

PUBLICATION

Tennessee Supreme Court Opens Door for More Employment Litigation

September 28, 2010

On September 20, 2010, the Tennessee Supreme Court surprised the legal and business community with its announcement in *Gossett v. Tractor Supply Company* of a new legal standard for summary judgment in employment cases in Tennessee state courts. Summary judgment motions are often used by employers in discrimination, harassment, and retaliation lawsuits to obtain a favorable result prior to trial. Since 1984, Tennessee state courts have decided summary judgment motions in such cases using the same analytical framework used by federal courts. Under this framework, which is often referred to as the "*McDonnell Douglas* framework" after the 1973 U.S. Supreme Court decision where it was first articulated, employers who offer evidence of a lawful reason for a challenged employment decision are entitled to summary judgment, unless the employee can present evidence that the reason offered by the employer was not the real reason for the challenged decision.

The *Gossett* decision announced that Tennessee state courts will no longer use the *McDonnell Douglas* framework, and in its place, they will grant summary judgment only if employers present evidence "that affirmatively negates an essential element of the nonmoving party's claim or shows that the nonmoving party cannot prove an essential element of the claim at trial." This is the same summary judgment standard that the Tennessee Supreme Court clarified as applying to other types of cases in its 2008 *Hannan v. Alltel Publishing Co.* decision.

The impact of the *Gossett* decision is clear from its discussion of the Tennessee Supreme Court's 2007 decision in *Allen v. McPhee*. In *Allen*, the Supreme Court had affirmed a trial court decision granting summary judgment to an employer under the *McDonnell Douglas* framework. The plaintiff had argued that the employer unlawfully retaliated against her by reassigning her to another position after she complained about sexual harassment. The employer had presented evidence that it transferred her to protect her from any threat of further harassment. In the majority opinion in *Gossett* authored by Chief Justice Janice Holder, the Supreme Court concluded that the *Allen* case should have been decided differently, and that summary judgment should have been denied, because under the new summary judgment framework, **the fact that the employee was reassigned shortly after alleging that her supervisor had sexually harassed her was enough to defeat summary judgment, no matter what the employer's explanation was.**

Because *Gossett* turned on the Tennessee Supreme Court's interpretation of Tennessee Rule of Civil Procedure 56, it has no impact on employment lawsuits that are filed in Tennessee federal courts, where the *McDonnell Douglas* framework will continue to apply. In the wake of the *Gossett* decision, we expect that most employment lawsuits in Tennessee will be filed directly in Tennessee state courts, where it will now be considerably easier for employees to have their cases survive a summary judgment motion and make it to trial by jury. Up until now, the majority of employment lawsuits have traditionally been filed in federal court after the federal Equal Employment Opportunity Commission ("EEOC") has finished processing and investigating them.

The *Gossett* decision was a very close one - a 3 to 2 decision with a dissenting opinion authored by Justice Cornelia Clark. Justice Clark's dissent favored retaining the *McDonnell Douglas* framework and noted that Tennessee will be only the fourth state to abandon it. Tennessee was already unusual in that its state laws allow plaintiff to sue private employers for alleged workplace discrimination and harassment in state court without first filing a complaint with a state or federal administrative agency.

It will be interesting to see whether the Tennessee legislature will consider passing a law that gives employers some relief from the impact of this new decision. In the meantime, Tennessee employers must adjust to the impact of this decision, which will require Tennessee state trial judges to deny summary judgment motions in cases where there is any circumstantial evidence that could possibly support a conclusion that harassing, discriminatory, or retaliatory conduct occurred, after ignoring all explanatory evidence favoring the employer.

If you need assistance with these or any kinds of labor and employment issues, do not hesitate to contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys, located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*

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