

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-30864
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 8, 2019

Lyle W. Cayce
Clerk

DEBORAH MORRIS,

Plaintiff - Appellant

v.

BATON ROUGE CITY CONSTABLE'S OFFICE,

Defendant - Appellee

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:15-CV-562

Before DAVIS, HAYNES, and GRAVES, Circuit Judges.

PER CURIAM:*

Appellant Deborah Morris appeals the district court's grant of summary judgment on her employment discrimination and sexual harassment claims. For the reasons set forth below, we AFFIRM the district court's judgment.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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I. Background

Deborah Morris began working at the Baton Rouge City Constable's Office (the "Constable's Office") in 2008. In 2010, she was assigned to the Court Security Division, where she was the only female deputy.

Morris asserts that several months after her assignment to the Court Security Division, one of her direct supervisors, Sergeant Alvin Jackson, began displaying troubling behavior toward her, such as making comments and taking actions she viewed as sexually suggestive. Morris eventually told Jackson that his actions were "inappropriate and disrespectful." Morris asserts that Jackson then began to treat her more poorly than he treated her colleagues in various ways such as failing to assign extra duties and overtime work that would allow for extra income, denying vacation leave, and assigning her to the "least desirable division." In turn, she alleges that this caused a cascade of poor treatment from her colleagues at Jackson's direction.

Morris says she complained about her treatment to Lieutenant Vernon Scott, Chief Deputy Laurence Navarre, and Constable Reginald Brown. Morris also filed written complaints in February and August 2013 about Jackson's and her co-workers' behavior. She asserts that her complaints were not taken seriously and nothing was done in response.

In 2014, Morris was suspended for 15 days due to an incident outside the office. Morris pursued another vehicle that cut her off in traffic while she was driving her personal vehicle. She radioed for backup when the car did not pull over. An officer from the Baton Rouge Police Department responded to the call and helped pull over the other driver. Morris then told the officer that she wanted to put the driver in jail. The officer "advised her that she had arrest powers and witnessed the incident" and that he would "assist her with whatever she needed." Morris eventually told the officer "to just cut the subject loose." She did not make an arrest or issue a citation.

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Morris's actions violated Constable's Office General Order 103. Following the incident, Lieutenant Scott informed Morris that she would be put on administrative leave while the Constable's Office investigated the incident. The internal investigator originally recommended a 90-day suspension, but Morris eventually agreed to an unpaid suspension lasting 15 days.

Morris sued the Constable's Office in state court, asserting claims under both Title VII and Louisiana law. The Constable's Office removed the case to federal court pursuant to 28 U.S.C. § 1331. The Constable's Office moved for summary judgment, and the district court dismissed Morris's discrimination and supervisor sexual harassment¹ claims with prejudice.² We now AFFIRM the judgment of the district court.

II. Standard of Review

We review a district court's grant of summary judgment *de novo*. *Martinez v. Tex. Workforce Comm'n-Civil Rights Div.*, 775 F.3d 685, 687 (5th Cir. 2014) (per curiam). In so doing, "[w]e view all facts and evidence in the light most favorable to the non-moving party." *Ferraro v. Liberty Mut. Fire Ins. Co.*, 796 F.3d 529, 531 (5th Cir. 2015). Where "there is no genuine dispute as to any material fact, the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a).

¹ Whether the district court applied a Rule 56(a) or Rule 12(b)(6) standard to Morris's supervisor sexual harassment claim is unclear. The district court dismissed Morris's claim at summary judgment. But it also indicated that it was dismissing Morris's claim because she had "failed to allege a sexual harassment hostile work environment claim against Jackson."

² The district court dismissed Morris's retaliation claim without prejudice for failure to exhaust her administrative remedies. Morris does not challenge that portion of the district court's order.

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III. Discussion

A. Sex Discrimination

Morris first challenges the district court's grant of summary judgment on her sex discrimination claim. A Title VII plaintiff bears the initial burden of establishing a prima facie case of sex discrimination, after which the burden shifts to the employer to show "some legitimate, nondiscriminatory reason" for the challenged actions. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). If the employer "offers such a justification, the burden shifts back to the plaintiff, who can attempt to show that the [employer's] proffered reason is simply a pretext for discrimination." *Manning v. Chevron Chem. Co.*, 332 F.3d 874, 881 (5th Cir. 2003). Thus, for summary judgment purposes, Morris at least must have put forth sufficient evidence to raise a fact issue on the prima facie showing and, if justification is shown, on pretext.

To make a prima facie showing of racial discrimination, a plaintiff must show that she:

- (1) is a member of a protected group; (2) was qualified for the position at issue; (3) was discharged or suffered some adverse employment action by the employer; and (4) was replaced by someone outside [her] protected group or was treated less favorably than other similarly situated employees outside the protected group.

McCoy v. City of Shreveport, 492 F.3d 551, 556 (5th Cir. 2007) (per curiam).

The Constable's Office does not dispute that Morris proffered evidence supporting a prima facie discrimination claim. Instead, it argues that the only cognizable adverse employment action is Morris's 15-day suspension. We agree. For purposes of a Title VII discrimination claim, "[a]dverse employment actions include only ultimate employment decisions such as hiring, granting leave, discharging, promoting, or compensating." *McCoy*, 492 F.3d at 559

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(quoting *Green v. Adm'rs of Tulane Educ. Fund*, 284 F.3d 642, 657 (5th Cir. 2002)).

Morris identifies one instance in which she was denied leave and one instance in which she asked for and was denied an opportunity to work overtime at schools.³ But the Constable's Office grants both overtime and leave on a first come, first served basis, and Morris has not proffered evidence showing that she asked for the denied leave or overtime before other officers. Morris also notes that she was transferred to the DMV division, which was purportedly the "least desirable division." Purely lateral transfers are not actionable unless they equate to a demotion. *Alvarado v. Tex. Rangers*, 492 F.3d 605, 612 (5th Cir. 2007). She points to no evidence that the reassignment was to a job that was "objectively worse" than the one she had previously. See *Stringer v. N. Bolivar Consol. Sch. Dist.*, 727 F. App'x 793, 799 (5th Cir. 2018). Finally, Jackson's other alleged rude and overbearing actions do not constitute ultimate employment actions for purposes of Title VII. Morris has thus put forth sufficient facts supporting a prima facie sex discrimination claim only in connection with her 15-day suspension.

Because Morris has stated a prima facie discrimination claim, the burden shifts to the Constable's Office to show a "legitimate, nondiscriminatory reason" for her suspension. See *McDonnell Douglas*, 411 U.S. at 802. The Constable's Office has satisfied its burden. Morris agreed to a 15-day suspension following her violation of General Order 103. She has presented no evidence that the Constable's Office's stated reason for her

³ Morris also claims Jackson never told her about or assigned her to "details." But she has presented no evidence of "details" about which she was not told or to which she was not assigned. Without more, Morris's claim cannot survive summary judgment. See *McFaul v. Valenzuela*, 684 F.3d 564, 571 (5th Cir. 2012) ("Summary judgment may not be thwarted by conclusional allegations, unsupported assertions, or presentation of only a scintilla of evidence.").

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suspension was pretextual. We therefore AFFIRM the district court's grant of summary judgment on Morris's sex discrimination claim.

B. Sexual Harassment

Morris next appeals the district court's grant of summary judgment on her sexual harassment claim against Jackson. Morris argues that her claim satisfies the pleading standard set forth in Federal Rule of Civil Procedure 8. But the district court apparently dismissed Morris's claim on a motion for summary judgment, not a Rule 12(b)(6) motion to dismiss. At the summary judgment phase, we do not examine whether Morris's complaint states a plausible claim for relief; instead, we must determine whether any genuine issue of material fact as to Morris's claims exists. *Compare* FED. R. CIV. P. 12(b)(6) *with* FED. R. CIV. P. 56(a).

To survive summary judgment, a plaintiff claiming sexual harassment against a supervisor must provide evidence creating a genuine issue of material fact as to whether: "(1) [she] belonged to a protected class; (2) [she] was subject to unwelcome sexual harassment; (3) the harassment was based on sex; and (4) the harassment affected a 'term, condition, or privilege' of employment." *Woods v. Delta Beverage Grp., Inc.*, 274 F.3d 295, 298 & n.2 (5th Cir. 2001) (*per curiam*) (quoting *Shepherd v. Comptroller of Pub. Accounts of the State of Tex.*, 168 F.3d 871, 873 (5th Cir. 1999)). Morris points to no evidence on any of these elements. Instead, she argues that the allegations in her amended complaint state a plausible claim for relief. But such allegations, without more, are insufficient to prevail on summary judgment. *See* FED. R. CIV. P. 56(a).

Even if the district court did apply Rule 12(b)(6) to Morris's amended complaint, she has still failed to state a sexual harassment claim. Morris claimed in her amended complaint that (1) Jackson took her to lunch at his house, where he "indicated to Morris his desire to have a romantic relationship

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with her”; (2) Jackson “would always close office doors whenever Morris would walk into his office”; and (3) after Morris rejected Jackson’s advances, he subjected her “to a pattern of discriminatory and retaliatory treatment.”

Morris has not alleged facts (or presented evidence) showing that the alleged harassment “affected a ‘term, condition, or privilege’ of employment.” *Woods*, 274 F.3d at 298 (quoting *Shepherd*, 168 F.3d at 873). However reprehensible the alleged conduct described is “[a] recurring point in [Supreme Court] opinions is that ‘simple teasing,’ offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the ‘terms and conditions of employment.’” *Shepherd*, 168 F.3d at 874 (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998)). Instead, “[f]or sexual harassment to be actionable, it must be sufficiently severe or pervasive ‘to alter the conditions of [the victim’s] employment and create an abusive working environment.’” *Shepherd*, 168 F.3d at 874 (quoting *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986)). Morris has neither pleaded nor presented evidence of such facts in support of her sexual harassment claim against Jackson. We thus AFFIRM the district court’s judgment dismissing Morris’s claim.

IV. Conclusion

For the foregoing reasons, we AFFIRM the judgment of the district court.