United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-7192 **September Term, 2019**

1:16-cv-02033-CKK

Filed On: September 18, 2019

Brian Watson,

Appellant

v.

District of Columbia Water and Sewer Authority,

Appellee

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

BEFORE: Henderson, Tatel, 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 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 order filed November 15, 2018, be affirmed. The district court properly granted summary judgment to Appellee as to Appellant's racial discrimination claims. Initially, the decision makers in charge of hiring and the applicants who were ultimately hired all share Appellant's race. See Murray v. Gilmore, 406 F.3d 708, 715 (D.C. Cir. 2005) (where plaintiff and person hired share the same race that "cuts strongly against any inference of discrimination"). Further, race could not have influenced the decision not to interview or hire Appellant because, contrary to Appellant's arguments, there is no genuine dispute as to the material fact that neither of the decision makers knew Appellant's race. See Burley v. Nat'l Passenger Rail Corp., 801 F.3d 290, 300-01 (D.C. Cir. 2015).

Additionally, Appellee stated a legitimate, non-discriminatory justification for not interviewing or hiring Appellant, namely, that it interviewed and hired other qualified individuals, with recent, relevant work experience. This justification is supported by the

record evidence and Appellant has not put forth any evidence that would cast doubt on the justification. See Brady v. Office of Sergeant at Arms, 520 F.3d 490, 495 (D.C. Cir. 2008) ("If the employer's stated belief about the underlying facts is reasonable in light of the evidence . . . there ordinarily is no basis for permitting a jury to conclude that the employer is lying about the underlying facts.").

Moreover, Appellant has not "produced sufficient evidence for a reasonable jury to find that the employer's asserted non-discriminatory reason was not the actual reason and that the employer intentionally discriminated against the employee." Brady, 520 F.3d at 494. Appellant's arguments that Appellee's justification is pretext for discrimination because it deviated from its hiring practices and because its justification is beyond credence are not supported by the record. The district court correctly declined to second guess Appellee's business decisions. Holcomb v. Powell, 433 F.3d 889, 897 (D.C. Cir. 2006) ("We have consistently declined to serve as a super-personnel department that reexamines an entity's business decisions.") (internal citations and quotation marks omitted).

Lastly, Appellant has forfeited any challenge to the remainder of the district court's decision. See United States ex rel. Totten v. Bombardier Corp., 380 F.3d 488, 497 (D.C. Cir. 2004) ("Ordinarily, arguments that parties do not make on appeal are deemed to have been waived.").

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