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Reeves v. Sanderson Plumbing Products: Stemming the Tide of Motions for Summary Judgment and Motions for Judgment as a Matter of Law

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Reeves v. Sanderson Plumbing Products: Stemming the Tide of Motions for Summary Judgment and Motions for Judgment as a Matter of Law

In *Reeves v. Sanderson Plumbing Products, Inc.*,[1] the Supreme Court addressed the evidentiary burdens required of a plaintiff in an ADEA case, holding that evidence leading the fact finder to reject the defendant's proffered legitimate nondiscriminatory reasons together with the elements of a prima facie case may meet a plaintiff's burden to show intentional discrimination.[2] Additionally, the Court at last set forth the way in which judges may consider a motion for judgment as a matter of law without weighing the evidence, holding that a court should consider all the nonmovant's evidence drawing all reasonable inferences in favor of the nonmovant, but only consider the movant's evidence that is uncontradicted or unimpeached and coming from disinterested witnesses.[3]

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1. 120 S. Ct. 2097 (2000).
2. *Id.* at 2108-09.
3. *Id.* at 2110.

I. FACTUAL BACKGROUND

Sanderson Plumbing Products, Inc. ("Sanderson"), a toilet seat and cover manufacturer, hired Roger Reeves in 1955 at the age of eighteen. In 1995 Reeves worked as a mid-level manager of Sanderson's "Hinge Room," specifically overseeing the "regular line." Joe Oswalt, Reeves' counterpart, managed the "special line," and Russell Caldwell supervised both the regular and special lines. In 1995 Reeves, age fifty-seven, Caldwell, age forty-five, and Oswalt, mid-thirties, were responsible for tracking the number of hours worked by each employee. As the supervisor over the Hinge Room, Oswalt also reviewed all monthly time sheet reports and disciplined tardy or absent union employees. During a regular meeting with Sanderson's director of manufacturing, Powe Chesnut, Caldwell revealed that production levels within the Hinge Room were down and attributed this decline in production to employee tardiness and absence during scheduled hours. Chesnut ordered a three-month audit of the Hinge Room time sheets, discovering that the monthly time sheet reports did not indicate an attendance or tardiness problem. The result of the audit revealed several discrepancies, and Chesnut recommended to his wife, the president of Sanderson, that Caldwell and Reeves be terminated. Prior to the problem in 1995, management also found errors attributed to Reeves in 1993 and placed him on a ninety-day probation period. Based on the recommendation of her husband, Sanderson's president terminated both Reeves and Caldwell.[4]

Subsequently, Reeves filed suit in the United States District Court for the Northern District of Mississippi, alleging a violation of the Age Discrimination Employment Act of 1967 ("ADEA").[5] The basis for Reeves' claims stemmed from two "age-related statements allegedly made by Chesnut several months before Reeves' dismissal, namely (1) that Reeves was so old that he 'must have come over on the Mayflower,' and (2) that he was 'too damn old to do his job.'"[6] During trial Sanderson argued that Reeves was terminated for poor work performance, citing his 1993 probation and inaccurate records in 1995. On the day that Sanderson terminated Reeves, management cited a failure to mark one employee as absent on particular days; however, Reeves later introduced evidence that he was in the hospital on those days, and therefore, was not responsible for the error. Further, Reeves countered

4. *Id.* at 2103, 2106 (2000).
5. 29 U.S.C. § 621-34 (1994 & Supp IV 1998).
6. Reeves v. Sanderson Plumbing Prods., Inc., 197 F.3d 688, 691 (5th Cir. 1999).

with evidence that he was not responsible for the errors found during the 1995 audit, offering evidence that those errors were not attributed to poor work performance. Specifically, Reeves argued that Sanderson's automated time card system did not always operate properly. Thus, Reeves and the other supervisor improvised by visually checking the employee stations at the start of work and then manually logging the employees' time cards. Both supervisors used this system even if some of the employees actually arrived earlier in the morning.[7]

At trial the defense twice moved for a judgment as a matter of law, but the court allowed the case to go to the jury resulting in a $35,000 award to Reeves. Following the award Sanderson filed a motion for judgment as a matter of law and, in the alternative, for a new trial. The court denied the motion. At the same time the court granted Reeves' motion for front pay in the amount of $28,490 and increased the jury verdict by $35,000 in liquidated damages based on the jury's finding that Sanderson's discriminatory actions were willful.[8]

On Sanderson's appeal the United States Court of Appeals for the Fifth Circuit reversed.[9] The court of appeals held that Reeves failed to introduce evidence sufficient for a jury to conclude his termination resulted from age-based discrimination.[10] While the court noted that Reeves may have introduced sufficient evidence for a trier of fact to find generalized age-based animus, the court stated, "We must, as an essential final step, determine whether Reeves presented sufficient evidence that his age motivated Sanderson's employment decision."[11] The appeals court "confined its review of evidence favoring [Reeves] to that evidence showing that Chesnut had directed derogatory, age-based comments at [Reeves], and that Chesnut had singled out [Reeves] for harsher treatment than younger employees."[12] The United States Supreme Court granted certiorari and reversed.[13]

II. LEGAL HISTORY

A. *The ADEA Framework*

The ADEA makes it "unlawful for an employer—(1) to fail or refuse to hire or to discharge any individual [over the age of forty] or otherwise

7. 120 S. Ct. at 2103-04, 2106-07.
8. *Id.* at 1204.
9. *Id.*
10. *Id.*
11. 197 F.3d at 693.
12. 120 S. Ct. at 2108 (citing *Reeves*, 197 F.3d at 693).
13. *Id.* at 2104, 2112.

discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's age."[14] In the statute Congress provided that juries may hear ADEA cases,[15] noting that defending age-based claims can be particularly challenging because the defense often must confront sympathetic juries.[16] Accordingly, defense attorneys invoke the procedural devices of the Federal Rules of Civil Procedure, principally making use of summary judgment under Federal Rule of Civil Procedure 56 ("Rule 56")[17] and judgment as a matter of law under Federal Rule of Civil Procedure 50 ("Rule 50")[18] to minimize the number of ADEA cases that reach a jury or withstand post-verdict scrutiny.[19]

Although a few ADEA plaintiffs introduce "smoking gun" evidence that a court will characterize as direct evidence, most plaintiffs must rely on circumstantial evidence.[20] To facilitate elusive proof of employer motive in circumstantial cases, courts deciding motions in ADEA cases under Rule 56 or Rule 50 have consistently applied the counterpart Title VII framework ordering the presentation of evidence in circumstantial cases, as first elaborated in *McDonnell Douglas v. Green*,[21] which *Texas Department of Community Affairs v. Burdine*[22] refined.[23]

In *McDonnell Douglas*, the plaintiff, an African-American male, worked as a mechanic and laboratory technician for McDonnell Douglas until 1964, when his employment was terminated during a general reduction in the total work force. Green, an avowed civil rights activist, claimed that his termination was motivated by race. In protest Green blocked the entrance road to the plant with his vehicle to impede the traffic flow during a shift change. Only three weeks after Green's protest, he observed an advertisement for mechanics listed by McDonnell Douglas. Green applied for the position, but did not receive the job. At

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14. 29 U.S.C. § 623(a)(1).

15. *Id.* § 626(c)(2). While Congress was unwilling to allow juries to hear Title VII cases, it is believed that the provision allowing juries to hear ADEA cases arises in part due to the "universality" of aging. Although discrimination based on gender and ethnicity may affect only portions of society, age will eventually affect all persons. *See* HAROLD S. LEWIS, CIVIL RIGHTS AND EMPLOYMENT DISCRIMINATION LAW 344-45 (1997).

16. *See* Frank J. Cavalier, *The Recent "Respectability" of Summary Judgments and Directed Verdicts in Intentional Age Discrimination Cases: ADEA Case Analysis Through the Supreme Court's Summary Judgment "Prism,"* 41 CLEV. ST. L. REV. 103, 104-06 (1993).

17. FED. R. CIV. P. 50.

18. FED. R. CIV. P. 56.

19. Cavalier, *supra* note 16, at 106-07.

20. *Id.* at 113-14.

21. 411 U.S. 792 (1973).

22. 450 U.S. 248(1981).

23. LEWIS, *supra* note 15, at 350.

Green's Title VII bench trial, in which he alleged, among other things, a race based refusal to rehire, the judge found the employer's assertion that Green was not hired because of his unlawful protest after his termination to be reasonable.[24] The Eighth Circuit Court of Appeals held that Green's protests were not "protected activities," but reversed the district court's dismissal of Green's claim relating to racially discriminatory hiring practices.[25]

On McDonnell Douglas' appeal to the Supreme Court, the Court applied a three-stage analytical framework, announcing that the plaintiff has the initial burden to establish a prima facie case of employment discrimination.[26] Under the framework plaintiffs may establish a prima facie case of discrimination by a preponderance of the evidence showing, "(i) that [plaintiff] belong[ed] to [the protected class]; (ii) that [plaintiff] applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite [plaintiff's] qualifications, [plaintiff] was rejected; and (iv) that, after [plaintiff's] rejection, the position remained open and the employer continued to seek applicants from persons of [plaintiff's] qualifications."[27] However, the Court noted that these initial showings, especially element four, should not be construed as a requisite for all cases under all fact patterns.[28] On plaintiff's showing of a prima facie case, the defendant has the burden to "articulate some legitimate nondiscriminatory reason for the employee's rejection."[29]

The third stage of analysis places on the plaintiff the ultimate burden in the case of proving disparate race-based treatment, and he must "demonstrate by competent evidence that the presumptively valid reasons for his rejection were in fact a coverup for a racially discriminatory decision."[30] Plaintiff must be given a "full and fair opportunity," either during her case in chief or on rebuttal, to make this showing.[31] The Court suggested that plaintiff could do so by offering a wide variety

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24. 411 U.S. at 794, 796-97.
25. *Id.* at 797-98.
26. *Id.* at 802.
27. *Id.*
28. *Id.* at 802-03.
29. *Id.* at 802.
30. *Id.* at 805.
31. *See* United States Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 717 (1983) (holding that when a defendant loses on a Rule 50 motion for judgment as a matter of law at the close of the plaintiff's case and then introduces its own witness to testify to a legitimate nondiscriminatory reason, it is no longer relevant whether the plaintiff did create a prima facie case; the defendant has in effect conceded by either not moving for judgment as a matter of law or by moving and losing).

of evidence including that white employees were not punished for the "stall in," that plaintiff suffered race-based treatment during plaintiff's prior period of employment, or through statistical evidence that the employer discriminated against plaintiff's protected group.[32]

In *Burdine* the Supreme Court refined the *McDonnell Douglas* framework.[33] Defendant, Texas Department of Community Affairs ("TDCA"), hired Burdine to work as an accounting clerk within the Public Service Commission ("PSC"). In 1972 Burdine was promoted to field services coordinator. Shortly after her promotion, her supervisor, the project director, resigned and Burdine's duties expanded to fill the void. Burdine quickly applied for the project director position, but the position remained open. In February 1973, the PSC's funding agency warned that it planned to stop funding the PSC due to inefficiencies. Burdine and the TDCA persuaded the Department of Labor to continue funding the PSC on the condition that the TDCA reform the organizational structure of the PSC. The TDCA subsequently hired a male for the project director position and hired an additional male for the only other professional position. The TDCA then fired Burdine. Shortly after termination the TDCA rehired Burdine and placed her in another area of the organization with a salary equal to that of the PSC project director.[34]

Burdine filed a Title VII suit in the Western District of Texas alleging gender discrimination. The district court held that the failure to promote Burdine and her termination were not based on gender discrimination. The Court of Appeals for the Fifth Circuit affirmed the district court's decision on the failure to promote, but reversed the lower court on the issue of termination.[35]

The Supreme Court reaffirmed the basic *McDonnell Douglas* framework, but added that "[t]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff."[36] In stage one the plaintiff has the burden of establishing by a preponderance of the evidence a prima facie case of employment discrimination as set forth in *McDonnell Douglas*.[37] The prima facie case

32. 411 U.S. at 804-05.
33. 450 U.S. at 256-58.
34. *Id.* at 250-51.
35. *Id.* at 251-52.
36. *Id.* at 253 (citing Board of Trustees of Keene State College v. Sweeney, 439 U.S. 24, 25 n.2 (1978)).
37. *Id.* at 252-53.

> in effect creates a presumption that the employer unlawfully discriminated against the employee. If the trier of fact believes the plaintiff's evidence, and if the employer is silent in the face of the presumption, the court must enter judgment for the plaintiff because no issue of fact remains in the case.[38]

So the defendant must respond to the plaintiff's prima facie case by producing some evidence that its challenged action was nondiscriminatory.[39] The court stressed that the employer's burden is not one of persuasion, but merely to offer "evidence [that] raises a genuine issue of fact as to whether it discriminated against the plaintiff."[40] The second stage allows the defendant to confront the plaintiff's prima facie case of employment discrimination and frames the issues of fact that the plaintiff must then prove are pretextual.[41] At the third stage the plaintiff must produce evidence sufficient to persuade the fact finder that the employer imposed on him the adverse term or condition for an unlawful or discriminatory purpose, and the plaintiff "retains the burden of persuasion."[42] The plaintiff may meet this burden "either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation [at stage two] is unworthy of credence."[43]

The Supreme Court held that the court of appeals improperly required defendant to persuade the court about a legitimate nondiscriminatory reason rather than merely offer admissible rebuttal evidence.[44] The Court reasoned that a plaintiff is protected from false responses by a defendant because: (1) a defendant's proffered reasons "must be clear and reasonably specific;" (2) a defendant would certainly have an incentive to try to persuade the trier of fact; and (3) plaintiffs have access to broad discovery rules under Title VII.[45]

Left unresolved by both *McDonnell Douglas* and *Burdine* was what action a court should take after stage three of the *McDonnell Douglas* framework. Unsurprisingly, a significant split arose among the lower

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38. *Id.* at 254.
39. *Id.*
40. *Id.* at 254-55.
41. *Id.* at 255.
42. *Id.* at 256.
43. *Id.* (citing *McDonnell Douglas*, 411 U.S. at 804-05).
44. *Id.* at 257-58. The court of appeals reasoned that a defendant, without the burden of persuasion at stage two, would have an incentive to give a false reason for its actions. The Supreme Court, defending its holding in *McDonnell Douglas*, reasoned that the plaintiff is nevertheless protected. *Id.* at 259.
45. *Id.* at 258.

courts.[46] A majority of courts of appeals concluded that at stage three, a plaintiff need only rebut the proffered reason given by the defendant at stage two, but is not required under the "pretext" standard to prove affirmatively that an unlawful discriminatory reason figured into the challenged decision.[47] A minority of courts required that a plaintiff, in addition to or instead of disproving the defendant's legitimate nondiscriminatory reason, must offer sufficient evidence affirmatively proving the true reason was age (or under Title VII race, sex, religion, or national origin).[48] The minority standard is known as the "pretext plus" standard.[49] In application that standard prevents many cases from reaching trial even though there may be real issues of fact.[50] Scholarly comment has opined "that many of the courts that have advanced the 'pretext-plus' rule have done so largely out of skepticism about the prevalence of bias in the workplace or out of deep-rooted hostility to what they perceive as the proliferation of nonmeritorious discrimination claims."[51]

In 1993 the Supreme Court decided *St. Mary's Honor Center v. Hicks,*[52] trying to settle the lower courts' inconsistency on the pretext plus question. Hicks, an African-American corrections officer, worked for St. Mary's Honor Center for six years prior to his termination. During that time he earned a position as a shift commander, and all evidence suggested that his work was satisfactory until supervisory personnel changes occurred. In 1984 St. Mary's assigned Hicks a new supervisor and was then frequently disciplined for infractions while other caucasion shift commanders did not receive any discipline for the same offenses. Hicks' supervisors demoted him as punishment for one alleged infraction and then, on June 4, 1994, terminated him after a heated confrontation.[53]

Hicks subsequently filed a Title VII action, alleging disparate treatment and establishing a prima facie case under the *McDonnell*

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46. Jody H. Oedell, *Between Pretext Only and Pretext Plus: Understanding St. Mary's Honor Center v. Hicks and its Application to Summary Judgment*, 69 NOTRE DAME L. REV. 1251, 1258-59 (1994).

47. *Id.*

48. Catherine J. Lancott, *The Defendant Lies and the Plaintiff Loses: The Fallacy of the "Pretext Plus" Rule in Employment Discrimination Cases*, 43 HASTINGS L.J. at 59-66 (1991).

49. *Id.*

50. *Id.*

51. *Id.* at 69 (citing Robert Belton, *Burdens of Pleading and Proof in Discrimination Cases: Toward a Theory of Procedural Justice*, 34 VAND. L. REV. 1205, 1209-10 (1981).

52. 509 U.S. 502 (1993).

53. *Id.* at 504-05.

Douglas framework. St. Mary's countered the prima facie case with evidence revealing Hicks' disciplinary problems prior to his termination. Hicks responded with pretext evidence disproving St. Mary's proffered reasons, but without, in the court's view, affirmatively showing that his termination was due to race.[54] The trial court ruled in favor of St. Mary's, noting that while Hicks proved the "'existence of a crusade to terminate him, he has not proven that the crusade was racially rather than personally motivated.'"[55] The Eighth Circuit Court of Appeals reversed, accepting the "pretext only" standard.[56]

Justice Scalia, writing for the Court, first analogized the burdens prescribed by *McDonnell Douglas* to the presumptions described in Federal Rule of Evidence 301.[57] While a burden of production is incumbent on the defendant at stage two of the *McDonnell Douglas* framework, the burden of persuasion remains always with the plaintiff,[58] and when "the defendant has succeeded in carrying its burden of production, the *McDonnell Douglas* framework–with its presumptions and burdens–is no longer relevant."[59] The Court agreed that evidence leading the fact finder to reject the proffered "reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) *may,* together with the elements of a prima facie case, suffice to show intentional discrimination."[60] However, it is wrong for a court to compel judgment merely because the plaintiff establishes the defendant's proffered reasons are pretext.[61] This means that the jury should be instructed that it may, but need not, render judgment for the plaintiff based on a prima facie case plus evidence of falsity of the legitimate nondiscriminatory reason.[62] To decide for the plaintiff on such evidence, the fact finder must find not only that the employer's

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54. *Id.* at 505-07.

55. *Id.* at 508 (quoting Hicks v. St. Mary's Honor Ctr., 756 F. Supp. 1244, 1252 (E.D. Mo. 1991)).

56. Hicks v. St. Mary's Honor Ctr., 970 F.2d 487, 492-93 (8th Cir. 1992).

57. FED. R. EVID. 301 provides that:

> [i]n all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuation, which remains throughout the trial upon the party on whom it was originally cast.

Id.

58. Oedell, *supra* note 46, at 1263.

59. *St. Mary's Honor Ctr.*, 509 U.S at 510.

60. *Id.* at 511 (emphasis added).

61. *Id.*

62. *Id.*

legitimate nondiscriminatory reason was false, but that the real reason was discrimination on a ground prohibited by Title VII.[63] The central issue then is whom should the court believe. "It is not enough, in other words, to *dis*believe the employer; the fact finder must *believe* the plaintiff's explanation of intentional discrimination."[64] Thus, the Court required that a judge ruling in favor of a plaintiff must specifically make a finding of intentional unlawful discrimination.[65]

St. Mary's seems to have accepted the "pretext-only" approach as matter of evidence, but requires dual pretext-plus findings of fact, based on that evidence to support a conclusion of liability. The opinion generated continuing confusion among the lower courts.[66] Most, but not all courts after *St. Mary's* agreed that a jury or judge may find for a plaintiff with no additional evidence of discriminatory intent beyond the prima facie case and evidence disproving the defendant's legitimate nondiscriminatory reason.[67] As noted by the dissent in *St. Mary's*, language in the majority opinion appeared to support either interpretation.[68]

B. Evidence Considerations for Rule 50 Motions

Rule 50 authorizes judges to override and hence limit the power of the jury to hear a federal civil case as granted under the Seventh Amend-

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63. *Id.* at 519.

64. *Id.* The *McDonnell Douglas/Burdine/St. Mary's* analytical framework governs decisions on Rule 56 motions for summary judgment and Rule 50 motions for judgment as a matter of law. It does not correspond neatly to the three stages of trial at which the parties offer evidence—plaintiff's case in chief, defendant's defense, and plaintiff's rebuttal. For example, a plaintiff may anticipate the defendant's legitimate nondiscriminatory reason and, accordingly, offer pretext evidence, in addition to evidence meeting her prima facie burden, during her case in chief. Similarly, the trial judge should not rule on the adequacy of the plaintiff's prima facie case once the defendant has called its first witness; the prima facie case is designed simply to decide whether the defendant must call a witness. *See Aikens*, 460 U.S. at 714-16. Nor should the jury be charged on the *McDonnell Douglas* allocation of burdens once all the evidence is closed. *See* Nix v. WLCY Radio/Rahall Comm., 738 F.2d 1181, 1185 (11th Cir. 1984).

65. 509 U.S. at 511 n.4.

66. Oedell, *supra* note 46, at 1267.

67. *Id.*

68. 509 U.S. at 535 (Souter, J., dissenting). The Court stated in one discussion that "rejection of the defendant's proffered reasons will *permit* the trier of fact to infer the ultimate fact of intentional discrimination . . . '[n]o additional proof of discrimination *is* required.' *Id.* at 511 (alteration in original) (footnotes omitted) (quoting *Hicks*, 970 F.2d at 493). Conversely, the Court also stated in another portion of the opinion that "a reason cannot be proved to be 'a pretext *for discrimination*' unless it is shown *both* that the reason was false, *and* that discrimination was the real reason." *Id.* at 515.

ment of the United States Constitution.[69] The rule is designed to ensure that judgment is not entered on jury findings that are unsupportable on the facts presented.[70] The rule provides in pertinent part:

> (a)(1) If during trial by jury a party has been fully heard on an issue and *there is no legally sufficient evidentiary basis* for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.[71]

In deciding Rule 50 motions, judges must not perform an ultimate weighing of evidence or determine the credibility of witnesses.[72] Yet, judges must forecast whether a reasonable jury could find what a party must prove by a requisite burden of proof-most commonly, a preponderance of the evidence.[73] Courts have applied the rule quite differently regarding what evidence the court is free to consider when determining whether to grant a motion under Rule 50.[74] There are essentially three distinct historical standards: (1) courts may consider all the evidence, that is evidence favoring either party; (2) only the evidence favorable to the nonmovant; or (3) all the evidence favorable to the nonmovant, but only evidence favoring the movant that is uncontradicted and unimpeached.[75]

In 1949 the Supreme Court finally weighed in on the topic in the case of *Wilkerson v. McCarthy*,[76] but many judges discounted the opinion

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69. FED. R. CIV. P. 50; U.S. CONST. amend. VII.

70. Edward H. Cooper, *Directions for Directed Verdicts: A Compass for Federal Court*, 55 MINN. L. REV. 903, 905 (1971). The basic problem with the use of juries is that adjudication requires both a fundamental understanding of a specific area of the law as well as the ability to properly apply the law to the facts of a particular case. *Id.* "The merciful obscurity of the verdict commonly alleviates the embarrassment which might result from any detailed knowledge of a jury's chosen means of discharging its duties." *Id.* "Directed verdicts are the basic means for controlling jury performance in such cases." *Id.*

71. FED. R. CIV. P. 50 (emphasis added).

72. *See* Simblest v. Maynard, 427 F.2d 1, 4 (2d Cir. 1970).

73. Anderson v. Liberty Lobby, 477 U.S. 242, 252 (1986).

74. 427 F.2d at 4.

75. *Id.*

76. 336 U.S. 53 (1949). Wilkerson worked as a railroad switchman in Denver, Colorado. While working in the railroad yard, plaintiff was injured when he fell into a pit. Wilkerson, at the time he fell, was attempting to walk across the pit on a narrow board. Apparently a greasy substance on the board's surface caused Wilkerson to lose his balance. Wilkerson filed a suit in the federal district court alleging a violation of the Federal Employers Liability Act ("FELA"). The trial court ruled on a Rule 50 motion in favor of the employer and the Supreme Court affirmed. *Id.* at 55-58.

because Justice Black failed to cite authority for the standard set forth.[77] Additionally, many judges interpreted the case as applying only to Federal Employers Liability Act[78] ("FELA") cases.[79]

In *Wilkerson* Justice Black stated, without citing any authority, that "[i]t is the established rule that in passing upon whether there is sufficient evidence to submit an issue to the jury we need look only to the evidence and reasonable inferences which tend to support the case of a litigant against whom a peremptory instruction has been given."[80] This passage, adopting approach two, is ultimately responsible for the resulting debate and continued division among the lower courts.[81] While some courts adopted the plain language set forth in *Wilkerson*, other courts refused to believe the language "meant what it said" and persisted with one of the other two approaches.[82]

Some courts have adopted the rule as stated in *Boeing Co. v. Shipman*[83]:

> the Court should consider all of the evidence-not just that evidence which supports the non-mover's case–but in the light and with all reasonable inferences most favorable to the party opposed to the motion . . . . However, it is the function of the jury as the traditional finder of the facts, and not the Court, to weigh conflicting evidence and inferences, and determine the credibility of witnesses.[84]

Still other courts have articulated approach three, holding that all evidence in favor of the nonmovant shall be considered, but only evidence supporting the movant that is uncontradicted or unimpeached.[85] Because the Supreme Court has not directly confronted the issue since *Wilkerson*, lower courts continue to apply varying approaches.[86]

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77. *See* 9A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2529, at 298 (2d ed. 1994); *Wilkerson*, 336 U.S. at 57.

78. 45 U.S.C. § 51-60 (1994).

79. *Id.*; *see also* WRIGHT & MILLER, *supra* note 77.

80. *Wilkerson*, 336 U.S. at 57.

81. WRIGHT & MILLER, *supra* note 77, at 298.

82. *Id.*

83. 411 F.2d 365 (5th Cir. 1969), *overruled on other grounds by* Gautreaux v. Seurlock Marine, 107 F.3d 331, 336 (5th Cir. 1997).

84. *Id.* at 374.

85. *See, e.g.*, Dehydrating Process Co. v. A.O. Smith Corp., 292 F.2d 653, 656 n.6, 657 (1st Cir. 1961).

86. WRIGHT & MILLER, *supra* note 77, at 298.

III. COURT'S RATIONALE IN *REEVES*

Justice O'Connor, writing for a unanimous Court in *Reeves*, overturned the decision of the appeals court.[87] The unanimous opinion clarified the plaintiff's burden of proof in ADEA employment discrimination cases and resolved the debate about what evidence a trial judge should consider in deciding a Rule 50 motion for judgment as a matter of law.[88]

The Court first addressed the evidentiary burdens required of a plaintiff in an ADEA case.[89] Recognizing that ADEA cases often must rely on circumstantial evidence to prove discrimination, the Court applied the Title VII *McDonnell Douglas* framework to analyze Reeves' ADEA claim.[90] The Court found that Reeves "undisputedly" established a prima facie case and also rebutted defendant's proffered explanation.[91] The Court then addressed the lower court's disagreement regarding the proper interpretation of *St. Mary's*.[92] The issue was whether *St. Mary's* endorsed the "pretext plus" standard or stood for the more relaxed standard that when a plaintiff proved the defendant's proffered reason was pretext, a judge or jury could permissibly find for the plaintiff without additional proof that unlawful discrimination was a factor in the termination.[93]

The Court adopted the less stringent interpretation of *St. Mary's*, holding that while:

> rejection of the employer's legitimate, nondiscriminatory reason for its action does not *compel* judgment for the plaintiff . . . it is *permissible* for the trier of fact to infer the ultimate fact of discrimination from the falsity of the employer's explanation . . . . Proof that the defendant's explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination.[94]

The Court reasoned that a trier of fact may consider dishonesty on the part of the defendant as an admission of guilt and may infer the guilt of that party.[95] Relying on *Furnco Construction Corp. v. Waters*,[96] the

87. 120 S. Ct. at 2112.
88. *Id.* at 2105-06, 2108.
89. *Id.* at 2105.
90. *Id.* at 2105-07.
91. *Id.*
92. *Id.* at 2108.
93. *Id.*
94. *Id.*
95. *Id.*
96. 438 U.S. 567, 577 (1978).

Court stated that because the employer is best situated to offer reasons for its actions, when those proffered reasons are eliminated, it is likely that the actual reason was an impermissible one.[97]

The Court observed that the principal defense asserted by Sanderson was that Reeves had not been tracking the employees' hours accurately.[98] However, Reeves offered adequate evidence for a reasonable fact finder to find that Sanderson's assertions were unlawful or untruthful.[99] Reeves offered evidence that the automated time clocks were inaccurate and required him to manually write in the employees' arrival time, on many occasions. He also established that he was not responsible for reviewing the monthly statements and was not responsible for errors that appeared on the monthly reports. Further, Reeves proved that he was not at work on some of the days that he allegedly marked an absent employee as present.[100] The Court concluded that Reeves met his burden of proving that Sanderson's proffered reason was unfounded or untruthful because in each case Sanderson conceded Reeves' assertions under cross examination.[101] The Court held that it was permissible for the trier of fact to infer discrimination based on the rejection of Sanderson's explanations.[102]

The Court was careful to warn that there may be cases when the evidence negates a finding that the employer unlawfully discriminated and the fact finder would be unable to infer discrimination, even though a plaintiff meets the burden of establishing a prima facie case and successfully rebuts the defendant's proffered reason.[103] For example, there may be distinct evidence that "conclusively reveals some other nondiscriminatory reason for the employer's decision."[104] The Court concluded its discussion suggesting that a judge hearing a Rule 50 motion should consider a number of factors including: "the strength of the plaintiff's prima facie case, the probative value of the proof that the employer's explanation is false, and any other evidence that supports the employer's case and that properly may be considered on a motion for judgment as a matter of law."[105] However, the Court withheld discus-

97. 120 S. Ct. at 2108-09.
98. *Id.* at 2107.
99. *Id.* at 2108.
100. *Id.* at 2107-08.
101. *Id.*
102. *Id.*
103. *Id.* at 2109.
104. *Id.*
105. *Id.*

sion of what circumstances would in practice afford an employer a right to a judgment as a matter of law.[106]

Justice Ginsburg concurred but wrote separately to urge the Court to define "more precisely the circumstances in which plaintiffs will be required to submit evidence beyond these two categories in order to survive a motion for judgment as a matter of law."[107] However, Justice Ginsberg noted that she did not believe the circumstances predicted by the majority would commonly arise.[108]

In Part II the Court held that a lower court deciding a Rule 50 motion should consider all the evidence supporting a nonmovant but only the uncontradicted and unimpeached evidence favoring the movant, and possibly only to the extent that the evidence favoring the movant comes from disinterested witnesses.[109] It also reaffirmed that in assessing whether that evidence is sufficient to enable a reasonable jury to have found as it did, the trial court should draw all reasonable inferences in favor of the nonmovant.[110]

The Court began its discussion by analogizing the Rule 50 evidence standard to that applicable at summary judgement under Rule 56.[111] The Court acknowledged that in prior rulings it held that a court deciding a Rule 56 motion must "review the record 'taken as a whole.'"[112] Further, the Court recalled that it ruled in *Anderson v. Liberty Lobby, Inc.*,[113] that "the standard for granting summary judgment 'mirrors' the standard for judgment as a matter of law, such that 'the inquiry under each is the same.'"[114] Accordingly, the Court held that when considering a Rule 50 motion the judge shall consider all the evidence in the record.[115] A court should "draw all reasonable inferences in favor of the nonmoving party," and the judge should not make credibility determinations, as those are duties of the jury.[116] To implement the latter command, "although the court should review the

106. *Id.* The limiting language found in *Reeves* presents the most likely avenue lower courts may take in the future to avoid the *Reeves* burden of proof standard. *See* Schnabel v. Abramson, 232 F.3d 83, 90 (2d. Cir. 2000).

107. 120 S. Ct. at 2112 (Ginsberg, J., concurring).

108. *Id.*

109. *Id.* at 2110.

110. *Id.*

111. *Id.*

112. *Id.* (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 495 U.S. 574, 587 (1986)).

113. 477 U.S. 242 (1986).

114. 120 S. Ct. at 2110 (quoting *Anderson*, 477 U.S. at 250-51).

115. *Id.*

116. *Id.*

record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe."[117] In summary the Court held that a court should consider all the nonmovant's evidence, drawing all reasonable inferences in favor of the nonmovant, but only consider the movant's evidence that is uncontradicted or unimpeached and coming from disinterested witnesses.[118] Thus, the Court agreed with historical approach (1) that the evidence of the moving party as well as the nonmoving party should be taken into account, but actually adopted approach (3) by limiting the relevant evidence of the moving party to that evidence which is uncontradicted and unimpeached.[119]

In applying its holding to the facts of *Reeves*, the Court found that the court of appeals failed to consider plaintiff's evidence "supporting [plaintiff's] prima facie case and undermining [defendant's] nondiscriminatory explanation."[120] Specifically, the court of appeals failed to consider that Chesnut's decision to fire Reeves was "motivated by age-based animus" and that Chesnut was principally responsible for petitioner's firing.[121] Hence, the lower court erred when it discounted the statements because they were not made directly to Reeves at the time of his termination.[122] In doing so the court failed to "draw all reasonable inferences in favor of the [nonmovant]."[123] Additionally, the court of appeals did not consider the "evidence that Chesnut was the actual decision maker," and it discounted Reeves' case in stating that there was "'no evidence to suggest that any other decision makers were motivated by age.'"[124] Essentially, the Court determined that the court of appeals impermissibly "substituted its judgment concerning the weight of the evidence for the jury's."[125]

III. IMPLICATIONS

Reeves has the potential to noticeably reduce the success rates of motions for summary judgment and motions for judgment as a matter of law in federal civil cases generally and employment discrimination cases in particular. First, as to employment discrimination cases, because the Court thought that ADEA and Title VII cases use the same

117. *Id.*
118. *Id.*
119. *Id.*
120. *Id.* at 2111.
121. *Id.* at 2110.
122. *Id.* at 2111.
123. *Id.*
124. *Id.* (quoting Reeves v. Sanderson Plumbing Prod., Inc., 197 F.3d at 694).
125. *Id.*

standard ordering the presentation of evidence, the analytical framework holding in *Reeves* should at a minimum extend beyond ADEA cases to cases under Title VII. All early indicators suggest that this logical extension will gain common acceptance among the courts.[126]

Second, although *Reeves* is an employment discrimination case, the Court used nonADEA or Title VII cases as authority to decide what evidence the court should consider when assessing the requirements of a Rule 50 motion.[127] The Court has several times insisted that its interpretation of Federal Rules apply transubstantively.[128] Accordingly, the *Reeves* construction of Rule 50 should apply to any other federal civil action the same way that it applied to an employment discrimination case. The practical implication being the nonmovant may survive a motion for judgment as a matter of law more easily because the judge will not be permitted to consider any contradicted or impeached evidence offered by the moving party.

Third, the Court's re-equation of the Rule 50 standard with the standard for granting summary judgment under Rule 56 suggests that lower courts may follow the *Reeves* rule in deciding what evidence the trial judge may consider in ruling on motions for summary judgment as well.[129]

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126. *See, e.g.*, Hinson v. Clinch County Bd. of Educ., 231 F.3d 821, 827 (11th Cir. 2000); Bell v. EPA, 32 F.3d 546, 550 (7th Cir. 2000); Tyler v. Re/Max Mountain States, Inc., 232 F.3d 808, 812 (10th Cir. 2000), for the proposition that the *Reeves* standard should apply to Title VII cases just as in ADEA cases.

127. 120 S. Ct. at 2110.

128. The Court unanimously held in *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163 (1993), that a plaintiff alleging a section 1983 violation against a municipality is not required to file a complaint with heightened specificity. *Id.* at 168. Following the basic guideline of Federal Rule of Civil Procedure 8 is adequate to avoid a dismissal. *Id.* at 165. In so ruling the Court overruled the Fifth Circuit Court of Appeals, which argued that the specificity required in a complaint increases with the complexity of the case. *Id.* at 169.

The Court reached this conclusion by finding that the Federal Rules of Civil Procedure should be applied the same way in all cases. *Id.* at 168. Unless specifically stated in Rule 9, plaintiffs are only required to follow Rule 8. *Id. See also* Crawford-El v. Britton, 523 U.S. 574, 601 (1998) (holding that the federal rules apply to all cases, and it is improper for courts to create heightened rules for certain claims).

129. *See, e.g.*, Thomas v. Great Atlantic & Pacific Tea Co., 233 F.3d 326 (5th Cir. 2000). Notably, *Reeves* was also a Fifth Circuit case. In *Thomas* the Fifth Circuit Court of Appeals reversed the district court's grant of summary judgment on the element of causation in a "dram shop" negligence suit. *Id.* at 327. The court began,

> When reviewing a grant of summary judgment, we must review the record as a whole, but must disregard all evidence favorable to the moving party that the jury is not required to believe. That is, we give credence to evidence favoring the nonmoving party as well as that evidence supporting the moving the [sic] party

Finally, as for the analytical framework, *Reeves* will make it easier for a plaintiff to reach the jury because courts will no longer be able to require "plus" evidence. In simple cross examination of defendant's witness's (impeachment), even without affirmative evidence to the contrary, contradiction may suffice to support a verdict under Rule 50, and by extension to defeat summary judgment under Rule 56. The practical effect will likely increase the settlement value of employment discrimination cases. Still, old habits die hard with the Federal Rules of Civil Procedure[130] and courts accustomed to routinely granting summary judgment since the Supreme Court's trilogy on the subject[131] may resist whole-hearted or immediate implementation of *Reeves*.[132]

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that is uncontradicted and unimpeached, at least to the extent that such evidence comes from disinterested witnesses.

Id. at 329 (footnotes omitted). The court held that the plaintiff's circumstantial evidence supporting causation was sufficient to meet the threshold of Rule 56 when the only evidence supporting the movant was from "interested" parties and lacked credibility. *Id.* at 332. The significance of *Thomas* is that it applied the principles of *Reeves* to a nonemployment discrimination case that deals with Rule 56 as opposed to Rule 50. *See also Hinson*, 231 F.3d at 826 (applying *Reeves* to a summary judgment motion); *Bell*, 232 F.3d at 549 (applying *Reeves* to a summary judgment motion); Glenn Distributors Corp. v. Carlisle Plastics, Inc., CIV. A. No. 98-2317, 2000 WL 1224941, *6 (E.D. Pa., Aug. 29, 2000) (applying *Reeves* to a Rule 50 nonemployment discrimination case).

130. *See* 5 WRIGHT & MILLER, *supra* note 77, § 1216, at 150.

131. *See Anderson*, 477 U.S. 242; Celtoex Corp. v. Catrett, 477 U.S. 317 (1986); *Matsushita*, 475 U.S. 574.

132. *See, e.g.*, Chapman v. AI Transport, 229 F.3d 1012 (11th Cir. 2000); *Schnabel*, 232 F.3d 83; *but see* EEOC v. Sears Roebuck & Co., 243 F.3d 846, 855-56 (4th Cir. 2001) (adopting *Hinson* approach over *Schnabel*).