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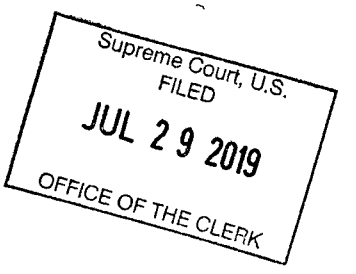

IN THE

SUPREME COURT OF THE UNITED STATES

JASON ALSTON,

Petitioner,

vs.

PRAIRIE FARMS DAIRY, INC. d/b/a LUVEL

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Fifth Circuit
Docket No. # 18-60767
District Court Docket No. # 4:16-CV-245

PETITION FOR WRIT OF CERTIORARI

Jason Alston
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July 27, 2019

Petitioner is a Pro Se litigant

QUESTION(S) PRESENTED

i. Whether the Respondent's Declarations submitted with their Dispositive Motion inadmissible evidence?

ii. Whether the District Court error in denying the Petitioner an evidence hearing?

PARTIES TO THE PROCEEDING

Jason Alston is a pro se litigant and the petitioner in above style case.

Petitioner:

JASON ALSTON

Respondent:

PRAIRIE FARMS DAIRY, INC. d/b/a LUVEL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case : **Pages:**

OTHER

RULES

PETITION FOR WRIT OF CERTIORARI

Petitioner, Jason Alston, respectfully prays for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The judgment of the United States Court of Appeals for the Fifth Circuit was filed on June 12, 2019. (Attached hereto at Appendix A and is published).

The judgment of District Court Memorandum Opinion and Order was made on April 16, 2018. (Attached hereto at Appendix B and is not published).

The United States Court of Appeals for the Fifth Circuit Clerk alleges Petition for Review and/ or Petition for Panel Rehearing is Untimely. (Attached hereto at Appendix C).

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was filed on June 12, 2019. (See Appendix A). This jurisdiction of this Court is invoked under 28 U.S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The 14th Amendment of the U.S. Constitution provides, in relevant part, that "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENTS OF CASE

The facts of this case are quite simple and straightforward. On December 13, 2016,

Watson & Norris, PLLC filed a Lawsuit on behalf of Petitioner against the Respondent. (Doc. # 1). On January 13; 2017, Respondent filed ANSWER to Complaint. (Doc. # 5). On February 21, 2017, Petitioner served his of Pre-discovery Disclosures to Respondent. (Doc. #7). On March 14, 2017, Notice of Conference: Telephone Case Management Conference rest for 3/21/2017 10:00 am before Magistrate Judge Jane M. Virden. (Under Doc. # 7) On March 21, 2017 Minute Entry for proceedings held before Magistrate Judge Jane M. Virden: Case Management Conference rest for 3/21/2017. (Doc. # 8).

On April10, 2017, Petitioner Attorneys' Served Interrogatories, Request For Production, and Requests for Admission to Respondent. (Doc. # 14-16).

On September 22, 2017, Respondent served the Petitioner untimely Pre-Discovery Disclosures of Core Information. (Doc. # 35).

On October 23, 2017, the Respondent Supplemental Disclosures. (Doc. #37). Dispositive Motion was due on November 7, 2017. (Doc. # 28). Discovery Deadline Extended to October 23, 2017. (See Doc. # 28). Motion to Withdraw as Attorney (Unopposed) by Jason Alston. (Doc. # 38). On November 14, 2017, Respondent submitted to the in District Court new evidence that was not present doing discovery but after the closing of Discovery. (See Doc. #43).

Respondent manufactured and invented this evidences to cause the petitioner prejudice. (See Doc. # 43 and 44 in 4:16-cv-00245 Dates on the Declarations).

Harold Papen was not mention in Respondent untimely Pre-Discovery Disclosures. (See Doc. # 35).

Respondent filed a Motion for Extension of time (Under doc. # 38). District Court grant Motion for Extension Of time and Motion to withdraw as Attorney (Doc. # 39). On November 27, 2017, petitioner filed a Motion to Strike (Doc. # 52 and 63).On April 27, 2018, Petitioner filed a Motion for New Trial. (Doc. # 102).

On May 30, 2018, Petitioner filed a Motion for Hearing. (See Doc. # 116 and 118). On October 23, 2018, ORDER denying 100 Motion; denying 102 Motion for New Trial; denying 108 Motion for Sanctions; denying 114 Motion to Compel; denying 115 Motion to Compel; denying 116 Motion for Hearing; denying 118 Motion for Hearing; denying 119 Motion to Compel; denying 135 Motion; denying 139 Motion for Sanctions. Signed by District Judge Debra M. Brown on 10/23/18. (tab) (Doc. # 150).

REASONS FOR GRANTING THE WRIT

Respondent Declarations submitted on November 14, 2017. (Doc. # 43) were unfair surprise and prejudice. **Discovery is a truth seeking device- each party is able to discover facts that the other party has. Parties and their attorneys are expected to comply with requests for discovery.** Respondent violated their discovery obligations by failing to disclose the Declarations submitted after the closing of discovery. (See Doc. # 43). Respondent delay in submitting these Declarations, precluded the petitioner from conducting any follow-up discovery. Respondent prejudiced petitioner case.

Respondent unmentioned witnesses ("Harold Papen") was not mention in Respondent initial disclosure. (Doc. # 35).

With Respect to the United States Court of Appeals for the Fifth Circuit Judges and the United States District Court for the Northern District of Mississippi Greenville Division judges opinions both Courts errored in their opinions in this case. United States Court of Appeals for the Fifth Circuit Judges did not applied the proper standards in evaluating the District Court's decision in granting respondent motion for summary judgment. Respondent Dispositive motion Declarations lack foundation, the opinions were speculative and unreliable. Respondent Declarations are inadmissible hearsay. (See Doc. # 43).

The District Court may only consider admissible evidences in ruling on a motion for summary judgment.

The District Court error in allowed Respondent Plant Manager ("Rodney Smith") to give an expert testimony(See Doc. # 79-1 at 2).

In *Daubert,* this Court held that Federal Rule of Evidence 702 imposes a special obligation upon a trial judge to "ensure that any and all scientific testimony . . . is not only relevant, but reliable." 509 U. S., at 589. The initial question before us is whether this basic gatekeeping obligation applies only to "scientific" testimony or to all expert testimony. We, like the parties, believe that it applies to all expert testimony. See Brief for Petitioners 19; Brief for Respondents 17.

For one thing, Rule 702 itself says:

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."Kumho Tire Co. v. Carmichael, 526 US 137 – Supreme Court 1999 at 147.

Defendant responded denying the accusations and attached an affidavit signed by Rodney Smith, Plant Manager of Prairie Farms Dairy, Inc., who stated, in relevant part, "only a live feed and no video recordings were made of Mr. Alston's work area during his employment with LuVel... Doc. #79-1 at 2.

Respondent fail to produce any credentials to this Plant Manager knowledge Surveillance video footage for the cameras' inside and outside of LUVEL. Respondent just provided hearsay testimony, which the petitioner disputed. Respondent intention withheld relevant surveillance video footage and information that was in their custody after the petitioner Attorneys' Requested this footage with good faith doing discovery. (See Doc. 79 And Doc. # 14-16).

Lawyers should make a good faith effort to comply with discovery requests. Summit Chase Condo. Ass'n, Inc. v. Protean Investors, Inc., 421 So. 2d 562, 564 (Fla. 3d DCA 1982).

Federal Rule of Civil Procedure 26(a)(1) requires parties to supplement their disclosures "in a timely manner" upon finding new information. Rule 37(c)(1) specifies the penalty for violation of Rule 26(a). A non-disclosing party cannot use withheld information unless it can establish that its "failure was substantially justified or is harmless."

No explanation was given from the Respondent to why working cameras' footage was not produce doing discovery to the petitioner nor why Dispositive motion Declarations documents were identified doing discovery. Respondent did not

provide a privilege log. The Court today holds that an employment discrimination plaintiff *may* survive judgment as a matter of law by submitting two categories of evidence: first, evidence establishing a "prima facie case," as that term is used in McDonnell Douglas Corp. v. Green, 411 U. S. 792, 802 (1973); and second, evidence from which a rational factfinder could conclude that the employer's proffered explanation for its actions was false. Because the Court of Appeals in this case plainly, and erroneously, required the plaintiff to offer some evidence beyond those two categories, no broader holding is necessary to support reversal. Reeves v. Sanderson Plumbing Products, Inc.,530 US 133- Supreme Court 2000 at 154.

District Court decision denied petitioner a hearing twice. (Doc. #116 and 118). District Court decision was made without giving the petitioner a statement Of reasons and a hearing, District Court denied the petitioner due process of law guaranteed by the Fourteenth Amendment.

We have held that abuse of discretion is the proper standard of review of a district court's evidentiary rulings. *Old Chief* v. *United States*, 519 U. S. 172, 174,

n. 1 (1997);*United States* v. *Abel*, 469 U. S. 45, 54 (1984). Indeed, our cases on 142*142 the subject go back as far as Spring Co. v. Edgar, 99 U. S. 645, 658 (1879), where wesaid that "[c]ases arise where it is very much a matter of discretion with the court whether to receive or exclude the evidence; but the appellate court will not reverse in such a case, unless the ruling is manifestly erroneous." General Electric Co. v. Joiner, 522 US 136 - Supreme Court 1997at 142.

Federal Rules of Civil Procedure Rule 26 (a) (1)(c)

(C) Times for Initial Disclosures- In General. A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

Respondent failed to timely provide the petitioner with respondent initial disclosures. (See Doc. # 35).

CONCLUSION

For all the reasons stated above the petition for a writ of certiorari should be granted.

Respectfully submitted this the 27 day of July, 2019.

Jason Alston, Petitioner

By: Jason Alston

Petitioner and Pro se Litigant

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