

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-7087

September Term, 2018

FILED ON: JANUARY 11, 2019

CHINYERE UZOUKWU,
APPELLANT

v.

METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS, ET AL.,
APPELLEES

Consolidated with 17-7179

Appeals from the United States District Court
for the District of Columbia
(No. 1:11-cv-00391)

Before: SRINIVASAN, PILLARD and KATSAS, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs of the parties. The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* Fed. R. App. P. 36; D.C. Cir. R. 36(d). It is hereby

ORDERED and **ADJUDGED** that the judgment of the United States District Court for the District of Columbia be affirmed.

Chinyere Uzoukwu sued her former employer, the Metropolitan Washington Council of Governments, and several former supervisors for employment discrimination. Before trial, the district court denied Uzoukwu's application to proceed *in forma pauperis* (IFP), dismissed as untimely Uzoukwu's claims under Title VII and the Americans with Disabilities Act (ADA), and granted summary judgment to the defendants on various claims under 42 U.S.C. § 1981. After a jury verdict for the defendants on the remaining claims, the district court denied Uzoukwu's motion for relief from judgment. Uzoukwu appeals each of these rulings, but none of her arguments has merit.

First, we find no reversible error in the denial of IFP status. Uzoukwu filed her IFP application within the ninety-day deadline to bring her Title VII and ADA claims, and the district

court denied the application without explanation after the ninety days had passed. Instead of then promptly paying the filing fee, Uzoukwu moved for reconsideration after forty days and paid the fee only after reconsideration was denied. The district court later dismissed the Title VII and ADA claims as untimely. On appeal, Uzoukwu contends that the district court abused its discretion in not explaining its initial denial of the IFP application, because an explanation might have allowed her to avoid the ensuing dismissal. However, Uzoukwu fails to articulate how an explanation regarding whether she satisfied the requirements for IFP status would have helped her to file the Title VII and ADA claims on time. Moreover, as explained below, these claims suffered fatal flaws even apart from their untimeliness.

Second, we affirm the dismissal of the Title VII and ADA claims for sex and disability discrimination. The district court dismissed these claims as untimely, but we affirm for failure to state a claim. The complaint alleges no facts to support a claim of disability discrimination. As for sex discrimination, Uzoukwu's only allegations are that a supervisor took her to lunch shortly after she was hired and offered her a ride home on two or three occasions, but then stopped doing so after she declined the offers. These allegations are insufficient to support a claim of either a hostile work environment or bias in the decision to fire her a year and a half later.

Third, we affirm summary judgment on the section 1981 claim of a hostile work environment. After two troubling emails were sent to other employees from Uzoukwu's work account, the Council required Uzoukwu to undergo counseling and to disclose certain information in connection with the treatment. These requirements were not severe enough to create a hostile work environment, which requires "discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Baloch v. Kempthorne*, 550 F.3d 1191, 1201 (D.C. Cir. 2008) (quotation marks omitted).

Fourth, we affirm summary judgment on the section 1981 claim of racial discrimination, which is predicated on the same counseling requirements. On this record, there is insufficient evidence to support a finding that the Council, in imposing the requirements, "intentionally discriminated" against Uzoukwu on the basis of race. *Ayissi-Etoh v. Fannie Mae*, 712 F.3d 572, 576 (D.C. Cir. 2013) (per curiam) (quotation marks omitted).

Fifth, we affirm summary judgment on the section 1981 retaliation claim, which is also predicated on the counseling requirements. "To establish a retaliation claim under Section 1981, a plaintiff must show that he engaged in a protected activity—such as filing an EEOC complaint—and that his employer took an adverse employment action against him because of that activity." *Ayissi-Etoh*, 712 F.3d at 578. Here, Uzoukwu presented no evidence that the defendants acted with retaliatory motives.

Sixth, we affirm the denial of Uzoukwu's motion for relief from judgment. Federal Rule of Civil Procedure 60(b)(2) permits a district court to relieve a party from a final judgment based on "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial." In support of her motion, Uzoukwu made only vague assertions about "the evidence," which failed to explain what specific new evidence she could not have timely

discovered. The district court did not abuse its discretion in denying relief under these circumstances.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. See Fed. R. App. P. 41(b); D.C. Cir. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk