United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-5181 **September Term, 2017**

FILED ON: MARCH 14, 2018

GHULAM ALI,

APPELLANT

v.

E. SCOTT PRUITT, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:14-cv-01674)

Before: SRINIVASAN and WILKINS, *Circuit Judges*, and WILLIAMS, *Senior Circuit Judge*.

J U D G M E N T

This case was considered on the record from the United States District Court for the District of Columbia, and on the briefs and oral arguments of the parties. The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* FED. R. APP. P. 36; D.C. CIR. R. 36(d). It is

ORDERED AND ADJUDGED that the District Court's judgment is **AFFIRMED**.

Ghulam Ali, an Environmental Protection Agency ("EPA") economist, here appeals the District Court's grant of summary judgment to his employer on Ali's claims that the EPA failed to reasonably accommodate his medical needs under the Rehabilitation Act and discriminated against him in violation of Title VII of the Civil Rights Act. This Court appointed Miller & Chevalier as amicus curiae ("Amicus") to present arguments in support of Ali, and we thank them for their assistance.

At the outset, we must ascertain our jurisdiction over this appeal – including, as relevant here, that the appeal was timely. *Bowles v. Russell*, 551 U.S. 205, 206 (2007). Federal Rule of Appellate Procedure 4 requires that an appeal be filed "within 60 days after entry of the judgment or order appealed from if one of the parties is [the federal government]." FED. R. APP. P. 4(a)(1)(B). "Under 28 U.S.C. § 1291, appeals may be taken . . . only from 'final decisions,'" "which end[] the litigation on the merits and leave[] nothing for the court to do but execute the

judgment." *St. Marks Place Hous. Co. v. U.S. Dep't of Hous. & Urban Dev.*, 610 F.3d 75, 79 (D.C. Cir. 2010) (citations omitted). We evaluate district-court orders to determine whether the court intended that its determination be a final decision for appellate purposes, "tak[ing] the district court at its word" regarding the significance of its orders. *Id.* at 79-80.

There are two possible starting whistles for the 60-day period for Ali to file his appeal. On March 31, 2016, the District Court entered a three-line Order stating that "[c]onsistent with the forthcoming Memorandum Opinion, the court finds that there are no genuinely disputed issues of material fact. [The Motion] is hereby GRANTED and this action will be dismissed with prejudice." *See Ali v. Pruitt*, No. 14-1674 (Mar. 31, 2016) ("March 31 Order"), ECF No. 11; AA5. On April 12, 2016, the District Court issued its more expansive decision setting forth the rationale for granting summary judgment. *See Ali v. McCarthy*, 179 F. Supp. 3d 54 (D.D.C. 2016). In an accompanying order, the District Court stated "this action is hereby dismissed with prejudice. This is a final appealable order," and directed that a copy be sent to Ali. *See Ali v. Pruitt*, No. 14-1674 (Apr. 12, 2016) ("April 12 Order"), ECF No. 13; AA47. Ali's notice of appeal was filed on June 8, 2016 – more than 60 days from the March 31 Order, but within that period with respect to the April 12 Order and Memorandum Opinion. We accordingly must decide whether the March 31 Order or the April 12 Order started Ali's Rule 4(a) appellate clock.

Several considerations compel our decision to measure the timeliness of Ali's appeal from April 12, rather than March 31. First and foremost, by its own terms, the March 31 Order lacked markers of finality to indicate a final, appealable decision. Instead, the March 31 Order forecasted the District Court's determination on the pending motion for summary judgment, stating that the "action will be dismissed" and referencing a "forthcoming" opinion. This language clearly indicated that that the District Court was not finished with the case before it – and we "take the district court at its word" on this issue. *See St. Marks*, 610 F.3d at 80. In addition, the March 31 Order contained no explanation of the District Court's rationale for granting summary judgment beyond a conclusory prognostication that "there are no genuinely disputed issues of material fact." March 31 Order. Such a cursory treatment eschews Rule 56's directive that a district court "state on the record the reasons for granting or denying the motion." FED. R. CIV. P. 56(a). The March 31 Order also did not direct the Clerk to mail a copy of the Order to Ali, who was *pro se*. To the contrary, the District Court docket does not indicate that the March 31 Order ever was sent to Ali. *See* Docket, *Ali v. Pruitt*, No. 14-1674 (D.D.C.); AA1-4. These indications all suggest that the District Court did not consider its March 31 Order to be a final, appealable order dismissing Ali's case, despite its definitive statement that the Defendant's motion was granted.

Our understanding of the March 31 Order is confirmed by its contrast with the April 12 Memorandum Opinion and Order, which had all the indications of finality that the March 31 Order lacked. The April 12 Order accompanying the Memorandum Opinion converted the March 31 Order's future-tense anticipation of dismissal into a present-tense, concrete outcome; it stated explicitly that it was "a final appealable order"; and it directed the Clerk of the Court to mail a copy of the District Court's decision to Ali. April 12 Order. The Memorandum Opinion set forth the District Court's rationale in granting summary judgment, providing a basis for Ali's eventual appeal. Accordingly, our review of the April 12 Order and Memorandum Opinion reinforces our determination that the District Court intended that decision, and not the March 31

Order, to be the final, appealable decision in this case.

We note that, like in *St. Marks*, the District Court issued its March 31 Order barely before the deadline by which district-court judges must report all motions that are pending for more than six months. *See St. Marks*, 610 F.3d at 80 (citing reporting requirements in 28 U.S.C. § 476(a)). As in *St. Marks*, we understand the March 31 Order to be analogous to an "administrative closure" of the pending motion, rather than a final disposition. *See id*. at 81. We again caution that "these orders can confuse parties," *id*., particularly where, as here, a party is representing himself without the assistance of counsel. While we remain sympathetic to the burdens facing district courts, an effort to avoid the "stigma" associated with the six-month reporting requirement in these circumstances carries a risk of confounding litigants. *See id*. at 82.

Turning to the merits, we review *de novo* the District Court's grant of summary judgment, *Stewart v. St. Elizabeths Hosp.*, 589 F.3d 1305, 1307 (D.C. Cir. 2010), and we affirm.

With respect to Ali's Rehabilitation Act claims, the District Court correctly concluded that Ali abandoned the interactive process when he failed to provide supportive medical information at the EPA's request and notified the EPA that he was pursuing the Alternative Work Space process instead of the Reasonable Accommodation process. *Ali*, 179 F. Supp. 3d at 76-80. The Rehabilitation Act contemplates an "interactive process," 29 C.F.R. § 1630.2(o)(3) – that is, "a flexible give-and-take between employer and employee so that together they can determine what accommodation would enable the employee to continue working." *Ward v. McDonald*, 762 F.3d 24, 32 (D.C. Cir. 2014) (internal quotation marks omitted). In summer 2006, Ali sought an accommodation because he anticipated that he would lose the private office he previously had been granted under the agency's Alternative Work Space ("AWS") program when his division relocated. *Ali v. Pruitt*, No. 14-1674, Def.'s Statement of Facts ("SOF")[1] ¶¶ 17-20 (Jan. 30, 2015), ECF No. 4-1; AA103. Ali claimed that he needs a private office, rather than a cubicle, due to his sensitivity to environmental allergens. Compl. 6-7. Ali and his supervisor met with the EPA's Reasonable Accommodation ("RA") liaison Bill Haig to discuss the request. *Ali v. Pruitt*, No. 14-1674, Def.'s Mot. for Summ. J. Ex. 12 (Jan. 30, 2015), ECF No. 4-7; AA 224. The EPA denied Ali's accommodation request for lack of medical documentation, and the denial letter informed Ali that he could submit additional information from his health care providers, including answers to a list of questions. However, Ali never provided the additional documentation that the EPA requested despite follow-up communication from the RA coordinator. Additionally, Ali informed Haig that Ali's "request [was] being considered by [his] office under an alternative process; [his] request in the past was approved under this process. So, [he] would have to wait to see the conclusion of this process, before [he] could follow [the RA] process." SOF ¶ 26; AA104 and *Ali v. Pruitt*, No. 14-1674, Def.'s Mot. for Summ. J. Ex. 17 (Jan. 30, 2015), ECF No. 4-12; AA233. On these undisputed facts, the District Court concluded that Ali abandoned the RA process, absolving the EPA of any failure to accommodate him. *Ali*, 179 F. Supp. 3d at 79-80.

Ali argues that the additional information requested by the EPA was unnecessary because

[1] As the District Court noted, Ali did not contest the EPA's statement of facts. *Ali*, 179 F. Supp. 3d at 60 n.2.

he had submitted to the RA coordinator a letter from his physician Dr. Suresh Gupta dated October 2, 2000, and a prescription from Dr. Michael Kaliner dated June 21, 2006. Amicus Br. 28-29; *see Ali v. Pruitt*, No. 14-1674, Pl.'s Resp. to Summ. J. Exs. B2 and B5 (Mar. 18, 2015), ECF No. 7; AA272, AA275. However, both documents contained only vague recommendations that "[i]t is not practical for Ali to share" a workspace "otherwise his health will deteriorate" (Dr. Gupta) and that Ali "would do best" in a private space (Dr. Kaliner). AA272, AA275. Accordingly, the EPA's Determination of Disability concluded that "there is insufficient documentation in either of these two [documents] that would indicate that [Ali's] ability to breathe is substantially limited, therefore, at this time, he is not considered to be a person with a disability" under the Rehabilitation Act. SOF ¶ 23-24; AA104 and Def.'s Mot. for Summ. J. Ex. 9; AA228, AA227-30. The EPA "set forth in writing precisely the information it needed" regarding Ali's medical condition, putting the burden on Ali to respond. *Ward*, 762 F.3d at 33. He failed to do so. By the time that Ali "suffered an on-the-job allergy attack" in March 2007, which Ali asserts meant that the EPA "needed no additional information," Amicus Br. 28-29, Ali had already withdrawn from the RA process.

Ali also contends that he "constructively engaged" the RA process by his application for a private office through the AWS program. *See* Appellant's Br. 47-48; Amicus Reply 15-17. However, Ali and Amicus cite no precedent supporting the proposition that employees may constructively engage in the RA interactive process by attempting to obtain their desired accommodations through a different human-resources mechanism. Instead, the law is well settled that employers may impose procedural requirements on employees engaged in the Rehabilitation Act's interactive process. *See, e.g.*, *Ward*, 762 F.3d at 33 (requiring written submission of information); *Stewart*, 589 F.3d at 1306-08 (particular paperwork). These cases instruct that the interactive process, while informal, is not a free-for-all by which an employee may ignore the procedures that the employer puts in place to process accommodation needs. A contrary rule permitting employees to circumvent an employer's procedures for raising issues would eviscerate an agency's ability to effectively manage employees through efficient human-resources processes. Amicus now contends that Ali did not abandon the interactive process, but instead merely put it on a temporary hold while pursuing the AWS program. Amicus Br. 26-27. Even assuming that characterization was otherwise persuasive, Ali never reengaged in the interactive process before filing suit. He did not indicate that he wished to resume the RA process, and he never submitted the additional information requested by Haig. Because Ali withdrew from the RA process, the District Court's grant of summary judgment to the EPA on Ali's Rehabilitation Act claim is affirmed.

Ali further appeals the District Court's decision with respect to his various employment discrimination claims, but his arguments are unavailing. The District Court correctly concluded that Ali's promotion and transfer claims were not timely exhausted, as Ali waited more than two years after his undesired transfer – and even longer since the purported agreement to promote him – before contacting the EPA Equal Employment Opportunity counselor. There is no reason for Ali's claims to be tolled, as they relate to discrete, independently actionable events. *See Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002) ("Discrete acts such as termination, failure to promote, denial of transfer, or refusal to hire are easy to identify. Each incident of discrimination and each retaliatory adverse employment decision constitutes a separate actionable 'unlawful employment practice.'"). Ali's hostile-work-environment claim relies

mostly on the same factual circumstances as his discrimination claims – that is, the series of events of non-promotion and transfer. However, Ali himself alleges that he was unaware of these incidents until after he got sick, undermining any claim to a hostile work environment prior to that time. Ali's allegation that he was "subjected to ridicule" from his colleagues because he was working from home, Compl. 8, also falls short of alleging a hostile work environment, which is actionable only when "sufficiently severe or pervasive to alter the conditions of the victim's employment." *Morgan*, 536 U.S. at 116. "[S]imple teasing" or "offhand comments" do not rise to the level of a hostile work environment, *Clark Cnty. Sch. Dist. v. Breeden*, 532 U.S. 268, 271 (2001), and Ali does not otherwise allege that the conditions of his employment were altered. Finally, the District Court interpreted Ali's allegations that he previously brought an Equal Employment Opportunity Commission charge against the EPA "in the late 1990s" to assert a claim of retaliation, but granted summary judgment because Ali failed to show any causal connection between his EEOC activity and the EPA's actions. *See Ali*, 179 F. Supp. 3d at 81; *cf.* Compl. 16. We agree: Ali alleges no specific evidence of retaliation, leaving only a possible inference based on the progression of events. However, the actions in question were too far removed to infer causality. *See Clark Cnty.*, 532 U.S. at 273 ("the temporal proximity must be 'very close'" for a court to infer causality based on "mere temporal proximity between an employer's knowledge of protected activity and an adverse employment action" (citations omitted)). Accordingly, we affirm the District Court's grant of summary judgment.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after the resolution of any timely petition for rehearing or petition for rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

PER CURIAM

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk