

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
No. 08-13646  
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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT FEBRUARY 3, 2009 THOMAS K. KAHN CLERK
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D. C. Docket No. 04-00562 CV-4-CLS

WENDELL F. GILLEY, an individual and  
as class representative,

Plaintiff-Appellant,

versus

MONSANTO COMPANY, INC., a corporation,  
MONSANTO COMPANY SALARIED EMPLOYEES'  
PENSION PLAN, et al.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Alabama  
\_\_\_\_\_

(February 3, 2009)

Before MARCUS, KRAVITCH and ANDERSON, Circuit Judges.

PER CURIAM:

After oral argument and careful consideration, we conclude that the judgment of the district court is due to be affirmed. We conclude that plaintiff cannot circumvent the law of the case established in Gilley v. Monsanto Co., Inc., 490 F.3d 848 (11thCir. 2007). Therefore, plaintiff's claims in Count I and V are foreclosed. With respect to his claim based upon new evidence, we conclude that the evidence is not new, and that plaintiff had ample opportunity to present that evidence in the hearing before the district court prior to the first appeal. Nor is there any other meritorious exception to the law of the case. With respect to plaintiff's claims in Counts II, III and IV, plaintiff's initial brief on appeal failed to preserve the claims, and in any event the claims are without merit.

AFFIRMED.