

No. 18-1242

In The
Supreme Court of the United States

ENDRE' GLENN,

Petitioner,

v.

NORDIC SERVICES, INC.,

Respondent.

**On Petition For A Writ Of Certiorari
To The Court Of Appeals Of Washington, Division 1**

**BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Nordic Services, Inc. is a Washington Corporation. There are no parent corporations or publicly-held companies owning 10% or more of Respondent's stock.

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SUMMARY OF ARGUMENT

Appellant Endre Glenn’s (“Glenn”) Petition For Writ Of Certiorari should be denied, because the Petition does not pose any question of federal law nor did the state courts below decide any such question. Only matters of state law were argued and decided below. Furthermore, Glenn’s claims of a denial of due process and equal protection under the U.S. Constitution, even had they been presented below, are factually and legally unsupportable.



ARGUMENT

I. BACKGROUND OF UNDERLYING LAWSUIT

The underlying lawsuit was filed by Respondent Nordic Services, Inc. (“Nordic”) due to failure to pay any portion of Nordic’s \$5,995.60¹ charge for post-water-damage construction work on the Glenn house. In response to Nordic’s lawsuit Glenn asserted a couple of minor workmanship-related complaints and a counterclaim for alleged injury sustained while moving his own furniture.

The underlying lawsuit was filed by Nordic to (a) foreclose Nordic’s construction lien against Glenn’s property, (b) obtain judgment against Glenn and (c) compel arbitration per the parties’ contract with litigation stayed pending arbitration. Superior Court Judge

¹ This was the amount that Glenn had agreed to pay per the parties’ signed contract.

Catherine Shaffer ordered private arbitration per the parties' contract.

Charles Burdell, retired King County Superior Court Judge, retained through Judicial Dispute Resolutions ("JDR"), served as arbitrator.

In both the trial court and subsequent arbitration proceedings Endre Glenn appeared *pro se* on behalf of himself and co-Defendant, Margaret Glenn.

In both the trial court and arbitration proceedings, Glenn succeeded in transforming a modest \$6,000.00 claim into a cause celebre. He was uncooperative,² repeatedly sought (often obtaining) delays of proceedings and filed multiple unconventional motions – running up the legal expense for Nordic in the proceedings. Judge Shaffer ruled that Glenn engaged in:

“conduct in this proceeding that is unnecessarily and unreasonably increased Plaintiff’s costs and that the Court finds to be vexatious, intended to delay, frivolous and not undertaken in good faith”

and was twice sanctioned for such conduct with a separate judgment having been entered for sanctions

² For example: refusing to agree initially to arbitrate despite the clear arbitration provisions in the contract he signed, refusing to stipulate to or even propose an arbitrator he would approve of, refusing to permit a site visit for Nordic to assess his complaints until Judge Burdell so ordered, refusing to answer certain deposition questions until ordered to do so.

in the amount \$3,090.00, which judgment of 1/30/17 Glenn did not appeal.

Glenn participated aggressively in the legal proceedings below – both in the trial court and in private arbitration – with two exceptions. First, both Endre and Margaret Glenn inexplicably failed to show up for the arbitration hearing, and neither bothered to call in to explain their absences while Judge Burdell, three Nordic witnesses and two Nordic attorneys³ waited for them to appear. It is noteworthy that the undated medical record Glenn attached to his instant Petition For Review⁴ scheduling some type of procedure for 10/21/16 was never provided to the Arbitrator or trial court. Furthermore, Glenn never at any time communicated after the hearing to Nordic counsel or Judge Burdell to explain their failure to attend the hearing.⁵

³ Nordic had two attorneys engaged as the injury counter-claim asserted by Glenn that was defended by separate counsel for Nordic. Counterclaim counsel for Nordic flew up from Oregon and the undersigned drove to Seattle from Marysville for the hearing that the Glenns boycotted.

⁴ This of course must have been provided *prior* to the 10/21/16 surgery date. The Arbitration hearing was scheduled for and took place with a no-show, no-communication by both Glenn and co-defendant, Margaret Glenn on 10/28/16.

⁵ For the first time in Glenn's Petition For Writ Of Supersedeas, Temporary Stay And Real Property As Alternative Security In Lieu Of Supersedeas Bond heard by the Court Administrator/Clerk, he claims that he "was ill and unable to attend" the hearing. (See Petition @ p.2, line 4). Glenn had never previously made this claim in his subsequent filings in the trial court or otherwise, and he says nothing about co-defendant Margaret Glenn's health who similarly failed to attend the hearing despite being obligated to

Glenn's second failure to participate occurred when Nordic filed its Motion To Confirm Arbitration Award. Despite being duly served, Glenn filed no response to that Motion. Accordingly Judge Shaffer entered the 1/27/17 Judgment And Order Confirming Arbitration Award from which Glenn now appeals.

Glenn subsequently attempted to challenge the 1/27/17 Judgment by filing a belated Motion To Vacate (without explaining or attempting to justify his failure to oppose the Nordic's Motion that generated the Judgment) that was denied by Judge Shaffer as untimely.

On appeal the Washington State Court Of Appeals affirmed the trial court in all respects rejecting Glenn's appeal. The Washington State Supreme Court thereafter denied Glenn's Petition For Discretionary Review.

II. PETITION FOR CERTIORARI SHOULD BE DECLINED

Glenn's Petition should be declined as it presents no question of federal law decided, or even presented, below in Washington State courts. In this regard, Glenn argued no issue of federal law and cited no federal statutes, cases or the U.S. Constitution in the Washington State trial court in support of his objections to the private arbitration procedure and award upon which he based his state court appeals. All of his

attend by JDR arbitration rules and a CR 43(f)(1) mandatory Notice To Attend served upon her. Endre Glenn *never* claimed in the trial court or in arbitration that he or Margaret Glenn failed to show due to illness.

arguments and complaints to the trial court were based on state statutes and state non-statutory law relating to private arbitrations.

Thereafter, in Glenn's appeal of the trial court decision to the Washington State Court Of Appeals he again raised no issue of federal law and invoked no federal statutes, federal cases or the U.S. Constitution in support of his appeal. He again relied exclusively upon Washington State statutes and cases relating to private arbitrations.

Only in his Petition For Discretionary Review to the Washington State Supreme Court did Glenn mention, only in passing, the U.S. Constitution. This mention was found at page 16 of Glenn's Petition For Review and is the one and only reference among all of his filings in the trial court and Washington appellate courts to federal law. Glenn stated:

Parties are technically deprived of their procedural due process rights under the Fourteenth Amendment and Pennsylvania's constitution when they are not afforded full opportunities to present evidence before a court. U.S.C.A. Const. Amend. 14; Const. Art. I, §1. *City of Philadelphia v. Fraternal Order of Police Lodge No. 5 (Breary)*, 604 Pa. 267, 985 A.2d 1259 (2009). Nordic Services, and their subcontract [sic] acted in bad faith, and intentionally withheld this exculpatory evidence. Glenn's key witness Rob Tooley, a former employee of VAN WILD Furnishings, advised the homeowner he will not testify in this litigation NORDIC v. Glenn.

The Washington State Supreme Court denied Glenn's Petition For Review terminating his state appeal. No Washington Court made any ruling in this litigation interpreting, citing or discussing any federal law (statutory or constitutional), and Glenn never argued that any federal law was violated prior to the single, above-quoted reference in his Petition For Discretionary Review to the Washington State Supreme Court.

Accordingly, Glenn did not present or preserve in state court proceedings any question of federal law for the U.S. Supreme Court to address. Moreover, Glenn has not and cannot demonstrate in support of his instant Petition per Supreme Court Rule 10(c) that:

“a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.”

Glenn ultimately only presented below complaints regarding the state court's interpretation and application of state law regarding private arbitrations, complaints that the state trial and appellate courts have rejected.

III. FACTUAL/PROCEDURAL MISSTATEMENTS AND DISTORTIONS IN PETITION

Glenn's instant Petition sets forth an inaccurate and misleading statement of the underlying facts and

proceedings in the trial court and in private arbitration. An accurate factual and procedural account follows with document references being to state court clerk's papers ("CP") constituting the record that was before the state appellate courts.

A. Appointment Of Judge Charles Burdell As Arbitrator.

In the state trial court Judge Shaffer's 3/4/16 Order (CP 99-101) compelling arbitration provided verbatim the relief requested by Nordic in its Motion To Compel Arbitration (CP 42-51). That Motion had been filed and served upon Glenn's then attorney in October, 2015 and noted for 10/20/15. The requested relief granted by Judge Shaffer included the following provision:

That the matter shall be arbitrated by the Hon. Charles Burdell, Hon. George Finkle or Hon. Steve Scott of Judicial Dispute Resolution, LLC at Plaintiff's option based upon availability and fees charged unless none of them can so serve or the parties agree subsequently to some other arbitrator.

Nordic sought this relief in its Motion due to the difficulties already encountered with Glenn, which made it seem unlikely that Glenn would agree soon (or ever) to any particular arbitrator.

When Glenn appeared *pro se* before Judge Shaffer, he raised no objection to that provision. He in fact signed the Order that included that provision as

“Approved For Entry” (CP 101). Glenn chose instead only to argue at the hearing that his injury counter-claim should not be arbitrated but instead tried to a jury.

Moreover, 42 days prior to the 3/4/16 hearing on 1/21/16 I transmitted to Glenn a letter hoping to avoid the hearing altogether. That letter (CP 110) solicited Glenn’s input and cooperation to identify and amicably resolve any issues regarding Nordic’s then-pending Motion. The letter (CP 110) stated in part:

If you have some alternative suggestion for an arbitrator from one of those organizations (JDR, WAMS or JAMS), please let me know as soon as possible. We may be able to agree and be able to enter an agreed Order avoiding the 2/19/16 hearing altogether. If you have any *other* concerns regarding my proposed Order, please also advise me.

If we can reach agreement as to the terms of an agreed Order, time and legal fees can be saved, and my client will be seeking reimbursement of all its legal fees from you if, as I expect, we prevail on the claim. Thus, the savings in legal expense benefits you as well.

Glenn did not respond to that letter and the scheduled hearing took place.

In Nordic’s opposition to a subsequent Glenn Motion to Amend (CP 105-111) that was deemed by Judge Shaffer a motion for reconsideration, Nordic’s counsel represented to the trial court that the three JDR

(“Judicial Dispute Resolution, LLC”) arbitrators referenced in Nordic’s Motion and the 3/4/16 Order had no present or past close personal or professional relationship with Nordic or him. They were designated because they were judged to be capable, experienced former Superior Court Judges having experience as described in the JDR website with construction disputes and, in the case of both Judge Burdell and Judge Scott, personal injury claims as well.

Glenn never at any time identified to the Court, to Nordic or to Nordic’s counsel any particular individual he wished to nominate to serve as arbitrator nor did he ever specifically object to Judge Burdell until the eve of the Arbitration hearing when Glenn in his so-called Motion for Emergency Relief (CP 307-365) asked trial court Judge Shaffer to remove Judge Burdell as arbitrator.

Judge Shaffer’s designation of three individuals including Judge Burdell as the pool from which to select the arbitrator was reasonable. Revised Code of Washington (“RCW”) 7.04A.110 provides:

- (1) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. The arbitrator so appointed has all the powers of

an arbitrator designated in the agreement to arbitrate or appointed under the agreed method.

Glenn was plainly not denied due process respecting the court-ordered appointment of Judge Burdell as arbitrator as he had every opportunity in Superior Court (and in response to Nordic's counsel's aforesaid written invitation) to present any concerns and objections to Nordic's proposed arbitrators as well as to propose alternative candidates. He failed to avail himself of such opportunities.

B. Trial Court And Arbitrator Rulings RE Discovery And Continuance Of Hearing.

Glenn claims that trial Judge Shaffer committed reversible error and denied him due process in refusing to grant his request to continue the arbitration hearing. That request was made by Glenn in his simultaneously filed Motion For Emergency Relief (CP 209-219) and Motion To Stay Arbitration Proceedings (CP 193-208) dated 10/19/16. Glenn also filed a Motion To Shorten Time (CP 185-192) on that date.

Glenn filed these Motions on 10/19/16 noting them to be heard the following day (10/20/16) (CP 220-222). The already once-continued arbitration hearing was scheduled 10/28/16.

Judge Shaffer denied Glenn's Motion to Shorten Time stating that it did not comply with Court rules and also denied his request for oral argument (CP 388). Glenn proceeded to refile his Motion for Emergency

Relief (CP 307-365), Motion to Stay Arbitration (CP 366-384) and Motion to Shorten Time (CP 298-306) along with a Notice for Hearing which listed two different hearing dates 10/25/16 and 10/27/16 (CP 304-306).

Judge Shaffer denied Glenn's Motions in her Order of 10/28/16 (CP 397-399) stating:

- (A) It is not at all clear that Defendant Glenn complied with the Court rules as this Court's law clerk/bailiff directed, as the Response indicates that no court order rescheduling this Motion or calendar note for motion was provided. This Motion is hence denied on procedural grounds, for failure to follow the Court rules.
- (B) In addition, the Motion is denied on its merits as frivolous. No basis for seeking emergency relief has been shown. Nor has any basis been provided for this court to intervene in discovery deadlines or remove the arbitrator.
- (C) Terms are not imposed at this time, because the court has not been provided with a basis to assess the hours and appropriate hourly rate for the time required to respond to the materials opposing counsel did receive.

Nordic's Response (CP 389-396) to these Glenn Motions set forth facts establishing that Glenn's complaints lacked merit. In this regard, Judge Burdell had granted virtually every motion that Glenn had made

in the arbitration to that date including authorizing Glenn's requested discovery; limiting Nordic's discovery of Glenn's medical history and requiring medical record transmittal by regular mail rather than email; granting Glenn's 9/7/16 motion to continue the original 9/28/16 hearing date to 10/28/16⁶ and granting his Motion To Compel Discovery and to issue a subpoena requested by Mr. Glenn. (CP 389-396).

Glenn was thus granted an initial continuance by Judge Burdell. It was only when Glenn requested a second continuance that Judge Burdell for the first time denied a Glenn motion.

While Judge Burdell did not articulate his reasons for the denial, they were apparent. The discovery Glenn complains about not timely receiving was a request that a non-party subcontractor generate a "list" for him of the names and personal information regarding current and former employees by the use of a subpoena for documents-only – not testimony. That was an improper use of a records subpoena and instead would require under Washington law testimony, a different type of document request or a deposition upon written

⁶ As stated by Judge Burdell in paragraph 16 of his 12/5/16 Arbitration Award (CP 512-519): "On the same day, Endre Glenn submitted a Motion to Reschedule Arbitration Brief Deadline and Arbitration Hearing which 'Request(s) the Court grants [sic] a minimum of 45 days to resolve discovery issues.' On September 12, 2016 the Glenns' motion was granted and the hearing was continued 51 days from the date of receipt of the motion to Friday, October 28, 2016 at 9:00 am."

questions to properly target this information. (CP 389-396).

Additionally, the employee information was provided in any event, notwithstanding the technical deficiency of his subpoena, in time (2+ weeks prior to the hearing) for him to subpoena the former employee to provide testimony at a deposition or the hearing itself.

Judge Burdell is an experienced and impartial arbitrator, and a respected former Washington State Superior Court Judge. Glenn made no showing such as would justify the overturning of his decision in this regard – much less his removal as arbitrator.

Again, while Glenn disagrees with Judge Burdell's and Superior Court Judge Shaffer's failure to grant him a second continuance of the arbitration hearing, he was not denied due process. His requests were considered and justifiably rejected by both Judge Burdell and Judge Shaffer.

Furthermore, Glenn at no time made a showing of (1) what evidence would have been adduced had another continuance been granted or (2) why he for some reason could not have generated any such evidence via a witness subpoena for a pre-arbitration deposition or a subpoena to appear at the arbitration hearing itself.

Glenn had the opportunity to be heard in person at the hearing, to call and subpoena witnesses for testimony, to confront and cross-examine Nordic's witnesses and to have the matter heard before a neutral, experienced retired judge. Instead, he subpoenaed no

witnesses for testimony, presented no evidence and failed to show up for the hearing. Incredibly, neither Glenn nor co-defendant, Margaret Glenn, bothered to call (or email) Judge Burdell or Nordic counsel to inform them he and Margaret did not plan to attend.

Judge Burdell states very clearly in this regard in his Arbitration Award (CP 512-519):

21. Neither of the Glenns communicated with me or Nordic's attorneys regarding their failure to appear prior to or on the day of the hearing.
22. Nordic's attorneys, the witnesses and I waited until after 10:00 am on Friday, October 28, 2016 for the Glenns to appear or to otherwise communicate. They did neither. Later that day, I was informed that Judge Catherine Shaffer denied the Glenns motion to continue the October 28, 2016 hearing and to have me removed as arbitrator.
23. On October 28, 2016, Nordic was prepared to present evidence through testimony, declarations, and documents as set forth in its Pre-hearing Statement of Proof to support its claim for breach of contract, validation and foreclosure of its Lien and denial of Defendant Endre Glenn's counterclaim for personal injury.
24. No evidence was submitted by the Glenns in opposition to Nordic's contract claims

or by Endre Glenn in support of his counterclaim for personal injury.

CONCLUSION

For the reasons cited above, it is respectfully requested that the Court deny Glenn's Petition For Writ Of Certiorari.

Respectfully submitted,

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