

No. 19-6794

IN THE
SUPREME COURT OF THE UNITED STATES

LAKESHA SMITH- PETITIONER

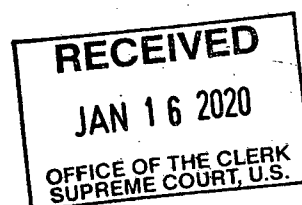
vs.

ST. JOSEPH'S/ CANDLER- RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF IN OPPOSITION OF
PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. If the actions of the respondent that led to my termination were “willful”, did the United States Court of Appeals Err in affirming the United States District Court’s decision of a Time Barr verdict?
2. Should the United States Supreme Court create a law that will define “willful” wrongful termination and what are the merits to clarify the law?

LIST OF PARTIES

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

RELATED CASES

- Smith v. St. Joseph's/ Candler, No. 4:17-cv-116, U. S. District Court for the Southern District of Georgia. Judgment entered April 26, 2018
- Smith v. St. Joseph's/ Candler, No. 18-12144-GG, U. S. Court of Appeals for the Eleventh Circuit. Judgment entered May 05, 2019

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OPINION BELOW

The opinion of the United States Court of Appeals judgment was entered on May 05, 2019.

The opinion of the United States Court of Appeals for the Eleventh Circuit for Rehearing and Rehearing En Banc was entered July 29, 2019

The opinion of the United States District Court was entered on April 26, 2018

JURISDICTION

Federal Courts

The date on which the United States Court of Appeals decided my case was May 05, 2019.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 29, 2019.

An extension of time to file the petition for a Writ of Certiorari was granted to and including November 26, 2019 on October 31, 2019 in Application No. 18 A. 12144-GG.

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

STATEMENT OF CASE

I. Statement of Facts

I was employed at St. Joseph's Hospital in October of 1998. On March 20, 2014, I was injured after a fall at St. Joseph's Hospital. During this time, I worked thirty hours a pay period and I was a full-time student. Injuries were reported to the charge nurse and the house supervisor. The Emergency Department physician completed an examination and I was sent home for that night. An incident report was completed by the worker's compensation department the next day, March 21, 2014. Pain in my lower back never subsided. I was experiencing shooting pain, tingling, and numbness down my right leg. The pain started in my lower back. A lower back MRI without contrast was ordered. St. Joseph's/ Candler performed this exam. This exam report was normal. However, in the year of 2016, I later sought treatment from an internist for my hypertension from Memorial Health University in Savannah, Georgia. A CT scan of my abdomen with and without contrast were performed and the musculoskeletal showed degenerative spine disease. This exam was resulted on May 19, 2016. I was also diagnosed with sciatica in my right extremities. Finally, questions were being answered to what I am experiencing.

Dr. Holtzclaw was the Worker's Compensation physician I was referred to by the Worker's Compensation nurses. Dr. Holtzclaw was the Orthopedic physician that treated me. He deemed unfit for duty and ordered physical therapy for a couple of weeks. Physical therapy was performed at Candler Hospital. At the end of my physical therapy session, I informed Dr. Holtzclaw of the pain experienced. Dr. Holtzclaw released me on light duty. I returned to work on April 14, 2014. Medical Records was the department I was assigned to work. I was unable to

return to work the morning of April 15, 2014 due to pain in my lumbar area and lightheadedness. A visit to see my primary health provider was made on April 15, 2014. My primary health provider sent me to the Emergency Department on April 15, 2014. I was scheduled to see the Worker's Compensation physician the morning of April 16, 2014. I was treated by Dr. Holtzclaw and deemed unfit for duty again. I informed Dr. Holtzclaw of the numbness and tingling in my right leg. I was never referred to a neurologist by Dr. Holtzclaw nor St. Joseph's/ Candler. An appointment to see a second Orthopedic physician was made by the Worker's Compensation nurses. Dr. Deriso was the second Orthopedic physician that examined me. Dr. Deriso rendered a second opinion and believed my pain would subside over time. On April 27, 2014, Dr. Holtzclaw's assistant released me back to work on full duty. She informed my mother and I this condition was out of their scope of practice. Dr. Holtzclaw's assistant told me to speak to the Worker's Compensation nurse for a referral to see a neurologist. This request was denied by the Worker's Compensation nurse. I was told to ask my Primary Care Provider for a referral.

Taking a leave of absence was my only option to help resolve this on- the- job injury. I looked back through the paperwork and read over the letters sent on April 03, 2014 and April 23, 2014. A leave of absence request form was attached to the letters. I signed this request for leave form on April 28, 2014. My manager, Leigh Craft, signed this form approving my request on April 30, 2014. This request for leave was taken to the Human Resources Department directly after Leigh Craft signed this form. I was called by the Worker's Compensation nurses on May 01, 2014. This was a conference call to inform me of returning to work on full duty. The conversation ended once I informed the Worker's Compensation nurses of my request for leave. Minutes after that call ended, I received another conference call from the Worker's Compensation nurses. The Worker's Compensation nurses informed me the wrong request for

for leave form was signed. I could not take a leave unless the correct form was signed. I signed this form on May 19, 2014 and Leigh Craft signed it on May 20, 2014.

St. Joseph's/ Candler was misleading during the process of Worker's Compensation and Leave of Absence claim form. The initial form signed for leave by my manager and I on April 28, 2014 did not show any hours previously used for my leave. The letter received on April 03, 2014 notified me that in the previous twelve months, zero hours of my FMLA entitlement were used. As of April 03, 2014, I was entitled to the full hours of leave. The letter stated my FMLA leave will run concurrent with any Worker's Compensation leave, but this letter also stated zero hours of FMLA were used. The question is, why did St. Joseph's/ Candler continue to count Worker's Compensation hours toward the leave knowing their Worker's Compensation physicians could not help me? I was experiencing nerve pain and needed a neurologist. In the letter I received on April 23, 2014, sixty hours of my FMLA entitlement was used and the starting date was now March 28, 2014. On the request for leave form, the initial form stated this leave was needed due to a work- related injury. The letter received on April 03, 2014 and April 23, 2014 both stated this leave was necessary due to a work- related injury. When the second request for leave form was sent to me, my injuries were no longer work related. This leave was now for an employee illness/ injury preventing functions of normal duties. This leave form also stated only two hundred and forty FMLA hours were available. I felt like St. Joseph Hospital no longer wanted to be held accountable for my injuries once I requested the leave. The hours for my leave were not consistent with the documents. Several forms were mailed to me that were not consistent concerning a return date.

My Primary Health Provider referred me to a neurologist. The neurologist was given fifteen days to fill out the certification form required for a medical leave, 29 C.F.R. 825.305(b).

This certificate was completed and filed in a timely manner. Treatment with the neurologist ended because my medical benefits were terminated, 29 C.F.R. 825.209.

II. Delays for Filing this Claim

Delays by Attorney Daly, the attorney I hired to represent me in filing a worker's compensation complaint, initially caused major setbacks in this case. Attorney Daly agreed to settle the Worker's Compensation claim and the Wrongful Termination claim, but later resigned from handling both claims. He resigned after two years of the claims. I represented myself in both claims because I had a hard time obtaining a lawyer. Attorney Daly stated in his letter of resignation that he would forward my file to my next attorney. Every attorney that was sent to Attorney Daly for my file would not accept the case. I finally called Dozier and Dozier law firm and Attorney Jack Jenkins accepted the case. He also informed me of my Wrongful Termination claim being separate from the Worker's Compensation claim. When Attorney Jack Jenkins informed me he was going to call Attorney Daly about this case, shortly after I received a resignation letter from him. This letter did not specify why he resigned. I was left to represent myself for both claims again. After the Worker's Compensation hearing, I filed a complaint with District Court for Wrongful Termination. This complaint was filed on June 30, 2017.

REASONS FOR GRANTING THE PETITION

The initial Wrongful Termination claim was filed on June 30, 2017. An amended complaint was requested by District Court. As a lay person, I filed an amended complaint on July 28, 2017. On August 10, 2017, District Court directed the clerk to summon the respondent. I respect District Court's decision to move forward with this claim. Granting a Writ of Certiorari

will allow the Supreme Court of the United States to review this case and apply the proper ruling. There is no existing law to apply to a case such as this. The Supreme Court of the United States is the appropriate court to address this claim.

I. Granting this petition will allow the Supreme Court of the United States to set the precedence for any “willful” Wrongful Termination case.

When District Court addressed this claim, I was informed that the term “willful” is not defined in the FMLA. The Court of Appeals agreed that FMLA does not define “willful” and it is not defined by the Supreme Court. District Court and the Court of Appeals both defined “willful” by using the case McLaughlin v. Richard Shoe Co., 486 U.S. 128, 108 S. Ct. 1677 (1988). The only problem is the merits are not mentioned for a FMLA claim. Without the mentioning of any merits for a “willful” Wrongful Termination claim, it is hard to support any claim. The Supreme Court of the United States can set the standard for this type of claim.

II. Granting this petition will allow my claim to be reviewed if the Supreme Court of the United States find my termination was “willful.”

On April 26, 2018, District Court dismissed my claim as untimely. District Court did not view my termination as “willful.” The Court of Appeals affirmed District Court’s decision on May 07, 2019. Clarifying the meaning and stating the merits necessary for a “willful” Wrongful Termination claim could possibly change the way this claim was viewed. If my claim should meet the requirements to prove I was terminated “willfully,” my claim will be heard. St. Joseph’s/ Candler interfered with the FMLA process by denying medical benefits. This action is a violation of FMLA and it delayed my return to work.

I have followed the proper procedures throughout the courts. The Court of Appeals was asked to define "willful" termination and to state the merits. I was denied the petition for a rehearing and rehearing en banc where this question was addressed. This is the reason why the Supreme Court of the United States was petitioned. I have also reached out to the President & CEO, Mr. Paul Hinchey, of St. Joseph's/ Candler. I have requested him to review this matter on my behalf. Mr. Hinchey has access to my employee file to review what type of employee I was. He can review my evaluations and achievement awards. Mr. Hinchey can also review how the Human Resources Department handled this matter as far as medical benefits. This letter was mailed to him on October 31, 2019. Mr. Hinchey has not responded to my request.

CONCLUSION

The petition for Writ of Certiorari should be granted.

Respectfully submitted this 13th day of January 2020.

A handwritten signature in black ink, appearing to read "Lakesha Smith", written over a horizontal line.

Lakesha Smith