

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-12540
Non-Argument Calendar

D.C. Docket No. 2:19-cv-00184-RDP

BARON K. HATCHER,

Plaintiff-Appellant,

versus

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama

(August 11, 2020)

Before WILLIAM PRYOR, Chief Judge, NEWSOM and HULL, Circuit Judges.

PER CURIAM:

On June 7, 2019, the district court dismissed Plaintiff Hatcher's complaint under Rule 12(b)(6) for failure to state a claim based on our precedent in Evans v.

Georgia Regional Hospital, 850 F.3d 1248 (11th Cir. 2017), which held that sexual orientation claims were not cognizable under Title VII of the Civil Rights Act of 1964. On June 15, 2020, the Supreme Court issued its decision in Bostock v. Clayton County, 590 U.S. ___, 140 S. Ct. 1731 (2020). Thereafter, the parties filed supplemental letter briefs which dispute the impact of the Supreme Court's decision in Bostock on Appellant Hatcher's sexual orientation discrimination and retaliation claims under Title VII.

After review and in light of Bostock, this Court vacates the district court's June 7, 2019 order and remands this case to the district court for reconsideration in the first instance. Nothing herein expresses any opinion on the Bostock issues or other alternative rulings that the district court has made or may make on remand. This Court notes that, as an alternative ground, the district court sua sponte relied on Plaintiff Hatcher's failure to exhaust remedies under Title VII. On remand and before ruling, the district court shall afford the parties an opportunity to brief anew all issues, including failure to exhaust.

VACATED AND REMANDED.