

**THIRD STAGE OF THE CHATGPT-4 APPEAL EXPERIMENT: Appellate Opinion Submitted for first time and Detailed Summaries and Analysis Provided**



Now I am going to provide you with the actual Opinion entered in this appeal. Please provide a complete and very detailed summary of the opinion. The Opinion can be found at: <https://aiethicscom.files.wordpress.com/2023/10/11th-cir-opinion-mckay-v.-miami-dade-cty.-36-f.4th-1128.pdf>

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## **Summary of the 11th Circuit Opinion in McKay v. Miami-Dade County**

### **Case Background**

The case revolves around Brandi McKay's appeal against the District Court's summary judgment that denied her claims under the Fair Labor Standards Act (FLSA) for minimum wage and overtime payments. McKay participated in Miami-Dade County's Medical Examiner's Forensic Imaging Preceptorship Program and claimed she was an employee of the County. The District Court ruled that she was an intern, not an employee, using the primary beneficiary test adopted by the Eleventh Circuit in *Schumann v. Collier Anesthesia, P.A.* (Page 1).

### **Factual Context**

McKay applied for the Program in 2016 and began her internship in April 2019. The Program involved workbook assignments, training in the morgue, and taking autopsy photographs. McKay filed a suit against Miami-Dade County in February 2020, claiming she was a county employee and that the County used the Program to save labor costs. Both parties filed cross-motions for summary judgment, and the District Court ruled in favor of the County (Page 2).

## **Legal Analysis**

The Court reviewed the grant of summary judgment de novo and examined whether McKay was an "employee" under the FLSA. The Court noted that the FLSA's definitions are broad but frustratingly circular. The Court considered two exceptions: the volunteer exception for public agencies and the internship exception established by case law (Pages 2-3).

The Court discussed the history and purposes of both exceptions. It concluded that both the internship and volunteer exceptions are applicable to public agencies. The Court reasoned that the internship exception derives from the statutory definition of "employ," which the Supreme Court interpreted as not including all persons who work for their own advantage on the premises of another (Page 5).

## **Court's Conclusion**

The Court agreed with the District Court that McKay was an intern, not an employee, and affirmed the District Court's judgment (Page 1).

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Please summarize in a complete and detailed manner the concurring opinion and the dissent.

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## **Summary of the Concurring Opinion and Dissent in McKay v. Miami-Dade County**

### **Concurring Opinion by Judge Jordan**

The concurring opinion by Judge Jordan agrees with the majority on certain aspects but diverges significantly on others. Specifically, Judge Jordan concurs with Parts II, III.A, and III.B.i of the court's opinion. These parts likely address foundational issues such as the jurisdiction,

standard of review, and perhaps some uncontroversial aspects of the Fair Labor Standards Act (FLSA) as it applies to the case.

However, Judge Jordan dissents from Parts I and III.B.ii of the court's opinion. The dissent focuses on the "trainee exception" to the FLSA set out in *Walling v. Portland Terminal Co.*, 330 U.S. 148, 67 S. Ct. 639, 91 L. Ed. 809 (1947). Judge Jordan argues that when the evidence and inferences are viewed in the light most favorable to Ms. McKay, they create a jury question as to whether Ms. McKay comes within this trainee exception for all the time she worked in Miami-Dade County's Forensic Imaging Preceptorship Program. This suggests that Judge Jordan finds the summary judgment inappropriate because a reasonable jury could find in favor of Ms. McKay ("Page 10 of 19").

### **Detailed Grounds for the Dissent**

1. **Questioning the "Grossly Excessive" Standard:** The dissent contends that a jury could find that McKay was employed after the first month of the Program, challenging the majority's reliance on the "grossly excessive" standard for determining the length of beneficial learning ("Page 9,10").
2. **Critique of Schumann Factors:** The dissent takes issue with the majority's application of the Schumann factors, particularly the fifth and sixth factors. These factors likely relate to the length of the Program and the benefits McKay provided to Miami-Dade County. The dissent argues that these factors could lead a jury to determine that McKay was an employee ("Page 9").
3. **Totality of Circumstances:** The dissent suggests a "totality of the circumstances" test instead of the Schumann factors for analyzing whether McKay was a "trainee" under Portland Terminal or an employee ("Page 8,7").
4. **Issues with Summary Judgment:** The dissent argues that even if the facts are undisputed, the inferences that can be drawn from those facts are contested. Therefore, summary judgment should be denied ("Page 14").
5. **FLSA Interpretation:** The dissent seems to argue that the majority's interpretation of the FLSA is flawed, particularly concerning whether McKay was an employee given the length of her time as a "trainee" and her possible displacement of other employees' work ("Page 14,15").

In summary, the dissent by Judge Jordan is rooted in a nuanced interpretation of the FLSA and the standards for summary judgment. It suggests that the majority's approach could unduly narrow the scope of who is considered an "employee" under the FLSA, thereby potentially excluding individuals like Ms. McKay who could otherwise have valid claims.

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Please analyze the Majority Opinion of Affirmance written Judge TJOFLAT and joined in by Judge JILL PRYOR, and prepare a memorandum of anything in the opinion that may be somewhat surprising or unexpected. Also provide a memorandum with a critical analysis of the majority opinion and any errors that were arguably made. Please include any other comments you may have on the majority opinion.

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### Memorandum 1: Surprising or Unexpected Elements in the Majority Opinion

**Subject: Analysis of Surprising Elements in the Majority Opinion by Judge TJOFLAT in McKay v. Miami-Dade County**

#### Introduction

The majority opinion in McKay v. Miami-Dade County, penned by Judge TJOFLAT and joined by Judge JILL PRYOR, upheld the District Court's ruling that Brandi McKay was an intern, not an employee, under the Fair Labor Standards Act (FLSA). While the opinion largely aligns with existing jurisprudence, there are some elements that may be considered surprising or unexpected.

#### Surprising Elements

##### 1. Broad Application of the Internship Exception

The majority opinion extends the internship exception to public agencies, a move that could have far-reaching implications for unpaid internships in the public sector. This broad application may be surprising given the remedial nature of the FLSA, which generally aims to extend protections to workers.

##### 2. Limited Discussion on Social Equity

Given the increasing scrutiny on unpaid internships and their potential to exacerbate social inequities, the absence of a thorough discussion on this aspect is somewhat surprising. The opinion does not delve into the broader societal implications of its ruling.

##### 3. Emphasis on "Grossly Excessive" Standard

The majority opinion leans heavily on the "grossly excessive" standard for determining the length of beneficial learning in an internship. This standard could be viewed as a high bar for interns to clear in order to be considered employees under the FLSA.

## **Conclusion**

While the majority opinion is largely in line with existing case law, its broad application of the internship exception, limited discussion on social equity, and emphasis on the "grossly excessive" standard are elements that may be considered surprising or unexpected.

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## **Memorandum 2: Critical Analysis of the Majority Opinion**

### **Subject: Critical Evaluation of the Majority Opinion by Judge TJOFLAT in McKay v. Miami-Dade County**

#### **Introduction**

This memorandum offers a critical analysis of the majority opinion in McKay v. Miami-Dade County, focusing on potential errors and areas for scrutiny.

#### **Critical Points**

##### **1. Interpretation of FLSA Protections**

The majority's broad application of the internship exception could be seen as a restrictive interpretation of the FLSA, which is generally construed liberally to apply its protections widely.

##### **2. Summary Judgment Standard**

The majority's affirmation of the summary judgment could be critiqued for not adequately considering the "totality of the circumstances," a standard suggested by the dissent. The majority's approach arguably does not give sufficient weight to factual nuances that could be better assessed by a jury.

##### **3. Lack of Consideration for Social Equity**

The majority opinion does not address the potential social equity concerns related to unpaid internships, missing an opportunity to provide a more nuanced interpretation that considers broader societal implications.

##### **4. Reliance on Schumann Factors**

The majority's heavy reliance on the Schumann factors could be seen as an overly rigid framework that does not adequately capture the complexities of modern labor relations.

#### **Conclusion**

While the majority opinion is well-reasoned in many respects, it arguably falls short in its interpretation of the FLSA's scope, its application of the summary judgment standard, and its consideration of broader societal implications. These shortcomings warrant further scrutiny and could form the basis for future legal challenges.

## **Additional Comments**

The majority opinion, while legally sound in many aspects, could benefit from a more nuanced approach that takes into account the evolving nature of labor relations and the ethical considerations surrounding unpaid internships.

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Please analyze the Dissenting Opinion of Judge Jordan and prepare a memorandum of anything in the opinion that may be somewhat surprising or unexpected. Also provide a memorandum with a critical analysis of the dissenting opinion and any errors that were arguably made. Please include any other comments you may have on the dissenting opinion.

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## **ChatGPT**

### **Memorandum 1: Surprising or Unexpected Elements in the Dissenting Opinion**

**Subject: Analysis of Surprising Elements in the Dissenting Opinion by Judge Jordan in McKay v. Miami-Dade County**

#### **Introduction**

Judge Jordan's dissenting opinion in McKay v. Miami-Dade County diverges from the majority on key points, particularly regarding the application of the Fair Labor Standards Act (FLSA) and the appropriateness of summary judgment. While the dissent is rooted in a nuanced interpretation of the law, there are elements that may be considered surprising or unexpected.

#### **Surprising Elements**

##### **1. Challenge to "Grossly Excessive" Standard**

Judge Jordan's dissent challenges the majority's reliance on the "grossly excessive" standard for determining the length of beneficial learning. This is surprising given that this standard has been applied in similar cases.

##### **2. Critique of Schumann Factors**

The dissent takes issue with the majority's application of the Schumann factors, which have been widely used in similar cases. This critique suggests a willingness to reevaluate established frameworks.

### **3. Emphasis on "Totality of Circumstances"**

The dissent's suggestion to use a "totality of the circumstances" test is somewhat unexpected, as it diverges from the more structured approach generally favored in legal analyses.

### **Conclusion**

Judge Jordan's dissenting opinion contains several surprising elements, including his challenge to the "grossly excessive" standard, his critique of the Schumann factors, and his emphasis on a "totality of the circumstances" test.

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## **Memorandum 2: Critical Analysis of the Dissenting Opinion**

### **Subject: Critical Evaluation of the Dissenting Opinion by Judge Jordan in McKay v. Miami-Dade County**

#### **Introduction**

This memorandum offers a critical analysis of Judge Jordan's dissenting opinion in McKay v. Miami-Dade County, focusing on potential errors and areas for scrutiny.

#### **Critical Points**

##### **1. Departure from Established Frameworks**

Judge Jordan's critique of the Schumann factors and suggestion to use a "totality of the circumstances" test could be seen as a departure from established legal frameworks, which could create uncertainty in future cases.

##### **2. Summary Judgment Standard**

While the dissent argues against the appropriateness of summary judgment, it could be critiqued for not providing a clear alternative standard or approach that courts should follow.

##### **3. Interpretive Stretch**

The dissent's interpretation of the FLSA as a remedial statute that should be broadly applied is not universally accepted and could be seen as an interpretive stretch.

#### **Conclusion**

While Judge Jordan's dissenting opinion offers a nuanced interpretation of the FLSA and the standards for summary judgment, it could be critiqued for its departure from established legal frameworks, its lack of a clear alternative to summary judgment, and its potentially broad interpretation of the FLSA.

#### **Additional Comments**

The dissenting opinion, while offering a fresh perspective on the issues at hand, could benefit from a more detailed explanation of the alternative frameworks and standards it suggests. This would provide clearer guidance for future cases and potentially address some of the criticisms outlined above.

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