No. 19-7166

ORIGINAL

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Ann L. Karnofel — PETITIONER
(Your Name)

vs.

Superior Waterproofing, Inc. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Supreme Court of Ohio
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ann L. Karnofel
(Your Name)

1528 Greenwood Ave.
(Address)

Girard, Ohio 44420
(City, State, Zip Code)

(330) 545-6303
(Phone Number)

QUESTION(S) PRESENTED

Were Petitioner's due process rights denied, because she is a 97-year-old, female pro se litigant?

Did a pro se litigant receive a fair day in the lower courts?

LIST OF PARTIES

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

[ ] 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:

RELATED CASES

Ann Karnofel v. Superior Waterproofing, Inc., No. 2017-T-0026, Eleventh District Court of Appeals, Trumbull County, Ohio. Opinion/Judgment entered December 29, 2017.

Ann Karnofel v. Superior Waterproofing, Inc., No. 2015 CV 01162, Court of Common Pleas, Trumbull County, Ohio. Judgments entered May 16, 2018 and March 7, 2017.

Superior Waterproofing v. Delores M. Karnofel, Nos. 2015-T-0113, 2017-T-0010, 2018-T-0027 and 2019-T-0015, Eleventh District Court of Appeals, Trumbull County, Ohio. Opinions/Judgments entered September 26, 2016, September 29, 2017, April 23, 2018 and April 8, 2019.

Superior Waterproofing, Inc. v. Delores M. Karnofel, No. 2014 CVF 01065, Girard Municipal Court, Trumbull County, Ohio. Judgment entered January 20, 2017.

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TABLE OF AUTHORITIES CITED

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 ______ 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[ ] is unpublished.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 E 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 Trumbull County, Eleventh District Appellate court appears at Appendix C 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 ______________________.

[ ] 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 October 1, 2019.
A copy of that decision appears at Appendix E.

[ ] 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Fourteenth Amend-
ment - Section 1 (Due Process Clause)

STATEMENT OF THE CASE

This case arises out of a denial for a Motion for Relief from Judgment with newly discovered evidence, Civ R. 60 (B) (2) and fraud Civ R. 60 (B) (3 and 5). The Lower Courts showed favoritism to the party that was represented by an attorney, over an elderly female, pro se litigant.

On June 27, 2013 Petitioner, Ann Karnofel, signed a contract with Respondent, Superior Waterproofing, Inc. The owner, Frank Kiepper, also signed the one-page contract that was on very thin paper. It was to perform exterior waterproofing of the basement and to remove and replace the front porch.

The Job started on September 16, 2013 and ended on September 30, 2013, because there was a disagreement in the contract regarding the placement of blocks for the porch and whether a new footer was needed, since that area was where the water entered.

The Job Also ended because the owner, Frank Kiepper, (hereinafter "Frank"), performed a sex stunt on the backporch when he invited himself in on September 30, 2013 to write on the backside of the original contract the additional work that he and my daughter, Delores Karnofel, requested, as well as the costs, checks received and dates thereof. The Job was not completed, and the work peeformed was not adequate.

Two additions were made to the contract by Frank — downspouts to the street and a French drain around the backporch ($1,600.00 plus $1,200.00). Delores Karnofel (hereinafter "Delores") only requested a replacement pipe for an existing trench that cost $200.00. It was paid for, pursuant to the backside of the contract. It indicated the replacement pipe request was made and paid for on 9-30-13, when Respondent received the second $3,600,00 check.

On October 1, 2013 Respondent called and spoke to Petitioner and Delores. Since there was a disagreement with the contract and a sex stunt, Delores told Frank to not return. Petitioner then reported Respondent to the Better Business Bureau. It failed to respond; therefore, it received a lower rating.

Petitioner had a very difficult time in locating a contractor, since Respondent did not install a cleanout, to place a camera in a pipe to detect what was wrong. The contractors wanted to dig-up the entire basement again to detect the problem, since there was mold and mildew all around the baseboard and walls — too costly.

On December 11, 2014 Respondent filed a Complaint on Account against Delores erroneously alleging that she made three requests to the contract and did not want to pay. Attached to the Complaint were two exhibits — one was the frontside of the original contract, and the second exhibit was a document captioned "Invoice" that was dated over one year after the job ended, October 3, 2014. It was typewritten, and it indicated the costs, including the additional work performed after the job started.

The Complaint on Account was filed in the Girard Municipal Court. Motions for Summary Judgment were filed by the parties. Delores lost, because the Judge misinterpreted the Invoice for a valid Change Order in its Judgment Entry. Petitioner and Delores cited contract law in their cases, that without a "signature" to authorize additional items to the contract, payment should not be made. All of the lower courts overlooked the absence of a change order and the absence of any document with a signature, authorizing additional work to the contract. The Girard Municipal Court's Judgment Entry was dated January 20, 2017, Appendix H. Delores could not appeal to the Ohio State Supreme Court, because they erroneously declared her a vexatious litigator and did not permit her to file any documents in that court. Delores also lost at the Appellate Court.

On June 23, 2015 Petitioner filed a Complaint against Respondent for a breach of contract and negligence in the work performed with the Trumbull County Court of Common Pleas. The Petitioner lost on the Motion for Summary Judgment which was not fair.

The Judge of the Common Pleas Court stated in its Judgment Entry of March 7, 2017, (Appendix G.):

> "... although the Girard suit named Delores as a Defendant and this suit was brought by Ann as Plaintiff, there is sufficient mutuality of interest, including an identity of desired result so that Delores and Ann are in privity for purposes of res judicata."

Delores filed a counterclaim; however, it was not valid since she was erroneously declared a vexatious litigator

And had to file a Leave to Proceed first. She abided by the Girard Municipal Court's Judge's instructions and filed the Leave to Proceed in the Girard Municipal Court and not the court that declared her a vexatious litigator, Trumbull County Court of Common Pleas. It was not valid. Yet, the Lower Courts overlooked it purposely, so Petitioner and Delores could be framed into privity and res judicata, then lose their cases. Even though Respondent filed a Motion for Summary Judgment with falsified affidavits, Civ R. 56(G), it still won. Sanctions should have been imposed on Respondent.

Petitioner appealed to the Appellate Court, Eleventh District, and lost on April 15, 2019. Petitioner appealed to the Ohio State Supreme Court and lost. (Appendix C – April 15, 2019 Opinion-Appellate Court)

On May 5, 2018 Petitioner filed a Motion for Relief from Judgment of the Trumbull County Court of Common Pleas' Entry of March 7, 2017, and it was denied on May 16, 2018. The Civ R. 60(B) motion was for newly discovered evidence, Civ R. 60(B)(2) and fraud, (3) and (5).

The newly discovered evidence was the backside of the original contract. It indicated the two checks Petitioner gave to Frank for $3,000.00 each. It also indicated the additions made to the contract and the dates of "9-24-13" and "9-30-13" in which the work was paid. So, Respondent's December 11, 2014 Complaint on Account was fraudulent and frivolous. Yet, the Lower Courts overlooked it, because Respondent was represented by an attorney, Ned C Gold, Jr., Esq., who shared the same law practice with a former Eleventh District Court of Appeals' Judge, Donald Ford, Sr. When Judge Ford retired in 2007, Judge Mary Jane Trapp took his place. It is Judge Trapp who signed all of the adverse decisions in this case.

The newly discovered evidence was truly "newly discovered." Delores made a copy of only the frontside of the contract, after the fraudulent Complaint on Account was filed against her, because that is what Respondent attached to the Complaint. The original contract was always in Delores' possession and in her file, because Respondent filed the Complaint on Account against Delores first, December 11, 2014. Petitioner filed her Complaint later, June 23, 2015.

The original contract was on very thin paper. Delores placed it behind all of the papers so it would not tear.

Delores filed a Civ R. 60 (B) Motion and was denied. Petitioner also was denied on May 16, 2018. This is what encouraged Respondent to file a "Motion for Sanctions - Including Attorneys fees." Respondent erroneously said that Petitioner was harassing Respondent and making it incur expenses in the instant case which is false. Respondent harassed Petitioner and Delores with the frivolous and fraudulent Complaint on Account, then framed them into privity, Res Judicata and now Sanctions and the false representation. The Lower Courts favored Respondent because of the connection with a former appellate court judge, and I am an elderly female, pro se litigant

Petitioner's Motion for Relief from Judgment that was filed on May 7, 2018 was filed within a reasonable time from the Judgment Entry of March 7, 2017 for Civ R. 60(B)(2) newly discovered evidence and fraud Civ R. 60(B) (3 and 5). Although the Lower Courts gave Petitioner an adverse decision.

Petitioner met the three requirements to prevail on the three-prong test in GTE Automatic Electric v. ARC Industries (1976), 47 Ohio St. 2d 146, 351 N.E.2d 113, and it was timely, Cautela Brose Cement Contractors v. McFadden, et al., 32 Ohio App. 2d 329, 291 N.E. 2d 539.

Petitioner cannot go into Delores' room with throw rugs, because she is on a walker and did not discover the newly discovered evidence until May 2018, when Petitioner reviewed some papers.

Although Delores filed a Leave for a Civ R. 60(B)(2,3 and 5) Motion with newly discovered evidence, and it was erroneously denied also.

Further documents And hearings were held regarding sanctions And Attorneys fees. Petitioner could not attend because of the weather And was given no continuances.

REASONS FOR GRANTING THE PETITION

Petitioner's Petition should be granted because she was discriminated against, since she is an elderly female, pro se litigant. Petitioner and her daughter, Delores Karnofel, do not think they know more than attorneys to represent themselves. They do not have the finances, as a result of negligent physicians that ruined their health and cannot prove anything, because the physicians lie, just like Respondent, its attorney and the Lower Courts.

Respondent took advantage of Petitioner, because her spouse is not living to protect her, and she is up in age — 97-years-old. I have been a widow for over 38 years and never dealt with a scam artist until I hired Respondent.

The due process clause in the 14th Amendment to the U.S. Constitution does not just pertain to the obvious or the new way of life that America has turned to. It pertains to every-day people, like Petitioner, who has been taken advantage of for not only Respondent to gain a profit, but also the Judges. If it were not for the Judges making intentional mistakes, the courts' dockets would not be backlogged.

This case is very costly and time consuming. The Judges are wasting a lot of the taxpayers' dollars with their biased decisions. They fear public criticism, so the next time their name is on the ballot, they might not win, if they give a pro se litigant a favorable decision. It would be more beneficial for the judges, if Respondent's

Attorney could Network and obtain more votes for them. They are not going to rely on Petitioner, who has been out of the workforce as a head cook at a highschool cafeteria for over 30 years, for votes.

The Eleventh District Court of Appeals has too much time on their hands to hear Petitioner's and Delores' cases over and over again, as a result of their biased decisions. A survey should be performed as to the amount of cases filed annually in the Appellate court and compare it to the historical records. We are in the electronic age; and the dockets would not be backlogged, if biased decisions were not made, particularly for pro se litigants. It is time to downsize in the Appellate Court and other Lower Courts to save the taxpayers' dollars.

The Lower Courts overlooked Petitioner's contract law that she cited, § 10:40 Construction Contract - Between owner and contractor - General conditions. A definition of a change order is:

> "A written order to contractor signed by owner, issued after execution of the Agreement and authorizing an addition, deletion or revision in the work, or an adjustment in the contract price or the contract time."

Petitioner and Delores did not know anything about change orders until well after the cases started and that was because I found a pamphlet that was handed out at one of my senior groups. It was published by the Federal Trade Commission and entitled, "FTC Facts for Consumers Home Sweet Home ... Improvement." It stated:

> "Remodelers often require payment for change orders before work begins."

Respondent received payment for the replacement pipe on 9-30-13 that Delores requested; That is why the Lower Courts denied the newly discovered evidence (backside of contract). It proved that Frank was beginning to make a change order but had no signatures. Frank received payment to the three additional items to the contract; therefore, the Respondent's Complaint on Account was frivolous and fraudulent.

Respondent has been in the waterproofing business for over 35 years and is well aware of change orders. Respondent's attorney has been his attorney for over 20 years, and he too is familiar with contract law, change orders and Respondent's business. He also knows the Judges in all of the courts, since he has reached the age of 80-years-old. Atty. Gold, like Frank, is unethical.

At the signing of the contract, Frank told Petitioner and Delores that his wife has MS. It is unfortunate, however, we also have infirmed health, but we don't frame people to gain money, like Respondent

Respondent and his attorney have received favors from the courts, for instance, Atty. Gold and his wife took a "4500-mile driving trip to the west and back" this past May and June. He missed the time to file evidentiary material. So, Judge Mary Jane Trapp gave him a second chance in her Judgment Entry of June 13, 2019. In Respondent's Response to Court's June 13, 2019 Entry Re: Attorney fees, Atty. Gold stated:

> "And so when I returned, there were a lot of unexpected issues on my plate, and I flat-out forgot about Magistrate Sheth-Massacci's order until she contacted me. But before I had a chance to prepare a request for a continuance related to the matters in her May 16th order, I received the Court's June 13th show cause entry."

The above is just an example of the favoritism shown in this case, to frame Petitioner and Delores for sanctions. Respondent and its attorney, as well as the judges, harassed Petitioner. Petitioner is merely defending herself, since Respondent is the one who initially commenced litigation on December 11, 2014 in the companion case against Delores.

Signatures are important in every aspect of life, whether it is letter writing, signing checks, contracts ... Documents are not valid without a signature. The lawyers and Judges of all areas would understand this; however, the Lower Courts overlooked § 10:40 Article X. Changes in the work. Section 3 states:

> "Additional work performed by contractor without authorization of a change order will not entitle it to an increase in the contract price or an extension of the contract time, except in the case of an emergency..."

There was no emergency; therefore, the absence of a change order or a fraudulent Invoice without a signature does not authorize an increase in the contract price.

The federal Government looked out for senior citizens by distributing the previously-mentioned pamphlet from the Federal Trade Commission. I wish This Court would do the same for a 97-year-old female pro se litigant by granting this Petition.

Petitioner placed her trust in the Lower Courts, when she was harmed by Respondent and its Attorney. Instead of pointing out the mistake of the absence of a change order or the absence of a signature on the Invoice to authorize the additional work added to the contract, the Lower Courts framed Petitioner and Delores into sanctions and attorney's fees.

Petitioner and Delores were forced into litigation as pro se litigants with Respondent's frivolous and fraudulent Complaint on Account. Now, Respondent and the Lower Courts forced Petitioner and Delores into sanctions and attorney's fees. The Appellate Court and Magistrate failed to support its seven-day extension of time that they gave to Respondent's Attorney to file a Response for the evidentiary hearing. This is not fair. If there was no law indicating that Respondent could have additional time to file its late response, then Respondent's Response for sanctions is invalid.

This Court must see that Petitioner is an innocent pro se litigant without any power like the Lower Courts and Atty. Gold. Even Frank has power among all of the contractors, since he purposely did not install a cleanout so a camera could be placed in the pipes to detect leakage from cracks or other problems. Respondent ruined my house with cracks, mold/mildew, destroyed landscaping/flowers and then framed me into privity, res judicata, sanctions and attorney's fees which is not fair.

Respondent and its attorney participated in frivolous conduct, and it should be corrected. The Lower Courts also participated in unethical conduct that should not go unnoticed. — All because Petitioner was not represented by an attorney.

The Lower Courts did not give Petitioner a fair day in court with the biased decisions, especially the absence of a change order.

Petitioner's Motion for Relief from Judgment was filed one year and two months from the date of the Judgment.

This is reasonable time, especially when fraud was a factor. The Girard Municipal Court misinterpreted the Invoice for a Change Order, Appendix H. Then the Common Pleas Court used the fraudulent Invoice, that was attached to the Complaint on Account as a valid case and framed Petitioner for privity and Res Judicata, Appendix G.

Petitioner appealed to the Appellate Court, Appendix F, and they too concealed the fraudulent and frivolous case in the Girard Municipal Court and erroneously stated on P. 5, ¶ 18, that Delores' had a counterclaim. One was filed, but it was not filed properly; therefore, privity and Res Judicata should not apply.

None of the Lower Courts mentioned anything about contract law or change orders, nor did they question why

Respondent did not ask Petitioner or Delores for a copy of the backside of the contract that was a making of a change order. The Appellate Court overlooked that the fraudulent Invoice did not have a signature, and it was dated over one year after the job ended.

Petitioner and Delores are novices at waterproofing and did not have the knowledge to suggest downspouts to the street or a French drain around the backporch. It shows in Appendix C, P.6, # 19 that $3,000.00 was paid on two occasions, but nothing is stated that a receipt or any other document noted the received payments, as the newly discovered evidence showed. Throughout Appendix C the Appellate Court mentions Delores' counterclaim, however, it was not valid.

Petitioner did not send Respondent a copy of the backside of the contract until May 7, 2018. Delores sent Respondent a copy in February 2018. Respondent has a copy of a document that Respondent cannot explain how it was sent to him from Petitioner or Delores.

If Respondent had the backside of the contract in its possession then it should have filed it with its Complaint on Account, since it was made at the time the work was being performed and not over one year after the job ended. Appendix C does not say anything about this, nor does it say anything about fraud, as a Result of the Complaint being

filed to harm Petitioner and Delores
The Appellate Court conceals the unethical conduct of Respondents by stating:

> "... all of Ann Karnofel's claims are barred by res judicata because she is in privity with Delores..."

The Appellate Court said that the newly discovered evidence was attached to Respondent's Motion for Summary Judgment. If so it was done fraudulently, or it was mistakened for the Invoice. Petitioner and Delores did not discover it until 2018, and Respondent cannot prove how it received it.
Even if Respondent would have attached the newly discovered evidence to the Complaint, it did not have any signatures to authorize added

work or payment. If so Petitioner would have prevailed, and sanctions would not have been imposed on Petitioner and Delores.

Petitioner asserted a due process claim in this case and other cases, as stated in Appendix C, p. 11, ¶ 42. Petitioner gave examples and evidence with the Appendices, particularly the misinterpretation (purposely) of an Invoice for a valid change Order in Appendix H, P. 2, ll 1-2. The misinterpretation was never corrected, because sanctions and attorney's fees would not apply.

In ¶ 43 of Appendix C, it states that pro se litigants are treated the same as "those litigants who retain counsel." Although this case proves that those who retain counsel are treated differently.

Appendix I - Respondent missed the Timeframe to file evidentiary material. Appendix K - Respondent was given a second chance. This is not fair.

In Appendices A, B and J the sanctions/attorney's fees are continued despite the denial of due process rights.

Petitioner was not given a fair day in court — a denial of her due process rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ann L Karnofel

Date: 12-27-19