

No. 23-5745

IN THE
SUPREME COURT OF THE UNITED STATES

Zephryn Hammond,

Petitioner

vs.

The University of Vermont Medical Center,

Respondent

On Petition for a Writ of Certiorari to

The Vermont Supreme Court of Appeals

for the Second Circuit

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

Zephryn Hammond

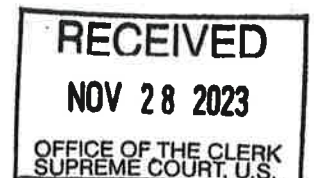
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QUESTIONS PRESENTED

1. When there are cases, similar to that of my own, when a decision is so far departed from the accepted and usual course of judicial proceedings, should the Supreme Court of the United States grant certiorari and use their supervisory discretion to intervene?
2. During litigation, what is considered the "record?" Does this include everything that is produced during discovery? Or does it specifically pertain to the evidence chosen by each party's counsel that is presented to a Judge?
3. When applying the McDonnell Douglas burden shifting framework, is it applied to State and Federal cases in the same fashion at the third and final step? If State law uses this burden shifting framework as 'guidance' should the Supreme Court of the United States be allowed to intervene to 'guide' those that are incorrectly applying it?

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PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

Petitioner wishes to file this Reply Brief to address both factual and legal arguments made in the Respondent's Brief in Opposition to the Petitioner's Petition for a Writ of Certiorari to this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

I apologize for the mistake of having wrongfully listed Federal and State laws and statutes. It was my assumption that this section of the petition was regarding the entire case including the lawsuit and how it has been unlawfully dealt with which is the purpose for filing a Writ of Certiorari.

FACTUAL ARGUMENTS

The Respondent has stated several of the facts of the case incorrectly. For example, when specifically asked who I reported to in early June of 2018 that Ms. Mitchell was treating me poorly due to my race, I responded clearly, Valerie. Counsel for Respondent chose not to believe me, rightfully so, but continues to mislead others into thinking I'm a liar because I refuse to recite her interpretation of the facts.

The Respondent claimed my performance ratings were "generally" positive. This is true but to be more specific, I received an 'excellent' as a rating for nearly 10 years until receiving the last retaliatory rating given by Ms. Cortight which was very similar to, if not worse than the rating I received the first year I was hired as a lab assistant, 16 years prior, which was 'consistently meeting expectations.' The statement regarding my attitude referenced by Respondent should be restated in full just as I had originally expressed it, "My attitude could be a bit better. But, then again my attitude goes hand in hand with how I am treated," which was directly correlated to the way I was being treated. I hadn't a problem admitting this during many

evaluations because it was true. I was allowing what Ms. Mitchell's words and actions affect me.

Ms. Cortright became supervisor in 2017. Prior to this she worked as a Histologist alongside myself for years which is how she and I became very close friends both at work and outside of work for over 10 years. During this time, she felt comfortable enough to inform me of a discussion she had with our previous supervisor regarding Ms. Mitchell's racially motivated treatment towards just myself. Ms. Cortright was well aware of my ailments, my work ethic, and most importantly, the way I was treated by Ms. Mitchell. The position Ms. Cortright held prior to supervisor, was one that required her to work in the same room as Ms. Mitchell, which is when they became extremely close. Our friendship became close to nonexistent as well.

After becoming supervisor, the only concerns Ms. Cortright brought to my attention pertained to when I was allowed to take my break in order to take my medication, and the confusion that arose having told me I was too fast at using the microtome at one time then another accusing me of being too slow. This wasn't true and she tried resending me the same email claiming such, just months apart from each other as if I wouldn't notice.

It was after making complaints in early June of 2018, when I began experiencing retaliation and more discrimination. Again, the first step of the disciplinary action process I received in retaliation for these complaints was the verbal warning on 6/22/18. I was never informed of any wrongdoing that warranted it, similar to the warning I was given when accused of not taking my break on time (there were times I didn't report to break on time, when forced to go at 10 AM, but this was because I needed to finish my work which Ms. Cortright later claimed I didn't finish tasks). I do not have direct evidence of the race complaint made to Ms. Cortright from 6/5/18 regarding Ms. Mitchell, although Ms. Cortright claims she kept records of such complaints in her testimony yet never produced them. The text message complaint from 6/7/18 proves that it was just over 2 weeks after having made any complaints, that I was issued a verbal warning. I would have been issued the verbal warning prior to having made my

complaint 6/5/18 if I truly had long standing issues. None of these false allegations were mentioned in my evaluation of 2017 by Ms. Cortright.

I was responsible for training a new hire in 2017 (she was the only tech terminated under Ms. Cortright and her employment was very short) and I worked independently on Saturdays having been responsible for the entire lab. There is nothing that proves I didn't notify co-workers if I left the room and this fabrication made by Ms. Cortright was removed from my evaluation in 2018 after I appealed this. I have daily logs of what I did during every hour of my shift proving I used the bathroom twice a day, when I took my breaks, and when I would leave the room. I did not receive a special accommodation to use the bathroom which is why I limited myself to using it twice a day to avoid receiving more discipline. If I was given an accommodation to use the bathroom when needed, I wouldn't have been timed and harassed when doing so. Being timed when using the bathroom, after making a complaint was just another way for Ms. Cortright to control, embarrass, punish and harass me while making me feel as if stepping away from the room was an inconvenience that affected patient care. She had said the exact opposite in my 2017 evaluation.

I met with Ms. Armstrong, the first HR representative, on 7/27/18, due to the punishment I received. Unfortunately it wasn't until after termination I learned it was illegal. Ms. Cortright denied this during her deposition, and Ms. Armstrong claimed Mr. St. John was solely responsible for having punished me. Ms. Cortright had given me the option to only take the manuals I could carry with me at the time, since I had a lifting restriction. The text message from 7/27/18 proves that she forced me to take 2 more after the fact, which I did after having met with Ms. Armstrong. When I met with Ms. Armstrong, I spent 3 hours discussing everything I endured from the complaint made to Ms. Cortright 6/5/18 to the punishment I received that day. As seen in the text message from 6/7/18, I warned Ms. Cortright I would take my complaints further up if the poor treatment continued, which is why she then permitted the poor treatment I received by Ms. Mitchell and partook in it as well. I told Ms. Armstrong, just as I told Ms.

Gallagher the next year, I didn't want her to immediately disclose that I reported both Ms. Cortright and Ms. Mitchell, not that I didn't want her to take immediate action. That wouldn't have been a decision I was responsible for making which is why I reported to HR. On 8/1/18 Ms. Armstrong informed me that she didn't view any of the poor treatment, discrimination, retaliation, or even the punishment I reported as illegal. I trusted her not knowing otherwise. This was the first mistake made by HR and could have prevented further poor treatment, the fabricated disciplinary action and ultimately termination. As an HR representative she should have been aware of the red flags and not taken advantage of the fact that I didn't. Ms. Armstrong testified that she would have looked into my complaint, having written out the word race in her notes, but it was my previous supervisor that thought Ms. Mitchell could be racist and not myself which is false, and contradicts her email. I told her about the conversation between Ms. Cortright and our previous supervisor to further prove that it wasn't new and that I recently started to believe that Ms. Mitchell was in fact racist. To make matters worse, two months after handing in my evaluation appeal to Ms. Armstrong on 8/24/18, which included yet another complaint suggesting both race and disability discrimination/retaliation (I can't help but feel discriminated against for reasons beyond my control such as Crohns, plantar fasciitis, shoulder surgery post-op and lastly my race), Ms. Armstrong sent me an email informing me she "dropped the ball" with the appeal, having lost it on her desk. Another 2 months of unnecessary treatment endured only to be given the same rating by the same person that originally gave it to me, Ms. Cortright. I foolishly trusted, waited, and prayed HR would soon end the poor treatment regardless of her saying it wasn't illegal. Ms. Armstrong did more than drop the ball; she essentially gave the perpetrators free reign to illegally treat me however they saw fit. This too was when the treatment became a lot less subtle which I still have yet to recover from.

Ms. Armstrong and Ms. Gallagher were the two HR representatives I worked with. Both focused on Ms. Cortright's false allegations regarding performance/behavior and completely

disregarded my complaints. It's heavily relied upon that HR did everything they could/should have when investigating my complaints when in fact they hadn't. Having purposely been placed in such a toxic working environment, it was Ms. Cortright, Ms. Mitchell, Ms. Buskey, Mr. St. John, Ms. Armstrong, and Ms. Gallagher that should ultimately be held responsible for putting patient care at risk having put me at risk of doing so. I still took accountability for having made the mistakes I was in fact responsible for.

The Respondent refers to the discriminatory and retaliatory treatment I received specific to myself, as a "personality conflict." This terminology is a watered down version of all I was forced to suffer through, also known as discrimination.

There isn't any substance to Ms. Cortright's false allegations from the verbal warning to termination. I asked several times for documentation outlining what I had done, when, why etc. etc. during every level, from the verbal warning (6/22/18) until after the final written warning (late March of 2019), but was never given any. Ms. Cortright would claim we spoke about these instances which too is false. There wasn't a list given until the end of March of 2019 after I was forced to ask Ms. Armstrong to ask Ms. Cortright since she continued to ignore my request. She then made up a list of false allegations, which a majority of are false, from 6/26/18 until termination that I came across in all the documentation after my former lawyer withdrew. This was never emailed to me nor was I informed verbally and it's not dated. Ms. Cortright simply concocted a list of false infractions, placed it in my personnel file, and that's all she needed to do to have me terminated making it seem as if it was warranted. After reviewing my personnel file, Ms. Gallagher told me that I had history of issues with coworkers (Ms. Mitchell), and that Ms. Cortright's concerns were not new. Essentially, she was telling me that she read over my evaluations having omitted reading the evaluation rebuttals which would have proven that Ms. Mitchell was responsible for making the same statements regarding the same concerns for nearly my entire career. She also said that due to the comments in my evaluations that the ratings I received were wrong.

Ms. Mitchell was a lead that supervised 3 benches, IHC, special stains and bookwork. Mr. Tembruell was also a lead that supervised routine Histology. Ms. Buskey was a lead that dealt mainly with research. They were all responsible for reporting to Ms. Cortright because her office was not in the lab which is why she heavily relied on their reports, especially regarding myself. Ms. Cortright claims she witnessed most of her false allegations firsthand but this is false. Ms. Cortright would rarely be in the lab and when she was it was never for long periods of time, while I was employed. She avoided me and this became more frequent closer to the time I was terminated.

When we were friends, Ms. Cortright informed me that Ms. Mitchell possibly be racist after she had a conversation regarding such with the supervisor at the time. I only referenced this conversation when making complaints to those I had having stated that I now agreed Ms. Mitchell be racist due to the way she continued to treat me and that it wasn't new. The treatment had recently started up again since I hadn't worked with Ms. Mitchell for months prior.

Ms. Mitchell admitted she treated me differently because the previous supervisor didn't 'deal' with me properly. Again, as seen in several evaluations, Ms. Mitchell was able to report false allegations regarding her form of constructive criticism, communication, finishing tasks, leaving the room, being combative and more but I was able to rebut these allegations as well which are also part of the evaluations that weren't included in the record for summary judgment.

The bone marrow I was accused of "missing" was not urgent (STAT), or delayed and it was not in the specimen drop off area (I assumed it was behind the folders that I didn't put away since I was not feeling well). Ms. Cortright told HR that Mr. Tembruell found the bone marrow on the shelf in plain sight when he arrived the following Monday morning, further proving it arrived after I left for the day, if this held true. This would also be the reason for not seeing the flashing red light indicating a phone message. I disputed this and still do. As seen in the text message provided in the appendix, there is a special process set for bone marrow specimens that arrive after hours or even the same day so there isn't a delay. Ms. Cortright lied saying that patient

care was delayed on an urgent bone marrow specimen which I was terminated for.

I was given the choice as to whether or not I chose to report to work on 4/1/19. Ms. Cortright claimed I was a no call/no show but calling work to report an absence wasn't part of the protocol when using CTO. As mentioned in the petition, I never heard back from Ms. Cortright regarding my choice not to work 4/1/19 as seen in the email she sent to HR, conveniently neglecting to include the email that preceded it. I disputed this and still do because it's false.

Ms. Cortright set me up for failure since she had plans of terminating my employment 3/14/19 when I had done nothing warranting such and the day prior to this, she informed me of her decision to uphold the final written warning. Shortly after this I was told Ms. Gallagher couldn't substantiate my claims. The next few weeks Ms. Cortright did everything she could to make sure I was terminated.

I wasn't purposely jeopardizing patient care by making the mistakes that I did make. I took accountability for all the mistakes I was in fact responsible for, fully aware of the potential patient harm. Ms. Cortright, Ms. Mitchell, Ms. Buskey, Mr. St. John, Ms. Armstrong, and Ms. Gallagher were those that were ultimately responsible for jeopardizing patient care and safety by knowingly subjecting me to such a toxic working environment which caused me to make a majority of the mistakes I wouldn't have ordinarily made.

LEGAL ARGUMENTS

"Equal Justice Under Law." This includes both Federal and State laws of the United States. The Supreme Court of the United States has the authority to review decisions of the State Court of Appeals to ensure equality and most importantly uniformity with the law.

State procedure mirrors that of Federal procedure. Example being the McDonnell Douglas burden shifting framework which the State of Vermont uses as a "guidance" when applied to cases such as my own. With that said, it seems as if pretext is used ambiguously

when applied to my case under Vermont State law which is unlawful. This is strictly my opinion.

A Summary judgment should be granted to the Respondent when there are no other facts to be tried. All of the necessary statements and evidence are already in front of the Judge and there isn't any way to obtain more evidence. In regard to my case, summary judgment should have been denied to the Respondent. I should have prevailed without the abundance of evidence that hasn't been seen by a Judge. If more of the evidence needs to be reviewed in order to prevail according to Vermont State law than so be it but that shouldn't be the case. Usually a summary judgment is granted when there is a lack of evidence not the overabundance of it. I made it as clear as possible when I appealed to the Vermont Supreme Court that there was more evidence to be seen that wasn't included in the record for the motion. The record as a whole, which was laid out during discovery should have been reviewed, not what was 'cherry picked' from it to best fit the version of the facts that better fit a completely different narrative discrediting my entire complaint.

The Vermont Supreme Court is abusing their discretion and when I motioned to reargue it was meant to highlight these areas. Simply put, the law was not applied correctly and I deserve a fair chance just as the next person.

I am unable to get the case file from my former lawyer and I've asked for it a few times between the Summer/Fall of 2022 and just last month without a response. This is why I had to submit the evidence from discovery with my notes on them that I had made a majority of when appealing to the Vermont Supreme Court.

Lawyers, plaintiffs, defendants, and Judges are not permitted to lie or make false statements to a Judge, although this does happen as seen in this case. Trust and credibility make up the foundation of the legal system and deviating from this can in fact lead to an incorrect judgment. Misleading, withholding, omitting, misapprehending, and bias, also add to this problem preventing those entitled to justice from obtaining it.

During the most recent review of all the evidence from discovery (1,960 pages submitted

by Respondent and 1,102 pages from the Petitioner), I've noticed many wrong doings. I discovered documentation that should have been submitted by both parties was not. One example being the text message correspondence between myself and Ms. Cortright that was submitted by my former lawyer to the Respondent. However, not all of these communications were submitted by the Respondent. If Ms. Cortright made a good faith attempt to recover these text messages, she would have easily been able to do so since they have never been deleted. Not only that but she still has the same cell phone number, so claiming she deleted them shouldn't suffice. Rather than hold Respondent accountable for withholding evidence, even though I was able to recover these text messages and submit this, my former lawyer made that same evidence disappear, not to be seen in opposition to a summary judgment, treating it as if it never existed. The entire case was based on having made complaints in early June of 2018 and the retaliation I began to receive shortly thereafter. The Respondent knowingly turned a blind eye to having made any complaints prior to the issuance of any disciplinary action, since these were turned over, and has thus made several misleading statements regarding this. If the Respondent is aware of all the evidence that hasn't been seen by a Judge, how can they motion for a summary judgment? The record that has been seen by the Judges thus far doesn't include all of the relevant evidence pertinent to this case. My lawyer failed and failed miserably which again, in my opinion seems deliberate. I also discovered that the email preceding the last email I sent Ms. Cortright, having informed her of my decision to use CTO 4/1/19 is absent. The last email sent the night before to Ms. Cortright clearly states that I never received confirmation regarding my decision. Had I not made this statement in that email I would have never realized it was missing. Ms. Cortright claimed I never responded to HR, they never looked into this and so I was terminated 4/3/19. The emails from the very end of March and beginning of April were sent to me by Ms. Armstrong since I wasn't able to print them off during my last few days of employment because I was locked out of my email account immediately following termination. Regardless, it was never sent to Ms. Armstrong by Ms. Cortright to send to me.

REASONS FOR GRANTING PETITION

My knowledge and experience with the law is very limited, since I am essentially learning as I move forward. I'm also learning from my mistakes, including those referenced by the Respondent, so please bear with me.

An advisory opinion is needed. Vermont law, if applied correctly, should not make it impossible for a plaintiff to prevail at summary judgment. Since the Respondent prevailed after the summary judgment due to the way the law was incorrectly applied, how many cases similar to this have and will suffer the same fate?

I deserve to hold UVMMC solely accountable for all that has happened to me and for the lasting effects of it all, which is why I filed the lawsuit. I shouldn't have to, nor am I able to at this time, file another lawsuit against my former lawyer for what appears to be a deliberate act having set me up for failure. This would only shift accountability from my former place of employment to my former lawyer and the necessary changes that need to be made in order to better ensure that those in protected classes are protected from illegal treatment.

From the way employers train/educate their HR representatives all the way to how the law is applied to cases such as this by State Courts should be addressed. The fact that my complaints bypassed every possible avenue sought for remedy is extremely unfortunate. I've reported to my former supervisor, her supervisor, an HR representative, the Attorney General, the Employee and Family Assistance Program, a second HR representative, the Vermont Superior Court, the Vermont Supreme Court and now the highest of all Courts, the Supreme Court of the United States.

Where is the line drawn that is, if there is one? All that I suffered through could have been prevented is the bottom line. I don't deserve this. This case could very well have precedential value. Although extremely unfortunate, it could be used to set an example for everyone including those that have committed wrongdoing while employed at UVMMC and those that have dealt with this case, both lawyers and Judges alike.

My responsibility was to essentially prove the false allegations made by the Respondent wrong. I did, yet I'm still at square one when this case should have already run its course. It has been 4.5 years that I have been in litigation but I haven't given up yet, although I can admit I have come extremely close. The fact of the matter is that I shouldn't be having to do this. I continue to make a fool of myself due to the lack of knowledge needed to assure that my claims do not go unanswered. Making the mistakes that I have thus far shouldn't be held against me. I simply want to be heard.

I deserve a chance to regain the trust and faith I once had in the justice system. What if this was to happen again, since I would/could never change the color of my skin and there isn't a cure for Crohn's Disease? I should not be made to feel as if the color of my skin and having Crohn's Disease is a punishment. This Court has the choice to finally hear me and the ability to do what is necessary to make this right. Contrary to Respondent, I do follow procedure, pay attention to detail, and have taken all of the correct steps necessary to be heard, the first one on 6/5/18 and the last having filed this petition 10/6/23. To then have this covered up and overlooked only adds insult to injury but not enough to deter me from needing to be heard.

This case does have national significance especially to those that are just entering the workforce. Particularly high schoolers and college students. Knowing and understanding which classes are protected and what constitutes illegal treatment is imperative. I don't blame myself for what has happened because I trusted it wasn't illegal when told this by HR, but if I knew then what I know now, that alone, could have made a difference. I could have made complaints to those outside of the workplace earlier and there wouldn't have been enough time for UVMC to continue to issue unwarranted disciplinary action making it seem as if termination was justified. Essentially, I could have fought harder to end the treatment due to what I now know are protected characteristics.

My former lawyer failed to file under both State and Federal law which I believe could have been deliberate, in my opinion. It seems as if I've been trapped since the Vermont

Supreme Court is the ultimate decision-maker regarding this case even having misapplied the law unfairly granting a summary judgment in the Respondents favor. Having petitioned for a writ of certiorari, the Respondent is now able to raise this issue in opposition which I was not responsible for. Although I should have prevailed at summary judgment according to the law, I feel I never had a chance because my lawyer was obviously not working for me but against me. He took advantage of me, my trust and my money then wiped his hands clean of the entire ordeal. Is this equal justice?

This case proves that UVMMC has an incredibly unskilled Human Resources department since not only one, but two representatives failed to conduct thorough investigations into either of my claims which would have prevented filing a lawsuit altogether. The first HR representative took 6 months to conduct an "investigation" and the other less than a month. They each questioned just one of the two perpetrators. Ms. Armstrong questioned Ms. Mitchell then had a conversation with Ms. Cortright. Having relied on Ms. Cortright's input regarding Ms. Mitchell's answers after she was questioned, Ms. Armstrong, didn't see any 'intent or frequency' to justify the need to put an end to any of the treatment I informed her of. Ms. Gallagher questioned myself then Ms. Cortright, and that was her investigation.

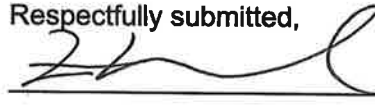
There are several material issues within this case that a jury should be able to decide fairly using the evidence that does in fact exist in both the record submitted for a summary judgment and the record that includes everything submitted during discovery. This isn't a disagreement regarding lack of evidence? It's the way the evidence, which was my responsibility to provide, was handled by those I provided it to. The only piece of direct evidence proving I made complaints prior to the issuance of any disciplinary action was not submitted as part of the record at summary judgment which was not an accident. My former lawyer foolishly assumed I wouldn't notice, but I did. The line of questioning, not submitting the proper evidence, and not being truthful with me are just a few of the issues that are incredibly concerning.

The published record is wrong. I don't deserve to have my name attached to fabrications made about myself simply because the evidence I have proving otherwise has been dealt with in an unlawful manner by those I trusted wouldn't do.

CONCLUSION

For the foregoing reasons, I kindly request that this Court issue a Writ of Certiorari to review the Judgment of the Vermont Supreme Court of Appeals and the Vermont Superior Court.

Respectfully submitted,

 11/22/23

Date: November 22, 2023