

No. 19-7697

IN THE
SUPREME COURT OF THE UNITED STATES

Rebecca Lovell-Petitioner

vs.

Children's Corner Daycare- Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals
For the Sixth Circuit

PETITION FOR REHEARING

Rebecca Lovell
1903 Sunrise Street
Union City, TN 38261
(731)819-8410

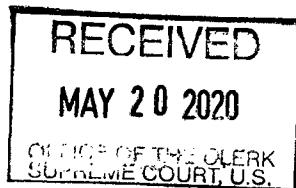


TABLE OF CONTENTS

TABLE OF CONTENTS AND AUTHORITIES.....	i
PETITION FOR REHEARING	1
Conclusion	6
CERTIFICATE OF COUNSEL	7

TABLE OF AUTHORITES

CASES

CEATS Inc. v. Continental Airlines, Inc., et al, NO. 14-681	1-5
Gov't Fin. Svcs. One Ltd. P'ship v. Peyton Place, 62 F.3d 767, 772, (5 th Cir.1995)	4
Hesling v. CSX Transp. Inc., 396 F.3d 632, 641 (5 th Cir.2005)	4
Liljeberg v. Health Svcs. Acq. Corp., 486 U.S. 847 (1988)	1, 3, 5-6
Patterson v. Mobil Oil Corp. 335 F.3d 476, 486 (5 th Cir.2003).....	2

STATUTES

28 U.S.C. 455(a)	3
-------------------------------	---

Any justice, judge, or magistrate judge of the United States shall disqualify himself
in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. 2071-2077	1
F.R.C.P Rule 60(b)	1-4
S. Ct. R. 44.2	1

PETITION FOR REHEARING

Pursuant to Rule 44.2 of this Court, I, Rebecca Lovell, hereby respectfully and mercifully petition this Court for an order (1) granting rehearing, (2) vacating the Court's March 23, 2020 order denying certiorari, and upon review (3) vacating the judgement of the Sixth Circuit affirming the district court's denial for relief under Rule 60(b) for mediator conflict by applying the standards established in *Liljeberg* stated in *CEATS, Inc. v. Cont'l Airlines, Inc.*, No. 13-1529 (Fed. Cir. 2014) and remanding this case back to the trial court in its original state as of August 30, 2017 at 9 am prior to the mediation in question for further proceedings. As the Court of last resort and a key policymaker with regard to the use of the Alternative Dispute Resolution program in U.S. courts pursuant to 28 U.S.C. 2071-2077, I humbly request this Court grant rehearing, to vacate the order denying certiorari to review the use and effectiveness of court-ordered mediation proceedings as a prerequisite for trial when a Neutral has so clearly deviated from the implemented rules of mediation set in place to preserve a party's self-determination and Constitutional right to trial from infringement in favor of the desire for pre-trial settlements to lighten caseload.

As grounds for this petition for rehearing, I submit the following.

1. I challenged the district court's judgement denying relief under Rule 60(b) and the validity of a settlement reached during court-ordered mediation asserting the presence of mediator conflict that warrants relief under this rule. First I argued on appeal that the trial court erred by finding that there was no suggestion of misconduct, coercion or duress when the settlement was only reached after Mediator Wilder violated numerous rules of the ADR plan, specifically alleging the mediator physically blocked me from leaving mediation once the settlement was declined and instructed me to write a check for fees that were not yet due BECAUSE I didn't take the settlement. Once I conceded while being detained in the mediation suite by the mediator as other parties were permitted to leave, I hesitated before the actual signing of the agreements, and Mediator Wilder again insisted I "take the settlement

or write him a check" before I could leave. Additionally, I argued that despite having the same payment arrangement in place for all parties of mediation that permitted 30 days to pay mediation fees, I, being the sole participant who did not agree to the settlement, was the sole participant who was not allowed to leave without first making payment, which should've called his impartiality into question. I argued that this imposition of payment that violated his pre-arranged payment agreement was used as a punishment for declining the settlement and applied only to me to pressure me into taking a settlement I verbally expressed I did not agree with or desire.

2. The Sixth Circuit affirmed the district court's ruling denying relief under Rule 60(b) and held the district court properly found "no suggestion" that I wasn't "free to walk away at any time", and further stated the mediator's actions were "typical of mediation" and "do not rise to the level of justifying setting aside the settlement." Circuit Judge Karen Nelson Moore, dissenting in part, believed the district court improperly rejected claims of being coerced into settling by the mediator, stating if the claims made regarding the mediator's conduct were true, it could constitute coercion which would justify setting aside the settlement, thus she would vacate the district court's judgement and remand for further review of the mediator's conduct to determine if vacatur was appropriate. A timely filed petition for writ of certiorari asserting the same arguments with respect to mediator misconduct for violations of the rules for the ADR program to facilitate a settlement under duress was submitted to this Court along with a supplemental brief submitted prior to conference.

3. In a somewhat similar case where relief was sought under Rule 60(b) for mediator conflict and denied by the district court, *CEATS, Inc. v. Cont'l Airlines, Inc.*, No. 13-1529 (Fed. Cir. 2014) relying upon the Fifth Circuit's findings in *Patterson v. Mobil Oil Corp.*, 335 F.3d 476, 486 (5th Cir. 2003), the Federal Circuit court held that a mediator's failure to disclose a personal relationship with a party of mediation pursuant to mediation standards created conflict sufficient enough to call the mediator's impartiality into question because the "appearance of impropriety" was present and enough to have an objective

observer find reason to question the mediator's impartiality. The appellate court also held that mediators having specific obligations regarding disclosures and neutrality that are similar to the recusal requirements of judges and justices under 28 U.S.C 455(a) deems the examination of the mediator's disclosure obligations under *Liljeberg* to decide if it warrants vacatur was appropriate. The Federal Circuit states:

"Courts depend heavily on the availability of the mediation process to help resolve disputes. Courts must feel confident that they are referring parties to a fair and effective process when they refer parties to mediation. And parties must be confident in the mediation process if they are to be willing to participate openly in it. Because parties arguably have a more intimate relationship with mediators than the judges, it is critical that potential mediators not project any reasonable hint of bias or partiality. Indeed, all mediation standards require the mediator to disclose any facts or circumstances that even reasonably create a presumption of bias."

4. Having raised the same issues in this case regarding mediator conflict, the Federal Circuit's finding in *CEATS* deeming it appropriate to first examine the mediator's obligations to determine if (1) mediator conflict exists as a result of a breach of obligation and (2) vacatur is an appropriate remedy for the conflict under *Liljeberg* should constitute "intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented" to warrant rehearing of the order denying certiorari in order to review the actions of Mediator Wilder under *Liljeberg* to determine if the lower courts erred in judgement denying relief under Rule 60(b) for mediator conflict. The Federal Circuit's disposition in *CEATS* that deviation from the mediation standards creates a presumption of bias contradict the Sixth Circuit's disposition in this case stating the actions of Mediator Wilder that by definition deviate from the mediation standards provided by the district court were "typical of the mediation process". By granting an order for rehearing and vacating the order denying certiorari would resolve a circuit split between the Fifth and Sixth Circuits with respect to what constitutes mediator conflict and how the presumption of bias can be created as a result.

5. The appellate court in *CEATS* held that mediator conflict had existed within his disclosure obligations, however, it was harmless and did not warrant relief because despite this conflict, the

petitioner was still given the opportunity to be heard in front of an impartial judge and jury at trial after the mediated settlement was declined. The relief sought was towards the jury's verdict and not related to mediation, so the mediator conflict had no bearings on the jury's disposition of the case. "A party seeking relief must prove (1) adverse party engaged in fraud or other misconduct, and (2) the misconduct prevented the moving party from fully and fairly presenting his/her case." *Hesling v. CSX Transp. Inc.*, 396 F.3d 632, 641 (5th Cir.2005) (citing *Gov't Fin. Servs. One Ltd. P'ship v. Peyton Place*, 62 F.3d 767, 772 (5th Cir.1995)) Although the appellate court agreed mediator conflict exists when a neutral fails to comply with ADR standards, it found vacatur was not appropriate in *CEATS* because the case was heard before an impartial judge and jury. The denial for relief under Rule 60(b) in *CEATS* was appropriate because the mediator's failure to disclose did not prevent the petitioner from proceeding to trial once the settlement was declined nor did it contribute to the jury's verdict which was the relief sought.

Conversely in this case, I was not given the opportunity to be heard in front of an impartial judge or jury after I willfully declined the settlement. My Constitutional right to be heard was taken from me by the court-appointed mediator whose noncompliance with court rules facilitated a coerced settlement that was enforced by lower courts because I "took the risk of feeling pressured" by choosing to participate in mediation without counsel. Like the mediator in *CEATS*, Mediator Wilder had specific obligations that prohibited conduct giving off the appearance of impropriety. Those obligations are not conditional or dependent upon a party's financial ability to afford representation during mediation, nor can they be modified at the mediator's discretion in order to facilitate a settlement at any cost. Mediator Wilder's noncompliance with the rules of the ADR proceeding was the sole catalyst in this case being settled before trial on August 30, 2017. Had I been permitted to decline the settlement and leave mediation without issue or intervention and permitted the same 30 days to make payment of mediation fees as the other participants of mediation

pursuant the payment agreement provided, I would not have conceded to the mediator's demands to settle, this case would have proceeded, and relief would not be sought. Because Mediator Wilder failed to comply with procedural standards of the ADR proceeding, which was the proximate cause for the relief sought, it would be prejudicial for any court to find that his actions were harmless.

Essentially, as the actions of Mediator Wilder on August 30, 2017 were performed to facilitate a coerced pre-trial settlement that did not comply with the ADR plan for the district court, my Constitutional right to be heard by an impartial judge and jury as desired when willfully declining the settlement was infringed upon, and yet I cannot pursue any cause of action for damages. The same ADR rules that *should protect* participants from misconduct and partiality during an ADR proceeding also provide neutrals with immunity from suit, therefore the only remedy available would be relief from judgement enforcing any agreement resulting from such conflict as determined by this Court under *Liljeberg*.

6. Consequently as this is the overall Court of last resort, unless this Court grants rehearing and vacates the order denying the petition for writ of certiorari in this case to consider the statutory obligations of Mediator Wilder during mediation, establish the existence of mediator conflict under CEATS, and determine that the lower courts erred in judgement by denying relief under the standards established in *Liljeberg*, then the possibility that my Constitutional right to trial that was infringed upon by being forced into settlement during a mandatory pre-trial mediation proceeding as opposed to going to trial will be indefinite. There is no other court to appeal to, and this is the last chance this case has to be reviewed to determine if the ADR program overseen by the U.S. Courts has done its due diligence in providing citizens with an easier dispute resolution through mediation by implementing specific procedural rules to preserve self-determination without infringing upon one's right to be heard during trial. This possibility of infringing upon one's right to trial, not only in my case, but in any other future case when a court excuses similar conduct of a neutral that by

definition does not comply with the rules of the ADR proceeding, should constitute “intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented” to warrant rehearing of the order denying certiorari in this case. Additionally, because the Administration Office of the United States Courts oversee the ADR program and ways to modify and improve the effectiveness of the program, there is a continuous “intervening circumstance of a substantial or controlling effect” that warrants rehearing and vacating the order denying the petition for writ of certiorari to determine if the ADR program is being implemented by the courts as effectively as possible without risking injustice to anyone with the right to trial, specifically in relation to this case.

CONCLUSION

For all reasons stated above, I pray this Court grant rehearing of the order denying the petition for writ of certiorari in the case , vacate the March 23, 2020 order denying certiorari, grant the petition for writ of certiorari to review the elements of conflict presented during mediation, vacate the Sixth Circuit’s judgement affirming the district court’s denial for relief under Rule 60(b) and remand this case under the standards of *Liljeberg* back to the trial court for further proceedings in its original state on August 30, 2017 at 9 am prior to any improper actions and influences by the mediator during the mandatory pre-trial mediation proceeding that did not comply with standards for mediation implemented by the United States District Court for the Western District of Tennessee.

Respectfully Submitted,



Rebecca Lovell
May 15, 2020