NONPRECEDENTIAL DISPOSITION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 24, 2024*
Decided April 25, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 23-1740

GARFIELD PHILLIPS,
Plaintiff-Appellant,

v.

PHYLLIS BAXTER, et al.,
Defendants-Appellees.

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

No. 16 C 8233

Charles P. Kocoras,
Judge.

O R D E R

Garfield Phillips sued his former supervisors at the Illinois Department of Human Services, alleging that they violated 42 U.S.C. § 1981 and the Equal Protection Clause of the Fourteenth Amendment, *see* 42 U.S.C. § 1983, by discriminating against

* 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).

him based on his race, sex, and national origin. The district court entered summary judgment in favor of the defendants. We affirm.

We draw our account of the facts from the record at summary judgment, which we view in the light most favorable to Phillips, the nonmoving party. *See Barnes-Staples v. Carnahan*, 88 F.4th 712, 715 (7th Cir. 2023). Phillips, a Black man who describes himself as having Ghanaian ancestry and Antiguan ethnicity, was employed as a casework manager at the Department's regional processing hub in Kankakee, Illinois, until he resigned in early 2016. His responsibilities included managing caseworkers' assignments and overseeing their processing and certifying of applications for benefits.

This lawsuit revolves around several events in the nine months leading up to Phillips's resignation that, he believes, were motivated by discriminatory animus. First, Phillips's direct supervisor, Phyllis Baxter, scheduled a pre-disciplinary meeting to discuss a string of unauthorized absences. Baxter canceled the meeting, though, after Phillips submitted all required paperwork and the absences were approved. Then, for about one month, Phillips was unable to make long-distance phone calls or to open certain computer applications. Phillips believes that his two fellow casework managers (both women) did not experience similar restrictions, though he admits he had no way to know. Later, Phillips applied for two promotions but was not selected. Both positions went to female candidates who received the highest scores in their interviews. (One of them was Baxter.)

At some point in 2015, Gayle Stricklin, a Department administrator, concluded that Phillips, who was more "skilled and experienced," should swap places with a casework manager in Kankakee's local office who needed "additional training." The local office was in the same building as the processing hub, and the reassignment would not affect Phillips's job title, responsibilities, salary, or benefits. In early 2016, Baxter notified Phillips about the new assignment, but Phillips told her that he would not accept it. The next week, Baxter and Stricklin instructed Phillips to leave the processing hub and to report to his new office. He refused. According to Phillips, Baxter became "belligerent" and used a "threatening tone" to order him to leave. Instead of reporting to the local office, Phillips left work for the rest of the day. For the next week, Phillips called in each day to report that he would be absent because he was sick or because of inclement weather. Another week later, he resigned.

Phillips believed that the true motivation for his perceived mistreatment at work was discrimination. At summary judgment, he submitted as evidence an email in which

Baxter told Stricklin that the processing hub and the local office were the "same but separate" and an email in which Stricklin used the phrase "[l]ike father ... [l]ike son" when warning a third party not to let Phillips back into the office after he "left very angry." In the district court, Phillips offered a complicated explanation for his belief that these comments were racist, and he does not clear it up on appeal.

Six months after he resigned, Phillips brought this lawsuit. The district court dismissed his complaint on the defendants' motion, but we reversed that decision with respect to his discrimination claim. *Phillips v. Baxter*, 768 F. App'x 555, 560 (7th Cir. 2019). Phillips then amended his complaint twice. After further motion practice, the case went forward on theories of discrimination based on race, sex, and national origin under the Equal Protection Clause, *see* 42 U.S.C. § 1983, and discrimination based on race under 42 U.S.C. § 1981.

The defendants later moved for summary judgment. They argued that Phillips failed to identify any adverse action against him and that, regardless, he furnished no evidence of discriminatory motive. In responding to the defendants' statement of material facts, *see* N.D. ILL. LOCAL R. 56.1(a)(2), Phillips supplied an answer to each statement but for the most part failed to cite admissible evidence supporting a dispute, as required by Local Rule 56.1(b)(2). He also submitted his own statement of facts (and a sur-reply with further factual assertions) but, again, did not cite record evidence as required by Local Rule 56.1(d)(2). In its decision, the district court addressed Phillips's facts to the extent they complied with the rules and deemed the defendants' factual statements undisputed. The court then granted the defendants' motion for summary judgment, concluding that, even if Phillips could establish that he experienced an adverse employment action, he supplied no evidence of discrimination based on his race, sex, or national origin. Phillips appeals, challenging the court's handling of the evidence as well as its ruling on the motion for summary judgment.

Phillips first contends that the district court improperly "nullified" the bulk of his evidence. We review a challenge to the enforcement of local rules for an abuse of discretion, giving "substantial deference" to the district court. *McCurry v. Kenco Logistics Servs., LLC*, 942 F.3d 783, 787 n.2 (7th Cir. 2019). Strict enforcement is permitted against counseled and pro se litigants alike. *See id.* And here, the enforcement was not especially "strict." The court gave Phillips reasonable leeway. *See Igasaki v. Illinois Dep't of Fin. & Pro. Regul.*, 988 F.3d 948, 957 (7th Cir. 2021) (district court may strike some responses and consider others). But it disregarded factual assertions or responses that were unsupported by admissible evidence, as the rules for summary judgment require.

FED R. CIV. P. 56(c)(1); *see Gunville v. Walker*, 583 F.3d 979, 985 (7th Cir. 2009). Doing so was not, as Phillips argues, determining the credibility of, weighing the truthfulness of, or "nullifying" any evidence. The court did not abuse its discretion.

As to the summary judgment decision, which we review de novo, *Barnes-Staples*, 88 F.4th at 715, Phillips does not raise much of a challenge, choosing to use his briefs to relitigate which facts should be in the record. But we understand him to argue generally that various workplace occurrences amounted to discriminatory employment actions.

We review claims of employment discrimination brought under §§ 1981 and 1983 in the same way as those brought under Title VII. *McCurry*, 942 F.3d at 788 (§ 1981); *Barnes v. Board of Trs. of the Univ. of Ill.*, 946 F.3d 384, 389 (7th Cir. 2020) (§ 1983). That is, we evaluate whether the evidence would permit a reasonable factfinder to conclude that Phillips's race, sex, or national origin caused an adverse employment action. *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 765 (7th Cir. 2016). Here, whether evaluated through the burden-shifting framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), or holistically, *see Ortiz*, 834 F.3d at 765, the evidence would not permit a reasonable jury to conclude that Phillips was subjected to an adverse employment action for an impermissible reason.

First, Phillips lacks evidence that his race, sex, or national origin played any role in the defendants' failure to promote him. Demonstrating discrimination based on a failure to promote requires evidence that the plaintiff (1) was a member of a protected class, (2) was qualified for the position he sought, (3) applied for that position and was rejected, and (4) was passed over for someone outside the protected class who was not better qualified. *McCurry*, 942 F.3d at 788–89. Here, the undisputed facts show that both promoted candidates were selected because they had the highest scores, and Phillips did not submit evidence that he was nevertheless a superior candidate each time. He also lacks evidence to support his conjecture that sex discrimination is the real reason he was not promoted, and speculative inferences are insufficient to defeat summary judgment. *See Herzog v. Graphic Packaging Int'l, Inc.*, 742 F.3d 802, 806 (7th Cir. 2014).

Second, to the extent Phillips invokes a theory of constructive discharge as an adverse employment action, he furnished no evidence that reassigning him, or any other action, communicated that he faced "imminent and inevitable" firing. *Chapin v. Fort-Rohr Motors, Inc.*, 621 F.3d 673, 680 (7th Cir. 2010) (no constructive discharge where employer "expressed a desire to keep [employee] on"). Quite the opposite: The evidence shows that the defendants believed that Phillips would be an asset to the local

office, which was lacking critical expertise. And although Phillips was uncomfortable with certain remarks by Baxter and Stricklin, his evidence falls short of allowing an inference that the work environment was so unbearable that he was effectively forced to resign. *See id.* at 679 (no constructive discharge based on one threat and raised voices).

Third, no other action by the defendants counts as an "adverse employment action" supporting a discrimination claim. Phillips's reassignment from the processing hub to the local office was not an adverse action because there is no evidence that it left him "worse off" with respect to the terms and conditions of his employment. *Muldrow v. City of St. Louis*, 601 U.S. ___, 2024 WL 1642826, at *5, *7 (2024). Indeed, the reassignment did not change his position, job duties, salary, or benefits, and the new office was even in the same building. *See Madlock v. WEC Energy Grp., Inc.*, 885 F.3d 465, 470–71 (7th Cir. 2018). The rest of Phillips's complaints—*e.g.*, changes in his duties (all within the scope of his role), an inability to make long-distance phone calls or access some computer applications, and a pre-disciplinary meeting that never happened—were mostly temporary inconveniences. None affected the terms or conditions of his employment so as to be an adverse employment action. *See McCurry*, 942 F.3d at 789.

Last, to the extent Phillips argues that there was a hostile work environment, he again lacks supporting evidence. Conduct must be objectively offensive and "severe or pervasive" to be actionable. *Scaife v. U.S. Dep't of Veterans Affs.*, 49 F.4th 1109, 1116 (7th Cir. 2022). But the conduct here was not. The phrases "same but separate" and "[l]ike father … [l]ike son" are not offensive to a reasonable person. And Phillips provided no evidence that Baxter's unspecified "belligerent" response to his refusal to leave the hub was severe or pervasive. *See id.* at 1114–15, 1117 (a few demeaning conversations and instances of aggressive yelling not severe or pervasive conduct).

AFFIRMED