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New Year, Same Analysis – The Eleventh Circuit Reiterates Proper Standard for Evaluating Employment Discrimination Claims

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By [Paige S. Newman](#)

The *McDonnell Douglas* burden-shifting framework used to evaluate employment discrimination claims may not be permanently cast aside, but a recent decision reminds us that it is not the only means through which employees can prove that unlawful discrimination occurred. Specifically, in *Tynes v. Florida Department of Juvenile Justice*, the Eleventh Circuit Court of Appeals recently reiterated that the *McDonnell Douglas* burden-shifting framework, which we have all come to know and recite, is not a set of elements that an employee must prove to establish an employer's liability and prevail on summary judgment or at trial. Rather, *McDonnell Douglas* is an "evidentiary framework" that can help answer the question of whether unlawful discrimination was the reason for an employer's adverse employment action, but is not the only way to prove unlawful discrimination occurred.

The Well-Known Prima Facie Case

Employers (or at least their counsel) are intimately familiar with the *McDonnell Douglas* burden-shifting framework used to evaluate employment discrimination claims. Primarily at issue in *Tynes* was the employee's ability to establish a

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prima facie case of discrimination by showing the employee (1) belongs to a protected class, (2) was subjected to an adverse employment action, (3) was qualified to perform the job in question, and (4) was treated less favorably than similarly situated employees outside their protected class. There are several variations on how these components are described, based upon the context of the claim, but once satisfied, the burden of production lands back upon the employer, while the ultimate burden to prove unlawful discrimination remains with the employee. But what if the employee fails to establish a prima facie case? Is there still a path to victory? According to at least the Eleventh Circuit, the answer is yes.

The Facts of *Tynes*

Plaintiff Tynes was employed by the Florida Department of Juvenile Justice for 16 years. While Tynes was on medical leave, the Department conducted a review of staffing and personnel issues. After that review, the Department terminated Tynes, citing various reasons for the termination, including “poor performance, negligence, inefficiency or inability to perform assigned duties, violation of law or agency rules, conduct unbecoming of a public employee, and misconduct.” Tynes, however, had never received a negative performance review or any reprimands from the Department. Tynes filed suit against the Department, alleging race and sex discrimination in violation of Title VII of the Civil Rights Act, claiming that similarly situated white and male employees were treated differently and that the Department’s stated reasons for her termination were pretext for unlawful discrimination.

The jury ultimately returned a verdict in favor of Tynes, finding that “(1) race or sex was a motivating factor; (2) the Department would not have discharged Tynes if it had not taken into account her race or sex; and (3) Tynes’s race was a but-for cause of her termination.” The Department filed a renewed motion for judgment as a matter of law or, alternatively, for a new trial, arguing that Tynes

failed to establish a prima facie case of discrimination under the *McDonnell Douglas* framework because Tynes did not present comparators who were similarly situated to her in all material respects (the fourth element of the prima facie case). The district court denied the Department's motion, finding that Tynes had proffered sufficient circumstantial evidence regarding her comparators to establish her discrimination claims, and the credibility of the evidence was for the jury to decide. The Department appealed the district court's denial of its motion to the Eleventh Circuit.

The Eleventh Circuit's Opinion

The Eleventh Circuit ultimately held that *McDonnell Douglas* is an "evidentiary tool that functions as a procedural device designed only to establish an order of proof and production."

Specifically, *McDonnell Douglas* operates as a burden-shifting framework, by which (1) the employee first sets forth a prima facie case of discrimination by establishing each of the four elements set forth above, which entitles the employee to a "rebuttable presumption" of intentional discrimination; (2) the employer attempts to rebut that presumption by offering evidence of a non-discriminatory justification for the adverse employment action; and (3) the employee then tries to show that the non-discriminatory justification offered by the employer was pretextual and the "real reason" for the adverse action was discrimination.

The Court explained that parties often misunderstand the *McDonnell Douglas* framework and argue that an employee's failure to establish a prima facie case is the nail in the coffin on their employment discrimination claim. However, the Court clarified that *McDonnell Douglas* "is not an independent standard of liability" and "establishing the elements of the *McDonnell Douglas* framework is not, and never was intended to be, the *sine qua non* for a plaintiff to survive a summary judgment motion." Instead, establishing a prima facie case of discrimination under *McDonnell Douglas* forces the

employer to come forward with evidence explaining its actions, which the employee can then attempt to demonstrate are pretextual.

The Eleventh Circuit clarified that *McDonnell Douglas* is not a standard to prove liability and/or survive summary judgment because once an employer offers evidence of the reason for its actions under the framework, the prima facie case established by the employee “drops out of the picture” and the court has all of the evidence before it, at that point, to decide whether the employer discriminated against the employee. The Court went on to explain that *McDonnell Douglas* is only one method by which an employee can prove discrimination by circumstantial evidence, and an employee may still be able to prove discrimination even if they cannot satisfy this framework – for example, by presenting a “convincing mosaic of circumstantial evidence” that leads to an inference of discriminatory intent. And, if an employee fails to establish a prima facie case under *McDonnell Douglas*, this is only fatal to their discrimination claim if they also fail to put forward enough evidence for the jury to infer discrimination. The Court emphasized that “the analysis turns on the substantive claims and evidence in the case, not the evidentiary framework.” Because the Department failed to demonstrate why the record evidence could not support the jury’s verdict in favor of Tynes, and instead only challenged the jury’s verdict by arguing that Tynes failed to establish one element of the prima facie case, the Eleventh Circuit affirmed the district court’s order.

The Implications for Employers

So, what does this mean for employers? Technically speaking, nothing new, as the Eleventh Circuit simply reiterated its prior holdings standing for the same proposition – that the key inquiry in an employment discrimination case is not whether an employee has established a prima facie case under the *McDonnell Douglas* framework, but instead, whether there is sufficient evidence from which the

jury can find that the employer intentionally discriminated against the employee. That said, the Eleventh Circuit commented that parties, and even district courts in their opinions, often over-emphasize the importance of the *McDonnell Douglas* elements at the summary judgment stage and treat it as a substitute “standard” necessary to survive summary judgment. In other words, parties frame their motions for summary judgment centering on whether the employee can prove each element of the prima facie case, and if not, the employee’s claim fails. However, as explained by the *Tynes* court, the prima facie case should not be the only focus of an employer’s motion for summary judgment. Instead, an employer should emphasize why all of the evidence, taken together, fails to lead to an inference of intentional discrimination.

For guidance or questions regarding how this recent decision may impact the analysis of any employment claims your company may be facing, consult your Akerman Labor and Employment attorney.

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