

No. 19-5477

ORIGINAL

Supreme Court, U.S.

FILED

AUG 05 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

BRIAN KEITH WAUGH — PETITIONER
(Your Name)

vs.

MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

DISTRICT OF COLUMBIA COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRIAN KEITH WAUGH
(Your Name)

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(Address)

WASHINGTON, DC 20020
(City, State, Zip Code)

301-458-1174
(Phone Number)

QUESTIONS PRESENTED

The Medical Malpractice Amendment Act of 2006 makes a distinction between D.C. Code § 16-2802 and D.C. Code § 16-2804. Under D.C. Code § 16-2804, the 90 day pre-Notice of D.C. Code § 16-2802 is inapplicable; and the form of words change in D.C. Code § 16-2804(a)(2) and (3) based on the Medical Malpractice Amendment Act of 2006. In the Interests of Justice, can the filing of a claim(s) in an Amended Complaint serve as Notice characteristic of State and Federal Rules and Civil Procedures' Rule 15(c) Notice?

Within my Petition for Rehearing En Banc, which was denied on May 6, 2019, I made it known that under certain circumstances, I had difficulty in reading, comprehending, and retaining information, also mental blocks adversely affecting my pursuits of Justice caused by a childhood event, which was in Court records. In this Case, factoring that Rehearing En Banc was denied by the District of Columbia Court of Appeals, does the Interests of Justice dictate Tolling the Statute of Limitations?

INDEX TO APPENDICES

Appendix A Decision of District of Columbia Court of Appeals

Appendix B Decision of the Superior Court of the District of Columbia

Appendix C Order of District of Columbia Court of Appeals Denying Rehearing

OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals to review the merits appears at Appendix A to the petition and has been designated for publication but is not yet reported. The opinion of the Superior Court of the District of Columbia appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the District of Columbia Court of Appeals decided my case was 03/14/2019. A copy of that decision appears at Appendix A. A timely petition for rehearing was thereafter denied on the following date: 05/06/2019, and a copy of the order denying rehearing appears at Appendix C. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. V;

D.C. Code §12-301(8) (2019),

D.C. Code § 16-2802 (2019),

D.C. Code § 16-2803 (2019),

D.C. Code § 16-2804(a)(2) (2019),

D.C. Code § 16-2804(a)(3) (2019);

B16-334, Medical Malpractice Amendment Act of 2006

STATEMENT OF THE CASE

In the Case, Brian Keith Waugh v. MedStar Georgetown University Hospital 203 A.3d 784 (D.C. 2019), the District of Columbia Appellate Court upheld the ruling of the Superior Court of the District of Columbia that I did not give the Defendant the required 90 days pre-Notice, that the 90 day pre-Notice is strictly pre-litigation Notice. By rehearing En Banc, it was made known to the Appellate Court that it did not factor D.C. Code § 16-2804(a)(2), based on a new claim of Extravasation in my MEMORANDUM IN OPPOSITION TO MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL'S MOTION TO DISMISS WITH PREJUDICE (B)(3)(c) on 02/20/2018, and D.C. Code § 16-2804(a)(3), based on correcting a misnomer noticed by the Defendant in the original Complaint by amendment on 01/17/2018, and that D.C. Superior Court Rules and Civil Procedures Rule 15(c)(C)(i) permits a Pleading to serve as Notice. Therefore, the ruling of the Appellate Court on Notice conflicts with Rule 15(c) provision for Notice during the Litigation process in both the Federal and D.C. Superior Court Rules and Civil Procedures followed by the States because under D.C. Code § 16-2804, changes in the form of words of Legislative history by "omission, addition, or substitution" and in procedure by making the 90-day pre-Notice requirement of D.C. Code § 16-2802 inapplicable, indicate that Notice may be customarily given during the litigation process. See Rauch v. Board of Com'rs of Marion County, 72 Ind. App 412 124 N.E. 704 (1919)

B16-334, Medical Malpractice Amendment Act of 2006 says the following,

The District of Columbia Health Occupations and Revision Act of 1985 was amended "...to require individuals who intend to file suit alleging medical malpractice to file with potential defendants a 90-day notice of intent to file suit in the District of Columbia Superior Court, to require parties to the suit to engage in mediation early in the litigation process..." Also that "The 90-day notice requirement and early mandated mediation serve similar purposes...These measures encourage early settlements and facilitate the parties' ability to reach a settlement."

And it also says of the 90 day pre-Notice requirement, "Sec. 16-2804...This requirement also shall be inapplicable to claims unknown to the person when filing the claim or to intended defendants who are identified in the notice by misnomer. The section permits waiver of this requirement by the court upon the finding of a good-

faith effort or if the interests of Justice dictate.”

And D.C. Code § 16-2804(a)(2) and (3), and (b) say,

“(a) Statute 16-2802 Notice is inapplicable when: (2) Any claim that is unknown to the person at the time of filing his or her notice; or (3) Any intended defendant who is identified in the notice by a misnomer. (b) Nothing indicated herein shall prevent the court from waiving the requirements of § 16-2802 upon a showing of good faith effort to comply or if the interests of justice dictate.”

Also, the Court of Appeals for the District of Columbia ruled that my Case was filed beyond the expiration of the Statute of Limitations. When I read the Statutes on Medical Malpractice in the first year that my cause of action accrued, I did not comprehend them. I thought the 90 days were for Notice in D.C. Code § 16-2802, and the other 90 days of D.C. Code § 16-2803 was time for the Statute of Limitations because in part, there was no reference to D.C. Code § 12-301(8) for Statute of Limitations. But, I thought I had time for a possible lawyer because I did not know who were the Defendants according to D.C. Code § 16-2804, whether contractors or employed, and no one gave me information.

I learned of the three (3) year Statute of Limitations, while learning about a M.D. Certificate of Merit online after two other failed Medical Malpractice Cases in an attempt to remove abscesses since 2014, which one still remains. Within about 2 weeks after reading about the 3 year Statute of Limitations in November 2017, I filed my Complaint in D.C. Superior Court based on what I could remember in D.C. District Court because of a mental block, I could not read the Rules and Civil Procedures. Medical issues have an affect on me also.

In filings, I made it known I was intimidated about Medical Malpractice Law, and discouraged by my failed attempt to file a Civil Rights Complaint, and about my related difficulty in reading and comprehending, and mental block based on failing an advanced 2nd grade English course. The class was learning grammar analysis when I transferred as a new student in the middle of the year; they were memorizing grammatical terms and identifying

them in sentences. It was new to me, and it was difficult comprehending and retaining information. And I failed a similar class in 10th grade, but got a B overall in night school for reading and comprehension. This has been a surmountable disability, but, it has impaired me in my pursuits of Justice as well as other past, and desired pursuits. Either, I may find it easier to read something a second time, or it may occur in reading something a second time, or reading something to learn that is new and intimidating that I am unfamiliar with, something I was not taught; as during appeal in my first Case in the District of Columbia or in this second filing of Cases on medical malpractice in the District of Columbia. Although, I do not have an expert witness, and despite my effort to pursue Justice, my disability in reading, comprehending, and retaining information, and mental blocks is evident and can be judged by a lay person. McCracken v. Walls-Kaufman, 717 A. 2d 346, 355 (D.C. 1998) I had difficulty reading and comprehending on appeal in a 2009 Civil Rights Conspiracy Complaint for discrimination based on Race and Handicap in D.C. District Court and was barred from filling because of amending my petition, after I was able to read and understand the rules better, 2 or 3 times before there was a ruling.

REASONS FOR GRANTING THE PETITION

The District of Columbia Court of Appeals has decided an important Federal Question in a way that conflicts with relevant decisions of this Court on Notice and Tolling the Statute of Limitations, which are contrary to the 5th Amendment of the U.S. Constitution, and shall adversely affect current Cases in the District of Columbia, which include my own pending, and conflict with decisions from other States. Therefore, The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: August 5, 2019