

United States Court of Appeals
For the Eighth Circuit

No. 19-2520

Veronica Delph

Plaintiff - Appellant

v.

University of Arkansas for Medical Sciences; Melvin Kirkwood

Defendants - Appellees

Appeal from United States District Court
for the Eastern District of Arkansas - Little Rock

Submitted: June 17, 2020

Filed: June 22, 2020
[Unpublished]

Before ERICKSON, WOLLMAN, and STRAS, Circuit Judges.

PER CURIAM.

Veronica Delph appeals the district court's¹ adverse grant of summary judgment in this employment discrimination action. Having carefully reviewed the

¹The Honorable D.P. Marshall Jr., Chief Judge, United States District Court for the Eastern District of Arkansas.

record and the parties' arguments on appeal, we find no basis for reversal. See Banks v. John Deere & Co., 829 F.3d 661, 665 (8th Cir. 2016) (standard of review). Accordingly, we affirm. See 8th Cir. R. 47B.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 19-2520

Veronica Delph

Plaintiff - Appellant

v.

University of Arkansas for Medical Sciences; Melvin Kirkwood

Defendants - Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Little Rock
(4:17-cv-00542-DPM)

JUDGMENT

Before ERICKSON, WOLLMAN, and STRAS, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

June 22, 2020

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

VERONICA DELPH

PLAINTIFF

v.

No. 4:17-cv-542-DPM

MELVIN KIRKWOOD,
Assistant Manager, UAMS

DEFENDANT

ORDER

Veronica Delph worked as a cashier in the UAMS cafeteria for nearly two years before she was fired. Delph's dispute is with the University of Arkansas system, by way of an official capacity claim against Melvin Kirkwood, her UAMS supervisor. Kirkwood says Delph was fired for attendance problems. Delph says she was fired because of her race and because she filed an EEOC charge alleging discrimination. Kirkwood moves for summary judgment on Delph's two remaining Title VII claims—race discrimination and retaliation. The Court considers the facts, where genuinely disputed, in the light most favorable to Delph. *Woods v. DaimlerChrysler Corporation*, 409 F.3d 984, 990 (8th Cir. 2005). Neither of her claims presents a jury question because she has not met Kirkwood's proof with contrary proof that would support a verdict for her. *Conseco Life Insurance Co. v. Williams*, 620 F.3d 902, 909 (8th Cir. 2010).

There's no direct evidence of race discrimination, so the familiar *McDonnell Douglas* burden-shifting framework applies. *Gibson v. American Greetings Corporation*, 670 F.3d 844, 853–54 (8th Cir. 2012). The Court assumes Delph has made a *prima facie* case. Kirkwood has articulated a legitimate, nondiscriminatory reason for firing her: Delph's violation of UAMS's attendance policy by being absent without excuse, or late, too many times in a twelve-month period. *No 41-3 at 3*. And Delph hasn't shown that this reason was a pretext for discrimination. *Schaffhauser v. United Parcel Service, Inc.*, 794 F.3d 899, 904 (8th Cir. 2015). She says that Kirkwood disciplined and treated her more harshly because of her race, *No 49 at 4*, but she hasn't shown that Kirkwood treated similarly situated white employees differently. *Lake v. Yellow Transportation, Inc.*, 596 F.3d 871, 874–75 (8th Cir. 2010). Delph also says that Kirkwood failed to follow policies when disciplining her, *No 49 at 6*. But there's no proof that he "was more likely motivated by race than by [Delph's attendance problems]." *Schaffhauser*, 794 F.3d at 904.

Delph's retaliation claim fails, too. Delph engaged in protected conduct—filing an EEOC charge—and suffered an adverse employment action. No evidence connects the two, though. *Bunch v. University of Arkansas Board of Trustees*, 863 F.3d 1062, 1069 (8th Cir.

2017). A reasonable juror could not conclude that, but for Delph's EEOC charge, she would not have lost her job.

* * *

Kirkwood's motion for summary judgment, No 41, is granted. Delph's motion to dismiss and for deposit, No 49, is denied. Delph's Title VII race discrimination and retaliation claims against Kirkwood will be dismissed with prejudice.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

10 July 2019

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

VERONICA DELPH

PLAINTIFF

v.

No. 4:17-cv-542-DPM

UNIVERSITY OF ARKANSAS FOR
MEDICAL SCIENCES and MELVIN
KIRKWOOD, Assistant Manager, UAMS

DEFENDANT

JUDGMENT

1. Delph's Title VII race discrimination and retaliation claims against Kirkwood are dismissed with prejudice.
2. Delph's other claims against Kirkwood are dismissed without prejudice.
3. Delph's claims against UAMS are dismissed without prejudice.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

10 July 2019

**Additional material
from this filing is
available in the
Clerk's Office.**