[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-12811

Non-Argument Calendar

LAKECHIA JACKSON,

Plaintiff-Appellant,

versus

FRONTIER COMMUNICATIONS,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:20-cv-00839-WWB-EJK

Before ROSENBAUM, JILL PRYOR, and GRANT, Circuit Judges.

PER CURIAM:

Lakechia Jackson sued her employer, Frontier Communications, bringing claims for race discrimination and retaliation under the Florida Civil Rights Act of 1992 (the "FCRA"). The district court granted Frontier's motion for judgment on the pleadings because it concluded that Jackson failed to exhaust her administrative remedies as required by the statute. After careful review, we disagree with the district court and conclude that Jackson exhausted her administrative remedies. We vacate the judgment and remand for further proceedings.

I.

Jackson, an African American woman, worked for Frontier as a customer service representative in Florida.[1] In April 2019, Michael Hathaway, a white man who was a vice president with Frontier, visited the office where Jackson worked to discuss opportunities for employees to serve as trainers for new customer service representatives. Jackson, who had experience as a trainer, asked Hathaway about an opportunity to transfer to Connecticut to work

[1] We present the facts as alleged in Jackson's complaint, accepting them as true and construing them in her favor. *See Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1335 (11th Cir. 2014) ("In determining whether a party is entitled to judgment on the pleadings, we accept as true all material facts alleged in the non-moving party's pleading, and we view those facts in the light most favorable to the non-moving party.").

as a trainer. Hathaway responded by asking Jackson whether she wanted to move to Connecticut to use marijuana there, saying that she "looks like someone [who] smokes marijuana." Doc. 1-4 at 2.[2] Jackson was shocked and humiliated by the comment, which she perceived to be race-based and predicated on stereotypes about African Americans using marijuana.

After the incident, Jackson complained to Frontier's human resources department. After making her internal complaint, she applied for a communications testing position, which paid more money than her current position. Although she was qualified, she was not selected. Instead, Frontier hired a white woman. In addition, after Jackson complained to human resources, she was written up for poor performance. According to Jackson, the write-up about her poor performance was made up and not based in fact.

In June 2019, Jackson filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"). She checked boxes indicating that Frontier had engaged in discrimination based on race and retaliation. She reported that the discrimination and retaliation began in April 2019 and continued to occur on an ongoing basis. In the charge, she alleged that while working for Frontier she had been "subjected to racist conduct and disparate treatment." Doc. 19 at 21. She explained that coworkers had warned her that Hathaway was "racist and treats African American employees very rudely." *Id.* When she approached Hathaway to

[2] "Doc." numbers refer to the district court's docket entries.

discuss "how [she] could best advance within the company (either at [her] current location or at others)," Hathaway responded by asking her whether there was "better weed there" and then "kept repeating that [Jackson] looked stoned." *Id.* She alleged that the conduct was offensive, stating that it felt "very racist that a Caucasian person was falsely accusing an African American person of marijuana use." *Id.* She noted that the comment was made in front of other employees, injuring her "professional reputation and ability to progress within the company." *Id.* But she did not mention being passed over for the communications testing position or being written up for poor performance. She alleged, too, that she was not the only African American employee to undergo discriminatory and disparate treatment from Hathaway. The charge stated that the company took no "remedial measures" against Hathaway after the incident. *Id.*

Jackson described in the charge how the company took actions to thwart her pursuit of administrative relief. Arlin Melendez, an operating manager, approached Jackson and told her that she "cannot gather any witness statements." *Id.* And Melendez told Jackson's coworkers that their jobs would be in jeopardy if they wrote statements corroborating Jackson's allegations.

Jackson filed suit against Frontier in Florida state court. She brought claims under the FCRA for disparate treatment and retaliation. She alleged that she was discriminated against because of her race when she was not selected for the communications testing position. She also alleged that she was retaliated against after

reporting Hathaway to human resources when she was passed over for the communications testing position and written up for poor performance. In the complaint, Jackson alleged that she exhausted her administrative remedies before filing suit because she had filed an administrative charge of discrimination with the EEOC.

Frontier removed the case to federal court. It then notified the district court that it had filed for bankruptcy. The case was stayed for more than a year while Frontier's bankruptcy case was pending.

After the bankruptcy stay was lifted, Frontier filed its answer to Jackson's complaint. It raised a defense that Jackson's claims were barred because she failed to exhaust her administrative remedies. It attached to its answer a copy of the administrative charge that Jackson had filed with the EEOC.

In its answer, Frontier also raised a defense that Jackson's claims were barred by a release in a separation agreement she had signed. It attached to its answer the separation agreement that Frontier and Jackson had signed while the case was stayed. The agreement stated that the parties mutually agreed to terminate their employment relationship. Frontier agreed to pay Jackson a lump sum severance payment as well as a few months of her health insurance premiums. In exchange, Jackson agreed to execute a general release and "forever discharge" Frontier "from any and all claims," including ones "arising in connection" with her employment with Frontier. *Id.* at 12. The agreement specified that the

released claims "include, but are not limited to: claims for . . . retaliation[,] . . . discrimination[,] and/or harassment, including any discrimination and/or harassment claim arising under . . . the Florida Civil Rights Act." *Id.* at 13. Although Frontier knew about Jackson's lawsuit and that she was represented by counsel, there is no indication that her attorney reviewed the separation agreement. Instead, it was signed by Jackson and a Frontier executive.

After filing its answer, Frontier moved for judgment on the pleadings. It argued that Jackson's claims were barred because she failed to exhaust administrative remedies. It acknowledged that Jackson had filed a charge of discrimination with the EEOC, but it argued that in the charge she had not raised any claim based on not being hired for the communications testing position or being written up for poor performance. Frontier also asserted that Jackson's claims should be dismissed because they were barred by the release included in the separation agreement.

The district court granted Frontier's motion for judgment on the pleadings. It concluded that Jackson failed to exhaust her administrative remedies before filing suit because her administrative charge "did not allege that [she] was passed over for a new job or promotion for discriminatory and retaliatory reasons or that she was written up for complaining to [human resources]." Doc. 33 at 4. The court did not address Frontier's argument based on the release in the separation agreement.

This is Jackson's appeal.

II.

We review *de novo* an order granting judgment on the pleadings. *Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1335 (11th Cir. 2014). "Judgment on the pleadings is appropriate where there are no material facts in dispute and the moving party is entitled to judgment as a matter of law." *Id.* (internal quotation marks omitted). "In determining whether a party is entitled to judgment on the pleadings, we accept as true all material facts alleged in the non-moving party's pleading, and we view those facts in the light most favorable to the non-moving party." *Id.*

III.

The FCRA prohibits discrimination in the workplace "because of [an] individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status." Fla. Stat. § 760.10(1)(a). It also prohibits retaliation against an employee who opposes an unlawful employment practice. *Id.* § 760.10(7).

Before filing a civil action alleging discrimination or retaliation under the FCRA, an employee must exhaust her administrative remedies. *See City of W. Palm Beach v. McCray*, 91 So. 3d 165, 172 (Fla. Dist. Ct. App. 2012). To satisfy the exhaustion requirement, she must file an administrative complaint with the Florida Commission of Human Relations or a charge of discrimination with the EEOC. *See id.*; Fla. Stat. § 760.11(1).

The purpose of the FCRA's exhaustion requirement is to provide an administrative agency with "the first opportunity to investigate the alleged discriminatory practices" so that it may

"perform its role in obtaining voluntary compliance and promoting conciliation efforts." *Gregory v. Ga. Dept. of Human Res.*, 355 F.3d 1277, 1279 (11th Cir.2004); *see Sunbeam Television Corp. v. Mizel*, 83 So. 3d 865, 874 (Fla. Dist. Ct. App. 2012) (same).[3] With this purpose in mind, courts have allowed judicial claims that "amplify, clarify, or more clearly focus the allegations in the [administrative] complaint," but not those that involve "allegations of new acts of discrimination." *Gregory*, 355 F.3d at 1279–80; *Sunbeam Television Corp.*, 83 So. 3d at 874. To determine whether a plaintiff exhausted her administrative remedies, the "proper inquiry" is whether the "[plaintiff's] complaint [is] like or related to, or grew out of, the allegations contained in [the administrative] charge." *Gregory*, 355 F.3d at 1280. Because courts are "extremely reluctant to allow procedural technicalities to bar claims brought under [the FCRA]," we do not "strictly interpret[]" the scope of an administrative charge. *Id.* (internal quotation marks omitted); *see Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000) (explaining that Florida legislature directed that FCRA should be "liberally construed").

[3] An employee who suffers discrimination or retaliation because of her race may also bring a claim under Title VII, 42 U.S.C. 2000e-2(a). Because the FCRA and Title VII have the same exhaustion requirements, in FCRA cases we may look to cases applying Title VII's exhaustion requirement. *See Harris v. Pub. Health Tr. of Miami-Dade Cnty.*, 82 F.4th 1296, 1303 n.4 (11th Cir. 2023).

Here, we conclude that Jackson satisfied the exhaustion requirement. In her charge filed with the EEOC,[4] she asserted that she had been subjected to both race discrimination and retaliation. She reported that the discrimination and retaliation began on the date of Hathaway's comment and continued through the date when she filed the charge. She included in the charge detailed allegations about Hathaway's comments. She also included her perception that his comments were race-based and details about why she thought so, including his treatment of other African American employees. And she alleged that his comments had an adverse effect on her reputation and career advancement. She even alleged that a manager was aware of what had happened to her and threatened her and other employees about writing witness statements about the incident.

Frontier nevertheless argues that Jackson failed to exhaust administrative remedies because the discrimination and retaliation claims in her complaint were based on the allegations that Frontier did not select her for the communications testing position and wrote her up for poor performance, but her EEOC charge never

[4] Jackson argues that because this case is at the pleadings stage and she did not attach a copy of the EEOC charge to her complaint, we may not consider it. We disagree. We may consider the charge under the doctrine of incorporation by reference. This doctrine permits a court, at the pleadings stage, to consider a document that was not attached to the complaint when the document is (1) "central to the plaintiff's claims" and (2) "undisputed, meaning that its authenticity is not challenged." *Johnson v. City of Atlanta*, 107 F.4th 1292, 1300 (11th Cir. 2024).

mentioned either event. It is true that Jackson's discrimination charge is not particularly detailed and did not say that she was passed over for the communications testing position or had been written up. But Jackson alleged in the charge that Hathaway's comments were heard by others, and her professional reputation and ability to progress within the company were harmed. Keeping in mind that we do not "strictly interpret[]" the scope of the administrative charge, we conclude that Jackson's allegations in the complaint about not being selected for the communications testing position and being written up for poor performance clarified and amplified the assertions in her EEOC charge that the incident with Hathaway harmed her professional reputation and impacted her ability to progress at the company. *Gregory*, 355 F.3d at 1280. The similarity of the allegations between the charge and complaint suggests that the allegations of the complaint could reasonably be expected to grow out of an investigation into the charge. Because the allegations in the complaint related to and grew out of the allegations in the administrative charge, Jackson exhausted her administrative remedies.

Frontier urges us to affirm on the alternative ground that it is entitled to judgment as a matter of law on its affirmative defense that Jackson released her claims against it when she signed the separation agreement. But the district court did not address this issue, and we decline to do so here in the first instance. *See Gose v. Native Am. Servs. Corp.*, 109 F.4th 1297, 1313 n.18 (11th Cir. 2024). We leave it to the district court to decide on remand whether Frontier

is entitled to judgment on the pleadings based on the separation agreement.

IV.

For the above reasons, we vacate and remand for further proceedings.

VACATED AND REMANDED.