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# Recent Developments: St. Mary's Honor Center v. Hicks: Title VII Does Not Compel Judgment for Plaintiff Merely Because the Trier of Fact Rejects Defendant's Reasons for Adverse Employment Decisions

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***St. Mary's Honor Center  
v. Hicks***

**TITLE VII DOES NOT  
COMPEL JUDGMENT  
FOR PLAINTIFF  
MERELY BECAUSE  
THE TRIER OF FACT  
REJECTS DEFENDANT'S  
REASONS FOR  
ADVERSE  
EMPLOYMENT DECISIONS.**

Last term, the Supreme Court provided a preview of its analysis of disparate treatment cases when it decided *St. Mary's Honor Ctr. v. Hicks*, 113 S. Ct. 2742 (1993). In a technicality based opinion delivered by Justice Scalia, the Court redefined the meaning of pretext as it had been traditionally used in employment discrimination litigation. Instead of merely demonstrating the falsity of the employer's proffered reasons for the adverse employment action, plaintiffs must now prove the employer's actions were "a pretext for discrimination." *Id.* at 2752.

In 1978, Respondent Melvin Hicks, an African-American, was hired as a correctional officer by Petitioner, St. Mary's Honor Center ("St. Mary's"). In 1980, he was promoted to a supervisory position as a shift commander. In 1984, managerial changes were made. In the course of that year, Hicks was reprimanded, suspended, demoted and ultimately discharged. Hicks brought suit in the United States District Court for the Eastern District of Missouri, alleging Title VII violations by St. Mary's for demoting and discharging him on the basis of race. The respondent claimed he would prevail by simply proving that the petitioner's justifications for the adverse employment actions were a pretext for discrimination.

After a full bench trial, the district court ruled in favor of St. Mary's and held that although Hicks' termination may have been personally motivated and the employer's reasons were disbelieved, Hicks failed to demonstrate the decision was racially based. The United States Court of Appeals for the Eighth Circuit reversed and held that once Hicks proved that all of St. Mary's proffered reasons were pretextual, Hicks was entitled to a judgment as a matter of law. *Id.* at 2748. St. Mary's filed a petition for certiorari, which the Supreme Court granted. The Court reversed the Eighth

Circuit's decision and remanded the case to the district court.

Evidentiary and procedural rules were the guiding principles of the Court's decision. First, the Court discussed the *McDonnell Douglas* requirement that the defendant must rebut the presumption of discrimination created by the plaintiff's prima facie case. The employer accomplishes this by providing a legitimate, non-discriminatory reason "which if believed by the trier of fact, would support a finding that unlawful discrimination was not the cause of the employment action." *Id.* at 2747 (citing *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254-55 (1981)). Most important is the requirement that "[t]he plaintiff bear the ultimate burden of persuading the trier of fact that the [employer] intentionally discriminated on the basis of race. . . ." *St. Mary's Honor Ctr.*, 113 S. Ct. 2742, 2747 (citing *Burdine*, 450 U.S. at 253).

Next, the Court explained that judgments as a matter of law are only awarded to plaintiffs if, "[at] the close of the defendant's case. . . (1) any rational person would have to find the existence of facts constituting a prima facie case, and (2) the defendant has failed to meet its burden of production. . . ." *Id.* at 2748. *See* Fed. R. Civ. P. 50(a)(1) or 52(c). The Court disagreed with the Eighth Circuit's holding that a mere rejection of the employer's justifications compelled judgment for the plaintiff. To do so would violate Federal Rule of Evidence 301 and a Title VII requirement that the plaintiff at all times bears the burden of persuasion. Conversely, the finding that Hicks was not entitled to judgment as a matter of law was based on St. Mary's claim that the employee had been dismissed due to "the severity and the accumulation of rules violations committed by respondent. . . ." *Id.* at 2747 (citing *Hicks v. St. Mary's Honor Ctr.*, 756 F. Supp.

1244, 1250 (1991)). The Court's primary point of contention was that the mere finding of pretext would require a directed verdict for plaintiffs if such a high degree of proof was placed upon the *McDonnell Douglas* prima facie case. As a preventative measure, the Court quickly denied that the level of proof required to establish a prima facie case and that necessary to support a directed verdict was on equal footing. As a result, the Court found neither statutory, logical nor precedential basis for the respondent's claim. *Id.* at 2751.

The most controversial segment of the Court's ruling was its "pretext-plus" approach to determining the ultimate issue of intentional discrimination. Contrary to the respondent's claim that Title VII plaintiffs need only prove pretext to prevail, Scalia insisted that *Burdine* requires that the plaintiff show both that the employer's justifications were false and that discrimination was the true reason for the demotion and dismissal. *Id.* at 2752. The Court then noted that its decision in *United States Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 714 (1983), dispelled any "doubt" in *Burdine* regarding the plaintiff's burden of persuasion. *St. Mary's Honor Ctr.* at 1253. Despite Hicks' showing that St. Mary's justifications for his dismissal were untrue, the Supreme Court found that he failed to meet his burden of persuasion by showing invidious discrimination motivated the employer's decision.

Justice Souter delivered the dissenting opinion with whom Justices White, Blackmun and Stevens joined. The dissent chided the majority's misinterpretation of the *McDonnell Douglas/Burdine* framework by insisting that a pretext-plus approach was inconsistent with the Court's prior holdings. Instead, the dissent asserted that the plaintiff may meet his burden of persuasion "either directly by per-

suading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Id.* at 2760. (emphasis added) (quoting *Burdine*, 450 U.S. at 256). "Unfairness and impracticality" were the dissent's major criticisms of the majority opinion. *Id.* at 2763. However, the dissent was also concerned with the Court's failure to limit the scope of the factual determination to the credibility of the employer's justifications.

The dissent believed the Court's requirement of additional proof would, more often than not, result in summary judgment for employers. *Id.* at 2762. By the same token, the dissent feared that the end result would be a more complicated and expensive pre-trial discovery process, longer trials, overall delays in Title VII litigation, and diminished judicial economy. *Id.* at 2763. The dissent was equally disturbed that the Court would hand down a ruling so patently favorable to employers who present "false evidence in a court of law." *Id.* at 2763. Consequently, the dissent believed victims of discrimination would be discouraged from filing claims, and those who did would waste valuable time and money on cases in which they have a meager chance of winning.

The *St. Mary's* opinion is significant in that it reinforces the requirement that an employer need only provide a non-discriminatory justification for the adverse employment decision to meet its burden of production. At that point in the trial, the *McDonnell Douglas/Burdine* inference of discrimination becomes irrelevant, and the credibility of the proffered reasons will not automatically compel a judgment for the plaintiff. Instead, the plaintiff must carry the ultimate burden of persuasion by: 1) persuading the trier of fact that the employer's justifications for the adverse employment action were untrue and discriminatory; and 2) persuading the trier of fact that the plaintiff has been the victim of intentional discrimination. Finally, the trier of fact must decide the ultimate question of whether the employer intentionally discriminated against the employee. As a result, the decision will turn not on the truth of the employer's justifications, but on the plaintiff's ability to show that the employer intentionally discriminated on the basis of race, color, religion, sex or national origin. In effect, the burden of production for employers remains minimal and the burden of persuasion for employees is more onerous -- making discrimination more difficult to prove.

- Kimberley S. Wright Jones

