

No. 18-9545

Supreme Court, U.S.
FILED

NOV 03 2018

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IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT HERCENBERGER
Applicant-Defendant,

vs.

KATHY PROCTOR
Respondent-Plaintiff.

On Petition for a Writ of Certiorari to the
Appellate Court of the State of Oregon

PETITION FOR WRIT OF CERTIORARI

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ORIGINAL

QUESTIONS PRESENTED

Where Equal Protection of the laws definition apply for all:

A phrase in the Fourteenth Amendment to the United States Constitution requiring that states guarantee the same right, privileges, and protection to all citizens.

The Equal Protection Clause requires states to treat their citizens equally, and advocates have used it to combat discriminatory laws, policies, and government. The Equal Protection Clause is part of the Fourteenth Amendment to the United States Constitution provides that no state shall deny to any person within its jurisdiction "the equal protection of the laws".

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Robert Hercenberger respectfully prays that a writ of certiorari issue to review the judgment below. In case number, trial # 17CV00229 , CA 165355.

OPINION BELOW

☐ The opinion of the Oregon Appellate Court appears at appendix A to this petition.

JURISDICTION

The Oregon Appellate Court issued its decision without opinion on Mar.7, 2018.

A copy at appendix A. Order denying petition for Reconsideration on June 4, 2018.

A copy at appendix B. The Oregon Supreme Court entered its decision Order denying Review on July 12, 2018. Appellant filed one (1) day late and received the letter after 14 days passed, a copy is attached at appendix C.

Appendix D. Oregon Supreme Court, Order of Dismissal, signed on 10.28.2018.

Which one I received late September is signed on Sep.24.2018.

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

CONSTITUTIONAL PROVISIONS

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV, § 1

STATEMENT OF THE CASE

A. Facts Giving Rise to this Case in Circuit Court proceeding

This Court need to know that defendant Ms. Proctor action against plaintiff is intentional tort because defendant knowingly did not corrected the material (false) statement previously made to tribunal.

And defendant know the falsity of fact. Oregon Rule of Professional Conduct.

Circuit court ruling and General Judgment is contrary of Oregon precedence.

ORCP 12 Pleadings are to be liberally construed, so as to disregard any error or defect that does not affect the substantive rights of the adverse party.

Stringer v. Car Data System, Inc., 314 Or 576, 841 P2d 1183 (1992).

Judge did not follow statutory procedure: As we know judge cannot change or twist statutes and need to follow binding precedence.

According to Oregon binding precedence. The court was not impartial to the parties in proceeding.

Oregon Rule of Professional Conduct:

Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

Thus the trial court erred when it dismissed plaintiffs complaint with prejudice.

See O'neil, 258 Or App at 837 (concluding that, because the DOC defendants had not filed a responsive pleading, and had filed ORCP 21 A motion to dismiss.

The trial court lacked discretion to dismiss the complaint with prejudice.

But most painful is when attorney Ms. Proctor drafted the General Judgment, and falsify the outcome on her own favor. And thus is fraud upon the court.

Mother DID NOT extend the RO after Dec. 22, 2015.

But because Mothers attorney General Judgment is Contrary to trial process, she is ousted me from my house. Without any ground, and no petition on file exist either.

Attorney supposed to fix the flaw according to Oregon Rule of Professional Conduct.

Not only that attorney ignored, but Judge Raines covered up for attorney.

Judge Unlawful activity: Code of judicial conduct

Rule 3.3 Impartiality and Fairness

(A) A judge **shall** uphold and apply the law and perform all duties of judicial office, including administrative duties, fairly, impartially, and without bias or prejudice.

Just informatively Mothers attorney Ms. Proctor is or was for long years, president for Washington County Oregon Bar Association, Oregon Bar Disciplinary (region 4) Chairperson prosecuting attorneys for the exact same reasons, but she is immune for her action and deserved from the Court the double standard.

B. The Oregon Appellate Court Proceedings

In this section I do not know what Oregon Court of Appeal considered, because on Mar, 7, 2018. Affirmed without opinion Circuit Court judgment.

Jun, 4. 2018. Reconsideration Denied.

Rather I can ask: Whether, the Oregon Court of Appeals erred construing or applying the law by failing to address mandatory statutory standards prior affirming the lower court judgment without opinion.

Directly contradicts Oregon statutory and case law.

Appellant contends that Court of Appeal made factual error in his decision based pursuant to ORAP 6.25 (1) (a) , and pursuant to ORAP 6.25 (1) (e) that the court of appeal erred in construing or applying the laws.

Oregon Precedence

The Court of Appeals reversed and remanded holding that Voth's complaint, which "specifically alleges that he has suffered \$50,000 in economic damages as a result of defendants' conduct" was

"sufficient to survive a motion to dismiss for failure to state a claim."

See: Voth v. Smith , 188 Or.App. 59, 69 P.3d 1274 (Or.App. 2003).

Plaintiff contends that the court erred in dismissing the case because, so his pleadings sufficiently stated a claim for relief in economic and non- economic damage in \$ 1 Million dollars.

REASONS WHY CERTIORARI SHOULD BE GRANTED

1. Importance

Cases of substantial legal significance, such as a clarification of a rule of evidence or an administrative procedure, can be important enough to merit this court's.

a, Oregon State Courts Decision Conflicts With This Court's Precedents.

Certiorari is also warranted because the Oregon courts decision is wrong on the merits. Oregon CA used a action to reverse in Voth v. Smith , 188 Or.App. 59, 69 P.3d 1274 (Or.App. 2003).

But denied in my case which one contradict the equal protection of law.

Whenever such action is appropriate to accomplish justice.

Klapprott v. United States, 335 U.S. 601, 614-15 (1949).

2. Potential impact on many People

In this case Oregon Courts flagrantly disregarded for accepted legal doctrine.

If Oregon Courts continue to ignore or disregard the **Equal Protection**

Clause law, especially in Pro Se cases then many people will be impacted.

Equal Protection of the laws definition: A phrase in the Fourteenth Amendment to the United States Constitution requiring that states guarantee the same right, privileges, and protections to all citizens.

The Equal Protection Clause requires states to treat their citizens equally, and advocates have used it to combat discriminatory laws, policies, and government a The Equal Protection Clause is part of the Fourteenth Amendment to the United States Constitution provides that no state shall deny to any person within its jurisdiction " the equal protection of the laws".

Review is Warranted Because Potential impact on many people

Puckett v. Cox, 456 F. 2d 233 (1972) (6th Cir. USCA)

It was held that a pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in Conley v. Gibson

Conley v. Gibson, 355 U.S. 41 at 48 (1957) "Following the simple guide of rule 8(f) that all pleadings shall be so construed as to do substantial justice"... "The federal rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." The court also cited Rule 8(f) FRCP, which holds that all pleadings shall be construed to do substantial justice.

Elmore v. McCammon (1986) 640 F. Supp. 905

"... the right to file a lawsuit pro se is one of the most important rights under the constitution and laws."

Haines v. Kerner, 404 U.S. 519 (1972)

"Allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient"... "which we hold to less stringent standards than formal pleadings drafted by lawyers."

Sims v. Aherns, 271 SW 720 (1925)

B.Platsky v. CIA, 953 F.2d 25, 26 28 (2nd Cir. 1991), "Court errs if court dismisses pro se litigant without instruction of how pleadings are deficient and how to repair pleadings."

"The right to a tribunal free from bias or prejudice is based, not on section 144 [of Title 28 U.S.C.], but on the Due Process Clause. . . ." United States v. Sciuto, 521 F.2d 842, 845 (7th Cir., 1976).

"retaliation under color of law."

It is a crime for one or more persons acting under color of law willfully to deprive or conspire to deprive another person of any right protected by the Constitution. State v. Sutton, 63 Minn. 147 65 NW 262 30 LRA 630 AM ST 459.

It is the duty of the courts to be watchful for the CONSTITUTIONAL RIGHTS of the Citizen, against any stealthy encroachments thereon.

Boyd v. U.S. 116 US 616, 635, (1885).

CONCLUSION

Applicant **Robert Hercenberger** who have been treated with unfairness, bias and the appearance of prejudice by this Court ,and the opposing counsel, leaves open the question of how an uninterested, lay person, would question the partiality and neutrality of this court. **"our system of law has always endeavored to prevent even the probability of unfairness."**

In re Murchinson, 349 U.S. 133, 136 (1955).

This court had a duty to ensure fairness. This Court failed, or refused to ensure that fairness. Marshall v. Jerrico, 100 S. Ct. 1610, 446 U.S. 238

The petition for a writ of certiorari should be granted, pursuant to equal protection clause and the 14th Amendment of Constitution.

Dated: May. 21 , 2019.

Respectfully submitted,



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