United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5135 **September Term, 2018**

FILED ON: MARCH 8, 2019

ROXANN J. FRANKLIN-MASON,
APPELLANT

v.

RICHARD V. SPENCER, SECRETARY OF THE NAVY,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:03-cv-00945)

Before: TATEL and KATSAS, *Circuit Judges*, and SENTELLE, *Senior Circuit Judge*.

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. *See* Fed. R. App. P. 34(a)(2); D.C. Cir. R. 34(j). The Court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). For the reasons stated below, it is hereby

ORDERED and **ADJUDGED** that the decision of the district court be affirmed.

Roxann Franklin-Mason worked as a statistical assistant for the Navy's Military Sealift Command beginning in 1978. Claiming discrimination and constructive discharge, she left the position in 1989 and sued the Secretary of the Navy ("Navy") in district court under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. The case settled in 1999 and, pursuant to that settlement agreement, she returned to the Navy, this time as a Senior Financial Analyst/Advisor.

A few years later, in 2003, Franklin-Mason again sued the Navy in district court, arguing that the Navy retaliated against her for entering into the settlement agreement. As that case was pending, the Court of Federal Claims granted summary judgment to the Navy in a related case

that she had filed, where she had claimed that the Navy had breached the settlement agreement. *See Mason v. United States*, 126 Fed. Cl. 149, 158–64 (2016), *aff'd sub nom. Franklin-Mason v. United States*, 692 F. App'x 633 (Fed. Cir. 2017) (holding that the Navy did not breach the settlement agreement). After a mistrial and various other procedural detours delayed resolution of the 2003 district court litigation, a jury found for the Navy in May 2017.

On appeal from that jury's verdict, Franklin-Mason now claims that the jury erred in finding for the Navy and that the district court incorrectly applied the law or otherwise abused its discretion by granting the Navy's motion to amend its answer, applying collateral estoppel to certain arguments based on the Court of Federal Claims' judgment, excluding various pieces of evidence, and barring a witness from testifying.

We start with Franklin-Mason's claim that "substantial evidence" regarding various alleged retaliatory acts entitles her to relief under Title VII. *See* 42 U.S.C. § 2000e-3(a) ("It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because [she] has opposed any [unlawful employment] practice . . . or because [she] has made a charge . . . or participated in any manner in an investigation, proceeding, or hearing under this subchapter."). Specifically, Franklin-Mason draws our attention to her concerns about her office seating, a delayed performance review, training opportunities, work assignments, leave hours, discipline, delays in funding a savings account, and the Navy's failure to transfer her to another unit. In reviewing this claim, we "are *required* to draw all inferences favorable to the" jury's verdict, *Carter v. Duncan-Huggins, Ltd.*, 727 F.2d 1225, 1234 (D.C. Cir. 1984), and may overturn the verdict only if "the jury could not reasonably have inferred from the conflicting testimony the existence of any of [the relevant] elements," *Ferebee v. Chevron Chemical Co.*, 736 F.2d 1529, 1534 (D.C. Cir. 1984).

Applying this highly deferential standard, we find the jury's verdict supported by more than sufficient record evidence. For example, although Franklin-Mason argues that her desk location evinced retaliatory or other discriminatory intent, trial testimony establishes that she occupied a spot next to officials of similar employment grade and with whom she worked. Franklin-Mason also argues that the Navy retaliated against her when her supervisor delayed or failed to offer her a performance evaluation for the 2000 to 2001 year. Record evidence reveals, however, that Franklin-Mason's supervisor actually did prepare the evaluation right before Franklin-Mason took an extended leave of absence. He simply forgot to sign it in her absence. When the evaluation was brought to his attention, he emailed Franklin-Mason, apologized for the delay, and informed her that she should feel free to notify him of any such oversight in the future.

Franklin-Mason's next two claims concern the Court of Federal Claims' ruling that the Navy did not violate the settlement agreement. Franklin-Mason starts by arguing that the district court abused its discretion by permitting the Navy to amend its answer to add a collateral estoppel defense, i.e., that the Court of Federal Claims' opinion ought to preclude Franklin-Mason from alleging that the Navy violated the settlement agreement. In reviewing this claim,

we keep in mind that "[i]n the absence of any apparent or declared reason" to deny a motion to amend a pleading, "such as undue delay, bad faith or dilatory motive," "leave [to amend] should, as the [Federal Rules of Civil Procedure] require, be 'freely given.'" *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also* Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave [to amend pleadings] when justice so requires."). Although Franklin-Mason would have had the Navy add its collateral estoppel defense over a decade earlier, when this litigation began, as the Navy points out, it moved to amend its answer within a few months of the relevant judgment. Because "[i]n issue preclusion, it is the prior judgment that matters," *Yamaha Corp. v. United States*, 961 F.2d 245, 254 (D.C. Cir. 1992) (emphasis omitted), we do not see how the district court could have expected the Navy to amend its answer years before the Court of Federal Claims actually issued its decision.

Alternatively, Franklin-Mason argues that the district court misapplied the collateral estoppel doctrine when it determined that the Court of Federal Claims' decision precluded argument over whether the Navy breached the settlement agreement. Collateral estoppel requires three elements: first, "the same issue now being raised must have been contested by the parties and submitted for judicial determination in the prior case"; second, "the issue must have been actually and necessarily determined by a court of competent jurisdiction in that prior case"; and third, "preclusion in the second case must not work a basic unfairness to the party bound by the first determination." *Id.* As the Navy observes, all three are present here. The district court thus properly applied collateral estoppel.

We can quickly dispose of Franklin-Mason's remaining claims. First, she argues that the district court erred in applying the parol evidence rule to the settlement agreement and thereby limiting the testimony that she could offer on the terms of that agreement. "In the absence of ambiguity in [a contract]," the parol evidence rule instructs, "we have no cause to examine extrinsic evidence of the parties' intent." *American Postal Workers Union, AFL-CIO v. U.S. Postal Service*, 940 F.2d 704, 708 (D.C. Cir. 1991). No such ambiguity existed concerning the relevant portions of the settlement agreement. The district court therefore properly applied the parol evidence rule.

Franklin-Mason next argues that the district court abused its discretion in excluding one of her proposed witnesses from testifying at trial. But Franklin-Mason offered this witness at the eleventh hour, and without having identified her in interrogatories or relevant pre-trial filings, including the parties' initial joint pretrial statement. The applicable local rule allows exclusion in such circumstances. *See* Local Civ. R. 16.5(b)(5) ("No objection shall be entertained to a witness or to testimony on the ground that the witness or testimony was disclosed for the first time in a party's Pretrial Statement, *unless the party objecting has unsuccessfully sought to learn the identity of the witness or the substance of the testimony by discovery, and the Court or magistrate judge finds the information to have been wrongfully withheld*." (emphasis added)); *accord* Fed. R. Civ. P. 37(c)(1) ("If a party fails to . . . identify a witness . . ., the party is not allowed to use that . . . witness to supply evidence . . . at a trial.").

Finally, Franklin-Mason argues that the district court abused its discretion by limiting her testimony concerning her alleged constructive discharge in the late 1980s. *See* Fed. R. Evid. 404(b) (admissibility of evidence of prior bad acts). Our review here is again circumscribed, as "a district court virtually always is in the better position to assess the admissibility of the evidence in the context of the particular case before it." *Sprint/United Management Co. v. Mendelsohn*, 552 U.S. 379, 387 (2008). In this instance, we see no reason to disturb the district court's ruling: the events at issue in this retaliation case mostly occurred well over a decade after her alleged constructive discharge in the late 1980s, implicating different supervisors, offices, and circumstances. The district court properly weighed such factors when determining the scope of testimony that it would allow. *See id.* at 387–88 (balancing similar factors to determine whether evidence was relevant under Federal Rule of Civil Procedure 403); *Huddleston v. United States*, 485 U.S. 681, 691 (1988) (explaining that "the trial court must make [an assessment] under Rule 403 to determine whether the probative value of the similar acts evidence is substantially outweighed by its potential for unfair prejudice" when determining whether to admit evidence offered under Rule 404(b)). The district court thus did not abuse its discretion in deciding to limit that testimony.

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 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.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk