

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 13-1415**

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NANCYE M. O'NEAL,

Plaintiff - Appellant,

v.

WAL-MART STORES EAST, L.P.,

Defendant - Appellee.

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Appeal from the United States District Court for the District of South Carolina, at Florence. R. Bryan Harwell, District Judge. (4:11-cv-01239-RBH)

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Submitted: July 15, 2013

Decided: August 9, 2013

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Before GREGORY and FLOYD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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J. Scott Kozacki, WILLCOX BUYCK & WILLIAMS, PA, Florence, South Carolina, for Appellant. Angela B. Cummings, Jade C. Murray, LITTLER MENDELSON, P.C., Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Nancye O'Neal (O'Neal) brought this sex and age discrimination action against Wal-Mart Stores East, L.P. (Wal-Mart), under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., and the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., in the United States District Court for the District of South Carolina. In her complaint, O'Neal asserted a variety of sex and age discrimination claims.

At the close of discovery, Wal-Mart filed a motion for summary judgment as to each of O'Neal's remaining claims, asserting that there was insufficient evidence in the record to support her claims. Specifically, with regard to O'Neal's failure to promote claim, Wal-Mart asserted that she neither produced direct evidence of sex or age discrimination nor evidence that Wal-Mart's stated reasons for its decision to hire an external male candidate (under the age of forty) for the position for which she applied were pretextual. Moreover, Wal-Mart asserted that the undisputed record evidence showed that it did not discriminate against O'Neal. With regard to O'Neal's constructive discharge claim, Wal-Mart asserted that O'Neal did not produce evidence to show that Wal-Mart intended for her to resign, that her working conditions met the elevated level of being objectively intolerable, or that her sex or age affected Wal-Mart's treatment toward her.

A United States Magistrate Judge filed a report and recommendation in which she recommended dismissing each of O'Neal's claims. Finding the magistrate judge's recommendation sound, and agreeing that there were no genuine issues of material fact precluding summary judgment, the district court adopted the magistrate judge's report and recommendation and issued a decision granting summary judgment in favor of Wal-Mart as to all of O'Neal's claims. O'Neal noted this timely appeal.

Our careful review of the briefing, appellate record, and relevant law compels us to conclude that the district court did not err in granting summary judgment in favor of Wal-Mart. Accordingly, we affirm on the reasoning of the district court, as stated in its March 5, 2013 decision. O'Neal v. Wal-Mart Stores East, L.P., Civil Action No. 4:11-cv-01239-RBH, 2013 WL 809244 (D.S.C. March 5, 2013).

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED