

Party Must Do More than Indirectly Mention an Issue to Preserve It for Appeal

9.2.2010

Brad A. Catlin

Today, the 7th Circuit issued a decision that highlights the importance of the arguments that are made to a trial court. In *Weber v. Universities Research Assn., Inc.*, Case No. 08-1957, the plaintiff sued her former employer for sex discrimination and retaliation in violation of Title VII. A plaintiff asserting a claim of discrimination or retaliation under Title VII may choose to prove her case under either the direct or indirect method and the district court granted summary judgment to the employer, finding that the plaintiff did not attempt to present any direct evidence of discrimination or retaliation.

On appeal, the plaintiff argued that she did produce evidence sufficient to survive summary judgment under both the direct and indirect methods. However, the Court found that she had waived any argument regarding the direct evidence.

After reviewing Weber's submissions to the district court opposing URA's motion for summary judgment, we find that Weber indeed failed to sufficiently raise the direct method of proof to preserve the issue for appeal. A single sentence that mentions a theory of direct proof—suspicious timing¹—is not enough to preserve the issue for appeal, especially where Weber apparently did nothing more to indicate to the district court that she was pursuing the direct method of establishing her retaliation claim.

This case is a reminder that you must present some argument on all issues that you would like to raise on appeal. A single sentence that infers that you are raising an issue is not enough.