IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
May 23, 2019

Lyle W. Cayce
Clerk

No. 18-30508

KATHRAN RANDOLPH,

Plaintiff - Appellant

v.

EAST BATON ROUGE PARISH SCHOOL SYSTEM; DAVID TATMAN, in his individual capacity and his official capacity as President of the East Baton Rouge Parish System; WARREN DRAKE, in his official capacity as Superintendent of the East Baton Rouge Parish School System; DOMOINE RUTLEDGE, in his individual capacity and his official capacity as attorney and legal counsel for the East Baton Rouge Parish School System; MILLIE WILLIAMS, in her individual capacity and her official capacity as an employee of the East Baton Rouge Parish School System; SHARMAYNE RUTLEDGE, in her individual capacity and in her official capacity as an employee of the East Baton Rouge Parish School System,

Defendants - Appellees

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:15-CV-654

Before JONES, HO, and OLDHAM, Circuit Judges.

PER CURIAM:*

The court has carefully considered this appeal in light of the briefs, oral argument, and pertinent portions of the record. Having done so, we generally agree with the district court's resolution of the case but find one error, which is that the district court never formally ruled on the merits of appellant's claim arising from the Consolidated Omnibus Reconciliation Act ("COBRA"). Accordingly, the judgment is AFFIRMED in part, REVERSED in part, and REMANDED for the court to consider the COBRA claim in the first instance.

The Plaintiff Kathran Randolph was a long-tenured teacher employed by the Defendant East Baton Rouge Parish School System. In 2009, the School Board appointed her Assistant Principal of Belaire High School. Randolph received a contract for that position which expired by its terms on June 30, 2011. In 2010, the School Board reassigned her to the position of Assistant Principal at Twin Oaks Elementary School. In 2013, the Defendant Superintendent Dr. Bernard Taylor appointed her "Interim Principal" of Twin Oaks. Dr. Taylor did not provide a written contract for Randolph when she assumed the temporary principal position.

A year later, a parent complained about Randolph's conduct toward a Twin Oaks student. Eventually, Dr. Taylor terminated Randolph from her interim principal position. Randolph was reassigned to be a teacher at another school, but she never reported to work. Instead, she submitted a "Notice of Resignation Due to Retirement."

Later, Randolph went to a doctor's appointment and learned that her health insurance had been cancelled. After calling the school board to discuss

* Pursuant to 5TH CIR. R. 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 5TH CIR. R. 47.5.4.

the issue, she received a cancellation notice from Blue Cross Blue Shield. She stated that before her call "I hadn't received a COBRA notice or anything."

Randolph alleges under 42 U.S.C. § 1983 that all of the Defendants deprived her of a property interest in her employment without due process and created a hostile work environment and constructively discharged her. She also alleges that the school district violated COBRA by failing to timely give notice that it had terminated her health insurance. Finally, she alleges several torts under Louisiana law.

Randolph voluntarily dismissed Dr. Taylor without prejudice. Although she later named him as a Defendant in an amended complaint, he was never served, and the district court confirmed that he was no longer a Defendant.

The Defendants moved for summary judgment on all claims. The district court granted their motions. Randolph now appeals.

"We review an appeal from an order granting summary judgment *de novo*." *Johnson v. Diversicare Afton Oaks, LLC*, 597 F.3d 673, 675 (5th Cir. 2010). Summary judgment is appropriate if there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Id.*

We first conclude that the Defendants are not liable under § 1983 for violating Randolph's due process rights. This claim fails for several reasons. First, Louisiana law afforded Randolph no "property" interest in her job as interim principal at Twin Oaks, although she retained her state-created property interest in being a public school tenured teacher. *See* La. R.S. § 17:444(B)(1) ("Whenever a teacher who has acquired tenure . . . in a local public school system . . . is promoted by the superintendent by moving such teacher from a position of lower salary to one of higher salary, such teacher shall not be eligible to earn tenure in the position to which he is promoted, but shall retain any tenure acquired as a teacher."); *Rousselle v. Plaquemines Parish School Bd.*, 633 So. 2d 1235, 1242-43 (La. 1994) (explaining that the

Louisiana Teacher Tenure Law "deprived a teacher promoted to a position of higher salary, i.e. principal or superintendent . . . of the opportunity of acquiring permanent status in the promotion"). Second, to the extent that Randolph quarrels with Dr. Taylor's failure to provide a written contract for the Twin Oaks promotion, such an act may violate Louisiana law, but it does not violate the due process clause. "There is not a violation of due process every time a university or government entity violates its own rules. Such action may constitute a breach of contract or a violation of state law, but unless the conduct trespasses on federal constitutional safeguards, there is no constitutional deprivation." *Levitt v. University of Texas at El Paso*, 759 F.2d 1224, 1230 (5th Cir. 1985).

Even assuming that Randolph had a property right, she has not shown under *Monell* that she was removed as the interim principal pursuant to any official policy or custom of the school board, so the school district cannot be liable. *See Rivera v. Houston Independent School District*, 349 F.3d 244, 247 (5th Cir. 2003) (citing *Monell v. Dept of Social Services*, 436 U.S. 658, 694, 98 S. Ct. 2018, 2037 (1978)). Actions relating to her removal are attributable to Dr. Taylor, not the school board, and Section 1983 does not recognize respondeat superior liability. *See Ashcroft v. Iqbal*, 556 U.S. 662, 676, 129 S. Ct. 1937, 1948 (2009); *Monell*, 436 U.S. at 691, 98 S. Ct. at 2036. Randolph posits that the school board had a "policy" of hiring administrators on an interim basis to avoid providing them with a contract. But the depositions of two former school board presidents show that any such policy would not have been attributable to the school board. In any event, such a policy was not the "moving force" behind Randolph's removal from the interim principal position. *See Rivera*, 349 F.3d at 247 (quotation marks omitted). For example, Dr. Taylor's termination letter explains that "[f]rom the date you were placed on leave, your behavior has been increasingly obstructive,

combative, and uncooperative. Despite numerous phone calls, and written communications, you have flatly refused to cooperate." Accordingly, *Monell* bars liability against the school district.[1]

Randolph's additional claim that her alleged "demotion" from the interim principal position to an ordinary teaching assignment violated due process is also meritless. Lacking a constitutionally recognized property interest in the higher position, Randolph cannot claim a "deprivation" when she lost that position. Even if this were not so, the record disproves any denial of constitutional due process minima. Randolph received ample notice of the opportunity to defend herself, but she did not avail herself of the school district's proffered procedures. For example, when the school district placed her on leave pending the investigation, Randolph signed an administrative leave form stating that she was "to remain accessible to the Office of Human Resources during my regular working hours." But despite this instruction, it was difficult for school employees to contact her while on leave, as she would only communicate with them via letter. Further, when the school district required her to attend a meeting concerning the final results of the investigation, she did not show up. Any "violations" of procedures were at most irregularities of state law and not of constitutional dimension. *Levitt*, 759 F.2d at 1230-31.

[1] As the district court intimated, a Louisiana school superintendent is not a policymaker for *Monell* purposes. *See Weathers v. School Bd. of Lafayette Parish*, 281 F. App'x 428, 429 (5th Cir. 2008) (holding that a Louisiana principal was not a policymaker "in the matter of hiring and firing of teachers because only the School Board was authorized by state law to make such decisions."); La. R.S. § 17:81(A)(1) ("Each local public school board shall serve in a policymaking capacity that is in the best interests of all students enrolled in schools under the board's jurisdiction," and explaining that the School Board hires superintendents). Louisiana law appears to be consistent with that of Texas, under which a school board, not a superintendent, "retains the ultimate policymaking authority for hiring and promotion." *Barrow v. Greenville Independent School District*, 480 F.3d 377, 379 (5th Cir. 2007).

In addition, Randolph has not shown that any of the individual Defendants are liable under § 1983. Dr. Taylor is no longer a party to this case, and the record shows that he—not the other Defendants—was the one responsible for Randolph's termination. *See Ashcroft*, 556 U.S. at 676, 129 S. Ct. at 1948 ("Because vicarious liability is inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution.").

Next, Randolph has not properly stated a claim for hostile work environment or constructive discharge cognizable under federal law because she never alleges that she is a member of a protected class and that she was harassed based on membership in such a class. *See Hernandez v. Yellow Transp., Inc.*, 670 F.3d 644, 651 (5th Cir. 2012); *Green v. Brennan*, 136 S. Ct. 1769, 1777 (2016). If Randolph is asserting that she was constructively discharged because the district's mistreatment of her following her removal as principal caused her to resign, this claim lacks legal foundation. The district court's analysis of these assertions is correct.

Finally, Louisiana's immunity statute bars Randolph's tort claims against the individual defendants. *See* La. R.S. § 17:439(A).

However, because the district court inadvertently failed to address the merits of Randolph's COBRA claim, we must remand for a formal ruling. It appears that the district court believed that it had previously ruled on the COBRA claim when it had not. The school district moved for summary judgment on all of Randolph's claims including the COBRA claim. Then Randolph cross-moved for summary judgment on the COBRA claim. In a text entry order, the court granted a motion to strike Randolph's cross-motion as untimely but stated that "[t]he pleadings filed by Plaintiff . . . may remain in the record however will be treated solely as an opposition to the Motion for Summ[a]ry Judgment."

When the district court issued its opinion ruling on the appellees' motion for summary judgment, it addressed the COBRA claim only in two footnotes. The first stated that "Plaintiff's *Opposition* to the School Board's motion also includes a cross-motion for summary judgment on her claim under [COBRA]. Not only is Plaintiff's pleading in violation of the Local Rules of Court which prohibit filing a motion and an opposition in the same pleading, but Plaintiff's summary judgment motion on her COBRA claim was untimely and therefore stricken by the Court." In a later footnote, the court simply stated, "Plaintiff's COBRA claims have previously been dismissed." Even if the court meant to rule for the school district because of Randolph's untimely and procedurally improper filings, it did not say so. We are left with a record showing only that the district court struck an improperly-filed summary judgment motion but elected to treat it as a brief in opposition. Because the circumstances surrounding the COBRA claim are not fleshed out at this point, we remand for the district court to consider it in the first instance. *See Hager v. DBG Partners, Inc.*, 903 F.3d 460 (5th Cir. 2018).

Based on the foregoing, the judgment of the district court is **AFFIRMED** in part, **REVERSED** in part only for reconsideration of the COBRA claim, and **REMANDED** for further proceedings in accord herewith.