

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50111

Summary Calendar

GLENN D. TROTTIE,

Plaintiff-Appellant,

versus

SOUTHWESTERN BELL YELLOW PAGES, INC.
and LEROY ROSAS,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(SA-91-CV-29)

(August 31, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Defendant Southwestern Bell Yellow Pages (Yellow Pages) employed plaintiff Glenn Trottie from 1978 until 1990. Defendant Leroy Rosas was Trottie's manager. Trottie filed a complaint alleging employment discrimination with the EEOC on January 26, 1990. Yellow Pages placed him on probation on January 15, 1990 and fired him on July 2, 1990. Trottie was forty years old and is a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

white male. He brought this suit, alleging age discrimination under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., racial discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq., retaliation for filing a complaint with EEOC, and pendent state-law tort claims. (On appeal, plaintiff's brief does not mention the state-law claims and therefore abandons them). Defendants asserted that they fired Trottie for legitimate, nondiscriminatory reasons, and moved for summary judgment. The district court granted this motion, finding that Trottie had not shown a prima facie case of age or racial discrimination and had not raised a genuine issue of material fact that his firing was in retaliation for his EEOC complaint.

To establish a prima facie case of age discrimination, a plaintiff must show that 1) he was fired; 2) he was qualified for the job; 3) he was a member of the protected class at the time he was fired; and 4) (a) he was replaced by someone outside the protected class or someone younger or (b) otherwise show that he was fired because of his age. Crum v. American Airlines Inc., 946 F.2d 423, 428 (5th Cir. 1991). Likewise, to show a prima facie case of discrimination under Title VII, a plaintiff must show that 1) he was fired; 2) he was qualified for the job; 3) he was a member of a protected group; and 4) his position was filled by someone who is not a member of a protected group. Valdez v. San Antonio Chamber of Comm., 974 F.2d 592, 596 (5th Cir. 1992).

Trottie has not made out a prima facie case for either of his discrimination claims. He has not alleged that he was replaced by

someone who was younger or a member of a protected class. His appellate brief does make a lone reference to a conversation about firing older workers. The affidavit to which he cites, however, says only that Rosas "was going to get rid of three to five people that he didn't like and worry about the consequences later." It makes no reference to age. Because Trottie has not created a genuine issue of material fact regarding age or racial discrimination, we affirm the district court's grant of summary judgment on these two claims.

Trottie is correct, however, in arguing that the district court should not have granted summary judgment on his claim of retaliation. Trottie introduced a deposition of Jim Young, a retired Yellow Pages supervisor. Young testified that Rosas called a meeting of Yellow Pages supervisory personnel in either January or February 1990. He summarized the meeting:

Leroy Rosas had received some type of complaint or . . . grievance . . . from Glenn Trottie, and he was completely on the ceiling that day, absolutely beside himself. . . . And that day, Leroy was very, very upset, very upset. And he came into the conference room and he said, "This is war." He said "I want everybody to pull out a piece of paper and a pen and jot down everything that you can think of that Glenn Trottie has done to you negatively."

Young's testimony was enough to raise a genuine issue of material fact as to the causal link between Trottie's complaint and Yellow Pages' firing him. Thus, we VACATE and REMAND the district court's grant of summary judgment on the retaliation claim, and AFFIRM its grant of summary judgment on the other claims.