

19-7740
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

YOLANDA BELL – PETITIONER

vs.

UNITED STATES OF AMERICA – RESPONDENTS

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

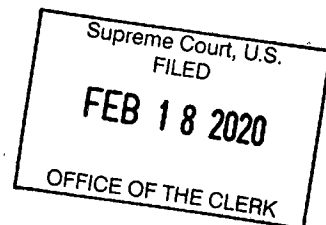
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QUESTION(S) PRESENTED

1. Did the Court of Appeals commit legal error and abuse their discretion when denying Petitioner's appeal of the district courts denial of her motions requesting medical reasonable accommodation due to Petitioner's disability, thereby denying her the opportunity to participate in the judicial process?

2. Did the Court of Appeals commit legal error and abuse their discretion in finding that an order that has the effect of a case being dismissed for lack of prosecution due to the denial of Petitioner's motions for medical reasonable accommodation is not a collateral order or interlocutory order; and therefore is not appealable?

LIST OF PARTIES

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

RELATED CASES

U.S. District Court of the District of Columbia, 2018-0738, Bell v. United States of America, March 29, 2019.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States Court of Appeals for the Fourth Circuit, 2019-1711, *Bell v. United States of America, et al.*, November 22, 2019, appears at Appendix A to the petition and is unpublished.

The orders of the United States District Court, Eastern District of Virginia, 2019-0469, *Bell v. United States of America, et al.*, June 18, 2019 appears at Appendix B to the petition and is unpublished.

The orders of the United States District Court, Eastern District of Virginia, 2019-0469, *Bell v. United States of America, et al.*, May 29, 2019 appears at Appendix C to the petition and is unpublished.

The opinion and order of the United States District Court of the District of Columbia, 2018-0738, *Bell v. United States of America, et al.*, March 29, 2019, appears at Appendix D to the petition and is unpublished.

The order of the United States District Court, Eastern District of Virginia, 2019-0469, *Bell v. United States of America, et al.*, January 21, 2020, appears at Appendix H to the petition and is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case (19-0469) was November 22, 2019.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendment XIV - Due Process and Equal Protection Clauses

Title II of the Americans with Disabilities Act of 1990 (ADA), 104 Stat. 337, 42.

U.S.C. §§12131-12165

“[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation or denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. §12132.

“Persons with disabilities are ‘qualified’ if they, ‘with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, *or the provision of auxiliary aids or services*, mee[t] the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity” §12131(2) (*emphasis added*).

STATEMENT OF THE CASE

Petitioner has a documented disability which prevents her from entering this courthouse. Petitioner requested a medical reasonable accommodation via two motions to the District Court. The first motion requested permission to electronically file through ECF. Petitioner was denied electronic filing. The second motion requested a continuance until she received her service dog so she could access the courthouse to file required and requested documents. The motion was denied. Petitioner appealed the denial to the Fourth Circuit of Appeals via an interlocutory appeal. The Fourth Circuit dismissed the appeal due to lack of jurisdiction.

This case was transferred by order from the District Court of the District of Columbia, the court of first instance, to the District Court of the Eastern District of Virginia. The basis for federal jurisdiction in the court of first instance were pursuant to the Federal Tort Claims Act (28 U.S.C. §2671-2680, et seq and 28 U.S.C. §§1346(b)(1). Provisions of 28 U.S.C. §2675 were complied with in full.

REASONS FOR GRANTING THE PETITION

Resolving accessibility to a U.S. Courthouse is not an insignificant issue. The honorable judges who sit upon the Judicial Conference felt it important and necessary enough to address this issue in particular. Ms. Bell is in training to receive her service dog to assist with her disability and perform acts to mitigate triggers of said disability. To date Ms. Bell has not graduated from the program and received her service dog, thereby effectively restricting access to this courthouse.

In *Tennessee v. Lane et al.* 541 U.S. 508 (2004) this Court held “Title II, as it applies to the class of cases implicating the fundamental right of access to the courts, constitutes a valid exercise of Congress’ §5 authority to enforce the guarantees of the Fourteenth Amendment.” And that Title II has an “affirmative obligation to accommodate persons with disabilities in the administration of justice...” When a qualified person with a disability is denied reasonable accommodation in order to access a public courthouse they are excluded from the judicial process and goes against Fourteenth Amendment guarantees of due process.

The Judicial Conference of the Administrative Office of the United States policy, as adopted in September 1994 and 1995, states that federal courts are to provide reasonable accommodations to all persons with disabilities. The Commonwealth of Virginia’s judicial policy states “Virginia’s Judicial System will make all reasonable modification to policies and programs to ensure that people

with disabilities have an equal opportunity to enjoy all of its programs, services, and activities. For example, individuals with service animals are welcomed in Virginia's courts, even where pets are generally prohibited." See *www.courts.state.va.us/courts/ada/notice.pdf*.

While Virginia's policy does not require them to "take any action that would fundamentally alter the nature of its programs or services or impose an undue financial or administrative burden," granting permission for Ms. Bell to electronically file via the ECF would not fundamentally alter the nature of the district courts programs or services, nor would it have imposed an undue financial or administrative burden, because the system to do so is already in place and used throughout the U.S. Court system. Pro se individuals are allowed to file via the ECF in other U.S. District Courts in the immediate area including the Fourth Circuit Court of Appeals. Further, Ms. Bell is already allowed to electronically file in the District Court of the District of Columbia, the District Court of Maryland, the District Court of the Eastern District of California, the District Court of the Northern District of California, the District Court of Missouri and the U.S. Court of Appeals for the District of Columbia and the Fourth Circuit Court of Appeals.

If Ms. Bell is unable to enter the courthouse to file her documents due to her disability and the district court will not allow her to file electronically and then rules on motions before the United States Postal Service delivers her replies to the

Clerk of Court, the district court' Order has the effective result of ending the litigation.¹

If the Judicial Conference of the Administrative Office of the United States and the Commonwealth of Virginia's Judicial policies state that their courts are to provide and make all reasonable modifications to their policies and programs to ensure that people with disabilities have an equal opportunity to enjoy their services and be heard *Id*, then judicial exception to provide justice when the application of the final judgment rule would operate very harshly, is an allowable judicial exception to interlocutory appeal from a non-final decision when it has irreparable consequences to avoid potentially irreparable harm. (*Forgay v. Conrad*, 47 U.S. 201 (1848)).

In Ms. Bell's case the lower courts denial of her motion for reasonable accommodation is considered a final order on that issue. And if a final order collateral to the merits is not appealable it would effectively result in the death of the action because the "opportunity for meaningful review will perish unless immediate appeal is permitted." (*Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 377-378 (1981)).

Petitioner is pro se and not a lawyer. Rule 2.2 of the Model Code of Judicial Conduct specifically states "It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their

¹ Petitioner is on disability retirement and a fixed income therefore paying a "service" to deliver and file her documents is not possible or feasible. See Appellee MTD at 1(b).

matters fairly heard” and doing so would not give the Appellant an unfair advantage. See *ABA Model Code of Judicial Conduct*, Rule 2.2[4]. Allowing Ms. Bell to file electronically via the already established and widely used ECF system provides no unfair advantage. It simply removes a barrier to her disability and allows her to “enjoy the services” of this federal district court.

Even if the lower courts denial of her motion for reasonable accommodation is not viewed as a final judgment law and procedure provides well-recognized judicial exception to the final judgment rule where appeals are allowed while portions of the case remain undecided. The collateral order doctrine provides that “an immediate appeal may be taken from an order that is final and unrelated to the merits (i.e. collateral) but that, if it is not appealed immediately, may result in irreparable harm to the Appellant” and would render any Appellate Court’s ruling ineffective if delayed. (*Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949)).

While what constitutes irreparable harm is within a court’s discretion the probability of harm to Ms. Bell in the appeal is her case being dismissed for lack of prosecution due to her disability and the denial of her reasonable accommodation requests which in essence is a denial of access to the court.

Courts have utilized the collateral order doctrine on orders that denied motions to proceed in forma pauperis which similarly deny access to the court. In *Gillespie v. United States Steel Corp.*, 379 U.S. 148 (1964) this Court intimated that an interlocutory appeal might be allowable when it was in the spirit of the federal

discretionary appeal statute even though the trial court had never certified the question under it.

Logic would dictate since collateral interlocutory orders pose no risk of repeated appellate review interlocutory review should have been granted and the appeal heard versus being dismissed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Very Respectfully submitted,



Yolanda Bell, Pro Se

Date: April 17, 2018