

No. _____

IN THE
SUPREME COURT
OF THE UNITED STATES

Jael Watts,

Petitioner,

v.

Michael K. Allen
7551 Great Swan Court
Alexandria, VA 22306

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE VIRGINIA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the trial court's failure to provide advance written hearing notices, as required by state procedural rules, constitutes a denial of the Petitioner's fundamental right to due process, which is guaranteed by the Fourteenth Amendment.

PARTIES TO THE PROCEEDINGS

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The Petitioner is Jael Watts. The Respondent is Michael K. Allen.

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OPINIONS BELOW

The Orders and Opinions of the Virginia Supreme Court are unreported and reprinted in the appendix at A-1.

The July 9, 2018 Virginia Supreme Court Order affirmed the November 8, 2017 Order of the Alexandria Virginia Circuit Court.

The orders of the Alexandria Virginia Circuit Court are unreported and reprinted in the Appendix at A-2.

JURISDICTION

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The Order of the Virginia Supreme Court affirming the November 8, 2017 Order of the Alexandria Virginia Circuit Court was entered on July 9, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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The First Section of the Fourteenth Amendment to the Constitution of the United States of America is set out in the Appendix at A-9.

STATEMENT OF THE CASE

On January 23, 2015, the Petitioner stopped at a non-functioning traffic signal and then proceeded traveling East into the intersection of Duke and Washington Streets in Alexandria, Virginia.

After entering the intersection, and crossing two lanes of oncoming traffic, the vehicle operated by the Petitioner was struck on the passenger front side by a vehicle traveling North on Washington Street, which was operated by the Respondent, Michael Allen.

The Petitioner submitted a claim to the Respondent, USAA, Michael Allen's vehicle liability insurer, on February 26, 2015, for monetary damages, stemming from damage to the vehicle operated by the Petitioner, which were sustained during the collision.

The Petitioner's claim for reimbursement for vehicle damage, which damages had been fully paid by the Petitioner at the time the claim was submitted, were denied by the insurer, USAA.

At the time that it denied the Petitioner's claim, the Respondent, USAA, possessed

multiple forms of conclusive evidence that the Respondent, Michael Allen, was the sole cause of the vehicular crash, and resulting damage to the Petitioner, including: (1) witness statements, (2) the verbal admission of fault by the Respondent, Mr. Allen, and (3) the damage profile of the vehicle operated by Mr. Allen, which established the head on collision of Mr. Allen's vehicle with the front passenger side of the vehicle operated by the Petitioner..

Despite knowledge of its own liability, and in contravention of its legal duty to voluntarily resolve a meritorious damage claim, the Respondent, USAA, nonetheless wrongfully denied the Petitioner's claim.

On January 19, 2017, the Petitioner instituted separate tort claims in Alexandria Circuit Court against Michael Allen and USAA. The Appellant's tort claim alleged joint and several liability between USAA and Michael Allen for the damage sustained by the Appellant.

Based on tort theories of negligence and recklessness, the Petitioner's complaint alleged that Michael Allen was the sole cause of the collision, in that he failed to stop at the non-functioning traffic signal, drove at an excessive rate of speed, and failed to maneuver his vehicle to avoid the collision.

Similarly, the Petitioner's complaint alleged that the Respondent, USAA, also acted with negligence by wrongfully failing to settle the claim, despite clear evidence of its liability, as well as that of its insured.

On April 12, 2017, in response to the demurrer of the Respondent, Michael Allen, the 18th District Court dismissed Respondent USAA from the Petitioner's suit. App. 9.

In response, the Petitioner filed a Petition for Appeal of the circuit court party dismissal with the Virginia Supreme Court on July 11, 2017.

The Respondent, Michael Allen, next motioned the 18th District Court on October 11, 2017 to compel the deposition of the Petitioner. App. 17.

Without observing the advance notice requirements of the Virginia Court rules, the District Court heard and granted the Respondent's motion in the absence of the Petitioner. App. 12

The certificate of service, which accompanied the motion to compel, indicates that the Respondent did not mail notice of the motion hearing to the Appellant until

October 4, 2017. App. 18.

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The Petitioner received the notice of the October 11, 2017 motion hearing on Friday, October 13, 2017.

In response, the Respondent forwarded a letter, postmarked October 16, 2017 to the Respondent's counsel of record notifying counsel that, due to prior work obligations involving out of state travel, the Petitioner would be unavailable for deposition until November 20, 2017 or later. This letter prompted no response from the Respondent or Respondent's counsel.

The Respondent next moved the district court, on November 8, 2017, to discharge the Appellant's complaint, for failure to comply with the October 4, 2017 order to compel. App. 14.

In further contravention of the advance hearing notice requirements of the Virginia Court rules, the district court again heard and granted the Respondent's motion for dismissal, in the absence of the Petitioner, on November 8, 2017. App. 7. The Respondent's certificate of service for that motion indicates that a hearing notice was not mailed to the Appellant until October 31, 2017. App. 16.

The Petitioner received notice of the November 8, 2017 hearing on November 10, 2017, two days after the hearing took place.

As provided by Virginia Court Rule 5:9, the Petitioner filed a Notice of Appeal on December 7, 2017. App 24 and 33.

The Petitioner also timely filed a Petition for Appeal to the Virginia Supreme Court on February 5, 2018, as required by Virginia Court rule 5:17. App 26 and 34.

The 18th District Court's Order dismissing the Petitioner's suit was affirmed by the Virginia Supreme Court on July 9, 2018. App. 3.

The Virginia Supreme Court did not address any of the Petitioner's substantive claims, and instead held, without further comment or explanation, that the Petitioner's objections to the trial court had not been "properly preserve[d]." App. 3.

REASONS FOR GRANTING THE WRIT

The trial court's arbitrary disregard of the Virginia court rules' mandatory advance hearing notice provisions constitutes a denial of the Petitioner's federal Constitutional right to due process.

A final civil judgment is a form of Constitutionally protected property right subject to the full guarantees of the Due Process Clause of the Fourteenth Amendment.

Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 228 (1995); McCullough v. Virginia, 172 U.S. 102, 123-24 (1898); Logan v. Zimmerman Brush Co., 455 U.S. 422, 430 (1982); Mathews v. Eldridge, 424 U.S. 319, 332 (1976).

Co-existing with guaranteed access to an impartial hearing is the right to receive "... notice reasonably calculated ... to apprise interested parties of the pendency of the action ..." Armstrong v. Manzo, 380 U.S. 545, 565 (1965).

In Memphis Light, this Court found that, in addition to protecting a litigant's right to know of impending proceedings, the Due process clause's notice mandate also safeguards each party's right to adequately prepare for her participation in the hearing. Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 14 (1978).

As this Court further acknowledged in Fuentes, notice is not Constitutionally complaint, if not timely. To serve its intended purpose, notice must be afforded "...at a time when deprivation [of a litigant's property interest] can still be prevented." Fuentes v. Shevin, 407 U.S. 67, 82 (1983).

Indeed, federal Due Process protections exist to insulate litigants from the arbitrary action of the government. Wolff v. McDonnell, 418 U.S. 539 (1974) citing Dent V. West Virginia, 129 U.S. 114, 123 (1889).

Therefore, a tribunal's unilateral decision to ignore the procedure specified by a governing provision of law for adjudicating a controversy is a denial of fundamental procedural due process. County of Sacramento v. Lewis, 523 U.S. 833, 845 (1995).

In striking down the holding of a state Board of Immigration appeals, because the Board's adjudicatory process was inconsistent with state regulation, this Court noted that the applicable state regulations possessed "the force and effect of law." United States ex. Rel. Accardi v. Shaughnessy, 347 U.S. 260, 265 (1954).

Since the Board's adjudication of the matter was inconsistent with the "prescribed procedure" specified by the regulations, the Board's decision was set aside as violative of the Petitioner's Due Process right to a fair hearing. Id. At 268.

Here, the Virginia Supreme Court's ruling, which affirmed the conduct of the Virginia district court, represents a two fold divestment of the Petitioner's Due Process rights.

The Virginia Supreme Court Rules require mailed notice of a motion hearing to be received by an opposing party at least ten (10) days prior to the hearing.

While Rule 4:15(b) requires "reasonable notice [to be written] ... and served at least seven days before the hearing", Rule 1:7 enlarges the reasonable notice period by an additional three (3) days.

When a party is permitted to act only after serving notice upon the opposition, Rule 1:7 forestalls the performance of such action by "... three (3) days ... when the notice is served by mail..."

Thus, the Virginia Court Rules permit counsel to present a circuit court motion only

after at least ten (10) days have elapsed since written notice was received by the opposing party.

However, the Petitioner was not in receipt of notice of the motion hearing to compel her deposition until the day after the hearing took place.

Similarly, the Petitioner's notice of the motion hearing dismissing her action altogether was not received for two days after the hearing was conducted, and the Respondent's dismissal motion was granted in the Petitioner's absence.

Through conducting both hearings with no advance notice to the Petitioner, and in direct contravention of the Virginia Court Rules, the Virginia District Court deprived the Petitioner of her Constitutional due process right to prepare a defense to the motions of the Respondents.

Contradicting the federal Due Process assurances of participation, confrontation of witnesses, and the production of evidence in one's own defense, the Virginia district court stripped the Petitioner of every Constitutional protection that the Fourteenth Amendment guarantees to all citizens.

By hearing and granting the Respondent's dismissal motion in the Petitioner's absence, and rendering no advance written notice as required by its own procedural rules, the Virginia trial court invalidated the federal Constitutional guarantee that the Petitioner receive the court's adherence to, and impartial application of, published state rules and decisions concerning the disposition of claims.

CONCLUSION

The decision of the Virginia Supreme Court to uphold the Virginia District Court orders, which were entered without advance notice to the Petitioner, as required by the Virginia court rules deprived the Petitioner of her rights under the Fourteenth Amendment.

For this reason, the Petitioner respectfully requests that this Honorable Court grant her Petition for Writ of Certiorari, reverse the decisions of the Virginia Supreme and trial courts, and remand this action to the trial court for a decision on the merits.

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