

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 96-10524  
Summary Calendar

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JOSEPH L. CHRISTOFARO,

Plaintiff-Appellant,

VERSUS

HEARTLAND HEALTH CARE CENTER OF BEDFORD, ET AL,

Defendants,

HEARTLAND HEALTH CARE CENTER OF BEDFORD,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas

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(4:94-CV-864-Y)

September 25, 1996

Before SMITH, DUHÉ and BARKSDALE Circuit Judges.

PER CURIAM:<sup>1</sup>

Appellant Christofaro brought an employment discrimination suit against his former employer Heartland Health Care Center which moved for summary judgment with appropriate supporting evidence. Appellant did not reply. Following the delays mandated by the rules the district court considered the motion and the entire

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<sup>1</sup>Pursuant to Local Rule 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

record, found no issue of material fact pending and granted Appellee's motion. Appellant then moved to vacate the judgment, to reopen the case and to consider evidence in opposition to the motion submitted for the first time with the motion to reconsider. Appellant offered no explanation for his failure to respond timely to the motion for summary judgment. The district court declined to reopen the case and consider the newly submitted evidence. Christofaro appeals. We affirm.

We have reviewed the record and the briefs and find no abuse of discretion by the district court. It properly considered the four factors of Lavespere v. Niagara Mach. & Tool Works, Inc., 910 F.2d 167 (5th Cir. 1960) which all parties agree is the law applicable to the motion to vacate and reconsider. Appellant gave the district court no reason for failure to file the additional evidence timely, and indeed admits in his brief that it was readily available. Relying upon Waltman v. International Paper Co., 875 F.2d 468 (5th Cir. 1989) we held in Lavespere, supra, that when a party does not offer any explanation to the district court for failing to timely file material in opposition to a motion for summary judgment "the district court may, without committing an abuse of discretion, refuse to admit and consider belatedly filed evidentiary materials." Lavespere at 175.

AFFIRMED.