Franklin v. City of Memphis Fire Dep't

United States Court of Appeals for the Sixth Circuit

May 02, 2023, Filed

No. 22-5069

Reporter
2023 U.S. App. LEXIS 10717 *

BRIDGETTE FRANKLIN, Plaintiff-Appellant, v. CITY OF MEMPHIS FIRE DEPARTMENT, Defendant-Appellee.

Opinion

[*1] ON APPEAL FROM THE UNITED

STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF

TENNESSEE

O R D E R

Before: SUHRHEINRICH, NALBANDIAN, and MURPHY, Circuit Judges.

Bridgette Franklin, a Tennessee resident, appeals the district court's grant of summary

judgment in favor of her employer, the City of Memphis Fire Department ("MFD"), on her claims

brought under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e, et seq.

This case has been referred to a panel of the court that, upon examination, unanimously agrees that

oral argument is not needed. *See* Fed. R. App. P. 34(a). For the following reasons, we affirm the

grant of summary judgment in favor of MFD.

I. Facts & Procedural History

Franklin, an African American female, has been employed with MFD in a non-firefighter

position since 2007. In February 2018, the City of Memphis posted a job opening for an "Airmask

Maintenance Mechanic" on its website. The position was limited to current MFD employees.

Franklin applied, and she and eight other applicants-five Caucasian males and three other African

American females-were individually interviewed by the same four-member panel.

During the interview process, the panel asked each candidate the same eight questions.1

After each question [*2] was asked, the panel members independently scored the candidate's response

on a 1-10 scale. The entire interview panel then completed a Panel Consensus Rating Form for

each candidate, in which the panel combined and averaged the candidate's scores and ranked the

candidate's overall qualifications for the position. The candidate who scored the highest was

selected for the promotion. In this case, Randall L. Mitchell, one of the Caucasian male candidates,

received the highest cumulative average score of 8.1 and was therefore hired for the promotional

position. It is undisputed that Franklin's score of 7.4 was the second highest among the nine

candidates and that, had Mitchell declined, she would

have received the promotion.

Franklin filed a timely charge with the Equal Employment Opportunity Commission

("EEOC"), alleging that MFD discriminated against her by promoting a less qualified Caucasian

male. She later amended her EEOC charge to allege that MFD had retaliated against her for filing

her initial EEOC charge. After obtaining a right-to-sue letter from the EEOC, Franklin filed suit

against MFD in federal court, asserting an intersectional race- and gender-discrimination claim

under Title VII. [*3] *See Shazor v. Pro Transit Mgmt., Ltd.*, 744 F.3d 948, 958 (6th Cir. 2014) (noting

that race and sex "do not exist in isolation" and that "African American women are subjected to

unique stereotypes that neither African American men nor white women must endure"). She

sought compensatory damages, including back pay with interest, and an injunction ordering MFD

to promote her to the position of Airmask Maintenance Mechanic. The parties consented to

proceed before a magistrate judge through the entry of judgment. *See* 28 U.S.C. § 636(c).

At the close of discovery, MFD filed a motion for summary judgment. The magistrate

judge granted that motion, and Franklin timely appealed.

1 Franklin disputed this fact below, asserting that the interview panel did not completely

pose one of the questions to her. Because Franklin failed to support that assertion with a citation

to evidence in the record, *see* Fed. R. Civ. P. 56(c)(1)(A), the magistrate judge appropriately

considered this fact undisputed, *see* Fed. R. Civ. P. 56(e)(2).

II. Standard of Review

We review a district court's grant of summary judgment de novo, viewing the facts in the

light most favorable to the non-moving party. *Flagg v. City of Detroit*, 715 F.3d 165, 178 (6th Cir.

2013). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as

to any [*4] material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ.

P. 56(a); *see Estate of Smithers ex rel. Norris v. City of Flint*, 602 F.3d 758, 761 (6th Cir. 2010).

If the moving party satisfies this burden, the burden then shifts to the non-moving party to set forth

"specific facts showing that there is a *genuine issue for trial*." *Matsushita Elec. Indus. Co. v.*

Zenith Radio Corp., 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). A party opposing

a motion for summary judgment may not rest upon her pleadings but must set forth specific facts

demonstrating that there are genuine issues of material fact. *Anderson v. Liberty Lobby, Inc.*, 477

U.S. 242, 248 (1986).

III. Law & Analysis

a. Discrimination

Title VII prohibits employers from taking an adverse employment action against

individuals based on their "race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-

2(a)(1). A Title VII claim must be proven with either "direct evidence of discrimination or . . .

circumstantial evidence that would allow an inference of discriminatory treatment." *Johnson v.*

Kroger Co., 319 F.3d 858, 864-65 (6th Cir. 2003). Because Franklin did not present any direct

evidence of discrimination, we analyze her Title VII claims in accordance with the three-step

framework set forth in *McDonnell Douglas Corp. v.*

Green, 411 U.S. 792, 802-04 (1973). *See*

Tennial v. United Parcel Serv., Inc., 840 F.3d 292, 303 (6th Cir.). Under this framework, the

burden is on the plaintiff to establish a prima facie case of discrimination. *McDonnell Douglas*

Corp., 411 U.S. at 802. If a plaintiff establishes a prima facie case, [*5] the burden shifts to the

defendant to articulate a legitimate, non-discriminatory reason for the adverse employment action

at issue. *Tennial*, 840 F.3d at 303. If the defendant satisfies its burden, the burden then shifts back

to the plaintiff to establish that the stated reason was pretextual. *Romans v. Michigan Dep't of*

Hum. Servs., 668 F.3d 826, 838 (6th Cir. 2012).

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In this case, assuming that Franklin made a prima facie case of discrimination, MFD

proffered a legitimate, non-discriminatory reason for promoting Mitchell instead of Franklin-

namely, that Mitchell was the most qualified candidate for the promotional position and performed

better than Franklin during the interview process, as evidenced by his score of 8.1, compared to

Franklin's score of 7.4. *See Provenzano v. LCI Holdings, Inc.*, 663 F.3d 806, 814-15 (6th Cir.

2011) (noting that, to meet its burden, a defendant need only present evidence raising a genuine

dispute of fact as to whether it discriminated against the plaintiff); *Wright v. Murray Guard, Inc.*,

455 F.3d 702, 707 (6th Cir. 2006). Franklin was therefore required to show that MFD's stated

reason for promoting Mitchell instead of her was merely a pretext for discrimination. *SeeRomans*,

668 F.3d at 838.

A plaintiff can prove pretext by showing that the defendant's stated reason for the adverse

action (1) had "no basis in fact," (2) "was [*6] not the actual reason for" the adverse action, or (3) "was

insufficient to explain" it. *Imwalle v. Reliance Med. Prods., Inc.*, 515 F.3d 531, 545 (6th Cir.

2008). "[A] reason cannot . . . be 'a pretext for *discrimination*' unless it is shown *both* that the

reason was false, *and* that discrimination was the real reason." *St. Mary's Honor Ctr. v. Hicks*,

509 U.S. 502, 515 (1993) (quoting *Texas Dep't of Cmty. Affs. v. Burdine*, 450 U.S. 248, 253

(1981)). Thus, regardless of which rebuttal method is used, "the plaintiff retains the ultimate

burden of producing 'sufficient evidence from which the jury could reasonably reject [the

defendants'] explanation and infer that the defendants intentionally discriminated against [her].'"

Johnson, 319 F.3d at 866 (quoting *Braithwaite v. Timken Co.*, 258 F.3d 488, 493 (6th Cir. 2001)).

On appeal, Franklin advances several arguments to establish pretext, but none are

convincing. To begin, Franklin argues that Mitchell did not meet one of the listed minimum

qualifications posted for the promotional position-that the applicant have a "[w]orking

knowledge of various computer software applications including Oracle preferred." Although

Mitchell acknowledged in his interview that "computer skills" were a weakness of his, two

members of the interview panel testified during their depositions that Mitchell had sufficient

knowledge of the requisite computer software applications. Franklin fails to [*7] cite to any evidence

in the record that would create a genuine issue of material fact on this point. Franklin also asserts

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that she is more qualified than Mitchell for the Airmask Maintenance Mechanic position, but she

fails to show that her qualifications were "so significantly better than the successful applicant's

qualifications that no reasonable employer would have chosen" Mitchell over her. *Bender v.*

Hecht's Dep't Stores, 455 F.3d 612, 627 (6th Cir. 2006); *see Hedrick v. W. Rsrv. Care Sys.*, 355

F.3d 444, 462 (6th Cir. 2004) (holding that a plaintiff's subjective belief that she is more qualified

does not suffice to show pretext).

Additionally, Franklin argues that half of the panel's interview questions "had no relevance

or relationship to the Airmask Mechanic position." These allegedly irrelevant questions include:

"Why are you interested in becoming an Air Mask Mechanic within the Air Mask Services

Bureau?"; "What are your strengths? What are your weaknesses?"; "How have you managed a

difficult situation involving customers or coworkers and what did you do to ensure there was a

positive outcome?"; and "Tell me about your experiences training your peers to perform new

tasks?" [*8] These questions are entirely commonplace in most job interviews, and Franklin cites no

record evidence showing that the questions were used as a pretextual device to discriminate against

her because of her race and/or gender.

Franklin next argues that the interview panel took issue with her time-management skills

even though the panel never asked her about time management, she did not have any time-

management issues, and time management was not a stated requirement for the position. However,

several panel members testified that their concerns about Franklin's time-management skills

stemmed from Franklin's own admission during her interview that she sometimes takes on too

many tasks at one time. As before, Franklin cites no evidence showing that interview panel

members used her time-management skills as a pretext to not promote her.

Lastly, Franklin argues that the interview panel's cumulative average scores for each

candidate were illegitimate given the panel's application of a so-called "Rule of Two" practice.

That practice involves the interviewers convening and discussing their rankings of the interviewees

and, if their scores happened to differ by two points or more, discussing those scores [*9] to bring them

within a two-point range of each other. Franklin again fails to cite any record evidence suggesting

that the panel utilized the "Rule of Two" in ranking the nine candidates for the promotion or that

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she was harmed by its application. *See Anderson*, 477 U.S. at 248; *see alsoAlexander v.*

CareSource, 576 F.3d 551, 560 (6th Cir. 2009) ("Conclusory statements unadorned with

supporting facts are insufficient to establish a factual dispute that will defeat summary judgment.").

In sum, MFC proffered a legitimate, non-discriminatory reason for promoting Mitchell,

and Franklin failed to produce sufficient evidence from which a jury could reasonably reject that

reason and infer that MFD intentionally discriminated against her. Therefore, the magistrate judge

properly granted summary judgment in MFD's favor on Franklin's discrimination claim. *See*

Johnson, 319 F.3d at 866.

b. Disparate Impact

The magistrate judge construed Franklin's complaint and response to MFD's summary-

judgment motion as also asserting a disparate-impact claim. Title VII prohibits employment

practices that are "fair in form, but discriminatory in operation." *Griggs v. Duke Power Co.*, 401

U.S. 424, 431 (1971). While disparate- [*10] *treatment* claims require a showing of an employer's

discriminatory intent, disparate-*impact* claims do not. *Id*. at 432*; see also Serrano v. Cintas Corp.*,

699 F.3d 884, 892 (6th Cir. 2013). Instead, a plaintiff must show "that a facially neutral

employment practice falls more harshly on one group than another and that the practice is not

justified by business necessity." *Dunlap v. Tennessee Valley Auth.*, 519 F.3d 626, 629 (6th Cir.

2008) (citing *Rowe v. Cleveland Pneumatic Co.*, 690 F.2d 88, 92 (6th Cir. 1982)).

We evaluate disparate-impact claims under a three-step burden-shifting framework. *See*

Albemarle Paper Co. v. Moody, 422 U.S. 405, 425 (1975). Under this framework, a plaintiff must

first establish a prima facie case of discrimination. *Id*. To establish a prima facie case of

discrimination based on a disparate-impact theory, a plaintiff must (1) "identif[y] a specific

employment practice to be challenged," and (2) prove "through relevant statistical analysis" that

"the challenged practice has an adverse impact on a protected group." *Dunlap*, 519 F.3d at 629

(citing *Johnson v. U.S. Dep't of Health & Hum. Servs.*, 30 F.3d 45, 48 (6th Cir. 1994)). If a

plaintiff makes this showing, the burden then shifts to the employer to "show that the protocol in

question has 'a manifest relationship to the employment'-the so-called 'business necessity'

justification." *Id.* (citing *Griggs*, 401 U.S. at 431, 432). The plaintiff must then show that other

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methods [*11] could accomplish the same goals "without creating the undesirable discriminatory effect."

Id.

Applying this framework, we affirm the magistrate judge's conclusion that Franklin failed

to establish a prima facie case of discrimination based on a disparate-impact theory. The Supreme

Court has held that "it is not enough to simply allege that there is a disparate impact on workers,

or point to a generalized policy that leads to such an impact. Rather, the employee is 'responsible

for isolating and identifying the *specific* employment practices that are allegedly responsible for

any observed statistical disparities.'" *Smith v. City of Jackson, Miss.*, 544 U.S. 228, 241 (2005)

(quoting *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 656 (1989)) (internal quotations

omitted). Franklin alleged below that MFD has an "'unwritten rule of preferring and selecting fire

fighters' for the Airmask Mechanic position." She further claimed that this rule disfavors black

women because they are underrepresented as firefighters. However, she did not cite any evidence

showing that MFD in fact employs such a policy, unwritten or otherwise. Moreover, the statistical

chart that Franklin filed alongside her response to MFD's motion for summary judgment-which

details historical demographic information regarding the Air Mask Department's [*12] employees

between the years 2000 and 2020 (omitting 2001 and 2003 through 2009)-is insufficient to

support an inference of discrimination because it is incomplete and unsourced, and its

methodology is never explained. *See Tinker v. Sears,*

Roebuck & Co., 127 F.3d 519, 524 (6th Cir.

1997). The magistrate judge properly granted summary judgment on Franklin's disparate-impact

claim.

c. Retaliation

Finally, Franklin argues that she adequately pleaded a Title VII retaliation claim in her

complaint and that she presented sufficient evidence to survive summary judgment on that claim.

The record belies her contentions. Although Franklin asserted a retaliation claim in her amended

EEOC charge, she did not assert such a claim in her complaint. Nor did she incorporate her

amended EEOC charge into her complaint by reference. To be sure, a complaint need not

expressly plead a legal theory so long as the complaint's well-pleaded factual allegations support

the theory. *See, e.g.*, *Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014) (per curiam); *Skinner v.*

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Switzer, 562 U.S. 521, 530 (2011). However, nothing in Franklin's complaint fairly suggests a

retaliation claim against MFD. The magistrate judge correctly concluded that Franklin failed to

plead a Title VII retaliation claim.

IV. Conclusion [*13]

For these reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

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