

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**

**File Name: 09a0091n.06**

**Filed: February 3, 2009**

**No. 08-5384**

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

|                               |   |                               |
|-------------------------------|---|-------------------------------|
| GLEN McDANIEL,                | ) |                               |
|                               | ) |                               |
| Plaintiff-Appellant,          | ) |                               |
|                               | ) | ON APPEAL FROM THE UNITED     |
| v.                            | ) | STATES DISTRICT COURT FOR     |
|                               | ) | EASTERN DISTRICT OF TENNESSEE |
| KINDRED HEALTHCARE, INC., dba | ) |                               |
| Kindred Hospital,             | ) |                               |
|                               | ) |                               |
| Defendant-Appellee.           | ) |                               |

Before: MARTIN and COOK, Circuit Judges; WATSON, District Judge\*

COOK, Circuit Judge. Plaintiff-appellant Glen McDaniel appeals the decision of the district court to enter summary judgment for defendant-appellee Kindred Healthcare, Inc. McDaniel sued Kindred Healthcare, Inc. under Title VII and the Age Discrimination in Employment Act (“ADEA”). On appeal, McDaniel does not press his ADEA claim and does not challenge the district court’s determination that the statute of limitations bars some of his Title VII claims. As for the claim he does appeal, our review of the record, the applicable law, and the parties’ briefs convinces us that the district court judge’s memorandum opinion carefully and correctly set out the facts and the governing law, and because a full opinion from this court would be duplicative and serve no

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\*The Honorable Michael H. Watson, United States District Judge for the Southern District of Ohio, sitting by designation.

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jurisprudential purpose, we affirm the grant of summary judgment to defendant-appellee, adopting the reasoning of the district court's February 26, 2008 memorandum resolving McDaniel's timely Title VII claims.

We reject McDaniel's argument, drawn from a law review article written by Professor Suja A. Thomas, *Why Summary Judgment is Unconstitutional*, 93 VA. L. REV. 139 (2007), that summary judgment violates the Seventh Amendment. This argument lacks merit. We agree with a prior panel of this court that recently examined the same law review article and rejected the same argument:

Although the historical examination that Professor Thomas provides is interesting . . . [t]he Supreme Court has held that summary judgment is constitutional, *see Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 336, (1979) (citing *Fidelity & Deposit Co. v. United States*, 187 U.S. 315, 319–21, for support of the proposition that summary judgment does not violate the Seventh Amendment), and it has continued to apply the Rule 56 summary judgment standard. *See, e.g., Beard v. Banks*, 548 U.S. 521 (2006). Thus, it would be inappropriate for us to hold that the summary judgment standard is unconstitutional.

*Cook v. McPherson*, 273 Fed. App'x 421, 425 (6th Cir. 2008).

Affirmed.