

19-7888

ORIGINAL

SUPREME COURT OF THE UNITED STATES

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Dr. Josephine H. Banks,

*Petitioner,*

VS

Supreme Court, U.S.  
FILED

MAR - 2 2020

OFFICE OF THE CLERK

Waffle House, Inc.,

*Respondent,*

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On Petition for A Writ of Certiorari to  
the Office of the United States Supreme Court

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**PETITION FOR A WRIT OF CERTIORARI**

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## **I.     QUESTION PRESENTED**

When a lower court overlooks a required legal document that is in the record, fails to correct their error and proceeds to deny a litigant the right to an appeal, how can this denial of due process be remedied?

## **II. PARTIES TO THE PROCEEDINGS**

Moore, Ingram, Johnson and Steele, LLP  
Robert Ingram, Attorney

## **III. PROCEEDINGS DIRECTLY RELATED TO THE CASE**

Current hearings:

Motion for Attorney Fees, Respondent

Motion to Vacate Order, Petitioner

Motion for a New Trial, Petitioner

Gwinnett County State Court

Honorable Judge Carla Brown presiding

Date: March 18, 2020, 11:00 am.

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## **V. TABLE OF AUTHORITIES**

### **Cases**

Oliver v. State, 187 Ga. App 818 (1988).

Olson v. Austin Enterprises, Inc. 116 Ga. App (1967).

Jordan v. Caldwell, 229 Ga. 343 (1972).

Jones v. Peach Trader, Inc. 302 Ga. 504 (2017).

McHugh Fuller Law, PLLC v. Pruitt Health-Toccoa, LLC, 297 Ga. 94 (2015).

### **Statute**

Georgia Law. O. C. G. A. § 5-6-37

### **Constitutional Provision**

United States Constitution, Amendment XIV

## **VI. Petition for Writ of Certiorari**

Petitioner suffered a personal injury in 2012, in the city of LaGrange, Georgia. As ProSe, the Petitioner, respectfully petitions this court for a Writ of Certiorari to review the two orders of denial handed down from the Georgia Court of Appeals.

## **VII. Opinions Below**

Order from the Georgia Supreme Court for

Order from the United States Court of Appeals dated (October 6, 2019)

Writ Petition for Case from Petitioner

## **VI. Jurisdiction**

The Georgia Court of Appeals dismissed Petitioner's Appeal and ruled that the Petitioner's Notice of Appeal was received one day late. The appeal date of September 11, 2018, (in the record) was disregarded by the Georgia Court of Appeals. At the Georgia Supreme Court level, application for Writ Certiorari was dismissed. However, very difficult personal circumstances prevailed that prevented Georgia Supreme Court application completion. On February 19, 2020, the Supreme Court of the United States made the legal decision to extend the time to file a petition for a Writ of Certiorari to March 1, 2020.

## **XIV. Constitutional Statutory Provisions Involved**

United States Constitution, Amendment XIV

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## **XIII. Statement of the Case**

### **1. The Injury Incident**

The case arises from injuries sustained by Petitioner caused by the negligent handling of hot coffee. On March 22, 2012, petitioner and her daughter were invitees at the Waffle House located at 4560 Hamilton Place, LaGrange,

Georgia 30240. This was an unfamiliar city over 50 miles from home. Petitioner's daughter purchased two cups of to-go coffee. The coffee spilled, and the Petitioner suffered second and third degree burns that required surgery and rehabilitation.

Facts acquired over time that the Petitioner and her daughter did not know follow:

Employees lacked training/supervision to achieve consistency proven safe when serving hot coffee. Employees do not warn unsophisticated users of coffee temperature. Servers do not routinely seal hot coffee, but do observe other servers doing so. Employees do not guarantee that properly sealed coffee leaves the coffee counter. Employees do not routinely service/maintain coffee making equipment (brewers). Employees do not consistently use proper to-go paper products. Their coffee temperature is not regulated for safety. Coffee is served that exceeds industry serving temperature standard. While in violation of equipment safety standards (after notification), Respondent failed to make corrections. Employees ignore duty to seal hot coffee while in employee's possession. Proprietor will mislead a patron's quest for justice, in court. Proprietor will suppress evidence in favor of patron. Employee created unnecessary confusion at the coffee counter. Employee failed to serve coffee at a temperature that would not cause 2nd and 3rd degree burns. Employee would not intervene and show due care or ordinary care. Employee would not stop a preventable injury to a customer. Employee would not implement their own safety policy to pay attention. Employee would not implement

own safety policy when serving multiple cup orders. Proprietor would try to improperly add an expert witness. Proprietor would ignore employee's wrong-doing. Employee practices a routine of serving unsealed coffee that is flawed and unsafe for innocent patrons.

## 2. On Direct Appeal

On direct appeal, Petitioner renewed her argument that the personal injury and damages sustained on March 22, 2012 resulted from a spill of unsafe coffee. In court, Petitioner was subjected to defense input from three lawyers. Petitioner's efforts to challenge numerous misrepresentations were met with relentless energy by the opposing lawyers. Petitioner openly requested the presentation of the complete Body of Evidence. The court's response, "They don't have to show that now" suppressed evidence, was unacceptable and a major error. Ultimately, the Georgia Appeals Court went on to deny Petitioner's Appeal request asserting that the appeal was submitted late.

In only seven short days, the trial court stated that no arguable issue of a material fact had been presented by the Petitioner. However, in fact, the opposite is true. On 8/27/19, the Defendant was awarded Summary Judgment and the Case was Dismissed. Petitioners' significant "Letter of Appeal" dated September 11, 2018, did meet and establish the timely requirement to file an appeal in GA.

The Georgia Court of Appeals dismissed Petitioner's Appeal and ruled that Petitioner's Notice of Appeal was received one day late. In addition, the Letter of

Appeal dated September 11, 2018, went uncorrected by the Georgia Court of Appeals.

At the Georgia Supreme Court level, application for Writ Certiorari was dismissed. However, very difficult personal circumstances prevailed that prevented the completion of the Georgia Supreme Court application. Recently on February 19, 2020, the Supreme Court of the United States made a legal decision to extend the time to file a petition for a Writ of Certiorari to March 1, 2020.

#### **IX. REASONS FOR GRANTING THE WRIT**

A. To avoid erroneous deprivation of the right to an appeal justifies scrutiny of the Georgia Court of Appeals actions. The right of all Petitioners to be heard in court is a Constitutional Right. The Appellant's Letter of Appeal dated September 11, 2018, is documented part of the legal record and may be considered as a Notice of Appeal.

In *Oliver v. State*, 187 Ga. App 818 (1988)-the judge ruled that an out of time appeal was deemed valid where the indigent defendant mailed a letter to the judge describing his intent to appeal. A simple letter was sufficient to meet the requirement of the appeal statute. In *Olsen v. Austin Enterprises, Inc.* 116 Ga. App. (1967), the appellate court dismissed the appellant's appeal because the appellant incorrectly identified the final date of judgment. Nothing in the O.C.G.A. § 5-6-37 indicates that an appellant has to correctly state the date of final judgment. Petitioner was required to make a "concise statement of the judgment, ruling, or order entitling the Petitioner to take an appeal." Petitioner did so. In Petitioner's

case, the Court of Appeals overlooked the trial court's receipt of Petitioner's initial letter providing notice of appeal. O.C.G.A. § 5-6-38 (a) provides that a "notice of appeal shall be filed within 30 days after entry of the appealable decision or judgment complained of" and timely filing is an absolute requirement to conferring the appellate court's jurisdiction to hear the case. In *Jordan v. Caldwell*, 229 Ga. 343 (1972). "An appellate court has the sole authority in determining whether a filed notice of appeal is sufficient to invoke its jurisdiction." Another case that concurs is *Jones v. Peach Trader, Inc.*, 302 Ga. 504 (2017). The Gwinnett County Trial Court accepted Petitioner's filing by their file stamp of "2018 SEP 11 AM 11:12." Subsequently, both the trial court and this court accepted these 6 other notices as properly filed and should accept this letter as properly filed as well. In fact, the only glaring difference between this letter and the 6 other notices of appeals are the titles: one entitled "Letter of Appeal" and six entitled "Notice of Appeal." It can be argued that those six additional notices of appeals all directly relate back to the letter that was originally filed with the trial court on September 11, 2018. Under O.C.G.A. § 5-6-37 the appellant bears the burden of designating the record for transmittal. See *McHugh Fuller Law Group, PLLC v PruittHealth-Toccoa, LLC*, 297 Ga. 94 (2015) wherein subsequent notices of appeals that relate back to the letter of appeal although not stated as amendments; these have the same effect.

The only glaring differences between this letter and the 6 other notices of

appeal are the titles: One entitled “Letter of Appeal” and six entitled “Notice of Appeal”. It can be argued that those six additional notices of appeals all directly relate back to the letter that was originally filed with the trial court September 11, 2018. Under O.C.G. A. 5-6-37, the Petitioner bears the burden of designating transmittal of the previous notices of appeal. See McHugh Fuller Law Group, PLLC v. Pruitt Health-Toccoa, LLC, 297 Ga.94 (2015). As such, those Petitioner’s “Letter of Appeal” had a specific and concise objective which was to notify through written communication that appellant was appealing the trial court’s decision. Most importantly, Petitioner’s Letter of Appeal is a Notice of Appeal as it notified all parties that Appellant was appealing the trial courts granting of Appellant’s motion for summary judgment. Because Petitioner’s subsequent letter of appeal and notices of appeals are all directly related, she properly designated each for transmittal. For these reasons, the Court should not have denied Petitioner’s Motion for Reconsideration. Petitioner’s Motion for Reconsideration was timely and filed in accordance with the 10 day Rule pursuant to Court of Appeals Rule 37. The Appeal Process is a perfect Check and Balance method designed to protect and promote justice for all that promotes liberty.

In Respondent’s Reply Brief to Petitioner’s Motion for Reconsideration, Respondent mentions Georgia Court of Appeals Rule 12 which states that the

December term of Court “begins the first Monday in December and ends March 31 the following year, “(Ga. Ct. of App. R. 12 (1). That also includes any motion for reconsideration period(s) and requires the court to issue its order in the term when the case was docketed or in the term immediately following. (Ga. Ct. of App. R. 12(1). Petitioner’s appeal was docketed during the December term of court on March 12, 2019. (See Notice of Docketing - Direct Appeal March 12, 2019).

The Court of Appeals issued its Order of Dismissal on March 26, 2019, within the December term of Court which ended on March 31, 2019. However, Georgia Court of Appeals Rule 37 (b) states that “notices for reconsideration must be filed within 10 days from the rendition of the judgment or dismissal.” Respondent filed her Motion for Reconsideration within the 10- day time frame required by Rule 37(b), this Motion for Consideration is timely. Moreover, Rule 12 states that an order, which one will be made the present Motion for Reconsideration, must be rendered in the December or April term. The Respondent conveniently decided to omit this in its original reply.

Under the Respondent’s application of the rules, the Court of Appeals could hypothetically issue a dismissal on the first day of a term and this would prevent a petitioner from being able to file a motion for reconsideration. Strict application of the Respondent’s position would be detrimental to preserving the rights of a Petitioner to utilize one of the most important tools in the appellate process, the motion for reconsideration. The 10-day rule to file a motion for reconsideration

could be cut down to a much shorter period a petitioner completely helpless and without procedural redress to pursue due process. This, alone, would make Rule 37(b) effectively useless, and would oppose a fair and just legal system that the framers of the Georgia Constitution intended. Because of this, the Court of Appeals should have granted Petitioner's motion for reconsideration instead of dismissing the Petitioner's appeal.

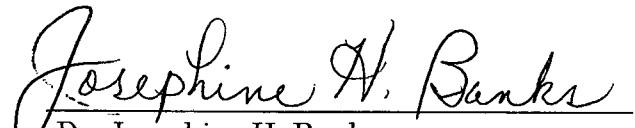
## X. CONCLUSION

WHEREFORE, for the above and foregoing reasons, Petitioner, Josephine Banks, respectfully requests that the Supreme Court of United States Court grant this Petition and issue a Writ of Certiorari to review the decisions of the Court of Appeals. Keeping in mind, the fact that the General Assembly specifically set forth instances where notice deficiencies would not result in the dismissal of an appeal.

Irregularities exist all over the world. It was incorrect for the Georgia Court of Appeals to withhold a benefit that has been afforded other litigants. Otherwise, the carefully-crafted procedural safeguards developed over the last fifty years will be undermined. Most importantly, justice can be denied the innocent. The honorable discretion of the Supreme Court to help citizens in their quest for justice is worth the labor to bring about awareness. By presenting this Writ Petition, an imbalance in a lower court system is shown. For a litigant without counsel and outnumbered by three, hear this outcry for justice to prevail.

DATED this 1st day of March 2020.

Respectfully submitted,

  
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