

22-462
SEP 06 2022

CASE NUMBER: OFFICE OF THE CLERK

In the
SUPREME COURT OF THE UNITED STATES

RUBY J. WATTS,

Petitioner,

v.

ADMINISTRATIVE OFFICE OF THE COURTS, et. al.,

Respondents,

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

Ruby J. Watts
Pro se, Petitioner
P.O. Box 9207
Pine Bluff, AR 71611
870-395-0922
870-692-6188

November 2, 2022

QUESTIONS PRESENTED
FOR REVIEW

1. Did the lower court err in its issuing a directed verdict when a documented prima facie case of discrimination had been established?
2. Did the lower court err in issuing a directed verdict and refusing to allow the case to proceed for a jury verdict when there existed genuine issues of material facts in evidence?
3. Did the lower court err in dismissing the Title VII claim by failing to apply the standards for granting a directed verdict?
4. Did the lower court err in denying its court appointed counsel the opportunity to fully represent Plaintiff, by shackling or tying her hands?
5. Did the lower court violate state statute/regulations by disregarding the issue of the Petitioner's unpaid and entitled mileage reimbursement, earned salary and earned vacation pay?
6. Did the lower court err and violate the Equal Pay Act/ADEA in issuing a directed verdict by disregarding the issues of unpaid salary, unpaid vacation, entitled unpaid travel reimbursements and pay disparity as being questions for the jury?
7. Did the lower court err in issuing a directed verdict and refusing to allow the case to proceed for a jury verdict where there were credibility questions?

8. Did the lower court violate the hear-say exception rule by not allowing documents to be entered into evidence that are included in the hearsay exception rule?

9. Did the lower court err or violate Natural Justice by denying the Petitioner the right to present factual evidence?

PARTIES TO THE PROCEEDINGS

Petitioner

- Ruby J. Watts

Respondents

- Administrative Office of the Courts
- John Stewart, Director of Finance and Administration, Individually and Official Capacity and Andrea Lea, Auditor of State, Individually and in her Official Capacity
- Doe(s), Legislative Bureau Member of the Administrative Office of the Courts, Individually and Official Capacity and Marty Garrity

Parties Dismissed in District Court

The parties below still have claims against them in their individual capacity and official capacity in this action.

- John Stewart
- Andrea Lea
- All other defendants have been dismissed from the lawsuit.

CORPORATE DISCLOSURE STATEMENT

Ruby J. Watts is not a subsidiary or affiliate of a publicly-owned corporation and has no parent company and no public company owns 10% or more of its stock.

LIST OF PROCEEDINGS:

In the United States Court of Appeals for the Eighth Circuit

No. 21-2527

Ruby J. Watts, Plaintiff-Appellant, v. Administrative Office of the Courts, Defendant-Appellee, et. al. and John Stewart, Director of Finance and Administration, Individually and Official Capacity; Andrea Lea, Auditor of the State, Individually and her Official Capacity, Defendant-Appellees-Respondents; Does: Legislative Bureau Member of the Administrative Office of the Courts, Individually and Official Capacity; Marty Garrity

Date of Final Opinion: April 25, 2022

Date of En Banc Rehearing Denial: June 8, 2022

In the United States District Court Eastern District of Arkansas

Case No. 5:16-CV-00302-JM-BD

Ruby J. Watts, Plaintiff v.
Administrative Office of the Courts, et. al., Defendants

Date of Judgment: June 16, 2021

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW.....	i
PARTIES TO THE PROCEEDINGS	iii
CORPORATE DISCLOSURE STATEMENT	iv
LIST OF PROCEEDINGS	v
TABLE OF CONTENTS	vi
APPENDIX TABLE OF CONTENTS	ix
TABLE OF AUTHORITIES	xi
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS	3
STATEMENT OF THE CASE	5
REASON FOR GRANTING THE PETITION	7
I. THE LOWER COURT ERRED BY ISSUING A DIRECTED VERDICT AND NOT ADDRESSING THE ISSUE THAT A PRIMA FACIE CASE OF DISCRIMINATION HAD BEEN ESTABLISHED	7

TABLE OF CONTENTS - Continued

	Page
II. THE LOWER COURT ERRED IN ISSUING A DIRECTED VERDICT BY REFUSING TO ALLOW THE CASE TO PROCEED FOR A JURY VERDICT WHEN THERE EXISTED GENUINE ISSUES OF MATERIAL FACTS IN EVIDENCE	9
III. THE LOWER COURT ERRED IN DISMISSING THE TITLE VII CLAIM WHEN IT FAILED TO FOLLOW THE STANDARDS FOR GRANTING A DIRECTED VERDICT BY NOT ALLOWING THE CASE TO PROCEED TO TRIAL FOR A JURY VERDICT	12
IV. THE LOWER COURT'S RULING ON COUNSEL'S MOTIONS TO AMEND AND RE-OPEN DISCOVERY IS REVIEWED ON AN ABUSE OF DISCRETION STANDARD	15
V. THE LOWER COURT ERRED WHEN IT DISREGARDED STATE REGULATIONS AND OR STATUTE BY DISREGARDING THE ISSUE OF PLAINTIFF'S UNPAID AND ENTITLED, MILEAGE REIMBURSEMENT, EARNED SALARY AND EARNED VACATION PAY	16

TABLE OF CONTENTS - Continued

	Page
VI. THE LOWER COURT VIOLATED THE EQUAL PAY ACT/ADEA BY ISSUING A DIRECTED VERDICT, IGNORING THE ISSUES OF UNPAID SALARY, UNPAID VACATION, ENTITLED UNPAID TRAVEL REIMBURSEMENTS AND PAY DISPARITY AS BEING QUESTIONS FOR THE JURY	19
VII. THE LOWER COURT ERRED IN ISSUING A DIRECTED VERDICT BY REFUSING TO ALLOW THE CASE TO PROCEED FOR A JURY VERDICT WHEN THERE WERE CREDIBILITY QUESTIONS	21
VIII. THE LOWER COURT VIOLATED THE HEARSAY EXCEPTION RULE BY NOT ALLOWING DOCUMENTS TO ENTER INTO EVIDENCE THAT ARE INCLUDED UNDER THE HEARSAY EXCEPTION RULE	23
IX. THE LOWER COURT VIOLATED NATURAL JUSTICE BY DENYING THE PETITIONER THE RIGHT TO PRESENT FACTUAL EVIDENCE	25
CONCLUSION	27

TABLE OF CONTENTS - Continued

	Page
APPENDIX TABLE OF CONTENTS	
Opinions and Orders	
Per Curiam of the United States Court of Appeals for the Eighth Circuit, Affirming Lower Court's Judgment for Directed Verdict Dismissing the Title VII Discrimination Complaint Case No. 21-2527 (April 25, 2022)	1a
Judgment Order of the United States District Court Eastern District of Arkansas, Granting Motion for Directed Verdict Case No. 5:16-CV-302-JM-BD (June 16, 2021)	3a
Order of the United States District Court Eastern District of Arkansas, Granting Motion in Limine, Prohibiting Documents from Being Introduced, signed by Deceased Judge Case No. 5:16-CV-302-JM-BD (February 25, 2020)	4a
Order of the United States District Court Eastern District of Arkansas, Appointing Counsel to represent the Plaintiff Case No. 5:16-CV-302-JM-BD (March 15, 2019)	5a
Partial Recommended Disposition in the United States District Court Eastern District of Arkansas Pine Bluff Division, Granting in Part and Denying in Part Defendant's Motion for Summary Case No. 5:16-CV-302-JM-BD Judgment (March 13, 2019)	6a

TABLE OF CONTENTS - Continued

APPENDIX TABLE OF CONTENTS -
Continued

Page

EXHIBIT

Exhibit Filed in the United States District Court Eastern District of Arkansas, Signed Document Case No: 5:16-CV-302 (June 29, 2015)	16a
--	-----

REHEARING ORDER

Order of the United States Court of Appeals for the Eighth Circuit, Denying Rehearing and Rehearing En Banc (June 8, 2022).....	17a
--	-----

STATUTORY PROVISIONS
Relevant Statutory Provisions Involved

U.S. Constitution Art. III. Sec. 2	18a
U.S. Constitution Amend. V	18a
U.S. Constitution Amend. VII	19a
U.S. Constitution Amend. XIV	19a
Title VII.....	19a
A.C.A. § 16-13-505	20a
A.C.A. § 16-13-505(a)(1)	20a
29 U.S.C. § 206(d) Equal Pay Act	20a
Lilly Ledbetter Fair Pay Act of 2009	21a
28 U.S.C. § 1332(a)	22a

TABLE OF AUTHORITIES

	Page
CASES	
<i>American West Bank Members, L.C.</i> <i>v. State of Utah and Its Agents</i>	16
<i>Anderson v. Liberty Lobby, Inc.</i> <i>477 U.S. 242, 247-48, 250-51 (1986)</i> <i>(Liberty Lobby)</i>	8
<i>Brown v. Packaging Corp. of America,</i> <i>2001 U.S. Dist. Lexus 25691, at 12</i> <i>(W.D. Tenn.)</i>	21
<i>Celotex Corp. v. Catrett,</i> <i>477 U.S. 317, 322 -33 (1986)</i>	9
<i>Dediol v. Best Chevrolet,</i> <i>655, F.3d 435, 439 (5th Cir. 2009)</i>	9
<i>Eisenberg v. Ins. Co. of N. Am.,</i> <i>815 F.2d 1285, 1288-89 (9th Cir. 1987)</i>	10
<i>Foman v. Davis,</i> <i>371 U.S. 178, 182, 83 S.Ct. 227, 9L.Ed2d</i> <i>222 (1962)</i>	15
<i>G. Edward Leary,</i> <i>No. 20120456, Supreme Court of Utah</i> <i>(Oct. 14, 2014)</i>	16

TABLE OF AUTHORITIES - (Continued)

	Page
CASES	
<i>Jarvis v. Potter,</i> 500 F.3d 1113, 1120 (10 th Cir. 2007)	14
<i>Kern v. TXO Prod. Corp.</i> 738 F.2d 968, 970 (8 th Cir. 1984)	15
<i>Kidd v. Taos Ski Valley, Inc.,</i> 88 F.3d 848, 853 (10 th Cir. 1986)	14
<i>Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,</i> 475 U.S. 574, 586-87 (1986)	13
<i>McDonnell Douglas Corp. v. Green,</i> 411 U.S. 792, 802 (1973)	7
<i>Mckenzie v. Davenport-Harris Funeral Home,</i> 834 F.2D 930, 934 (11 th Cir. 1987)	21
<i>Nat'l. Am. Co. v. Am. Re-Ins. Co.</i> F.3d 736, 739 (10 th Cir. 2004)	13

TABLE OF AUTHORITIES - (Continued)

	Page
CASES	
Novus Franchising, Inc. v. Dawson, 725 F.3d 885, 895 (8 th Cir. 2013) (quoting Kern v. TXO Prod. Corp. 738 F.2d 968, 970 (8 th Cir, 1984)	15
Rayes v. Johnson, 969 F.2d 700, 702-03(8th Cir. 1992)	15
Thomas v. First Nat'l Bank, 111 F.3d 64, 66 (8 th Cir. 1997)	7
Univ. of Tex. Sw. Med. Ctr. v. Nassar, 570 U.S. 338, 342 (2013))	20
WC&M, 496 F.3d at 398	8
Wiggins v. Sargent, 753 F.2d 663, 668 (8 th Cir. 1985)	15
Winfrey v. City of Forrest City, Ark., 882 F.3D 757, 758 (8 th Cir. 2018)	20

TABLE OF AUTHORITIES - (Continued)

	Page
CONSTITUTIONAL PROVISIONS	
U.S. Constitution, Article III, Section 2	3
U.S. Constitution, Amendment V	3
U.S. Constitution, Amendment VII	4
U.S. Constitution, Amendment XIV	4
	4
STATUTES AND CODES	
Arkansas Discrimination in Employment Act (ADEA)	11
Ark. Code Ann. §16-13-505	16
Ark. Code Ann. §16-13-505(a)(1)	16
Ark. Code Ann. §19-4-904	19
28 U.S.C. § 1332(a)	2
28 U.S.C. § 1254(1)	2
29 C.F.R. 18.804, Hearsay Exceptions. 804(a)(4)	23
29 U.S.C. § 206(d) The Equal Pay Act	11
	11
ACTS	
Lilly Ledbetter Fair Pay Act of 2009	20

TABLE OF AUTHORITIES - (Continued)

	Page
Title VII of The Civil Rights Act of 1964	11
 JUDICIAL RULES	
Fed. R. Civ. P. 15(a)	15
.. Fed. R. Civ. P. 56	12
Fed. R. Civ. P. 56(c)	14
Fed. R. Civ. P. 56(e)(2)	14
Fed. R. B.50 Practice	21

OPINIONS BELOW

The decision of the Eighth Circuit Court of Appeals, (Loken, Gruender and Grasz, Cir. Judges) dated April 25, 2022, Affirming the Trial Court's decision Granting Defendant-Appellee's Motion for Directed Verdict is set forth at App. 1a.

The decision of the United States District Court Eastern District of Arkansas (Moody, U.S.D.J) dated June 21, 2021, Granting Defendant's Motion for Directed Verdict is set forth at App. 3a.

The Order of the United States District Court Eastern District of Arkansas, (Moody, U.S.D.J) dated February 25, 2020, Granting Defendant's Motion in Limine, Prohibiting Documents From Being Introduced, signed by Deceased Circuit Judge is set forth at App. 4a.

The Order of the United States District Court Eastern District of Arkansas, (Deere, U.S.M.J) dated March 15, 2019, Appointing Counsel to represent Plaintiff is set forth at App. 5a.

The Partial Recommended Disposition of Magistrate Judge Beth Deere in the United States District Court Eastern District of Arkansas, (Deere, U.S.M.J) dated March 13, 2019, Granting in Part and Denying in Part Defendant's Motion for Summary Judgment is set forth at App. 6a.

EXHIBIT

The Exhibit filed in the United States District Court Eastern District of Arkansas, dated June 29, 2015, Document as signed by Deceased Circuit Judge L.T. Simes II, is set forth at App. 16a.

REHEARING ORDER

The decision of the Eighth Circuit Court of Appeals (M.E. Gans) dated June 8, 2022, Denying the Petition for En Banc Hearing as "over length" is set forth in App. 17a.

JURISDICTION

The basis for this Court's jurisdiction is contained in Art. III. Sec. 2 of the United States Constitution. Constitutional issues contained in 28 U.S.C. 1254(1). The initial court had jurisdiction pursuant to 28 U.S.C. 1332, Diversity of Citizenship. On April 25, 2022, the 8th Circuit Court of Appeals rendered its decision affirming the decision of the United States District Court for the Eastern District of Arkansas granting the Defendant's Motion for Directed Verdict, dated June 16, 2021. On June 8, 2022, the 8th Circuit Court of Appeals rendered a decision denying Petitioner's Petition for Rehearing and Rehearing En Banc filed May 8, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution Art. III. Sec. 2

The Judicial power shall extend to all Cases, in Law and Equity, arising under the Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority, to all Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases of admiralty and maritime Jurisdiction, to Controversies to which the United States shall be a Party; to Controversies between two or more states; between a State and Citizens of another State; between Citizens of different States; between Citizens of the Same State, claiming land under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subject.

U.S. Constitution, Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when an actual service in time or War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limbs; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution, Amendment VII

In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

U.S. Constitution. Amend. XIV

The 14th Amendment of the United States Constitution gives everyone a right to due process of law, which includes judgments that comply with the rules and case law. The Fourteenth Amendment states: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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 law.”

**28 U.S.C. § 1332(a)
Diversity of Citizenship;
Amount in Controversy; Costs**

The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between citizens of different states.

STATEMENT OF THE CASE

This was a timely filed appeal from the U.S. District Court to the Eighth Circuit Court of Appeals, by Ruby Watts against the Administrative Office of the Courts, et. al. Ruby Watts filed this employment discrimination and retaliation case, without legal counsel, seeking damages under Title VII of the Civil Rights Act of 1964; the Equal Pay Act (EPA); and the Age Discrimination in Employment Act (ADEA).

On July 12, 2021, an appeal was filed after the trial of June, 2021, in which the U.S. District Court issued a Directed Verdict with Prejudice on all claims. Mrs. Watts asserts that she was retaliated against, was denied equal pay due to race, sex and age; "forced to resign due to intolerable working conditions."

Prior to her initial hire as the official court reporter for the former Judge L.T. Simes II, Mrs. Watts was promised an annual salary of \$65,221; but Defendants only initially paid \$32,694; about two weeks later, pay was changed to reflect the salary as \$32,813; about two months later, pay was again changed to reflect the salary at \$35,554. Mrs. Watts promised annual salary of \$65,221 has been ignored; her entitled travel pay reimbursement was/is still being withheld and sick pay and vacation pay has not been received. At the time of hire by Judge Simes, Mrs. Watts was a "Re-hire" (with more than 20 years of court reporting experience as freelance and official), not a "New-hire." Caucasian females with less tenure with the State were hired and paid higher salaries than Mrs. Watts received.

Defendants moved for summary judgment February 1, 2019; their motion was denied in part as to claims in their official capacity because question of fact remained as to the retaliation claim; and granted in part as to the Defendants in their individual capacity being dismissed. On March of 2019, the District Court appointed Attorney Denise Hoggard to represent Plaintiff. In April, 2019, counsel requested to amend and reopen discovery, it was not addressed. In July, 2019, counsel again requested to amend and reopen the discovery.

On March 25, 2020, the U.S. District Court issued an Order prohibiting Plaintiff from introducing and/or discussing documents relating to salary and mileage and designation of Pine Bluff as her official workstation. On July 12, 2021, an appeal was filed after the trial of June, 2021, in which the District Court issued a Directed Verdict with Prejudice on all claims.

The Eighth Circuit Court denied the appeal on April 25, 2022. The Petitioner filed a Petition for Rehearing and Rehearing En Banc, May 8, 2022; this Petition for Rehearing was denied by the Eighth Circuit Court as "overlength."

REASONS FOR GRANTING THE PETITION

I. THE LOWER COURT ERRED BY ISSUING A DIRECTED VERDICT AND NOT ADDRESSING THE ISSUE THAT A PRIMA FACIE CASE OF DISCRIMINATION HAD BEEN ESTABLISHED.

A directed verdict was wrongfully granted, because plaintiff had already established a prima facie case of discrimination. Additionally, through direct evidence, with Defendant's own exhibits, there were/are genuine issues of material fact. In a motion for a directed verdict, the argument would be whether a reasonable jury could find for the opposing party. As stated by Magistrate Judge Deere, "Once a prima facie case is established, a rebuttable presumption of discrimination arises, and the burden then shifts to the employer to articulate a legitimate nondiscriminatory business reason for its actions. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802(1973). Once such a reason is produced, "the presumption disappears and the [plaintiff] bears the burden of proving that the proffered reason was pretextual and the real reason for the [adverse employment action] was discrimination." *Thomas v. First Nat'l Bank*, 111 F.3d 64, 66 (8th Cir. 1997). Per Magistrate Judge Deere, Per Magistrate Judge Deere, "The Court does not accept the Defendants' conclusion in their favor on an issue that, they admit, requires a factual analysis."

Magistrate Judge, Beth Deere¹ stated "Accordingly, Mrs. Watts has established a *prima facie* case of discrimination and Defendants through their own exhibits, have demonstrated a question of fact remains as to whether the comparators named by Mrs. Watts are similarly situated."

In reviewing a summary judgment motion, the court must "refrain from making credibility determinations or weighing the evidence," and must show the facts in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. See WC&M, 496 F.3d at 398. See also (II)USCA531 (first appellate decision.

The court shall grant summary judgment if the movant shows that there are no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law and the court should state on the record the reasoning for granting or denying the motion (1986). Where there were and remains genuine dispute as to material fact, summary judgment may be granted if the nonmoving party's evidence is merely colorable or is not significantly probative. *Liberty Lobby*, 477 U.S., at 250-251. Essentially, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law."

¹ Judge Moody referred the case to this Court.

Summary judgment (directed verdict) is appropriate only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56C. A genuine issue of material fact exists when the evidence is such that, viewing the record as a whole, a reasonable jury could return a verdict for the nonmoving party. See *Dediol v. Best Chevrolet*, 655 F.3d 435, 419 (5th Cir. 2011).

**II. THE LOWER COURT ERRED IN
ISSUING A DIRECTED VERDICT BY
REFUSING TO ALLOW THE CASE TO
PROCEED FOR A JURY VERDICT
WHEN THERE EXISTED GENUINE
ISSUES OF MATERIAL FACTS IN
EVIDENCE.**

The moving party bears the initial burden of showing the absence of genuine issues of material fact. *Celotex v. Catretti*, 477 U.S. 317, 322-23 (1986).

In this case, Defendants had been denied their motion for summary judgment by U.S. Magistrate Judge Beth Deere on March 13, 2019.¹ The Magistrate Judge, in her Partial Recommended Disposition, stated “Summary judgment means that the court rules in

¹The Defendant’s counsel seemingly misled the District Court Judge upon making their request for a directed verdict by alleging and or presenting to the Court that there were no issues of genuine material fact or facts important to the outcome of the case,

favor of a party without the need for a trial. A party is entitled to summary judgment if the evidence viewed in the light most favorable to the party on the other side of the lawsuit, shows that there is genuine dispute as to any fact that is important to the outcome of the case. Fed. R. Civ. P. 56. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir. 1987). Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986).

Again, the Magistrate Judge stated, "There exists questions of facts in this case: 1) Whether Defendants were the employer and Judge Simes the agent or whether Judge Simes alone was the employer; 2) How "official Station" was defined at the time Ms. Watts was hired; 3) Whether Judge Simes had the authority to designate an official work station outside of his judicial district; 4) Defendants do not include any evidence to support summary judgment on retaliations; 5) Defendants, through their own exhibits have demonstrated questions of fact remains as to whether the comparators named by Ms. Watts are similarly situated." Judge Deere stated, "For all these reasons, this Court recommends Judge Moody deny summary judgment on the Title VII claims" and "Therefore, summary judgment on the retaliation claim cannot be granted at this time" respectively. Once a prima facie case is established, a rebuttable presumption of discrimination arises, and the burden then shifts to the employer to articulate a legitimate nondiscriminatory business reason for its actions. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802(1973); the Court does not accept the Defendants' conclusion in their favor on

an issue that, they admit, requires a factual analysis.”² Said recommendation of Judge Deere was adopted by the lower Court.

GROUND: Title VII of the Civil Rights Act of 1964; the Equal Pay Act (EPA) 29 U.S.C. § 206(d); the Age Discrimination in Employment Act (ADEA) 29 U.S.C § 621; 29 C.F.R. 18.804 Hearsay Exceptions. Declarant Unavailable 804(a)(4); and the Lilly Ledbetter Fair Pay Act of 2009.

Public Law No. 111-2. (01/29/2009). Lilly Ledbetter Fair Pay Act of 2009 amends the Civil Rights Act of 1964 to declare that an unlawful employment practice occurs when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to the decision or practice; or (3) an individual is affected by application of the decision or practice, including each time wages, benefits, or other compensation is paid. This Act allows liability to accrue, and allows an aggrieved person to obtain relief, including recovery of back pay, for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing. Or similar or related to practices that occurred outside the time for filing a charge.

² The crucial relevant issue here is: In addition to the evidence of record, a prima facie case of racial discrimination had been established by the Defendants, through their own exhibits, as opined by Judge Deere.

Applies the proceeding provisions to claims of compensation discrimination under the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973.

This Act also, amends the Age Discrimination and Employment Act of 1967 to declare that an unlawful practice occurs when a discriminatory compensation decision or other practice is adopted, when a person becomes subject to the decision or other practice, or when a person is affected by the decision or practice including each time wages, benefits, or other compensation is paid.

**III. THE LOWER COURT ERRED IN
DISMISSING THE TITLE VII CLAIM
WHEN IT FAILED TO FOLLOW THE
STANDARDS FOR GRANTING A
DIRECTED VERDICT BY NOT
ALLOWING THE CASE TO PROCEED
TO TRIAL FOR A JURY VERDICT.**

Summary judgment is properly granted when no genuine and dispute issues of material fact remain, and when, viewing the evidence most favorably to the nonmoving party, the movant is clearly entitled to prevail as a matter of law. Fed. R. Civ. P 56: Celotex Corp V. Catrett 46 U.S. 317, 322-23 (1986); Eisenberg v Ins, Co. of Am., 815 f,2d 1285, 1288-89 (9th Cir, 1987). The moving party bears the burden of showing that there is no material factual dispute. Therefore, the court must regard as true the opposing party's evidence if supported by affidavits or other evidentiary material. Celotex, 477 U.S. at 324; Eisenberg 815 F.2d at 1289. The court must draw all reasonable inference in favor of the party against whom summary judgment is sought.

The Equal Employment Opportunities Commission administers and enforces Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et. seq.*, and other employment discrimination statutes. See, U.S. EEOC: B. Rule 50 Practice; Motion for Judgment as a Matter of Law (1) The Rule and (2) Standard of Sufficiency. Title VII of the Civil Rights Act of 1964, prohibits employment discrimination based on race, color, religion, sex and national origin.

In this case the lower court disregarded substantial and direct evidence of discrimination that proved sufficient to proceed through the trial with a jury's determination. The District Court Magistrate Judge, Beth Deere had already made a finding that a prima facie case of racial discrimination had been established; therefore, the District Court should have denied Defendant's motion for directed verdict. The Magistrate Judge's Recommended Disposition that was later adopted by the lower court, would support that a jury could reasonably find a Title VII violation. A prima facie case of discrimination had already been established.

The moving party for summary judgment bears the burden of showing the absence of genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322-33 (1986). And once the moving party meets the initial burden, the burden shifts to the nonmoving party to show that a genuine issue remains with respect to the dispositive matters for which the nonmoving party carries the burden of proof. Nat'l Am. Ins. Co. v. Am. Re-Ins. Co., 358 F.3d 736, 739 (10th Cir. 2004); see Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). As to these matters, the nonmoving party may not

rest on the pleadings but must set forth specific facts. Fed. R. Civ. P. 56(e)(2), Matsushita, 475 U.S. 574, 586-87. Allegations not supported by evidence are insufficient to establish a genuine issue of material fact. Jarvis v. Potter, 500 F.3d 1113, 1120 (10th Cir. 2007); see Kidd v. Taos Ski Valley, Inc., 88 F.3d 848, 853 (10th Cir. 1986).

When applying this standard, the Court views factual record in the light most favorable to the party opposing the motion for summary judgment. Summary judgment may be granted if the nonmoving party's evidence is merely colorable or is not significantly probative. Liberty Lobby, 477 U.S. at 250-251. Essentially, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law."

The Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue of material fact exists when the evidence is such that, viewing the record as a whole, a reasonable jury could return a verdict for the non-moving party. See Dediol v. Best Chevrolet, 655 F.3d 435, 419 (5th Cir. 2011). In reviewing a summary judgment motion, the court must "refrain from making credibility determinations or weighing the evidence," and must show the facts in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. See WC&M, 496 F.3d at 398.

IV. THE DISTRICT COURT'S RULING ON
COUNSEL'S MOTIONS TO AMEND
AND RE-OPEN DISCOVERY IS
REVIEWED ON AN ABUSE OF
DISCRETION STANDARD.

Although civil litigants don't have any constitutional or statutory right to a court-appointed attorney, *Wiggins v. Sargent*, 753 F.2d 663, 668 (8th Cir. 1985), the District Court has the discretion in whether or not to appoint counsel. See *Rayes v. Johnson*, 969 F.2d 700, 702-03 (8th Circuit. 1992). In this case, the Court made the determination that Mrs. Watts would benefit from learned counsel; thus, the Court in its own discretion, appointed counsel to represent the plaintiff. What was the benefit of learned counsel if counsel is unable to zealously exercise or is denied the ability to adequately prepare the case and move forward? Here, the Court appointed counsel requested more than once to reopen discovery and to amend Petitioner's complaint and was denied without explanation.

Referencing *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9L.Ed 2d 222 (1962). *Novus Franchising, Inc. v. Dawson*, 725 F.3d 885, 895 (8th Cir. 2013) (Quoting *Kern v. Txo Prod. Corp.* 738 F.2d 968, 970 (8th Cir, 1984)). In *Foman v. Davis* the court "held that leave to amend should generally be freely given." Federal Rule of Civil Procedure 15(a) declares that leave to amend "shall be freely given when justice so requires," and denial of the motion without any apparent justifying reason was an abuse of discretion. P. 182. This mandate is to be heeded. See 3 *Moore, Federal Practice* (2d ed. 1948), P.15.08, 15.10. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any

apparent or declared reason – such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendments, etc. the leave sought should, as the rules require, be freely given.”

Even though “the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant leave to amend without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of discretion and inconsistent with the spirit of the Federal Rules.” AND “A dismissal is a severe measure and should be granted by the Trial Court only if it is clear that a party is not entitled to relief under any state of facts which could be proved in support of its claims.” Quoting America West Bank Members, L.C. v. State of Utah and Its Agents; Utah Dept. Of Financial Institute; G. Edward Leary, No. 20120456, Supreme Court of Utah (Oct. 14, 2014).

V. THE LOWER COURT ERRED WHEN IT DISREGARDED STATE REGULATIONS AND OR STATUTE BY DISREGARDING THE ISSUE OF PLAINTIFF'S UNPAID AND ENTITLED MILEAGE REIMBURSEMENT, EARNED SALARY AND EARNED VACATION PAY.

Pursuant to A.C.A. § 16-13-505, which is a directive by the State, the official court reporters are entitled to reimbursement for actual expenses incurred for meals, lodging and transportation. A.C.A. § 16-13-505(a)(1), a court reporter for a circuit court is entitled

to reimbursement for actual expenses incurred for meals, lodging, and transportation costs for attending court away from the court reporter's official station.³

In her Recommended Disposition, Magistrate Judge Deere stated, "Arkansas law provides official court reporters "transportation costs for attending court away from a reporter's official station." ARK. CODE ANN. §16-13-505(a)(1). "Official station is the geographic location or address where the employee normally reports for duty and/or spends the majority of his/her time and must be designated in writing by the employer." ARK. ADMIN. CODE 0006.09.1 RI-19-4-903. A strikingly similar definition is found in Defendants' exhibit entitled "Payment Policies for Official Court Reporters/Trial Court Administrators." However, it notes that the definition was adopted in May 2015. (#33-3 at 29 n.1) Ms. Watts was hired in January 2014; therefore, there appears to be a question of fact as to how "official station" was defined at the time she was hired."

³ To further uphold Defendant's refusal to pay and withhold entitled unpaid actual expenses for travel, vacation, sick pay and pay disparity, by State Statute and against EPA/ADEA/Ledbetter.

Further in the document, Judge Deere states “There is a question of fact as to whether Judge Simes had the authority to designate an official work-station outside of his judicial district. For all these reasons this Court recommends Judge Moody deny summary judgment on the Title VII claims.” Even further in the document, Judge Deere stated “Defendants barely allude to the retaliation claim and do not include any evidence to support summary judgment on retaliation. Therefore summary judgment on the retaliation claim cannot be granted at this time.” Those recommendations were adopted by the lower court.

Both the Equal Pay Act and ADEA prohibits pay discrimination and disparate treatment on the basis of sex or age. 29 U.S.C. § 206(d) and 29 U.S.C. § 621, respectively. The Equal Pay Act of 1963 (Pub. L. 88-38) (EPA). The EPA which is administered and enforced by the EEOC, prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort and responsibility under similar working conditions. The laws that EEOC enforces makes it unlawful for federal agencies to discriminate against employees and job applicants on the basis of race, color, religion, sex, national origin, disability, or age. A person who files a complaint or participates in an investigation of an EEO complaint, or who opposes an employment practice made illegal under any of the laws that EEOC enforces is protected from retaliation.

Pursuant to A.C.A. § 16-13-505, the official court reporters are entitled to reimbursement for actual expenses incurred for meals, lodging and transportation. Court reporters reimbursement for expenses. § 16-13-505(a)(1). A court reporter for a circuit court is entitled to reimbursement for actual expenses incurred for meals, lodging, and transportation costs for attending court away from the court reporter's official station. 2) Notwithstanding the exemption from state travel regulations provided by § 19-4-904, if a court reporter uses a personal vehicle for transportation, he or she is entitled to reimbursement for mileage at the same rate prescribed by the Department of Finance and Administration for executive branch employees.

VI. THE LOWER COURT VIOLATED THE EQUAL PAY ACT/ADEA BY ISSUING A DIRECTED VERDICT, IGNORING THE ISSUES OF UNPAID SALARY, UNPAID VACATION, ENTITLED UN-PAID TRAVEL REIMBURSEMENTS AND PAY DISPARITY AS BEING QUESTIONS FOR THE JURY.

Both the Equal Pay Act and ADEA prohibits pay discrimination and disparate treatment on the basis of sex or age. 29 U.S.C. § 206(d) and 29 U.S.C. § 621, respectively. The Equal Pay Act of 1963 (Pub. L. 88-38) (EPA). The EPA which is administered and enforced by the EEOC, prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require

substantially equal skill, effort and responsibility under similar working conditions. The laws that EEOC enforces makes it unlawful for federal agencies to discriminate against employees and job applicants on the basis of race, color, religion, sex, national origin, disability, or age. A person who files a complaint or participates in an investigation of an EEO complaint, or who opposes an employment practice made illegal under any of the laws that EEOC enforces is protected from retaliation; and “Title VII prohibits ‘employer discrimination on the basis of race, color, religion, sex, or national origin, in hiring, firing, salary structure, promotion and the like.’ Winfrey v. City of Forrest City, Ark., 882 F, 757, 758 (8th Cir. 2018) (quoting Univ. of Tex. Sw. Med. Ctr. v. Nassar, 570 U.S. 338, 342 (2013)).

The Lilly Ledbetter Fair Pay Act of 2009-amended the Civil Rights Act of 1964 to declare that an unlawful employment practice occurs when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to the decision or practice; or (3) an individual is affected by application of the decision or practice, including each time wages, benefits, or other compensation is paid. ⁴ Also, The Ledbetter Act amends the Age Discrimination and Employment Act of 1967 to declare that an unlawful practice occurs when a discriminatory compensation decision or other practice is adopted, when a person becomes subject to the decision or other practice, or when a person is affected by the decision or practice including each time wages, benefits, or other compensation is paid.

⁴Defendants had decision making authority about the Plaintiff's salary and the issuance of the travel pay which was part of their duties; pay disparity should have been an issue for the jury to determine.

**VII. THE LOWER COURT ERRED IN
ISSUING A DIRECTED VERDICT BY
REFUSING TO ALLOW THE CASE TO
PROCEED FOR A JURY VERDICT
WHEN THERE WERE CREDIBILITY
QUESTIONS.**

“Credible choices between competing views of the evidence are inappropriate in summary judgment proceedings or on motions for directed verdict.” *Brown v. Packaging Corp. Of America*, 2001 U.S. Dist. LEXUS 25691, at 12 (W.D. Tenn.), quoting *McKenzie v. Davenport-Harris Funeral Home*, 834 F.2d 930, 934 (11th Cir. 1987). When applying this standard, the Court views factual record in the light most favorable to the party opposing the motion for summary judgment. Summary judgment may be granted if the nonmoving party’s evidence is merely colorable or is not significantly probative. *Liberty Lobby*, 477 U.S. at 250-251. Essentially, the inquiry is “whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law.”

B. Rule 50 Practice: Motion for Judgment as a Matter of Law.

1. The Rule

Rule 50(b) allows the court to reserve decision on the question of law until after the case has been submitted to the jury and it has reached a verdict or is unable to agree. If the court decides the initial motion should have been granted, it may set aside the verdict of the jury and enter a judgment as a matter of law.

2. Standard of Sufficiency

- The question of whether the evidence is sufficient to create an issue of fact is a question of law and is the same regardless of whether the motion is being considered before or after submission to the jury.
- The standard for evaluating the sufficiency of the evidence under Rule 50 is the same as the standard for reviewing a motion for summary judgment as well. *Anderson v Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).
- The court may not weigh the evidence, pass on the credibility of witnesses, or substitute its judgment of the facts for that of the jury. It must view the evidence most favorably to the party against whom the motion is made and give that party the benefit of all reasonable inferences that may be drawn from the evidence.
- The court must review all of the evidence in the record, not just the evidence favorable to the nonmoving party. *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 149-51 (2000); however, “it must disregard all evidence favorable to the moving party that the jury is not required to believe.” *Id.* at 151.

Thus, "the court should give credence to the evidence favoring the nonmovant as well as that 'evidence supporting the moving party that is uncontradicted and un impeached, at least to the extent that that evidence comes from disinterested witnesses.' Id (quoting 9 A. C. Wright & A. Miller, Federal Practice and Procedures § 2529, at 300 (2d ed. 1995)).

Both the Equal Pay Act and ADEA prohibits pay discrimination and disparate treatment on the basis of sex or age. 29 U.S.C. § 206(d) and 29 U.S.C. § 621, respectively. AND The 14th Amendment states: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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 law. U.S. Const. Amend. XIV.

**VIII. THE LOWER COURT VIOLATED THE
HEARSAY EXCEPTION RULE
BY NOT ALLOWING DOCUMENTS
TO ENTER INTO EVIDENCE THAT
ARE INCLUDED IN THE HEARSAY
EXCEPTION RULE.**

**29 C.F.R. 18.804, HEARSAY
EXCEPTIONS. 804(A)(4) DECLARANT
UNAVAILABLE. A DECLARANT IS
CONSIDERED UNAVAILABLE IN**

SITUATIONS SUCH AS WHEN THE DECLARANT IS EITHER DEAD OR HAS PHYSICAL OR MENTAL ILLNESS THAT PREVENTS TESTIMONY.

The Order of the United States District Court Eastern District of Arkansas, dated February 25, 2020, granting Defendant's Motion in Limine, prohibiting Plaintiff from introducing and or talking about documents relating to salary and mileage and designation of Pine Bluff as the official workstation, which the Defendants alleged as hearsay. There are documented e-mails of inquiry by the Judge which reflects the issues as to the qualifications; who decided the court reporter's salary; how it was calculated; whether Plaintiff was a "new-hire" or a "re-hire" a factual dispute, etc.

Hearsay defined: Hearsay is defined as an out of court statement, made in court, to prove the truth of the matter asserted. A declarant is considered unavailable in situations such as when the declarant is either dead or has physical or mental illness that prevents testimony. These out-of-court statements do not have to be spoken words, they can also constitute documents or even body language. This exception also provides that evidence of a hearsay statement not included in one of the other exceptions may nevertheless be admitted if it meet these following conditions:

- It has sound guarantees of trustworthiness.
- It is offered to help prove a material fact.
- It is more probative than other equivalent and reasonably obtainable evidence.

- Its admission would forward the cause of justice.
- The other parties have been notified that it will be offered into evidence.

**IX. THE LOWER COURT VIOLATED
NATURAL JUSTICE BY DENYING
THE PETITIONER THE RIGHT TO
PRESENT FACTUAL EVIDENCE.**

The District Court issued an order preventing petitioner from introducing evidentiary documents that were detrimental to the outcome of the case. Natural justice requires the right to be heard, the right to be treated without bias, and a decision being based on relevant evidence. A person must be given a reasonable opportunity to present information before a decision is reached that might adversely affect them. The dire effect of natural justice is that "the failure of natural justice makes the administrative decision either void or voidable. When the authority is required to observe the principle of natural justice in an order but fails to do so, the general judicial opinion is that the order is void.

In this case, it's factual: A) that Judge Simes made inquiries to committee members on the issue of Plaintiff's salary; B) that reporter's mileage expenses are entitled reimbursements by Arkansas statute; C) that there were Caucasian women with less seniority whose initial pay was greater than Plaintiff's; D) comparators were paid more than Plaintiff, who had more experience and more seniority; E) the travel administrator (employing judge) determined the employee's official station; F) a public official may be sued under Title VII in his/her official capacity; G) Title VII claims against the state

and its agencies are not barred by the Eleventh Amendment; H) race was/is a motivating factor in setting Plaintiff's salary.

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue of material fact exists when the evidence is such that, viewing the record as a whole, a reasonable jury could return a verdict for the non-moving party. See Dediol v. Best Chevrolet, 655, F.3d 435, 439 (5th Cir. 2011).

Finally, "A dismissal is a severe measure and should be granted by the Trial Court only if it is clear that a party is not entitled to relief under any state of facts which could be proved in support of its claims." Quoting America West Bank Members, L.C. v. State of Utah and Its Agents; Utah Dept. Of Financial Institute; G. Edward Leary, No. 20120456, Supreme Court of Utah (Oct. 14, 2014).

CONCLUSION

This is a fact intensive discriminatory case involving a court reporter's salary, nonpayment of sick pay and vacation pay in violation of the Equal Pay Act; nonpayment of entitled withheld state regulated travel pay, per § 16-13-505 and § 16-13-505(a)(1); retaliation; the Lilly Ledbetter Fair Pay Act; Title VII of Civil Rights Act and Plaintiff being denied the ability to present crucial evidence to support her claim(s). Irreparable harm supports the claims of arbitrary discrimination and bias, and arbitrary denials of due process of law.

Federal Rule of Civil Procedure 15(a), which declares that leave to amend "shall be freely given when justice so requires," and denial of the motion without any apparent justifying reason was an abuse of discretion. Failing to present the case to the jury when there was a question(s) of genuine issues of material fact in evidence and questions of credibility was in error. "A prima facie case of discrimination had already been established.

Even though "the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant leave to amend without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of discretion and inconsistent with the spirit of the Federal Rules." Also, "A dismissal is a severe measure and should be granted by the Trial Court only if it is clear that a party is not entitled to relief under any state of facts which could be proved in support of its claims.

For the foregoing reasons, the Petitioner respectfully requests this Honorable Court to grant Certiorari in the above captioned matter.

Respectfully submitted,

Ruby J. Watts

Ruby J. Watts, Pro se
P.O. Box 9207
Pine Bluff, AR 71611
870-395-0922 or 870-692-6188