Bennett v. Schmidt

United States District Court for the Northern District of Illinois, Eastern Division
November 20, 1997, Decided ; November 24, 1997, Docketed
Case No. 96 C 6914

Reporter: 1997 U.S. Dist. LEXIS 19034; 1997 WL 760495
VALERIE BENNETT, Plaintiff, v. MARIE SCHMIDT, DICK ABLE, CARALEE BRUHL, SUSAN ARGENTINE, BILL SCHMIDT, and MARY THIELE, in their individual capacities as members of the Board of Directors, School District 15, DuPage County, Defendants.

Disposition: [*1] Defendants' motion to dismiss plaintiff's First Amended Complaint granted. Judgment by dismissal entered in favor of defendants and against plaintiff and case dismissed.

Counsel: For VALERIE BENNETT, plaintiff: Douglas M Grimes, Attorney, Gary, IN.

For VALERIE BENNETT, plaintiff: Philip Wilbur Bennett, Attorney at Law, Lombard, IL.

For MARIE SCHMIDT, DICK ABLE, CARALEE BRUHL, SUSAN ARGENTINE, BILL SCHMIDT, MARY THIELE, defendants: John F. Canna, Thomas J. Canna, Dawn Marie Hambly, Canna and Canna, Ltd., Orland Park, IL.

Judges: Ann Claire Williams, Judge.

Opinion by: Ann Claire Williams

Opinion

MEMORANDUM OPINION AND ORDER

In her First Amended Complaint, Plaintiff Valerie Bennett ("Bennett") alleges that Defendants Board of Directors of School District 15 [1] (collectively "defendants") violated Title VII of the Civil Rights Act of 1964 [2], *42 U.S.C. § 1981*, *42 U.S.C. § 1983*, and the Fourteenth Amendment. Defendants move the court to dismiss Bennett's First Amended Complaint for failure to comply with *Rule 8 of the Federal Rules of Civil Procedure* and for failure to state a claim upon which relief can be granted under *Rule 12(b)(6) of the Federal Rules of Civil Procedure*. For the [*2] reasons set forth below, the court grants defendants' motion.

Background

In April 1995, Bennett applied for a full-time teaching position with School District 15 ("the district"). (P9.) [3] Bennett contends that she has an educational background which well-qualified her for the teaching positions. (P10, 17, 29b 29h.) The district designated a screening committee to interview applicants for available teaching positions. (P12.) According to Bennett, the screening committee was composed exclusively of white persons. (P29c.) Bennett did not receive an invitation to interview for a teaching position. (P11.) Bennett alleges that the screening committee interviewed only white applicants for the positions. (P13.)

[*3] According to Bennett, the screening committee and principal recommended that white applicants fill the teaching positions. (PP 20, 21.) The district hired only white persons for the positions. (PP 21, 29d.)

As a result, on April 24, 1996, Bennett filed an employment discrimination action on behalf of herself and others similarly situated against eight sets of school directors in their official capacity from eight different

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1 The named directors are: Marie Schmidt, Dick Able, Carolee Bruhl, Susan Argentine, Bill Schmidt, and Mary Thiele.

2 *42 U.S.C. § 2000e et seq.*

3 Unless otherwise noted, all citations in the Background section refer to Plaintiff's First Amended Complaint at the paragraph number noted.

school districts, including School District 15. [4] On July 25, 1996, all the school director defendants ("the directors") filed a consolidated motion to sever the claims against them. On August 26, 1996, this court entered a memorandum opinion and order ("order") granting the directors motion to sever the claims against each of the directors named in Bennett's Complaint and First Amended Complaint because the eight separate school districts had been improperly joined. On November 26, 1996, the court clarified the order by directing Bennett to file an amended complaint which identified one of the defendants to proceed against, while allowing Bennett to institute suits against each of the other defendants in separate actions. (*See* Nov. 26, 1997 Minute Order.) [*4]

Judge Milton Shadur received one of Bennett's lawsuits and dismissed the case on statute of limitations grounds. [5] Judge Shadur further proposed that this court rescind the severance order, retain the separate cases under one case number, and then send the cases back to various judges for discovery, motion, and trial. After considering Judge Shadur's proposal, the court then sought the advice of the Executive Committee. On February 18, 1997, the Committee ordered that this court retain all of Bennett's individual lawsuits.

[*5] In the interim, Bennett filed her First Amended Complaint on October 28, 1996 terminating school directors of School District 15 in their official capacity and adding the aforementioned individual directors in their individual capacity. On its face, Bennett's First Amended Complaint charges allegations under only one count ("Count I"). However, she then asserts four claims of relief under Title VII of the Civil Rights Act of 1964 [6], *42 U.S.C. § 1981*, *42 U.S.C. § 1983*, and the Fourteenth Amendment [7]. Bennett contends that defendants engaged in intentional and unlawful practices in the hiring and promotion of African-Americans and other minorities as full time classroom teachers which had the purpose and effect of establishing a pattern and practice of racial discrimination. Bennett further requests that this court exercise its pendent jurisdiction over her state claims. [8] She seeks declaratory and injunctive relief, and compensatory and punitive damages. Defendants move to dismiss this action for failure to comply with *Rule 8* and for failure to state a claim upon which relief can be granted. [*6]

Analysis

Defendants move the court to dismiss Bennett's First Amended Complaint under *Rule 12(b)(6) of the Federal Rules of Civil Procedure*. A motion to dismiss tests the sufficiency of the complaint, not the merits of the suit. *Demitropoulos v. Bank One Milwaukee, N.A.*, 915 F. Supp. 1399, 1406 (N.D. Ill. 1996) (citing *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990)). Therefore, the court accepts as true all well-pleaded factual allegations and draws all reasonable inferences in favor of the plaintiff. *Zinermon v. Burch*, 494 U.S. 113, 118, 108 L. Ed. 2d 100, 110 S. Ct. 975 (1990); *Colfax Corp. v. Illinois State Toll Highway Auth.*, 79 F.3d 631, 632 (7th Cir. 1996) (citation omitted). The court will dismiss a claim only if "it appears beyond doubt that [the plaintiff] can prove no set of facts in support [*7] of his claim which would entitle him to relief." *Colfax*, 79 F.3d at 632 (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957)).

Defendants first argue that the court should dismiss the complaint because Bennett fails to comply with *Rule 8 of the Federal Rules of Civil Procedure*. *Rule 8(a)(2)* requires a "short and plain statement of the claim showing that the pleader is entitled to relief." The rule also states that "each averment of a pleading shall be simple, concise, and direct." *Fed. R. of Civ.P. 8(e)(1)*. Moreover, under *Rule 8*

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[4] *See Bennett v. School Directors of Dist. 68, et al.*, 96 C 6915;

Bennett v. School Directors of Dist. 93, 96 C 6916;

Bennett v. School Directors of Dist. 200, 96 C 2422;

Bennett v. School Directors of Dist. 203, 96 C 6917;

Bennett v. School Directors of Dist. 204, 96 C 6918; and

Bennett v. School Directors of Dist. 205, 96 C 6919.

(Bennett has chosen not to pursue the case against School District 89.)

[5] *See Bennett v. School Directors of Dist. 204*, 941 F. Supp. 763 (N.D. Ill. 1996).

[6] 42 U.S.C. § 2000(e), *et seq.*

[7] Bennett does not set forth any statements to clarify her prayer for relief under the Fourteenth Amendment.

[8] Bennett simply states in one sentence that "the pendent jurisdiction of the court is also invoked for the state causes of action." (P2.)

a complaint "must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged." *Vicom, Inc. v. Harbridge Merchant Services, Inc.*, 20 F.3d 771, 775 (7th Cir. 1994) (quoting *Wade v. Hopper*, 993 F.2d 1246, 1249 (7th Cir. 1993)). A confusing complaint makes the complaint difficult to discern for the defendant to file a responsive pleading and for the court to conduct an orderly litigation. *Vicom, Inc.* 20 F.3d at 776; *see also Michaelis v. Nebraska State Bar Assoc.*, 717 F.2d 437, 439 (8th Cir. 1983) (affirming dismissal with prejudice of needlessly [*8] prolix and confusing complaint because "the style and prolixity of these pleadings would have made an orderly trial impossible").

Bennett's repetitious, rambling, and disorganized amended complaint violates *Rule 8*. Many of the 35-paragraphs of the amended complaint contain repetitive language and are needlessly lengthy. In fact, the first paragraph is a full page and half long with four indented paragraphs. Paragraph 29 incorporates thirteen subparagraphs. Furthermore, as defendants point out, Bennett does not clearly state which allegations relate to which theory of liability. All of her four claims for relief appear to stem from the same set of allegations asserted under count I, the only count in the amended complaint. Moreover, Bennett does not even attempt to set forth her state causes of action. She merely asserts that the court has pendent jurisdiction over her state claims; the court and opposing party are left to discern what state causes of action Bennett alleges in her amended complaint.

Bennett has had ample opportunity to plead her employment discrimination claims in "short, concise, and plain statements", *Fed. R. Civ. P. 8(a)*, and has filed an amended complaint in each [*9] of the eight actions. [9] However, her Amended Complaint does not state her causes of action in a simple and direct way. Due to her failure to comply with *Rule 8(a)*, the court dismisses Bennett's First Amended Complaint with prejudice.

Assuming, arguendo, that the amended complaint contained short and concise statements of discrete theories of liability and supporting facts, the court would still grant defendants' motion to dismiss Bennett's complaint. Turning to the substantive issues in this action, Bennett first alleges that defendants violated her rights under Title VII of the Civil Rights Act of 1964.

In count I, Bennett attempts to state facts to support a Title VII disparate impact claim. "Disparate impact cases challenge employment practices that [*10] appear facially neutral in their treatment of different groups, but in fact fall more harshly on one group than another." *Nash v. Consolidated City of Jacksonville, Duval County, Fla.*, 895 F. Supp. 1536, 1541 (M.D. Fla. 1995); *see Int'l. Bhd. of Teamsters v. United States*, 431 U.S. 324, 335 n. 15, 52 L. Ed. 2d 396, 97 S. Ct. 1843 (1977). A disparate impact theory differs from disparate treatment because impact cases need not prove discriminatory intent. *Melendez v. Illinois Bell Telephone Co.*, 867 F. Supp. 637, 645 (N.D. Ill. 1994); *Nash*, 895 F. Supp. at 1541; *see also Dothard v. Rawlinson*, 433 U.S. 321, 328, 53 L. Ed. 2d 786, 97 S. Ct. 2720 (1977).

The threshold issue before the court, with respect to a Title VII disparate impact claim, is whether Bennett pleads a prima facie case. If she successfully puts forth such evidence, the burden shifts to defendants to demonstrate that the employment practice which produced the impact constitutes a job related criteria. *Rowe v. Cleveland Pneumatic Co., et. al.*, 690 F.2d 88, 94 (6th Cir. 1982); *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 425, 45 L. Ed. 2d 280, 95 S. Ct. 2362 (1975). However, in her Amended Complaint, [*11] Bennett only needs to set forth the elements of a Title VII disparate impact claim.

To plead a disparate impact prima facie case, the plaintiff must identify a facially neutral employment practice that defendants employed which had a significant discriminatory effect. *Nash*, 895 F. Supp. at 1541; *see also Stephen v. PGA Sheraton Resort, Ltd.*, 873 F.2d 276 (11th Cir. 1989). A plaintiff often makes out such a case by using statistics to demonstrate a disparity in selection rates. *Nash*, at 1541; *Rowe v. Cleveland Pneumatic Co.*, 690 F.2d 88, 94 (6th Cir. 1982). "The plaintiff must offer statistical evidence of a kind and degree sufficient to show that the practice in question has caused the exclusion of applicants for jobs or promotions because of their membership in a protected group." *Nash*, at 1541 (quoting *Watson v. Ft. Worth Bank & Trust*, 487 U.S. 977, 994, 101 L. Ed. 2d 827, 108 S. Ct. 2777 (1988)). Moreover, the statistical disparities must sufficiently substantiate such an inference of causation. *Nash*, at 1541.

The plaintiff must first show an imbalance in the workforce through statistics. *Nash*, at 1542. The proper comparison shows the racial composition [*12] between those persons qualified in the labor market and those holding at-issue jobs. *Id.* (citing *Wards Cove*, 490 U.S. 642 at 650, 109 S. Ct. 2115, 104 L. Ed. 2d 733). However, "merely showing an imbalance in the workforce" does not satisfy the prima facie case under a disparate impact analysis. *MacPherson v. Univ. of Montevallo*, 922 F.2d

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[9] Bennett has filed a Second Amended Complaint in three of her seven cases. *See Bennett v. School Directors of Dist. 68*, et al., 96 C 6915; *Bennett v. School Directors of Dist. 93*, 96 C 6916; and *Bennett v. School Directors of Dist. 205*, 96 C 6919.

766, 771 (11th Cir. 1991). Plaintiff must also establish a "meaningful statistical comparison" between qualified persons and those actually hired. *See Alford v. City of Montgomery, Alabama*, 879 F. Supp. 1143, 1149 (M.D. Ala. 1995).

Bennett identifies two practices as the specific facially neutral employment practice that had a discriminatory effect on African-Americans. She claims that the District had a practice that: (1) allowed school administrators to exclude applicants from the interviewing process for any or no reason, and (2) allowed the school principals to determine which applicants to interview. (Pl.'s Compl. PP 14, 15.) Bennett asserts that these two facially-neutral practices had a discriminatory impact on African-Americans and other minorities because the practices excluded them from employment within the district. As a result, Bennett alleges that the district [*13] denied her an interview and a recommendation for employment due to her race. (Pl.'s Compl. PP 19, 23.)

To support her allegations, Bennett offers several pieces of statistical evidence and a list of discriminatory acts committed against her and her class that she believes had a racially discriminatory effect. In one piece of statistical evidence, Bennett states that "as of the 1993-1994 school year, defendants employed 11 full time equivalent African-Americans as full time classroom teachers out of a total staff of 655 full time equivalent teachers." (Pl.'s Compl. P30a.) This statistic, standing alone, shows an imbalance in the workforce; but plaintiff needs to show more.

Bennett also attaches two percentage graphs. The first graph, Exhibit A1, attempts to breakdown the percentage of white teachers versus white students in District 15 and the seven other school districts. The second graph, Exhibit A2, illustrates the percentage breakdown between minority teachers and minority students. However, the Supreme Court held that a comparison of a school district's teacher workforce to its student population is inappropriate. *Hazelwood School District v. United States*, 433 U.S. 299, [*14] 308, 53 L. Ed. 2d 768, 97 S. Ct. 2736 (1977). The Court concluded that the proper comparison is between the racial composition of the school district's teaching staff and the racial composition of the qualified public school teacher population in the relevant labor market. Bennett makes no attempt to compare the racial composition of the school district teachers with the racial composition of qualified school teachers in the relevant labor market.

Furthermore, all three pieces of statistical evidence Bennett offers reflect data as of the 1993-1994 school year, nearly two school years prior to April 1995 when she applied for full time teaching positions in District 15. Bennett presents no other recent data in her complaint or her response to defendants' motion to dismiss.

Therefore, the court finds that Bennett's statistical evidence does not establish a "meaningful statistical comparison" that shows the number of African-Americans who qualified and interviewed for the teaching positions and those who actually were hired. *See Alford*, 879 F. Supp. at 1149. Moreover, the statistics do not substantiate an inference of causation under a disparate impact analysis. *See Nash*, at [*15] 1541-1542. Thus, Bennett fails to successfully plead a prima facie case of disparate impact.

Furthermore, disparate impact claims that do not "raise a presumption of discriminatory purpose" are "insufficient to sustain a cause of action under *sections 1981* and *1983*." *Drake v. City of Fort Collins*, 927 F.2d 1156, 1162 (10th Cir. 1991) (affirming the district court's decision to dismiss a Black plaintiff's employment discrimination case under Title VII and *§§ 1981* and *1983* because he failed to support his disparate impact claim due to insufficient statistics evidence) (quoting *New Mexico ex rel. Candelaria v. City of Albuquerque*, 768 F.2d 1207, 1209 (10th Cir. 1985)); *see also Durham v. Xerox*, 846 F. Supp. 939, 940 (W.D. Okla. 1992). Since Bennett's Title VII disparate impact claim fails, her claims under *§§ 1981* and *1983* also fail. Therefore, the court also dismisses those claims for relief.

In one sentence, Bennett asserts that the court has pendent jurisdiction over her state causes of action. The doctrine of pendent jurisdiction, however, no longer exists; the courts exercise supplemental jurisdiction. *See*28 U.S.C. § 1367 (1991 Supp.). Section 1367 provides that [*16] a federal district court "shall have supplemental jurisdiction over all other claims that are so related to the claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy…" 28 U.S.C. § 1367(a).

As the court stated in the Background section of this opinion, Bennett has not specifically or generally alleged her state causes of action. Therefore, the court declines to exercise its supplemental jurisdiction over Bennett's state law claims.

Conclusion

For the reasons set forth above, the court grants defendants' motion to dismiss plaintiff's First Amended Complaint.

ENTER:

Ann Claire Williams,

Judge

Dated: NOV 20, 1997

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to hearing before the Court. The issues have been heard and a decision has been rendered.

That pursuant to the court's memorandum opinion and order of November 21, 1997, judgment by dismissal is entered in favor of defendants and against plaintiff; that plaintiff take nothing and this case is dismissed on the merits.

Date: 11/20/97