UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60009
Summary Calendar

ANNETTA STROTHER,

Plaintiff-Appellant,

VERSUS

COLUMBIA-BRAZORIA INDEPENDENT SCHOOL DISTRICT, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-G-92-316)

(July 25, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Annetta Strother appeals an adverse summary judgment in her § 1983 action. We **AFFIRM**.

I.

In October 1990, Strother was terminated as cafeteria manager for Brazoria Elementary School. The letter formally so notifying her, signed by Assistant Superintendent Phillip Mitchell, stated that the termination was based on allegations that Strother had stolen food and because of other management problems. Strother

---

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

filed this 42 U.S.C. § 1983 action against the Columbia-Brazoria Independent School District (CBISD); Mitchell (individually and in his capacity as Assistant Superintendent of CBISD); Barbara Searcy (individually and in her capacity as Director of Food Services for CBISD); and Phu Master, one of Strother's co-workers.[2] Strother alleged that she was terminated in violation of due process; specifically, that her property and liberty interests were violated, because she was terminated without just cause and based on fabricated accusations.[3]

In December 1993, the district court granted summary judgment, and dismissed Strother's property and liberty interest claims with prejudice. It concluded that Strother was an at-will employee, and therefore had no protected property interest in her job as cafeteria manager, and could be terminated at any time. It concluded also that she was afforded several opportunities, including a name-clearing hearing, to "present her side of the story" both before and after she was discharged; and that these opportunities fulfilled CBISD's obligation with regard to Strother's liberty interest in her position.

---

[2] Searcy investigated the theft and other allegations against Strother, and participated in the decision to terminate her; Master complained to Searcy that Strother had taken food from the cafeteria and had criticized Master unjustly. We refer to all the defendants collectively as "CBISD".

[3] Strother also claimed that she was terminated in retaliation for having engaged in protected activities; and that "Defendants never acquired jurisdiction to consider any termination of [her] employment". The district court granted partial summary judgment on these claims in April 1993; and Strother does not present them on appeal.

II.

Strother challenges the adverse summary on her property and liberty interest claims. We review a summary judgment *de novo*, viewing the record and inferences drawn from it in the light most favorable to the non-movant. ***Topalian v. Ehrman***, 954 F.2d 1125, 1131 (5th Cir.), *cert. denied*, ___ U.S. ___, 113 S. Ct. 82 (1992). It is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." ***Celotex Corp. v. Catrett***, 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56(c). If the movant meets its initial burden of showing that there is no genuine issue of material fact, the burden shifts to the non-movant to produce evidence or designate specific facts showing the existence of a genuine issue for trial. ***Celotex***, 477 U.S. at 322-24; Fed. R. Civ. P. 56.

A.

CBISD presented ample evidence to show that, as a matter of law, Strother had no protected property interest in her position. In 1990, the year she was discharged, Strother had no written contract, and thus was an at-will employee. Further, CBISD regulations provided that "auxiliary" employees (such as cafeteria workers) were to be at-will employees. Moreover, CBISD presented evidence that no agent of CBISD, other than the superintendent, was authorized to modify the terms of an employee's contract; and that any purported modifications of Strother's contract made by her

previous supervisor (her sister-in-law) were made without authority.[4]

Relying, *inter alia*, on this evidence and on cases from Texas state courts and this circuit, the district court concluded correctly that, as a matter of law, Strother had no protected property interest in her position. *See* ***Christian v. McKaskle***, 649 F. Supp. 1475, 1476, 1478-79 (S.D. Tex. 1986) (when employee asserts that government employer deprived him of property interest in continued employment, employee must first show legitimate claim of entitlement to position, based on state law; employment may be at-will even if employee is afforded certain procedural rights, such as hearing); ***Sabine Pilot Serv., Inc. v. Hauck***, 687 S.W.2d 733, 734 (Tex. 1985) (employment for indefinite term or without written or oral contract specifying period of employment is employment at-will, which generally may be terminated without cause and at any time); ***Staheli v. University of Mississippi***, 854 F.2d 121, 125 (5th Cir. 1988) (informal or customary understanding

[4] Strother's assertion that she had a property interest in her position appears to have been founded primarily on representations made to her by Eleanor Stuckey, her sister-in-law, and previously her supervisor. Stuckey had sent Strother a "Letter of Reasonable Assurance", essentially a notification that if she accepted employment with CBISD for the following year, she would be ineligible to claim unemployment benefits. In moving for summary judgment, defendants asserted that the letter was executed to comply with Tex. Rev. Civ. Stat. Art. 5221b-1(f)(1) (Unemployment Compensation Act), not as a written contract of employment. The district court concluded that the letter did not constitute a contract between Strother and CBISD.

cannot create property interest in a position in face of formal rules to the contrary).[5]

B.

Furthermore, the district court correctly granted summary judgment against the liberty interest claim. Strother asserts that the court recognized "merit in her ... claim," but improperly dismissed it in favor of judicial economy. Her characterization of the court's conclusion regarding her liberty interest claim is, at best, misleading: the court, rather than finding the claim meritorious, concluded that the remedy for any violation of Strother's liberty interest was a name-clearing hearing, which she had received. *E.g.*, ***Wells v. Hico Indep. Sch. Dist.***, 736 F.2d 243, 256 & n.18 (5th Cir. 1984), *cert. dism'd*, 473 U.S. 901 (1985) (to establish a liberty interest, plaintiff must show that his governmental employer has brought false and stigmatizing charges against him, which damage his ability to find other employment; remedy for deprivation of liberty interest is name-clearing hearing, either before or after publication of stigmatizing charges) (internal citations and quotation omitted).[6]

---

[5] Strother also contends that the court erred in applying Mississippi law in its discussion of whether a property interest existed. This contention is meritless. Courts are directed to look to state law in determining whether a property interest exists, ***Board of Regents of State Colleges v. Roth***, 408 U.S. 564, 577 (1972), ***Christian***, 649 F. Supp. at 1476. The court relied properly on Texas law (although it also cited federal cases from this circuit in its discussion of how such a property interest is created).

[6] As shown *supra*, Strother's contention that the district court "ignored" her due process claims, to include procedural due process, is meritless.

III.

For the foregoing reasons, the judgment is

AFFIRMED.