

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 1, 2022

Lyle W. Cayce
Clerk

No. 21-60640
Summary Calendar

CHAKAKHAN R. DAVIS,

Plaintiff—Appellant,

versus

DOLLAR GENERAL CORPORATION, L.L.C.,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:20-CV-274

Before HIGGINBOTHAM, HIGGINSON, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Chakakhan Davis alleges that she was injured by the doors at two different Dollar General stores in Mississippi. The district court granted summary judgment to Dollar General, which Davis appealed. We affirm.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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I.

Davis alleges that she was injured in February 2019 when a manual push door at a Dollar General store jammed on her arm. Davis filed a customer injury claim with Dollar General. This claim was denied as false after a Dollar General Claims Representative reviewed surveillance footage demonstrating that Davis walked through the door without issue. Davis also alleges that she was injured by an electric-powered door at a different Dollar General store in 2020. She again filed a customer injury claim; this claim was also denied as false after a different Dollar General Claims Representative reviewed surveillance footage demonstrating that Davis walked through the door without issue. Dollar General also sent a letter to Davis, informing her that she was banned from all its stores and no longer an invitee to any of its stores.¹

Proceeding *pro se*, Davis sued Dollar General and the two Claims Representatives, seeking five trillion dollars in damages.² Davis asserted claims for negligence, discrimination in violation of 42 U.S.C. § 1981 and Title II of the Civil Rights Act of 1964, and defamation. The district court granted summary judgment to Dollar General as to each of Davis's claims.

II.

We review *de novo* a district court's grant of summary judgment.³ Summary judgment is proper "if the movant shows that there is no genuine

¹ During the period from 2012 to 2016, Davis previously filed five other claims with Dollar General, all of which were denied.

² In her complaint and notice of appeal, Davis named "Dollar General Corporation, LLC" as the defendant. There appears to be no Dollar General Corporation, LLC, but this misnomer was resolved when the Dollar General Corporation—less the "LLC"—was served and participated in the proceedings below, thus there is no issue on appeal.

³ *Martin Res. Mgmt. Corp. v. AXIS Ins. Co.*, 803 F.3d 766, 768 (5th Cir. 2015).

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dispute as to any material fact and the movant is entitled to judgment as a matter of law.”⁴ A summary judgment ruling “will be affirmed by this court when the nonmoving party fails to meet its burden to come forward with facts and law demonstrating a basis for recovery that would support a jury verdict.”⁵ Additionally, we review the denial of a motion for reconsideration for abuse of discretion.⁶

III.

As a preliminary matter, we must address what is before us on appeal. In her brief, Davis’s Statement of the Issues presents a multitude of issues from various points of the proceedings, but this list is not supported by her notice of appeal. “The notice of appeal must . . . designate the judgment, order, or part thereof being appealed[.]”⁷ Davis’s notice of appeal states that her appeal concerns only three orders: the grant of summary judgment to Dollar General, the denial of default judgment against Dollar General, and the denial of prospective relief. While we are not exacting in our reading of the orders specified in a notice of appeal,⁸ we are mindful that “[t]he purpose of the notice of appeal is to provide sufficient notice to the appellees and the courts of the issues on appeal.”⁹ With no apparent intent to appeal other

⁴ FED. R. CIV. P. 56(a).

⁵ *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1071 (5th Cir. 1994).

⁶ *In re Taxotere (Docetaxel) Prod. Liab. Litig.*, 966 F.3d 351, 361 (5th Cir. 2020).

⁷ Fed. R. App. P. 3(c)(1)(b).

⁸ *Warfield v. Fid. & Deposit Co.*, 904 F.2d 322, 325 (5th Cir. 1990).

⁹ *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 808 (5th Cir. 2012).

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orders discernable in Davis’s notice to appeal, we review the issues properly before us—the three orders presented in the notice of appeal.¹⁰

We affirm the grant of summary judgment to Dollar General. Dollar General presented video surveillance footage as well as affidavits to rebut each of Davis’s claims. Davis failed to present evidence to create a genuine issue of material fact as to any of her claims and her bare assertions are insufficient to survive the summary judgment standard.¹¹

We affirm the denial of Davis’s motion for default judgment against Dollar General. Davis argued that she was entitled to default judgment as Dollar General had not responded to her complaint, but Dollar General had responded.

Finally, we affirm the denial of Davis’s motion for prospective relief. Although Davis labeled her motion as a motion for prospective relief, the district court properly recognized that this was actually a motion for reconsideration under Federal Rule of Civil Procedure 59(e) and analyzed it as such.¹² As Davis failed to identify an intervening change in the controlling law, newly discovered evidence that was previously unavailable, or a manifest error of law or fact, the district court did not abuse its discretion in denying the motion.¹³

¹⁰ *McCardell v. U.S. Dep’t of Hous. & Urb. Dev.*, 794 F.3d 510, 516 (5th Cir. 2015).

¹¹ *Little*, 37 F.3d at 1075.

¹² *Castro v. United States*, 540 U.S. 375, 381–82 (2003) (“Federal courts sometimes will ignore the legal label that a *pro se* litigant attaches to a motion and recharacterize the motion in order to place it within a different legal category . . . They may do so in order to . . . create a better correspondence between the substance of a *pro se* motion’s claim and its underlying legal basis.”).

¹³ *Demahy v. Schwarz Pharma, Inc.*, 702 F.3d 177, 182 (5th Cir. 2012)

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IV.

For the foregoing reasons, we **AFFIRM**, urging Davis to heed the words of caution of the district court: if a court finds that Davis “engaged in vexatious litigation or acted in bad faith,” it “may issue monetary sanctions against her and issue an injunction barring her from filing any new lawsuit” without prior approval from the court.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

April 01, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 21-60640 Davis v. Dollar General
USDC No. 3:20-CV-274

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5th Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5th Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that plaintiff-appellant pay to defendants-appellees the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Nancy F. Dolly, Deputy Clerk

Enclosure(s)

Ms. Chakakhan R. Davis
Mr. Matthew D. Miller

United States Court of Appeals
for the Fifth Circuit

No. 21-60640

CHAKAKHAN R. DAVIS,

Plaintiff—Appellant,

versus

DOLLAR GENERAL CORPORATION, L.L.C., ET AL

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:20-CV-274

ON PETITION FOR REHEARING EN BANC

Before HIGGINBOTHAM, HIGGINSON, and DUNCAN, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

June 07, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-60640 Davis v. Dollar General
USDC No. 3:20-CV-274

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: Shea E. Pertuit, Deputy Clerk
504-310-7666

Ms. Chakakhan R. Davis
Mr. Matthew D. Miller



moot Motion for expedited ruling on the motion for reconsideration filed by Appellant Ms. Chakakhan R. Davis [9825779-2]; granting Motion to extend time to return a sufficient petition for rehearing en banc, until May 9, 2022, filed by Appellant Ms. Chakakhan R. Davis. [9827404-2] [21-60640] (SEP) [Entered: 05/02/2022 04:33 PM]

05/09/2022

MOTION filed by Appellant Ms. Chakakhan R. Davis to extend the time to return a sufficient Petition for rehearing en banc [9824846-2] until 05/19/2022 [9841516-2]. Date of service: 05/06/2022. [21-60640] (SEP) [Entered: 05/06/2022 12:57 PM]

05/09/2022

COURT ORDER granting Motion to extend time to return a sufficient petition for rehearing en banc, until May 19, 2022, filed by Appellant Ms. Chakakhan R. Davis. [9841516-2] [21-60640] (SEP) [Entered: 05/06/2022 03:25 PM]

05/19/2022

REHEARING MADE SUFFICIENT filed by Appellant Ms. Chakakhan R. Davis in 21-60640 [9824846-2]. Sufficient Rehearing due deadline satisfied. [21-60640] (SEP) [Entered: 05/19/2022 02:49 PM]

06/07/2022

COURT ORDER denying Petition for rehearing en banc filed by Appellant Ms. Chakakhan R. Davis. [9824846-2] Without Poll. [9864020-1] Mandate issue date is 06/15/2022. [21-60640] (SEP) [Entered: 06/07/2022 10:13 AM]

06/15/2022

MANDATE ISSUED. Mandate issue date satisfied. [21-60640] (CB) [Entered: 06/15/2022 07:17 AM]

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