

PUBLICATION

Tennessee Supreme Court Jettisons McDonnell Douglas Analysis

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In September 2010, the Tennessee Supreme Court dramatically changed employment law in Tennessee. In *Gossett v. Tractor Supply Company*, --- S.W.3d --- (Tenn. 2010), a sharply divided Court held that the *McDonnell Douglas* framework for employment discrimination and retaliation claims no longer applies to claims in Tennessee state court. Under the *McDonnell Douglas* standard (which Tennessee courts have been applying for years), the employer just had to offer a legitimate nondiscriminatory/retaliatory reason for its decision, and then the burden shifted to the employee to proffer some evidence that the employer's reason for termination was pretextual. If the employee could not come up with that evidence, then the case was dismissed on summary judgment before trial.

Under the Court's new standard, an employer's legitimate reason is not enough to obtain summary judgment, and the burden never shifts to the employee to present evidence that the employer's reason is pretextual. Instead, the new standard requires an employer to present "undisputed evidence that a legitimate reason was the exclusive motivation for discharging an employee." The effect of this decision is to shift the burden to the employer to prove beyond any question that it did not discriminate in order to get the case dismissed on summary judgment.

What this means for Tennessee employers....

- Employment lawsuits, which are typically filed in federal court, will now be filed in state court.
- State court is not as well equipped to handle these cases because state court judges are not used to hearing employment cases.
- Pre-trial dismissal on summary judgment will be granted infrequently in employment suits, and many more employment claims will now proceed to trial in Tennessee state court.
- Employers' cost to defend or settle employment claims will increase because employers will either be stuck with costs of defense through trial, or they will have to settle with the Plaintiff's lawyer who knows the increased costs of defense through trial.
- The *Gossett* decision makes Tennessee employment law inconsistent with federal law on the exact same claims.