

18-8746
No. _____

ORIGINAL

Supreme Court of the United States

Tatyana Evgenievna Drevaleva

Petitioner Pro Se

v.

The Department of Industrial Relations of the State of California

Respondent

On Petition for a Writ of Certiorari to the Supreme Court of California

Petition for a Writ of Certiorari

Tatyana E. Drevaleva

Petitioner Pro Se

I. Questions presented:

- 1) Shall the Court of Appeal grant Defendants' Motion to Dismiss an Appeal if Defendants improperly served the Plaintiff with this Motion, and they mailed the Motion to Plaintiff's previous home postal address knowing that the Plaintiff is no longer living there, and the Plaintiff had no chance to receive this Motion in mail?
- 2) Shall the Court of Appeal grant Defendants' Motion to Dismiss an Appeal if Defendants frivolously electronically transmitted this Motion to Plaintiff's email address even though at that time the Plaintiff did not consent for Electronic Service?
- 3) Shall the Court of Appeal grant Defendants' Motion to Dismiss an Appeal if there was no signature of Defendants' Attorney on the Record on this Motion (Mr. Nicholas P. Seitz, Esq.), and there was a signature of another Attorney (Ms. Dorothy A. Chang, Esq.) who hadn't previously filed the "Substitution of Attorney" form?
- 4) Shall the Court of Appeal grant Defendants' Motion to Dismiss an Appeal if Defendants failed to identify the correct Defendant in their own Motion, and they wrote "Plaintiff Julie Su" instead of "Defendant the Department of Industrial Relations of the State of California"?

5) Shall the Court of Appeal grant Defendants' Motion to Dismiss an Appeal if the Plaintiff-Appellant already filed an "Abandonment of Appeal" form?

II. A list of all Parties in the proceeding in the Court whose judgment is sought to be reviewed.

1) Tatyana Evgenievna Drevaleva – Plaintiff-Appellant-Petitioner Pro Se. I was a Plaintiff at the Superior Court of Alameda County (CA), an Appellant at the Court of Appeal for the First District (CA), and a Petitioner at the Supreme Court of California.

My address:

Tatyana E. Drevaleva
1063 Gilman Dr., Daly City, CA, 94015
415-806-9864; tdrevaleva@gmail.com

2) The Department of Industrial Relations (DIR) of the State of California – Defendant-Appellee-Respondent. DIR was a Defendant at the Superior Court of Alameda County, an Appellee at the Court of Appeal for the First District, and a Respondent at the Supreme Court of California.

Attorney on the Record:

Mr. Nicholas Patrick Seitz, Esq.
455 Golden Gate Ave., 9th Floor, San Francisco, CA, 94102
415-703-4871; nseitz@dir.ca.gov

III. Corporate Disclosure Statement according to Rule 29.6 of the Rules of the U.S. Supreme Court – not applicable.

IV. The Orders of the lower Courts that are challenged in this Petition:

- 1) The Order of the Court of Appeal for the First District dated November 06, 2018 that granted Defendants' Motion to Dismiss Appeal A155090 despite I had previously abandoned this Appeal. The Court did not address the issues such as the "Substitution of Attorney" form, the absence of the signature of an Attorney on the Record, the incorrect Defendant listed in the Motion to Dismiss, and the incorrect service of the Motion on the Plaintiff-Appellant
- 2) The Order of the Supreme Court of California En Banc dated January 23, 2019 that denied my Petition for Review and that was signed by Chief Justice of the Supreme Court of California Hon. Tani Gorre Cantil-Sakauye. The California Supreme Court refused to address these issues.

V. The basis for jurisdiction in the U.S. Supreme Court:

- 1) The U.S. Supreme Court has appellate jurisdiction under Rule 13 of the Rules of the U.S. Supreme Court which says that the Petition for a Writ of Certiorari shall be filed within 90 days after entry of the order denying discretionary review.

VI. The Constitutional provisions that are involved in this case – not applicable.

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IX. A concise statement of this case setting out the facts material to consideration of the questions presented.

Petitioner Tatyana Drevaleva was retaliated and unlawfully terminated from my job at Alameda Health System in 2013 for asking questions about unpaid overtime and shift differentials, not received breaks, denying my affiliation to the Union, and asking to transfer me to a full time position while actually working full time. I filed a retaliation and unlawful termination claim with the Department of Industrial Relations of the State of California (DIR), the Division of Labor Standards Enforcement (DLSE). DIR processed my claim for 3 years and 4 months instead of statutory 60 days (the old version of Labor Code, Section 98.7(e).) DIR issued a Determination Letter in 2016 that said that I had been fired for medical negligence towards the patient even though my former employer Alameda Health System (AHS) had never said it. I filed a Complaint against DIR at the Superior Court of Alameda County.

DIR served me with the Demurrer (the California C.C.P. §430.10.) DIR also served me with the anti-SLAPP Motion (C.C.P. §425.16) and thus banned the discovery process. I filed a Motion for Specified Discovery (C.C.P. §425.16(g)) Despite the Pending anti-SLAPP Motion which was denied. I filed a Motion for Reconsideration (C.C.P. §1008) of

the Court's Order Denying my Motion for Specified Discovery Despite the Pending anti-SLAPP Motion. This Motion was also denied.

On August 16, 2018, I filed a Notice of Appeal of the Court's Order Denying my Motion for Reconsideration of the Court's Order Denying my Motion for Specified Discovery Despite the Pending anti-SLAPP Motion at the Court of Appeal for the First District, Division 4, Appeal No. A155090. Next day, on August 17, 2018, the Superior Court of Alameda County issued the Order partially granting the anti-SLAPP Motion. On August 17, 2018, the Superior Court also issued an Order sustaining the Demurrer without leave to amend, and dismissing the action. This Order constituted a Judgment under C.C.P. §581d, and it was entered into the Court's Domain system on August 17, 2018.

On August 24, 2018, Defendants served me with the Motion to Dismiss Appeal A155090 on the basis that the Order denying the Motion for Reconsideration is not appealable under C.C.P. §1008(g.)

At that time, DIR's Attorney on Record Mr. Seitz was out of his office. Before serving me with this Motion, DIR's Attorney Ms. Chang asked me how she can serve me because I was homeless, and I didn't have any home postal address. I said that I would come to the Defendants' office, and the Defendants would serve me in person. Ms.

Chang refused. She ordered her assistant to mail this Motion to my previous home postal address in Monterey, CA even though she knew that I was no longer living there (I filed a Notice of a Change of Address with the Superior Court on July 19, 2018). Ms. Chang also emailed me a courtesy copy of that Motion even though at that time I hadn't signed Consent for Electronic Service.

I agreed with the Defendants that I made a mistake filing this Appeal because, under C.C.P. §1008(g), the Order denying a Motion for Reconsideration is not appealable. However, I objected to the following issues:

- 1) Defendants mailed this Motion to my previous home postal address even though they knew that I was no longer living there, and I had no chance to receive this Motion
- 2) Defendants frivolously transmitted the "courtesy" electronic copy of the Motion to my email address even though at that time I hadn't signed the Consent for Electronic Service form
- 3) Defendants failed to identify the correct Defendant in their own Motion. Instead of "Defendant the Department of Industrial Relations", they listed "Plaintiff Julie Sue"

4) There was no signature of Attorney on the Record Mr. Nicholas P. Seitz, Esq. in the Motion. Instead, there was a signature of another Attorney of the Department of Industrial Relations Ms. Dorothy A. Chang, Esq. even though she hadn't filed a "Substitution of Attorney" form

I listed these objections in my Opposition. I asked the Court of Appeal to dismiss this Motion despite I agreed with the Defendants regarding the issue raised in this Motion. On September 10, 2018, I signed Consent for Electronic Service so the Defendants could serve me electronically. On September 26, 2018, I abandoned Appeal A155090.

On November 06, 2018, the Court of Appeal for the First District granted Defendants' Motion to Dismiss and didn't address the issues that I raised in my Opposition. I petitioned to the California Supreme Court. On January 23, 2019, the Supreme Court denied my Petition for Review and didn't address these issues.

As I expected, Defendants used the same tactics in their subsequent filings such as they put Ms. Chang's signature on their Motions despite there was no "Substitution of Attorney" form filed.

I am respectfully petitioning the U.S. Supreme Court with a prayer to clarify these issues.

X. Discussion.

Question 1.

To the best of my belief, Defendants' Motion shall have been dismissed because Defendants failed to properly serve me with this Motion. They mailed the Motion to my previous home postal address despite they had been served with my Notice of a Change of Address.

Question 2.

I believe that Defendants Motion shall have been dismissed because they frivolously electronically transmitted this Motion to my email address even though at that time I hadn't served them with my Consent for Electronic Service.

Question 3.

In my Opposition to the Motion to Dismiss, I cited *Epley v. Califro*, [Sac. No. 6671. In Bank. Mar. 26, 1958], "The attorney of record has the exclusive right to appear in court for his client and neither the party himself nor another attorney should be recognized by the court in the conduct or disposition of the case. (*People v. Merkouris*, 46 Cal. 2d 540, 554, 555 [297 P.2d 999]; *Wells Fargo & Co. v. City & County of San Francisco*, 25 Cal. 2d 37, 42 [152 P.2d 625].) [4] Under section 285 written notice of the substitution of a new attorney must be given to the

adverse party. Until then the attorney of record must be recognized as his exclusive representative.

Also, I cited *Jackson v. Jackson*, Civ. No. 7227. Third Dist. (Dec. 1, 1945) where the appeal was dismissed because there was no signature of the Attorney on the record.

Also, I cited C.C.P. §284,

“The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

1. Upon the consent of both client and attorney, filed with the clerk, or entered upon the minutes;
2. Upon the order of the court, upon the application of either client or attorney, after notice from one to the other.”

Also, I cited Also, I cited C.C.P. §285,

“When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, must be given to the adverse party. Until then he must recognize the former attorney.”

In our subsequent email exchange, Ms. Chang cited *Ellis Law Group, LLP v. Nevada City Sugar Loaf Properties, LLC*, 178 Cal. Rptr. 3d 490, 499-500 (Ct. App. 2014) and claimed that the Court in *Ellis* allowed Attorneys who work in one private law group to substitute each other without filing a “Substitution of Attorney” Notice, and claimed that the Department of Industrial Relations should be viewed as a law group.

I objected, and I said that, as a Public Entity, the Department of Industrial Relations couldn’t be viewed as a law group for the purpose of substituting Attorneys without the prior Notice. Both the Court of Appeal for the First District and the Supreme Court of California refused to rule on this issue. This is why I am respectfully petitioning the U.S. Supreme Court with a prayer to clarify this issue for our lawsuit and for all subsequent litigants.

Question 4.

In their Motion, Defendants failed to identify the correct Defendant “The Department of Industrial Relations of the State of California” and listed “Plaintiff Julie Su” instead of the Defendant. I objected, and I said that the Motion should have been dismissed because there was no correct Defendant in this Motion. The Counsel shall comply with the California Rules of Court, Rule 8.57 that explicitly asks to identify the correct Party.

Read the California Rules of Court, Rule 8.57,

(a) Motion to dismiss appeal A motion to dismiss an appeal before the record is filed in the reviewing court must be accompanied by a certificate of the superior court clerk, a declaration, or both, stating:

(2) The names, addresses, and telephone numbers of all attorneys of record - stating whom each represents - and unrepresented parties."

Question 5.

To the best of my belief, the Court of Appeal can't grant Defendants' Motion to Dismiss Appeal after the Plaintiff-Appellant already abandoned the Appeal.

XI. Why this Petition shall be granted.

I am respectfully asking the U.S. Supreme Court to grant this Petition because this Opinion would ensure the uniformity of decisions to all lower Courts. Also, I am respectfully asking the U.S. Supreme Court to compel the Supreme Court of California to follow its own Opinions such as in *Epley v. Califro* and to follow the requirements of the California Code of Civil Procedure, Sections 284 and 285.

XII. Conclusion.

I am respectfully asking the U.S. Supreme Court to reverse the Orders of the Court of Appeal for the First District and of the Supreme Court of California for failure to follow the California Code of Civil Procedure, the California Rules of Court, and the case laws decided by both the Appellate and the Supreme Court of California.

Every Court must follow the laws of its State.

I declare under the penalty of perjury, under the Federal laws, and under the laws of the State of California that all foregoing is true and correct. Executed at Daly City, CA on March 20, 2019.

Respectfully submitted,

s/ Tatyana E. Drevaleva

Tatyana Evgenievna Drevaleva



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Date: March 20, 2019.