19-5192

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

FOURTH APPELLATE DISTRICT
RICHMOND COUNTY

FILED
JUL 16 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

BRENDA MASSAQUOI,

Petitioner,

Petition for Writ of Certiorari

Case No:

V,

AMERICAN CREDIT ACCEPTANCE,

Respondent.

CIVIL APPEAL TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petition for Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

1. Is a plaintiff's prima facie case of discrimination because of race, national origin and retaliation, combined with sufficient evidence for a reasonable factfinder to reject the employer's nondiscriminatory explanation for its decision, adequate to sustain a finding of liability for intentional discrimination under Title VII of the Civil Rights Act of 1964?

2. Is a plaintiff's prima farcie case of an employer creating and sustaining a hostile work environment combined with sufficient evidence for a reasonable factfinder to reject the employer's nondiscriminatory good faith explanation adequate to sustain a finding of liability for intentional discrimination under Title VII of the Civil Rights Act of 1964?

3. Is a plaintiff's prima facie case of discrimination when an employer intentional uses unverified here say from a bias source with known racist tendencies combined with sufficient evidence for a reasonable factfinder to reject the employer's nondiscriminatory explanation for its decision, adequate to sustain a finding of liability for intentional discrimination under Title VII of the Civil Rights Act of 1964?

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STATEMENT OF ISSUES

I. Whether the district court erred in granting American Credit Acceptance summary judgment; therefore, denying Petitioner the right to a fair trial was not protected activity under Title VII. American Credit Acceptance lacked good faith, the law, the facts, any reasonable assumptions its effective immediate dismissal of Petitioner was an unlawful conduct as a premediated rush to judgment denying her an opportunity to state the facts on the record, because of her race and national origin.

II. Whether a reasonable factfinder could conclude that American Credit Acceptance fired Petitioner in retaliation for her complaint about Angela Preuter's discriminatory acts towards her to Sharon Ponder, HR Business Partner, where the records include evidence that American Credit Acceptance terminated Petition, effective immediately, the same day, August 15, 2015, she called out, though the evidence showed that Petitioner had no attendance issues, adhered to American Credit Acceptance attendance policy and performed her job exceedingly well.

STATEMENT OF THE CASE

On August 24, 2015 the Petition called off from work with over 40 PTO hours. She left a message that she would be back on August, 26, 2015.

On August 24, 2015 American Credit Acceptance sent this email to the Petitioner: Based on the information we have received that you have relocated to North Carolina and do not intend to return to work at ACA and the fact that you removed all personal items from your work area as of August 21, 2015 indicating that you do not intend to return to work at ACA your employment is being terminated effective 8/24/2015.

American Credit Acceptance knew or should have known that the information about the Petitioner's relocation to North Carolina was inaccurate. American Credit Acceptance would have taken these steps if the Petitioner's effective immediate termination was not premediated and a rush to judgment, because of her race and national origin.

ACA would have called Country Club Apartments rental office to verify her move-out-date.

ACA would have driven the 3.5 miles or nine minutes from 961 E Main Street, Spartanburg, SC to 2479 Country Club Road, Apartment 1000F, Spartanburg, SC, where the Plaintiff would have been seen.

ACA would have waited until August 26, 2015 when the Plaintiff was to return to work.

ACA should have known that the Petitioner kept no personal items on her desk.

Even if ACA's reliable source revealed that the Plaintiff had moved to Liberia, West Africa, ACA should have waited for Wednesday, August 26, 2015. The question is why ACA Wrongfully terminated the Petitioner with sufficient PTO hours – her race and national origin.

REASONS FOR GRANTING WRIT OF CERTIORARI

The Petitioner submits the following in support of her writ of certiorari to review the decision of the Fourth Circuit Court of Appeals affirming the United States District Court, Greenville, South Carolina granting respondent's Motion for Summary Judgment.

In granting a summary judgment, the lower court departed from the accepted standard of review set by this Curt in Reeves v. Sanderson Plumbing Products, Inc., 120 S.Ct. 2097, 68 USLW 4480, (U.S., June 12, 2000).

SUMMARY OF ARGUMENT

Petitioner, who is African-American, alleged that American Credit Acceptance violated Title VII's ant retaliation provision when it terminated her employment effective immediately after she complained to the company's HR department that her supervisor, Angela Preuter was discriminating against her by setting different policies for her and laughing openly about her deep Liberian accent. The district court granted summary judgment to American Credit Acceptance disregarding convincing evidence of discrimination, because of race and nation origin. The court erred, requiring reversal of summary judgment.

Title VII makes it unlawful for employers to discriminate against their employees based on a protected characteristic, including race or national origin. See 42 U.S.C. §§ 2000e-2(a)(1); 2000e-2(m). Accordingly, when there is evidence that a supervisor expressly practices discriminatory bias between employees with respect to a protected characteristic, this Court has held an employee is reasonable to believe her employer is acting unlawfully under the statute. Despite such evidence in this case, the district court omitted it entirely from its analysis, and instead held in favor of American Credit Acceptance. Angela Preuter indifferent treatment of the Petitioner banned her from going to the restroom after 4:30 when she and others went; laughing at her deep

Liberian accent on the floor and her exceeding expectation of her responsibilities are material to the determination of objective reasonableness here. Moreover, a jury could find that American Credit Acceptance did not act in good faith when it relied on information it received from Angela Preuter about the Petitioner whom she had openly discriminated against. Additionally, a reasonable jury could thus find that American Credit Acceptance terminated the Petitioner's employment effective immediately on August 24, 2015 in retaliation for her complaint about discrimination and because it knew she would have returned to work on Wednesday, August 26, 2015 and it would have lost its best opportunity to retaliate against her.

ARGUMENT

Title VII's anti retaliation provision makes it unlawful to discriminate against any individual for reporting conduct he or she reasonably believes to be unlawful under Title VII. See 42 U.S.C. § 2000e-3(a); Payne v. McLemore's Wholesale & Retail Stores, 654 F.2d 1130, 1140 (5th Cir. 1981). The evidence in this case is sufficient to show that the Petitioner report to Human Resources—about Angela Preuter's discriminatory acts against her—was protected activity under the statute. More specifically, under this Court's precedent the evidence is sufficient to show that the Petitioner had a good faith, reasonable belief that prompted her complaint. The evidence also creates a triable issue as to whether American Credit Acceptance would not have fired the Petitioner but for her complaint, her race and her nation origin. This Court should reverse the grant of summary judgment on the Petitioner's discrimination/retaliation claim, applying a de novo standard of review. See Weeks v. Harden Mfg. Corp, 291 F.3d 1307, 1312 (11th Cir. 2002) ("We review the district court's grant or denial of a motion for summary judgment de novo, viewing the record and drawing all reasonable inferences in the light most favorable to the non-moving party.").

To establish a prima facie case of retaliation, "a plaintiff must prove that he engaged in statutorily protected activity, he suffered a materially adverse action, and there was some causal relation between the two events." Goldsmith v. Bagby Elevator Co., 513

F.3d 1261, 1277 (11th Cir. 2008). Ultimately, the plaintiff must show that "his or her protected activity was a but-for cause of the alleged adverse action by the employer." Univ. of Tex. Sw. Med. Ctr. v. Nassar, 133 S. Ct. 2517, 2534 (2013). In this case, the Petitioner produced sufficient evidence to meet these standards. A. Under this Court's precedent, the evidence is sufficient to show Petitioner had a good faith, reasonable belief that American Credit Acceptance acted unlawfully under Title VII.

Title VII's anti retaliation provision makes it unlawful to discriminate against any individual who, inter alia, "has opposed any practice made an unlawful employment practice" under the statute. 42 U.S.C. § 2000e-3(a). In evaluating a plaintiff's opposition conduct, it is well-established that the action(s) that an employee reports need not constitute an actual Title VII violation for the opposition conduct to be protected under Title VII's anti retaliation provision. See, e.g., Taylor v. Runyon, 175 F.3d 861, 869 (11th Cir. 1999). Rather, a plaintiff need only show that she had a "'good faith, reasonable belief that the employer was engaged in unlawful employment practices.'" Weeks, 291 F.3d at 1311.

Here, the Petitioner stated that Angela Preuter set different policies for her based on retaliation, her race and her national origin. This evidence, standing alone, establishes that the Petitioner objectively reasonable belief that she was discriminated against in violation of Title VII.

See 42 U.S.C. §§ 2000e-2(a)(1) (unlawful to discriminate because of an individual's race or national origin), 2000e-2(m) ("[A]n unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice."). Furthermore, "when there is direct evidence 'that the defendant acted with a discriminatory motive, and the trier of fact accepts this testimony, the ultimate issue of discrimination is proved.'" Thompkins v. Morris Brown Coll., 752 F.2d 558, 563 (11th Cir. 1985). See EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004, §II(A)(2)(c) Ex. 1 (2016), available at https://www.eeoc.gov/laws/guidance/retaliation-guidance.cfm#fig1 (stating

that an employee's complaint that her supervisor failed to promote her because of her sex "after an apparently less qualified man was selected" is an example showing that the employee had a good faith, reasonable belief that discrimination had occurred). See also, e.g., Fine v. Ryan Int'l Airlines, 305 F.3d 746, 752-53 (7th Cir. 2002) (plaintiff had good faith, objectively reasonable belief in reporting discrimination, as the report was not "groundless").

The evidence creates a triable issue that the Petitioner had an objectively reasonable basis to believe she was reporting unlawful conduct under Title VII, rendering her complaint protected opposition under the statute. Though neither the magistrate nor the district court analyzed the remaining elements of the prima facie case (adverse action and causation), the evidence satisfies the remaining elements. A termination, of course, is an adverse action. See Farley v. Nationwide Mut. Ins. Co., 197 F.3d 1322, 1337 (11th Cir. 1999). As for causation, Sharon Ponder and Angela Preuter knew about the Petitioner's complaint—indeed, she complained to Ponder whom terminated her employment effective immediately in concert with Preuter. This evidence is sufficient to show causation. See id. (causation element of prima facie case satisfied by evidence that supervisors were aware of plaintiff's protected activity, and evidence of close temporal proximity—four months—between her protected activity and her effective immediate termination by email).

B. The evidence would allow a reasonable juror to conclude that but for her complaint that she had been discriminated against based on her race and national origin, the Petitioner would not have been terminated effective immediately by email.

To create a triable issue of pretext, the evidence must "'permit a reasonable factfinder to conclude that the reasons given by the employer were not the real reasons for the adverse employment decision.'" Hulbert v. St. Mary's Health Care Sys., Inc., 439 F.3d 1286, 1298 (11th Cir. 2006). Here, American Credit Acceptance asserted that it fired the Petitioner on August 24, 2015, because it heard that she had moved to North Carolina

and was not coming back even though she still lived at 2479 Country Club Road, #1000F, Spartanburg, SC 29302 and was coming back.

The Petitioner's complaint of race and national origin discrimination caused American Credit Acceptance to openly and aggressively target her by allowing Angela Preuter to openly discriminate against her creating a hostile work environment for her.[7] See, e.g., Hairston v. Gainesville Sun Publ'g Co., 9 F.3d 913, 921 (11th Cir. 1993) (as evidence of pretext, emphasizing that "[i]immediately preceding and following [plaintiff's] filing of his administrative complaints," employer's actions toward plaintiff changed by increased scrutiny from her supervisor).

Indeed, even assuming an employer has a legitimate basis to fire an employee before her complaint, evidence that the employer expedited its termination because of that complaint constitutes a violation of Title VII's ant retaliation provision. See Alvarez v. Royal Atlantic Developers, Inc., 610 F.3d 1253, 1270 (11th Cir. 2010) (where employer had legitimate non-discriminatory reasons for firing plaintiff before her complaints, and the employer "remained free to act on those reasons afterward," the "one thing [defendant] could not lawfully do is fire her earlier than it otherwise would have because she complained about discrimination").

Finally, by not issuing any written warnings or a final warning or suspension, like it did with other employees, before firing the Petitioner, American Credit Acceptance departed from its attendance policy, which is further evidence of pretext. See Keene v. Prine, 477 F. App'x. 575, 582 (11th Cir. 2012) (defendant's departure from its progressive discipline policy, by "firing her without first taking any less drastic disciplinary step," would allow a reasonable juror to doubt its stated reason for firing her via email).

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's granting of summary judgment to American Credit Acceptance and 7on Petitioner's Title VII discrimination claim against American Credit Acceptance.