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WALKER V. ABBOTT LABORATORIES, 340 F.3D 471 (7TH Cm. 2003)

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FACTS

In 1997, Ronald Payne, a former employee of Abbott Laboratories (Abbot) filed a class action.[1] Dennis Walker, the designated class representative,[2] brought a claim of intentional racial discrimination in promotion and pay under 42 U.S.C. § 1981,[3] which was one of four claims in the Second Amended Complaint.[4] The United States District Court for the Northern District of Illinois dismissed the § 1981 claims on the ground that the plaintiffs, as at-will[5] employees, failed to plead a contractual basis for racial discrimination under § 1981.[6] The court dismissed the other Title VII claims because the class was overbroad.[7] The Third Amended Complaint preserved the dismissed claims for appeal and alleged individual and class claims of discrimination in promotion and pay under a Title VII disparate-impact theory.[8]

In response to Abbot's motion for partial dismissal, the district court dismissed Payne's claim to state court.[9] The district court also denied class certification and granted summary judgment on Walker's Title VII claim.[10] On appeal, the only substantive issue was whether the district court erred in dismissing Walker's individual § 1981 claim based on his status as an at-will employee.[11]

HOLDING

The United States Court of Appeals for the Seventh Circuit held that at-will employment relationships are sufficiently contractual to support a

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1 Walker v. Abbott Laboratories, 340 F.3d 471, 472 (7th Cir. 2003).

2 Marvin Fields was also a class representative in the action, but he voluntarily dismissed his claims at the close of discovery. *See id.* at 473.

3 42 U.S.C. § 1981 (2003). The act guarantees all persons within the jurisdiction of the United States the same right in every state and territory to make and enforce contracts. *Id.* § 1981(a). The act defines "make and enforce contracts" as "making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." *Id.* § 1981(b).

4 *Walker*, 340 F.3d at 473.

5 At-will employment refers to employment terminable by either the employee or the employer at any time and can include termination for any reason. *See* BLACK'S LAW DICTIONARY 545 (7th ed. 1999).

6 *Id.*

7 *Id.*

8 *Id.*

9 *Id.* at 473 n.1.

10 *Id.* at 473.

11 *Id.*

claim of racial discrimination in promotion and pay under 42 U.S.C. § 1981.[12]

ANALYSIS

The court initially addressed two procedural issues raised by the defendant.[13] Abbott first argued that Walker waived his § 1981 disparate-treatment claim by not raising a Title VII disparate-treatment claim.[14] The court noted that Title VII claims and § 1981 claims are not identical and that therefore "failure to pursue one" did not result "in a waiver of the other."[15] Abbott also contended that Walker waived his right to appeal by failing to request reconsideration in the district court.[16] The court found the argument without merit and recognized that, in accordance with *Gonzalez v. Ingersoll Milling Mach. Co.*,[17] reversal by the district court was unlikely.[18]

The court then addressed the merits of Walker's § 1981 claim.[19] The court began with a discussion of the language of § 1981 and the narrow interpretation of its scope in *Patterson v. McLean Credit Union*,[20] in which the Supreme Court held that § 1981 applies only to the formation of the contract but not conduct afterward.[21] The court reasoned that the Civil Rights Act of 1991 overruled *Patterson* and extended the scope of § 1981 to

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[12] *Id.* at 472.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 474.

[16] *Id.*

[17] Gonzalez v. Ingersoll Mach. Co., 133 F.3d 1025, 1035 (7th Cir. 1998) (questioning whether an at-will employee had contractual rights to bring a claim under § 1981). In *Gonzalez*, an at-will employee alleged that her employer violated § 1981 and Title VII of the Civil Rights Act of 1964 by discriminating against her on the basis of race. *Id.* at 1029. The Court of Appeals for the Seventh Circuit affirmed the dismissal of the claim and held that the employee's Title VII claims were not properly before the court because the plaintiff had not raised them in the complaint. *Id.* at 1032. Additionally, the employee's discrimination complaint and her demotion were not causally connected. *Id.* at 1033. The court dismissed the § 1981 claim on the same basis, *id.* at 1035, but questioned the ability of an at-will employee to bring a § 1981 claim due to the lack of a contract regarding the terms of employment, *id.* at 1034–35.

[18] Walker v. Abbott Laboratories, 340 F.3d 471, 474 (7th Cir. 2003).

[19] *Id.* at 475.

[20] Patterson v. McLean Credit Union, 491 U.S. 164 (1989) (holding that the breadth of § 1981 was limited to the formation of a contract and that the only actionable claims for an at-will employee under § 1981 were in the formation of the at-will employment contract and promotion). In *Patterson*, a former employee of a credit union sued her employer under § 1981, claiming racial harassment and that the employer failed to promote her and discharged her because of her race. *Id.* at 169. The Supreme Court held that § 1981 prohibits racial discrimination in the making and enforcement of private contracts but covers only conduct at the initial formation of the contract and other conduct that impairs the right to enforce contractual obligations. *See id.* at 171, 176–78. Therefore, § 1981 claims related to promotion are actionable to the extent that they involve "the opportunity to enter into a new contract with the employer." *Id.* at 185.

[21] *Walker*, 340 F.3d at 475.

include conduct beyond contract formation.[22] Despite the broader interpretation of § 1981, the court recognized the necessity of a contractual relationship to establish a claim under the section.[23] With no dispute as to Walker's status as an at-will employee, the court then determined whether Walker was able to bring an action under § 1981.[24]

The court discussed dicta in *Gonzalez* that suggested that an at-will relationship might not be sufficient to support the necessary contractual relationship required by § 1981. The court noted, however, that the *Gonzalez* court expressly avoided discussing the issue because the plaintiff in that case had no evidence of discrimination.[25] The court also discussed *McKnight v. GMC*,[26] which stated that at-will employment is a continuing contractual relationship despite the possibility of an abrupt end.[27] The court clarified that *Gonzalez* questioned the view in *McKnight* because *Gonzalez* relied on the now-overruled *Patterson* decision.[28] The court also noted that all five other circuit courts that had addressed the issue had held that an at-will employee possesses a sufficient contractual basis for stating a claim under § 1981, despite the possibility of termination at the will of either party.[29]

In its analysis of the statutory language of § 1981, the court found no indication that Congress intended to give specialized meaning to the word "contract" and assumed that Congress intended its ordinary meaning.[30] The court also turned to the Restatement (Second) of Contracts, which states that an employer's promise to pay an employee for certain work and an employee's acceptance of that offer by performance creates a contract.[31] The court again noted that Walker's status as an at-will employee was undisputed.[32]

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22 *Id.* at 475 n.3.

23 *Id.* at 475.

24 *Id.*

25 *Id.*

26 McKnight v. GMC, 908 F.2d 104 (7th Cir. 1990) (recognizing at-will employment as a contractual relationship and finding that § 1981 did not cover discrimination in termination of at-will employees). In *McKnight*, an at-will employee sued the employer under § 1981 and Title VII of the Civil Rights Act of 1964, claiming that he had been fired because of his race and in retaliation for filing claims of racial discrimination against the company. *Id.* at 107. Relying on the Supreme Court's holding in Patterson, the Court of Appeals for the Seventh Circuit held that conduct by employer was not actionable under § 1981, *id.* at 108–09, but that there was sufficient evidence of racial and retaliatory motives to support findings under Title VII, *id.* at 114. In doing so, the court recognized that "[e]mployment at will is . . . a continuing contractual relation." *Id.* at 109.

27 Walker v. Abbott Laboratories, 340 F.3d 471, 476 (7th Cir. 2003).

28 *Id.*

29 *Id.* (citing cases from the Eighth, Second, Tenth, Fourth, and Fifth Circuits).

30 *Id.*

31 *See id.* (citing RESTATEMENT (SECOND) OF CONTRACTS § 1 (1981)).

32 *Id.*

The court further explained that the unfixed duration of the contract did not undermine the presence of a contractual relationship.[33] The court reiterated the view in *McKnight* that at-will employees have certain rights despite the possibility of losing or quitting their jobs at any time.[34] The court listed wages, benefits, and working conditions as such rights.[35] The court further stated that an employer's breach of those rights would give an employee a cause of action and recognized that the Restatement identified at-will employment as contractual.[36] The court also analyzed the nature of at-will employment under Illinois state law.[37] The court concluded that Illinois state law recognizes the contractual nature of at-will employment.[38]

The court also examined the congressional intent behind the Civil Rights Act of 1991.[39] The act's prohibition of racial discrimination in contracts led the court to hold that § 1981 protects all at-will employees.[40] The court mentioned that the exclusion of at-will employees from § 1981 protection would allow the "ubiquitous at-will doctrine" to violate state and federal laws.[41]

Lastly, the court distinguished the case from *Gonzalez*, in which the employee claimed discrimination in termination and lay-off practices.[42] In *Gonzalez*, the lack of a specific duration in at-will employment hindered the employee's ability to state a § 1981 claim because no contractual rights regarding the term of employment existed.[43] Here, however, Walker's § 1981 claim related to discrimination in promotion and pay.[44] The court held that an at-will employment relationship is sufficiently contractual to maintain a § 1981 claim based on discrimination in promotion and pay. The court reversed and remanded to the district court to determine the merits.[45]

CONCLUSION

In *Walker*, the Seventh Circuit discussed the impact of § 1981 on at-will employment for the first time since Congress extended the breadth of the

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33 *Id.*
34 *Id.*
35 *Id.*
36 *Id.*
37 *Id.* at 477.
38 *Id.*
39 *Id.*
40 *Id.*
41 *Id.*
42 *Id.*
43 *Id.*
44 *Id.*
45 *Id.* at 478.

statute after the *Patterson* decision.[46] The court's interpretation of at-will employment as a contract suggests that the breadth of § 1981 could be extended to prohibit discrimination in all aspects of at-will employment. Although other circuit courts have considered whether or not at-will employees can raise claims under § 1981, not all of them have extended § 1981 to termination.[47] The *Walker* court left this issue to be determined later. The court's failure to completely overrule *Gonzalez*, however, could leave some questions about whether or not at-will employees may bring termination claims. Although the court's eagerness to reestablish *McKnight* will most likely allow such claims, the court, by distinguishing *Gonzalez* based on its focus on termination, may have inadvertently encouraged employers to test the limits of the holding in this case.

Summary and Analysis Prepared By:
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[46] *Id.* at 477.

[47] *See* Lauture v. IBM, 216 F.3d 258, 260 (2000) (citing cases allowing at-will employees to sue for wrongful discharge under § 1981).