129 F.3d 1265
Unpublished Disposition
NOTICE: THIS IS AN UNPUBLISHED OPINION.
(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA6 Rule 28 and FI CTA6 IOP 206 for rules regarding the citation of unpublished opinions.)
United States Court of Appeals, Sixth Circuit.

UNITED STATE of America, Plaintiff-Appellee,
v.
CITY OF WARREN, et al., Defendants-Appellees,
Edna M. HUCKABY, Movant-Appellant.

No. 95-2353. | Nov. 13, 1997.

Before CONTIE, DAUGHTREY and COLE, Circuit Judges.

Opinion

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

PER CURIAM.

***1** Movant-Appellant Edna Huckaby appeals the district court's order denying her claim for relief based on a Title VII suit that the United States filed against the City of Warren in 1986. For the following reasons, we AFFIRM the judgment of the district court.

I.

In 1986, the United States initiated a "pattern or practice" employment discrimination suit against the City of Warren, alleging that the city's recruiting practices and preapplication residency requirements adversely impacted potential black applicants' employment prospects in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* On February 14, 1991, five years after the United States filed its complaint, the district court granted the United States' renewed motion for partial summary judgment, holding that Warren's preapplication residency requirement violated Title VII by having a disparate impact on black applicants for municipal positions.

In early 1992, the district court held a bench trial on the United States' remaining allegations. In January 1993, following its decision that Warren's recruiting practices for certain municipal positions violated Title VII, the district court granted the United States' request to notify victims of Warren's past discriminatory practices that they may be qualified for relief, and on June 28, 1993, the court entered an order describing the procedure the United States should use to identify victims of Warren's Title VI violations.[1]

Out of 300 claims, the United States narrowed the list of possible victims to seventy-five people; Huckaby's claim survived this initial screening. The parties engaged in discovery with regard to all the remaining claims, and the city's attorneys deposed the seventy-five individuals, including Huckaby. After the district court granted a motion for partial summary judgment which disposed of some of the claims, the United States further reduced its list of those eligible for relief to eleven claimants; Huckaby learned that the United States had decided she was ineligible for relief in a notice entitled "Revised Recommendation on Claim for Relief." On September 18, 1995, Huckaby filed her objection to the United States' recommendation, and on October 25, 1995, she testified in a district court hearing regarding her claims. The district court entered an order on October 30, 1995, concurring with the United States' decision denying Huckaby's claim for relief,

Huckaby filed this timely appeal.[2]

II.

This court has jurisdiction to hear appeals from final orders denying relief in Title VII cases. *See Highlander v. K.F C. National Management Co.,* 805 F.2d 644, 645 (6th Cir.1986). This court reviews a district court's finding of fact in a Title VII case for clear error. *See Woolsey v. Hunt,* 932 F.2d 555, 563 (6th Cir.1991).

III.

Huckaby argues that the United States and the district court did not adequately consider the evidence that she presented to establish that she was a victim of Warren's discriminatory residency requirement. We disagree.

***2** The basis for Huckaby's discrimination claim is that she was seeking employment between 1979 and 1981, that she called the City of Warren during that time to inquire about municipal job openings, that on at least one occasion the Warren employee to whom she spoke informed her of the residency requirement, and that because Huckaby did not meet the requirement, she did not apply for Warren city employment.

The district court's order, based on the United States' revised recommendation and on Huckaby's testimony it the October 25, 1995 hearing, found that: (1) Warren was not accepting applications for positions which Huckaby was seeking between 1979 and 1981; (2) Huckaby testified that she called Warren twice a year from 1979-1989, and she was told that no positions that she was interested in were available, indicating that a lack of open positions rather than the residency requirement was the reason she was denied an employment opportunity; (3) despite Huckaby's regular phone calls to Warren between 1979 and 1989 she testified that she never learned that Warren had eliminated its residency requirement and she never applied to Warren for employment after 1986, when the city advertised several clerical positions in Detroit newspapers.

Huckaby has submitted voluminous papers as evidence of her claim, including resumes and letters dating back to the 1970s; however, only her claim form and oral testimony support her contentions; she has presented no contemporaneous evidence of her attempts to secure employment with the City of Warren. Moreover, at the district court hearing, Warren presented evidence that it was not accepting any applications for clerical positions, such as those Huckaby was seeking, between 1979 and 1981.

Although this fact alone is not fatal to Huckaby's claim, absent clear error on the record, this court cannot reverse the district court's finding of fact, nor should it disturb the trial court's credibility determinations. "[The] question is not whether the finding is the best or only conclusion ... Rather the test is whether there is evidence in the record to support the lower court's finding and whether its construction of that evidence is a reasonable one." *Heights Community Congress v. Hilltop Realty, Inc.,* 774 F.2d 135, 140 (6th Cir.1985). The transcript of the hearing, read with the documents Huckaby has submitted, indicates no clear error in the district court's conclusion that Warren was not accepting applications in Huckaby's field from anyone inside or outside of Warren at the time of Huckaby's inquiries.

Accordingly, we affirm the decision of the district court.

Huckaby has also filed a motion to recover the cost of preparing her joint appendix. Fed. R.App. P. 39(a) provides that "Except as otherwise provided by law ... if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered...." Because we affirm the district court's order, we cannot grant Huckaby recovery of costs. Accordingly, we deny Huckaby's motion.

IV.

***3** For the foregoing reasons, we AFFIRM the judgment of the district court.

Parallel Citations

1997 WL 720429 (C.A.6 (Mich.))

Footnotes

[1] The order limited the pool of eligible claimants to:
(1) all qualified black individuals who sought employment with Warren between March 24, 1972 (the date the municipalities became subject to Title VII) and May 13, 1986, but who were denied employment because of Warren's former preapplication residency requirements;
(2) all qualified black individuals who would have applied for employment with Warren between March 24, 1972 and May 13, 1986, but who did not apply to Warren for employment because of residency requirements; and
(3) all qualified black individuals who would have applied for police or firefighter positions with Warren between March 24, 1972 and October 31, 1986, but for Warren's discriminatory recruitment practices.
On her claim form submitted to the United States, Huckaby identified herself as a member of the second category.

[2] Originally Huckaby had named the United States as an appellee; however, the government submitted a letter to this court dated August 22, 1996, indicating that it would not participate in the appeal; in the meantime, the City of Warren had requested that it be named as appellee.