

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JUAN ESPINOZA; ALBERTO REYES; ANTONIO NARANJO; ROEL OLIVARES,
– PETITIONERS

v.

SAN BENITO CONSOLIDATES INDEPENDENT SCHOOL DISTRICT –
RESPONDENT

PETITION FOR WRIT OF CERTIORARI

FROM THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

ED STAPLETON
Attorney for Petitioner/Appellant
2401 Wildflower Dr. Ste. C
Brownsville, Texas 78526
Telephone: (956) 504-0882

STAR JONES
Attorney for Petitioner/Appellant
P.O. Box 1179
Olmito, Texas 78575
Telephone: (956) 371-0061

QUESTION PRESENTED

1. The 5th Circuit erred when it affirmed the trial Court's granting of Respondent's Motion for Summary Judgment against all Petitioners on the issue of Fair Labor Standard Act (FLSA) wage and hour violations. Pursuant to Fed. R. Civ. P. 56(a), a genuine and material fact issue existed as to whether Petitioners were or were not being paid correctly and all reasonable inferences must be drawn in favor of the non-moving party, which the trial Court did not do.

2. The 5th Circuit erred in affirming the trial Court's granting of Respondent's Motion for Summary Judgment against all Petitioners on the issue of FLSA wage and hour violation, because the 5th Circuit misapplied and strictly construes Fed. R. Civ. P. 56. While Rule 56 does not require a Court to sift through the record in search of evidence to support a party's opposition to summary judgment, it does require it review the record before the Court in ruling on the matter. The trial Court erroneously used Rule 56 as an avenue to dispose of complex issues before the Court, prejudicing Petitioners.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. The Honorable Hilda G. Tagle, United States District Judge.
2. Juan Espinoza, Plaintiff-Appellant.
3. Alberto Reyes, Plaintiff-Appellant.
4. Antonio Naranjo, Plaintiff-Appellant.
5. Roel Olivares, Plaintiff-Appellant.
6. San Benito Consolidated Independent School District, Defendant-Appellee.
7. Counsel for Plaintiff-Appellant:
Star Jones and Angela P. Nix (in district court) and Ed Stapleton and Star Jones (on appeal).
8. Counsel for Defendant-Appellee:
Miguel Saldana and Leandra Costilla Ortiz (in district court and on appeal)
Stacy Truer Castillo (on appeal).

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari be issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to this petition and is unpublished.

The opinion of the United States District Court appears at Appendix B to this petition and is unpublished.

JUISDICTION

The date on which the United States Court of Appeals decided Petitioners' case was October 12, 2018 and affirmed on November 5, 2018.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves issues pursuant to 29 U.S.C. § 207(a)(1), 29 U.S.C. § 207(k) and 29 CFR 553.230, all pertaining to the Fair Labor Standards Act (FLSA).

STATEMENT OF THE CASE

A. Procedural History

Petitioners sued Respondent under Fair Labor Standard Act violations, Equal Pay Act violations and 42 U.S.C. §1983 violations. The trial Court dismissed Petitioner's Equal Pay Act claim as to Espinoza, Naranjo and Olivares on a Fed. R.

Civ. P. 12(b)(6) ruling. It then dismissed Petitioners' FLSA claims and the remaining Equal Pay Act claims in a Fed. R. Civ. P. 56 summary judgment ruling.

After a trial on the merits of the remaining claims, the Court submitted the case to the jury on the sole issue of whether Respondent's violated Petitioners' Garza and Reyes First Amendment Rights and the jury returned a verdict for Respondent.

B. Statement of Facts (solely pertinent to the FLSA claim)

Petitioners are each employees as defined by 29 U.S.C. §203(e)(1). Respondent is San Benito Consolidated Independent School District, an employer as defined by 29 U.S.C. 203(d). Petitioners Espinoza, Garza, Naranjo, Olivares and Reyes work for Respondent as police officers as non-exempt, salaried employees regularly working more than forty (40) hours a week, yet receive *less* than half of their pay for overtime hours rather time and one-half.

In March, 2012, Petitioners complained to the United States Department of Labor, regarding being paid incorrectly. They informed the Department of Labor they were receiving less than half time pay for overtime work, rather being paid time and one half. They also complained about the way Respondent misclassified them as exempt when, by law, they are non-exempt, they were not being given credit for the amount of years they were employed with Respondent, they were required to be on call twenty-four (24) hours a day and they did not get a work free lunch.

Petitioners informed Respondent of the report to the Department of Labor – Wage and Hour Division and because of it, suffered retaliation. After formally grieving to Respondent, Respondent issued a ruling which indicated she did not

believe Petitioner's were being paid correctly and for Respondent to look into it. After Respondent failed to rectify the situation as promised, Petitioners sued.

The trial Court ruled in favor of Respondent's Motion for Summary Judgment, hence, dismissing Petitioner's FLSA claim.

C. Appeal

Petitioners timely filed their appeal to the United States Court of Appeals for the Fifth Circuit and the Fifth Circuit affirmed the District Court's judgment.

REASONS FOR GRANTING THE PETITION

A. Question 1: Whether genuine disputes as to any material fact existed and whether the Court viewed all evidence in the light most favorable to the nonmoving party.

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The Court must view all evidence in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242 (1986). Factual controversies must be resolved in favor of the non-movant, "but only when there is an actual controversy, that is, when both parties have submitted evidence of contradictory facts." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). "When assessing whether a dispute to any material fact exists, [courts] consider all of the evidence in the record but refrain from making credibility determinations or weighing the evidence." *Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co.*, 530 F.3d 395, 398–99 (5th Cir. 2008). (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). *Anderson* held "...it is clear enough

from our recent cases that at the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. *Anderson* at 249.

In its Motion for Summary Judgment, Respondent relied upon the Wage and Hour report, which upheld the manner Respondent paid Petitioners. In response to Respondent's Motion for Summary Judgment, Petitioners attached numerous excerpts from their expert witness' deposition testimony, along with a report by an employee of the school district, both who stated Petitioners **were not** paid correctly. The Court gave deference to the Wage and Hour report when ruling against Petitioners. In the court's response, it ruled that "...the evidence is undisputed that the DOL Wage and Hour Division found no violation by the School District of the FLSA during a period of investigation from November 8, 2010 to November 7, 2012." There was a genuine and material fact issue dispute, which should have been drawn in favor of Petitioners, and therefore, should have been presented to the jury.

Petitioners' expert, Tomi Jo Stefanos (herein Stefanos) testified that 29 CFR 553.230(b) allows governmental employers to pay employees under the 7(k) fluctuating workweek method, but they must pay officers time and one-half after 171 hours within a 28 day pay period. She also stated Respondent could pay straight overtime of time and one-half after forty-hours, but the fluctuating workweek method Respondent relies upon cannot be used for police officers and firemen, because they have to be paid at time and one-half. These deposition excerpts were attached to Petitioners' Motion for Summary Judgment Response as Exhibit K and Exhibit L.

The method in how Respondent paid Petitioners is a fact issue the jury should have resolved. We urge this issue be returned to the trial court so a jury may make this determination.

B. Question 2: Whether the Court correctly applied Rule 56

Fed. R. Civ. P. 56 does not impose upon the district a duty to sift through the record in search of evidence *but* it does require a Court to review everything in the record when ruling upon a Motion for Summary Judgment. The trial Court ruled on four different motions at one time and consolidated them all into one order, titled “ORDER,” which is document 85 of the record. Two of those motions the Court ruled on included Defendant’s Motion to Exclude Plaintiffs’ Expert Tomi J. Stefanos and Defendant’s Motion for Summary Judgment.

The Court denied Defendant’s Motion to Exclude Plaintiffs’ Expert, after considering Petitioners’ response and exhibits, including Ms. Stefanos’ expert report as to what each Petitioner was owed. Attached to the summary judgment evidence was extensive deposition testimony of Ms. Stefanos, Petitioners’ deposition testimony and Respondent’s ruling in a grievance decision all stating that Petitioners are being paid incorrectly and should be paid an alternative way. The Court did not have to “sift” through the record, because it denied Defendant’s Motion to Exclude Ms. Stefanos’ report in the paragraph *immediately* proceeding the FLSA motion for summary judgment paragraph.

Additionally, in the trial Court’s “ORDER” and under the summary judgment ruling in favor of dismissing the FLSA claims, the order references some exhibits

relating to the payment of Petitioners, *which was attached to Ms. Stefanos' expert report*. The trial Court considered this evidence in making a ruling, but contradicted itself by using Fed. R. Civ. P. 56 to explain why it will not consider the expert report. The purpose of Rule 56 is to protect the Court from burdensome work and time management, but not as an avenue to dispose of Petitioner's claims.

The trial Court and Fifth Circuit erred in its application of Fed. R. Civ. P. 56. We urge this issue be returned to the trial court so a jury may make this determination.

CONCLUSION

Petitioners should be given the opportunity to try this matter to the jury. The trial Court erred in applying well established Fifth Circuit law, which requires a Judge to deny a summary judgment motion when a genuine and material fact issue existed and drawing all reasonable inferences in favor of the non-moving party. Additionally, a Court is required to consider all evidence in the record, which the trial Court failed to do. We urge that the misapplication of this federal rule and contrary rulings to well established Fifth Circuit holdings, require this Court to remand this matter back to the trial Court and permit Petitioner's to try this case before a jury.

Respectfully submitted,

/s/ Ed Stapleton

ED STAPLETON

Texas State Bar Number 19058400

Southern District Federal ID No. 1501

2401 Wildflower Dr. Ste. C

Brownsville, Texas 78526

Telephone: (956) 504-0882

Fax: (956) 504-0814

LAW OFFICE OF STAR JONES

/s/ Star Jones

Star Jones

Texas State Bar Number 24062810

Southern District Federal ID No. 964890

P.O. Box 1179

Olmito, Texas 78575

Telephone: (956) 371-0061

Facsimile: (956) 284-0426

lawofficeofstarjones@gmail.com