UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-41368
Summary Calendar

ORENW. PIPER,

Plaintiff-Appellant,

versus

U. S. POSTAL SERVICE and MARVIN T. RUNYON,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana

(93 CV 1431)

June 19, 1995

Before POLITZ, Chief Judge, GARWOOD and PARKER, Circuit Judges.

POLITZ, Chief Judge:[*]

Oren W. Piper challenges the district court's exclusion of evidence and its denial of two pretrial motions, in his civil rights suit against the United States Postal Service. Unable to review the evidentiary challenges because of Piper's failure to provide a trial transcript, and otherwise finding no error, 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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

Piper, a mail carrier, has been employed by the United States Postal Service since 1983. In 1990 he became a member of the Worldwide Church of God. Because church doctrine requires members to refrain from work on the Sabbath, running from sundown Friday until sundown Saturday, Piper sought an adjustment of his work schedule. The Postmaster refused the request. When Piper failed to report for work as scheduled on various Saturdays he was disciplined and, in July 1990, discharged.

Following a decision by the United States Merit Systems Protection Board in December 1990, Piper was reinstated. In January 1991 Piper filed a civil rights suit against the Postal Service, alleging discrimination in the Service's failure to accommodate his religious beliefs.[1] Thereafter, Piper was able to bid for and receive a carrier's position with Saturday and Sunday as fixed days off. In March 1992 the parties concluded a settlement agreement dismissing Piper's suit with prejudice.

Piper alleges that subsequent to the filing of the civil action he was repeatedly subjected to retaliatory disciplinary action and harassment. He filed an administrative complaint claiming reprisal, consenting to the Service's request for a 90-day extension to the 180-day time limit allocated for the resolution of the complaint.[2] At the expiration of the extension the Service's

[1]**Piper v. Frank,** No. CV91-0138-S (W.D. La.).

[2]29 C.F.R. § 1613.220 **Avoidance of delay** provides in pertinent part:

(a) The [EEO] complaint shall be resolved promptly. To this

EEO office had not completed its investigation.[3]

In August 1993, Piper filed the instant Title VII suit against the Postmaster General, charging four incidents of retaliation by the Postal Service for his previous civil rights action.[4] The case proceeded to trial. At the conclusion of Piper's case in chief, the district court granted defendant judgment as a matter of law, finding and concluding that Piper had not established a prima facie case. Piper timely appealed.

Analysis

We note at the outset that Piper has not provided a transcript of the trial court proceedings. As the defendants correctly point out, "The failure of an appellant to provide a transcript is a proper ground for dismissal of the appeal."[5] Piper contends that

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end, both the complainant and the agency shall proceed with the complaint without undue delay so that the complaint is resolved within 180 calendar days after it was filed.

[3]According to the Service's brief, Piper received a copy of the completed investigation one month after he filed the instant action in district court.

[4]The claim was brought pursuant to 42 U.S.C.A. § 2000e-16. The statute allows an individual to file a civil action if the agency has failed to take final action on an EEO complaint within 180 days of the filing of the initial charge. Id. at (c).

[5]**RecoverEdge L.P. v. Pentecost,** 44 F.3d 1284, 1289 (5th Cir. 1995)(citing **Richardson v. Henry,** 902 F.2d 414, 416 (5th Cir.) (dismissing appeal based on sufficiency of evidence because appellant failed to include a transcript), cert. denied, 498 U.S. 901 (1990) & 498 U.S. 1069 (1991)).

Fed. R. App. P. 10(b)(1) provides in pertinent part:

Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as the appellant deems necessary, subject to local rules of the courts of appeals.

the transcript was not necessary, asserting that because he is not challenging the district court's entry of judgment as a matter of law, we need not consider the sufficiency of the evidence. We disagree. Piper challenges evidentiary rulings. Reversal for an erroneous evidentiary ruling is only warranted where a party's substantial rights are affected.[6] Concluding that meaningful review of the court's exclusion of evidence is not possible without the trial transcript, we must dismiss the appeal to the extent that it challenges evidentiary rulings.[7]

Fed. R. App. P. 10(b)(2) provides:

> If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion.

[6]**Grizzle v. Travelers Health Network, Inc.,** 14 F.3d 261 (5th Cir. 1994). See also **F.D.I.C. v. Mijalis,** 15 F.3d 1314 (5th Cir. 1994)(explaining that party challenging evidentiary ruling must prove substantial prejudice); **Fed. R. Civ. P.** 61, **Harmless Error** (error in admission or exclusion of evidence not grounds for reversal unless error inconsistent with substantial justice and affected substantial rights of the parties); **Fed. R. Evid.** 103(a)(error not to be predicated on evidentiary ruling unless substantial right of party affected).

[7]**Boze v. Branstetter,** 912 F.2d 801 (5th Cir. 1990)(limiting scope of review to available record); Compare **RecoverEdge** (declining to dismiss appeal for incomplete record where court need not consider sufficiency of evidence).

Even assuming arguendo that the district court erroneously excluded evidence, without a complete transcript we cannot determine whether such error affected the parties' substantial rights. For example, Piper argues that he "was barred from bringing forth evidence that would have clearly established [his] prima fascia [sic] case." However, because the record excerpts provided by Piper do not even include the court's statement of why it granted judgment for the defendants, it is impossible to evaluate his contentions.

Piper next challenges the district court's denial of his Motion to Interview Witnesses. He asked that the court compel the Postal Service to provide him with the opportunity to interview co-employee witnesses while both he and the witnesses were "in duty status." "A district court's rulings on discovery motions are largely discretionary and will be reviewed only when they are arbitrary or clearly unreasonable."[8] Piper asserts that because the Postal Service took overly long in investigating his EEO complaint, he was effectively denied an administrative remedy. He suggests that the rules of the administrative process consequently should apply to the instant judicial proceeding, urging us to "award him some of the advantages of the administrative procedure." To this end, Piper notes that an individual pursuing administrative remedies for work-place discrimination is given the right to a reasonable amount of official time to prepare the complaint.[9]

Piper's invocation of administrative procedure has no applicability to this action, which arises from the district court's de novo consideration of his discrimination claim.[10] Because his request has no basis in law,[11] the district court

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[8]**Robinson v. State Farm Fire & Cas. Co.,** 13 F.3d 160, 164 (5th Cir. 1994).

[9]29 C.F.R. § 1613.214(b)(2).

[10]See **Prewitt v. United States Postal Service,** 662 F.2d 292, 303 (5th Cir. 1981)("Once administrative remedies have been exhausted . . . an individual is entitled to de novo consideration of his discrimination claims in the district court."); **Chandler v. Roudebush,** 425 U.S. 840 (1976).

[11]Piper in effect concedes that there is no legal basis to support his request, arguing that "if no precedent currently exists

correctly denied the motion. Further, because Piper has not established that he was harmed by the court's ruling--he has not, for example, demonstrated that he was prevented from interviewing witnesses -- we may find no fault in any hypothetical error.[12]

Finally, Piper maintains that the court erred in denying his Motion for Exemption of **Fed. R. Civ. P.** 45(c), requesting relief from the obligation to pay witness fees to Postal Service employees.[13] He again grounds this argument in the allowances of the administrative process[14] which are inapplicable; the district court's ruling was not in error.

The judgment of the district court is AFFIRMED.

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to approve such an order, this court should dare to establish one." We decline the invitation.

[12]**Fed. R. Civ. P.** 61. This reasoning also applies to Piper's final allegation.

[13]Rule 45(c), **Protection of Persons Subject to Subpoenas,** provides in pertinent part:

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

[14]Here Piper cites 29 C.F.R § 1613.218 (f), which provides that at the hearing before the Administrative Judge, the judge "shall request [the] agency . . . to make available as a witness at the hearing an employee requested by the complainant."