

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

September 15, 2011

No. 10-60095

Lyle W. Cayce
Clerk

GEORGE DULIN,

Plaintiff - Appellant

v.

BOARD OF COMMISSIONERS OF THE
GREENWOOD LEFLORE HOSPITAL,

Defendant - Appellee

Appeal from the United States District Court
for the Northern District of Mississippi

Before BARKSDALE, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:

ON PETITION FOR REHEARING

The petition for rehearing is GRANTED. We WITHDRAW our earlier opinion, *Dulin v. Board of Commissioners of Greenwood Leflore Hospital*, 646 F.3d 232 (5th Cir. 2011), in its entirety, and substitute the following:

We have reconsidered our opinion in the light of the Supreme Court's holding in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 148 (2000) that a "plaintiff's prima facie case [of discrimination], combined with sufficient evidence to find that the employer's asserted justification [for termination] is false, may permit the trier of fact to conclude that the employer

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unlawfully discriminated.” Upon reconsideration, we now conclude that there is a triable issue of fact that requires a jury to decide fact and credibility issues. *See id.* at 150 (“Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)) (internal quotation marks omitted)). We hold that the district court reversibly erred in granting judgment as a matter of law under Federal Rule of Civil Procedure 50(a) to the Board of Commissioners on Dulin’s claim under 42 U.S.C. § 1981. Consequently, the judgment of the district court is VACATED, and the case is REMANDED for further proceedings consistent with this order.