

United States Court of Appeals
for the Fifth Circuit

No. 26-30012

United States Court of Appeals
Fifth Circuit

FILED

October 21, 2026

Thomas B. Plunkett, III
Clerk

VARRICK DYER,

Plaintiff—Appellant,

versus

NEW ORLEANS CITY; ROMAN NELSON, *in his official capacity as
Superintendent of New Orleans Fire Department,*

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:24-CV-1702

Before SMITH, HAYNES, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Captain Varrick Dyer, describing himself as a dark-skinned African American male, asserted several claims based on workplace discrimination against the City of New Orleans and Roman Nelson in his official capacity as superintendent of the New Orleans Fire Department (collectively, “the City”). Dyer brought these claims under Title VII of the Civil Rights Act of

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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1964, Louisiana state law, and 42 U.S.C. §§ 1981, 1983, and 1985, noting that he is an African American man. The magistrate judge dismissed most of Dyer's claims for failure to state a claim, dismissed his remaining claims at the summary judgment stage, and then denied Dyer leave to amend. We affirm the district court's summary judgment order, vacate the district court's dismissal of Dyer's hostile work environment claim, reverse the district court's dismissal of Dyer's retaliation claim, and remand for further proceedings.

I. Background

The Equal Employment Opportunity Commission issued Dyer a notice of right to sue in April 2024. Subsequently, Dyer filed suit against the City in the Eastern District of Louisiana. The parties consented to proceeding before the magistrate judge. *See* 28 U.S.C. § 636(c). Shortly after filing suit, Dyer filed an amended complaint, which serves as the operative complaint here.

Dyer's complaint asserts claims under: Title VII, for hostile work environment, retaliation, and disparate treatment; the Louisiana Employment Discrimination Act, LA. REV. STAT. ANN. § 23:332, et seq., for retaliation and discrimination based on race and gender; LA. REV. STAT. ANN. § 51:2256, for conspiracy to violate human rights; 42 U.S.C. § 1985(3), for conspiracy to interfere with civil rights; 42 U.S.C. § 1981; and 42 U.S.C. § 1983, for deprivation of a vested property right.

The City moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). The magistrate judge determined that Dyer had plausibly pleaded a race-based disparate treatment claim under Title VII, Louisiana law, and § 1981, but granted the motion to dismiss as to Dyer's remaining claims. Specifically, the magistrate judge pointed to two instances to support Dyer's race-based disparate treatment claims: Dyer's being

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charged with a more severe rule violation than his white counterpart involved in the same incident and Dyer's being denied a promotion in favor of a white coworker.

The City later moved for summary judgment on Dyer's remaining race-based disparate treatment claims. As the parties were exchanging briefs on the City's motion for summary judgment, Dyer moved for leave to file a second amended complaint. The magistrate judge, however, denied Dyer's motion, reasoning that Dyer's proposed amendments would be futile. A month later, the magistrate judge partially granted the City's motion for summary judgment and dismissed Dyer's disparate treatment claim as to the discipline-related incident but allowed the promotion-related disparate treatment claim to proceed. Considering the City's second motion for summary judgment, however, the magistrate judge granted it and dismissed Dyer's remaining disparate treatment claim. Dyer promptly appealed.

II. Jurisdiction & Standard of Review

The district court had federal question and supplemental jurisdiction over this case. 28 U.S.C. §§ 1331, 1343, 1367. We have jurisdiction to consider this appeal under 28 U.S.C. § 1291.

We review grants of a motion to dismiss or for summary judgment de novo. *United States ex rel. Babalola v. Sharma*, 746 F.3d 157, 160 (5th Cir. 2014) (discussing motions for summary judgment); *Martone v. Robb*, 902 F.3d 519, 523 (5th Cir. 2018) (discussing motions to dismiss). We also “apply a de novo standard of review” when reviewing the “denial of leave to amend . . . based solely on futility.” *City of Clinton v. Pilgrim's Pride Corp.*, 632 F.3d 148, 152 (5th Cir. 2010).

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III. Discussion

Dyer argues on appeal that the magistrate judge erred by: (1) dismissing his Title VII hostile work environment and retaliation claims as well as his § 1985 and state law conspiracy claims; (2) granting summary judgment on his Title VII disparate treatment claim; and (3) denying his motion for leave to amend. We address each motion in turn.

A. Motion to Dismiss

Dyer contends that the magistrate judge erred when dismissing four of his claims at the pleading stage. We agree with Dyer in part. The magistrate judge erred, but only with respect to Dyer's hostile work environment and retaliation claims.

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation modified).

We discuss below Dyer's (1) hostile work environment claim; (2) retaliation claim; (3) § 1985 conspiracy claim; and (4) state law conspiracy claim.

1. Title VII Hostile Work Environment

To establish a Title VII hostile work environment claim, a plaintiff must demonstrate that he:

(1) belongs to a protected group; (2) was subjected to unwelcome harassment; (3) the harassment complained of was based on race; (4) the harassment complained of affected a term, condition, or privilege of employment; (5) the employer

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knew or should have known of the harassment in question and failed to take prompt remedial action.

Hernandez v. Yellow Transp., Inc., 670 F.3d 644, 651 (5th Cir. 2012) (citation omitted). “Harassment affects a term, condition, or privilege of employment if it is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” *Id.* (citation modified). In evaluating workplace conduct, it “is not measured in isolation.” *Id.* (citation omitted). Rather, “to deem a work environment sufficiently hostile, all of the circumstances must be taken into consideration.” *Id.* (citation modified). In making such a determination, courts must consider “the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” *Id.* (citation omitted).

Dyer’s alleged incidents of a hostile work environment were impermissibly evaluated individually. Dyer asserted seven incidents to support his hostile work environment claim. The magistrate judge, however, did not consider these incidents as a whole but instead looked at them individually, reasoning that “[t]he instances of harassment alleged by Dyer are hardly severe or pervasive.” Because the magistrate judge did not consider the City’s conduct as a whole, we remand for further consideration as appropriate.¹

2. Title VII Retaliation

¹ Previously, the magistrate judge noted that Dyer’s complaint “fail[ed] to make any plausible connection between the[] incidents of harassment and Dyer’s race or color.” After Dyer sought to amend the complaint, the magistrate judge determined, based on the allegations of the proposed second amended complaint, such an amendment would be futile. On remand, Dyer must amend his complaint to adequately connect his claims to race.

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Dyer also argues that the magistrate judge erred in dismissing his Title VII retaliation claim. For Dyer to establish a retaliation claim under Title VII, he must show that he (1) engaged in protected activity, (2) he suffered an adverse employment action, and (3) there was a causal link between the protected activity and the adverse employment action. *Wright v. Union Pac. R.R. Co.*, 990 F.3d 428, 433 (5th Cir. 2021). To survive at the pleading stage, Dyer “only needed plausibly to allege facts going to the ultimate elements of the claim.” *Id.* (citation modified). Dyer plausibly pleaded each element.

The City does not dispute that Dyer engaged in a protected activity when he filed the EEOC charge in 2023. Therefore, the first element does not warrant further discussion.

As to the second element, an adverse employment action is a “materially adverse” action. *Burlington N. & Santa Fe R.R. Co. v. White*, 548 U.S. 53, 68 (2006). An action is materially adverse if it would “dissuade[] a reasonable worker from making or supporting a charge of discrimination.” *Id.* (citation omitted). Here, forty-two days after Dyer filed his Charge of Discrimination with the EEOC, the Fire Department charged Dyer with a rule violation, claiming Dyer lent, sold, or gave away Department property, and suspended Dyer for 36 hours. Suspension, even for a short period of time, is an adverse employment action. *See LeMaire v. La. Dep’t of Transp. & Dev.*, 480 F.3d 383, 390 (5th Cir. 2007) (“LeMaire’s suspension is an adverse employment action, as a two-day suspension without pay might have dissuaded a reasonable employee from making a charge of discrimination.”). Dyer’s suspension, as short as it was, constitutes an adverse employment action.

Third, “[i]f an adverse employment action occurs within close temporal proximity to protected activity known to the employer, a plaintiff will have met h[is] burden to establish a prima facie case of retaliation.”

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Badgerow v. REJ Props., Inc., 974 F.3d 610, 619 (5th Cir. 2020). The temporal proximity—forty-two days—between Dyer’s EEOC charge and the Department’s decision to charge him for a rule violation is close enough to establish a causal connection. *See Brown v. Wal-Mart Stores E., L.P.*, 969 F.3d 571, 578 (5th Cir. 2020) (“Because the approximately six-to-seven-week gap between Brown’s protected activity and her termination is shorter than gaps that we have previously found sufficient to show a causal connection, Brown has met her prima facie burden based on timing alone.”), *as revised* (Aug. 14, 2020). The fact that the City’s Civil Service Commission eventually reversed the suspension does not alter our conclusion. *See Burlington*, 548 U.S. at 73 (“[A]n indefinite suspension without pay could well act as a deterrent, even if the suspended employee eventually received backpay.”).

Based on the above, the magistrate judge erred in dismissing Dyer’s retaliation claim.

3. 42 U.S.C. § 1985 Conspiracy

Dyer challenges the magistrate judge’s conclusion that Dyer’s complaint failed to “plausibly establish a conspiracy.” To state a claim under § 1985(3), we have explained that:

a plaintiff must allege: (1) a conspiracy involving two or more persons; (2) for the purpose of depriving, directly or indirectly, a person or class of persons of the equal protection of the laws; and (3) an act in furtherance of the conspiracy; (4) which causes injury to a person or property, or a deprivation of any right or privilege of a citizen of the United States.

Hillard v. Ferguson, 30 F.3d 649, 652–53 (5th Cir. 1994). Dyer has not plausibly pleaded a conspiracy.

To support his conspiracy claim, Dyer alleges that firefighters “conferred when drafting special reports” about a confrontation involving

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Dyer and Captain Martin and that his coworkers spread rumors about him. Specifically, Dyer alleged that “[s]everal firefighters conferred when drafting special reports about the incident, some of whom were never instructed to write a special report but took it upon themselves to insert their opinion via special report,” and he has been “plagued with false rumors that he has a history of violence.” These rumors included Dyer’s son, while in training for the Department, being told that Dyer had “a history of workplace violence,” and that his platoon would “give [him] hell” for being Dyer’s son.

Dyer’s allegations are insufficient to plausibly plead a § 1985 conspiracy. Here, even if Dyer’s claims are taken as true and viewed in the light most favorable to him, they do not allow us to “draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Martone*, 902 F.3d at 523 (citation omitted). Conspiracy under § 1985 “requires some form of class-based discrimination” and there must be some “kind of agreement” between the accused parties. *Cantú v. Moody*, 933 F.3d 414, 419–20 (5th Cir. 2019). Dyer, in his complaint, does not point to any agreement between the parties. The fact that Dyer’s coworkers spread rumors about him or conferred in drafting special reports about an incident do not lend themselves to the reasonable inference that members of the Department conspired to discriminate against Dyer and deprive him of a right or privilege.

Therefore, the magistrate judge did not err in dismissing Dyer’s § 1985 claim for failure to state a claim.

4. State Law Conspiracy

Dyer filed a state law conspiracy claim in the district court where the magistrate judge concluded he failed to state a plausible claim for relief under LA. REV. STAT. ANN. § 51:2256. We conclude that he has failed to adequately brief, and therefore forfeited, the appeal of his state law conspiracy claim. “A party forfeits an argument . . . by failing to adequately

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brief the argument on appeal.” *Rollins v. Home Depot USA, Inc.*, 8 F.4th 393, 397 (5th Cir. 2021). If a party presents “a laundry list of grievances,” but does not “explain them and often does not cite the record or relevant law,” then the “matters are waived for inadequate briefing.” *United States v. Stalnaker*, 571 F.3d 428, 439–40 (5th Cir. 2009). Dyer briefed his state law conspiracy claim in a single paragraph. That paragraph does not contain a single citation to case law, nor does it explain the applicable legal standards. Because Dyer has failed to adequately explain or cite relevant authority, his state law conspiracy claim is forfeited.

B. Motion for Summary Judgment

We now turn to Dyer’s contention that the magistrate judge erred by granting the City’s second motion for summary judgment and dismissing his race-based disparate treatment claim. We conclude that this was not error.

Title VII bars covered employers from discriminating against an employee based on his race. 42 U.S.C. § 2000e-2(a)(1). When a party lacks direct evidence of discrimination, we apply the *McDonnell Douglas*² burden-shifting framework. *Watkins v. Tregre*, 997 F.3d 275, 281 (5th Cir. 2021). Under that framework, Dyer “must first make a prima facie case of race discrimination, and then the burden of production shifts to [the City] to proffer a legitimate, nondiscriminatory reason for [its] action.” *Id.* If the City satisfies this burden, “the presumption of discrimination disappears, and [Dyer] must then produce substantial evidence indicating that the proffered legitimate, nondiscriminatory reason is a pretext for discrimination.” *Id.* at 282. (citation modified).

² *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

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Dyer's race-based disparate treatment claim rests on Captain Danny Simon's promotion over Dyer to the newly created special operations coordinator position. After the Chief of Special Operations position was vacated, the City appointed Simon, a white male, to the special operations coordinator position. The City did not post a job opening for this position and did not interview anyone else. Instead, Nelson appointed Simon to the position on the recommendation of the division's commanding officer, Chief Armand Bourdais. Nelson did not consider Dyer for the special operations coordinator position. When asked, Nelson clarified that Simon's promotion was based on the preference for "someone that ha[d] experience in all aspects of special operations." Simon, at the time of his appointment, had served as the Urban Search and Rescue task force leader and had significant experience managing the aftermath of the collapse of the under-construction Hard Rock Hotel. Dyer, in contrast, did not have experience on the Urban Search and Rescue team and instead worked as a HazMat captain. Additionally, Simon had been recommended to Nelson by Chief Armand Bourdais. Finally, Nelson did not think that Dyer, as one of the highest overtime earners at the Department, would be interested in a five-day-a-week position for which overtime pay was not available.

Our analysis focuses on *McDonnell Douglas*'s final step. That is, the magistrate judge properly concluded that Dyer presented a prima facie case of disparate treatment, and the City offered several nondiscriminatory reasons for promoting Simon and not considering Dyer (i.e., Chief Bourdais's recommendation, Simon's applicable experience, and Dyer's being one of the Department's highest overtime earners).³ Dyer must now

³ Dyer asserts that these reasons are contradictory, not to be believed, and that the magistrate judge made an improper credibility determination in granting summary judgment. The City, however, needed only to "articulate a nondiscriminatory reason with sufficient clarity to afford [Dyer] a realistic opportunity to show that the reason is

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proffer “substantial evidence” that the City’s explanations were “pretext for race discrimination.” *Id.* at 283. Dyer’s evidence must be considered substantial if “it is of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions.” *Id.* (citation omitted). Dyer “may establish pretext either through evidence of disparate treatment or by showing that [the City’s] proffered explanation is false or unworthy of credence.” *Id.* (citation modified).

Dyer’s arguments and supporting evidence fail “to permit an inference of discrimination.” *Owens v. Circassia Pharms., Inc.*, 33 F.4th 814, 831 (5th Cir. 2022) (emphasis omitted). Important here is the fact that Nelson never considered anyone else, including other white people, *but* Simon for the special operations coordinator position. Chief Bourdais brought Simon to Nelson’s attention with his recommendation and Simon had relevant experience. It is not that Nelson considered Dyer and passed over him, but that Nelson did not consider Dyer at all, or anyone else. This implies that Nelson did not have a discriminatory intent to exclude Dyer. Therefore, Dyer has failed to present support for the inference that the City’s reasons were pretext for discrimination.

Accordingly, the magistrate judge did not err in granting summary judgment on Dyer’s disparate treatment claim.

pretextual.” *Watkins*, 997 F.3d at 282 (citation omitted). The magistrate judge, based on Nelson’s testimony, correctly determined that the City satisfied its burden of production.

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C. Motion for Leave to Amend

Given our assessment of the district court's ruling on Dyer's hostile work environment claim and amendment directive to Dyer, we forgo further consideration of Dyer's prior request to amend.

IV. Conclusion

Accordingly, we AFFIRM in part, VACATE in part, REVERSE in part, and REMAND for further proceedings. Subject to what we have directed, we express no view on what actions the magistrate judge should take on remand or on the ultimate merits of the remaining issues.