

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40944
Summary Calendar

ELLA CHANDLER EDWARDS,

Plaintiff-Appellant,

v.

CENTENARY COLLEGE OF LOUISIANA
and JAMES MARCUM, DR.,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(5:93 CV 1309)

March 28, 1995

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:*

Ella Chandler Edwards filed a civil action against Centenary College of Louisiana and Dr. James Marcum on September 16, 1993, alleging that she was the victim of employment discrimination in violation of the Age Discrimination in Employment Act ("ADEA"). 29 U.S.C. §§ 621-634 (1985). The district court found that the

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

applicable statute of limitations had run before Edwards had filed her complaint with the EEOC, and the court consequently granted summary judgment in favor of Centenary College and Dr. Marcum. We affirm the district court's granting of summary judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

Edwards is a 59-year old professional librarian who was employed on a full-time basis at Centenary continuously from August of 1969 to May of 1992. In June of 1991, Centenary hired Dr. Marcum as its library director. Dr. Marcum began to note various deficiencies in Edwards's job performance, and on July 15, 1991, Marcum transferred Edwards from her position as reference librarian to a position involving the taking of inventory of books in the attic of the library. Edwards's reference librarian position was filled by Christy Wren, a woman under the age of forty. Marcum's dissatisfaction with Edwards apparently persisted, and he consequently removed Edwards from her job taking inventory in the attic and assigned her the task of college archivist.

On February 24, 1992, Marcum informed Edwards that she would be given the title of "College Archivist", a part-time position, resulting in a pay cut and a reduction to part-time status. On June 1, 1992, Edwards received her employment contract detailing the reduction to part-time status. Edwards filed a claim with the Equal Employment Opportunity Commission on September 16,

1992. On August 5, 1993 Edwards instituted this suit pursuant to the ADEA.

On February 21, 1994, Centenary College and Dr. Marcum filed a Motion for Summary Judgment in the district court, and the court granted that motion on August 18, 1994. The court's order found that Edwards's complaint to the EEOC was filed 22 days after the 180-day limitation period set forth in the ADEA. Edwards subsequently brought this appeal, arguing that the concepts of equitable tolling and equitable estoppel apply to this case to maintain the timeliness of her action.

II. STANDARD OF REVIEW

In employment discrimination cases, we review summary judgments *de novo*, applying the same standard as the district court. Waltman v. International Paper Co., 875 F.2d 468, 474 (5th Cir. 1989). First, we consult the applicable law to ascertain the material factual issues. King v. Chide, 974 F.2d 653, 655-56 (5th Cir. 1992). We then review the evidence bearing on those issues, viewing the facts and inferences to be drawn therefrom in the light most favorable to the nonmoving party. Lemelle v. Universal Mfg. Corp., 18 F.3d 1268, 1272 (5th Cir. 1994); FDIC v. Dawson, 4 F.3d 1303, 1306 (5th Cir. 1993), cert. denied, 114 S. Ct. 2673 (1994). Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that

the moving party is entitled to judgment as a matter of law."
Fed. R. Civ. P. 56(c).

Under Rule 56(c), the party moving for summary judgment bears the initial burden of informing the district court of the basis for its motion and of identifying the portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Norman v. Apache Corp., 19 F.3d 1017, 1023 (5th Cir. 1994). A dispute about a material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). If the moving party meets its burden, the burden shifts to the non-moving party to establish the existence of a genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 585-87 (1986); Norman, 19 F.3d at 1023. The burden on the non-moving party is to do more than simply show that there is some metaphysical doubt as to the material facts. Matsushita, 475 U.S. at 586.

III. DISCUSSION

The ADEA provides that "it shall be unlawful for an employer . . . to discharge any individual . . . because of such individual's age." 29 U.S.C. § 623(a)(1). The Supreme Court has established an evidentiary procedure that allocates the burden of production and establishes an orderly presentation of proof. In age discrimination cases, the plaintiff must make a prima facie case demonstrating that: (1) he was discharged from a position;

(2) he was qualified for that position; (3) he was within the protected class at the time of discharge; (4) he was either replaced by someone outside the protected class or replaced by someone younger. Pruet Production Co. v. Ayles, 784 F.2d 1275, 1279 (5th Cir. 1986).¹ In order to ultimately prevail, the plaintiff must prove, by a preponderance of the evidence, that unlawful discrimination was the true reason for the employment decision, rather than the employer's proffered reasons. St. Mary's, 113 S. Ct. at 2747.

The ADEA stipulates that an employee may not file a civil action until sixty days after filing a charge with the EEOC alleging unlawful discharge. 29 U.S.C. § 626(d). The ADEA further requires that such a charge must be filed within 180 days of the alleged discriminatory act. While some states have a 300-day filing period, this period is only applicable in a so-called "deferral" state, which has a state agency for age discrimination complaints. At the time Edwards was allegedly discriminated against, Louisiana did not have a state agency for age discrimination complaints. Louisiana was, therefore, a "non-deferral" state and consequently, the 180-day time limitation applies in this case.

¹ This standard was originally set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and it was recently re-affirmed in St. Mary's Honor Center v. Hicks, 113 S. Ct. 2742 (1993). Although these were race discrimination cases under Title VII, we have adopted these procedural guidelines for ADEA cases as well.

Edwards argues that the doctrines of equitable estoppel and equitable tolling should be applied in this case to prevent her claim from being barred by the 180-day limitations period. Equitable estoppel, however, comes into play only if the employee's untimeliness in filing the charge results either from "deliberate design" to delay the filing or actions that the employer "should unmistakably have understood" would result in the employee's delay. Clark v. Resistoflex Co., Div. of Unidynamics, 854 F.2d 762, 769 (5th Cir. 1988) (citing Felty v. Graves-Humphreys Co., 818 F.2d 1126, 1128 (4th Cir. 1987)). Thus, to invoke equitable estoppel, Edwards must show that the defendant attempted to mislead her. Edwards argues that she was "led to believe" that she would continue at full-time pay after being moved to the archivist position, but she presents no specific facts to support this allegation. Even if this allegation were factually supported, Edwards admits that she was aware of her part-time status in February of 1992, at which time she had sufficient information to file her EEOC claim.

Edwards also argues that the doctrine of equitable tolling should be applied because she was not replaced by Bonnie Hodges, a woman under the age of forty, until June of 1992. Therefore, until that time, Edwards contends that she lacked the information necessary to file her claim. Under the doctrine of equitable tolling, the plaintiff may avoid the bar of the statute of limitations if, despite all due diligence, she is unable to obtain vital information bearing on the existence of her claim.

Cada v. Baxter Healthcare Corp., 920 F.2d 446, 451 (7th Cir. 1990). In this case, however, we must reject Edwards's argument for the application of equitable tolling. Edwards does not dispute that in the summer of 1991, she was replaced by Christy Wren, a woman under the age of 40. Thus, when Edwards was removed from her position as reference librarian and assigned to work in the attic of the library, she knew that she was a member of the protected age class, she was aware that she had been terminated from a job that she considered herself qualified to perform, and she knew that her replacement was a woman in her thirties. See Blumberg v. HCA Management Co., 848 F.2d 642, 645 (5th Cir. 1988)(describing the prima facie case for an ADEA claim), cert. denied, 488 U.S. 1007 (1989). A plaintiff who is aware that she is being replaced in a position that she believes she is able to handle by a person outside the protected age group knows enough to support filing a claim. See Pruet Production Co. v. Ayles, 784 F.2d 1275, 1279 (5th Cir. 1986).

If a reasonable person in the plaintiff's position would not have known that she had been fired in possible violation of the age discrimination act, she could look to the doctrine of equitable tolling to suspend the running of the statute of limitations for such time as was reasonably necessary to conduct the necessary inquiry. Cada, 920 F.2d at 451. The "possible" qualification is important. If a plaintiff were entitled to have all the time she needed to be *certain* her rights had been violated, the statute of limitations would never run, for even

after judgment, there is no certainty. Id. In this case, Edwards has not presented sufficient evidence to establish a material fact to the extent that a reasonable jury could apply either equitable estoppel or equitable tolling to block the application of the 180-day time limitation to her case.²

IV. CONCLUSION

For the foregoing reasons, we AFFIRM the district court's granting of summary judgment for the appellees.

² Edwards states in her brief that the district court did not address the applicability of equitable estoppel in its Memorandum Ruling and Order granting the appellee's Motion for Summary Judgment. Since this argument was advanced by Edwards at the district court level, we assume that the district court implicitly rejected this argument. See Norman v. Apache Corp., 19 F.3d 1017, 1021 (5th Cir. 1994) ("The denial of a motion by the district court, although not formally expressed, may be implied by the entry of a final judgment or of an order inconsistent with the granting of the relief sought by the motion.").