United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
August 20, 2021
Lyle W. Cayce
Clerk

No. 20-10158

SONYA R. EDWARDS,

Plaintiff—Appellant,

versus

MESQUITE INDEPENDENT SCHOOL DISTRICT,

Defendants—Appellees,

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:18-CV-2620

Before DENNIS and ENGELHARDT, *Circuit Judges*, and HICKS*, *Chief District Judge*.

S. MAURICE HICKS, JR., *Chief District Judge*:

* Chief District Judge of the Western District of Louisiana, sitting by designation.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

Plaintiff Sonya R. Edwards appeals the district court's dismissal of her discrimination and retaliation claims under Fed. Rule Civ. Proc. 12(b)(6). After careful review of the arguments and relevant portions of the record, we AFFIRM.

I.

Edwards was hired by the Mesquite Independent School District ("MISD") in 2006 as a substitute teacher and was assigned exclusively to Mesquite High School beginning in 2014. Beginning in February 2017, Edwards claims the high school secretary started making racist remarks to her, spreading false stories about her, and continuously harassing her. At one point, another school administrator was made aware of the situation and told Edwards "to keep doing what she is doing," there was "no need to investigate," and that "everything was ok." On May 19, 2017, Edwards was terminated from her substitute teaching position and was transferred to Agnew Middle School within the MISD.

Edwards subsequently submitted to the EEOC a Form 238 Intake Questionnaire on or about May 22, 2017, and a Form 5 Charge of Discrimination on May 29, 2018, alleging that she experienced discrimination based on her race and retaliation for reporting the alleged mistreatment. She then filed multiple complaints against MISD in the district court asserting similar claims. MISD filed a motion to dismiss Edwards's first amended complaint because she failed to exhaust her administrative remedies.

Prior to filing a claim in the district court for employment discrimination under Title VII, a plaintiff must exhaust all administrative remedies by filing a timely charge of discrimination with the EEOC, or other state administrative agency, and receiving a statutory right-to-sue notice. *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 109, 122 S.Ct. 2061, 2070

(2002). In Texas, a plaintiff has up to 300 days after the alleged discriminatory employment practice to file a charge with the EEOC. *Id.* at 110.

The district court granted MISD's motion to dismiss Edwards's first amended complaint because her Form 5 Charge was untimely and she did not provide "any argument or legal authority supporting the notion that the [c]ourt should consider the date of her Intake Questionnaire, rather than her EEOC charge, for the purpose of the 300-day requirement." Additionally, the district court found she failed to "state a claim for Title VII discrimination or retaliation." MISD filed another motion to dismiss Edwards's second amended complaint on the same grounds, to which Edwards never responded.

In reviewing MISD's second motion, the district court noted that Edwards's second amended complaint contained "few differences" from the first and was, in fact, identical. The district court dismissed her second amended complaint with prejudice finding that she was "given the chance to amend her complaint to demonstrate that she filed a timely charge of discrimination and has failed to make any new allegations that do so." Edwards timely appealed.

II.

We review motions to dismiss *de novo* on the pleadings. *Jebaco, Inc. v. Harrah's Operating Co., Inc.*, 587 F.3d 314, 318 (5th Cir. 2009). A pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). The complaint must allege more than "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009) (citation omitted). "[F]actual allegations must be enough to raise a right to relief above the speculative level . . . on the assumption that

all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56, 127 S. Ct. 1955, 1965 (2007). Central to the analysis is whether, when "[v]iewing the facts as pled in the light most favorable to the nonmovant, …a complaint provides 'enough facts to state a claim to relief that is plausible on its face.'" *Jebaco*, 587 F.3d at 318 (quoting *Twombly*, 550 U.S. at 570, 127 S.Ct. at 1974).

Further, we may affirm on any grounds raised in the district court below and supported by the record, even if not relied upon by the district court. *Raj v. Louisiana State Univ.*, 714 F.3d 322, 330 (5th Cir. 2013). In this case, we affirm because Edwards has waived all arguments regarding the sufficiency of her Intake Questionnaire.

Generally, we will not consider an issue that a party failed to raise in the district court. *Black v. North Panola School Dist.*, 461 F.3d 584, 593 (5th Cir. 2006). This is particularly the case when a party fails to present an argument in response to a motion. *Lavigne v. Cajun Deep Found., LLC*, 654 Fed. Appx. 640, 644 (5th Cir. 2016). MISD argues, and we agree, that Edwards had multiple opportunities to argue that the district court should consider the date of her Intake Questionnaire rather than her Charge filing when determining whether she exhausted her administrative remedies. Indeed, the district court noted in its memorandum order dismissing the second amended complaint that Edwards was given a chance to amend her complaint to provide argument and authority in support of the notion that the district court should consider the date of her Intake Questionnaire, but she failed to do so. And, as MISD points out, Edwards missed yet another opportunity to present the argument when she failed to respond to MISD's second motion to dismiss.

Now, for the first time, Edwards asserts that her Intake Questionnaire is a charge under *Federal Express Corporation v. Holowecki*, 552 U.S. 389, 128

S.Ct. 1147 (2008), and that a charge may be later verified under *Edelman v. Lynchburg College*, 535 U.S. 106, 115, 122 S.Ct. 1145, 1150 (2002). We may not consider Edwards's arguments absent a showing of extraordinary circumstances, meaning proof that the issue involves a question of law and failure to address it would result in a miscarriage of justice. *Black*, 461 F.3d at 593. Edwards does not meet this burden.

Holowecki requires a fact-intensive inquiry to determine whether an Intake Questionnaire meets EEOC regulatory requirements for a charge and expresses an intent to be considered as a charge. 552 U.S. at 396-98, 128 S.Ct. at 1154-56. *Edelman*, similarly, requires examination of whether the initially filed document ultimately contains an oath verifying the legitimacy of the charge before the employer is required to respond. 535 U.S. at 116, 122 S.Ct. at 1151. Neither argument presents a pure question of law. *Lavigne*, 654 Fed. Appx. at 644. Likewise, Edwards cannot demonstrate the likelihood of a miscarriage of justice from our failure to consider her arguments. As previously recounted, Edwards was given the opportunity to present her arguments in any of her three complaints or in a response to MISD's second motion to dismiss, but she failed to do so. We find her claims raised for the first time on appeal have been waived and we decline to consider them here.

III.

For the foregoing reasons, we AFFIRM the district court's order.

JAMES L. DENNIS, *Circuit Judge*, dissenting:

I respectfully dissent from the majority's conclusion. Sonya R. Edwards adequately pleaded that she exhausted all required administrative remedies prior to filing this suit in federal court and thus the district court erred in granting Mesquite Independent School District's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Contrary to the majority's holding, Edwards's failure to raise before the district court the specific legal arguments she makes on appeal as to *how* she exhausted her administrative remedies has not waived her argument that she did, in fact, exhaust them.

As Edwards points out in her brief to this court, she stated in her first amended complaint that "[o]n or about May 22, 2017, [Edwards] filed a charge of employment discrimination and/or Intake Questionnaire against Defendant with the Dallas District Office of the Equal Employment Opportunity Commission ("EEOC") within 300 days of the last discriminatory act." In her second amended complaint, Edwards pleaded that she "timely completed her Charge of Discrimination and EEOC Intake Questionnaire and mailed to the EEOC Dallas office on May 22, 2017 (within 300 days after the discriminatory employment practices complained of in Plaintiff's First Amended Complaint)," and that "[t]he EEOC responded and confirmed receipt of [her] correspondence on August 14, 2017." Thus, she argues, her "EEOC charge was instituted and timely filed [and] she has exhausted her administrative remedies with respect to her claims in this lawsuit."

Edwards clearly pleaded that she exhausted her administrative remedies. This is sufficient to survive Rule 12(b)(6) review. Contrarily, the

majority holds that Edwards has waived her argument by failing to make the specific legal arguments to the district court that she now raises on appeal; namely that her Intake Questionnaire may be construed as a charge of discrimination under *Federal Express Corporation v. Holowecki*, 552 U.S. 389, 403–04 (2008), and that a such a charge may be later verified under *Edelman v. Lynchburg College*, 535 U.S. 106, 115 (2002). But these are legal arguments speaking specifically to the manner in which Edwards has exhausted her administrative remedies: these are not factual claims, and do not bear on whether Edwards adequately pleaded the fact that she exhausted her administrative remedies. Even if we do not consider these new legal arguments, on *de novo* review Edwards adequately pleaded administrative exhaustion in her amended complaints. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007). For these reasons, I would reverse the district court's dismissal of this case and remand for further proceedings.