

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JEROME A. CHRISTMON— PETITIONER

vs.

B&B AIRPARTS INCORPORATED - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JEROME A. CHRISTMON

(Your Name)

1639 NORTH TIMBERS EDGE COURT

(Address)

MULVANE, KANSAS 67110

(City, State, Zip Code)

(316) 727- 1027

(Phone Number)

QUESTION(S) PRESENTED

1. If summary judgement is sought, using only the deponents' **UNCERTIFIED** deposition as the basis for the moving parties supposed factual position (without said deponents' interrogatories), does the timely filing of the revised and corrected Errata Sheets of said deponents' **UNCERTIFIED** deposition render said **UNCERTIFIED** deposition insufficient evidence thus deeming the motion for summary judgement INADMISSABLE?
2. If summary judgement is sought using only the deponents' **UNCERTIFIED** deposition (lacking said deponent interrogatories), and then granted, has the court violated the rights of the non-moving party under the 7th Amendment of the Constitution of the United States?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

JEREMY K SCHRAG
LEWIS BRISBOIS BISGAARD & SMITH LLP
1605 NORTH WATERFRONT PARKWAY, SUITE 150
WICHITA, KANSAS 67206

RANDALL J. PANKRATZ
ADRIAN & PANKRATZ, P.A.
301 NORTH MAIN, #400
NEWTON, KANSAS 67114

DAVID J. STUCKY
ADRIAN & PANKRATZ, P.A.
301 NORTH MAIN, #400
NEWTON, KANSAS 67114

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix **A** to the petition and is

☐ reported at _____, or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____, or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____, or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____, or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was
MAY 24, 2018

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____ and a copy of the order denying rehearing appears at Appendix _____

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. —A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. —A_____

The jurisdiction of this Court is invoked under 28 U. S. C. s^s 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Title VII, Civil Rights Act of 1964, as Amended prohibits employment discrimination based on race, color, religion, sex, and national origin.
2. U.S. Constitution Amendment VII:
In suits at common law, where the value in controversy shall exceed twenty (20) dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, then according to the rules of the common law.

STATEMENT OF THE CASE

In May 2016, the petitioner, **JEROME A. CHRISTMON** filed a religious discrimination lawsuit against his former employer, **B&B AIRPARTS INC.**, (AKA) the respondent.

In July 2015, I, Jerome A. Christmon (A.K.A. the petitioner), being a practicing Hebrew Israelite, went to my then manager, Mrs. Roseanne Payne, to request a religious accommodation by having my schedule permanently changed to show Saturday (A.K.A. The Sabbath) instead of Sunday, as my weekly off day. Mrs. Payne, acting on the behalf of my then employer, B&B Airparts Inc. (A.K.A. the respondent), stated to me that she "would not" change my schedule, but instead that I could fill out a "time-off" request form to request time off. I reiterated to her that I wasn't seeking time off, but to have my work schedule permanently changed to show the Sabbath (Saturday) as my off day and to have Sunday be the day of my weekend overtime day. I did it this way to ensure I could observe my faith and maintain my obligations to them, my employer.

After informing her that they could not force me to work on the Sabbath, Mrs. Payne then stated to me that what she could do was "...cut ALL of my weekly overtime". The conversation ended with Mrs. Payne again instructing me to fill out a form to request time off. This situation took place on Friday, July 24, 2015.

Because I had not made my religious accommodation request prior to being scheduled, I went in to work on the following Sabbath (Saturday). A couple of weeks later, the harassment started in the form of posted work schedules showing that I was only allowed over time on the Sabbath (Saturday). Prior to this change, I was averaging about 8 to 10 overtime hours, Monday through Friday, and 4 to 8 overtime hours on the Sabbath (Saturday). For the next 6 months I was repeatedly scheduled to work on the Sabbath and not scheduled for ANY overtime throughout the week.

During the six months of this ordeal, B&B Airparts Inc. employed a weekend overtime shift that ran from Friday, 4 a.m. to 4 p.m., Saturday 4 a.m. to 4 p.m., and ended Sunday 4 a.m. to 4 p.m. It should also be noted that at no point in time was I ever informed that I would not be punished or made to feel that my job was not in danger because of my religion. To the contrary, I was reminded daily by the now public posting of my work schedule, that my employer would not honor my religious request.

In February 2016, I was terminated from B&B Airparts Inc. but not before I opened the case with the EEOC (Equal Employment Opportunity Commission). Shortly after my departure from B&B Airparts Inc. I received my 'Right to Sue' letter from the EEOC.

On May 26, 2016, I filed a lawsuit against B&B Airparts Inc. under Title VII of the Civil Rights Act 1964 claiming discrimination for failure to accommodate religious practices (Appendix D: US District Court of Kansas, Kansas City Civil Docket for case number: 2:16-cv-02341-CM (1)(2)).

In January 2017, the courts allowed the respondent to take my deposition 'AFTER' the discovery deadline period. On or about March 3, 2017, my deposition was taken by the respondents' attorney. At which time I informed the court reporter that I DID NOT wish to waive my right to review and revise my deposition Civ. R. 30(e) before it was filed and certified with the court. The court reporter informed me it would take about 14 days to receive my copy for review and revision.

On March 30, 2017 the respondents' attorney attempted to file a motion for summary judgment using only the petitioners 'UNCERTIFIED' deposition as their factual statements by the petitioner. Upon gaining knowledge of the motion for summary judgment being filed, I filed an emergency hearing motion with the courts and informed them, using two (2) similar opinions, that the respondents' motion should not be considered because it failed to meet the standards of a properly filed summary judgment motion:

As such, the deposition was not proper material under rule 56" *Moore v. Florida Bank of Commerce*, 654 F. Supp. 38 (S.D. Ohio 1986), " the court reporter certification is an essential portion of a transcript necessary for decisions because it qualifies any submitted transcript Pages as summary judgment evidence. It therefore, must appear somewhere in the record and it does not here." *Morphew v. Lawhon Associates*, Case No. 2:10-cv-716 (S.D. Ohio Dec. 8, 2011).

It should be noted that the deposition was not filed with the court, nor was it properly authenticated by way of an affidavit.

My motion for an emergency hearing was denied and on April 19, 2017. I responded to the summary judgment motion and again spoke to the fact that the respondent used an uncertified deposition to support their supposed position. "...the court cannot consider deposition testimony referenced in summary judgment reply memorandum but not filed with the court". *Soliday v. Miami County, Ohio*, 55 F.3d 1158 (6th Cir. 1995).

On April 27, 2017 the court filed and certified the revised and corrected Errata sheets of the petitioner's deposition (Appendix D: US District Court of Kansas, Kansas City civil docket for case number: 2:16-cv-02341-CM (38)) (Appendix E: Plaintiff Deposition Certification) (Appendix F: Plaintiff Errata Sheets). Thus, making it impossible to gain certification for the deposition used in the prematurely filed attempt at a summary judgment motion.

The pretrial order entered on May 23, 2017 (Appendix D: US District Court of Kansas, Kansas City civil docket for case number : 2:16-cv-02341-CM(39)) shows that the Magistrate Judge set a trial date of October 30, 2017 (Appendix D: US District Court of Kansas, Kansas City civil docket for case number : 2:16-cv-02341-CM(39)) and that the date to file a summary judgment motion is set for March 30, 2017. These dates are important moving forward because on August 31, 2017, despite trial being set and no motion to extend the deadline to file summary judgment, the courts granted the respondents motion for summary judgment, denying my right to a trial based solely on pages from an uncertified deposition (Appendix B: United States District Court for the District of Kansas Memorandum and Order).

On September 28, 2017, I filed an appeal with the United States Court of Appeals, Tenth Circuit, and explained to them that the documents used in the motion for summary judgment did not meet the standards set forth by Civ. R. 56(c)).

On May 24, 2018 the appeals court affirmed The District Court's ruling stating certification was presented by the respondent after it was brought to the courts attention that an uncertified deposition was used in their summary judgment motion.

REASONS FOR GRANTING THE PETITION

The writ of certiorari brought forth by the petitioner, Mr. Christmon, is a clear and undeniable example of why this High Court exist. To allow the proceedings of this case to remain on record should be and very well could be viewed as a shameful and irresponsible act on the part of this court. The citizenry under its jurisdiction looks to this court to uphold the laws of the land and understand, based on your continued exemplary actions, that their trust is not misguided. The violations of rules, procedures, and rights, that have taken place, should not be allowed to persist and be used in future litigation to persuade the courts to overlook or even deny those seeking judication from the courts, which would undoubtedly happen if the courts deny this writ of certiorari.

On several occasions, by way of an emergency hearing motion, motion to deny summary judgment, and in appeals court, Mr. Christmon repeatedly informed the courts that rules were being broken and that uncertified documents were being used as factual evidence in a inadmissible summary judgment; a clear violation of Civ. R. 30(E), 32, 56(c) and 56(E)(4)(b). All the while his pleadings were being ignored.

Although it has not been affirmed by the Supreme Court to allow or deny the use of certified or uncertified depositions in summary judgment motion, "it has been well established by the Supreme Court that only evidence that would be admissible at trial may be used to support or oppose a motion for summary judgment" *Taylor v. Fraenza*, 2007 Ct. Sup. 10522 (Conn. Super. Ct. 2007). The timely filing and certification of the petitioners revised and corrected errata sheets (Appendix F) on April 27, 2017 (Appendix C(38)), makes it impossible to certify the deposition excerpts used in the summary judgment, motion filed on March 30, 2017 (Appendix C(32)).

Quote, "...accordingly the court will not consider these uncertified transcripts in ruling on motion for summary judgment" *Stevens v. Katz*, 2001 Ct. Sup. 16326 (Conn. Super. Ct. 2001). Quote, "...uncertified copies of excerpts of deposition transcripts are not admissible as evidence and therefore cannot be considered in a motion for summary judgment" (internal quotation marks omitted) *Schulhof v. Stellato*, 1996 Ct. Sup. 100 (Conn. Super. Ct. 1996) "The court will not consider the plaintiff's uncertified deposition in deciding this motion for summary judgment. The appellate court has held that [a] response to a question propounded in a deposition is not a judicial admission." (internal quotation marks omitted) *Esposito v. Wethered*, 4 Conn. App. 641 (Conn. App. Ct. 1985).

The courts have also stated that "the court cannot consider the uncertified deposition testimony for the purposes of [a] motion for summary judgment because the transcript is not independently admissible as evidence and it fails to comply with the requirements of the Practice Book." *Pishnov v. Lewis*, 1995 Ct. Sup. 6019 (Conn. Super. Ct. 1995)

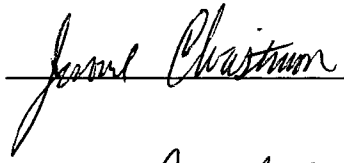
For the District Court of Kansas to require the respondent to reply on an ill-prepared summary judgment, that relies on insufficient evidence, should not be left unrectified when documents submitted in support of a motion for summary judgment failed to establish that there is no genuine issue of material fact that the non-moving party has no obligation to submit documents establishing the existence of such issues" *Zielinski v. Kotsoris*, 279 Conn. 312 (Conn. 2006) "The rules would be meaningless if they could be circumvented by filing [unauthenticated documents] in support of or in opposition to summary judgment" *Taylor v. Fraenza*, 2007 Ct. Sup. 10522 (Conn. Super. Ct. 2007).

Keeping with the traditions of the courts" the trend in the Superior Courts is to consider certified but not uncertified deposition testimony when ruling on a summary judgment motion" *Rosenberg v. Meriden Housing Authority*, 1999 Ct. Sup. 14318 (Conn. Super. Ct. 1999) "deposition testimony submitted in support of a summary judgment motion must be certified" *Candido v. Dattco, Inc.*, 1998 Ct. Sup. 3783 (Conn. Super. Ct. 1998), and understandably so. To allow a summary judgment motion filed with an uncertified deposition to be granted denies the non-moving party their right to a trial," the right to a jury trial is a substantial right and does not merely involve a question of procedure." *Voltz v. Manor Care Nursing Home*, ACCELERATED CASE NO. 98-L-103 (Ohio Ct. App. Mar. 31, 1999), which is an egregious violation of the 7th Amendment of the United States Constitution.

CONCLUSION

It is the responsibility of the United States Supreme Court to ensure that the procedures and rules that govern the acts of the court are always being upheld, for all those under its jurisdiction. For this reason, as well as those laid out in this writ, it behooves this Court to grant this petition. The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: August 20, 2018