UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

# Daniel Smith v. Ochsner Health System

No. 18-31264, United States Court of Appeals for the Fifth Circuit (April 17, 2020)

## SUMMARY

**Key Legal Topics:** FLSA overtime exemption; highly compensated employee (HCE) exemption; administrative exemption; procurement as exempt duty; waiver of arguments on appeal. **Holding:** The Fifth Circuit affirmed summary judgment for the employer, holding that an organ procurement coordinator earning over $120,000 was exempt from overtime under the HCE exemption because he customarily and regularly performed procurement duties directly related to the employer's business operations, even without exercising significant discretion. The court also held that the employee waived his argument that his work was primarily manual by failing to raise it in district court.

## CASE DETAILS

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| COURT | United States Court of Appeals for the Fifth Circuit |
| WRITING FOR THE COURT | Leslie H. Southwick; James E. Graves Jr.; Kurt D. Engelhardt |
| JURISDICTION | Federal |
| DECIDED | April 17, 2020 |
| DOCKET | 18-31264 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | Appeal from summary judgment in favor of defendants on FLSA overtime claim |
| STANDARD OF REVIEW | De novo review of summary judgment |
| PRECEDENTIAL VALUE | Published |
| PARTIES | Daniel G. Smith v. Ochsner Health System; Ochsner Clinic Foundation |

## TOPICS

employment law · flsa · summary judgment · appellate procedure · standard of review · waiver

## PRACTICE AREAS

Employment Law · FLSA Litigation

## QUESTIONS PRESENTED

1. Whether Smith customarily and regularly performed exempt duties under the highly compensated employee exemption.
2. Whether Smith primarily performed non-manual work.
3. Whether Smith's work was directly related to Ochsner's general business operations.
4. Whether Smith waived the argument that his work was primarily manual by failing to raise it in district court.

## HOLDINGS

1. Smith was exempt as a highly compensated employee because he customarily and regularly performed procurement duties, which are directly related to management or general business operations, and he waived the argument that his work was primarily manual.

## KEY QUOTATIONS

> *"Customarily and regularly means a frequency that must be greater than occasional but which, of course, may be less than constant. Tasks or work performed customarily and regularly includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks."* (at 11)

> *"Courts are to interpret them by giving a fair reading, neither a broad nor a narrow one."* (at 4)

> *"Work directly related to management or general business operations includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities."* (at 8)

## FACTUAL BACKGROUND

Daniel Smith was employed as an organ procurement coordinator at Ochsner Health System from 2001 to 2017. He had no high school diploma or advanced degrees. His duties included responding to organ donation calls, evaluating donor medical histories, verifying consent, communicating with surgeons, arranging organ transportation, and completing reports. From 2014 to 2017, his annual salary exceeded $120,000. Smith sued for overtime pay under the FLSA, claiming he was not exempt.

## PROCEDURAL HISTORY

Smith sued Ochsner for unpaid overtime under the FLSA. Ochsner moved for summary judgment on the affirmative defense that Smith was exempt as a highly compensated administrative employee. The district court granted summary judgment. Smith appealed.

## DISPOSITION

affirmed

## CASES CITED

- United States v. Lawrence, 276 F.3d 193 (5th Cir. 2001)
- Fontenot v. Upjohn Co., 780 F.2d 1190 (5th Cir. 1986)
- Encino Motorcars, LLC v. Navarro, 138 S. Ct. 1134 (2018)
- Icicle Seafoods, Inc. v. Worthington, 475 U.S. 709 (1986)
- Dalheim v. KDFW-TV, 918 F.2d 1220 (5th Cir. 1990)
- Owsley v. San Antonio Indep. Sch. Dist., 187 F.3d 521 (5th Cir. 1999)
- Mangaroo v. Nelson, 864 F.2d 1202 (5th Cir. 1989)
- Dewan v. M-I, L.L.C., 858 F.3d 331 (5th Cir. 2017)
- Zannikos v. Oil Inspections (U.S.A.), Inc., 605 F. App'x 349 (5th Cir. 2015)
- Keelan v. Majesco Software, Inc., 407 F.3d 332 (5th Cir. 2005)
- Keenan v. Tejeda, 290 F.3d 252 (5th Cir. 2002)
- United States v. Olano, 507 U.S. 725 (1993)
- McManaway v. KBR, Inc., 852 F.3d 444 (5th Cir. 2017)