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OFFICE OF THE CLERK
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

Dr. Josephine H. Banks,

Petitioner,

v.

Waffle House, Inc.,

Respondent,

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

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION

Dr. Josephine H. Banks

ProSe - 770-856-2894

3203 College Ave.

Columbus, GA 31907

Email: josiebanks84@yahoo.com

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QUESTIONS PRESENTED

The Petitioner's question resulted from elite lawyers' actions to hide evidence, marginalize a disabled litigant (which establishes this court's jurisdiction), bias the presiding judge and oppose the case docketed with the Georgia Court of Appeals.

QUESTION PRESENTED BY PETITIONER

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?

PARTIES TO THE PROCEEDINGS

Waffle House, Inc.
Moore, Ingram, Johnson and Steele, LLP
Robert Ingram, Respondent

PROCEEDINGS DIRECTLY RELATED TO THE CASE

Directly Related proceedings are:

Motion for Attorney Fees, Respondent Moore, Ingram, Johnson and Steele, LLP
Respondent cancellation, awaiting new Calendar Date.
Honorable Judge Carla Brown, presiding.

GA Motion Statue O.C.G.A. 9-11-60 to Vacate Order, Motion for New trial and Motion
to Set Aside filed by Petitioner with Clerk of Gwinnett County State Court Trial Court
on October 21, 2017. Honorable Judge Carla Brown, presiding.

State Court of Gwinnett County, Georgia, Josephine Banks v Waffle House, Inc. No.
15-C-06239-3 (August 27, 2018) (Order granting summary judgment).

Court of Appeals of the State of Georgia, Josephine Banks v. Waffle House, Inc. No.
A119A1594 (Order dismissing Petitioner's motion for Reconsideration entered April
18, 2019; Order denying Petitioner's Request for Permission to File Second Motion
for Reconsideration entered May 22, 2019).

Supreme Court of Georgia, Josephine Banks v Waffle House, Inc., No. S20T0274
(October 3, 2019) (Order denying request for extension of time to file a Petition for
Writ of Certiorari).

United States Supreme Court, Josephine Banks Writ Petition Submitted on Mar. 1,
2020, for review of Georgia Court of Appeals Decision to Dismiss Petitioner's Case.
Currently in Progress.

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1. To avoid erroneous deprivation of the right to an appeal justifies scrutiny of the Georgia Court of Appeals decision and related actions to deny the Constitutional Right of a disabled Petitioner to be heard in the appeals court which is the first step to secure a jury trial that is undeniable and is sustainable as Due Process in the constitution.	
2. The Plaintiff's timely Letter of Appeal dated September 11, 2018, is part of the record and may be considered as a Notice of Appeal, similar to the ruling in the <i>Ollie v State</i> , 187 Ga. App 818 (1988) case and therefore should be honored by the GA Court of Appeals.	
3. This petition has the potential to become a landmark case by setting a precedent in a significant ruling that sets a new standard whereby the right to an appeal is protected by the American Disability Act and cannot be denied.	
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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, VII

American Disability Act

Petition for Writ of Certiorari

Although forced into a ProSe status, Petitioner respectfully petitions this court for a Writ of Certiorari to review the removal of her case from court's docket and denial of two reconsideration orders handed down from the Georgia Court of Appeals.

Opinions Below

Order from the Georgia Supreme Court

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

Writ Petition for Case from Petitioner

Jurisdiction

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. Petitioner is protected by the American Disability Act of 1990 that covers a visible mobility deficiency. Respondent provided a list of federal issues that were articulated at the summary judgment hearing. The list included "Petitioner's use of a cane, walker, lower extremity weakness and recipient of disability benefits". At the restaurant, absence of a handicap entrance and the tightly built doors prevented Petitioner's access to the restaurant's interior. This barrier validates why Petitioner's daughter was asked to enter the restaurant and purchase coffee. Thus, the jurisdiction of the United States Supreme Court is invoked.

Constitutional Statutory Provisions Involved

United States Constitution, Amendment XIV, VI, VII, ADA

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, preservation of the right to a speedy and fair trial by jury. In addition, ADA prohibits discrimination in all places open to the public.

STATEMENT OF THE CASE

Petitioner was injured on March 22, 2012. A hot coffee cup's lid, that was never sealed by the employee, came off the cup; spilled and Petitioner was severely burned. Respondent blamed Petitioner's daughter. The fact is the server breached her duty to seal the lid. Surgery was required. Petitioner's Tort claim charged that the coffee served was unsafe (**See Amended Complaint #1**).

In open court, Respondent falsely implied that Petitioner held proprietor responsible for preexisting disabilities. Petitioner never connected any disability to the proprietor. As a result, the courtroom atmosphere was unpleasant. Comments made drew unfavorable attention to Petitioner's disabilities.

Respondent overlooked proprietor's violation of the American Disability Act's mandate to provide building access. The absence of a handicap entrance made the restaurant inaccessible to Petitioner. Thus, Petitioner asked daughter to go inside the restaurant and purchase the coffee. Respondent said Petitioner never entered the store. Petitioner felt marginalized in the public courtroom which was a human rights ADA violation. While seated there in a wheelchair, Petitioner had no choice but to listen. This experience was unfavorable, uncaring, and unnecessary in violation of Petitioner's protection under ADA. The court had a legal duty to care. Nevertheless, the following disabilities were openly articulated: Gait Abnormality, Use of a Walker, Lower Extremity Weakness, Disability Benefits. Under ADA protection, Petitioner should not have experienced ridicule and a diminished sense of value in the courtroom. Petitioner asserts that Respondent's talk on Petitioner's

physical limitations posed a direct threat to the judge's perception of Plaintiff as a qualified litigant. Dissemination of this information fostered negative attitudes evident in exclusion exhibited when the judge mainly looked and spoke in the direction of Respondent's table as if Petitioner was not present. This treatment was a violation that arose from Plaintiff's disabilities broadcasted in the courtroom, caused pain and suffering and cannot be justified (**See Transcript, p.32**) and **ADA update, p.12**).

The fact that the "**first-wrong doer**" shown in the video was never seen by the trial court. The award of summary judgment was based on prejudiced video evidence.

The act of an "Unsophisticated User" discovering an unsealed, yet flush, cup's lid that appeared sealed and leaving it as discovered (unsealed) with the expectation that the server would perform her legal duty to tightly seal the hot coffee did not break the causal connection. The server failed to give proper and legal service to a "new coffee drinker". Injury to the Petitioner was preventable. The server breached her Duty to Warn and omitted reasonable care through silence and said nothing to the unsophisticated user. (**See Crystal's depos. P. 25**).

Petitioner saw that truth had been compromised when Respondent's continuity broke. For years, daughter's actions were described as "lifted, removed, replaced and manipulated." Respondent broke with continuity, massaged the evidence and flipped to new terminology that suddenly switched daughter's actions to failure to "re-seal" and "re-secure". This was a clear distortion of fact (**See SMJ**

Brief p. 2, 3, 17, 18). To “re-seal” or “re-secure” the coffees was impossible. This fabrication of fact was proven. Without wavering, server said she never sealed Petitioner’s coffee (**See April Spradlin dep. p.59**). This fact proprietor must accept. ~~Petitioner~~ Petitioner feared that the scope of truth and integrity was becoming less clear. A pattern became evident. Examples follow: Expert witnesses were not properly noted and Petitioner disclosed this information to the court, to no avail (**See SMJ Brief p. 10-11 and Appendix, 9B**). On page 16 of Summary Judgment, Respondent’s claim that Petitioner felt coffee should be served at 135 degrees is inaccurate. With only one old brewer inspection report, routine service of coffee brewers is false. Coffee at 185 degrees in the parking lot shows lack of maintenance of coffee serving temperature. List of Undisputed facts are questionable. Claim of daughter in possession of the hot coffees is unproven. Petitioner charged with Discovery Abuse, despite the trial court having allowed admission of the same old and complete records in. Reports that requests made had not been met never changed long after requests were satisfied. Thus, to vacate the summary judgment order is validated (**See Petitioner’s Motion to Vacate SMJ #2**).

The immediate continuation with consequences of what the server started dissolved Respondent’s allegation of an Intervening Act. Daughter’s action flowed from the server’s original negligent act which is proximate cause of Petitioner’s injury. Respondent chose to ignore a dangerous serving practice documented in deposition testimonies. Employees left to-go coffees unsealed without informing the customer. Employees knew customers would not know that hot coffee with a flush

lid was unsealed until after touching the cup. Daughter was unaware and the duty to warn was breached. Manager Lewis said customer had to use common sense while employees made assumptions to seal or not to seal hot coffee (**See depo. Spradlin #5, p. 59 and Lewis, #7, p. 31**). This confusion is precisely what daughter experienced at the counter. The need is great for a jury trial.

The dismissal of Petitioner's case can be corrected, with help from the United States Supreme Court. Significant fees (**See Cost Info, p.20**) were paid to release case records to the GA Court of Appeals. In good faith, the status of this case reported as docketed was accepted, considered proper and correct

Later, dismissal and a report of untimely was shocking and detrimental. However, Petitioner had filed a Letter of Appeal, months prior, on September 11, 2018. This letter was in the Gwinnett County record. Petitioner asks this court to review what happened and determine whether the court of appeals improperly dismissed Petitioner's case that the court had docketed and improperly denied Petitioner's Motion for Reconsideration. Hopefully, there is an error that can be corrected in Petitioner's favor and docket status reaffirmed.

PROCEDURAL HISTORY

Pursuant to O.C.G.A. § 5-6-38, a notice of appeal must be filed "within 30 days after entry of the appealable decision or judgment complained of". The appealable decision was the judgment granting Respondent's Motion for Summary Judgment on August 27, 2018. On September 11, 2018, Petitioner filed with the trial court a notice, which put the Respondent, GA Court of Appeals, and Gwinnett County State

Court on notice of appeal. This notice was titled "Letter of Appeal" and was consistent with the provisions set forth in O.C.G.A. § 5-6-38. The Clerk of the State Court placed a file stamp of "2018 SEP 11 AM 11:12" on the notice of appeal (see **Attachment A**). Stamped was the time and date of the filing, which was well within the 30-day time frame prescribed by law. Subsequently, Petitioner filed other notices of appeal and amended notices of appeal that directly related back to and referenced the 9-11-18, initial Letter of Appeal FILED and ACCEPTED by the court. The Court of Appeals granted this notice, indexed it on March 6, 2019 and then docketed the appeal on March 12, 2019. On March 13, 2019, Respondent filed a motion to dismiss for lack of jurisdiction. On March 26, 2019, the Court of Appeals issued an order granting Respondent's motion to dismiss. On April 1, 2019, Petitioner filed a Motion for Reconsideration challenging the grant of Respondent's motion to dismiss. On April 2, 2019, Respondent filed a response to Petitioner's motion for reconsideration. On April 18, 2019, the Court of Appeals denied Petitioner's motion for reconsideration. On April 24, 2019, Petitioner filed Permission to File a Second Motion for Reconsideration, which was denied by the Court of Appeals on May 22, 2019, Pursuant to Rule 38 of the Georgia Court of Appeals, which states "notice of the intention to petition for a writ of certiorari must be filed with the Clerk of this Court within 10days after the judgment or, if a motion for reconsideration is filed, within 10 days after the order ruling on that motion." Subsequently, Petitioner filed her Notice of Intent to Petition for a Writ of Certiorari on Monday June 3, 2019, which was properly filed because the 10th day

was on the weekend as prescribed by O.C.G.A. § 1-3-1 (“when a period of time measured in days, weeks, months, years, or other measurements of time except hours is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted; and if the last day falls on the weekend, the party having such privilege shall have to the following Monday to exercise the privilege”). ~~Respondent~~ ^{Petitioner} filed this Petition for Writ of Certiorari on June 21, 2019, within the 20-day time frame as prescribed by Supreme Court of Georgia Rule 38.

ENUMERATION OF ERROR(S)

1. The GA Court of Appeals erred when it decided to grant Respondent’s motion to dismiss for lack of jurisdiction, when it ruled that petitioner’s September 11, 2018 letter of appeal did not meet the requirements set forth in O.C.G.A. § 5-6-38. The discretion to recognize the letter rightfully as the first part of the total steps taken by petitioner to appeal should be a credible part of the record.
2. The court of appeals erred when it twice denied petitioner’s motion for reconsideration of its granting of respondent’s motion to dismiss for lack of jurisdiction without using its sole discretion to acknowledge that an error was made by another, not the Petitioner. Petitioner’s case was considered fairly docketed. Any error correction should favor petitioner and sustain case docket status.

ARGUMENTS AND CITATION OF AUTHORITIES

1. The court of appeals erred when it decided to grant Respondent’s motion to dismiss for lack of jurisdiction, Plaintiff appeals to the GA Court of Appeal decision to ruled that petitioner’s September 11, 2018 “Ltter of Appeal” did not meet the requirements set forth in O.C.G.A. § 5-6-38.
- A. **Petitioner’s Letter Meets Several Requirements of the Notice of Appeal Statute under Georgia Law.**

Respondents argue that Petitioner’s letter does not constitute a proper notice of appeal under the statute. However, upon looking at the statute, one can conclude that this is far from the truth and lacks any factual basis. The

totality of the circumstances, and the subsequent letters relating back to the original letter, does constitute a notice of appeal under Georgia Law. O.C.G.A. § 5-6-37 that provides the following:

The notice SHALL set forth the title and docket number of the case; the name of the Petitioner and the name and address of his attorney; a concise statement of the judgment, ruling, or order entitling the Petitioner to take an appeal; the court appealed to; a designation of those portions of the record to be omitted from the record on appeal; a concise statement as to why the appellate court appealed to has jurisdiction rather than the other appellate court; and, if the appeal is from a judgment of conviction in a criminal case, a brief statement of the offense and the punishment prescribed.

As mentioned in the previous section, the letter of appeal is directly related to the 6 subsequent notices of appeals that the Petitioner filed (September 11, 27, 28, October 15, and November 16, 19, and 27). In the initial letter, Petitioner lists the name of the Petitioner and her attorney's address. At this point, Petitioner was forced to represent herself and both her name and address are clearly shown on the letter. Petitioner provides a concise statement of the judgment, ruling, or order entitling her to take an appeal. This is clearly shown when she states that she is appealing because the "presiding judge (Carla Brown) rule in favor of the Defendant (Petitioner) and granted summary judgment and dismissed my case." In the subsequent notices of appeals, Petitioner designates what portions of the record are to be omitted on appeal as prescribed by the statute. (see R – 1-2; R – 3-4; R – 5-12; R – 13-20; R – 21-28; R – 29-37). In totality of the circumstances, Petitioner has met the requirements of the notice of appeal statute. Further, OCGA § 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," or within 30 days of any order on

certain post-trial motions. Petitioner's initial action of submitting the "Letter of Appeal" coupled by subsequent actions connect to amending the September 11, 2018 letter, which was filed within the 30-day window prescribed by the notice of appeal statute. This letter and its progeny set forth the requirements of O.C.G.A. § 5-6-37, and Petitioner's motion for reconsideration should not be dismissed.

Court rulings strive for consistency. There is case law where sufficiency was met with a simple letter and satisfied the requirement of the notice of intent to appeal statute. In Ollives 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. The judge ruled that the actions of a third party who delivered the letter outside of the 30-day window, the date on the letter was in fact within the statutory window. The appeals court agreed with judge and chose to allow a subsequent notice of appeal to suffice in conferring jurisdiction to the Court of Appeals. Similarly, the Court of Appeals or the Supreme Court of Georgia is in the same position to exercise their discretion in considering the totality of the circumstances, that shows sufficiency in steps taken for Banks. For instance, all parties privy to the suit were put on notice of Petitioner's intention and decision to appeal the trial court's granting of Respondents motion to dismiss. Furthermore, subsequent filings of additional notices of appeals and amendments all relate back to and reference the original "Letter of Appeal" filed on September 11, 2018.

This case is unlike the cases cited in Respondents Response to Petitioner's Motion for Reconsideration. (Appellee's Response to Appellant's Motion for Reconsideration, April 2, 2019). In *Olson v. Austin Enterprises, Inc.*, 116 Ga. App. (1967), the appellate court dismissed the appellant's appeal because they incorrectly identified the final date of judgment. However, nothing in the O.C.G.A. § 5-6-37 indicates that an appellant has to correctly state the date of final judgment. Here, Petitioner was required to make a "concise statement of the judgment, ruling, or order entitling the Petitioner to take an appeal." Petitioner did just that by stating, "the presiding Judge (Carla Brown) ruled in favor of Defendant and granted Summary Judgment and Dismissed my case". The General Assembly specifically set forth instances where notice deficiencies would not result in dismissal of an appeal. Including: (1) failure to include a jurisdictional statement and (2) designating the wrong appellate court. Here Petitioner omits the jurisdictional statement as well designating an appellate court, but these omissions are not fatal to Petitioner's notice of appeal and cannot result in dismissal of her appeal. Therefore, the appeal should not have been denied.

B. Petitioner's Filing of Her Letter of Intent Falls Well within the Time frame Prescribed by the Computation of Time Statute.

In this case, the Court of Appeals overlooked the trial court's receipt of Petitioner's initial letter providing notice of her 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. Jordan

v. Caldwell, 229 Ga. 343 (1972). “An appellate court has the sole authority in determining whether a filed notice of appeal or discretionary application is sufficient to invoke its jurisdiction.” Jones v. Peach Trader, Inc., 302 Ga. 504 (2017).

Computation of time O.C.G.A. § 1-3-1 provides that a “when a period of time is measured in days, weeks, months, years, or other measurements of time except hours is prescribed for the exercise of any privilege or discharge of any duty, the first day shall not be counted but the last day shall be counted.” Here, the present appeal should not be dismissed because Petitioner’s Notice of Appeal was thought timely filed by the GA Court of Appeals. The Trial Court entered judgment against Petitioner on August 27, 2018. (R – 38). Petitioner subsequently filed a letter indicating that her decision and intent to file notice of appeal on September 11, 2018, (See Attachment A), within the thirty (30) day requirement prescribed in O.C.G.A. § 5-6-38. Additionally, O.C.G.A. § 1-3-1 states that when computing time to file in days, you are to count the last day but not the first day. The Petitioner timely filed her notice of appeal within fifteen (15) days in accordance with the thirty-day requirement. Given that the Petitioner filed her notice of appeal timely, this appeal must not be dismissed for lack of jurisdiction and must be reinstated. The record is clear that notice was filed on September 11, 2018. The record is equally clear the Petitioner filed his notice before the thirty (30) day deadline. Accordingly, this Motion should be granted, and Petitioner’s appeal reinstated.

Moreover, both the Trial Court and the Respondents were on notice that Petitioner was appealing her case. The Respondent’s decision to mislead the Court

of Appeals by ignoring this properly filed notice on September 11, 2018, and focusing on subsequent notice(s) filed ignores reality and deprives Petitioner the ability to obtain fair and due process as our justice system provides. Therefore, the Petitioner's appeal should not have been denied.

3. The court of appeals erred when it twice denied petitioner's motion for reconsideration of its granting of respondent's motion to dismiss for lack of jurisdiction.

This Court should overturn the Court of Appeals dismissal of Petitioner's appeal. Georgia Court of Appeals Rule 37 provides that this Court can grant a motion for reconsideration when its judgment is based upon a material fact in the record that was overlooked. See Georgia Court of Appeals Rule 37(e) (A reconsideration shall be granted on motion of the requesting party, only when it appears that the Court overlooked a material fact in the record. . .").

A. Petitioner's Motion for Reconsideration is Timely as it was Filed in Accordance with the 10 Day Rule Pursuant to Court of Appeals Rule 37

In Respondent's Reply 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 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 thereafter. (Ga. Ct. Of App. R. 12). 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 “motions for reconsideration must be filed within 10 days from the rendition of the judgment or dismissal.” Respondent filed her Motion for Reconsideration on Sunday March 31, 2019 and it was officially accepted on April 1, 2019, which is 4 days from the date of the original order of dismissal. Because Petitioner timely filed the Motion for Reconsideration within the 10-day time frame requirement (b), this Motion for Consideration is timely. Moreover, Rule 12 states that an order, which will be 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 last day of a term and this would prevent a Petitioner from being able to file a motion for reconsideration. 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 time leaving a petitioner completely helpless and without procedural redress to pursue due process. Respondent has fought hard to deny Petitioner fairness in the U.S. legal system. This cannot happen if Rule37(b) is made effective today.

B. Appellant's Letter of Appeal is Part of the Record and May Be Considered as a Notice of Appeal.

Appellant filed the letter indicating her intent and notice to appeal on September 11, 2018. The Gwinnett County trial court accepted this filing as designated by their file stamp of "2018 SEP 11 AM 11:12". Subsequently Appellant filed several other documents with the court that were titled notice of appeal and had similar contents as the initial letter on September 11, 2019. Both the trial court and this court accepted these 6 notices as properly filed and should accept this letter as properly filed as well. In fact, the only glaring differences 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 the six additional notices of appeals all related 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. In the present appeal, the record designates 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 subsequent notices of appeals related back to the "Letter of Appeal" although expressly not stated as amendments, these have the same effect. The "Letter" had a specific and concise objective which was to notify through written communication that appellant was appealing the trial-court's decision. Most importantly, Plaintiff's letter of Appeal is a Notice of Appeal as it notified all parties that Appellant was appealing the trial courts granting of Appellee's motion for summary judgment. Appellant's subsequent letter of appeal and notices of appeals all relate. Each were properly

designated for transmittal. For these reasons, this Court is called upon to agree that Appellant's motion for reconsideration should be granted.

This court is informed of Petitioner's efforts to submit a Writ of Certiorari to the Supreme Court of Georgia that met with circumstances out of Petitioner's control. In the course of things, on May 17, 2019, Petitioner's daughter suddenly expired due to lung cancer. Petitioner was emotionally overwhelmed. This time of sadness and sorrow was the only reason efforts to complete a pending Writ Application with the Supreme Court of GA failed **(See attached certificate #23)**.

In Gwinnett County State Court, Petitioner's case is still open. Respondent's claim of case closed is an error. There is no misapplication of law nor is this writ request baseless as alleged by Respondent. Petitioner has hope that this court exercises its discretion and grants a writ of certiorari to a disabled U. S. citizen in a struggle to allow justice to triumph.

FEDERAL QUESTIONS RAISED

In the state court of Gwinnett County, Respondent said Petitioner "never came into the restaurant" **(See transcript p.4 & 29)**. Proprietor's building did not have a handicap entrance. How could Petitioner safely enter the building? On the state level, Respondent's insensitive talk in the courtroom raised Petitioner's visible disability and was unnecessary and unfavorable (See Transcript, p.29). This court is precisely where one must go for "due process" and ADA advocacy. Petitioner's case could promote formalizing the precedence of a new standard for lower courts to allow appeals, to sustain rights, to guarantee "protection under the

law,” and protection under the ADA rule that safeguards the right to fair legal proceedings and protection against discrimination (**See Transcript,p.12**). On the appeal level, Petitioner seized the opportunity to raise and further examine federal issues evident at the summary judgment hearing. Scrutiny of federal issues was terminated when the GA Court of Appeals dismissed Petitioner’s case. Thus, this Petition for Writ of Certiorari petition should be granted.

COMPELLING REASON TO GRANT PETITION

This court’s jurisdiction is established. Marginalization of the disabled occurs all too often. This court has the power to evaluate court proceedings and, in this case, continue a commitment to let justice arise for the disabled. This is a golden opportunity to guarantee that the validation of another litigant’s “Letter of Appeal” will be fairly dispensed to all. This court is asked to oversee that justice is dispensed fairly. The prayer is that this court will intervene due to a liberty most in jeopardy, the right to a jury trial by way of an appeals court. Foresight is called upon to embrace the possibility of a landmark ruling that sets a precedence for the disabled wherein the right of the disabled to appeal is ruled undeniable. Otherwise, justice in a democratic society for the innocent and the disabled could be neglected and the guilty could get away. Certainly, the Founding Fathers would agree. Accordingly, this Petition for a Writ of Certiorari should be granted.

CONCLUSION

Wherefore, for the aforementioned reasons, Petitioner asks this court to grant this Petition for a Writ of Certiorari.

Josephine Banks, Pro Se

3203 College Ave.

Columbus, GA 31097

770 856 – 2894

Josiebanks84@yahoo.com

Josephine Banks

**Additional material
from this filing is
available in the
Clerk's Office.**