584 Fed.Appx. 517
This case was not selected for publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007.
See also U.S.Ct. of App. 9th Cir. Rule 36-3.
United States Court of Appeals,
Ninth Circuit.

Raul Field ESCANDON, Plaintiff–Appellant,
v.
LOS ANGELES COUNTY; Department of Public Works, Department of Human Resources; William T. Fujioka, Chief Executive Officer, Defendants–Appellees.

No. 12–56700.
|
Submitted Aug. 12, 2014. *
|
Filed Aug. 15, 2014.

Synopsis
Background: County employee filed Title VII employment discrimination claim against county employer and officials, challenging the employer's failure to promote him. The United States District Court for the Central District of California, Philip S. Gutierrez, J., granted summary judgment in favor of defendants.

Holdings: The Court of Appeals held that:

[1] employer's failure to promote employee was not pretextual, as required to prevail in race discrimination claim, and

[2] District Court did not abuse its discretion in denying employee's request for an extension of time to conduct discovery.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (2)

[1] Civil Rights
Motive or intent; pretext

County employer's proffered non-discriminatory reasons for failing to promote employee, that he received poor performance reviews, that he received the lowest qualifying score for eligibility for a promotion based on his evaluation, and that he was not qualified for the job, were not pretext for race discrimination in violation of Title VII; there was no showing that the employer's reasons were not true or that the employer's decision not to promote employee was motivated by racial animus. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

Cases that cite this headnote

[2] Federal Civil Procedure
Depositions and Discovery
Federal Civil Procedure
Pretrial Order

District Court did not abuse its discretion in denying employee's request to modify its scheduling order, which it interpreted as a request for an extension of time to conduct discovery outside of the discovery period, in Title VII race discrimination action, in light of employee's multiple-month delay in propounding any discovery, his failure to move to compel responses to his discovery before the discovery cut-off, and his filing of the motion to extend discovery on the last permissible day. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; Fed.Rules Civ.Proc.Rule 16(b)(4), 28 U.S.C.A.

4 Cases that cite this headnote

Attorneys and Law Firms

*518 Raul Field Escandon, Alhambra, CA, pro se.

 © 2019 Thomson Reuters. No claim to original U.S. Government Works.

Jeffrey Mark Hausman, Esquire, Hausman & Sosa, LLP, Tarzana, CA, for Defendant–Appellee.

Appeal from the United States District Court for the Central District of California, Philip S. Gutierrez, District Judge, Presiding. D.C. No. 2:10–cv–09484–PSG–PLA.

Before: HAWKINS, THOMAS, and McKEOWN, Circuit Judges.

MEMORANDUM [**]

Raul Escandon appeals *pro se* from the district court's order granting summary judgment in favor of Los Angeles **County**, the **County's** Department of Public Works ("DPW"), the **County's** Department of Human Resources, and William T. Fujioka (collectively, "the **County**"). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Escandon failed to provide sufficient evidence that his "[o]pposition, pleadings, and submissions adequately showed that genuine triable issues remained as to material facts." *See* *Celotex Corp. v. Catrett,* 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) ("[S]ummary judgment is proper if the pleadings, depositions, answers to interrogatories ... show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (internal quotation marks omitted)). On de novo review, *Blue Ridge Ins. Co. v. Stanewich,* 142 F.3d 1145, 1147 (9th Cir.1998), we conclude that the district court correctly determined that **Escandon** filed unauthenticated and uncorroborated documents, some irrelevant, and others not part of his moving papers. **Escandon** provides no evidence demonstrating the existence of any claim, relying instead on conjecture, conclusory statements, and unsupported claims without evidentiary support. He therefore did not meet his burden of proof necessary to support his claims. *See* *Villiarimo v. Aloha Island Air, Inc.,* 281 F.3d 1054, 1061 (9th Cir.2002) (providing that "uncorroborated and self-serving" evidence is insufficient to establish a genuine issue ***519** of material fact); *Celotex,* 477 U.S. at 322–23, 106 S.Ct. 2548.

[1] Even had he introduced sufficient evidence, **Escandon's** Title VII discrimination claim regarding the **County's** alleged failure to promote him to Senior Civil Engineer is unavailing. Because the **County** assumed that **Escandon** presented a prima facie case, creating a presumption of discrimination, the burden of production shifted to the **County** to provide a legitimate, nondiscriminatory reason for its action. *See* *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). The record demonstrates that the **County** offered sufficient evidence that **Escandon** was passed for a promotion to Senior Civil Engineer for a nondiscriminatory reason: his performance reviews. **Escandon** received an appraisal of promotability score of 70 percent, the lowest possible qualifying score for eligibility for a promotion, based on his rater's evaluation as well as three years of work performance evaluations. **Escandon** failed to show that this moderate performance justification was pretextual. Consequently, the district court correctly granted summary judgment in favor of the **County** on this claim.

Escandon also did not establish a genuine issue of material fact that he was subjected to racial discrimination under Title VII when not selected for the position of DPW Director. **Escandon** did not make a prima facie case of discrimination on this claim because he was not qualified for the job. *See* *McDonnell Douglas,* 411 U.S. at 802, 93 S.Ct. 1817 (listing whether a plaintiff "applied and was qualified for a job for which the employer was seeking applicants" as one of the elements of establishing a prima facie case). Absent necessary management experience, **Escandon** failed to meet the minimum requirements for the Director post when he first applied in 2005 and then again in 2008.

Escandon's claim of disparate impact under Title VII lacks a factual basis. He provides no evidence of a significant disparate impact that is "the systemic result of a specific employment practice." *Atonio v. Wards Cove Packing Co., Inc.,* 810 F.2d 1477, 1485 (9th Cir.1987); *see also* *Hemmings v. Tidyman's Inc.,* 285 F.3d 1174, 1190 (9th Cir.2002) (listing the elements of a prima facie disparate impact claim). As with **Escandon's** Title VII disparate impact claim, "claims under section 1981 require proof of intentional discrimination." *Jurado v. Eleven–Fifty Corp.,* 813 F.2d 1406, 1412 (9th Cir.1987). Because "[t]he same standards apply, and facts sufficient to give rise to a Title VII claim are also sufficient for a section 1981 claim," both claims fall together. *Id.*

Finally, **Escandon's** Title VII claims are time barred under the statute of limitations, *see* 42 U.S.C. § 2000e–5(e)(1), as

is his Section 1983 claim, having been raised more than two years after the employment decisions occurred, *see Alameda Books, Inc. v. City of Los Angeles,* 631 F.3d 1031, 1041 & n. 8 (9th Cir.2011) (noting the two-year limitations period for Section 1983 claims).

We lack jurisdiction to consider **Escandon's** state law tort claims because he failed to meet his burden of demonstrating that he submitted a government claim to the **County**. *See* Cal. Gov.Code § 900 et seq. (providing that a plaintiff suing a California public entity for a tort must present to the entity a timely written claim for damages).

[2] The district court did not abuse its discretion in denying **Escandon's** request to modify its scheduling order, which it interpreted as a request for an extension of time to conduct discovery outside of the discovery period. Given **Escandon's** ***520** multiple month delay in propounding any discovery, his failure to move to compel responses to his discovery before the discovery cut-off, and his filing of this motion on the last permissible day, the district court correctly determined that **Escandon** had not been diligent and therefore did not have "good cause" to support his motion. *See* Fed. R. Civ. Pro. 16(b)(4) ("A schedule may be modified only for good cause and with the judge's consent.").

Escandon's motion to supplement the record and requests for judicial notice and sanctions pursuant to Federal Rule of Evidence 201 are denied.

AFFIRMED.

All Citations

584 Fed.Appx. 517

Footnotes

* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R.App. P. 34(a)(2).

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36–3.

End of Document © 2019 Thomson Reuters. No claim to original U.S. Government Works.