[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-13439
Non-Argument Calendar

D.C. Docket No. 7:16-cv-00275-RDP

AMY HEATHERLY,

Plaintiff-Appellant,

versus

UNIVERSITY OF ALABAMA BOARD OF TRUSTEES,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama

(June 20, 2019)

Before WILSON, NEWSOM, and HULL, Circuit Judges.

PER CURIAM:

Amy Heatherly, an employee of the University of Alabama, appeals the district court's grant of summary judgment in favor of UA in her sex discrimination suit under the Equal Pay Act, Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Lilly Ledbetter Fair Pay Act of 2009, and 42 U.S.C. § 1981. Heatherly first argues that her Equal Pay Act claim should have withstood summary judgment because she established that David Bertanzetti, George Tutt, and Travis Railsback—all UA employees whom Heatherly cited as male comparators—received higher merit-pay increases than Heatherly even though, she says, their jobs were equal to hers in terms of skill, effort, responsibility, and working conditions. Second, Heatherly asserts that she provided sufficient evidence in support of her Title VII claim to demonstrate that sex was a motivating factor for her comparatively low salary. Finally, Heatherly maintains that her Title IX claim should have survived summary judgment for the same reasons as her Title VII claim.

I

We review an order granting summary judgment *de novo*, viewing "the evidence and all reasonable inferences drawn from it in the light most favorable to the nonmoving party." *Battle v. Bd. of Regents*, 468 F.3d 755, 759 (11th Cir. 2006) (per curiam). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to

judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Shaw v. City of Selma*, 884 F.3d 1093, 1098 (11th Cir. 2018). When the movant meets that standard, the nonmoving party must come forward with "specific facts showing that there is a *genuine issue for trial*." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e) (emphasis added)).

A

The Equal Pay Act prohibits employers from discriminating on the basis of sex by paying employees of different sexes different rates for the same work. 29 U.S.C. § 206(d)(1) (2012). Heatherly can establish a prima facie violation "by showing that the employer paid employees of opposite genders different wages for equal work for jobs which require equal skill, effort, and responsibility, and which are performed under similar working conditions." *Steger v. Gen. Elec. Co.*, 318 F.3d 1066, 1077–78 (11th Cir. 2003) (internal quotation marks omitted). The initial burden to demonstrate comparability is "fairly strict"; although Heatherly need not show that the jobs are identical, she must demonstrate "that she performed substantially similar work for less pay." *Miranda v. B & B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1526 (11th Cir. 1992); *see also Waters v. Turner, Wood & Smith Ins. Agency, Inc.*, 874 F.2d 797, 799 (11th Cir. 1989) (per curiam) ("The standard for determining whether jobs are equal in terms of skill, effort, and responsibility is high.").

When determining whether Heatherly's job is substantially similar to those of her alleged comparators, our focus is on the primary duties of each job, not on the individual employees holding those jobs, or on incidental or insubstantial job duties. *Miranda*, 975 F.2d at 1533 (noting that "the controlling factor under the Equal Pay Act is job content") (quotation omitted).

The testimony of Heatherly, her supervisors, and the three male comparators—coupled with that of the parties' expert witnesses—demonstrates that Heatherly's job did not entail the same skill, effort, responsibility, or working conditions as the jobs that her alleged comparators held. As an initial matter, Heatherly's broad assertion that UA valued all jobs within the same pay grade equally because it used a pay-grade system is belied by the fact that the salaries within Heatherly's own pay grade ranged from $70,907 to $134,722.

More particularly, the record shows that Heatherly's alleged male comparators had different job responsibilities than she did. Bertanzetti's responsibilities included administering benefits programs, implementing new benefits plans in conjunction with third-party administrators, and managing more than $45 million in medical costs for more than 10,000 employees. Heatherly conceded that she lacked the qualifications to perform Bertanzetti's job. As Director of Payroll, Tutt is responsible for managing approximately $400 million in annual pay, including processing salaries and related tax filings. Tutt also

supervises 10 staff members. And again, Heatherly has conceded that Tutt's role had a broader financial impact than hers did, and the record demonstrates that she supervised fewer colleagues. Finally, although Railsback's title of Associate Director of HR was similar to Heatherly's as Director of HR, during the relevant time period Railsback had between 10 and 12 direct-report employees, as compared to Heatherly's one. Railsback also took on greater responsibilities after a supervisor transferred to him many of Heatherly's tasks due to dissatisfaction with Heatherly's performance. *See Arrington v. Cobb Cty.*, 139 F.3d 865, 876 (11th Cir. 1998) ("[A]lthough formal job titles or descriptions may be considered, the controlling factor in the court's assessment of whether two jobs are substantially equal must be actual job content."). In sum, a reasonable juror could not find that Heatherly engaged in work that was substantially similar to that performed by her alleged comparators. UA is therefore entitled to judgment on Heatherly's Equal Pay Act claim.[1]

B

Turning to Heatherly's Title VII claim, we have held that single-motive and mixed-motive discrimination under Title VII are alternative causation standards, and that the latter applies to a claim alleging that both legal and illegal rationales

[1] Because we find that Heatherly has not demonstrated a prima facie case, we do not address UA's affirmative defense that the pay disparities were justified by UA's merit-based system. *See* 29 U.S.C. § 206(d)(1) (2012).

motivated an adverse employment action. *Quigg v. Thomas Cty. Sch. Dist.*, 814 F.3d 1227, 1235–36, 1235 n.4 (11th Cir. 2016). For a mixed-motive discrimination claim premised on circumstantial evidence—such as Heatherly's here—we ask at summary judgment "whether a plaintiff has offered evidence sufficient to convince a jury that: (1) the defendant took an adverse employment action against the plaintiff; and (2) [a protected characteristic] was *a* motivating factor for the defendant's adverse employment action." *Id.* at 1239 (alteration in original) (internal quotation marks omitted) (quotation omitted).

As for the first prong, disparate pay is undoubtedly an adverse employment action under Title VII. *Bowen v. Manheim Remarketing, Inc.*, 882 F.3d 1358, 1364 (11th Cir. 2018). In an effort to meet the second prong, Heatherly analogizes to our reversal of a grant of summary judgment in *Bowen*; points to a standard deviation of 2.1 between the salaries of male and female employees in her pay grade at UA; and contends, more generally, that a reasonable juror could reject UA's justifications for her lower merit pay increases as post hoc.

Our decision in *Bowen* turned in no small part on evidence indicating that the plaintiff's managers "were influenced by sex bias," "took sex into account when considering personnel matters," and "repeatedly exhibited an unwillingness to treat women equally in the workplace." *Id.* at 1363 (internal quotation marks

omitted) (quotation omitted). Heatherly has not presented analogous evidence here.

In addition, although Heatherly cites her expert's data suggesting systemic pay disparities at UA, his analysis is flawed because it compared the pay for Heatherly's job to the pay for different jobs with different responsibilities. The expert assumed—contrary to the evidence already reviewed—that an equal pay grade implied comparability. Finally, Heatherly did not provide evidence to support her assertion that her supervisor exaggerated the responsibilities of her alleged male comparators post hoc while diminishing and denigrating her own responsibilities. Because Heatherly has not presented sufficient evidence for a jury to conclude, by a preponderance of the evidence, that sex was a motivating factor for her disparate pay, *Bowen*, 882 F.3d at 1364, we affirm as to her Title VII claim.

C

Finally, Heatherly argues that her Title IX claim succeeds for the same reasons as her Title VII claim. We therefore need not reach the question—as yet undecided in this Circuit—whether Title VII preempts Title IX when a plaintiff alleges employment discrimination on the basis of sex and Title VII affords a parallel remedy. Evaluating Heatherly's Title IX arguments on the same basis as her arguments addressing Title VII, we find that they fail as a matter law for the

same reasons. We therefore affirm the grant of summary judgment for Heatherly's Title IX claim as well.

AFFIRMED.