NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 2, 2021*
Decided April 16, 2021

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL S. KANNE, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 20-1823

HECTOR AREVALO-CARRASCO,
Plaintiff-Appellant,

v.

THE MIDDLEBY CORPORATION, INC., & CARTER-HOFFMAN, LLC,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 18 CV 4528

Manish S. Shah,
Judge.

O R D E R

Hector Arevalo-Carrasco worked as a welder for Carter-Hoffman, a manufacturer, until he was fired in 2018 after two fights in the workplace. Arevalo sued his former employer and its parent company for retaliation, harassment, and discrimination based on sex, race, and national origin. The district court entered

* We have agreed to decide this case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

summary judgment for the defendants, concluding that some of Arevalo's claims were untimely and that he lacked sufficient evidence to support the others. We affirm.

At the outset, we address Arevalo's concern that the district court did not "search through" his evidence to see the merit of his claims. Local rules required Arevalo to submit a response statement raising factual disputes in separately numbered paragraphs and to submit his own statement of facts, supporting both with admissible evidence. *See* N.D. ILL. L.R. 56.1(b), (e). Although Arevalo supplied dozens of documents, he did not comply with these rules. The court therefore deemed his employer's factual account undisputed but still "considered [Arevalo's] declaration to the extent it is competently supported by admissible evidence." The court was entitled to strictly enforce its local rules. *See McCurry v. Kenco Logistics Servs., LLC*, 942 F.3d 783, 787 (7th Cir. 2019). We thus recount the facts as presented by the defendants, but in the light most favorable to Arevalo. *See id.*

After several stints as a temporary worker, Arevalo began working full time at Carter-Hoffman in 2011. At that time, he received a copy of the company's employee handbook, which sets out rules prohibiting "abusive language" and "fighting with, threatening, intimidating, or coercing fellow coworkers." The handbook further warns that infractions may result in a warning or discharge. Arevalo also received training on the company's zero-tolerance violence policy.

Arevalo had worked for the company for nearly five years when he complained to Carter-Hoffman's human resources manager about harassment. First, he said, his coworkers made several derogatory and threatening remarks: "We don't like wetbacks and spics;" "I hate Mexicans. They are taking our jobs;" "We're going up north to shoot and kill Mexicans;" "I like Mexicans because we pay them less;" and "We're going up north to hunt Mexicans." He also reported that his supervisor showed him pornography on a smartphone, told Arevalo about his sex life, and described other workers' sexual attributes. According to Arevalo, around the same time, the human resources manager told him he could be fired for speaking to his coworkers in Spanish. Arevalo does not know whether his 2015 complaints were investigated, but he testified that the race- and national origin-based comments stopped that year, and the unwanted sexual conversations ended in 2016. He says that he continued to update human resources about bad behavior at his workplace.

During this time—in 2014, 2015, and 2017—Arevalo's performance reviews documented conflict with his coworkers. Then, in late 2017, Arevalo's supervisor saw

him slam a hammer on a table before chasing a coworker he was arguing with. Both employees were issued written warnings, alerting them that another offense would result in removal. Arevalo responded that he would report the company to the Equal Employment Opportunity Commission for discrimination. Four months later, in 2018, Arevalo threatened to have his brother "kick his [supervisor's] ass" when the supervisor counseled Arevalo during a timed welding test. He was fired that same day for violating the workplace violence policy again. Soon after, he filed a charge with the EEOC, and he eventually received a right-to-sue notice.

Arevalo then filed this lawsuit. With the help of recruited counsel, he later submitted a streamlined amended complaint, asserting that Carter-Hoffman and Middleby, its parent corporation, subjected him to a hostile work environment and fired him in retaliation for complaining about that harassment under Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e. He further alleged that the defendants discriminated against him based on his sex, *id.*, race, *id.* §§ 1981, 2000e, and national origin §§ 1981, 2000e. The recruited lawyer withdrew after Arevalo's deposition.

The defendants moved for summary judgment, and the district court granted that motion. The court first determined that Middleby was not a proper defendant because it did not employ Arevalo and that the Title VII discrimination claims based on conduct three years before his dismissal were untimely. *See id.* § 2000e-5(e)(1). As for his discharge, he failed to show that Carter-Hoffman fired him because of any protected characteristic under Title VII or § 1981. Further, no reasonable jury could find that Arevalo had suffered a hostile work environment because the offensive remarks were "too isolated" and stopped after his complaint. Finally, for purposes of his retaliation claim, Arevalo did not point to any evidence that the company fired him for anything other than his workplace violations. Arevalo now appeals.

Arevalo generally challenges the entry of summary judgment on the retaliation and discrimination claims, which we review de novo. *Knudtson v. Cnty. of Trempealeau*, 982 F.3d 519, 525 (7th Cir. 2020). We have read Arevalo's opening brief generously but discern no argument about a hostile work environment or Middleby's liability, so we do not address these claims. *See Anderson v. Hardman*, 241 F.3d 544, 545 (7th Cir. 2001).

Arevalo first contends that the district court improperly dismissed his discrimination claims under Title VII as untimely. But the district court was correct that any Title VII claim based on "prior discrete discriminatory acts" (hostile remarks about Mexicans, unwanted sexual conversations, and threats to not speak Spanish) was time-barred. *See Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002); *Barrett v.*

Ill. Dep't of Corrs., 803 F.3d 893, 898–99 (7th Cir. 2015). That conduct had stopped three years—far more than 300 days—before he filed his only administrative charge in 2018. *See* § 2000e-5(e)(1). To the extent that § 1981 claims based on any of these events would be timely under the four-year statute of limitations, Arevalo does not challenge the district court's conclusion that Carter-Hoffman could not be liable for the offensive conduct of his coworkers that ended after he complained in 2015.

As it relates to his discharge, Arevalo had filed timely discrimination claims under Title VII and § 1981. For purposes of § 1981, "national origin" is not protected, but "ethnicity," which includes Mexican heritage, is. *See Saint Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 613 (1987); *Ortiz v. Werner Enters., Inc*, 834 F.3d 760, 764 (7th Cir. 2016) (§ 1981 claim based on "Mexican ethnicity"). To survive summary judgment, Arevalo needed evidence that a protected characteristic "caused the discharge." *Ortiz*, 834 F.3d at 765. Under § 1981, the race- or ethnicity-based discrimination must have been the determinative reason for his firing. *See Comcast Corp. v. Nat'l Ass'n of African American-Owned Media*, 140 S. Ct. 1009, 1019 (2020). If discrimination were merely one reason for his termination, Arevalo could still prevail under Title VII's "motivating factor" standard. *See Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1739 (2020) (protected characteristic as "one but-for cause" is "enough to trigger" Title VII); *Comcast Corp.*, 140 S. Ct. at 1017. But that distinction does not serve Arevalo here; his claims fail under both Title VII and § 1981.

Arevalo contends that Carter-Hoffman fired him because of his race or Mexican ethnicity and provided a pretextual reason for its decision. The district court, he says, ignored evidence that he never violated the workplace violence policy and that he was meeting his employer's legitimate expectations. But even if Arevalo was generally performing his job satisfactorily, he cannot support the assertion that he was meeting his employer's legitimate expectations at the time of his discharge. *See Igaski v. Ill. Dep't of Fin. & Pro. Regul.*, 988 F.3d 948, 958–59 (7th Cir. 2021). The record reflects that he had a troubled relationship with his coworkers, and Carter-Hoffman fired him when he threatened his supervisor just four months after receiving a "final warning" for offending the anti-violence policy. Whether that decision was wise is beyond our purview; we care only whether the reason covered up a discriminatory motive. *See id*. at 958; *McCann v. Badger Mining Corp.*, 965 F.3d 578, 590 (7th Cir. 2020). And the circumstantial evidence that Arevalo cites—lack of witnesses to the fights, some positive past reviews, and a previously clean record—could not support a finding that Carter-Hoffman provided a false reason for his discharge. *See McCann*, 965 F.3d at 590.

Arevalo lastly asserts that Carter-Hoffman retaliated against him for reporting the harassment and warning that he would complain to the EEOC. But to prevail, Arevalo needed evidence that his engagement in a protected activity was the but-for cause of his discharge. *See Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 346 (2013); *Robertson v. Dep't of Health Servs.*, 949 F.3d 371, 378 (7th Cir. 2020). Again, however, the record does not support that Carter-Hoffman fired Arevalo for anything other than his misconduct. Workplace conditions *improved* for Arevalo after his protected activity. And the mere timing of events—even if we credit Arevalo's unsupported assertions that he threatened to file a charge with the EEOC in 2017 and that he continued to report misbehavior into 2018—does not create a triable issue. *See Igasaki*, 988 F.3d at 959; *Kidwell v. Eisenhauer*, 679 F.3d 957, 966 (7th Cir. 2012) (allowing only "a few days to elapse"). The timing here is not suspicious in relation to any protected activity because the unrebutted evidence shows that Carter-Hoffman fired Arevalo on the very day of his second of two workplace altercations within four months. *See Igasaki*, 988 F.3d at 960; *Kidwell*, 679 F.3d at 967 (employee's misconduct broke any causation connection).

We have reviewed Arevalo's other arguments, and none has merit.

AFFIRMED