IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-50284
Summary Calendar

BRIAN G. PLATZ,

Plaintiff-Appellant,

versus

NORTHSIDE INDEPENDENT SCHOOL DISTRICT,

Defendant-Appellee.

Appeal from the United States District Court for the
Western District of Texas
(SA 93 CA 403)

(November 11, 1994)

Before Judges KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:*

Brian Platz has worked as a special education and business vocation teacher for NISD since August 1982. He injured his lower back in January 1986 while attempting to break up a fight between students. He filed a worker's compensation claim for his injuries and underwent multiple surgeries over several summers to repair the

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

damage. Thereafter, his doctor placed limits on his lifting. Platz contends that over the next several years NISD discriminated against him in the course of his employment because he filed a worker's compensation claim, in violation of TEX. REV. CIV. STAT. ANN. § 8307c, and that NISD failed to accommodate him and discriminated against him because of his back disability, in violation of the ADA, 42 U.S.C. § 12101 et seq.

Platz is still employed by NISD. Moreover, he has stated in a deposition that he has never lost any pay, bonuses, nor benefits as a result of these events.

For the reasons discussed below, we affirm the judgment of the district court dismissing his complaint.

I

Platz filed his complaint on May 24, 1993. The district court, thereafter, granted NISD's motion for summary judgment on all claims. First, the district court held that certain of Platz's claims, which are based on events more than two years prior to his filing date of May 24, 1993, were barred by the two-year statutes of limitations for the ADA and the Texas Labor Code. See 42 U.S.C. §§ 12117, 2000e-5; TEX. CIV. PRAC. & REM. CODE ANN. § 16.003 (West 1986). Second, the district court held that NISD was entitled to sovereign immunity under Texas law. Finally, the district court ruled that Platz failed to come forward with any evidence to controvert NISD's evidence that there was no ADA claim. Platz now appeals. We affirm.

II

Platz appeals on two points. First, he argues that the district court abused its discretion by granting the school district sovereign immunity as to his worker's compensation discrimination claim. Second, he argues that the defendant, NISD, failed to satisfy its burden of showing the existence of no genuine issue of material fact as to his ADA claim under Fed. R. Civ. P. 56. Platz does not appeal the district court's determination of the applicable statutes of limitations.

We review de novo a district court's grant of summary judgment. Duckett v. City of Cedar Park, 950 F.2d 272, 276 (5th Cir. 1992). Accordingly, under Rule 56 the party moving for summary judgment must "demonstrate the absence of a genuine issue of material fact," but need not negate the elements of the non-movant's case. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986); see Lujan v. National Wildlife Federation, 497 U.S. 871, 110 S.Ct. 3177, 3187, 111 L.Ed.2d 695 (1990). If the movant meets this initial burden, then the nonmovant must go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial. Celotex, 477 U.S. at 324. Mere "broad and conclusory assertion[s]" will not pass muster. Hopper v. Frank, 16 F.3d 92, 97 (5th Cir. 1994). In other words, the nonmovant, Platz, must "discharge [the] burden by . . . either submitting opposing evidentiary documents or by referring to evidentiary documents already in the record, [that]

set out specific facts showing a genuine issue exists." Lavespeare v. Niagra Mach. & Tool Works, Inc., 910 F.2d 167, 178 (5th Cir. 1990), cert. denied, ___ U.S. ___, 114 S.Ct. 171, 126 L.Ed.2d 131 (1993). Keeping these respective burdens in mind, we view this evidence and the inferences to be drawn from it in the light most favorable to the non-moving party. Unida v. Levi Strauss & Co., 986 F.2d 970, 975 (5th Cir. 1993).

A

We first consider Platz's argument that NISD was not entitled to the defense of sovereign immunity against his state claim of discrimination based upon the filing of a worker's compensation claim.[1] The district court found that under Texas law NISD could invoke the defense of sovereign immunity to this section 8307c claim. Although we agree with the district court's grant of summary judgment on this claim, we reach the same result on different grounds. See Hanchey v. Energas Co., 925 F.2d 96, 97 (5th Cir. 1990).

We choose to pretermit the sovereign immunity issue because there is currently a debate in the Texas intermediate courts concerning whether a state or political division employee may pursue a claim against the state or political subdivision founded

[1]Although the code section on which Platz bases his state claim, TEX. REV. CIV. STAT. ANN. art. 8307c, was repealed by the Texas legislature in Acts 1993, ch. 269, § 1, the relevant portion of the statute was reenacted essentially verbatim as TEX. LABOR CODE ANN. § 451.001 (West Supp. 1994).

on section 8307c.[2] Unlike the district court, we choose not to join this discussion with our decision in this case. Instead, we hold that even assuming that NISD is amenable to suit, summary judgment is proper because the plaintiff fails to come forward with any evidence concerning a key element of his claim of discrimination because of his filing for worker's compensation.

Section 8703c is now located in the Texas Labor Code. The relevant portion of the statute states that "[a] person may not discharge or in any other manner discriminate against an employee because the employee has filed a workers' compensation claim in good faith...." TEX. LABOR CODE ANN. § 451.001(1) (West Supp. 1994).

Summary judgment was proper because Platz has offered no evidence that the persons he accused of discrimination were aware that he had filed a worker's compensation claim. On the other hand, the persons he accused of discrimination have signed affidavits stating that they were not aware at the time of the

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[2]Compare Barfield v. City of LaPorte, 849 S.W.2d 842 (Tex. Ct. App. - Texarkana Div. 1993); City of La Porte v. Prince, 851 S.W.2d 876 (Tex. Ct. App. - Waco Div. 1993); with Classen v. Irving Healthcare Sys., 868 S.W.2d 815 (Tex. Ct. App. - Dallas Div. 1993). We have found previously that sovereign immunity extends to school districts under Texas law, with the exception of torts involving motor vehicles. Jones v. Houston Indep. Sch. Dist., 979 F.2d 1004, 1007 (5th Cir. 1992). Jones was rendered, however, before the Texas legislature passed laws extending certain aspects of the Texas wrongful discharge provisions to employees of political subdivisions. See TEXAS LABOR CODE ANN. §§ 451.001, 504.002 (West Supp. 1994). Barfield, Prince, and Classen interpret these recently amended statutes.

alleged incidents that he had filed a worker's compensation claim. In response, Platz simply alleges that there is a connection between these so-called acts of discrimination and his claim, but he presents no evidence to support this allegation. Platz even admitted in his deposition that he did not know whether the actors were aware of his worker's compensation claim or his injury at the time of the alleged acts of discrimination. If Platz has not submitted evidence that these accused persons knew of his worker's compensation claim, then there is simply no proof that the defendant discriminated against him on the basis of it. Therefore, because he has not raised a genuine issue of material fact as to this key element, summary judgment as to this claim was proper. See Unida v. Levi Strauss & Co., 986 F.2d 970, 978 (5th Cir. 1993).

B

We next examine Platz's claim of discrimination brought under the ADA, 42 U.S.C. § 12101 et seq.[3] We affirm the district court's judgment as to this claim. Having reviewed all the evidence in the record, we adopt the district court's opinion in this respect. Again, Platz simply offers no evidence that any of the persons accused of discrimination were aware of his back problems, nor does he present evidence of lack of accommodation. NISD presented

[3]From the language of the complaint, it seems that Platz is bringing claims based on § 12112 (a), (b)(1), and (b)(5). He never specifies, however, a particular section on which he bases his claim for relief. Nevertheless, we are able to address his claim because he alleges violations which require the defendant to have knowledge of the disability.

affidavits of persons accused of discrimination in which they swear either that they were not aware of his injuries, or that he never related his disability to his requests for "accommodations," such as requests for a permanent classroom, a change in his class schedule, elevator repair, etc. NISD also attached Platz's deposition in which he admitted that he never related these requests for "accommodations" to his back disability. In this same deposition Platz also admitted that he was allowed to leave work early on a regular basis for physical therapy, and that he has not lost any pay, sick leave or benefits because of his disability. By contrast, Platz simply presented a portion of his deposition in which he described his various surgeries and an affidavit rehashing the broad and conclusory assertions found in his complaint. Moreover, Platz never presented any evidence demonstrating a connection between the accused persons' actions and his back disability. Because Platz has failed to designate specific facts showing a genuine issue of material fact for trial, we AFFIRM the district court's ruling on this claim.

III

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

A F F I R M E D.