Bennett v. Schmidt

United States District Court for the Northern District of Illinois, Eastern Division
July 13, 2000, Decided ; July 14, 2000, Docketed
96 C 6914

Reporter: 2000 U.S. Dist. LEXIS 11908; 78 Empl. Prac. Dec. (CCH) P40,158

VALERIE BENNETT, Plaintiff, vs. MARIE SCHMIDT, DICK ABEL, CORALEE BRUHL, SUSAN ARGENTINE, BILL SCHMIDT, and MARY THIELE, in their official and individual capacities as members of the Board of Education, School District 15, DuPage County, Defendants.

Disposition: [*1] Defendants' motion for summary judgment granted.

Counsel: For VALERIE BENNETT, plaintiff: Douglas M Grimes, Attorney, Gary, IN.

For VALERIE BENNETT, plaintiff: Philip Wilbur Bennett, Washington, DC.

For MARIE SCHMIDT, DICK ABLE, CARALEE BRUHL, SUSAN ARGENTINE, BILL SCHMIDT, MARY THIELE, defendants: John F. Canna, Thomas J. Canna, Dawn Marie Hambly, Joseph P. Selbka, Canna and Canna Limited, Orland Park, IL.

Judges: Charles P. Kocoras, United States District Judge.

Opinion by: Charles P. Kocoras

Opinion

MEMORANDUM OPINION

CHARLES P. KOCORAS, District Judge:

This matter comes before the Court on Defendants' motion for summary judgment. For the reasons set forth below, the Court grants Defendants' motion.

BACKGROUND

Plaintiff Valerie Bennett ("Bennett") in her second amended complaint alleges both disparate treatment and disparate impact racial discrimination against Defendants Marie Schmidt, Dick Abel, Coralee Bruhl, Susan Argentine, Bill Schmidt, and Mary Thiele (collectively, the "Defendants") in their official and individual capacities as members of the Board of Education of School District 15. Plaintiff alleges that Defendants discriminated against her on the basis [*2] of her race by failing to hire her as a teacher in School District 15.

Bennett is an African-American woman who submitted an application for employment as a teacher in School District 15 ("District 15") around April 1995. Nowhere on the application did Bennett indicate her race. At the time she had a Type 03 teaching certificate. Prior to the 1995-96 school year, District 15 sought applicants for seven certificated positions for the coming school year. Bennett did not have the requisite teaching certificates for any of these positions. However, after the start of the 1995-96 school year, District 15 began searching for two additional teachers for positions requiring a Type 03 teaching certificate. One of the positions was as a second grade teacher at Winnebago School, and the other was as a sixth grade teacher at Reskin School. Mark Wagener ("Wagener"), the Principal of the Winnebago School, and David Beard ("Beard"), the Principal of Reskin School, eventually interviewed the candidates selected for consideration. Ultimately two white women were selected for the positions. After District 15 hires a teacher, as required by law, the teacher must complete a criminal background check [*3] form, which requests information regarding race. However, Bennett never reached this stage because she was not hired or even interviewed for the vacant positions.

Bennett filed a claim with the Equal Employment Opportunity Commission (the "EEOC") alleging that Defendants discriminated against her based on her race. Subsequently, District 15 was notified of Bennett's charge. Bennett then filed this claim against Defendants alleging both disparate treatment and impact discrimination and bringing claims under *42 U.S.C. § 2000e, et seq.* ("Title VII"), *42 U.S.C. § 1981*, and *42 U.S.C. § 1983*. Judge Williams, who initially had this case, granted Defendants judgment on the pleadings with respect to Plaintiff's disparate impact claim, but then later granted Plaintiff's motion to reconsider this ruling. Defendants presently move for summary judgment on all of Bennett's claims.

LEGAL STANDARD

Summary judgment is appropriate when the record, viewed in a light most favorable to the nonmoving party, reveals that there is no genuine issue as to any material fact and that the moving party is entitled to judgment [*4] as a matter of law. *Fed. R. Civ. P. 56(c)*. The moving party bears the initial burden of showing that no genuine issue of material fact exists. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). The burden then shifts to the nonmoving party to show through

specific evidence that a triable issue of fact remains on issues on which the nonmovant bears the burden of proof at trial. *See id*. The nonmovant may not rest upon mere allegations in the pleadings or upon conclusory statements in affidavits. The nonmovant must go beyond the pleadings and support its contentions with proper documentary evidence. *See id*.

The plain language of *Rule 56(c)* mandates the entry of summary judgment against a party who fails to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. "In such a situation there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *See id*. at 323. Applying these principles, the [*5] Court evaluates the merits of the motion now before it.

DISCUSSION

Defendants move to dismiss both Plaintiff's claims based on disparate treatment and disparate impact. In its motion to dismiss the disparate treatment claims Defendants argue primarily that they were unaware of Bennett's race until Bennett filed her charge with the EEOC and so, could not have discriminated against Bennett based on her race. In addition, Defendants argue that they had legitimate nondiscriminatory reasons for not hiring Bennett. With respect to Plaintiff's disparate impact claims, Defendants argue that Plaintiff failed to allege any such claim on her EEOC charge and thus cannot bring an action for disparate impact. The Court will address the disparate treatment claim and the disparate impact claim in turn.

I. Disparate Treatment

In moving to dismiss Plaintiff's disparate treatment claim for intentional discrimination, Defendants' focus their arguments on asserting that Plaintiff cannot ultimately prove intentional discrimination by the Defendants because Defendants did not know Plaintiff's race. Plaintiff, on the other hand, argues that she may be able to demonstrate intentional discrimination [*6] through the indirect burden shifting method, and thus, her claim is viable. Because Plaintiff has failed to demonstrate that she can indirectly prove intentional racial discrimination, the Court grants Defendants' motion for summary judgment with respect to Plaintiff's disparate treatment claim.

A Title VII plaintiff can satisfy her burden of proof by either presenting direct evidence of discrimination or by the indirect, burden-shifting method set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). Under *McDonnell Douglas*, a plaintiff must establish a prima facie case by a preponderance of the evidence. *Jackson v. E.J. Brach Corp.*, 176 F.3d 971, 982 (7th Cir. 1999), *citing Testerman v. EDS Technical Prods. Corp.*, 98 F.3d 297, 302 (7th Cir. 1996). If she is successful, she creates a rebuttable presumption and the defendant must present some evidence of a legitimate, nondiscriminatory reason for its action. *See Jackson*, 176 F.3d at 982, *citing McDonnell Douglas*, 411 U.S. at 802; *Testerman*, 98 F.3d at 302. If the defendant meets this requirement, [*7] the burden then shifts back to the plaintiff to demonstrate by a preponderance of the evidence that the reason or reasons proffered by the defendant is actually a pretext for discrimination. *See Jackson*, 176 F.3d at 982, *citing, inter alia, McDonnell Douglas*, 411 U.S. at 802; *Testerman*, 98 F.3d at 302. "Pretext means a lie, specifically a phony reason for some action." *Plair v. E.J. Brach & Sons, Inc.*, 105 F.3d 343, 348 (7th Cir. 1997). Merely casting doubt on an employer's stated reason for its employment decision is insufficient to establish pretext. *See Weisbrot v. Medical College of Wisconsin*, 79 F.3d 677, 682 (7th Cir. 1996). The ultimate burden of persuasion as to whether the defendant intentionally discriminated against the plaintiff remains with the plaintiff, *See Jackson*, 176 F.3d at 982, *citing Fairchild v. Forma Scientific, Inc.*, 147 F.3d 567, 572 (7th Cir. 1998).

While Plaintiff does not attempt to prove discrimination through direct evidence, she does attempt to do so by the indirect method. In so doing, Plaintiff sets out her prima facie case by demonstrating [*8] that: (1) she belongs to a protected class; (2) she applied for and was qualified for the position; (3) she was rejected for the position; and (4) the defendant hired a person outside the protected class who had similar or lesser qualifications than the plaintiff. *See Hammoudah v. Rush-Presbyterian-St. Luke's Medical Center*, 2000 U.S. Dist. LEXIS 2024, No. 98 C 5050, 2000 WL 220505, at *4 (N.D. Ill. Feb. 18, 2000), *citing Pafford v. Herman*, 148 F.3d 658, 669 (7th Cir. 1998). Plaintiff has established that she is African-American; that she applied for a teaching position; that she possessed a type 03 teaching certificate; that she was rejected for the position; and that Defendants hired non-African-Americans with similar or lesser qualifications than Plaintiff. Although Defendants focus on Plaintiff's inability to ultimately and directly prove intentional discrimination and consequently devote little attention to Plaintiff's indirect method of proof, Defendants do rebut Plaintiff's prima facie case in their reply by stating that Defendants did have a legitimate nondiscriminatory reason for not hiring Plaintiff and by citing two exhibits. The Court may ignore arguments raised for [*9] the first time in reply memoranda because the plaintiff generally has not had an opportunity to respond. *See L&O Partnership No. 2 v. Aetna Casualty and Surety Co.*, 761 F. Supp. 549, 551 (N.D. Ill. 1991); *Wagner v. Magellan Health Servs., Inc.*, 121 F. Supp. 2d

673, 2000 WL 804692 (N.D. Ill. 2000). However, the Court will address Defendants' rebuttal of Plaintiff's indirect method of proving discrimination because Plaintiff defends her indirect method extensively in her response and because the Court afforded Plaintiff an opportunity to file a sur-reply, although she did not take advantage of it. *See L&O Partnership No. 2*, 761 F. Supp. at 551; *Wagner*, 121 F. Supp. 2d 673, 2000 WL 804692, at *4.

Defendants essentially advance two reasons for not hiring Plaintiff. The first is that because school was already in session when the positions requiring a Type 03 teaching certificate became available, Defendants were seeking individuals with prior teaching experience in similar positions and/or prior experience within District 15 as either a substitute or teacher's aide. Thus, Defendants hired Cynthia Church ("Church") for the second grade [*10] teacher position and Lisa McNally ("McNally") for the sixth grade teacher position. Church was then and had been for four and a half years an aide and substitute teacher in District 15 while McNally was then a teacher's aide in District 15 and had immediately prior been a 6th grade teacher for four years in another school district. Rather than rebut Defendants proffered reason, Plaintiff argues that the two hired teachers were less qualified than Plaintiff because Plaintiff had a Master's degree in education and Church and McNally did not. However, this neither addresses nor rebuts Defendants' proffered reason for choosing Church and McNally over Plaintiff. Because the qualifications Defendants sought were prior experience in similar positions and/or prior experience in the district, whether Plaintiff had a Master's degree is irrelevant.

The second reason is that Defendants had a preference for candidates with only a Bachelor's degree because District 15 would have to pay teachers with Master's degrees a higher salary. Because Plaintiff possessed a Master's degree, she was not as attractive a candidate as Church and McNally since her salary would have been at least $ 5,023 more than [*11] theirs as a result. To rebut, Plaintiff asserts that District 15 at the time employed other teachers that were compensated at a level as high or higher than that at which she would have been compensated and that 58.8 percent of the certificated teachers in the district had Master's degrees or above. However, that District 15 then employed people at higher compensation levels or that the district then employed people with Master's degrees or above, does not lead to the conclusion that the district did not legitimately want to hire someone for the two particular positions whom it could compensate at a lower level. Moreover, that the district may have employed people at higher compensation levels or that the district may have employed people with Master's degrees is
irrelevant to the education requirements or intended compensation levels for the two particular vacant positions. Thus, Plaintiff has failed to demonstrate that the Defendants' proffered reasons are pretexts.

In addition, Plaintiff cannot demonstrate pretext because she is unable to demonstrate that Defendants even knew her race at the time she applied. In order to demonstrate that the proffered reason is pretext for an intent [*12] to discriminate based on race, the plaintiff must first show that the defendant knew plaintiff's race at the time of the alleged discriminatory act. *See Banks v. Rubin*, 1998 U.S. Dist. LEXIS 13780, No. 97 C 0560, 1998 WL 565088, at *4 (N.D. Ill. Aug. 31, 1998) (Williams, J.). None of the application materials required Bennett to identify her race, and nowhere on the application materials does Bennett indicate her race. Further, Defendants never met Bennett. The depositions of the Principals of the two schools at which Bennett sought positions testify to the fact that neither Principal was aware of Bennett's race. They also suggest that others were likewise unaware of her race. Moreover, depositions of District 15's superintendent, along with depositions of his administrative assistant and District 15's Personnel Secretary indicate that those in the District were unaware of Bennett's race. In short, the evidence supports Defendants' assertion that they were unaware of Plaintiff's race during the application process, and there exists no evidence to the contrary. All Bennett does to suggest that she may have indicated her race is surmise that she may have filled out a criminal background check in [*13] which she indicated her race. However, she offers no evidence in support thereof. The Seventh Circuit has found that "Proof that an employer did not know of a plaintiff's membership in a protected class would likely preclude any assertion of pretext." *Rabinovitz v. Pena*, 89 F.3d 482, 488 (7th Cir. 1996). Because the evidence indicates that Defendants were unaware of Plaintiff's race, Plaintiff for this additional reason has failed to demonstrate that any of Defendants' proffered reasons are pretext.

As such, the Court grants summary judgment to Defendants on Plaintiff's disparate treatment claims.

II. Disparate Impact

Defendants move for summary judgment on Plaintiff's disparate impact claim arguing that Plaintiff is barred from

bringing it because she failed to allege it in her EEOC charge. [1] The Court agrees.

[*14]

Generally, a plaintiff cannot bring Title VII claims that were not included in her EEOC charge. *See Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 47, 94 S. Ct. 1011, 1019, 39 L. Ed. 2d 147 (1974). Bringing a charge with the EEOC is a condition precedent with which Title VII plaintiffs must comply. *See Babrocky v. Jewel Food Co.*, 773 F.2d 857, 864 (7th Cir. 1985). This rule allows the EEOC and the employer an opportunity to settle disputes through conference, conciliation, and persuasion and gives the employer some warning of the conduct about which the employee is complaining. *See Cheek v. Western and Southern Life Ins. Co.*, 31 F.3d 497, 500 (7th Cir. 1994) (citations omitted). Thus, allowing a plaintiff to allege claims outside the scope of the predicate EEOC charge would frustrate the EEOC's investigatory and conciliatory role and deprive the employer of notice of the charge. *See id.* at 500.

Because most EEOC charges are drafted by laypersons, there is significant leeway in determining whether an EEOC charge encompasses the claims in a complaint alleging Title VII violations. *See id. citing Taylor v. Western & Southern Life Ins. Co.*, 966 F.2d 1188, 1195 (7th Cir. 1992). [*15] Thus, "all Title VII claims set forth in a complaint are cognizable that are 'like or reasonably related to the allegations of the charge and growing out of such allegations.'" *See Cheek*, 31 F.3d at 500. (citations omitted). Claims are not alike or reasonably related unless there exists a factual relationship between them. *See id.* at 501. At minimum, this requires the EEOC charge and the complaint to describe the same conduct and implicate the same individuals. *See id. citing Rush v. McDonald's Corp.*, 966 F.2d 1104, 1110 (7th Cir. 1992); *Allen v. Denver Pub. Sch. Bd.*, 928 F.2d 978, 984 (10th Cir. 1991); *Malhotra v. Cotter & Co.*, 885 F.2d 1305, 1312 (7th Cir. 1989).

Plaintiff alleges that her EEOC charge is comprised of an August 19, 1995 letter to the EEOC (the "August Letter") and a more formal October 1995 charge (the "October Charge"). Although the parties agree that the October Charge comprises the EEOC charge, they dispute whether the August Letter comprises the charge as well. Judge Williams previously held that the October Charge alone did not encompass Plaintiff's disparate impact claims, [*16] and this Court agrees. *See Bennett*, No. 96 C 6914, slip opinion, at 9, 12 (while the October Charge set forth a disparate treatment theory of discrimination, it did not set forth a disparate impact theory). In addition, even if the August Letter were considered part of Plaintiff's EEOC charge, Plaintiff's disparate impact claims alleged in her complaint fall outside the scope of the August Letter. Thus, Plaintiff cannot bring her disparate impact claims. *See Valance v. Wisel*, 110 F.3d 1269, 1274 (7th Cir. 1997) (disputed facts preclude summary judgment only where they are material to the issue being decided).

The August Letter alleges:

Specifically we charge the above mentioned school districts with the following:

Rejecting African-American teachers based on their race

Practicing a hiring system that excludes African-Americans from the team that selects and approves new teachers.

Limiting African-American teachers to the lowest level teaching positions.

Because African-Americans are limited to the lowest level teaching positions, they are thereby excluded from higher paying administrative positions.

Of these allegations, the only [*17] one that may possibly claim discrimination based on disparate impact is the second one, which alleges that Defendants were "Practicing a hiring system that excludes African-Americans from the team that selects and approves new teachers." However, Plaintiff's complaint alleges, in relevant part:

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[1] Judge Williams initially agreed with Defendants on this issue and granted them judgment on the pleadings with respect to the disparate impact claim. *See Bennett v. Schmidt*, No. 96 C 6914 (N.D. Ill. Sept. 27, 1999). Judge Williams considered Plaintiff's argument that her charge with the EEOC consisted of two submissions-an August 19, 1995 letter (the "August Letter") and a more formal EEOC charge filed in October 1995 (the "October Charge"). However, because of the absence of any evidence supporting the Defendants' or the EEOC's receipt of the August Letter, Judge Williams concluded that the October Charge was all that the Defendants received and that the EEOC considered. *See id.* at 16. Finding that the disparate impact claim set forth in Plaintiff's complaint fell outside the scope of those claims in Plaintiff's October Charge, Judge Williams granted Defendants judgment on the pleadings without prejudice. *See id.* at 9, 16. Judge Williams then invited the parties to brief the issue of whether the August Letter should be considered part of the formal EEOC charge. *See id.* at 16. Plaintiff subsequently filed, and Judge Williams granted, a motion to reconsider. *See Bennett v. Schmidt*, No. 96 C 6914 (N.D. Ill. Feb. 3, 2000). Judge Williams found that Plaintiff's newly submitted affidavit created a genuine issue of material fact as to whether she included the August Letter with her October Charge. *See id.* at 5-8. Judge Williams, however, did not specifically address whether the disparate impact claim alleged in Plaintiff's complaint was within the scope of the August Letter.

14. Dist. 15 acting under color of state law, had in force a policy and practice whereby school administrators could exclude applicants from screening committee interviews for any reason or no reason.

15. Dist. 15 policy and practice of allowing school principals to determine which applicants would be interviewed for teaching positions had a disparate and discriminatory impact on the hiring of African-American applicants for full time classroom teaching positions with Dist. 15, in that the principals were not trained by the District to grant interviews to all qualified applicants regardless of race.

…25. The practice of authorizing its principals to determine what applicants would be interviewed by a screening committee, was an established, well settled policy, practice, ploy, device and subterfuge used by Dist. 15 to exclude African-Americans and other minorities from employment as teachers [*18] in the DuPage County Public Schools.

The claims in Plaintiff's August Letter and her complaint are not alike or reasonably related as they fail to describe the same conduct or policy. *Cf. Cheek*, 31 F.3d at 501. As the Seventh Circuit has explained, "a claim of sex discrimination in an EEOC charge and a claim of sex discrimination in a complaint are not alike or reasonably related just because they both assert forms of sex discrimination." *Cheek*, 31 F.3d at 501.

Although both the EEOC charge and the complaint allude to or allege some policy or practice having a disparate impact on African-Americans, they allege completely different policies or practices. Plaintiff's August Letter seems to allege that the practice or policy of maintaining a system that excludes African-Americans from the team that selects and approves new teachers has a disparate impact. This is different from the allegations in Plaintiff's complaint, which claim that the practice or policy of allowing school principals to determine which applicants would be interviewed for teaching positions had a disparate impact. The policies alleged also involve different individuals. While [*19] the EEOC charge complains of the disparate impact resulting from a selection team that excludes African-Americans, the complaint takes issue with the disparate impact resulting from allowing the school principal to determine who to interview. "…The requirement of some specificity in a[n EEOC] charge is not a 'mere technicality.'" *Id.* at 501, *citing Rush*, 966 F.2d at 1111 (citations omitted).

Because Plaintiff's Title VII disparate impact allegations in her complaint are outside the scope of those allegations in her EEOC charge, she cannot properly bring the claims of disparate impact alleged in her complaint. Accordingly, the Court grants Defendants summary judgment with respect to the disparate impact claims.

III. *§ 1981* Claim

The Court analyzes *§ 1981* claims of discrimination in the same manner as Title VII claims. *See Bratton v. Roadway Package System, Inc.*, 77 F.3d 168, 176 (7th Cir. 1996), *citing Pilditch v. Board of Education of City of Chicago*, 3 F.3d 1113, 1116 (7th Cir. 1993), *cert. denied*, *510 U.S. 1116, 114 S. Ct. 1065, 127 L. Ed. 2d 385 (1994)*. Consequently, for the same [*20] reasons that the Court granted summary judgment to Defendants on Plaintiff's Title VII claims, the Court grants summary judgment to Defendants on Plaintiff's *§ 1981* claims.

IV. *§ 1983* Claim

Plaintiff's entire *§ 1983* claim generally alleges:

33. The aforesaid actions and failures to act of defendants directors constitute intentional, unlawful and unconstitutional racial discrimination by defendants in violation of plaintiff and her class federal [sic] and Constitutional rights, privileges and immunities secured by *42 U.S.C. § 1983*.

In order to allege a *§ 1983* claim, Plaintiff must claim that she had a constitutionally protected right, that she was deprived of that right, and that the deprivation was caused intentionally by the defendant who acted under color of state law. *See42 U.S.C. § 1983*; *McNabola v. Chicago Transit Authority*, 10 F.3d 501, 513 (7th Cir. 1993). Defendants, and the Court, assume that Plaintiff is alleging a deprivation of her equal protection rights under the Fourteenth Amendment. *Cf. Trautvetter v. Quick*, 916 F.2d 1140, 1148-49 (7th Cir. 1990). Plaintiff's *§* [*21] *1983* claim cannot be referring to her Title VII rights as *§ 1983* supplies a remedy for deprivations of constitutional rights and not for violations of rights created by Title VII. *See id.* at 1149, n.4; *Gray v. Lacke*, 885 F.2d 399, 414 (7th Cir. 1989) (citations omitted).

In maintaining a *§ 1983* claim based on equal protection, Plaintiff must demonstrate that the discrimination suffered was intentional. *See Trautvetter*, 916 F.2d at 1149; *Gray*, 885 F.2d at 414. However, the Court has already determined that Plaintiff has failed to demonstrate intentional discrimination either directly or indirectly. As such, Plaintiff's *§ 1983* claim fails.

CONCLUSION

For the reasons set forth above, the Court grants Defendants' motion for summary judgment.

Charles P. Kocoras

United States District Judge

Dated: July 13, 2000