

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 8, 2026

Thomas B. Plunkett, III
Clerk

No. 26-10182

IVANA SANDERS,

Plaintiff—Appellant,

versus

CHRISTIAN RICHARDSON, *District Manager*; JUSTYN HERSMA, *Store Manager (Former)*; FEDEX OFFICE & PRINT SERVICES,
INCORPORATED,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:24-CV-333

Before ELROD, *Chief Judge*, RICHMAN and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

Plaintiff-Appellant Ivana Sanders appeals the district court's grant of Defendants-Appellees motion for summary judgment on her claims of retaliation under Title VII, 42 U.S.C. § 1981, and § 21.055 of the Texas Commission on Human Rights Act. Sanders argues that there was a genuine dispute of material fact with respect to whether she was denied a promotion

* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

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for engaging in protected activity. Because the district court correctly held that there was no dispute of material fact with respect to whether Sanders engaged in a protected activity, we AFFIRM.

Ivana Sanders, a Black woman, claims that she experienced an eleven-month “pattern of repeated . . . harassment and retaliation.” In her view, this pervasive harassment was “directed disproportionately at Black employees.” Sanders reported this harassment to store management five times between March 2022 and December 2022 and a sixth time to FedEx corporate human resources (HR). Sanders claims that, because of these complaints, she was passed over for promotion to Lead Consultant and that her eventual promotion to Lead Consultant was conditioned upon agreeing to cease reporting the alleged harassment to HR.

Sanders sued the defendants in federal district court. At the summary judgment stage, only Sanders’s claims of retaliation under Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-3(a)), 42 U.S.C. § 1981, and § 21.055 of the Texas Commission on Human Rights Act (“TCHRA”) remained. Both Sanders and the defendants filed cross-motions for summary judgment. The district court granted the defendants’ motion for summary judgment, reasoning that there was no dispute of material fact with respect to whether Sanders engaged in protected activity. Sanders appealed to this court.

On appeal, Sanders raises three issues. She claims the district court: (1) incorrectly concluded that she did not engage in a “protected activity” under Title VII, 42 U.S.C. § 1981, or the TCHRA; (2) abused its discretion by not considering certain evidence of retaliation; and (3) improperly applied the summary judgment standard in denying Sanders motion for summary judgment and granting the defendants’ motion for summary judgment. We review a grant of summary judgment *de novo* and we apply the same standard

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as the district court. *Wantou v. Wal-Mart Stores Tex., L.L.C.*, 23 F.4th 422, 430 (5th Cir. 2022).

First, we address whether there was a genuine dispute of material fact with respect to whether Sanders engaged in a protected activity. Because the substantive law underlying Title VII, 42 U.S.C. § 1981, and TCHRA retaliation claims is the same, the meaning of “protected activity” under each is also the same. *See Gorman v. Verizon Wireless Tex., L.L.C.*, 753 F.3d 165, 170 (5th Cir. 2014) (“The substantive law governing Title VII and TCHRA retaliation claims is identical.”); *Jones v. Gulf Coast Rest. Grp.*, 8 F.4th 363, 368 n.6 (5th Cir. 2021) (observing that when a plaintiff sues under both Title VII and 42 U.S.C. § 1981 as “parallel causes of action,” both claims “require the same proof to establish liability.”).

To establish a retaliation claim, a plaintiff must show that “she engaged in a protected activity.” *Brown v. Wal-Mart Stores East, L.P.*, 969 F.3d 571, 577 (5th Cir. 2020). A protected activity, as relevant here, is the reporting of status-based discrimination by an employer. *See Univ. of Texas Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 356 (2013) (citing 42 U.S.C. § 2000e-2(a)(1), 3(a)). The claim of discrimination need not be ultimately successful, but a plaintiff must show that she reasonably believed that she was reporting discriminatory conduct. *See E.E.O.C. v. Rite Way Serv., Inc.*, 819 F.3d 235, 237 (5th Cir. 2016).

Here, prior to her promotion, Sanders filed two complaints regarding one of her co-workers. These complaints alleged that a co-worker exhibited “hostile, toxic, rude, aggressive, passive aggressive, smug, snide, bullying behavior” that was “HABITUAL, NEVER-ENDING, CONSTANT, UNPROFESSIONAL, AND ABOVE ALL COMPLETELY UNACCEPTABLE ESPECIALLY IN A WORKPLACE.” ROA.680 (emphasis in original). However, these

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complaints do not allege any conduct that could reasonably be described as discriminatory. While Sanders did submit an additional four complaints to FedEx store management and HR, those complaints occurred after Sanders was promoted and therefore cannot be causally linked to the alleged retaliatory act here, which was the withholding of a promotion.

Sanders is correct that “magic words” are not required to establish a Title VII claim. However, Sanders still must establish that the behavior she reported “involve[d] . . . being treated unfairly due to race or sex.” *Arora v. Starwood Hotels & Resorts Worldwide, Inc.*, 294 F. App’x 159, 162 (5th Cir. 2008). The district court was correct in concluding that neither of two complaints relevant to Sanders’s claim were protected activity.

Second, we address whether Sanders provided evidence of retaliation. On appeal, Sanders argues that the district court erred by not accounting for multiple pieces of evidence of retaliation. But most of the evidence cited by Sanders on appeal is irrelevant because it occurred after the alleged retaliatory actions. The only potentially relevant piece of evidence is the conversation between Sanders and FedEx District Manager Justyn Hersma (Hersma) on August 1, 2022. During this meeting, Hersma stated, “[I]n order for me to approve you for any promotions, the HR stuff, that has to stop.”

But the retaliation must involve discrimination. While Hersma was in a position with decision making authority, his statement that “the HR stuff . . . has to stop” was not discriminatory. *See Jones v. Robinson Prop. Group, L.P.*, 427 F.3d 987, 993 (5th Cir. 2005). As discussed above, the “HR stuff” is Sanders’s complaints of her co-worker’s actions that did not involve discriminatory conduct. The district court correctly concluded that “if a defendant employer admits to using unprotected activity as a basis for the

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adverse employment action, then for purposes of constituting direct evidence of retaliation, the employer has effectively admitted nothing at all.”

Third, and finally, we address the summary judgment standard. Summary judgment is proper when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Courts do not “assume that the nonmoving party could or would prove the necessary facts” “in the absence of any proof.” *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). The district court resolved competing motions for summary judgment by Sanders and the defendants concurrently. In doing so, it explained, as we have above, that Sanders failed to show any facts which support that she engaged in a protected activity. Sanders was only able to assert mere allegations at best; thus, summary judgment was proper. *See Eason v. Thaler*, 73 F.3d 1322, 1325 (5th Cir. 1996).

For the foregoing reasons, the district court’s grant of summary judgment is AFFIRMED.