

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-7045

September Term, 2018

1:13-cv-00451-ABJ

Filed On: July 9, 2019

Dolores Barot,

Appellant

v.

Embassy of the Republic of Zambia,

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Pillard, Katsas, and Rao, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs and appendices filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's September 8, 2017 and March 8, 2018 orders be affirmed. The district court properly granted summary judgment in favor of the appellee on appellant's D.C. Wage Payment and Collection Law claim because appellant failed to produce sufficient evidence to raise a material issue of disputed fact regarding whether that claim is time-barred. Appellant's argument that the statute of limitations was tolled when she timely filed the same claim in D.C. Superior Court was not raised in the district court and is therefore forfeited. See Chichakli v. Tillerson, 882 F.3d 229, 234 (D.C. Cir. 2018) (holding that an argument not raised in district court is forfeited). The district court properly determined that appellant's general and conclusory deposition testimony was insufficient to raise a material issue of disputed fact regarding whether the statute of limitations should be tolled under the narrow "lulling" doctrine. See Daniels v. Potomac Elec. Power Co., 100 A.3d 139, 142 (D.C. 2014) (noting that the "lulling" doctrine was "designed to create a very narrow equitable exception to rigorous filing requirements" (internal quotation marks and citation omitted)); Johnson v. Perez, 823 F.3d 701, 710-11 (D.C. Cir. 2016) (noting that courts may grant summary judgment where a plaintiff's evidence is vague or conclusory). The court declines to consider the other cursory arguments raised by appellant regarding this claim. See SEC v. Banner Fund Int'l, 211 F.3d 602, 613 (D.C. Cir. 2000) (noting that the court may disregard "asserted but unanalyzed" arguments); Cement Kiln Recycling Coal. v. EPA, 255 F.3d 855, 869 (D.C. Cir. 2001) ("A litigant does not properly raise an issue by addressing it in a cursory fashion with only bare-bones arguments." (internal quotation marks and citations omitted)).

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The district court also correctly granted summary judgment in favor of appellee on appellant's age discrimination and retaliation claims. Assuming without deciding that appellee is an "employer" for purposes of these claims, the district court properly determined that no reasonable jury could conclude, based on the entire record, that appellant was terminated "because of" her age. See DeJesus v. WP Co. LLC, 841 F.3d 527, 532-35 (D.C. Cir. 2016) (holding that once an employer offers a legitimate, non-discriminatory reason for an adverse employment action, an employee must produce sufficient evidence for a reasonable jury to find that an employer intentionally discriminated against the employee, and rebuttal evidence may not always suffice); Aka v. Wash. Hosp. Ctr., 156 F.3d 1284, 1291 (D.C. Cir. 1998) (holding that a weak issue of material fact as to whether an employer's explanation is untrue may not be sufficient in light of the evidence in the entire record). Appellant's argument that appellee terminated her because it "coveted" the computerized voucher template she created or because of a supervisor's "ego" undermines her claim of age discrimination. See Aka, 156 F.3d at 1291.

The district court also correctly granted summary judgment in favor of appellee on appellant's claim of retaliation under Title VII of the Civil Rights Act. Appellant failed to produce sufficient evidence to raise a material issue of disputed fact regarding whether she engaged in protected activity under Title VII. See Broderick v. Donaldson, 437 F.3d 1226, 1232 (D.C. Cir. 2006) (holding that a "complaint must in some way allege unlawful discrimination, not just frustrated ambition").

Finally, appellant's assertion that the district court was prejudiced against her because of its previous dismissal of her case lacks merit. See Liteky v. United States, 510 U.S. 540, 555 (1994) (holding that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion").

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. Rule 41.

Per Curiam