NONPRECEDENTIAL DISPOSITION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 January 6, 2023*
Decided January 12, 2023

Before

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-1734

JASON SMITH,
Plaintiff-Appellant,

v.

CITY OF CHICAGO, et al.,
Defendants-Appellees.

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

No. 18 C 8075

Gary Feinerman,
Judge.

O R D E R

Jason Smith sued the City of Chicago and three of his former colleagues, alleging that they fired him because he complained of racial discrimination and then defamed him. The district court entered summary judgment for the defendants. Because Smith

* This appeal is successive to case nos. 20-2556 and 21-1431 and is being decided under Operating Procedure 6(b) by the same panel. We have agreed to decide the 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).

lacks evidence that the defendants knew about his protected activity or said anything false about him, we affirm.

Smith worked as a probation officer for Cook County for over 15 years, and the relationship was tumultuous. He accused the County several times of racial discrimination, including in grievances he filed on behalf of his union and in a charge he filed with the Illinois Department of Human Rights. A year and a half after filing that charge, Smith accepted a job at the City of Chicago. At first, rather than tell the County about his City job, he sought and received approval for an educational leave. But soon after, according to Smith, he told his County boss that he was quitting and mailed a resignation letter to the County. The County says it never received any notice of his resignation. Smith later certified to the City that he did not have any other jobs.

While believing that Smith was still employed by the County on educational leave, the County learned that Smith had another job. To show the City that Smith had two jobs, the County sent Karlo Flowers, a City employee, Smith's email requesting the educational leave. Smith believes that, in this email, he referenced one of his prior complaints of racial discrimination. He had written that another probation officer "was granted a ten hour work shift despite the fabricated information created and submitted to the Illinois Human Rights Commission … stating no probation officer has ever had a ten hour work shift" and that a "directive [was] submitted from the Office of the Chief Judge to remove the fabricated document inserted into [Smith's] personnel file."

Both employers fired Smith. The County fired him because, as far as it knew, Smith had never resigned and was on a leave of absence. At the City, Flowers explained to Sydney Roberts, the head of the police accountability office, that the County just fired Smith for having two jobs. Roberts then fired Smith for the same reason.

Afterward, Smith applied to the Transportation Security Administration. It asked James Murphy-Aguilu, Smith's supervisor at the City, why Smith no longer worked there. Murphy-Aguilu responded that "my understanding is [Smith] was terminated" because "he had failed to disclose secondary employment, however, please refer to Karlo Flowers if you need a more detailed description of the termination."

Smith sued several defendants. In another appeal, we affirmed the district court's partial judgment in favor of County and union officials. *See Smith v. Evans*, et al., 2022 WL 205414 (7th Cir. 2022). This appeal concerns Smith's claims against the City, Flowers, Roberts, and Murphy-Aguilu. Smith asserted that he was fired in retaliation

for the complaints of racial discrimination he made while he was at the County, in violation of both Title VII of the Civil Rights Act of 1964 and the Illinois Civil Rights Act. He also asserted that Murphy-Aguilu defamed him. The district court entered summary judgment for the defendants, concluding that a jury could not find that they knew about Smith's protected activity or that Murphy-Aguilu defamed him.

Smith insists that summary judgment was improper. We begin with his claims of retaliation under Title VII and the Illinois Civil Rights Act. In doing so, we acknowledge that the Illinois Supreme Court has not clarified whether the latter Act covers retaliation claims. *Compare Ill. Native Am. Bar Ass'n v. Univ. of Ill.*, 856 N.E. 2d 460, 469 (Ill. App. 2006) (Hoffman, J., concurring) ("The [Illinois] Civil Rights Act … does not grant a right of action to a person who experiences retaliation"), *with Weiler v. Vill. of Oak Lawn*, 86 F. Supp. 3d 874, 889–90 (N.D. Ill. 2015) ("[A]n individual can bring a claim for retaliation under ICRA."). But we need not reach that question because Smith's retaliation claim would fail either way. The key inquiry is whether a jury could find that the City fired Smith because of his protected activity. *See Lesiv v. Ill. Cent. R.R. Co.*, 39 F.4th 903, 911 (7th Cir. 2022). A jury could not do so here.

Smith maintains that Roberts, the decisionmaker at the City, fired him because he had accused the County of racial discrimination. He contends that Roberts must have learned about his protected activity from the email that the County sent to Flowers (which references an Illinois human-rights agency) or from Murphy-Aguilu (who Smith says knew about grievances that Smith filed for the union).

Smith's claim fails at the outset because a reasonable jury could not conclude that Roberts knew about his protected activity. The email was not sent to Roberts, she swears that she had no knowledge of complaints that Smith made while at the County, and Flowers testified that he did not understand the email to reference any complaint of discrimination. Moreover, a jury could not disbelieve Flowers because Smith's email did not appear to refer to a complaint that *Smith* filed. Smith's references—to the work schedule of another employee, "fabricated information … submitted to the Illinois Human Rights Commission," and a document that was "inserted" into his personnel file—all conveyed that another person filed a charge.

Likewise, a jury could not infer that Murphy-Aguilu told Roberts that Smith had filed complaints of racial discrimination for his union. Murphy-Aguilu testified that he knew Smith was in a union, not that he knew Smith had complained on behalf of the union. In any case, no evidence suggests that Murphy-Aguilu spoke to anyone about

Smith's protected activity, and Smith's speculation to the contrary cannot preclude summary judgment. *See Weaver v. Speedway, LLC*, 28 F.4th 816, 820 (7th Cir. 2022).

Smith also contends that Roberts's reason for firing him was pretextual. His argument rests on his belief that the reason for his discharge (undisclosed secondary employment) was incorrect because he had resigned from the County when he told the City that he had no other jobs. But a jury could not infer that Roberts lied about thinking that Smith had another job, even if that understanding turned out to be inaccurate. *See Robertson v. Dep't of Health Servs.*, 949 F.3d 371, 378 (7th Cir. 2020). Smith needs evidence that Roberts did not believe her proffered reason, *see id.*, and he lacks any. The only thing that Roberts knew when she fired Smith was that the County had just fired him for having two jobs; no one gave her any reason to think otherwise.

Smith's defamation claim fares no better. Defamation under Illinois law requires a false statement. *Hadley v. Doe*, 34 N.E.3d 549, 557 (Ill. 2015). And a jury could not find that Murphy-Aguilu's statement was untrue. He said that it was *his understanding* that Smith was fired for having two jobs, not that Smith in fact had two jobs. Even if Smith had resigned from the County, he lacks evidence suggesting that Murphy-Aguilu knew this or believed that Smith was fired for a different reason than having a second job. In any case, because the statement was made to an employer, it was conditionally privileged under Illinois law. *See Quinn v. Jewel Food Stores, Inc.*, 658 N.E.2d 1225, 1234 (Ill. App. 1995). This means that Smith must show that Murphy-Aguilu knew the statement was false or recklessly disregarded whether it was false. *See Coghlan v. Beck*, 984 N.E.2d 132, 147 (Ill. App. 2013). Smith has not done so.

AFFIRMED