

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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No. 94-41107

(Summary Calendar)

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MICHAEL FITZGERALD,

Plaintiff-Appellant,

versus

JESSE BROWN, Secretary, Department  
of Veterans Affairs,

Defendant-Appellee.

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Appeal from the United States District Court  
For the Western District of Louisiana  
(93-CV-2174)

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(June 1, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:\*

Michael Fitzgerald filed an employment discrimination complaint against the Department of Veterans Affairs under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e (1988). The Department dismissed the administrative complaint after Fitzgerald refused to accept an "offer of full relief," and the Equal Employment Opportunity Commission ("EEOC") upheld the dismissal on

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

appeal. Fitzgerald then filed suit in federal district court. Pursuant to Rules 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure, the district court dismissed Fitzgerald's complaint. Fitzgerald appeals the court's dismissal, and we reverse and remand.

I

In his administrative complaint, Fitzgerald claimed that a co-worker and others had made false accusations against him.<sup>1</sup> He claimed that because of the "hostile" environment of Shreveport, Louisiana, such accusations could be harmful.<sup>2</sup> Fitzgerald stated in his administrative complaint that the corrective action he was seeking was "a complete investigation" and that "appropriate action" be taken.

The Department of Veterans Affairs offered to settle the dispute by disciplining the co-worker and changing her work hours so that Fitzgerald would not have to work with her. The Department's Deputy Assistant Secretary for Equal Employment Opportunity deemed the proposed settlement a "certified offer of full relief." See 29 C.F.R. 1614.107(h) (1994) (providing that certified offer of full relief is relief appropriate under 29 C.F.R. § 1614.501); 29 C.F.R. § 1614.501 (listing appropriate

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<sup>1</sup> Fitzgerald stated: "I a black male have been accused by white female, and others of threatening them, and or of shooting up one woman's house, and chocking by putting my hands around another woman's throat. This I did not do, and investigation proved them to make false statements."

<sup>2</sup> Fitzgerald claimed that: "For a hostile area such as Shreveport Louisiana these are very serious accusations and could make for a very explosive situation."

relief for various types of employment discrimination). When Fitzgerald refused to accept the certified offer, the Department issued a final agency decision dismissing his administrative complaint under § 1614.107(h) (requiring dismissal of complaint if complainant refuses a certified offer of full relief). Fitzgerald appealed the dismissal to the EEOC, which upheld the Department's decision.

Fitzgerald filed suit in federal district court, alleging that his employer had failed to provide him with a workplace free from unlawful discrimination. He requested injunctive relief,<sup>3</sup> claimed that he had suffered "irreparable harm in the amount of \$1,000,000.00," and requested punitive damages in the amount of \$2,000,000. The Department of Veterans Affairs moved to dismiss Fitzgerald's complaint under Rules 12(b)(1), (b)(2), and (b)(6) of the Federal Rules of Civil Procedure. A magistrate judge recommended that the district court dismiss the complaint on the grounds that (1) the Department's offer constituted full relief because there were no compensatory damages available under Title VII at the time Fitzgerald's claim arose, and (2) having refused an offer of full relief in the administrative proceedings, Fitzgerald was foreclosed from bringing suit in federal court. The district court adopted the magistrate judge's findings and dismissed Fitzgerald's complaint.

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<sup>3</sup> In the section of his complaint entitled "Relief," Fitzgerald stated: "Wherefore, plaintiff prays that this court: permanently enjoins the defendant, their agents suc[cessors, employees, attorneys and those acting in concert with them and at their direction from continuing to discriminate against plaintiff on account of his race."

## II

We review the district court's dismissal under Rules 12(b)(1) and (b)(6) de novo. *Carney v. Resolution Trust Corp.*, 19 F.3d 950, 954 (5th Cir. 1994). "We take the allegations of the complaint to be true, and we will not affirm the district court's dismissal unless it appears beyond doubt that the plaintiff cannot prove any set of facts in support of his claim which would entitle him to relief." *Id.*

On appeal, Fitzgerald contends that the Department of Veteran Affairs' settlement offer did not make him "whole" because it did not compensate him for the "severe stress" that his co-worker's actions had caused him.<sup>4</sup> Liberally construing this argument,<sup>5</sup> we take Fitzgerald's claim to be that (1) the settlement offer did not constitute full relief for the purposes of § 1614.107(h) because it did not include an award of damages, and (2) the district court consequently erred in dismissing his complaint.

### A

We construe Fitzgerald's first argument on appeal to be that he was not offered full relief in the administrative proceedings because he was not offered the damages he requested in his district court complaint. The district court held that Fitzgerald's request did not state a claim upon which relief might be granted because

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<sup>4</sup> Fitzgerald's argument on appeal, in its entirety, is that: "The agency tendered offer certified full relief did not make Plaintiff-Appellant whole. Plaintiff-Appellant has been subjected to irreparable harm (severe stress)."

<sup>5</sup> We construe liberally the briefs of pro se appellants. *Price v. Digital Equipment Corp.*, 846 F.2d 1026, 1028 (5th Cir. 1988).

"[t]here [were] no compensatory damages available under Title VII, as it stood at the time of this claim." The court's statement regarding Title VII is incorrect. "The Civil Rights Act of 1991 creates a right to recover compensatory and punitive damages for certain violations of Title VII of the Civil Rights Act of 1964." *Landgraf v. USI Film Prods.*, \_\_\_ U.S. \_\_\_, \_\_\_, 114 S.Ct. 1483, 1488, 128 L. Ed. 2d 229 (1994). While compensatory and punitive damages are not available under Title VII for conduct occurring before the effective date of the Civil Rights Act of 1991, *id.* at \_\_\_, 114 S.Ct. at 1508, November 21, 1991, *id.* at \_\_\_, 114 S.Ct. at 1505, Fitzgerald filed his administrative complaint in June of 1992, complaining of conduct that occurred in 1992. We conclude therefore that the district court erred in dismissing Fitzgerald's complaint to the extent that the court relied on its assertion that compensatory damages were unavailable under Title VII at the time that Fitzgerald filed his claim.

B

Fitzgerald also attacks the district court's dismissal of his complaint for failure to exhaust administrative remedies. It is well-settled in this circuit that a Title VII claimant must exhaust administrative remedies before filing suit in federal court, and that the claimant's failure to do so will deprive the court of subject-matter jurisdiction over the claim. *See National Ass'n of Gov't Employees v. City Pub. Serv. Bd.*, 40 F.3d 698, 711 (5th Cir. 1994) ("It is well-settled that the courts have no jurisdiction to consider Title VII claims as to which the aggrieved party has not

exhausted administrative remedies."). In support of its dismissal of Fitzgerald's complaint on 12(b)(1) grounds, the district court cited the Second Circuit's decision in *Wrenn v. Secretary, Department of Veterans Affairs*, 918 F.2d 1073 (2d Cir. 1990), cert. denied, 499 U.S. 977, 111 S. Ct. 1625, 113 L. Ed. 2d 721 (1991).

In *Wrenn*, the court held that a Title VII claimant had not exhausted his administrative remedies before filing suit in federal court because (1) he had rejected a settlement offer certified by the EEOC as an offer of full relief, and (2) he had not participated in the administrative process in good faith. *Id.* at 1078-79. As to the first holding, the Eighth Circuit emphasized in *Frye v. Aspin*, 997 F.2d 426 (8th Cir. 1993), that the court in *Wrenn* did not hold that the claimant's rejection of a certified offer of full relief in and of itself constituted a failure to exhaust. *Id.* at 428. Instead, the court in *Wrenn* first determined that the certified offer was indeed an offer of full relief under the relevant provisions. *Id.*; *Wrenn*, 918 at 1076. Thus, Fitzgerald's rejection of the certified offer does not in and of itself represent a failure to exhaust administrative remedies.

However, the district court in the present case concluded that the certified settlement offer to Fitzgerald did constitute full relief under the relevant provisions and, thus, that Fitzgerald's rejection of that particular offer represented a failure to exhaust administrative remedies. We presume the court's reasoning to have been that if compensatory damages were not available under Title VII at the time Fitzgerald filed his administrative claim,

compensatory damages were not available to Fitzgerald during the administrative process. We decline to address at this time the question of whether the Civil Rights Act of 1991 made compensatory damages available to Title VII claimants during administrative proceedings. Instead, we reverse the district court's Rule 12(b)(1) dismissal because it was based on an incorrect assumption about the general availability of compensatory damages under Title VII.

### III

For the foregoing reasons, we REVERSE the district court's dismissal of Fitzgerald's complaint and REMAND for further consideration consistent with this opinion.