

19-8217 ORIGINAL
No. _____

FILED
APR 03 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Blake Jones — PETITIONER
(Your Name)

vs.

McKee Foods — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

8th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Blake Jones
(Your Name)

2007 N. Carl St.
(Address)

Siloam Springs, AR 72761
(City, State, Zip Code)

(479) 220-0650
(Phone Number)

QUESTION(S) PRESENTED

May a Defendant ignore evidence provided through interrogatories, deposition, and motions for the purpose of Summary Judgement?

IS the word of the Plaintiff to be believed?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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:

RELATED CASES

Lisa Garcia v. McKee Foods

5:18-cv-05112 Arkansas Western District Court

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CASES

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Celotex Corp. v. Catrett 477 U.S. 317

Anderson v. Liberty Lobby, Inc. 477 U.S. 242

Tolan v. Cotton 572 U.S. 650

STATUTES AND RULES

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

[] reported at Pacer Case WO 19-1605; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

[] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was Nov 2019.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Jan 6, 2020, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

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

[] For cases from state courts:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

This is an employment case covered under the FMLA. The Plaintiff was terminated and seeks redress under the provisions allowed.

The question before this court does not seek to determine the right or wrong of either party. What is presented before this Court is the question of precedence and integrity of law. "Justice denied anywhere diminishes justice everywhere." The defendant through interrogatories, depositions, and papers of record, was provided with evidence of disparate treatment, a named witness, and interference of FMLA. The defendant stated to the Trial Court that there was no evidence. On Appeal, the defendant admitted to evidence in the Appellee Brief.

This Great Court has stated through Celotex Corp. v. Catrett, for the purpose of Summary Judgement, all evidence must be attacked. The burden of production remains with the defendant, and it must discharge this burden before being granted Summary Judgment. Without attacking the evidence there can be no burden, and therefore Summary Judgement must be denied. This was addressed to the Court of Appeals to maintain the integrity and precedent set by Celotex V Catrett.

The evidence of all that is written below can be found in Appendix C.

McKee Foods was granted Summary Judgement, without deposing named witness, Chance Regalado, or having to address similar comparators working under the same supervisor. These employees committed the exact policy violation Plaintiff was accused of.

McKee Foods provided evidence of employees sleeping and leaving company property on company time. This violation of company policy was stated to terminate the Plaintiff. The Plaintiff then provided more evidence of other employees sleeping and horse playing, working under the same supervisor. By way of deposition, it was established by the Plaintiff supervisor, that the other employees were not on FMLA.

Chance Regalado was the only witness besides the defendant, who the Plaintiff intended to call. He was never deposed nor provided any affidavit. McKee Foods was made aware of the fact this witness would testify to matters he personally witnessed. Also, the defendant was made aware, that this witness would be able to testify as to who actually drove the vehicle the day in question. The witness list was provided to McKee Foods. McKee Foods was not free to ignore this evidence of the witness, whom they never deposed.

The Trial Court did not address this evidence, and granted Summary Judgement. On appeal Mr. Jones stated these issues in his Brief and Reply brief. McKee Foods agreed there was evidence of similar comparators but argued why the Court of Appeals should not address them.

The Trial Court only addressed three of the six employees that were listed as similar comparators. McKee Foods provided four employees in request for

Production. All four had committed similar acts of comparison. Three for leaving company property on company time and one for sleeping. Mr. Jones then provided two other employees who violated the same policy. One for sleeping, the other for horseplay. These two employees were not addressed in the memorandum and order, nor was the employee that was sleeping provided by McKee Foods.

The documents listed in Appendix C, are in the pleadings and depositions, already part of the record. These documents were provided in Initial disclosures, then marked as Exhibit 6 for Deposition. The documents are then recorded on the Exhibit list provided to the Trial Court.

The emails and statements provided in these documents are evidence against the defendants' stated reason for termination. Exhibit X also shows each employee receiving what the policy called for, a step 3 with a final written warning. Both for leaving company property on company time and sleeping. The other two employees Chandler Jordan, and Austin Cobbs, were listed in Plaintiffs' Opposition to Summary Judgement. McKee Foods gave Mr. Jones a step 4, which Exhibit X shows warranted a Final written warning Step 3, not termination or suspension. McKee Foods disciplinary policy is also in Appendix C.

Finally, Document F combined with the avs scans, commented on by the Trial Court in the Memorandum, are evidence against the employers' stated reason.

Document F states the two employees could not see out of HR, so they had to relocate. Both the avs time scans show the two employees to be in HR while witnessing the incident. This is evidence contrary to Mr. Ruebusch and Mr. Tharps' signed statement in Document F to the unemployment office.

Without making factual determinations this evidence was all provided to the defendant and Trial Court. It was again provided to the 8th Circuit Court of Appeals. All papers of record being considered and with a named witness, it was not proper to grant Summary Judgement to the defendant.

The 8th Circuit Court of Appeals did not offer an opinion nor comment, except referring to Torgerson v. Rochester No. 09-1131. This case with an en banc review, focused on a single comment made by an employer.

REASONS FOR GRANTING THE PETITION

That this Court may use its' Supervisory Powers to maintain the rule of law set by Rule 56. also, so that the precedent set by this Court in Celotex Corp vs Catrett must be adhered too. That justice may continue to be impartial for both Mr. Jones and all those who come after.

This ruling allows witnesses to be dispatched without ever being heard, and is contrary to the opinion of Celotex vs. Catrett. Evidence will continue to be unheard by the 8th Circuit, and the precedents set by this Great Court ignored.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Blake Jones

Date: 24-3-2020