

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40291
Summary Calendar

MENTHEOLA DOUGLAS,

Plaintiff-Appellant,

versus

LAMAR UNIVERSITY,

Defendant-Appellee.

Appeal from the United States District Court
For the Eastern District of Texas
(1:92-CV-225)

(June 16, 1995)

Before POLITZ, Chief Judge, HIGGINBOTHAM and EMILIO M. GARZA,
Circuit Judges:

PER CURIAM:*

Mentheola Douglas, formerly a secretary at Lamar University
Beaumont Campus, appeals an adverse judgment following a bench
trial on her Title VII discrimination claim against the university.
Finding no error, we affirm.

*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should not be published.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

In 1976 Douglas, an African-American, was hired as a secretary in the university's Assessment, Advising & Research Center. She received positive job evaluations and in 1981 was promoted to the level of Secretary II. On two occasions in December 1989 her white supervisor used a racial slur in referring to Douglas. Douglas filed a grievance, a hearing was held, and the supervisor was fired.

Pending replacement of the supervisor, Douglas worked under Dr. Joseph Kavanaugh, Lamar's Associate Vice President and Dean of Students. In February 1990 Dean Kavanaugh sent Douglas a letter criticizing her job performance and warning her that lack of improvement could lead to termination. The letter was based on complaints the supervisor had presented at the grievance hearing. The following week, the vice president of the university placed a memorandum in Douglas's personnel file voiding Dean Kavanaugh's letter. In March 1990 Douglas filed a charge with the Equal Employment Opportunity Commission, alleging race-based discrimination stemming from the Dean's letter.¹

After the supervisor's position was filled, Dean Kavanaugh remained as Douglas's second-level supervisor, a position he previously had occupied as the university official charged with overseeing the Assessment, Advising & Research Center. Douglas contends that the Dean continued to scrutinize her work unfairly,

¹The charge was additionally based on another letter Douglas simultaneously received from Dean Kavanaugh.

holding her to a higher standard than white employees. As an example, Douglas points to a memorandum she received from the Dean in October 1991, criticizing her performance in the administration of the university's testing program.

In December 1991 Douglas was hospitalized for major depression with recurrent psychotic features. In January 1992 a hospital representative called Dean Kavanaugh to warn him that Douglas, in a group therapy session, had stated that she was planning to kill him. University officials decided to place Douglas on leave without pay; they maintain that they chose this approach rather than firing Douglas so that she could receive disability benefits.

Later that month Douglas, upon the advice of her psychiatrist, resigned. Douglas maintains her illness and resignation were compelled by a program of harassment implemented by Dean Kavanaugh. Douglas filed the instant Title VII complaint, alleging that Lamar University discriminated and retaliated against her, and that she was constructively discharged.² Douglas sought monetary, declaratory, and injunctive relief. Following a bench trial, the

²42 U.S.C. § 2000(e) *et seq.* Douglas also raised other federal and state common law claims which the district court dismissed prior to trial.

Although the record casts doubt on whether the suit was timely filed -- Douglas filed only a motion to proceed *in forma pauperis* and for the appointment of counsel within the designated statutory period after receiving notice of her right to sue -- any deficiencies have been waived. See 42 U.S.C. § 2000e-5(f)(1); **Firle v. Miss. State Dep't of Educ.**, 762 F.2d 487 (5th Cir. 1985); **Zipes v. Trans World Airlines**, 455 U.S. 385 (1982).

In July 1992 Douglas filed a second EEOC charge, alleging retaliation and constructive discharge. She received a right-to-sue notice on this charge.

district court granted judgment for the university. Douglas timely appealed.

Analysis

We review for clear error the factual determinations underlying the district court's resolution of the Title VII claim.³ Douglas contends that she proved by a preponderance of the evidence retaliatory discrimination, harassment, and constructive discharge. We are not persuaded. Although Douglas engaged in protected activities in filing the grievance and the Title VII complaint, we find no evidence that she consequently suffered an adverse employment action.⁴ The university fired the offending supervisor. It retracted the critical letter Douglas received from Dean Kavanaugh. Although Douglas periodically received negative feedback on her job performance in the roughly two years after she filed her grievance, the record does not support a finding that such criticism constituted discrimination⁵ or that it was imposed in retaliation for protected activities.

Further, the district court correctly ruled that Douglas was not constructively discharged. We find no credible evidence to

³**Hill v. Miss. State Employment Serv.**, 918 F.2d 1233 (5th Cir. 1990), cert. denied, 502 U.S. 864 (1991).

⁴To prevail on a Title VII claim of retaliation, a plaintiff must establish that: (1) she engaged in an activity protected by Title VII; (2) an adverse employment action occurred; and (3) there was a causal connection between the participation in the protected activity and the adverse employment action. **Pierce v. Tex. Dep't of Criminal Justice, Inst. Div.**, 37 F.3d 1146 (1994), cert. denied, No. 94-1357, 1995 WL 61527 (May 15, 1995).

⁵See **Armstrong v. City of Dallas**, 997 F.2d 62 (5th Cir. 1993).

support the proposition that Kavanaugh or other Lamar officials intentionally made Douglas's working conditions so intolerable that a reasonable person in her shoes would have had no choice but to resign.⁶ Douglas's allegation that harassment by her employer caused her illness is extremely implausible, particularly in view of her history of mental illness. Moreover, the university's decision to place her on leave without pay did not constitute a constructive discharge, given the communication of Douglas's threat to kill Dean Kavanaugh. The district court's findings are not clearly erroneous and we perceive no error of law in the trial court's disposition.

For the foregoing reasons, the judgment of the district court is AFFIRMED.

⁶**Ugalde v. W.A. McKenzie Asphalt Co.**, 990 F.2d 239 (5th Cir. 1993).