[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-13683

Non-Argument Calendar

LAWRENCE J. LEITGEB,

Plaintiff-Appellant,

versus

SARK WIRE CORPORATION - GA,

Defendant- Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 2:21-cv-00259-RWS

Before WILSON, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

Plaintiff Lawrence Leitgeb, proceeding *pro se*, appeals the district court's order granting Defendant Sark Wire Corporation's ("Sark Wire") motion to dismiss Leitgeb's workplace discrimination claim. After careful review, we affirm.

I.

Because the procedural posture of this case involves a Federal Rule of Civil Procedure 12(b)(6) motion, we must accept the allegations of plaintiff's complaint as true and construe them in the light most favorable to the plaintiff. *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1335 (11th Cir. 2012). The facts set forth in this section of the opinion therefore are taken from the complaint and construed in the light most favorable to the plaintiff.

On October 13, 2021, a Sark Wire employee posted memoranda informing other Sark Wire employees that an individual within the company had been diagnosed with COVID-19, that the company would be closed the following day for sanitization, and that all Sark Wire employees would need to receive a COVID-19 test to return to work. On October 15, 2021, Leitgeb received a text message asking for an update on his COVID-19 test results, to which he responded that he was unable to get tested due to firmly held religious beliefs. Linda Martin, a human resources director at Sark Wire, called Leitgeb and informed him that nineteen of his coworkers had tested positive for COVID-19 and that he could not

return to work until he received a COVID-19 test. On October 18, 2021, another Sark Wire employee confirmed that Leitgeb could not come to work without the test results.

On October 19, 2021, Leitgeb sent a letter to Martin explaining his religious objections to receiving a COVID-19 test. In particular, he stated:

> My reasons for opposing the testing procedure is more difficult to articulate yet I will try. COVID testing is a very intrusive procedure. It requires the insertion of a padded stick up a person's nostril. This intrusion presents the manufacturer of the test the opportunity to plant an infectious disease much the same way allowing an officer to search a vehicle presents the opportunity to plant contraband. I know many will say that this simply does not happen. I believe otherwise.
>
> I believe that if the government/industrial complex can lie about the vaccines, they will lie about the test procedure as well. In fact, this feels like all one big lie. COVID-19 in my opinion is about as real as any other flu. I also believe that by submitting to the test, I will be contributing to the falsification of data that our government/industrial complex will use to justify the vaccine. (I expect to test positive for the COVID virus because I already have natural immunity.) . . . .

(Footnotes omitted).

On October 20, 2021, Martin responded to the letter, stating that Leitgeb's objections to the testing requirement appeared to be

based on his suspicion of the legitimacy of the COVID-19 pandemic broadly, not on any sincerely held religious belief. Martin further stated that, even if Leitgeb's objections were based on sincerely held religious beliefs, an exemption from the testing requirement would be denied because it would cause undue hardship on Sark Wire's workplace safety. Martin notified Leitgeb that he was placed on unpaid leave until he no longer posed a risk to other Sark Wire employees.

On November 2, 2021, Leitgeb filed suit against Sark Wire in state court, and Sark Wire removed the complaint to federal court on December 2, 2021. In his complaint, Leitgeb alleged violation of his rights under the First Amendment, the Fifth Amendment, the Thirteenth Amendment, the Fourteenth Amendment, the Nuremberg Code, and Title VII of the Civil Rights Act. On December 29, 2021, Sark Wire filed a motion to dismiss Leitgeb's complaint. Leitgeb responded in opposition on January 20, 2022, and Sark Wire replied on February 1, 2022. On August 7, 2022, Leitgeb filed a charge of discrimination with the EEOC.

On September 21, 2022, the district court granted Sark Wire's motion to dismiss in full. The district court first determined that Leitgeb's constitutional claims failed at the threshold because Sark Wire was not a state actor. In particular, the district court reasoned that Leitgeb did not allege facts showing that Sark Wire was a state actor under the state compulsion test, the public function test, or the nexus/joint action test. The district court also concluded that Sark Wire did not violate the Thirteenth Amendment

because Leitgeb did not allege facts showing that he was forced to work, that he faced legal sanctions for declining a COVID-19 test, or that he was prevented from obtaining employment elsewhere. As to Leitgeb's alleged violation under the Nuremberg Code, the district court concluded that the testing policy was not comparable to forced experimentation and dismissed the claim. Finally, the district court dismissed Leitgeb's claims under Title VII because Title VII did not require Sark Wire to prioritize Leitgeb's beliefs over the health and safety of its other employees as it dealt with a COVID-19 outbreak.

Leitgeb timely appealed.

II.

We review *de novo* a district court's order of dismissal, "accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff." *Mesa Valderrama v. United States*, 417 F.3d 1189, 1194 (11th Cir. 2005). A complaint must articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

III.

On appeal, Leitgeb argues that the district court erred in dismissing his constitutional claims because Sark Wire was a state actor under the state compulsion test and the nexus/joint action test. He argues that the "plethora of recent rules and regulations, fears

of fines and fees, myriad of mandates, and financial incentives," along with President Biden's speeches on COVID-19, elevated Sark Wire to a state actor.

"[T]he state-action requirement reflects judicial recognition of the fact that 'most rights secured by the Constitution are protected only against infringement by governments.'" *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982) (quoting *Flagg Brothers Inc. v. Brooks*, 466 U.S. 149, 156 (1978)). We rely on three primary tests in evaluating whether a private entity's actions rise to the level of state action: (1) the state compulsion test; (2) the public function test; and (3) the nexus/joint action test. *Nat'l Broad. Co. v. Commc'ns Workers of Am., AFL-CIO*, 860 F.2d 1022, 1026–27 (11th Cir. 1988). Under the state compulsion test, a plaintiff must show that the state "has coerced or at least significantly encouraged the action alleged to violate the Constitution." *Rayburn ex rel. Rayburn v. Hogue*, 241 F.3d 1341, 1347 (11th Cir. 2001). Under the nexus/joint action test, a plaintiff must show that the state has "so far insinuated itself into a position of interdependence with the private party that it was a joint participant in the enterprise." *Id.* (quoting *Nat'l Broad. Co.*, 860 F.2d at 1026–27). To charge a private party with state action under this standard, the governmental body and private party must be intertwined in a symbiotic relationship that must involve the alleged constitutional violation. *Nat'l Broad Co.*, 860 F.2d at 1026. The mere fact that a business is subject to State regulation does not by itself convert its action into that of the State. *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982).

Here, the district court did not err when it found that Sark Wire was not a state actor. Under the state compulsion test, Leitgeb failed to plausibly allege that the state coerced or encouraged Sark Wire to place him on unpaid leave after he refused to receive a COVID-19 test. *Rayburn*, 241 F.3d at 1347. Indeed, Leitgeb's complaint mentions no tangible connection between any state action and Sark Wire's decision to place him on unpaid leave. And under the nexus/joint action test, he failed to identify any statute, regulation, or executive order that mandated Sark Wire to require COVID-19 testing or that mandated placing him on unpaid leave when he refused to comply. *Id.* Leitgeb states that human resource directors are an "extension of the government, part of the government-industrial complex," but alleges no actual statute, regulation, or executive order mandating Sark Wire's actions. And President Biden's speeches on the topic are not sufficient to show such a connection. We thus conclude that the district court did not err in determining that Sark Wire was not a state actor subject to constitutional claims.

IV.

Leitgeb next argues that the district court erred in dismissing Leitgeb's Thirteenth Amendment claim because forcing someone to receive a COVID-19 test "encroaches on the status of slavery."

The Thirteenth Amendment of the United States Constitution provides that "[n]either slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place

subject to their jurisdiction." U.S. Const. amend. XIII. In order to find a condition of involuntary servitude, the victim must have had "no available choice but to work or be subject to legal sanction." *United States v. Kozminski*, 487 U.S. 931, 943 (1988).

Here, Leitgeb concedes in his brief that he was not prevented from working elsewhere. Because Leitgeb failed to plausibly allege that he had no choice but to work for Sark Wire or be subject to legal sanction, *see id.*, we conclude that the district court did not err in concluding that he failed to state a claim under the Thirteenth Amendment.

V.

As to his claim under the Nuremberg Code, Leitgeb argues that the district court erred in dismissing his claim because of the experimental nature of the COVID-19 vaccine and tests.

Certain crimes against humanity violate basic precepts of international law, and courts are permitted to give some redress for violations of clear and unambiguous international human rights protections. *See Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386, 1397 (2018). But this redress extends to a private right of action for violations of international law "*only* where there is a statute expressing Congress's intention to permit private suits." *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1232 n.7 (11th Cir. 2004). Because Leitgeb fails to reference any statute that provides a private right of action for a Nuremberg Code violation, we conclude that the district court did not err in dismissing his claim under the Nuremberg Code.

VI.

Finally, Leitgeb argues that the district court erred in dismissing his Title VII claim because Sark Wire failed to show undue hardship in accommodating his request for exemption.

Title VII prohibits an employer from discriminating against an employee on the basis of that person's race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a)(1). It defines religion as including "all aspects of religious observance and practice, as well as belief," and notes that an employer must accommodate religious beliefs unless it demonstrates that it "is unable to reasonably accommodate an employee's . . . religious observance or practice without undue hardship on the conduct of the employer's business." *Id.* § 2000e(j).

In Georgia, an aggrieved employee must file a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") within 180 days of the alleged unlawful employment practice, before bringing a Title VII suit in federal court. *See id.* § 2000e-5(e); *Watson v. Blue Circle, Inc.*, 324 F.3d 1252, 1258 (11th Cir. 2003). Compliance with the 180-day filing period is not a jurisdictional prerequisite to filing a Title VII suit, and it is subject to waiver and tolling when equity so requires. *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 397–98 (1982). However, filing a complaint with the EEOC is a prerequisite to the equitable exceptions to administrative exhaustion. *Hines v. Widnall*, 334 F.3d 1253, 1257 (11th Cir. 2003). Thus, a plaintiff's failure to begin or exhaust

administrative remedies serves as an absolute bar to his claims. *Id.*; *Grier v. Sec'y of the Army*, 799 F.2d 721, 724 (11th Cir. 1986).

Here, while the district court considered only whether Sark Wire's refusal to grant a religious exemption was based on more than a *de minimis* cost, we generally may affirm for any reason supported by the record. *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713, 716 (11th Cir. 2012). And the record shows that Leitgeb waited almost ten months after the October 20, 2021, letter to file a discrimination charge with the EEOC. We thus conclude that Leitgeb's Title VII claim is time-barred because he failed to comply with the 180-day filing period and failed to exhaust his administrative remedies. *See* § 2000e-5(e); *Watson*, 324 F.3d at 1258. Accordingly, we affirm the district court's dismissal of his Title VII claim.

IV. CONCLUSION

For all these reasons, we affirm the district court's grant of Sark Wire's motion to dismiss.

AFFIRMED.