WALKER v. NORTHWEST AIRLINES

2004 | Cited 0 times | D. Minnesota | January 14, 2004

ORDER

I. INTRODUCTION

The above-entitled matter comes before the Court upon the Report andRecommendation of Chief United States Magistrate Judge Jonathan G.Lebedoff dated October 28, 2003. The Report and Recommendationrecommended that Defendant's Motion for Summary Judgment be granted.First, the Chief Magistrate Judge reasoned that Walker's Title VII raceand retaliation claims relating to alleged increased scrutiny anddiscipline are time-barred, because Walker failed to file a charge withthe Equal Employment Opportunity Commission ("EEOC") within 180 daysafter the alleged unlawful employment practice occurred. Second, theChief Magistrate Judge reasoned that Walker's remaining Title VII,Page 2section 1981 and Family Medical Leave Act ("FMLA") claims failed onthe merits under the traditional McDonnell Douglasburden-shifting analysis. Plaintiff George E. Walker filed timelyobjections to the Report and Recommendation. Defendant NorthwestAirlines, Inc. ("Northwest"), filed a response to Walker's objections.

Pursuant to statute, the Court has conducted a de novo reviewof the record. 28 U.S.C. § 636(b)(1); Local Rule 72.1(c). Havingreviewed the record in this case, the Court adopts the Chief MagistrateJudge's recitations of the facts. For the reasons set forth below, theCourt adopts in part, and modifies in part, the Report andRecommendation.

II. DISCUSSION

A party is entitled to summary judgment when, viewing all facts in thelight most favorable to the non-moving party, there is no genuine issueas to any material fact, and the moving party is entitled to judgment asa matter of law. Fed.R.Civ.P. 56(c); Celotex Corp. v.Catrett 477 U.S. 317, 322-23 (1986). The party seeking summaryjudgment bears the burden of showing that there is no disputed issue ofmaterial fact. Celotex, 477 U.S. at 323.

Walker raises four objections to the Report and Recommendation. First,Walker argues that the Chief Magistrate Judge erred when he determinedthat the 180-day statute of limitations, rather than the 300-day statuteof limitations, applied to Walker's Title VII claims. Second, Walkerargues that the Chief Magistrate Judge has overlooked andmischaracterized Walker's evidence of discrimination. Third, Walkerargues that the Chief Magistrate Judge erred when he stated that Walker'sStatement of Facts was replete with factual assertions wholly unsupportedby the record. Fourth, Walker argues

that the ChiefPage 3Magistrate Judge erred when he did not address Walker's renewedcall for additional time in which to conduct discovery. The Court willaddress each objection in turn.

A. Applicable Limitations Period

A Title VII complainant must file his charge with the EEOC within 180days after the alleged unlawful employment practice occurred, or within300 days after such occurrence if the complainant initially instituteddiscrimination proceedings with a state or local agency.42 U.S.C. § 2000e-5(e)(1). If a claim is not filed within these timelimits, it is time-barred. Nat'l R.R. Passenger Corp. v. Morgan.536 U.S. 101, 109 (2002). The time period begins to run on the date onwhich the adverse employment action is communicated to the plaintiff.Dring v. McDonnell Douglas Corp. 58 F.3d 1323, 1328 (8th Cir. 1995).

Walker filed his charge with the EEOC on March 2, 2000. (Neither partyobjects to the Chief Magistrate Judge's determination that March 2, 2000,constitutes the date of the EEOC charge.) Walker claims that the 300-daylimitation period should apply to his claim, because his EEOC charge wascross-filed with the Arizona Civil Rights Division ("ACRD") pursuant to aworksharing agreement between the two agencies.

In response to Northwest's motion for summary judgment, Walker reliedon documentation from the ACRD and the EEOC showing that his EEOC chargehad been cross-filed with the ACRD. Although Northwest specificallyrequested this information in discovery, Walker failed to produce thesedocuments and incorrectly represented that all such documents had beenproduced to Northwest. Northwest had also requested cross-filinginformation from the ACRD under the Freedom of Information Act, but wasinformed thatPage 4the ACRD had no record of a filing by Walker. Because Walkerwithheld these documents without substantial justification, and could notshow that the failure to produce was harmless, the Chief Magistrate Judgedisregarded the documents for the purpose of summary judgment.Fed.R.Civ.P. 37(c)(1). Without the documentation showing that Walker's claimwas cross-filed with the ACRD, there was no evidence that Walker's claimhad been initially instituted with a state or local agency. Thus, theChief Magistrate Judge held that the 180-day time period applied toWalker's claim.

Walker contends that the failure to produce the documents was harmless,because Northwest was on notice that Walker's EEOC charge had beencross-filed with the ACRD. Walker's EEOC charge listed the ACRD as theapplicable state or local agency and contained an unchecked box where thecomplainant could request that the form also be filed with the stateagency. Because Northwest was on notice that Walker's claim wascross-filed, Walker contends that the 300-day limit applies and that hemay allege adverse actions that occurred on or after May 7, 1999.

Walker is correct that, when the EEOC and state agency have anapplicable worksharing agreement, the EEOC charge is deemed to havebeen cross-filed with the state agency even when the box

requestingcross-filing is not checked. See, e.g., Worthington v.Union Pac. R.R. 948 F.2d 477, 480 (8th Cir. 1991) (holding that acharge filed with a state agency is deemed to have been filed with theEEOC at that time even though the complainant failed to place an "x" inthe box requesting cross-filing, when the EEOC and state agency have aworksharing agreement equivalent to the agreement in this case).Page 5

The parties have not submitted the text of the Arizona worksharingagreement to this Court; however, the agreement is a public record, ofwhich the court may take judicial notice. See Caha v.United States, 152 U.S. 211, 221-22 (1894) (taking judicial noticeof agency rules and regulations); United States v. City of St.Paul. 258 F.3d 750, 753 (8th Cir. 2001) (taking judicial notice ofan agency handbook "although not adopted by administrative rule subjectto notice and comment"); Bolinksy v. Carter Machinery Co.,Inc., 69 F. Supp.2d 842, 845 n.5 (W.D. Va. 1999) (taking judicialnotice of worksharing agreement between Virginia Council on Human Rightsand EEOC).

Title VII expressly allows the EEOC to enter into worksharingagreements with state and local agencies. Worthington v. Union Pac.R.R., 948 F.2d at 480. The worksharing agreement between the ACRDand the EEOC provides that the EEOC is deemed an agent of the ACRD toreceive charges and that a proceeding with the ACRD is automaticallyinitiated upon receipt of charges with the EEOC. Worksharing AgreementBetween Arizona Civil Rights Division and Equal Employment OpportunityCommission for Fiscal Year 2000 § II(A). By filing a claim with theEEOC, Walker commenced proceedings with both the EEOC and the ACRD. Theagreement also contains a waiver of jurisdiction by the ACRD: For charges originally received by the EEOC and/or to be initially processed by the EEOC, the ACRD waives its right of exclusive jurisdiction to initially process such charges for a period of 60 days for the purpose of allowing the EEOC to proceed immediately with the processing of such charges before the 61st day.Arizona Worksharing Agreement § III(A)(1). By filing with the EEOC,Walker simultaneously commenced and terminated state agency action.Worthington. 948 F.2d atPage 6482; Bolinksy, 69 F. Supp.2d at 847.

Under the worksharing agreement, Walker's charge was initiated with astate agency upon filing with the EEOC and the 300-day period applies,regardless of whether the Walker produces proof that the EEOC charge wascross-filed with the state agency. See also Shiban v.Intel Corp., No. CV-00-401, 2002 WL 31371971, at *2 n.2 (D. Ariz.Mar. 28, 2002) (noting that the filing requirements under Title VII andthe ADEA are analogous and that "[i]n dual filing states, such asArizona . . . the statute of limitations [for filing an ADEA charge withthe EEOC] is 300 days not 180"); Schell v. Harris/Shcolnik &Assoc., Inc., 1998 WL 960327, at *1 (D. Ariz. Nov. 6, 1998) (holdingthat "[a] plaintiff alleging a violation of Title I of the ADA must filea charge of discrimination with the EEOC within 180 days of the accrualof his cause of action, or within 300 days of the accrual in a deferraljurisdiction such as Arizona").

Even without considering the excluded documentation regarding theEEOC's cross-filing of Walker's claim with the ACRD, Walker's EEOCcharge was deemed filed with the ACRD when he filed the

charge with theEEOC. Thus, Walker's Title VII claims were governed by the 300-dayperiod, not the 180-day period and any adverse actions that occurred onor after May 7, 1999 are not time-barred.

Construing the facts in favor of Walker, Walker received his the Noticeof Decision Making Leave ("DML"), an adverse employment action byNorthwest, on May 15, 1999. Thus, Walker's Title VII claim based on theDML received from Northwest while in Phoenix is not time-barred. Walker'sfirst objection is sustained. However, as noted below, Walker'sPage 7Title VII claim based on discipline received from Northwest, suchas the DML, while in Phoenix fails on the merits.

B. Characterization of Walker's Evidence of Discrimination

Walker argues that the Chief Magistrate Judge "mischaracterizesWalker's evidence and fails to consider the evidence in the light mostfavorable to Walker." Walker notes two alleged examples ofmischaracterization, which this Court will address. Walker then statesthat the Chief Magistrate Judge was incorrect when he determined that"Walker has failed to present sufficient evidence to make out a primafacie case under Title VII termination and retaliation claims, § 1981claims of increased scrutiny and discipline and termination, andtermination claim under the FMLA." As noted in the Report andRecommendation, such broad statements, without citation to the record,impede the Court's ability to construe the facts in the light mostfavorable to the plaintiff. However, this Court has conducted a denovo review of the record, and addresses each claim below.

1. Alleged Examples of Mischaracterization

Walker asserts that the Chief Magistrate Judge erred when he determinedthat Walker had testified that Walker's co-worker, Miller, "was nottreated more favorably than he." The Report and Recommendation also notedthat "there is some evidence suggesting that Miller, the other Lead ESE,was scrutinized less than Walker," demonstrating that the ChiefMagistrate Judge took all of Walker's evidence into account. The Reportand Recommendation determined that this evidence was attributable to thefact that, unlike Miller, Walker was a short-term, temporary employee.Page 8

Walker admits that he testified,"I wouldn't use the word `favorably'"to describe how Miller was treated in relation to Walker. The Court doesnot comprehend how the Chief Magistrate Judge was "mischaracterizing"evidence by quoting Walker's own deposition testimony. The Court is notrequired to ignore Walker's own testimony when deciding a motion forsummary judgment merely because that testimony is not favorable toWalker. Aucutt v. Six Flags Over Mid-America, Inc.,85 F.3d 1311.1315 (8th Cir. 1996). Walker's objection is without merit.

Walker also objects that the Chief Magistrate Judge improperly weighedWalker's testimony on two issues: whether white employees were treateddifferently than he was for travel pass violations and the nature andseverity of co-worker Patricia Chrzanowski's alleged harassment. TheCourt first addresses Walker's evidence of disparate treatment. The Courtthen addresses Walker's evidence of

Chrzanowski's harassment in thecontext of its discussion of the impact of the recent Supreme Courtdecision in Desert Palace. Inc. v. Costa. 539 U.S. —,123 S.Ct. 2148 (2003).

2. Walker's Evidence of Disparate Treatment

Walker's only assertion regarding whether Northwest treated travel passviolations by white employees differently than Walker's violation is onesentence in his brief: "It is well known that there are white employeeswho have violated the travel pass policy who were not terminated or evendisciplined." Memorandum of Law in Opposition to Defendant's Motion forSummary Judgment at 20-21. Walker provides no citation to the record forthis "well known" fact and does not specify any similarly situatedNorthwest employee who was treatedPage 9differently than Walker for violating the travel pass policy. Inopposing a motion for summary judgment, Walker "must demonstrate theexistence of specific facts that create a genuine issue for trial; mereallegations or denials are not enough." Lambert v. City ofDumas. 187 F.3d 931, 934-35 (8th Cir. 1999). It is well establishedthat "[s]tatements of counsel are not evidence and do not create issuesof fact." Exeter Bancorporation, Inc., v. Kemper Sees. Group.Inc., 58 F.3d 1306, 1312 n.5 (8th Cir. 1995) (citation omitted).Thus, the Chief Magistrate Judge was correct in determining that Walkerdid not create a genuine issue of material fact regarding whetherNorthwest treated white employees differently than Walker for travelpass violations.

3. Walker's Evidence of Harassment by Chrzanowski and the Impactof Desert Palace

Walker's section 1981 claim is based on alleged racial harassment by aco-worker, Patricia Chrzanowski. Walker objects that the Chief MagistrateJudge improperly rejected Walker's evidence regarding the nature andseverity of Chrzanowski's harassment. In order to properly address thisobjection, the Court must examine the burden-shifting frameworkapplicable to Walker's claims in light of the Supreme Court's recentdecision in Desert Palace. Inc. v. Costa. 539 U.S. —,123 S.Ct. 2148 (2003).

a. The Impact of Desert Palace

The Chief Magistrate Judge recommends that Defendant's motion forsummary judgment be granted on all claims, because Plaintiff's claimsfail on the merits. The Chief Magistrate Judge analyzes Walker's TitleVII, section 1981, and FMLA claims under thePage 10McDonnell Douglas analysis, because Walker relied oncircumstantial evidence of discrimination. However, the Supreme Courthas recently clarified that, absent a statutory mandate, courts shouldnot differentiate between circumstantial and direct evidence indiscrimination cases. Desert Palace. Inc. v. Costa. 539 U.S.___, 123 S.Ct. 2148, 2154 (2003). In Desert Palace, theSupreme Court held that a Title VII plaintiff was entitled to amixed-motive jury instruction if she presented direct or circumstantialevidence of discrimination. Id. at 2155. The Desert Palacedecision is based on the Supreme Court's reasoning that courts havealways treated circumstantial and direct evidence alike in civil, andeven criminal,

cases. Id. at 2154. The Court reasoned thatthere was no basis for weighing direct evidence more heavily thancircumstantial evidence in Title VII cases, absent a statutory command.

Under a mixed-motive analysis, the employee does not bear the burden ofproving that the employer's legitimate non-discriminatory reason fortaking an adverse employment action is pretextual. Instead, the employeemerely needs to show that, even if the employer's non-discriminatoryreason is true, the employee's characteristic was also a motivatingfactor in the employer's decision. Cram v. Lamson & SessionsCo., 49 F.3d 466, 471 (8th Cir. 1995). If the employee succeeds inmeeting his burden, the burden then shifts to the employer to show that,but for the employee's protected characteristic, it would have takenthe same employment action. Id.

Thus, if the employee fails to prove that the employer's reason ispretextual, he may still survive summary judgment if he has offeredenough evidence to raise a genuine issuePage 11of material fact as to whether his protected characteristic was, atleast, a motivating factor in the employer's decision. Thequestion becomes one of mixed motive, regardless of whether theemployee's evidence of discrimination is direct or circumstantial. Evenif the employer's non-discriminatory reason is true — it is notpretext — the employee's claim can survive if he has presentedsufficient evidence to raise a genuine issue of material fact as towhether his protected characteristic was, at least, amotivating factor in the employer's decision. See Dunbarv. Pepsi-Cola Gen. Bottlers of Iowa. Inc., No C02-3038, 2003 WL22290229, at *15 (N.D. Iowa Oct. 7, 2003).

The Desert Palace opinion specifically addressed Title VIIclaims, not section 1981 claims. However, the Eighth Circuit hasconsistently applied the same standard to section 1981 claims and TitleVII claims. See, e.g., Ross v. Kan. City Power &Light Co., 293 F.3d 1041, 1050 (8th Cir. 2002). See alsoGlass v. Bemis Co., Inc., 22 F. Supp.2d 1063, 1066-68 (D.Neb. 1998) (applying mixed-motive analysis to section 1981 claim).Additionally, like Title VII, section 1981 does not contain languagedirecting courts to weigh direct evidence more heavily thancircumstantial evidence.

Walker does not bear the burden of establishing that Northwest'slegitimate, non-discriminatory reasons for disciplining and terminatingWalker were pretext. Rather, Walker must only prove by the preponderanceof the evidence either that North west's reasons were a pretext fordiscrimination, or that, even if Northwest's reasons were true, Walker'sprotected characteristic was another motivating factor. The Report andRecommendation thoroughly analyzed how Walker failed to show thatNorthwest's reasons were pretext, butPage 12did not analyze whether Walker was able to show that, even ifNorthwest's reasons were true, Walker's protected characteristic was alsoa motivating factor. This Court modifies the Report and Recommendation byanalyzing each of Walker's claims under a mixed-motive analysis inaddition to the McDonnell Douglas analysis.

b. Title VII and Section 1981 Race Discrimination Claims forIncreased Workplace Scrutiny and Discipline in Phoenix

The Chief Magistrate Judge first analyzes Walker's section 1981 claimsbased on increased workplace scrutiny and discipline in Phoenix, andnotes that the same analysis applies to Walker's Title VII racialdiscrimination claim. As the Report and Recommendation explained, Walkerdid not show that he was performing his job at a satisfactory level, didnot show specific evidence of disparate treatment of similarly situatedemployees, and produced virtually no evidence to support an inference ofracial animus. Even under the Desert Palace analysis, assumingthat Walker had established his prima facie case, Walker failed topresented sufficient evidence to raise a genuine issue of material factas to whether his protected characteristic was, at least, amotivating factor in Northwest's decisions to discipline and scrutinizeWalker. Because Walker offered virtually no evidence that race was amotivating factor in workplace scrutiny and discipline while in Phoenix,Walker's section 1981 claim and Title VII claim based on those actionsare subject to summary judgment under either a McDonnellDouglas or a Desert Palace analysis.

c. Termination in San Francisco

Walker claims that his termination in December 1999 violated both TitleVII andPage 13section 1981. As the Report and Recommendation detailed, Walker didnot establish that he had performed his job satisfactorily and admittedthat he violated Northwest's established travel pass policy.Additionally, Walker's charges of discriminatory conduct were aimed atNorthwest employees in Phoenix, who had no role in Northwest's decisionto terminate his employment. Walker has presented no specific factualevidence that race was a motivating factor in Northwest's decision toterminate him.

d. Hostile Work Environment in Phoenix

Walker claims that racial harassment by his co-worker, Chrzanowski, inPhoenix constituted a hostile work environment under section 1981. Walkeralso claims that increased scrutiny and discipline that he received inPhoenix constitute harassment. As noted above, Walker has failed to raisea genuine issue of material fact regarding whether the increased scrutinyand discipline were motivated by racial animus, because there is nocausal nexus between Walker's race and Vandermolen's actions.

Walker testified that Chrzanowski repeatedly referred to him as "lips,"made comments regarding sexual activity and breast implants, and put herfinger in Walker's face and yelled at him. Although when viewed inisolation, many of Chrzanowki's actions do not appear to be racial,"[t]he predicate acts which support a hostile-environment [racial]harassment claim need not be explicitly [racial] in nature. Rather, thekey issue `is whether members of one [race] are exposed todisadvantageous terms or conditions of employment to which members of theother [race] are not exposed." Kopp v. Samaritan Health Sys.,Inc., 13 F.3d 264, 269 (8th Cir. 1993). See alsoHathaway v. Runyon, 132 F.3d 1214, 1222 (8thPage 14Cir. 1997) ("Not every aspect of a work environment characterizedby hostility and intimidation need be explicitly [racial] in nature tobe probative."). At this stage of the proceedings, the Court must drawall inferences in favor of Walker. Kopp, 13. F.3d at 269.Additionally, "summary judgment should seldom be granted in the contextof employment

actions, as such actions are inherently fact based."Hindman v. Transient Corp., 145 F.3d 986, 990 (8th Cir. 1998).Thus, Chrzanowki's harassing behavior, combined with her use of a racialterm to refer to Walker, could be viewed together as a pervasive patternof harassment, motivated by Walker's race.

Northwest also argues that it took prompt and effective remedial actionby speaking to Chrzanowski and conducting an internal investigation thatresulted in her termination. However, Northwest took nine months tocomplete its investigation of Chrzanowski. Whether an informal discussionwith Chrzanowski and an investigation that took nine months to completeconstituted an appropriate response is question best left for a jury.See, e.g., Howard v. Burns Bros., Inc., 149 F.3d 835,841 (8th Cir. 1998) ("Once the plaintiff makes a submissible case, thepromptness and adequacy of the employer's response to a complaint ofharassment are fact questions for the jury to resolve."). Thus, the Courtdenies Northwest's motion for summary judgment as to Walker's section1981 hostile work environment claim

e. Family Medical Leave Act Retaliation Claim

While the Chief Magistrate Judge did not analyze Walker's FMLA claimunder a Desert Palace analysis, the Report and Recommendationnoted that Walker failed to showPage 15any causal connection between his exercise of FMLA rights and histermination, other than the fact that he was on FMLA leave when he wasterminated. This Court need not decide whether Desert Palaceapplies to FMLA claims, because even under a mixed-motive analysis,Walker's FMLA claim fails. An employer is entitled to terminate anemployee who violates company policy while on leave. Sepe v.McDonnell Douglas Corp., 176 F.3d 1113, 1115 (8th Cir. 1999).Additionally, Walker's leave began on October 23, 1999, and Northwestdid not terminate Walker unitl December 23, 1999, two months later.Cf. Smith v. Allen Health Sys., Inc., 302 F.3d 827,833 (8th Cir. 2002) (holding that two-week period between taking FMLAleave and being fired was "barely" enough temporal proximity to establisha prima facie case of causation, and noting that two months was too longa period of time). Because Walker offered no evidence that his exerciseof his FMLA rights was a motivating factor in his termination, other thantiming, he failed to raise a genuine issue of material fact regarding hisFMLA claim, even under a mixed-motive analysis.

C. Inaccuracies in Walker's Statement of Facts

Walker asserts that the Chief Magistrate Judge's statement thatWalker's statement of facts "is replete with factual assertions whollyunsupported by the record to which he cites" is "unfair." However, Walkeradmits that he frequently cited to an exhibit which he failed to file orto provide to the Court, and that he failed to provide the correctcitation for his assertion that a co-worker used a particular raciallyderogatory term against Walker. In his objections to the Report andRecommendation, Walker continues this practice by failing to provide theCourt with the alleged correct citation to the record forPage 16the racially derogatory term and by continuing to make assertionswithout any citation to the record. The Court has reviewed the record inthis matter and

finds that Walker's objection has no merit.

D. Walker's Request for Additional Time for Discovery

Walker argues that the Chief Magistrate Judge erred when he did notaddress Walker's renewed call for additional time in which to conductdiscovery, made orally during the summary judgment hearing. The ChiefMagistrate Judge issued a pretrial order on April 26, 2002, ordering thatdiscovery be completed by March 1, 2003. The Chief Magistrate Judge hasalready twice issued orders denying Walker's motions for additionaldiscovery. This Court affirmed one of those orders on October 3, 2003.Now, Walker argues that the Chief Magistrate Judge should have againaddressed Walker's desire for additional discovery, although Walkerfailed to serve or file a new motion seeking additional time fordiscovery by the date of the hearing on the motion for summary judgment.

A party opposing summary judgment who desires additional time fordiscovery must file "an affidavit with the trial court showing `whatspecific facts further discovery might unveil.' Where a party fails tocarry her burden under Rule 56(f), `postponement of a ruling on a motionfor summary judgment is unjustified.'" Stanback v. Best DiversifiedProds., Inc., 180 F.3d 903, 911 (8th Cir. 1999)(citations omitted).Walker filed a Rule 56(f) request for a continuance on September 4,2003, which the Chief Magistrate Judge denied. Walker attempts to revivehis Rule 56(f) motion with his oral request for additional time made atthePage 17October 9, 2003, summary judgment hearing before the ChiefMagistrate Judge. The Chief Magistrate Judge has already denied Walker'sRule 56(f) motion, and Walker did not file a new Rule 56(f) affidavit andmotion with the Chief Magistrate Judge. Walker has failed to carry hisburden under Rule 56(f) and postponement of a ruling on Northwest'smotion for summary judgment would be unjustified.

IV. CONCLUSION

In conclusion, Walker raised four objections to the Report andRecommendation. The Court overrules Walker's third and fourth objections.The Court sustains Walker's first objection, regarding the applicabilityof the 300-day time period to Walker's Title VII claim; however, Walker'sTitle VII claim fails on the merits. The Court sustains Walker's secondobjection only as to his claim of racial harassment by Chrzanowski.Finally, the Court modifies the Report and Recommendation in order tocomply with Desert Palace. Inc. v. Costa. 539 U.S. —,123 S.Ct. 2148, 2154 (2003). Thus, the Court grants summary judgment toNorthwest Airlines on all claims, except for Walker's section 1981 claimof racial harassment based on the actions of Chrzanowski.

Accordingly, based upon the files, records, and proceedings herein,IT IS HEREBY ORDERED that

1. The Chief Magistrate Judge's Report and Recommendation, filedOctober 28, 2003, is hereby ADOPTED in part andMODIFIED in part as follows:Page 18

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The Court adopts the Factual Background, Section II, and Standard of Review, Section III, in their entirety; The Court modifies the discussion of the Statute of Limitations on Title VII Claims, Section IV(A), as set forth in this opinion to conclude that the 300-day statute of limitations applies to Plaintiff's time to file his charge with the EEOC; The Court modifies the discussion of Remaining Title VII and § 1981 Claims, Section IV(B), as set forth in this opinion, to include the Desert Palace analysis and to conclude that Plaintiff's claim of harassment by Chrzanowski in violation of 42 U.S.C. § 1981 survives summary judgment.2. Defendant's Motion for Summary Judgment [Docket No. 96] isGRANTED as to

Count I of the Complaint: Plaintiff's Title VII claim based on scrutinizing, disciplining, and terminating Plaintiff; Count II of the Complaint: Plaintiff's Title VII retaliation claim; and Count IV of the Complaint: Plaintiff's Family Medical Leave Act claim.3. Defendant's Motion for Summary Judgment [Docket No. 96] isDENIED as to