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COMMENT

JONES V. OKLAHOMA CITY PUBLIC SCHOOLS: MISAPPLICATION OF *REEVES* IN AGE DISCRIMINATION

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I. INTRODUCTION

Many individuals face hardship in the workplace every day while simultaneously trying to achieve personal success and make valuable contributions to the general public welfare. Over time, one's skills become developed, effectual, and ultimately exceptional. Such force and capability can get lost through the subjective bias of age discrimination. People begin to feel powerless when their rights are stripped away and a job that has formed and shaped them as a person is immediately brought to an end. In the past forty-four years since the government first recognized the increasingly prevalent issue of age discrimination, courts have endeavored to adopt successful policies and standards to aid plaintiffs in their determination to seek justice. Complications arise when there is not an objective, rigid formula, leaving the court with too much subjective discretion. In *Jones v. Oklahoma City Public Schools*,

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the United States Court of Appeals for the Tenth Circuit held that if a plaintiff can establish a prima facie case of age discrimination and present sufficient evidence that reasons for her employment alteration were pretextual, then she has proven a case of age discrimination without the need for additional evidence.¹

This Comment begins with the history and background of the court's establishment of a framework for the burden of proof in age-discrimination actions and the exceptions to such standards. Next, this Comment describes the facts, procedural history, and opinion of *Jones*. Lastly, this Comment discusses how courts can misapply the law and the adverse effects that such violations can have on individuals.

II. HISTORY AND BACKGROUND

A. *The McDonnell Douglas Framework*

One of the most important pieces of civil-rights legislation concerning unlawful employment practices is Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on "race, color, religion, sex, or national origin."² In 1967, Congress enacted the Age Discrimination in Employment Act (ADEA), which extended protection against employment discrimination to individuals forty years of age or older.³ The Tenth Circuit has abided by the framework of *McDonnell Douglas Corp. v. Green* that established the precedential standard of proving pretext for discrimination in a Title VII action.⁴ In *McDonnell Douglas*, the U.S. Supreme Court set forth a

1. *Jones v. Okla. City Pub. Sch.*, 617 F.3d 1273, 1282 (10th Cir. 2010).

2. Civil Rights Act of 1964, Pub. L. No. 88-352, § 703, 78 Stat. 241, 255 (codified as amended at 42 U.S.C. § 2000e-2(a) (2006)).

3. Age Discrimination in Employment Act of 1967, Pub. L. No. 90-202, § 12, 81 Stat. 602, 607 (codified as amended at 29 U.S.C. § 623(a) (2006)).

It shall be unlawful for an employer—

- (1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;
- (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or
- (3) to reduce the wage rate of any employee in order to comply with this Act.

Id. § 4, 81 Stat. at 603 (codified as amended at 29 U.S.C. § 623(a)).

4. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 798 (1973).

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“three-step, burden-shifting method of proof” for plaintiffs⁵:

[T]he plaintiff must first demonstrate a prima facie case of unlawful discrimination. If she succeeds at this first stage, the burden of production then shifts to the employer to identify a legitimate, nondiscriminatory reason for the adverse employment action. Once the employer advances such a reason, the burden shifts back to the plaintiff to prove the employer’s proffered reason was pretextual.⁶

While the Supreme Court has not definitively ruled that the model applies to ADEA claims, courts continue to rely on the framework in this context.⁷

1. Establishing a Prima Facie Case of Age Discrimination

The plaintiff has the initial burden of establishing a prima facie case of discrimination.⁸ This can be accomplished by demonstrating that “1) she is a member of the class protected by the [ADEA]; 2) she suffered an adverse employment action; 3) she was qualified for the position at issue; and 4) she was treated less favorably than others not in the protected class.”⁹ “The Tenth Circuit liberally [interprets] the phrase ‘adverse employment action.’”¹⁰ Therefore, “[s]uch actions are not [only] limited to monetary losses in the form of wages or benefits.”¹¹ The circuit prefers “a case-by-case approach” to examine the particular facts of each situation.¹² However, “[a] mere inconvenience or an alteration of job

5. *Jones*, 617 F.3d at 1276 n.3.

6. *Id.* at 1278 (citing *McDonnell Douglas*, 411 U.S. at 802; *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 143 (2000)).

7. *See Reeves*, 530 U.S. at 142 (“This Court has not squarely addressed whether the *McDonnell Douglas* framework, developed to assess claims brought under § 703(a)(1) of Title VII of the Civil Rights Act of 1964 also applies to ADEA actions. Because the parties do not dispute the issue, we shall assume, *arguendo*, that the *McDonnell Douglas* framework is fully applicable here.” (citation omitted)); *Gross v. FBL Fin. Servs., Inc.*, 129 S. Ct. 2343, 2349–50 n.2 (2009).

8. *McDonnell Douglas*, 411 U.S. at 802.

9. *Jones*, 617 F.3d at 1279 (alteration in original) (citing *Sanchez v. Denver Pub. Sch.*, 164 F.3d 527, 531 (10th Cir. 1998)).

10. *Sanchez*, 164 F.3d at 532.

11. *Id.*

12. *Id.* (quoting *Jeffries v. Kansas*, 147 F.3d 1220, 1232 (10th Cir. 1999)).

responsibilities”¹³ is not an “adverse employment action.”¹⁴

2. The Legitimate, Nondiscriminatory Reason

After the plaintiff establishes a prima facie case, the burden “shift[s] to the employer to articulate some legitimate, nondiscriminatory reason for the employee’s rejection.”¹⁵ “[T]he defendant’s explanation of its legitimate reasons must be clear and reasonably specific”¹⁶ in order to “frame the factual issue with sufficient clarity so that the plaintiff will have a full and fair opportunity to demonstrate pretext.”¹⁷ Although the burden of persuasion stays with the plaintiff, “the defendant nevertheless retains an incentive to persuade the trier of fact that the employment decision was lawful.”¹⁸

3. Proving Pretext for Discrimination

Once the employer produces sufficient evidence of a nondiscriminatory reason for its decision, the burden shifts back to the plaintiff “to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.”¹⁹ A plaintiff “may succeed . . . 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 is unworthy of credence.”²⁰ “Under the pretext theory, an employee proves . . . discrimination by showing that the employer’s articulated reasons are false.”²¹

Another pretext analysis that the Tenth Circuit has not followed is

13. *Id.* (quoting *Crady v. Liberty Nat’l Bank & Trust Co.*, 993 F.2d 132, 136 (7th Cir. 1993)). See also *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998) (recognizing that an adverse employment action is “a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits”).

14. *Sanchez*, 164 F.3d at 532.

15. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

16. *Tex. Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 258 (1981).

17. *Id.* at 255–56.

18. *Id.* at 258.

19. *Id.* at 253.

20. *Id.* at 256.

21. J. Hagood Tighe, *The Refined Pretext-Plus Analysis: Employees’ and Employers’ Respective Burdens After Hicks*, 46 S.C. L. REV. 333, 340 (1995) (footnote omitted).

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the pretext-plus theory,²² which requires an employee to “show that the employer’s articulated reasons are false *plus* produce some additional evidence that the employer’s concealed reason was intentional discrimination.”²³

[T]he employee may prove that the employer’s reason for refusing to hire the employee was false. However, absent evidence that the employer’s reason constituted intentional discrimination, the employee’s action will fail. Confusion over the plus evidence comes primarily from a misconception that direct evidence of intentional discrimination is required. However, courts using this theory allow circumstantial evidence. This circumstantial evidence must be evidence of discriminatory intent, rather than an inference of discriminatory intent based on unsupported allegations.²⁴

B. The Reeves Exception

The *McDonnell Douglas* model demands that for a plaintiff to win on her action the court must not only “disbelieve the employer; the factfinder must *believe* the plaintiff’s explanation of intentional discrimination.”²⁵ When applicable, “the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose.”²⁶

“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 a prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant’s proffered reasons will *permit* the trier of fact to infer the ultimate fact of intentional discrimination.”²⁷

22. *Swackhammer v. Sprint/United Mgmt.*, 493 F.3d 1160, 1168 (10th Cir. 2007) (“However the plaintiff may choose to demonstrate pretext, we have definitively rejected a ‘pretext plus’ standard . . .”).

23. Tighe, *supra* note 21, at 340–41.

24. *Id.* at 341.

25. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147 (2000) (quoting *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 519 (1993)).

26. *Id.*

27. *Id.* (quoting *Hicks*, 509 U.S. at 511).

Nevertheless, this is not always true. Even when the plaintiff has established a prima facie case and presented sufficient evidence to repudiate the employer's explanation, there may be times where "no rational factfinder could conclude that the action was discriminatory."²⁸ This scenario is known as the *Reeves* exception.²⁹

For instance, an employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer's decision, or if the plaintiff created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred.³⁰

Courts look at several factors when weighing the evidence of pretext "including the strength of the [employee'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."³¹

III. JONES V. OKLAHOMA CITY PUBLIC SCHOOLS

A. Facts

Judy Jones started teaching for Oklahoma City Public Schools (OKC) in 1969.³² After thirty-three years of employment, in 2002, she was promoted to executive director of curriculum and instruction (EDCI).³³ Jones was fifty years old.³⁴ Her salary for the 2006-2007 fiscal year was \$98,270.³⁵ As of July 2006, Jones worked under Linda Brown, the interim superintendent.³⁶ Brown assigned Jones to Manny Soto and Linda Toure, "two of OKC's five executive directors in charge

28. *Id.* at 148.

29. *Jones v. Okla. City Pub. Sch.*, 617 F.3d 1273, 1280 (10th Cir. 2010).

30. *Reeves*, 530 U.S. at 148.

31. *Jones*, 617 F.3d at 1280 (alteration in original) (quoting *Reeves*, 530 U.S. at 148–49).

32. *Id.* at 1275.

33. *Id.*

34. *Jones v. Okla. City Pub. Sch.*, No. CIV-08-562-C, slip op. at 1 (W.D. Okla. Apr. 27, 2009).

35. *Jones*, 617 F.3d at 1275.

36. *Id.*

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of schools and support services”³⁷ who “asked Jones when she was going to retire.”³⁸ Brown also inquired about Jones’s retirement plans.³⁹

In 2007 OKC hired John Porter as permanent superintendent.⁴⁰ Soon thereafter, Porter decided to reorganize the executive team.⁴¹ He believed that Jones’s position could be excluded and her tasks assigned to existing directors, allowing for a “budget-neutral” reorganization.⁴² Porter ordered Michael Shanahan, OKC’s senior human resources officer, to notify Jones “that her position would be eliminated”⁴³ and she would be reassigned as the “principal at Horace Mann Elementary School for the 2007-2008 school year.”⁴⁴ Shanahan told Jones that her salary would remain the same for the following year only.⁴⁵ He also told her that Brown and Porter, with the aid of four other executive directors, decided to demote her.⁴⁶ Jones was also informed by Scott Randall, OKC’s senior finance officer, that she was the only director to be reassigned.⁴⁷ Randall clarified that Porter would have briefed him on the reassignment if it had been made for “budgetary reasons.”⁴⁸

As stipulated, Jones’s salary remained the same for the 2007-2008 school year.⁴⁹ Nonetheless, she endured hardship because of the transfer. Not only were her vacation benefits modified, but after the 2007-2008 school year, Jones’s salary decreased by \$17,000 to \$82,250, significantly altering her retirement benefits.⁵⁰ Furthermore, one month after reassigning Jones, Porter formed a new executive position—executive director of teaching and learning (EDTL).⁵¹ The new position was almost identical to that of EDCI.⁵² “Both positions required a master’s degree in curriculum and instruction, and the job responsibilities

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Jones v. Okla. City Pub. Sch.*, No. CIV-08-562-C, slip op. at 1 (W.D. Okla. Apr. 27, 2009).

45. *Jones*, 617 F.3d at 1275.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 1275–76.

52. *Id.* at 1276.

for both positions included oversight of programs designed to improve teacher instruction and curricular development.⁵³ Moreover, OKC hired a forty-seven-year-old for the new position.⁵⁴

B. Procedural History

Convinced that her demotion was due to age, Jones filed suit in the U.S. District Court for the Western District of Oklahoma alleging that OKC violated the ADEA.⁵⁵ OKC filed a motion for summary judgment,⁵⁶ rejecting the idea that Jones had been “demoted and arguing, in the alternative, that if Jones had suffered an adverse employment action it was due exclusively to the elimination of her former position.”⁵⁷

With seemingly cavalier overtones, District Judge Robin J. Cauthron granted OKC’s motion for summary judgment, calling Jones’s argument a “far-fetched conspiracy theory.”⁵⁸ Analyzing Jones’s ADEA claim under the *McDonnell Douglas* framework, the court concluded that she had established a prima facie case of age discrimination.⁵⁹ It found that she had suffered an adverse employment action because her transfer “resulted in a change in her vacation pay, her retirement benefits, and the prestige of her position.”⁶⁰ However, the court concluded that OKC met its burden under the second step by offering a legitimate, nondiscriminatory reason for the transfer.⁶¹ Porter had “decided to create a new deputy superintendent position in a revenue-neutral manner” and “Jones’[s] position was eliminated to fund the new position.”⁶² To satisfy the third step, establishing pretext, Jones observed that “funding for her previous position stayed on the books for the 2007-2008 fiscal year, and staff in her former department continued working in that department before and after the position of [EDTL] was created.”⁶³ In addition, Jones highlighted “the similarities between her previous

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*; see FED. R. CIV. P. 56(b).

57. *Jones*, 617 F.3d at 1276.

58. *Jones v. Okla. City Pub. Sch.*, No. CIV-08-562-C, slip op. at 7–8 (W.D. Okla. Apr. 27, 2009).

59. *Id.* at 4.

60. *Id.*

61. *Id.* at 5.

62. *Jones*, 617 F.3d at 1276.

63. *Id.*

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position and the new position.”⁶⁴ Lastly, she stated under oath that OKC directors had “made age-related comments regarding her retirement plans and that these comments occurred outside of the context of a normal course of conversation.”⁶⁵ Viewing the evidence in the light most favorable to Jones, the district court determined that there was “evidence from which a reasonable factfinder could rationally find Defendant’s proffered reason inconsistent or unworthy of belief.”⁶⁶

Still, the district court held in favor of OKC by applying the rare *Reeves* exception: “[T]he factfinder must be able to conclude, based on a preponderance of the evidence, that discrimination was a determinative factor in the employer’s actions—simply disbelieving the employer is insufficient.”⁶⁷ The court found that Jones’s “evidence for pretext [was] not particularly strong and a reasonable jury could very well find no inconsistencies in [OKC’s] position.”⁶⁸ The court found itself straining to locate evidence of age discrimination.⁶⁹ Out of all the evidence presented, the court focused on Brown’s testimony denying any involvement in the demotion, placing sole responsibility for the decision on Porter.⁷⁰ The court cast aside Shanahan’s comments suggesting that other directors had input in the decision, requiring Jones to offer “additional evidence suggesting that her age played a role regardless of who was involved.”⁷¹ In conclusion, the court found Jones’s ADEA claim “wholly lacking in detail or evidence” even when “viewed in the light most favorable” to Jones.⁷²

C. Opinion

Sitting for the Tenth Circuit were Circuit Judges Carlos F. Lucero, Mary Beck Briscoe, and Stephanie K. Seymour.⁷³ Writing for the court, Judge Lucero determined that the district court misapplied *Reeves*, erroneously holding Jones to the discredited “‘pretext plus’ [standard] in

64. *Id.*

65. *Id.*

66. *Jones*, No. CIV-08-562-C, at 6.

67. *Id.* at 7 (quoting *Miller v. Eby Realty Group LLC*, 396 F.3d 1105, 1111 (10th Cir. 2005)).

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 7–8.

73. *Jones v. Okla. City Pub. Sch.*, 617 F.3d 1273, 1274 (10th Cir. 2010).

rendering its decision.”⁷⁴ Consequently, the Tenth Circuit reversed the district court’s judgment and order granting the motion for summary judgment.⁷⁵ The case was remanded for further proceedings because the *Reeves* exception did not apply; “Jones was under no obligation to provide additional evidence of age discrimination.”⁷⁶

The standard of appellate review for a district court’s granting of summary judgment is *de novo*.⁷⁷ Summary judgment is proper if “there is no genuine issue as to any material fact and . . . the movant is entitled to judgment as a matter of law.”⁷⁸ The record must be viewed “‘in the light most favorable to [Jones], who opposed summary judgment.’”⁷⁹ Accordingly, the Tenth Circuit re-examined the record and applied the *McDonnell Douglas* analysis to ascertain whether Jones had established a *prima facie* case of age discrimination.⁸⁰ Then, it focused on whether the *Reeves* exception applied.⁸¹

1. *Jones* under the *McDonnell Douglas* Framework

Following the four-step standard for proving a *prima facie* case of age discrimination, the Tenth Circuit found that the district court “correctly determined that Jones suffered an adverse employment action.”⁸² First, since Jones was approximately sixty years old at the time of her reassignment,⁸³ she was a member of the class protected by the ADEA,⁸⁴ being an individual “of at least forty years of age.”⁸⁵

Second, the Tenth Circuit examined whether Jones suffered an adverse employment action.⁸⁶ It noted how the Tenth Circuit “liberally defines the phrase ‘adverse employment action’” by taking a “‘case-by-

74. *Id.* at 1275.

75. *Id.* at 1282.

76. *Id.*

77. *Id.* at 1277.

78. FED. R. CIV. P. 56(c)(2).

79. *Jones*, 617 F.3d at 1277 (alteration in original) (quoting *Thomas v. Int’l Bus. Machs.*, 48 F.3d 478, 484 (10th Cir. 1995)).

80. *Id.* at 1279.

81. *Id.* at 1280.

82. *Id.* at 1279.

83. *Id.* at 1276.

84. “The parties [did] not dispute that Jones demonstrated she was a member of the class protected by the ADEA . . .” *Id.* at 1279.

85. Age Discrimination in Employment Act of 1967, Pub. L. No. 90-202, § 12, 81 Stat. 602, 607 (codified as amended at 29 U.S.C. § 631(a) (2006)).

86. *Jones*, 617 F.3d at 1279.

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case approach.”⁸⁷ Factors a court looks for include a “significant change in employment status, . . . reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.”⁸⁸ The court recognized that although Jones’s previous salary continued into the next school year, she suffered a \$17,000 pay cut the following year.⁸⁹ As a result of her reassignment to elementary school principal, Jones lost some of her vacation benefits; her retirement benefits were also reduced due to the change in salary.⁹⁰

OKC argued “that Jones did not suffer an adverse employment action because she remained employed in a position with similar responsibilities and received a daily pay rate that was almost exactly the same as her per diem rate as an executive director.”⁹¹ The Tenth Circuit found OKC’s denial of Jones’s demotion false because serving as an executive director for the entire school system was certainly more prestigious than serving as elementary school principal “in the district’s organizational hierarchy.”⁹² Moreover, OKC’s argument that Jones’s salary reduction was not an adverse employment action proved ineffective because the decrease injured Jones’s personal financial situation and eliminated the benefits that accompanied her former position.⁹³ The Tenth Circuit disagreed with OKC that a “five-dollar reduction in daily pay” was not an adverse action when considering the sizeable amount she lost annually.⁹⁴ Hence, the court concluded that Jones suffered an adverse employment action.⁹⁵

Third, Jones was deemed qualified for the position at issue.⁹⁶ While she served as EDCI, Jones’s colleagues evaluated her performance “as satisfactory or better.”⁹⁷ Fourth, the Tenth Circuit found that Jones “was treated less favorably than others not in the protected class”⁹⁸ because OKC did not debate the issue and hence waived any argument on the

87. *Id.* (quoting *Sanchez v. Denver Pub. Sch.*, 164 F.3d 527, 532 (10th Cir. 1998)).

88. *Id.* (quoting *Hillig v. Rumsfeld*, 381 F.3d 1028, 1032–33 (10th Cir. 2004)).

89. *Id.*

90. *Id.* at 1279–80.

91. *Id.* at 1279 (internal quotation marks omitted).

92. *Id.* at 1280.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.* at 1279.

97. *Id.* at 1275.

98. *Id.* at 1279.

point on appeal.⁹⁹ Therefore, the Tenth Circuit determined that Jones had established a prima facie case of age discrimination.¹⁰⁰

2. *Jones* and the *Reeves* Exception

Next, the Tenth Circuit explored the district court's application of *Reeves*. The lower court found that despite Jones's establishment of a prima facie case of discrimination, "no reasonable juror could find that [OKC's] decision to reassign her was based on her age."¹⁰¹ It felt that Jones had presented "a weak issue of fact" as to OKC's reason for her reassignment and found no "independent evidence" of discrimination.¹⁰² Hence, it placed Jones's case within the *Reeves* exception, finding that Jones needed more evidence of age discrimination to succeed on her claim.¹⁰³

The Tenth Circuit, on the other hand, agreed with Jones that the *Reeves* exception did not apply to her case.¹⁰⁴ It noted that under *Reeves*, a juror may infer that the employer unlawfully discriminated based on a plaintiff's evidence satisfying the first step of *McDonnell Douglas* and by sufficient proof that the employer's reasoning is false in the second step of the inquiry.¹⁰⁵ Since Jones was held to a pretext standard, as opposed to a "pretext-plus" standard, she only had to establish a prima facie case of discrimination and produce enough evidence of pretext for discrimination in her reassignment.¹⁰⁶

In regard to the second step of the analysis, OKC presented two reasons for reassigning Jones.¹⁰⁷ First, Porter argued that he wanted to reorganize the executive staff in a "revenue-neutral fashion,"¹⁰⁸ yet the Tenth Circuit noted that Jones had shown that OKC continued to pay her former salary the year after her reassignment.¹⁰⁹ Also, Jones's former

99. *Id.* at 1279 n.5; *see also* *Jordan v. Bowen*, 808 F.2d 733, 736 (10th Cir. 1987) (finding that "[parties] who fail to argue [an] issue in their brief are deemed to have waived [that] contention on appeal").

100. *Jones*, 617 F.3d at 1280.

101. *Id.*

102. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 148 (2000). *See Jones v. Okla. City Pub. Sch.*, No. CIV-08-562-C, slip op. at 7 (W.D. Okla. Apr. 27, 2009).

103. *Jones*, 617 F.3d at 1280.

104. *Id.* at 1281.

105. *Id.* at 1280.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.* at 1281.

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staff continued to be employed in the same positions after she left.¹¹⁰ Moreover, the record showed that Randall told Jones that he would have been informed of the transfer if it were budget-related.¹¹¹ Second, Porter argued that Jones's former position could be "absorbed by other directors."¹¹² The Tenth Circuit inspected Jones's evidence that the EDTL position was "strikingly similar" to that of EDCI and was created only a month after her transfer.¹¹³ It also recognized that the new position was given to "someone thirteen years Jones'[s] junior."¹¹⁴ Therefore, the Tenth Circuit found that Jones had met the *McDonnell Douglas* framework after the third step by satisfying her burden of production and persuasion.¹¹⁵

The Tenth Circuit found that the district court erred in applying *Reeves* because the exception did not apply in Jones's case.¹¹⁶ When *Reeves* does apply, the exception demands additional evidence of discrimination, which is required for the "pretext-plus" standard.¹¹⁷ However, an inquiry into this exception was unnecessary because Jones had no duty to provide additional evidence of age discrimination after establishing that OKC's reassignment was pretextual.¹¹⁸ The Tenth Circuit found that the district court had trouble discerning the exception for two reasons.¹¹⁹ First, the court did not view the facts in the light most favorable to Jones.¹²⁰ As a result, the lower court found that Jones raised only a "weak issue of fact," but when analyzed in a more favorable light, the circuit recognized that she had supplied evidence of discrimination that the district court discarded.¹²¹ The Tenth Circuit noted that the lower court should have considered Shanahan's statement that three executive directors had made "age-related comments."¹²² Second, the circuit determined that even if Jones had presented a weak question of fact, the record lacked "abundant and uncontroverted independent

110. *Id.*

111. *Id.*

112. *Id.* at 1280.

113. *Id.* at 1281.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.* at 1280–81.

118. *Id.* at 1282.

119. *Id.* at 1281–82.

120. *Id.* at 1281.

121. *Id.* at 1281–82.

122. *Id.* at 1281.

evidence that no discrimination had occurred.”¹²³ In conclusion, the Tenth Circuit held that because the *Reeves* exception did not apply, the demand for additional evidence under the “pretext-plus” standard was unnecessary, and the district court’s granting of summary judgment was improper.¹²⁴

IV. ANALYSIS

Jones demonstrates how the law can be misapplied, adversely affecting individuals’ lives. The Tenth Circuit correctly reversed the district court’s granting of summary judgment because of the court’s wrongful application of the *Reeves* exception.¹²⁵ In fact, the error was so apparent that the circuit panel’s decision on appeal was unanimous.¹²⁶ Although the Tenth Circuit addressed several issues on appeal, the determinative question was whether the *Reeves* exception applied to the *McDonnell Douglas* framework in *Jones*’s situation.

Because the Tenth Circuit follows the *McDonnell Douglas* “case-by-case approach,”¹²⁷ there is no concrete formula for interpreting and determining a discrimination case; rather, courts view each unique situation through the lens of three standard guidelines. The consequence of such a standard is that plaintiffs and defendants bear the costs of litigation when the law is misapplied. Oftentimes, this prevents a party from seeking justice for the violations they encounter. *Jones* concedes that the mental and emotional demand of litigation is one factor that deterred her from moving forward on remand.¹²⁸

It is important to note that even the U.S. Equal Employment Opportunity Commission (EEOC) chose to study *Jones*’s case.¹²⁹ The EEOC “studies and [provides] information to labor unions, management, and the general public concerning the needs and abilities of older workers, and their potentials for continued employment and contribution to the economy.”¹³⁰ The Commission filed a brief of amicus curiae in

123. *Id.* at 1281–82.

124. *Id.* at 1282.

125. *Id.*

126. *Id.*

127. *Id.* at 1279.

128. Interview with Judy Jones, Plaintiff, in Okla. City, Okla. (June 11, 2011).

129. See Brief of Amicus Curiae the Equal Emp’t Opportunity Comm’n in Support of Plaintiff-Appellant and Reversal, *Jones*, 617 F. 3d 1273 (No. 09-6108).

130. Age Discrimination in Employment Act of 1967, Pub. L. No. 90-202, § 3(a), 81 Stat. 602, 602 (codified as amended at 29 U.S.C. § 622(a) (2006)).

support of Jones, advocating reversal of the district court's granting of summary judgment¹³¹:

The district court's treatment of the District's motion for summary judgment presents a situation strikingly similar to that condemned in *Reeves*. In *Reeves*, the Supreme Court addressed a Court of Appeals' decision in a case where the evidence was sufficient to establish both a prima facie case of age discrimination and that the employer's proffered reason for its action was unworthy of belief. The Court of Appeals held that "this showing, standing alone, was insufficient" to support a verdict in the plaintiff's favor, adding that the court "must, as an essential final step, determine whether [the plaintiff] presented sufficient evidence that his age motivated [respondent's] employment decision." As discussed above, the Supreme Court completely rejected this "final step," or pretext-plus, approach.¹³²

The EEOC went on to state that the district court had "misread[] *Reeves*" by engaging in the rejected "'pretext plus' analysis."¹³³ Although only persuasive authority, the EEOC's point of view in coordination with the Tenth Circuit's pretext analysis for age discrimination would prove helpful in a jury trial. Its brief submitted on behalf of Jones only reiterates the district court's error.

In terms of evidentiary proof for discrimination cases, particularly age-based claims, facts and circumstances may appear rather subjective. The court's purpose is to try and move away from a he-said-she-said argument and discover the truth. In the process, it is important for courts to attempt to fairly and accurately portray the parties' opposing views. The district court's analysis is an example of how a misapplication of the law can severely hinder a plaintiff's case in the midst of unfair or improper treatment. The district court, in its opinion, used very subjective language when interpreting Jones's evidence: "not particularly strong"; "[p]laintiff offers what can only be considered an unsupported far-fetched conspiracy theory wholly lacking in detail or evidence"; "it is not entirely clear that she believed the reassignment occurred because of

131. Brief of Amicus Curiae, *supra* note 129, at 17–18.

132. *Id.* at 17 (alteration in original) (citations omitted) (quoting *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 145–46 (2000)).

133. *Id.* at 18.

her age or the simple fact that other people didn't like her."¹³⁴ Considering the court's disregard of the testimony of witnesses such as Shanahan who affirmed comments suggesting the executives' age-related motives, its chosen language only confirms that the court did not view the evidence in the light most favorable to Jones.¹³⁵ Instead, the district court assessed all the evidence brought forth by OKC, placing heavy emphasis on Brown's testimony and Porter's authority to make decisions as superintendent.¹³⁶ The Tenth Circuit properly reallocated the perspective, weighing the evidence in a way most favorable to Jones.¹³⁷

Jones will be beneficial to future litigants in similar age-discrimination cases. This case reaffirms the Tenth Circuit's strong policy on using a pretext standard for discrimination analysis. The Tenth Circuit's holding aligns with former cases, such as *Adams v. Goodyear Tire & Rubber Co.*, where the court held that "*Reeves* does not constitute a significant change in the manner in which the Tenth Circuit . . . has traditionally applied *McDonnell Douglas* and the pretext analysis."¹³⁸ Therefore, *Jones* is a stable decision that will stand up over time in courts within the Tenth Circuit and beyond.

V. CONCLUSION

In *Jones*, the Tenth Circuit reaffirmed its standard under the *McDonnell Douglas* framework for discrimination cases by reversing the judgment of the district court and holding that a plaintiff in an age-discrimination case is not held to the "pretext-plus" standard of analysis. The court affirmed that the *Reeves* exception applies in rare circumstances; no additional evidence is required once a plaintiff has established that the alteration in her employment situation was pretextual. The Tenth Circuit clearly acknowledged that the district court misapplied the law in violation of Jones's constitutional rights and the ADEA. By taking a case-by-case approach, the circuit examined the unique facts of Jones's employment action and determined that she had established a prima facie case under the first step of the *McDonnell*

134. *Jones v. Okla. City Pub. Sch.*, No. CIV-08-562-C, slip op. at 7 (W.D. Okla. Apr. 27, 2009).

135. *Id.*

136. *Id.* at 5.

137. *Jones v. Okla. City Pub. Sch.*, 617 F.3d 1273, 1281–82 (10th Cir. 2010).

138. *Adams v. Goodyear Tire & Rubber Co.*, No. 96-4228-SAC, 2000 WL 1859000, at *1 (D. Kan. Nov. 9, 2000).

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Douglas model. Then, it found that OKC had produced a legitimate, nondiscriminatory reason for Jones's reassignment from executive director to elementary school principal. However, the Tenth Circuit concluded that Jones had met her burden under the third step by proving that OKC's decision to reassign her was pretextual. In conclusion, the Tenth Circuit agreed with Jones that the *Reeves* exception did not apply, and she was not required to submit to the "pretext-plus" standard based on her evidentiary presentation and satisfaction of proof. Without plaintiffs such as Jones who have a fierce determination to protect their constitutional rights in the face of adversity, our individual rights would continue to be threatened by misapplication of precedent. Judy Jones's sheer will and strength serve as a testament to future litigants who feel wronged by an issue deeper than what is merely right and wrong in the face of life's conflicts.