

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DOCKETING STATEMENT

Case Name: Rachel Tudor v. Southeastern Oklahoma State University, and The
Regional University System of Oklahoma

Appeal No. (if available) : 18-6165

Court/Agency Appealing From: U.S. District Court for the Western District of Oklahoma

Court/Agency Docket No.: CIV-15-324-C District Judge: Robin J. Cauthron

Party or Parties Filing Notice of Appeal/Petition: Southeastern Oklahoma State
University, and The Regional University System of Oklahoma

I. TIMELINESS OF APPEAL OR PETITION FOR REVIEW

A. APPEAL FROM DISTRICT COURT

1. Date notice of appeal filed: Sept. 28, 2018

a. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing notice of appeal: No

b. Is the United States or an officer or an agency of the United States a party to this appeal? No. In the case below, the United States settled its claims and was dismissed as a party with prejudice. Dkt # 206 (10/17/2017)

2. Authority fixing time limit for filing notice of appeal:

Fed. R. App. 4 (a)(1)(A) _____ Fed. R. App. 4(a)(6) _____
Fed. R. App. 4 (a)(1)(B) _____ Fed. R. App. 4(b)(1) _____
Fed. R. App. 4 (a)(2) _____ Fed. R. App. 4(b)(3) _____
Fed. R. App. 4 (a)(3) _____ Fed. R. App. 4(b)(4) _____
Fed. R. App. 4 (a)(4) X Fed. R. App. 4(c) _____
Fed. R. App. 4 (a)(5) _____
Other: _____

3. Date final judgment or order to be reviewed was **entered** on the district court docket: June 6, 2018 & Sept. 18, 2018

4. Does the judgment or order to be reviewed dispose of **all** claims by and against **all** parties? *See* Fed. R. Civ. P. 54(b).

 Yes

(If your answer to Question 4 above is no, please answer the following questions in this section.)

a. If not, did district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done?

b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. ' 1292(a)? _____

c. If none of the above applies, what is the **specific** statutory basis for determining that the judgment or order is appealable? _____

5. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).

a. Give the filing date of any motion that tolls the time to appeal pursuant to Fed. R. App. P. 4(a)(4)(A) or 4(b)(3)(A): _____

 July 3, 2018 & July 5, 2018

- b. Has an order been entered by the district court disposing of any such motion, and, if so, when? Yes. Sept. 18, 2018 & Sept. 25, 2018

6. Cross Appeals.

- a. If this is a cross appeal, what relief do you seek beyond preserving the judgment below? *See United Fire & Cas. Co. v. Boulder Plaza Residential, LLC*, 633 F.3d 951, 958 (10th Cir. 2011)(addressing jurisdictional validity of conditional cross appeals).
Vacating judgment and dismissal of the claims below; in the alternative, a new trial ordered; in the alternative, remittitur of damages.
- b. If you do not seek relief beyond an alternative basis for affirmance, what is the jurisdictional basis for your appeal? *See Breakthrough Mgt. Group, Inc. v. Chukchansi Gold Casino and Resort*, 629 F.3d 1173, 1196-98 and n. 18 (10th Cir. 2010)(discussing protective or conditional cross appeals).
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2. LIST ALL RELATED OR PRIOR RELATED APPEALS IN THIS COURT WITH APPROPRIATE CITATION(S). If none, please so state.

Tudor v. Southeastern Oklahoma State University, et al., No. 18-6102
(June 6, 2018)

3. GIVE A BRIEF DESCRIPTION OF THE NATURE OF THE UNDERLYING CASE AND RESULT BELOW.

This action was brought by the United States on March 30, 2015 and it was based on an EEOC complaint filed by Dr. Rachel Tudor, a transgender individual and former professor at Southeastern Oklahoma State University (“SOSU”). The complaint alleged, pursuant to Title VII of the Civil Rights Act, sex discrimination and retaliation surrounding Dr. Tudor’s tenure denial. Dr. Tudor intervened as a Plaintiff on May 4, 2015, and added a claim alleging that SOSU created a hostile

work environment. The United States eventually settled its claims and was dismissed with prejudice on October 17, 2017. [NOTE: The United States and its attorneys have no continuing role in the underlying action and no prospective role in either the appeal or cross-appeal. Therefore, defendants-appellees/cross-appellants request that the United States be removed in the case caption and its attorneys be termed on CM/ECF.]

On November 20, 2017, after a week-long trial, a jury found for Dr. Tudor on the retaliation and discrimination claims and for Defendants on the hostile work environment claim. The jury awarded Dr. Tudor \$1,165,000, an amount the district court later remitted to the Title VII statutory cap of \$300,000. In addition, the district court awarded Dr. Tudor back pay and front pay.

Before, during, and after trial, Defendants contended that Title VII was not applicable, that Plaintiff's expert should not have been allowed to testify, that the evidence was insufficient to sustain a verdict, and, in the alternative, that the award should have been reduced below the statutory cap. These arguments were made in various motions to dismiss, a motion for judgment as a matter of law, and a renewed motion for judgment as a matter of law or for a new trial. All such motions were denied. Notably, the district court struck Defendants' renewed motion for judgment as a matter of law or for a new trial as being untimely filed, even though it was filed within the period specified by Fed. R. Civ. P. 50(b).

Prior to the court disposing of post-judgment motions, Plaintiff filed a notice of appeal that the Tenth Circuit abated until the district court disposed of all post-judgment motions affecting the judgment. This occurred on Sept. 25, 2018.

4. IDENTIFY TO THE BEST OF YOUR ABILITY AT THIS STAGE OF THE PROCEEDINGS, THE ISSUES TO BE RAISED IN THIS APPEAL.

Defendants-Appellees/Cross-Appellants seek to demonstrate:

1. That the district court misapplied this circuit's precedent in *Etsitty v. Utah Transit Authority*, 502 F.3d 1215 (10th Cir. 2007) by holding that Dr. Tudor's allegations of transgender discrimination could be adjudicated as Title VII "gender stereotyping" claims.
2. That Plaintiff's expert witness on tenure should have been excluded by the district court.
3. That Defendant's renewed motion for judgment as a matter of law was timely filed under Fed. R. Civ. P. 50(b) and should not have been struck.

4. That Plaintiff produced insufficient evidence to sustain a judgment on the discrimination and retaliation claims; in particular, that Plaintiff did not produce sufficient evidence of gender stereotyping, did not demonstrate qualification for the job sought, and did not sufficiently show that Defendants' legitimate, non-discriminatory reasons were pretextual.
5. That, in the alternative, the district court erred when it awarded Dr. Tudor the maximum damages amount available under 42 U.S.C. § 1981(a) when the evidence presented at trial failed to support such award.

5. ADDITIONAL INFORMATION IN CRIMINAL APPEALS.

- A. Does this appeal involve review under 18 U.S.C. ' 3742(a) or (b) of the sentence imposed? _____
- B. If the answer to A (immediately above) is yes, does the defendant also challenge the judgment of conviction? _____
- C. Describe the sentence imposed. _____

- D. Was the sentence imposed after a plea of guilty? _____
- E. If the answer to D (immediately above) is yes, did the plea agreement include a waiver of appeal and/or collateral challenges?

- F. Is defendant on probation or at liberty pending appeal? _____
- G. If the defendant is incarcerated, what is the anticipated release date if the judgment of conviction is fully executed?

H. Does this appeal involve the November 1, 2014 retroactive amendments to §§ 2D1.1 and 2D1.11 of the U.S. Sentencing Commission's Guidelines Manual, which reduced offense levels for certain drug trafficking offenses?

NOTE: In the event expedited review is requested and a motion to that effect is filed, the defendant shall consider whether a transcript of any portion of the trial court proceedings is necessary for the appeal. Necessary transcripts must be ordered by completing and delivering the transcript order form to the Clerk of the district court with a copy filed in the court of appeals.

VI. ATTORNEY FILING DOCKETING STATEMENT:

Name: Zach West Telephone: (405) 522-4798

Firm: State of Oklahoma, Office of Attorney General

Email Address: zach.west@oag.ok.gov

Address: 313 NE 21st St, Oklahoma City, OK 73105

PLEASE IDENTIFY ON WHOSE BEHALF THE DOCKETING STATEMENT IS FILED:

- A. Appellant
- Petitioner
- Cross-Appellant

B. PLEASE IDENTIFY WHETHER THE FILING COUNSEL IS

- Retained Attorney
- Court-Appointed
- Employed by a government entity

(State of Oklahoma, Office of Attorney General)

Employed by the Office of the Federal Public Defender.

_____/s/ Zach West_____ 10/10/2018_____
Signature Date

NOTE: A copy of the final judgment or order appealed from, any pertinent findings and conclusions, opinions, or orders, any tolling motion listed in Fed. R. App. P. 4(a)(4)(A) or 4(b)(3)(A) and the dispositive order(s), any motion for extension of time to file notice of appeal and the dispositive order **must be submitted with the Docketing Statement.**

The Docketing Statement must be filed with the Clerk via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF can be found on the court's website, www.ca10.uscourts.gov.

CERTIFICATE OF SERVICE

I, Zach West hereby certify that on 10/10/2018 I electronically filed a copy of the foregoing **Docketing Statement** with the Clerk of the Court using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Zach West

Signature

October 10, 2018

Date

Zach West

Office of the Oklahoma Attorney General

313 NE 21st St, Oklahoma City, OK 73105

Oklahoma City, OK 73105

[Full name and address of attorney]