

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

September 21, 2007

Charles R. Fulbruge III
Clerk

No. 06-51269

Summary Calendar

RUBEN JAMES GONZALEZ

Plaintiff-Appellant

v.

JUPITER COMMUNITIES LLC

Defendant-Appellee

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:05-CV-940

Before REAVLEY, SMITH, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Ruben James Gonzalez is appealing the district court's denial of his motion to proceed in forma pauperis (IFP) on appeal following the district court's order granting the defendant Jupiter Communities, L.L.C. (Jupiter) summary judgment and dismissing his complaint under Title VII of the Civil Rights Act. Gonzalez is effectively challenging the district court's certification that he should not be granted IFP status because his appeal is not taken in good faith. See *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997); 28 U.S.C. § 1915(a)(3).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Jupiter presented summary judgment evidence that Gonzalez was terminated because he was not performing his job in a satisfactory manner. Gonzalez did not rebut that evidence. Nor did he show that he was treated differently from similarly situated employees. Other than his conclusional assertions, Gonzalez has not provided any evidence that he was terminated based on his gender. Thus, Gonzalez did not satisfy his burden of showing that a genuine issue of material fact existed as to whether Jupiter intentionally discriminated against him based on his sex. *Longfield v. Eastfield College*, 88 F.3d 300, 304 (5th Cir. 1996).

Because there was no genuine issue as to any material fact and Jupiter was entitled to judgment as a matter of law, the district court's determination that Gonzalez's appeal was not taken in good faith was correct. See *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).

Because Gonzalez has failed to show that he has a nonfrivolous issue for appeal, we uphold the district court's order certifying that the appeal is not taken in good faith. Gonzalez's request for IFP status is DENIED, and his appeal is DISMISSED as frivolous. See *Baugh*, 117 F.3d at 202 & n.24; 5th Cir. R. 42.2.

IFP DENIED; APPEAL DISMISSED AS FRIVOLOUS.