

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60353  
Summary Calendar

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WILLIE B. DILLARD, a/k/a "Bud",

Plaintiff-Appellant,

versus

NORTHEAST MISSISSIPPI COCA  
COLA BOTTLING CO.,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
(1:92-CV-69-S-D)

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(December 5, 1994)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:<sup>1</sup>

Willie B. Dillard appeals from the adverse judgment as a matter of law on his age discrimination claims against Northeast Mississippi Coca Cola Bottling Co. We **AFFIRM**.

I.

In October 1990, Northeast hired Dillard, who was then 61 years of age, as night supervisor of the loading crew. In December 1991, Dillard was discharged. After exhausting administrative

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<sup>1</sup> Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

remedies, he filed suit against Northeast, alleging that it discriminated against him because of his age both when it discharged him and when it refused, approximately three months before his discharge, to transfer him to a position in another department. At the conclusion of all of the evidence at trial, the district court granted Northeast's motion for judgment as a matter of law.

## II.

Dillard contends that the district court erred in granting Northeast's motion for judgment as a matter of law because there was evidence from which a reasonable jury could have found that Northeast discriminated against him because of his age. "In reviewing a district court's disposition of a motion for judgment [as a matter of law], we apply the same test as did the district court, without any deference to its decision". ***Little v. Republic Refining Co.***, 924 F.2d 93, 95 (5th Cir. 1991). In doing so, we look to our well-known standard:

[T]he Court should consider all of the evidence--not just that evidence which supports the non-mover's case--but in the light and with all reasonable inferences most favorable to the party opposed to the motion. If the facts and inferences point so strongly and overwhelmingly in favor of one party that the Court believes that reasonable men could not arrive at a contrary verdict, granting of the motion[] is proper. On the other hand, if there is substantial evidence opposed to the motion[], that is, evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions, the motion[] should be denied .... There must be a conflict in substantial evidence to create a jury question. However, it is the function of the jury as the traditional finder of the facts, and not the Court,

to weigh conflicting evidence and inferences, and determine the credibility of witnesses.

**Boeing Co. v. Shipman**, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc).

"In an age discrimination case, the plaintiff bears the burden of persuading the trier of fact that the defendant intentionally discriminated". **Molnar v. Ebasco Constructors, Inc.**, 986 F.2d 115, 118 (5th Cir. 1993). "[W]hen a case has been tried on the merits, a reviewing appellate court need not address the sufficiency of plaintiff's prima facie case, and may instead proceed directly to the ultimate question whether plaintiff has produced sufficient evidence for a jury to find that discrimination has occurred". **Walther v. Lone Star Gas Co.**, 952 F.2d 119, 122-23 (5th Cir. 1992).

A.

With respect to Dillard's termination claim, the evidence established that Dillard was 62 years old when he was discharged, and that he was replaced by a 19-year-old. Northeast produced evidence of a legitimate, non-discriminatory reason for discharging Dillard, including a termination of employment form which stated the reasons for Dillard's termination, including that he was "unable to successfully manage his employees" and that he had not handled properly a confrontation with one of them. Northeast's plant manager, Fondren, testified that Dillard could not control the younger people working under him. Dillard's immediate supervisor, Knox, testified similarly that Dillard had trouble managing the younger employees assigned to him. Fondren testified that he discharged Dillard because the employees who worked under

Dillard's supervision were not satisfied and were leaving.

Dillard conceded that he had trouble supervising some of the younger employees, but testified that he never told anyone in management about the problems he was having, or asked for assistance in dealing with them. He attributed his supervisory difficulties to the younger employees' resentment of him because he was an older person; however, he admitted that the younger employees never told him that the problems they were having with him had anything to do with his age. He testified that "[i]t was just a feeling that [I] had". Moreover, Dillard's brother, a Northeast employee, testified that he had warned Dillard that he was going to lose his job if he did not stop being so hard on the employees he supervised.

Dillard described the altercation with a 23-year-old employee, Jeffrey Bland, which occurred a few days before his termination. According to Dillard, he fired Bland for both cursing him and refusing to do his fair share of the work; and he called the police because Bland refused to leave the plant. Northeast later rehired Bland. Dillard testified that Northeast discriminated against him because of his age when it discharged him and rehired Bland. Dillard gave the following testimony in response to questioning by the court:

Q. ... [D]o you believe you were terminated because of your age or because you were having trouble with the young workers? Which was it?

A. Well, according to Mr. Fondren, the reason he terminated me, he told me I called the police. And also he said that I was having a problem with the younger people, and he didn't think I handled the

Jeff Bland situation right.

Q. Well, my question is, why do you think your age had anything to do with your termination?

A. Well, sir, he fired me and hired the young boy back who done all the cursing, Your Honor. ... [H]e hired him back and put him back to work and he did not offer me a job, anything.

In light of the undisputed evidence of Dillard's difficulty in supervising his employees, Dillard's subjective belief that age was the motivating factor in Northeast's decision to terminate him and rehire Bland falls far short of proving that Northeast's stated reason for Dillard's termination -- inability to effectively supervise his employees -- was discriminatory. See ***Elliott v. Group Medical & Surgical Serv.***, 714 F.2d 556, 564 (5th Cir. 1983) ("generalized testimony by an employee regarding his subjective belief that his discharge was the result of age discrimination is insufficient to make an issue for the jury in the face of proof showing an adequate, nondiscriminatory reason for his discharge"), *cert. denied*, 467 U.S. 1215 (1984); see also ***Little***, 924 F.2d at 96 ("An age discrimination plaintiff's own good faith belief that his age motivated his employer's action is of little value").

B.

With respect to Dillard's claim that Northeast discriminated against him by refusing to offer him a position in another department, Dillard produced evidence that, on three occasions, he spoke with Spencer,<sup>2</sup> the manager of Northeast's cooling department,

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<sup>2</sup> Spencer was 65 years of age at the time of trial in April 1994.

and requested a transfer to a position in that department; that, in a conversation unrelated to Dillard's interest in a transfer, Spencer asked Dillard his age and commented that they were about the same age; and that, a few days later, a 20-year-old was hired for the position. Northeast produced evidence of a legitimate, non-discriminatory reason for not offering Dillard the position: Dillard did not apply for it through the proper channels, by requesting a transfer from Fondren.

It was undisputed that Spencer never submitted an application to Fondren for a transfer to the cooling department. On cross-examination, Dillard admitted that he did not ask either Spencer or Fondren about the procedures for transfer from one department to another, and that he did not tell his immediate supervisor, Knox, that he was interested in transferring to another department. In response to questioning by the court, Dillard testified that he thought Spencer had the authority to hire employees because he and Spencer were at the same level in the plant, and he hired his own employees without consulting with Fondren. The court questioned Dillard as to why he thought his age was a motivating factor in Northeast's decision not to transfer him to a job in the cooling department, and Dillard responded, as follows:

Q. ... [W]hy do you think your age was a factor in your not getting hired in the Cooling Department?

A. Well, ... the fact of the matter is that they went and hired a younger person. They never had no older people back there, and obviously that's all they wanted back there. That's why I say that my age was a factor, that they never had an older person back there doing the job that I wanted.

Q. Is that just your feeling, or do you have anything to back that up with?

A. Since I was there. I speak while I was there, about 14 months, they had never put an older person back there. And it was manual labor, and obviously they thought I couldn't do the manual labor part.

Q. Well, do you think they thought you couldn't do the manual labor because of your age? Is that what you're saying?

A. That's what I believe, yes, sir.

Based on this evidence, a reasonable jury could not find that Northeast's failure to offer Dillard the job in the cooling department was discriminatory. Spencer's inquiry about Dillard's age, in a conversation totally unrelated to Dillard's interest in transferring to a position in Spencer's department, will not support an inference of discriminatory intent. See **Moore v. Eli Lilly & Co.**, 990 F.2d 812, 818 & n.27 (5th Cir.) (new supervisor's inquiries concerning ages of current employees and whether any current employees planned to retire soon are not evidence of discriminatory intent), *cert. denied*, \_\_\_ U.S. \_\_\_, 114 S. Ct. 467 (1993). And, the fact that a 20-year-old was hired for the position is insufficient to prove discrimination. See **Little**, 924 F.2d at 98 ("Little's reliance upon the fact that his replacement was 39-years-old provides an insufficient basis to support the jury's verdict"). Dillard admitted that he had no knowledge of Northeast's procedures regarding transfers from one department to another. Fondren and Spencer both testified that employees had to request transfers from Fondren. Dillard's assumption that Spencer had the authority to hire him, but did not do so because of his

age, is insufficient to support a jury finding of discrimination. See *Grizzle v. Travelers Health Network, Inc.*, 14 F.3d 261, 268 (5th Cir. 1994) (employee's "self-serving generalized testimony stating her subjective belief that discrimination occurred ... is simply insufficient to support a jury verdict in plaintiff's favor").

III.

For the foregoing reasons, the judgment is

**AFFIRMED.**