noting that if plaintiff did "not file within a reasonable time (to be set by the District Court) a complaint which complies with Rule 8, the District Judge may dismiss the complaint with prejudice for violation of that rule").

Jumonville admits that her conduct caused delay, but insists that it was not undue delay, and maintains that dismissal with prejudice is too harsh a penalty, on the basis that the deficiencies in her second amended complaint were not so severe as to warrant dismissal without the opportunity to amend. We disagree.

The district court twice ordered Jumonville to amend her complaint to bring it into compliance with Rule 8; but she failed to do so, instead persisting in filing successive complaints which, although each was shorter than the preceding one, still contained excess verbiage and irrelevant, repetitious, unintelligible allegations. And, although the Secretary attached to his first motion to dismiss an example of an employment discrimination complaint which Jumonville could have used as a model for stating her claims succinctly, she disregarded that guidance. Under these circumstances, the district court did not abuse its discretion by dismissing the action with prejudice.

In sum, there is a clear record of delay and refusal to comply with court orders; a lesser sanction would not serve the best interests of justice. Enough is enough.

B.

Next, Jumonville contends that the district court erred by denying her Rule 59 motion to file a third amended complaint. "Denial of a motion to vacate, alter, or amend a judgment [under Rule 59(e)] so as to permit the filing of an amended pleading [pursuant to Rule 15] draws the interest in finality of judgments

into tension with the federal policy of allowing liberal amendments under the rules." ***Southern Constructors Group, Inc. v. Dynalectric Co.***, 2 F.3d 606, 611 (5th Cir. 1993). "Under either rule we review the district court's decision only to determine whether it was an abuse of discretion." ***Id***. The more liberal Rule 15 standards, which favor granting leave to amend, rather than the standards applicable to Rule 59(e), which favor the denial of motions to alter or amend a judgment, apply when a party seeks amendment of a judgment based on the pleadings. ***Id***.

Although leave to amend "shall be freely given when justice so requires", Fed. R. Civ. P. 15, it "is by no means automatic". ***Southern Constructors***, 2 F.3d at 612. Among the reasons that justify denial of permission to amend are the "repeated failure to cure deficiencies by amendments previously allowed", ***Dussouy v. Gulf Coast Inv. Corp.***, 660 F.2d 594, 598 (5th Cir. 1981), and "futility of amendment". ***Whitaker v. City of Houston***, 963 F.2d 831, 836 (5th Cir. 1992). Both are applicable here. Jumonville repeatedly failed to cure the deficiencies in her complaint, despite being warned specifically by the district court that failure to comply with Rule 8 would result in dismissal. Moreover, her proposed third amended complaint, although shorter than the three previous ones, still does not comply with Rule 8; accordingly, granting leave to amend would have been futile.

III.

For the foregoing reasons, the judgment and order denying the Rule 59 motion are

AFFIRMED.