

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-12111
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT DECEMBER 10, 2009 THOMAS K. KAHN CLERK
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D. C. Docket No. 07-01812-CV-WBH-1

DOUGLAS CARL,

Plaintiff-Appellee,

versus

FULTON COUNTY, GEORGIA,

Defendant,

THOMAS ANDREWS,

Defendant-Appellant.

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

(December 10, 2009)

Before BLACK, BARKETT and HULL, Circuit Judges.

PER CURIAM:

Thomas Andrews appeals the district court’s denial of qualified immunity in a suit Douglas Carl brought against him and Fulton County, Georgia, alleging race and gender discrimination under 42 U.S.C. §§ 1981 and 1983 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1), based on Andrews’ failure to promote Carl. Andrews asserts the district court erred in denying him qualified immunity by relying on “stray comments” from various individuals, which were too attenuated to be attributed to his decision. Andrews further contends his subjective reasons for not promoting Carl—that Carl performed poorly in the interview and the other individual was the best qualified and performed well during her interview—were not discriminatory and were objectively reasonable, such that he was entitled to qualified immunity.

The district court concluded there were disputed issues of material fact regarding whether Andrews’ reasons for failing to promote Carl were pretextual, and denied summary judgment and qualified immunity to Andrews. After a thorough review of the record, and the parties’ briefs, we agree with the district court’s conclusion. Thus, we affirm the district court’s denial of qualified immunity.

AFFIRMED.