

19-8012

Case No. _____

GENERAL
OPINION

To the U.S. Supreme Court

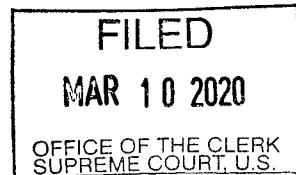
Tatyana Evgenieva Drevaleva

Petitioner Pro Se

v.

1) Alameda Health System

2) Officers of the Department of Industrial Relations of the
State of California Ms. Healy, Ms. Daly, Mr. Santos, and Mr.
Rood whom I am suing in their individual capacities



Respondents

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the 9th Circuit

Petition for a Writ of Certiorari

Tatyana E. Drevaleva

Petitioner Pro Se

333 Baker St., Apt. 406
San Francisco, CA, 94117
415-806-9864; tdrevaleva@gmail.com

I. Questions presented.

1) Plaintiff worked as a Monitor Technician observing cardiac monitors at Alameda Health System in 2013. Plaintiff was fired from Alameda Health System in September 2013 for asking questions about unpaid overtime, unpaid shift differentials, denial of my affiliation to the Union, not received 10 and 15 minute breaks, and for asking to transfer me to a full time job while I was actually working full time. In 2013, Plaintiff submitted a retaliation and unlawful termination claim and a wage claim to the Department of Industrial Relations (DIR) of the State of California. In December 2016 (in 3 years and 4 months), DIR denied the retaliation and unlawful termination claim stating that the Plaintiff had been properly fired from AHS for committing medical negligence towards the patient. However, no one record within both AHS and DIR confirms the allegation of the medical negligence. In December 2016, immediately after being notified by DIR that the retaliation and unlawful termination claim would be denied, Plaintiff filed a lawsuit against both AHS and DIR at the District Court for Northern California, No. 3:16-cv-07414-LB. The District Court dismissed Plaintiff's Fair Labor Standards Act (the FLSA) claim on the ground that the statute of limitations had expired.

The question is: Shall the District Court toll the statute of limitations under the FLSA which is 2-3 years if the Plaintiff's retaliation and unlawful termination claim was investigated by a Governmental Agency (the Department of Industrial Relations of the State of California) for 3 years and 4 months instead of statutory 60 days (the former version of the California Labor Code Section 98.7)?

Moreover, while Plaintiff's Appeal was pending at the 9th Circuit, the Legislature amended Labor Code Section 98.7 and explicitly ordered to stay all statutes of limitations while a retaliation and unlawful termination claim is pending within DIR. I presented this argument to the 9th Circuit. However, the 9th Circuit refused to accept this argument and dismissed my Appeal No. 17-16382 on the ground that my FLSA claim was time barred. The 9th Circuit denied my Petition for Panel Rehearing and my Petition for Rehearing En Banc.

- 2) In 2016, Plaintiff filed an original Complaint for Damages while residing in California. Both Defendants Alameda Health System (AHS) and DIR are located in California. The District Court dismissed my original Complaint with leave to amend. On April 02, 2017, I relocated to the State of New Mexico because I had gotten a

full time job at the Raymond G. Murphy VAMC in Albuquerque, NM. On April 10, 2017, I filed an Amended Complaint. I preserved Alameda Health System as one of the Defendants. I dismissed DIR from a list of the Defendants after I learned about the Eleventh Amendment protection at the District Court. Instead of DIR itself, I listed four Officers of DIR Ms. Daly, Ms. Healy, Mr. Santos, and Mr. Rood whom I was suing in their personal capacities. I claimed the Diversity of Citizenship jurisdiction over AHS and newly named Defendants-Officers of DIR. The District Court acknowledged the Diversity of Citizenship jurisdiction over four Officers but declined the Diversity of Citizenship jurisdiction over Alameda Health System. The District Court cited *Groupo Dataflux v. Atlas Global Grp., L.P.*, 541 U.S. 567, 570 (2004) that held that the Diversity of Citizenship jurisdiction is determined at the time when an original Complaint was filed. The 9th Circuit agreed. In my Petition for Panel Rehearing and Rehearing En Banc, I cited a more recent case law *Curry v. U.S. Bulk Transport, Inc.*, 462 F.3d 536, 540 (6th Circuit, 2006), “The general rule is that diversity is determined at the time of the filing of a lawsuit. See *Smith v. Sperling*, 354 U.S. 91, 93 & n. 1, 77 S.Ct. 1112, 1 L.Ed.2d 1205 (1957). Notwithstanding this general rule, persuasive

authority counsels that in a situation such as this where an amended complaint is filed to include the identity of a previous unidentified defendant, diversity must be determined at the time of the filing of the amended complaint."

The question is: Does the District Court have a Diversity of Citizenship jurisdiction over Plaintiff's Amended Complaint against a previous Defendant AHS if the Plaintiff relocated to another State, and the Plaintiff added new Defendants Officers of DIR?

3) After I added four Defendants – Officers of DIR, I asked Hon. Judge Laurel Beeler to order the U.S. Marshals Service to serve all Defendants with a Summons and an Amended Complaint. However, only Alameda Health System and DIR's Officer Mr. Santos were served with the Summons and the Amended Complaint. Three other Officers Ms. Daly, Ms. Healy, and Mr. Rood were never served with the Summons and the Amended Complaint. Also, all four Officers failed to timely consent to Magistrate Jurisdiction. I objected, and I asked Hon. Magistrate Judge Laurel Beeler to order the U.S. Marshals Service to serve Ms. Daly, Ms. Healy, and Mr. Rood again with a Summons and an Amended Complaint. Ms. Beeler never responded to

my request, and three mentioned above officers were never served with the Summons and the Amended Complaint. Also, I argued that, because three all four DIR's Officers failed to timely consent to Magistrate Jurisdiction, the District Court for Northern California should have transferred the entire Amended Complaint to a District Judge. However, Magistrate Judge Hon. Laurel Beeler didn't pay attention to my arguments, and she continued to judge the case. Despite three Officers were not served with the Summons and the Amended Complaint, and despite all four Officers failed to timely consent to Magistrate Jurisdiction, Hon. Laurel Beeler entered a Judgment in Officers' favor, and she dismissed my lawsuit with prejudice. After I filed a Notice of Appeal after the Final Judgment, Ms. Beeler named my Appeal frivolous and revoked my *in forma pauperis* status on that Appeal.

The question is: Does the District Court have jurisdiction to process any claim against three Defendants who were not served with a Summons and an Amended Complaint? Does a Magistrate Judge have jurisdiction to continue judging the Amended Complaint if four newly added Defendants didn't timely consent to Magistrate Jurisdiction?

4) Do both a District Court for Northern California and the U.S. Court of Appeals for the 9th Circuit have a right to ignore my Demand for a Default Judgment if DIR's Officer Mr. Santos who was served with a Summons and an Amended Complaint and who was not in the Military failed to timely respond to my Amended Complaint?

II. A list of all Parties in the proceeding in the court whose judgment is sought to be reviewed.

a) Tatyana Evgenievna Drevaleva – Plaintiff-Appellant Pro Se.

333 Baker St., Apt. 406, San Francisco, CA, 94117

415-806-9864; tdrevaleva@gmail.com

b) Ms. Doris Ng, Esq. Counsel for the Department of Industrial Relations of the State of California and Officers of the Department of Industrial Relations of the State of California

455 Golden Gate Avenue, 9th Floor, San Francisco, CA, 94102

Tel.: (510) 285-1634; Fax: (415) 703-4807

E-mail: dng@dir.ca.gov

c) Mr. Timothy C. Travelstead, Esq.

The Narayan Travelstead Professional Law Corporation

Attorneys for Alameda Health System

7901 Stoneridge Drive, Suite 230, Pleasanton, CA, 94588

Telephone: (650) 403-0150; Facsimile: (650) 403-0157

T.Travelstead@narayantravelstead.com

III. Corporate disclosure statement according to Rule 29.6 of the Rules of the U.S. Supreme Court – not applicable.

IV. The Orders of the lower Courts that are challenged in this Petition.

- a) The Order of the District Court for Northern California dated June 07, 2017 that granted Alameda Health System's Motion to Dismiss my Amended Complaint
- b) The Order of the District Court for Northern California dated July 07, 2017 that granted four DIR's Officers' Motion to Dismiss my Amended Complaint
- c) The Order of the 9th Circuit dated December 24, 2019 that affirmed the Judgment of the District Court for Northern California
- d) The Order of the 9th Circuit dated January 22, 2020 that denied my Petition for Panel rehearing
- e) The Order of the 9th Circuit dated March 04, 2020 that denied my Petition for Rehearing En Banc.

V. The basis for jurisdiction in the U.S. Supreme Court.

I am filing this Petition pursuant to Rule 10 of the Rules of the U.S. Supreme Court that says,

“Rule 10. Considerations Governing Review on Certiorari
Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court’s discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power.”

Because both the District Court for Northern California and the 9th Circuit clearly departed from accepted and usual course of a judicial proceeding and entered a Judgment in favor of three Defendants who were not served with a

Summons and an Amended Complaint, and because a Magistrate Judge continued to judge the Amended Complaint despite all four newly named Defendants failed to timely consent to Magistrate Jurisdiction, I am petitioning to the U.S. Supreme Court with a request to resolve this conflict.

Also, because the decision of a 3 Judge Panel of the 9th Circuit regarding the Diversity of Citizenship jurisdiction contradicted the case law that was decided by the 6th Circuit *Curry v. U.S. Bulk Transport, Inc.*, 462 F.3d 536, 540 (6th Circuit, 2006), and because the 9th Circuit refused to conduct both a Panel Rehearing and Rehearing En Banc, I am petitioning the U.S. Supreme Court with a request to intervene.

Also, because the 9th Circuit refused to follow the newly amended version of Labor Code Section 98.7 and refused to conduct both a Panel Rehearing and a Rehearing En Banc, I am petitioning the U.S. Supreme Court with a request to intervene,

VI. The Constitutional provisions that are involved in this case.

The Eleventh Amendment to the U.S. Constitution.

VII. A List of Related Cases.

1) 3:20-cv-00642, District Court for Northern California, District Judge

James Donato – *Drevaleva v. Ms. Laurel Beeler in her personal capacity as a Magistrate Judge of the U.S. District Court for Northern California et al.*, FTCA claim for Harassment and Outrage, the lawsuit was filed on February 28, 2020.

2) RG17881790, Superior Court of Alameda County – *Drevaleva v. Department of Industrial Relations* - dismissed

a) Appeal No. A155090, Court of Appeal for the First District (CoA 1st Dist.) – withdrawn

b) Appeal No. A155165, A155187, A155899 (CoA 1st Dist.) – dismissed

(i) Petition for Review No. S260407, California Supreme Court - is pending

(ii) Petition for Writ of Mandate No. S260480, California Supreme Court - is pending

c) Appeal No. A156248 (CoA 1st Dist.) – dismissed

(i) Petition for Review No. S260355, California Supreme Court - is pending

- (ii) Petition for Writ of Mandate No. S260491, California Supreme Court - is pending
- 3) RG19002853, Superior Court of Alameda County – *Drevaleva v. Alameda Health System*, First Verified Petition for Writ of Mandate to Compel AHS to Issue the Improperly Withheld Public Records – dismissed with prejudice
 - a) Appeal No. A157784 (CoA 1st Dist.) – dismissed
 - (i) Petition for Review No. S259444, California Supreme Court – denied
 - (ii) Petition for Writ of Mandate No. S260513, California Supreme Court – pending
 - b) Appeal No. A158299 (CoA 1st Dist.) – dismissed
 - (i) Petition for Review No. S259440, California Supreme Court – denied
 - (ii) Petition for Writ of Mandate No. 260498, California Supreme Court – pending
 - c) Appeal No. A158282 (CoA 1st Dist.) – pending
- 4) RG19002840, Superior Court of Alameda County – *Drevaleva v. Alameda Health System* – Verified Petition for an Order Relieving from Government Code Section 945.4 – dismissed

- a) Appeal No. A157851 (CoA 1st Dist.) – pending
- 5) RG19010635, Superior Court of Alameda County – *Drevaleva v/ 1) Alameda Health System, 2) The Narayan Travelstead Professional Law Corporation* – the anti-SLAPP Motion was granted, a Notice of Appeal was filed, the case is on an automatic stay
 - a) Appeal No. A158862 (CoA 1st Dist.) – pending.

VIII. A concise statement of the case setting out the facts material to consideration of the questions presented.

Plaintiff Tatyana Drevaleva was hired on April 01, 2013 to work as a Part Time Monitor Technician at Alameda Health System (California) observing cardiac monitors. In June-July 2013, I approached my former manager Mr. Verrilien Clerve, and I asked questions about unpaid both overtime and shift differentials, denial of my affiliation to the Union, not received 10 and 15 minute breaks, and I asked to transfer me to a full time job while I was actually working full time. My questions remained unanswered. In August 2013, I approached a newly appointed Director of Step Down Unit Mr. Gilbert Harding, and I asked him the same questions. I asked to reimburse me with missing payments, to allow me to be represented by the Union, and to transfer me to a full time job because I was actually working full time. Mr. Harding promised to think about it but nothing changed. On September 05, 2013, I sent a letter to Mr. Harding with these questions, and I asked to give me a response in writing. In two days after I sent this letter, on September 07, 2013, I was fired in twenty minutes after the beginning of my shift. Before being fired, I didn't receive a Notice, and I was not given an opportunity to be heard.

In September 2013, I filed both a retaliation and unlawful termination claim and a wage claim with the Department of Industrial Relations of the State of California, the Division of Labor Standards Enforcement (DIR/DLSE.) DIR quickly dismissed my wage claim asserting lack of jurisdiction over County employers.

At the time when I submitted my retaliation and unlawful termination claim to DIR, the California Labor Code Section 98.7 directed the Labor Commissioner to notify a Claimant and a Respondent about its Determination within 60 (sixty) days from the day of filing the retaliation and unlawful termination claim. Instead of 60 days, DIR processed my claim for 3 years and 4 months and eventually denied it on the ground that I had committed medical negligence towards the patient. However, during my employment with AHS, I didn't have a verbal warning, I was not written up, and I received a good Letter of Reference from Assistant Manager Mr. Masangkay. There is no record within AHS that would explain and/or confirm the allegation of the medical negligence. After being fired from AHS, my certificate of an EKG Technician remained valid. I was not reported to the appropriate State Bar. After being fired from AHS, I was receiving Unemployment Insurance benefits, and I got subsequent employment at the Raymond G. Murphy VAMC.

In December 2016, DIR notified me via the email that DIR would dismiss my retaliation and unlawful termination claim against AHS because I had committed medical negligence. DIR refused to provide me with any explanation and evidence regarding the allegation of the medical negligence. DIR even failed to mail me a Determination Letter thus depriving me to file an Appeal with Director of DIR Ms. Christine Baker. I had the only remedy to file a lawsuit against both AHS and DIR. I filed the lawsuit No.3:16-cv-07414-LB at the District Court for Northern California. Magistrate Judge Laurel Beeler was assigned to judge my case. Ms. Beeler granted my Application to Proceed *in forma pauperis*.

During the litigation at the District Court, my former employer AHS never said that I had been fired for medical negligence towards the patient. AHS asserted lack of subject-matter jurisdiction and failure to state the claim upon which relief could be granted. DIR moved to dismiss my complaint for lack of subject-matter jurisdiction, for failure to state the claim upon which relief could be granted, and for Eleventh Amendment's protection. The District Court dismissed my original Complaint with leave to amend.

On April 02, 2017, I relocated to New Mexico because I had gotten a full time job at the Raymond G. Murphy VAMC. On April 10, 2017, I filed an Amended Complaint from the State of New Mexico. I removed DIR from a list of Defendants, and I listed four Officers of DIR whom I was suing in their individual capacities – Ms. Daly, Ms. Healy, Mr. Santos, and Mr. Rood.

Only Alameda Health System and Mr. Santos were served with a Summons and an Amended Complaint. Three other Officers Ms. Daly, Ms. Healy, and Mr. Rood were never served with a Summons and an Amended Complaint. DIR fiercely opposed all attempts of the U.S. Marshals Service to serve Ms. Daly, Ms. Healy, and Mr. Rood with a Summons and an Amended Complaint. The Summons returned unexecuted. Also, all four DIR's Officers failed to timely consent to Magistrate Jurisdiction. I objected, and I asked Hon. Judge Laurel Beeler to order the U.S. Marshals Service to serve Ms. Daly, Ms. Healy, and Mr. Rood again with a Summons and an Amended Complaint. I never heard back from Ms. Beeler. She didn't respond to my request, and she continued to judge the case. Also, I objected to the fact that all four Officers didn't consent to Magistrate Jurisdiction. I argued that the whole Amended Complaint should have been transferred to a District Judge.

Ms. Beeler paid zero attention to anything I said, and she continued to judge the Amended Complaint.

Mr. Santos who was served with a Summons and an Amended Complaint and who was not in the Military failed to timely respond to my Amended Complaint. I filed a Request for Entry of Default to which Ms. Beeler paid zero attention. I petitioned to Ms. Beeler again, and I asked to enter a default judgment against Mr. Santos. Ms. Beeler didn't respond. She didn't enter a Default Judgment, and she continued to judge in favor of Mr. Santos.

During the process of litigation at the District Court, Ms. Beeler dismissed my FLSA claim on the basis that this claim was time barred. Ms. Beeler asserted that the time frame to file the FLSA claim was 2-3 years, and I filed in in 3 years and 4 months. I argued that it was not my fault that DIR had processed my claim for 3 years and 4 months. I didn't have control over DIR's processing times. I argued that the statute of limitations to file an FLSA cause of action should be tolled. In fact, I filed my lawsuit immediately after I learned that DIR was going to dismiss my retaliation and unlawful termination claim. The District Court should have processed my FLSA cause of action. However, the District

Court dismissed my FLSA cause of action as time barred, and the 9th Circuit affirmed.

During the process of Appeal at the 9th Circuit, the Legislature amended Labor Code Section 98.7 and explicitly ordered the Courts to stay all statutes of limitations if the retaliation and unlawful termination claim was being processed by DIR. I presented this argument in my Petition for panel Rehearing and my Petition for Rehearing En Banc. However, the 9th Circuit didn't reconsider its decision, and it affirmed the ruling of the District Court.

Also, I argued that, because I submitted my Amended Complaint from New Mexico, the District Court has a Diversity of Citizenship jurisdiction over my Amended Complaint. The District Court accepted the Diversity of Citizenship jurisdiction over four DIR's Officers but refused to accept the Diversity of Citizenship jurisdiction over Alameda Health System asserting that the jurisdiction is determined at the time when the original Complaint was filed. I disagreed, and I said that the District Court should exercise the Diversity of Citizenship jurisdiction over Alameda Health System. However, both the District Court and the 9th Circuit refused.

During the process of litigation at the District Court and the 9th Circuit, both DIR and its Officers never said that I had been fired for medical negligence towards the patient. Judge Beeler improperly continued the Case Management Conference and banned Discovery. There was no any record from AHS or DIR that could confirm the allegation of the medical negligence. During the process of litigation at both the District Court and the 9th Circuit, DIR's Officers claimed immunity for discretionary acts pursuant to the California Civil Code Section 47(b.) Despite there was no documentary explanation and evidence regarding the allegation of the medical negligence, Judge Beeler granted all four DIR's Officers with absolute immunity and dismissed my lawsuit with prejudice. After I filed a Notice of Appeal, Judge Beeler named my Appeal frivolous and revoked my *in forma pauperis* status on Appeal. It took approximately 6 months for me to reinstate my *in forma pauperis* status at the 9th Circuit. However, the 9th Circuit affirmed the Absolute Immunity to all 4 DIR's Officers despite three of them were not served with a Summons and an Amended Complaint. The 9th Circuit denied my Petition for Panel Rehearing and a Petition for Rehearing En Banc.

IX. Why this Petition shall be granted.

It is the intention of Congress to end retaliation and discrimination at a workplace. However, employers and both District Courts and Circuits continue the improper tactics of harassing the victims of employment retaliation, and the Courts intentionally prolong a quick and fair resolution of Plaintiff's cases. I am respectfully asking the U.S. Supreme Court to intervene and to end all these over six years of horror. I am asking the U.S. Supreme Court to reverse the 9th Circuit's Memorandum dated December 24, 2019, to remand the case to the District Court, and to compel the District Court to rule on the merits of this case.

X. Conclusion.

I am respectfully asking the U.S. Supreme Court to reverse the December 24, 2019 Memorandum, to remand my case to the District Court, and to proceed my case to a Jury Trial.

I am respectfully asking to award me with a default Judgment against Mr. Santos for his failure to timely respond to my Amended Complaint.

I am respectfully asking to rule that the District Court for Northern California didn't have jurisdiction to adjudicate my Amended Complaint because Ms. Daly, Ms. Healy, and Mr. Rood were never served with the Amended Complaint, and all four DIR's Officers failed to timely consent to Magistrate Jurisdiction. I am respectfully asking the U.S. Supreme Court to allow me to serve Ms. Daly, Ms. Healy, and Mr. Rood with an Amended Complaint.

I am respectfully asking the U.S. Supreme Court to recuse Hon. Judge Laurel Beeler from judging my case and to transfer the case to a District Judge.

I declare under the penalty of perjury under the Federal laws, and under the laws of the State of California that all foregoing is true and correct. Executed at San Francisco, CA on March 10, 2020.

Respectfully submitted,

s/ Tatyana E. Drevaleva



Tatyana Evgenievna Drevaleva

Petitioner Pro Se

333 Baker St., Apt.406, San Francisco, CA, 94117

415-806-9864; tdrevaleva@gmail.com

Date: March 10, 2020.

XI. Certificate of Compliance.

This Petition was written using 3,804 words.

Respectfully submitted,

s/ Tatyana E. Drevaleva



Tatyana Evgenievna Drevaleva

Petitioner Pro Se

333 Baker St., Apt.406, San Francisco, CA, 94117

415-806-9864; tdrevaleva@gmail.com

Date: March 10, 2020.