NONPRECEDENTIAL DISPOSITION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 23, 2024*
Decided January 25, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-1513

BERNARD K. POLLARD,
Plaintiff-Appellant,

v.

INDIANA DEPARTMENT OF CHILD SERVICES,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Indiana, Fort Wayne Division.

No. 1:20-CV-260-HAB

Holly A. Brady,
Chief Judge.

O R D E R

Bernard Pollard, who was fired from his position with the Indiana Department of Child Services (the "Department"), appeals the summary judgment rejecting his claims of employment discrimination. The district court concluded that Pollard failed to

* 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).

produce evidence that would allow a reasonable juror to conclude that he was fired because of his protected characteristics. We affirm.

We construe the record in the light most favorable to Pollard, the nonmovant at summary judgment. *Dunlevy v. Langfelder*, 52 F.4th 349, 353 (7th Cir. 2022). Pollard, a Black man in his sixties, began working as a family case manager for the Department in 2016. His performance was largely satisfactory until early 2019, when an intern accused him of sexually harassing her. According to the intern, Pollard asked her if it would be sexual harassment for a man to say, "Girl you fine, you wanna go out with me tonight" as he "modeled the movement of checking [her] out with his eyes up and down." In her words, Pollard then told her "you're a beautiful girl" and "you're blonde, have a flat stomach, perky and have a nice butt … like a white girl stuck in a black girl's body." As she recounted, Pollard added, "if I wanted to, I could have had you by now."

The intern reported these events to Pollard's supervisor, who initiated a human-resources investigation. During the investigation, Pollard denied making comments about the intern's appearance and defended his question about sexual harassment as a legitimate intellectual discussion. He also clarified that he told the intern not that he could "have her," but that "back in the day" he was "smooth" and "had more white women than you have relatives." One of Pollard's colleagues, when interviewed as part of the investigation, reported that Pollard had told coworkers that a married woman could not be raped by her husband. Pollard also denied saying this. Instead, he recalled being asked what a woman should do if her husband abuses her, and he says he responded by quoting a Bible passage, "Let not the wife depart from her husband." The investigator ultimately found the intern's allegations credible and recommended that Pollard be dismissed because his comments, even if they did not constitute sexual harassment, were "unwelcomed, unprofessional, and do not meet agency standards."

The Department's regional director then conducted a pretermination meeting with Pollard. At that meeting, Pollard alleged that he was being singled out for his race and that the Department was treating him "like a n***** chasing the white woman." The regional director suspended the meeting to investigate Pollard's accusation, later noting in an email to human resources that doing so meant that Pollard "could no longer state that he was treated any differently than anyone else." A week later, the regional director reconvened the meeting and fired Pollard because he had created "an offensive environment" through his comments on rape, his remarks to the intern, and his use of a racial slur during the pretermination meeting.

On the same day he was fired, Pollard reported to the Department that the regional director had retaliated against him for complaining to the agency's executive director that the human-resources investigation was racially motivated. Pollard also alleged that he was generally treated differently from coworkers because of his race. The Department investigated these accusations, as well as the accusation lodged at the pretermination meeting, and found that no discrimination or retaliation occurred.

Pollard sued the Department, pleading claims of retaliation and discrimination based on race, sex, religion, *see* 42 U.S.C. §§ 2000e–2000e-17, and age, s*ee* 29 U.S.C. §§ 621–634. He reasserted that the sexual harassment investigation into him was racially motivated and argued that he was also terminated because of his religious beliefs regarding marriage, his age, and because he had complained to the Department's executive director. Pollard also contended that the Department disrespected and belittled him, which was necessarily an act of sex discrimination because it detracted from his social standing as a man.

The district court granted the Department's motion for summary judgment. The court noted at the outset that Pollard had abandoned his retaliation claim (by not developing the claim in discovery or in response to the summary judgment motion) and failed to include a claim for age or religious discrimination in his administrative complaint. As for Pollard's claims of race and sex discrimination, the court concluded that he failed to present sufficient evidence to support a prima facie case under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–04 (1973). The court explained that Pollard did not identify any similarly situated employee who was treated more favorably than him, but even if he did, he failed to point to any evidence to show that the Department's reason for firing him was pretextual.

On appeal, Pollard first targets the summary judgment rejecting his claims of sex and race discrimination. Because the analysis of the prima facie case and pretext often overlap, as they do here, we may proceed directly to the question whether the Department's reasons for firing him were pretextual. *See Bragg v. Munster Med. Rsch. Found. Inc.*, 58 F.4th 265, 271 (7th Cir. 2023). Pollard asserts that he introduced evidence of pretext through an email—overlooked, he says, by the district court—showing that race must have motivated the human-resources investigation into his conduct. In that email, the regional director wrote that he wanted to investigate Pollard's allegation of race discrimination so that Pollard "could no longer state that he was treated any differently than anyone else." Pollard believes that this statement reflects the Department's dismissiveness of his allegation of race discrimination.

But to show pretext, a plaintiff must demonstrate that the reasons are phony, a lie on the part of the defendant. *Id*. And nothing in this email calls into question the sincerity of the Department's legitimate, nondiscriminatory reasons for firing him—his offensive comments on rape, his remarks to the intern, and his use of a racial slur during the pretermination meeting.

As another instance of pretext, Pollard points to the Department's investigation that cleared him of sexual harassment. This determination, he surmises, shows that the decision to fire him could have been motivated only by race or sex. But the Department's sexual harassment policy says that even if an allegation is unsubstantiated, an employee can still be disciplined if—as in this case—his conduct was deemed to be inappropriate or unprofessional.

Pollard also devotes much of his brief on appeal to argue that the Department's investigation and termination procedures violated his due process rights. He had asserted a due process claim in his response opposing the Department's motion for summary judgment. But Pollard never included this claim in his complaint, and parties may not amend their pleadings in briefs opposing a motion for summary judgment. *Anderson v. Donahoe*, 699 F.3d 989, 997 (7th Cir. 2012).

The remainder of Pollard's brief largely repeats arguments he raised to the district court, but all are too undeveloped to warrant discussion. *See* FED. R. APP. P. 28(a)(8)(A); *Shipley v. Chi. Bd. of Election Comm'rs*, 947 F.3d 1056, 1062–63 (7th Cir. 2020).

AFFIRMED