

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50386
Summary Calendar

RICHARD F. ROEBEN,

Plaintiff-Appellant,

versus

LA QUINTA MOTOR INNS, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
(SA 93 CV 453)

March 16, 1995

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

EDITH H. JONES, Circuit Judge:*

Richard Roeben appeals the grant of summary judgment in favor of La Quinta Motor Inns, Inc. in this age discrimination case. Finding no error in the district court's judgment, we affirm.

BACKGROUND

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Roeben sued La Quinta alleging that he was terminated in violation of the Age Discrimination in Employment Act of 1967 (ADEA). 29 U.S.C. §§ 621-634. La Quinta moved for summary judgment providing evidence supporting its claim that Roeben was discharged for legitimate nondiscriminatory reasons. Roeben failed to file an opposition to the motion.

The magistrate judge recommended that the district court grant summary judgment in favor of La Quinta. Roeben failed to file objections to the magistrate's recommendation, opting instead to file a motion to extend the statutory ten day response period an additional thirty days. The district court denied the motion for extension of time, accepted the magistrate's recommendation, and granted La Quinta's motion for summary judgment.

On appeal, Roeben alleges that the district court abused its discretion in refusing to extend the statutory ten day period to object to the magistrate's recommendation. Roeben also contends that La Quinta's unopposed motion for summary judgment failed to affirmatively demonstrate the absence of any genuine issue of material fact.

DISCUSSION

Any objections to a Magistrate's Memorandum and Recommendation must be filed and served in written form within ten days after the party wishing to object has been served with a copy of the Memorandum and Recommendation. 28 U.S.C. § 636(b)(1). The district court has discretion, for cause shown, to extend the time for filing and serving the objections. Fed. R. Civ. P. 6(b). The

district court's denial of a motion to extend time is reviewed for abuse of discretion. See, e.g., Wesolek v. Canadair, Ltd., 838 F.2d 55, 58 (2d Cir. 1988).

Rather than objecting to the magistrate's recommendation to grant La Quinta's motion for summary judgment, Roeben instead chose to file a three page motion to extend the statutory objection period an additional thirty days. The proffered ground for the request to quadruple the normal period was "counsel for Plaintiff was preoccupied in completing discovery and preparing for trial [in another case] . . . during the entire month of April . . ., counsel for Plaintiff inadvertently failed to respond to Defendant's Motion for Summary Judgment." Counsel for Roeben further asserted that he had identified "several points of contention" with the motion for summary judgment and the magistrate's recommendation, but was too busy to timely file an opposition. Given the proffered excuse for plaintiff's failure to file any response, the district court was well within its discretion in denying Roeben's motion for extension of time.¹

Where there is no objection to the Memorandum and Recommendation, the district court is not required to conduct a de novo review of the recommendation. 28 U.S.C. § 636(b)(1). In this case, the plaintiff was afforded more process than was due because

¹ This is especially true in light of the fact that La Quinta's initial motion for summary judgment was dismissed for violating the page limit. La Quinta reformatted and refiled its motion twenty-one days later. Therefore, in addition to the statutory time to oppose the motion for summary judgment, Roeben had an additional notice and twenty-one more days to formulate some sort of response.

the district court did conduct a de novo review of the entire record, even though the court recognized that it was not required to do so. After the de novo review, the district court concluded that the Memorandum and Recommendation was a correct statement of the facts and law in all regards. Accordingly, the motion for summary judgment was granted.

When a party fails to object to a Memorandum and Recommendation, we review the district court's acceptance of the magistrate's recommendation only for plain error or manifest injustice. See Nettles v. Wainwright, 677 F.2d 404, 410 (5th Cir. Unit B 1982); Carter v. Collins, 918 F.2d 1198, 1203 (5th Cir. 1990). "Plain error is error which, examined in the context of the entire case, is so obvious and substantial that failure to notice and correct it would affect the fairness, integrity, or public reputation of judicial proceedings." Calcasieu Marine Nat'l Bank v. Grant, 943 F.2d 1453, 1460 (5th Cir. 1991).

It is undisputed that La Quinta was reorganizing its corporate structure such that certain functions were being consolidated with others and that between five and ten other project managers were terminated at the same time Roeben was terminated. Roeben's subjective belief that he was discriminated against and the fact that the employee who was retained for the consolidated position was five years his junior do not amount to plain error or suggest that a manifest injustice has occurred.

Therefore, the judgment of the district court is **AFFIRMED.**