[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 21-11358

Non-Argument Calendar

MARY NEALY,

Plaintiff-Appellant,

versus

SUNTRUST BANK,
SUNTRUST BANKS, INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:19-cv-02885-SDG

Before ROSENBAUM, NEWSOM, and GRANT, Circuit Judges.

PER CURIAM:

This is an employment discrimination case under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981. Mary Nealy alleges that SunTrust Bank terminated her based on her race and gender. The district court granted summary judgment to SunTrust because Nealy failed to establish a prima facie case of discrimination. We agree and affirm.

I

Mary Nealy, an African American woman, previously worked at SunTrust's Atlanta office as a Processing Specialist in the Consumer Lending Sales Center (CLSC). In this capacity, Nealy had access to a system knows as ACAPS, which contained sensitive client information from consumer loan applications and real estate data used in the loan underwriting process. Donna Reed managed the CLSC operations for SunTrust's Atlanta and Orlando offices.

A CLSC employee in Orlando requested permission to work a second job as a realtor. Reed had not received such a request before, and upon consideration, she determined that allowing an employee to maintain a real estate business on the side may cause a conflict of interest: A CLSC employee with access to ACAPS may use that information to further her own real estate activities. Reed decided to prohibit CLSC employees with access to ACAPS from maintaining active real estate licenses.

Nealy held a real estate license and decided not to deactivate it; thus, SunTrust terminated Nealy's employment. Two other African American women in the Atlanta office who had access to ACAPS and deactivated their real estate licenses remained employed by SunTrust, and a female African American administrative assistant who did not have access to ACAPS was allowed to retain her real estate license.

Nealy filed an employment discrimination lawsuit against SunTrust, alleging that it discriminated against her on the basis of race and gender, in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981.[1] In an amended complaint, Nealy named six SunTrust employees from other departments as her comparators. According to Nealy, these employees were not black women, possessed real estate licenses, could access ACAPS, and remained employed by SunTrust. Following discovery, SunTrust moved for summary judgment. The district court granted summary judgment, concluding that Nealy failed to "establish a *prima facie* case of discrimination because she (1) failed to point to a similarly situated comparator to support her claims of intentional discrimination, and (2) did not otherwise present evidence demonstrating racial animus." The court noted that none of Nealy's comparators "(1) worked in the CLSC, or (2) were supervised by Reed,"

[1] Nealy also alleged age discrimination and race discrimination premised on a mixed-motive theory. The district court granted summary judgment to SunTrust on those claims, and Nealy does not challenge those rulings on appeal.

and that Nealy did not cogently articulate how Reed's decision constituted evidence of discrimination. Nealy appealed.

Before us, Nealy contends that her six comparators were similarly situated in all material respects and that SunTrust's stated reasoning for terminating her employment was pretext for discrimination.[2]

II

Title VII prohibits employers from discriminating against employees on the basis of race or sex. 42 U.S.C. § 2000e-2(a)(1). Similarly, 42 U.S.C. § 1981 prohibits employment discrimination on the basis of race. Both Title VII and § 1981 have the same requirements of proof and use the same analytical framework. *Chapter 7 Tr. v. Gate Gourmet, Inc.*, 683 F.3d 1249, 1256–57 (11th Cir. 2012). As the Supreme Court explained in *McDonnell Douglas Corp. v. Green*, the employee carries the initial burden of establishing a prima facie case of racial discrimination. 411 U.S. 792, 802 (1973). She may do so by showing that "(1) she belongs to a protected class, (2) she was subjected to an adverse employment action, (3) her employer treated similarly situated employees outside her classification more favorably, and (4) she was qualified to do

[2] "We review de novo a district court's grant of summary judgment." *Mosley v. Zachery*, 966 F.3d 1265, 1270 (11th Cir. 2020). "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.'" *Id.* (quoting Fed. R. Civ. P. 56(a)).

the job." *Smelter v. S. Home Care Servs. Inc.*, 904 F.3d 1276, 1288 (11th Cir. 2018). If the employee establishes a prima facie discrimination case, the burden shifts to the employer to "articulate some legitimate, nondiscriminatory reason" for its actions. *McDonnell Douglas*, 411 U.S. at 802. If the employer meets this burden, the employee gets a fair opportunity to show that the employer's stated reason is, in fact, pretext for discrimination. *Id.* at 804.

In *Lewis v. City of Union City*, this Court held that in making a prima facie showing of racial discrimination, the employee must name comparators who were "similarly situated in all material respects" and treated more favorably. 918 F.3d 1213, 1224 (11th Cir. 2019) (en banc). We reasoned that such a comparator may be "subject to the same employment policy, guideline, or rule" and will ordinarily "have been under the jurisdiction of the same supervisor." *Id.* at 1227–28. Here, Nealy's comparators worked in different departments under different supervisors with different rules. It's difficult to see how SunTrust treated similarly situated employees outside Nealy's class more favorably when Nealy's comparators weren't subject to the same policy that Reed implemented for the CLSC.[3] *See Jones v. Gerwens*, 874 F.2d 1534, 1541 (11th Cir. 1989) ("[M]easures undertaken by different supervisors may not be comparable for purposes of Title VII analysis."). Moreover, other

[3] Nealy also failed to establish that any of her comparators had access to all the same confidential information that she did. So even if her comparators were subject to the same policy regarding real estate licenses, Nealy would not necessarily meet her burden of proof.

CLSC employees within Nealy's class remained employed after they complied with Reed's policy. We agree with the district court that Nealy failed to make a prima facie showing of racial or gender discrimination because her comparators were not similarly situated in all material respects. Thus, summary judgment was proper.

III

Because Nealy's case fails at the first step of the *McDonnell Douglas* burden-shifting framework, we need not consider whether SunTrust's reasons for terminating Nealy were pretext for discrimination.[4]

AFFIRMED.

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[4] In her attempt to demonstrate pretext, Nealy challenges the wisdom of Reed's rule. We note, however, that an employer's honest, good-faith belief may be a legitimate reason for termination even if it's mistaken or wrong. "Federal courts do not sit as a super-personnel department that reexamines an entity's business decisions." *Elrod v. Sears, Roebuck & Co.*, 939 F.2d 1466, 1470 (11th Cir. 1991) (quotation omitted). So long as the discharge is not because of race or gender, the employer has not violated Title VII or § 1981.