REMOVING THE THUMB FROM THE SCALE: THE ELEVENTH CIRCUIT SUMMARY JUDGMENT STANDARD FOR DISPARATE TREATMENT CASES IN THE WAKE OF *CHAPMAN V. AI TRANSPORT*

Employment discrimination claims and civil rights claims comprised 0.4% of the federal circuit court caseload in 1964.[1] By 1986, 6.8% of all litigation was employment litigation.[2] Because of the increase in employment discrimination cases in all jurisdictions, including the Eleventh Circuit, summary judgment should be a valuable tool in promoting judicial efficiency. Courts should employ this useful tool despite the fact that intent is involved in many of these actions. In *Chapman v. AI Transport*,[3] the Eleventh Circuit correctly abrogated its prior rule of giving preferential treatment to employment discrimination plaintiffs at the summary judgment stage.[4]

Part I of this Article deals with the summary judgment standard under Rule 56 of the Federal Rules of Civil Procedure as set down by the Supreme Court in its trilogy of 1986 cases. Part II addresses the formula for employment discrimination plaintiffs seeking relief under Title VII. Part III analyzes where early Eleventh Circuit decisions fit into this framework. Finally, Part IV addresses the move on the part of the Eleventh Circuit in *Chapman* toward the proper use of the summary judgment tool.

I. THE SUMMARY JUDGMENT STANDARD

In *Chapman*, the Eleventh Circuit articulated the summary judgment standard that courts should apply in disparate treatment cases where no direct evidence is present.[5] This tool of judicial efficiency "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if

1. John V. Janisonius, *The Role of Summary Judgment in Employment Discrimination Litigation*, 4 LAB. LAW. 747, 747 n.2 (1988).
2. *Id.*
3. 229 F.3d 1012 (11th Cir. 2000).
4. *Chapman*, 229 F.3d at 1025-26.
5. *Id.*

any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[6] This standard was generally intended as an effective tool for dismissing overly burdensome litigation.[7] However, courts sought to use this tool sparingly, especially in cases where intent was involved.[8] Because of the intent requirement in employment discrimination cases under Title VII, courts have been reluctant to grant motions for summary judgment in these cases.[9] The Supreme Court moved away from this sparing use of motions for summary judgment with its 1986 trilogy of cases interpreting Rule 56 of the Federal Rules of Civil Procedure. In the 1986 trilogy, which includes *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*,[10] *Celotex Corp. v. Catrett*,[11] and *Anderson v. Liberty Lobby, Inc.*,[12] the Court clarified the relative burdens of proof necessary in summary judgment proceedings.

In *Matsushita*, the Court was called on to decide an antitrust dispute involving Japanese and American manufacturers of consumer electronic products.[13] American manufacturers claimed that the Japanese competitors were illegally conspiring to drive American manufacturers from the domestic market.[14] The American manufacturers claimed that the Japanese companies were inflating prices for Japanese products in Japan and lowering prices for the same Japanese products exported to America.[15] The Japanese manufacturers rebutted evidence produced by the Americans, explaining that their tactics were meant only to compete with the American manufacturers and not to drive them from the market.[16] The Court stated that "the nonmoving party must come forward with 'specific facts showing that there is a genuine issue for trial.'"[17] The Court allowed the district court to examine the persuasiveness of the evidence produced by the Japanese defendants in determining whether a genuine issue of material fact existed.[18] Thus, even if examined in the light most favorable to the plaintiff, if the persuasiveness of defendant's evidence leaves no issue of material fact for trial, summary judgment must be

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6. FED. R. CIV. P. 56(c).
7. *See* Michael E Smith, *Judge Charles E. Clark and the Federal Rules of Civil Procedure*, 85 YALE L.J. 914, 918-19 (1976).
8. *See* Poller v. Columbia Broad. Sys., 368 U.S. 464, 473 (1962).
9. *See* Janisonius, *supra* note 1, at 756.
10. 475 U.S. 574 (1986).
11. 477 U.S. 317 (1986).
12. 477 U.S. 242 (1986).
13. *Matsushita*, 475 U.S. at 577.
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.* at 587 (quoting FED. R. CIV. P. 56(e)).
18. *Matsushita*, 475 U.S. at 597.

awarded.[19]

The Court further developed its summary judgment standard in *Celotex Corp. v. Catrett*, a case dealing with the liability of asbestos manufacturers.[20] The defendant manufacturer moved for summary judgment because the plaintiff could not prove after one year of discovery that it had manufactured the asbestos products to which the plaintiff was exposed.[21] In granting defendant Celotex's motion for summary judgment, the Court stated that Rule 56, "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."[22] Because the burden was on the plaintiff to demonstrate the essential element of causation, Celotex was not forced to attach evidence negating the plaintiff's claim.[23] A holding to the contrary would have forced Celotex to "prove the negative" when the burden clearly rested with plaintiff. The Court stated that "[o]ne of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses, and we think it should be interpreted in a way that allows it to accomplish this purpose."[24] In keeping with the purpose of the rule, the Court recognized that it would be contrary to the goal of disposing of unsupported claims if movants were forced to prove that the claims were unsupported instead of merely bringing the unsupported allegations to the attention of the court.[25]

Anderson v. Liberty Lobby, Inc., the final case in the trilogy, was a libel case involving a magazine publisher.[26] The Court noted that "the inquiry involved in a ruling on a motion for summary judgment . . . necessarily implicates the substantive evidentiary standard of proof that would apply at the trial on the merits."[27] Therefore, the Court subjected the motion for summary judgment standard to the applicable "clear and convincing" standard.[28] The respondent argued that defendants should rarely be granted summary judgment when state of mind is at issue.[29] The court rejected this argument stating that, even when intent is involved, a "plaintiff is not thereby relieved of his own burden of produc-

19. *Id.*
20. 477 U.S. 317 (1986).
21. *Celotex*, 477 U.S. at 319.
22. *Id.* at 322.
23. *Id.* at 323.
24. *Id.* at 323-24.
25. *Id.* at 324-25.
26. 477 U.S. 242, 245 (1986).
27. *Liberty Lobby*, 477 U.S. at 252.
28. *Id.* at 255.
29. *Id.* at 256.

ing in turn evidence that would support a jury verdict."[30]

The result of the 1986 summary judgment trilogy is that the Court established some basic principles that are relevant to employment discrimination claims. These are as follows: (1) the movant satisfies his burden of production by pointing out that there is no evidence to support the other party's case; (2) when the movant shows that summary judgment is appropriate, the opposing party must establish specific facts creating a genuine issue for trial; (3) the standard of proof applied is the same as the standard of proof required to prove the underlying claim; and (4) the presence of an issue of intent does not relieve plaintiff of his burden.[31] This summary judgment trilogy dealt with intent, which is valuable in gleaning an understanding of the standard in employment discrimination cases. However, none of these cases dealt directly with employment discrimination. The practitioner must be mindful of the general summary judgment standard while focusing more closely on the tests specifically relevant to employment discrimination cases articulated by the Court.

II. SUMMARY JUDGMENT STANDARD IN DISPARATE TREATMENT CASES

Because it is often difficult to prove direct discrimination in an employment setting, the Supreme Court has articulated a three-step evidentiary burden shifting analysis to deal with disparate treatment cases lacking direct evidence. The standard was first articulated in *McDonnell Douglas Corp. v. Green*[32] and further explained and developed in *Texas Department of Community Affairs v. Burdine*[33] and *St. Mary's Honor Center v. Hicks*.[34] This is the standard by which the Eleventh Circuit was bound in deciding *Chapman*.[35]

In *McDonnell Douglas*, the Court recognized the difficulty of proving direct discrimination and instead set forth a framework through which a plaintiff could establish a prima facie case of discrimination.[36] A prima facie case can be established by demonstrating that: (1) the plaintiff belongs to a protected minority group, (2) he applied and was qualified for a job for which the employer was seeking applicants, (3) despite his qualifications, he was rejected, and (4) after his rejection, the position remained open and the employer continued to seek appli-

30. *Id.*
31. *See* Janisonius, *supra* note 1, at 771.
32. 411 U.S. 792 (1973).
33. 450 U.S. 248 (1981).
34. 509 U.S. 502 (1993).
35. *Chapman v. Al Transport*, 229 F.3d 1012, 1024 (11th Cir. 2000).
36. *See McDonnell Douglas*, 411 U.S. at 802.

cants from persons of complainant's qualifications.[37] Upon a showing of this prima facie case by the plaintiff, the burden then shifts to the defendant to articulate a nondiscriminatory reason for its actions.[38] The *McDonnell Douglas* Court noted that the inquiry does not end with the rebuttal of the prima facie case, though.[39] Once rebuttal occurs, the plaintiff must then bring forth evidence which demonstrates that defendant's stated reason for rejection was merely a pretext for discrimination.[40]

McDonnell Douglas involved a refusal to rehire an employee following unlawful and disruptive acts against the company.[41] The Court set down a list of factors that would be relevant to a determination of pretext.[42] Factors relevant to the inquiry included the following: "petitioner's treatment of respondent during his prior term of employment; petitioner's reaction . . . to respondent's legitimate civil rights activities; and petitioner's general policy and practice with respect to minority employment."[43]

The Court further developed this burden shifting system in *Texas Department of Community Affairs v. Burdine*.[44] In that case, the Court was called on to decide a gender discrimination question brought by an accounting clerk under Title VII of the Civil Rights Act of 1964.[45] The additional development the Court set out in *Burdine* involved the defendant's burden in illustrating a legitimate nondiscriminatory reason for the adverse employment action.[46] The Court clarified the fact that the defendant's burden in the second stage of the *McDonnell Douglas* framework was limited to the production of a nondiscriminatory reason and not the persuasion of its validity.[47] The Court articulated three reasons why the burden of production would not unduly hinder the plaintiff.[48] These were as follows: (1) that defendant's reasons for the adverse action must be reasonably clear and specific, (2) that defendant still has an incentive to persuade the trier of fact even if his burden is limited to production, and (3) the liberal discovery rules applicable to civil suits in federal court are further enhanced by plaintiff's opportunity in Title VII actions to examine the Equal Employment Opportunity

37. *Id.*
38. *Id.*
39. *Id.* at 804.
40. *Id.*
41. *See McDonnell Douglas*, 411 U.S. at 794.
42. *Id.* at 804-05.
43. *Id.*
44. 450 U.S. 248 (1981).
45. *Burdine*, 450 U.S. at 250 (analyzing the claim under 42 U.S.C. § 2000e).
46. *See id.* at 258-60.
47. *Id.* at 258.
48. *Id.*

Commission's files.[49] The Court recognized that Title VII was not designed to limit traditional management techniques, and that this goal is furthered by a scheme whereby defendants only bear the burden of a clear and specific explanation of their nondiscriminatory motives.[50]

In *St. Mary's Honor Center v. Hicks*, the Court further developed the third stage of the *McDonnell Douglas* framework with regard to plaintiff's burden of proving that the articulated reasons for the adverse action were a pretext for discrimination.[51] *Hicks* involved a corrections officer's claim that he was demoted and discharged because of his race.[52] The employer countered with reasons relating to an increased number of rule violations in a short period of time.[53] The factfinder was able to determine that the proffered nondiscriminatory reasons were false, but was unable to determine if intentional discrimination was the real reason for the discharge.[54] The Court stated 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."[55] When the defendant meets his burden of production, "the factual inquiry proceeds to a new level of specificity."[56] The Court stated that "[i]t is not enough . . . to *dis*believe the employer; the factfinder must *believe* the plaintiff's explanation of intentional discrimination."[57] The confusion which resulted from the *Hicks* opinion centers around the following language: "The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination."[58]

It is not difficult to see how the use of the word "may" in the above passage proved particularly troublesome in determining whether plaintiff could proceed on the merits (if the prima facie case was rebutted with nondiscriminatory reasons and those reasons were believed to be false). The *Hicks* statement seems to be in contrast to the *Burdine* language, which indicates that if the proffered reasons are false, the plaintiff still must prove that the real reason is intentional discrimination. Although *Hicks* resulted in a trial on the merits and not a motion for summary judgment, this standard applies to the allocation of the rela-

49. *Id.* at 258 (citing EEOC v. Assoc. Dry Goods Corp., 449 U.S. 590 (1981)).
50. *Burdine*, 450 U.S. at 259-60.
51. 509 U.S. 502, 514-15 (1993).
52. *Hicks*, 509 U.S. at 505.
53. *Id.*
54. Hicks v. St. Mary's Honor Ctr., 756 F. Supp. 1244, 1252 (E.D. Mo. 1991).
55. *Hicks*, 509 U.S. at 515 (1993) (citing *McDonnell Douglas*, 411 U.S. at 804).
56. *Id.* at 516 (quoting *Burdine*, 450 U.S. at 255).
57. *Id.* at 519.
58. *Id.* at 511.

tive burdens among parties in employment discrimination cases.[59] This new standard for the third stage of the *McDonnell Douglas* framework resulted in a struggle among courts of appeals in determining the appropriate level of proof for plaintiff to satisfy his burden for demonstrating pretext.[60] Despite earlier language of the Court in *United States Postal Service v. Aikens*,[61] the *Hicks* language created a struggle to define the plaintiff's burden.[62] Out of this struggle to define evidentiary burdens grew two approaches to determining what plaintiff must demonstrate to survive summary judgment.

A. Pretext-Only Jurisdictions

The Ninth Circuit is an example of a jurisdiction that allows a demonstration of pretext-only to survive summary judgment.[63] In deciding *Washington v. Garrett*,[64] the court thought a "suspicion of mendacity" precluded an award of summary judgment.[65] "If a plaintiff succeeds in raising a genuine factual issue regarding the authenticity of the employer's stated motive, summary judgment is inappropriate, because it is for the trier of fact to decide which story is to be believed."[66] These circuits allow the combination of the evidence presented under the first two stages of the *McDonnell Douglas* framework to carry a plaintiff's burden through the final stage.[67]

The pretext-only method is the correct method in which to examine a disparate treatment case without direct evidence. This method takes advantage of the *McDonnell Douglas* formula to aid plaintiffs in proving what is often very difficult to demonstrate—intent to discriminate. However, if the evidence of the prima facie case is strong enough to raise an issue of material fact as to the pretext of the reasons, it should be considered sufficient. It is unlikely that a plaintiff would only produce part of his evidence in establishing a prima facie case, and then save some to rebut the employer's proffered reasons. The pretext-only

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59. *See* Julie Tang & Hon. Theodore M. McMillian, *Eighth Circuit Employment Discrimination Law: Hicks and Its Impact on Summary Judgment*, 41 ST. LOUIS U. L.J. 519, 527 (1997) (noting that courts must tailor their summary judgment standards to the holding in *Hicks*).

60. Paul D. Seyferth, *A Roadmap of the Law of Summary Judgment In Disparate Treatment Cases*, 15 LAB. LAW. 251, 258 n.55 (1999).

61. 460 U.S. 711, 716 (1983) ("[N]one of this means that trial courts or reviewing courts should treat discrimination differently from other ultimate questions of fact").

62. *See generally* Tang & McMillan, *supra* note 59.

63. *Developments in the Law: Employment Discrimination*, 109 HARV. L. REV. 1568, 1597 (1996).

64. 10 F.3d 1421 (9th Cir. 1993).

65. *Washington*, 10 F.3d at 1433.

66. *Id.* at 1433.

67. Seyferth, *supra* note 60, at 259 (citing Barbour v. Dynamics Res. Corp., 63 F.3d 32, 39 (1st Cir. 1995)).

approach is much more practical and mindful of the method in which these cases are tried.

B. Pretext Plus

Other jurisdictions hold "that a plaintiff cannot survive summary judgment merely by showing that the employer's non-discriminatory reason was false. Instead, the plaintiff must also introduce evidence from which a jury could reach the ultimate finding of discrimination."[68] These jurisdictions require some additional proof after defendant has met his burden of production.[69] The plaintiff must continue with proof which would demonstrate intentional discrimination on the part of the employer, not merely that the proffered nondiscriminatory reason was false.[70]

While this version of the test may be too employer-friendly, it correctly assumes that plaintiffs already receive plenty of assistance with the *McDonnell Douglas* burden shifting analysis. However, it is not necessary to subject plaintiffs to a higher standard than was required by the summary judgment trilogy. While this is a step in the right direction, the step is probably too large.

III. ELEVENTH CIRCUIT STANDARD PRIOR TO *CHAPMAN*

Prior to *Chapman*, the Eleventh Circuit has been referred to as a "pretext minus" jurisdiction.[71] The pretext minus standard is illustrated by *Hairston v. Gainesville Sun Publishing Co.*[72] In that case, the court did not even require a demonstration of pretext to survive a motion for summary judgment.[73] The court stated that "summary judgment . . . is generally unsuitable in Title VII cases in which the plaintiff has established a prima facie case because of the 'elusive factual question' of intentional discrimination."[74]

The rule articulated in *Hairston* was first set down in *Delgado v. Lockheed-Georgia Co.*[75] In that case, the court was reviewing an award of summary judgment for the defendant aircraft manufacturer with respect to a claim under the Age Discrimination in Employment Act (ADEA).[76] The employer had a company policy which forbade mis-

68. *Id.* at 260 (citing Moore v. J.P. Stevens & Co., Inc., 957 F. Supp. 82 (D.S.C. 1997)).
69. *Id.*
70. *See id.*
71. *Developments in the Law, supra* note 63, at 1597 n.117.
72. 9 F.3d 913 (11th Cir. 1993).
73. *Hairston*, 9 F.3d at 921.
74. *Id.* (quoting Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 256 n.10 (1981)).
75. 815 F.2d 641 (11th Cir. 1987).
76. 29 U.S.C. § 621-634 (1990).

charging time when working on a particular contracting task.[77] The plaintiff was discharged for violating this work rule.[78] Under the ADEA, the court recognized that, where a defendant justifies the discharge by a work rule violation, the plaintiff can prove this was a pretext to age discrimination and not a nondiscriminatory reason by showing that other younger employees were not discharged for violating the same rule.[79] The court agreed with the plaintiff that there was evidence that similarly situated supervisors who were younger than plaintiff were punished more leniently than the plaintiff, and that this evidence created a genuine issue of material fact.[80]

The Eleventh Circuit further developed its lenient standard toward plaintiffs with regard to summary judgment burdens in *Batey v. Stone*.[81] In *Batey*, the court dealt with a situation in which Batey, a military secretary, was passed over for a promotion after the United States Army decided to merge her previous occupational duties with those of another officer.[82] The Army rewrote the job description of the new office to include the majority of the former duties of the male officer and not Batey's former duties.[83] The court used the *McDonnnell Douglas* formula to analyze the case and found that Batey met her initial prima facie case with evidence that her job was merged with that of a male, and that the criteria for choosing the new employee were mainly those characteristics of the male's job.[84] It was also unclear what the real reason was for merging the two job descriptions.[85] Furthermore, there was some question about whether the criteria matrix was "fixed" to approve a pre-selected candidate.[86] The only rebuttal offered by the Army was that the duties of the previous male's job were more suited to the newly created position.[87] However, despite Batey's poor qualifications, she was moved into the second round of interviews.[88] The court saw this as a method of covering the discrimination with treatment unequal to others applying for the same job.[89] While deciding that no additional evidence was necessary to rebut the proffered reasons by the Army, the court incorrectly stated that summary judgment in employment cases,

77. *Delgado*, 815 F.2d at 643.
78. *Id.*
79. *Id.* at 644 (citing Anderson v. Savage Labs., Inc. 675 F.2d 1221 (11th Cir. 1982)).
80. *Id.*
81. 24 F.3d 1330 (11th Cir. 1994).
82. *Batey*, 24 F.3d at 1332.
83. *Id.*
84. *Id.* at 1334.
85. *Id.*
86. *Id.* at 1335.
87. *Batey*, 24 F.3d at 1335.
88. *Id.*
89. *Id.*

"which usually necessarily involve examining motive and intent, . . . is especially questionable."[90] While the reversal of the summary judgment was probably correct, the court unnecessarily included the language from *Hayden*. The court should have articulated the rule more clearly and stated that the elements of the prima facie case, if strong enough on their own, should be sufficient to defeat summary judgment in this particular case—but not in all cases. With this seemingly blanket exemption from summary judgment for employment discrimination cases, the court directly contradicted the Supreme Court's holdings in *Hicks* and *Aikens*. While no additional evidence is necessary to prove pretext, plaintiff still should have to raise a genuine issue of material fact regarding the final stage of the *McDonnell Douglas* formula. Otherwise, defendants would be forced to "prove the negative." This idea was directly discouraged in *Celotex*.[91]

The Eleventh Circuit traveled further down this plaintiff-friendly road when it decided *Maddow v. Proctor & Gamble Co.*[92] In that case, Proctor & Gamble bought out Max Factor and instituted a policy of promoting a "new look" for its salespeople.[93] Proctor & Gamble wanted young and energetic salespeople.[94] However, the Max Factor employees were described by one Proctor & Gamble personnel member as "mature and well-trained."[95] The company began interviewing for sales positions and based scores solely on the interview and not at all on prior sales experience.[96] Most of the Max Factor employees received lower interview ratings than their younger counterparts.[97] One of the plaintiffs was told that he did not fit the Proctor & Gamble mold and should think about retiring.[98] The prima facie case was clearly met by the plaintiffs and was rebutted with evidence by Proctor & Gamble illustrating the fact that the interviewing index was a uniform standard of determination.[99] The plaintiffs countered with the proposition that the interviewing index was merely a pretext for discrimination.[100] The plaintiffs produced statistical evidence demonstrating that a larger number of younger employees were chosen for jobs, and produced circumstantial evidence demonstrating a concerted effort on the part of Proctor &

90. *Id.* at 1336 (quoting Hayden v. First Nat'l Bank, 595 F.2d 994, 997 (5th Cir. 1979)).
91. *See* Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).
92. 107 F.3d 846 (11th Cir. 1997).
93. *Maddow*, 107 F.3d at 849.
94. *Id.*
95. *Id.*
96. *Id.*
97. *See id.* at 850.
98. *Maddow*, 107 F.3d at 850.
99. *Id.* at 851.
100. *Id.*

Gamble to weed out the older employees.[101] The court noted that plaintiffs did not need to prove pretext, but must merely raise an issue of material fact with regard to pretext.[102] The court realized that this issue of fact was created by the plaintiffs' evidence.[103] However, it refused to divorce itself from the language of its prior opinions which held that "[t]he grant of summary judgment, though appropriate when evidence of discriminatory intent is totally lacking, is generally unsuitable."[104] The court correctly reversed the grant of summary judgment for Proctor & Gamble and articulated a strong rule: "The defendants' explanation for their termination decisions is entirely plausible. However, the statistical, circumstantial, and direct evidence in the record. . . creates a genuine issue of material fact that defendant's proffered reason is a pretext."[105] This holding is the correct statement of the pretext-only line of cases in most jurisdictions.[106] However, the inclusion of language that essentially places a thumb on the plaintiff's side of the scale in employment discrimination cases makes the actual intent of the court misleading.

IV. *CHAPMAN V. A1 TRANSPORT*

Chapman v. A1 Transport[107] clears up this confusion by moving away from the Eleventh Circuit's misguided language and reaffirming the idea that a plaintiff must raise a genuine issue of material fact—whether through the evidence presented in the prima facie case or rebuttal evidence to the employer's proffered reasons—to survive summary judgment. In *Chapman,* the Eleventh Circuit moved closer to the Supreme Court's direction in *United States Postal Service v. Aikens*,[108] in which the Court stated that employment discrimination cases should not be treated any differently than other cases involving questions of fact.[109] In *Chapman*, the court was called on to decide John Chapman's claims under the ADEA.[110] The court granted a hearing to decide whether an employer may use subjective criteria in making employment decisions.[111] Chapman was employed as a claims supervisor from 1969

101. *Id.* at 852.
102. *Id.* at 851.
103. *See Maddow*, 107 F.3d at 852.
104. *Id.* at 851 (quoting *Hairston*, 9 F.3d at 921).
105. *Id.* at 852.
106. *See supra* notes 62-67 and accompanying text.
107. 229 F.3d 1012 (11th Cir. 2000).
108. 460 U.S. 711 (1983).
109. *Aikens*, 460 U.S. at 716.
110. *Chapman*, 229 F.3d at 1016.
111. *Id.*

to 1985 at Home Insurance Company.[112] However, between 1985 and 1988 he changed jobs three times, and in October 1988 he began working for A1 Transport.[113] A1 Transport was subsequently purchased by AIG Aviation, a subsidiary of American International Group (AIG).[114] Chapman interviewed for a position with American International Group Claims Services (AIGCS), another subsidiary of AIG, in October 1992.[115] In denying him the position, AIGCS cited Chapman's poor interview performance and his record of high job turnover rate in a relatively short period of time.[116] Chapman, who was sixty-one years old, claimed that his age and not his work history prevented him from obtaining this supervisory position.[117] Instead, AIGCS eventually hired four other employees who were all younger than Chapman.[118]

The defendant did not dispute the fact that Chapman had established a prima facie case because he met the burden of stage one of the *McDonnell Douglas* formula.[119] He was a member of a protected age group, he was subject to an adverse employment action, and he was qualified to do the job and was replaced by younger candidates.[120] When the burden shifted to the defendant to articulate nondiscriminatory reasons, the defendant produced evidence that Chapman was not impressive in his interview.[121] One of the interviewers was concerned about the number of times Chapman had changed jobs in the recent time period.[122] Chapman also did not give an impressive presentation of his skills.[123] When the burden shifted back to Chapman to prove that these two nondiscriminatory reasons were a pretext for discrimination, Chapman did not include any evidence in addition to that used to establish his prima facie case.[124] Chapman merely stated that the other candidates had held the same number of jobs over the course of their careers without addressing the issue of the recent job turnover.[125]

In granting the defendant's summary judgment motion, the court recognized its prior decisions which stated that "summary judgment in employment discrimination cases . . . is especially questionable."[126]

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112. *Id.* at 1017.
113. *See id.*
114. *Id.*
115. *Chapman*, 229 F.3d at 1017.
116. *Id.* at 1019.
117. *Id.* at 1016.
118. *Id.* at 1018.
119. *See id.* at 1028.
120. *Chapman*, 229 F.3d at 1028.
121. *Id.*
122. *Id.*
123. *See id.* at 1020.
124. *See id.* at 1021.
125. *Chapman*, 229 F.3d at 1025.
126. *Id.* (quoting Batey v. Stone, 24 F.3d 1330, 1336 (11th Cir. 1994)).

The court questioned whether this rule was ever followed in the past.[127] The holdings of the prior cases on this issue demonstrate that the rule was not followed but that this misleading language was included in many opinions. The court cited *Hicks* for the proposition that, even though discrimination deals with questions of intent, "none of this means that trial courts or reviewing courts should treat discrimination differently from other ultimate questions of fact."[128] The court then articulated a new standard which provided that "[t]he long and short of it is that the summary judgment rule applies in job discrimination cases just as in other cases. No thumb is to be placed on either side of the scale."[129]

As a result of this decision and, in particular, this language articulated by the court, reviewing courts now must proceed with the *Celotex* inquiry when reviewing summary judgments. Plaintiffs still bear the burden of proving there is an issue of material fact by a preponderance of the evidence. When a defendant points out that the plaintiff has not created a genuine issue of material fact, the burden returns to the plaintiff to raise an issue of fact regarding pretext. If the evidence for the prima facie case is strong enough to demonstrate pretext on its own, no further evidence is necessary. However, if it is not, the plaintiff can no longer proceed to the jury by merely resting on a prima facie case. "[C]ourts do not sit as a superpersonnel department that reexamines an entity's business decisions. No matter how medieval a firm's practices, no matter how high-handed its decisional process, no matter how mistaken the firm's managers, the ADEA does not interfere."[130] The inquiry should only involve whether the employer has explained his reasons and whether the plaintiff can rebut those reasons and create a genuine issue of material fact. No longer do plaintiffs get the benefit of the doubt because of the mere fact that intent is involved.

With the decision handed down in *Chapman*, the Eleventh Circuit cleared up its confusing and misleading language of prior opinions. It is arguable that the plaintiff was already given a helping hand in proving discriminatory intent with the advent of the *McDonnell Douglas* burden shifting formula. It is no longer necessary to compound a plaintiff's advantage by allowing many employment discrimination cases to survive summary judgment when no issue of fact has been raised. While there is some question as to whether the Eleventh Circuit was a jurisdiction which has always been "plaintiff-friendly," the court has clearly

127. *Id.* (citing Earley v. Champion Int'l Corp., 907 F.2d 1077, 1081 (11th Cir. 1990) ("Summary judgments for defendants are not rare in employment discrimination cases.")).

128. *Id.* at 1026 (quoting Hicks, 509 U.S. at 524).

129. *Id.* at 1026.

130. *Chapman*, 229 F.3d at 1030 (quoting Elrod v. Sears, Roebuck & Co., 939 F.2d 1466, 1470 (11th Cir. 1991)).

struck down any belief that employment discrimination defendants should rarely be granted summary judgment. Summary judgment is the proper vehicle for resolving claims not supported by the evidence. This vehicle should be available to defendants in employment cases just the same as in other types of cases. After almost a decade of misleading and confusing discourse on the subject, the Eleventh Circuit has finally given defendants the tools necessary to defend employment discrimination claims on equal ground.

V. CONCLUSION

The Supreme Court has articulated clear standards with respect to its development of the summary judgment standard. This useful tool for promoting judicial efficiency is just as easily used in the employment context as any other. The Court has also accommodated the difficulty plaintiffs face in proving discrimination with the *McDonnell Douglas* framework. That framework should not be exploited in order to get a case before a potentially sympathetic jury. Consequently, the Eleventh Circuit's decision in *Chapman* adequately balances the plaintiff's right to a trial by jury with the employer's right to make legitimate business decisions.

Benjamin D. McAninch