No. 20-5989

ORIGINAL

Supreme Court, U.S.
FILED
OCT 05 2020
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Ann Karnofel — PETITIONER
(Your Name)

vs.

Superior Waterproofing, Inc. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Supreme Court of Ohio
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ann Karnofel
(Your Name)

1528 Greenwood Ave.
(Address)

Girard, Ohio 44420
(City, State, Zip Code)

(330) 545-6303
(Phone Number)

QUESTION(S) PRESENTED

Was Petitioner denied her due process rights, because she is a pro se litigant?

Was it fair to impose sanctions and attorney's fees on Petitioner, when Petitioner did not get an opportunity to respond at the evidentiary hearing?

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- Karnofel v. Superior, No. 2015 CV 01162, Court of Common Pleas, Trumbull County, Ohio. Judgment entered, March 7, 2017.
- Karnofel v. Superior, No. 2017-T-0026, Eleventh District Court of Appeals Trumbull County, Ohio. Judgment entered, May 10, 2018.
- Karnofel v. Superior, No. 2018-T-0055, Eleventh District Court of Appeals, Trumbull County, Ohio. Judgment Entered, June 28, 2019.
- Karnofel v. Superior, No. 2018-0908, Supreme Court of Ohio. Judgment entered, September 12, 2018.
- Karnofel v. Superior, No. 2019-1000, Supreme Court of Ohio. Judgment entered, October 1, 2019.
- Karnofel v. Superior, No. 19-7166, Supreme Court of the United States. Judgment entered, April 20, 2020.

Related cases continued

- Karnofel v. Superior, No. 2019-0792, Supreme Court of Ohio. Judgment entered, September 3, 2019.

- Karnofel v. Superior, No. 19-7642, Supreme Court of the United States. Judgment entered, June 15, 2020.

- Superior v. Delores Karnofel, No. 2014 CVF 1065, Girard Municipal Court, Girard, Ohio. Judgment entered, January 20, 2017.

- Superior v. Delores Karnofel, No. 2015-T-0113, Eleventh District Court of Appeals, Trumbull County, Ohio. Judgment entered, September 26, 2016.

- Superior v. Delores Karnofel, No. 2015-T-0117, Eleventh District Court of Appeals, Trumbull County, Ohio. Judgment entered, August 5, 2016.

- Superior v. Delores Karnofel, No. 2017-T-0010, Eleventh District Court of Appeals, Trumbull County, Ohio. Judgment entered, September 29, 2017.

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TABLE OF AUTHORITIES CITED

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STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix ______ to the petition and is

[ ] reported at ______________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix ______ to the petition and is

[ ] reported at ______________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix __A__ to the petition and is

[ ] reported at ______________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the __Trumbull County, Eleventh District Appellate__ court appears at Appendix __N__ to the petition and is

[ ] reported at ______________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was ______________________.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: ______________________, and a copy of the order denying rehearing appears at Appendix ______.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ________________ (date) on ________________ (date) in Application No. ___A______.

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

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was April 14, 2020. A copy of that decision appears at Appendix C.

[✓] A timely petition for rehearing was thereafter denied on the following date: July 7, 2020, and a copy of the order denying rehearing appears at Appendix D.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ______________ (date) on ______________ (date) in Application No. ___A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Page Number

U.S. Const. amend. XIV, § 1, cl. 3

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the states 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 any person within its jurisdiction the equal protection of the laws." 25, 31-34, 36

STATEMENT OF THE CASE

This appeal arises out of a denial for Petitioner's Motion for Relief from Judgment with newly discovered evidence, Civ R. 60 (B) (2) and fraud, Civ R. 60 (B) (3) and (5). On appeal Respondent filed its brief and a Motion for Sanctions — Including Attorney's Fees. The Appellate Court then favored the party that was represented by a lawyer and ruled in Respondent's favor by erroneously imposing sanctions and attorney's fees upon Petitioner.

An evidentiary hearing was held on August 15, 2019. Petitioner, a 96-year-old, feeble female, did not attend because the weather was very hot and humid, and her Motion to Stay (continuance) was denied. Although Respondent, who forgot to respond to Magistrate' Sheth-Massacci's Order of May 16, 2019 regarding the filing of evidentiary material for the upcoming hearing, received a second chance with Judge Trapp's Judgment Entry of June 13, 2019, that gave it seven days from the date of the Judgment Entry to respond.

Respondent did not file any Motions for an extension of time, to receive a second chance to file evidentiary material. This case would have ended at that time, if Judge Trapp did not extend the time to respond to the Magistrate's Order.

Petitioner was not treated fairly, since she was a 96-year-old, feeble female, pro se litigant who did not have friends in the court system as Respondent. Respondent's owner, Frank Kiepper, worked at the Trumbull County Auto Title Department in the winter months. Also, Respondent's lawyer, Ned C. Gold, Jr., shared the same law office with Donald Ford, Sr., a former Appellate Court Judge for the Eleventh District. Judge Trapp, who signed the decisions in this case, took Judge Ford's position upon his retirement.

This case developed as a result of a negligent contracting company, Superior Waterproofing, Inc., Respondent herein, and the scam-artist owner, Frank Kiepper (hereinafter, "Frank"). Petitioner, Ann Karnofel, signed the proposal (contract) with Respondent on June 27, 2013. Petitioner's daughter, Delores Karnofel's (hereinafter, "Delores") name was printed on the proposal; however, no signature was requested.

The contract indicated exterior waterproofing, that is, hand digging of basement walls and putting on a new front porch. The job started on September 16, 2013 and ended on September 30, 2013, because there was a disagreement in the contract about the footer for the new front porch. The waterproofing job was not completed; and the work performed was not adequate, since mold and mildew developed on the walls after the job ended.

On September 24 and 30, 2013 Frank knocked on the backporch door and requested a payment of $3,000.00, a total of $6,000.00. Frank also requested the original contract, so he could write on the backside—the payments received, the dates and the work that was added to the contract after June 27, 2013. Frank spoke to Delores on September 24 and 30, 2013, not Petitioner.

There were three items added to the contract and Delores only requested one.

The backside of the contract indicated the following (Appendix E):

"Additional 1200.00 for digging around sunroom.

Paid 3 000.00 downpayment 9-24-13
Balance 7,700 00

Waterproofing	9,500.00	
Downspouts	1,600.00	
Sunroom	1,200.00	
extra french drain	200.00	
	12,500.00	
	-3,000.00	downpayment 9-24-13
	9,500.00	
	-3,000.00	payment 9-30-13
	6,500.00	balance"

Delores requested a replacement pipe for an existing trench. The cost was #200.00, and it was paid for on 9-30-13, as indicated above in the quoted information.

The downspouts (#1,600.00) and sunroom (#1,200.00) were suggested by Frank. Petitioner and Delores did not have the knowledge to request those additions. Although Respondent distorted the truth about the additional items, so it could file a frivolous and fraudulent Complaint on Account, Appendix F. It was filed on December 11, 2014 against Delores, erroneously alleging that Respondent "... performed the services as required pursuant to the contract, but Defendant has refused to pay full consideration and still owes $6,000.00 to Plaintiff on an account." A statement was not mailed.

Attached to the Complaint on Account was the frontside of the original contract and an Invoice that was postdated — over one year after the job ended — October 3, 2014. Motions for Summary Judgment were filed by the parties. On January 20, 2017 the Girard Municipal Court ruled in Respondent's favor and misinterpreted the Invoice, that was an exhibit to the Complaint on Account, for a Change Order. It erroneously stated (Appendix G):

> "Attached to the complaint of the Plaintiff and its motion for summary judgment are copies of the original contract and change order."

Pursuant to § 10:40 Construction Contract - Between owner and contractor — General conditions, Article X. Changes in the Work, Section 3 states:

> "Additional work performed by contractor without authorization of a change order will not entitle it to an increase in the contract price or an extension of the contract time, except in the case of an emergency ..."

There was no emergency; therefore, Respondent was not entitled "to an increase in the contract price." Respondent's Invoice was not captioned "Change Order." Also, there was no signature on the Invoice, to authorize the additional work. None of the Lower Courts addressed the issue of the missing signature or any contract law.

Respondent has been in the waterproofing business for over 35 years and is familiar with additions to the contract and the importance of signatures. Respondent's lawyer, Ned C. Gold, Jr., has been representing Respondent for over 20 years. Petitioner is sure that he knows all about contract law and the importance of a signature, when added work is made to the contract after the initial signing. Atty. Gold did graduate from law school, unlike Petitioner and Delores.

Petitioner filed a Complaint against Respondent for negligence and a breach of contract in the Trumbull County Court of Common Pleas on June 23, 2015. Depositions and hearings were held. Motions for Summary Judgment were filed; and on March 7, 2017 the Court of Common Pleas erroneously ruled in Respondent's favor and stated (Appendix H):

> "Therefore, the Court finds that although the Girard suit named Delores as a Defendant and this suit was brought by Ann as Plaintiff, there is sufficient mutuality of interest, including an identity of desired result so that Delores and Ann are in privity for purposes of res judicata."

First and foremost, the two cases are different. Delores is a defendant for a Complaint on Account. This is regarding costs, payments and a fraudulent invoice that was maliciously misinterpreted for a change Order. Petitioner is a Plaintiff in a case for negligence in work performed by Respondent and a breach of contract. Delores' case should have been dismissed, since it did not have a change order or any document with a signature authorizing the additional work; however, the motion to dismiss was denied.

Petitioner appealed the March 7, 2017 Judgment Entry to the Eleventh District Court of Appeals and wrongfully lost on May 10, 2018. An appeal was made to the Supreme Court of Ohio, and it was wrongfully declined on September 12, 2018.

On May 7, 2018 Petitioner filed a Motion for Relief from Judgment with newly discovered evidence and fraud. The newly discovered evidence was the backside of the original contract that indicated the additions made to the contract, the costs, payments made and the dates of the additions and the payments. The Appellate Court erroneously stated that it was not newly discovered evidence; however, it was since Petitioner never spoke to Frank about the information on the backside of the contract. It was only Delores; and Delores filed it in the back of her file, so it would not get torn because the contract was on very thin paper. Delores' case was also filed first. Delores forgot about it and discovered it in 2018. Petitioner cannot walk without her walker and does not go into Delores' room, because the throw rugs do not have a rubber backing.

The Court of Common Pleas denied the Motion on May 16, 2018. An appeal was taken, and it was wrongfully denied on April 15, 2019. Petitioner explained that the newly discovered evidence was not filed within one year. It was filed on May 7, 2018 from the March 7, 2017 denial. It was one year and 60 days. This was reasonable time. In Little v. First American Title Insurance Co., 2015 WL 7075914, it states:

> "... motion was filed approximately four years after the entry of default judgment and is therefore untimely."

Petitioner also filed the motion for Relief from Judgment regarding fraud since Respondent filed a frivolous and fraudulent Complaint on Account with a fraudulent Invoice that was dated over one year after the job ended and did not have any signatures on it, to authorize the additional work. Although the Girard Municipal Court misinterpreted it for a Change Order, and all of the other appealing Courts went along with the misinterpretation. This was not fair. The Lower Courts favored the party that was represented by a lawyer.

Pursuant to Civ R. 60(B)(5), motion for Relief from Judgment, there is not a one year time limit to file a motion for Relief from Judgment. Although the Lower Courts overlooked Civ R. 60(B)(5) and contract law for Respondent, since its lawyer, Ned C. Gold, Jr., shared the same law office with a former Eleventh District Court of Appeals Judge upon his retirement, Donald Ford, Sr.

Respondent and its lawyer, as well as the Judges, did not want the newly discovered evidence in the case. Respondent never asked Delores or Petitioner for a copy, because then it would show that payment was made for all three items added to the contract, even if Delores only requested one item. It also would have shown that the backside of the contract, the newly discovered evidence, was the making of a change order; however, it did not have any signatures to authorize the additional work. The Appellate Court covered-up for Respondent. The case should have been dismissed with the fraudulent invoice, but it was not. Respondent would not have gone as far as it did, if it wasn't for the Lower Courts favoring it.

Respondent indicated that it had this newly discovered evidence in its possession; however, it never explained how it received it. If it did have it in its possession, then it should have used it as an exhibit in the Complaint on Account instead of the Post-dated Invoice.

Also, none of the Judges addressed the fine print on the contract, because Respondent and its lawyer did not abide by their own contract. It stated (Appendix I):

> "... All work to be completed in a workmanlike manner according to

standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate...."

The job ended on September 30, 2013 not only because there was a disagreement with the contract as to how the new front porch was going to be built, but also because Frank performed a sex stunt in front of Delores on the back porch. This was not in a workmanlike manner.

The additions/alterations to the contract were executed without written orders; therefore, Respondent was not entitled to extra costs.

Further, at the end of the contract where it indicated Acceptance of Proposal, it stated (Appendix I):

"... Payment will be made as outlined above."

There was no outline indicating the method of payment. The contract had one cost of $9,500.00 without any stipulations of a downpayment or when any payments had to be made

Before the Appellate Court's April 15, 2019 Judgment Entry, Respondent filed its Brief on August 21, 2018 and captioned it "BRIEF OF DEFENDANT-APPELLEE, SUPERIOR WATERPROOFING, INC, AND MOTION FOR SANCTIONS-INCLUDING ATTORNEY'S FEES." This was an easy way to get out of discussing the newly discovered evidence, the backside of the contract that indicated Frank's own handwriting of the additions to the contract, the payments made and the dates thereof. Petitioner filed a Motion to Strike the Motion for Sanctions and Attorney's Fees and a Motion to Strike the Brief. The Appellate Court granted Respondent's Motion wrongfully on April 15, 2019. It stated that Respondent was entitled to reasonable expenses, attorney's fees and costs.

Petitioner's Motion for Reconsideration was denied on May 1, 2019. Petitioner appealed to the Supreme Court of Ohio. It was declined on September 3, 2019. An appeal was also denied by the Supreme Court of the United States on April 20, 2020 and upon Rehearing on June 15, 2020.

On May 16, 2019 Magistrate Sheth-Massacci of the Eleventh District Court of Appeals issued an Order (Appendix J). It stated "Counsel for Appellee shall have fifteen (15) days from the date of this order to file evidentiary material ... demonstrating reasonable expenses, costs ...." Counsel for Appellee, Ned C. Gold, Jr. (hereinafter, "Atty. Gold") missed the filing date; Appendix K.

On June 13, 2019 Judge Mary Jane Trapp issued a Judgment Entry (Appendix L). It gave Atty. Gold a generous seven days from the date of the entry "... to show cause as to why this court should not determine that he is not entitled to any monetary expenses ...." Atty. Gold did not even file a motion for an extension of time or any other motion regarding the time-barred response. This was not fair. Favoritism was obviously given to the party that was represented by a lawyer.

Atty. Gold filed "Appellee's Response to Court's June 13, 2019 Entry Re: Attorney Fees." Atty. Gold stated (Appendix K):

"By way of exclamation, and not excuse, allow me to advise why

I did not respond timely. Just a few days after I received the May 16th order, receipt being May 20th, I left the office for a 4500-mile driving trip to the west and back. I was gone for a period of a little over two weeks and did not return to the office until June 11th."

Atty. Gold had plenty of time to respond. He received the Order before his trip. He did not file any motions for an extension of time. Although Judge Trapp generously gave him a second chance with the June 13, 2019 Judgment Entry. Favoritism was given to Atty. Gold, because he shared the same law office with Donald Ford, Sr., Esq., a former Eleventh District Court of Appeals Judge. Upon his retirement he went into the law office with Atty. Gold. Judge Mary Jane Trapp took Judge Ford's position.

The evidentiary hearing was scheduled for August 15, 2019. Petitioner filed a Motion for Continuance, as a result of the hot weather, Petitioner's age and health conditions. It was denied, even when Petitioner filed a Motion for Continuance, unlike Atty. Gold. The Lower Courts covered-up for Atty. Gold and Respondent with the misinterpretation of an Invoice for a Change Order, the absence of a signature on the Invoice, if it was used as a post-dated change order, and favoritism shown to Atty. Gold and Respondent for Time-Barred Pleadings. Atty. Gold was also permitted to file a Brief late.

Petitioner filed a Motion for Re-consideration of the June 13, 2019 Judgment Entry. It was denied on June 28, 2019. Petitioner Appealed to the Supreme Court of Ohio. It was declined to accept Jurisdiction on October 1, 2019. It was then appealed to Supreme Court of the United States. The petition for the writ of certiorari was denied on March 2, 2020 and for a rehearing on April 20, 2020.

Respondent and the Appellate Court wrongfully and maliciously stated that

Petitioner was harassing Respondent with a frivolous Appeal which was false. It was Respondent who filed the frivolous and fraudulent Complaint on Account against Delores, to frame Petitioner for not only privity and res judicata, but also sanctions and attorney's fees. Petitioner did not have the finances to retain a lawyer like Respondent, otherwise the Complaint on Account would have been dismissed.

Petitioner made two requests for a copy of the August 15, 2019 hearing by submitting a request letter and a blank CD disc; however, the disc was always blank. Petitioner also confirmed that the disc was blank with another person's CD player

On September 18, 2019 the Magistrate's Decision was filed, regarding the evidentiary hearing on August 15, 2019. The Magistrate stated that Atty. Gold "referred to his June 20, 2019 submission, which was in

Response to this Court's June 13, 2019 entry, regarding the hours he spent on this matter." If Petitioner missed a filing date, she would not have been given a second chance, because she is a pro se litigant. Petitioner was harassed by Respondent and Respondent's lawyer with the frivolous and fraudulent Complaint on Account, as well as the Lower Court's biased and wrongful decisions. Petitioner and her daughter, Delores, did not do anything wrong in their lives to be subjected to such harshness and biased decisions.

On September 27, 2019 Petitioner filed Objections with a copy of the newly discovered evidence (the backside of the contract with Frank's handwriting) and the post-dated Invoice. Neither document had signatures, to authorize the additional work, in order to receive additional money. None of the Judges indicated anything about the absence of a signature, Civ. R. 11. Petition, nor her daughter, Delores, made any addendums to the contract.

Respondent did not file a Response to Petitioner's Objections. Petitioner was not aware of filing a transcript of the proceedings or an affidavit. Although Petitioner made two requests this past spring and summer for a copy of the disc of the hearing. Each disc was blank when Petitioner listened to it.

The Appellate Court approved the Magistrate's Findings of Fact, even when Petitioner indicated obvious errors and items that were not fully considered. The whole case is fraud. Respondent perpetrated fraud upon-the-court with its frivolous and fraudulent Complaint on Account. The Appellate Court in its October 29, 2019 Judgment Entry "... Adopts the Magistrate's Decision overruling all other pending motions and awarding Appellee, Superior Waterproofing, Inc., the sum of $2,722.50, for which judgment is hereby rendered and execution may issue. Costs are assessed to Appellant." Appendix M.

The pending motions were Petitioner's "... motion to stay, the court's denial of her motion to continue the evidentiary hearing before the magistrate, and her objection to the court's judgment entry ordering Appellee to show cause are overruled as those Judgment entries are not a part of the Magistrate's Decision ... The Court would note that we also overruled Appellee's Motion for a continuance of the evidentiary hearing."

The court wrongfully stated "The only frivolous conduct found by this court in the underlying appeal was that of Ms. Karnofel." Nothing could be further from the truth than that statement. Petitioner was framed in this case, as well as her daughter. The Judges feared public criticism, if they ruled in a pro se litigant's favor, especially if the other party is a friend of the Court. Petitioner's Complaint was not frivolous, nor was her appeal on her Motion for Relief from Judgment.

Petitioner filed a Motion for Reconsideration on the October 29, 2019 Judgment Entry, and the Court wrongfully stated "Thus, we find that Ms. Karnofel's Motion is frivolous and obviously serves only to harass Superior and cause it to incur further expenses." Again, Respondent is the one that is harassing Petitioner and Delores. It was the one that filed the frivolous and fraudulent Complaint on Account first. Petitioner had to file a Complaint in the Court of Common Pleas to defend herself against a scam-artist contractor. Petitioner and Delores are the ones who have incurred severe credit card debt, as a result of the expenses involved in copying, postage and an errand runner, since Petitioner no longer drives, and Delores cannot drive due to mercury toxicity with an electro-galvanic current from dental amalgam fillings, and it was exacerbated from a TMJ misadjustment from a chiropractor. Respondent also filed a lien on the house. Respondent's lawyer should be disbarred with his malicious acts.

Petitioner then filed an appeal to the Ohio Supreme Court on January 24, 2020 of the Appellate Court's December 13, 2019 Judgment Entry, that denied Petitioner's Motion for Reconsideration. On April 14, 2020 the Ohio Supreme Court issued its decision that declined jurisdiction. Petitioner filed a Motion for Reconsideration on April 24, 2020. It was denied on July 7, 2020.

REASONS FOR GRANTING THE PETITION

Petitioner, Ann Karnofel, was deprived of her constitutional due process rights — U. S. Const. amend XIV, § 1, cl. 3. The Lower Courts displayed favoritism to Respondent, Superior Waterproofing, Inc., and its lawyer, Ned C. Gold, Jr., because Atty Gold shared the same law office with a retired, Eleventh District Court of Appeals Judge, Donald Ford, Sr. Judge Mary Jane Trapp, who signed the decisions in this case, took Judge Ford's position upon his retirement. Judge Trapp should have disqualified herself in this case, since she was the one who replaced Judge Ford. Even though it is not a direct connection, Judge Trapp has a personal interest because she would not have her job today, if Judge Ford did not retire.

Not only was favoritism shown to Respondent and its lawyer, but also to the Girard Municipal Court for the misinterpretation of the Invoice.

Respondent's frivolous and fraudulent documents were so deceitful, that a call is necessary for an action of this Court's supervisory power.

Petitioner does not think that she knows as much or more than a lawyer to represent herself, she and her daughter, Delores, do not have the finances to retain one. Now they have sanctions and attorney's fees being imposed upon them by the Eleventh District Court of Appeals, which is a wrongful act.

This Court must see that fraud was a factor throughout this case, whether it was from fraudulent pleadings and exhibits or from fraudulent and biased decisions. No United States citizen should be taken advantage of because he/she does not have the finances to hire a lawyer.

If fees are awarded to the prevailing party, then the case in controversy should have supporting evidence to substantiate the award. As it stands now the Appellate Court continues to hide the testimony of the August 15, 2019 Evidentiary Hearing, by not sending Petitioner a copy on a CD disc. Also, this Court must see that Respondent and its lawyer received a big favor by Judge Trapp with the June 13, 2019 decision, (Appendix L) by generously giving Respondent additional time to respond, since Respondent missed the filing date (Appendix K).

In reference to the above, Respondent and its lawyer should not have been granted the motion for Sanctions and fees. Atty. Gold was the one who clogged the courts' dockets with its fraudulent and frivolous Complaint on Account that goes unnoticed. The award was not justified. The Courts, Respondent and Atty. Gold are hiding the testimony of the August 15, 2019 Evidentiary Hearing, as well as hiding the newly discovered evidence (Appendix E), that proved the additional work was paid for on September 24 and 30, 2013. There were two, $3,000.00 checks issued. One was for the downpayment and the other one was for the downspouts - $1,600.00, digging around the sunroom - $1,200.00 and the Replacement pipe - $200.00. The total of the additional work was $3000.00. So the Complaint on Account was not necessary. It was filed to harass Petitioner and Delores and for them to waste their time and money.

Further, Respondent did not submit any exhibits to substantiate its $275.00/hour, if this Court does not grant this Petition. Petitioner argued that the "Equal Access to Justice Act" hourly rate should not exceed $125.00. The Appellate Court indicated that it only applies to cases "... where the United States of America or any of its agencies or officials are parties." The $275.00/hour is outrageous in this area, where the income is not that high, due to a poor economy.

Pursuant to R.C. § 2323.51, it states that the award:

> "... shall not exceed and may be equal to or less than the fees actually incurred."

Without substantiating evidence to support the $275.00/hourly rate, no award should be given. Atty. Gold is a dishonest lawyer. The Appellate Court could modify the amount.

Petitioner, a pro se litigant, was framed into privity, res judicata, sanctions and attorney's fees. Atty. Gold is a dishonest lawyer who is trying to swindle money out of an indigent pro se litigant. Atty. Gold is not worth a penny,* and Petitioner, nor her daughter, Delores, owe him any money. Atty. Gold is looking for easy money before he retires, as well as his client, Respondent, who complained that his wife was suffering from MS. Everybody wants to have money, but one should not use people, as Respondent and Atty. Gold are using Petitioner and Delores.

The U.S. courts are open for people who are injured and should not fear public criticism, if a decision should be made against a friend of the courts, as in this instant case. Of course, the courts are going to favor the party who will bring them more votes in an election. Petitioner, 97-years-old, does not have many family and friends who are her age, that are still living to vote. Atty. Gold made several mistakes; and the Courts covered-up for him because he is going to retire soon, and they want him to feel good about himself.

If these unscrupulous Acts from lawyers and Judges are not noticed and corrected, then they will continue throughout the Courts and prevent the Mechanics of Justice to function, properly. These Acts were unconstitutional that subjected Petitioner and Delores to lengthy, costly and tiresome court proceedings that went unnoticed. Countless hours have been spent in preparing and filing pleadings in this case and the companion case.

Respondent filed the motion for Sanctions and Attorney fees, as a result of Petitioner's Appeal of her denial of a Motion for Relief from Judgment with newly discovered evidence and fraud. In the October 29, 2019 Judgment Entry (APPENDIX M), it wrongfully stated:

> "The only frivolous conduct found by this court in the underlying appeal was that of Ms. Karnofel."

Petitioner's pleadings were not frivolous, especially the Appeal for the Motion for Relief from Judgment with credible evidence, nor other conduct.

Was Petitioner denied her due process rights, because she is a pro se litigant?

The evidentiary hearing was held on August 15, 2019. Petitioner did not attend, because of the hot weather. Petitioner filed a Motion for Continuance, however, the Appellate Court wrongfully denied it. Petitioner was 96-years-old at the time of the hearing, and the Appellate Court was well aware of that. Petitioner also has health conditions such as hypothyroidism, high blood pressure and lymphedema that all worsen when there are extreme temperatures.

The Magistrate's Order of September 18, 2019 (Appendix N) indicated:

> "Appellee established that it spent $2,722.50 in attorney fees defending the appeal. This is, therefore, unrebutted, and appears on its face quite reasonable ... Ann Karnofel, is ordered to pay Appellee, Superior Waterproofing, Inc. $2,722.50."

The $2,722.50 WAS unrebutted because Petitioner WAS unable to Attend the hearing due to her impaired health. When Petitioner requested a copy of the hearing, by sending the Appellate Court a letter with a blank CD disc, the returned CD disc was always blank. This happened two times this past summer. Petitioner was unaware of filing a transcript of the hearing within 30 days after filing the Objections.

Petitioner did not receive a fair day in Court, when her Motion for Continuance was denied. The Appellate Court gave Respondent a second chance to file its Response (Appendix L), and it did not file any pleading for an extension of time.

In Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) 70 S.Ct 652, 94 L.Ed. 865, it states:

> "The fundamental requisite of due process of law is the opportunity to be heard."

Petitioner was not given the opportunity with a biased decision that denied the Motion for Continuance, due to the hot weather.

Petitioner does not owe Respondent or its lawyer any money. Respondent perpetrated fraud upon-the-court with its frivolous and fraudulent Complaint on Account (Appendix F). Older Americans are subjected to fraud because they are more trusting. Respondent thinks that Petitioner has money, because her house was paid off and that she entered into a contract with Respondent (Appendix K, P.3, Paragraph 2.) This is false. Petitioner does not have money, that is why she has to file indigency affidavits.

This case would interest millions of people in the United States. Pro se litigants are in all of the courts. Favoritism is shown to the party that is represented by a lawer, and this is not fair.

In State v. Pryor, 10TH Dist. No. 07-AP-90, 2007-Ohio-4275, it states:

> "... the pro se litigant is to be treated the same as one trained in the law as far as the requirement to follow procedural law and the

Adherence to court Rules. If the courts treat pro se litigants differently the court begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel."

Petitioner was not treated the same as Respondent in this case. The June 13, 2019 Judgment Entry (Appendix L) gave Respondent seven days from the date of the entry to have a second chance to respond. If it was not for the June 13, 2019 Judgment Entry, Respondent would not have had its Motion for Sanctions and attorney fees granted. It was a deceitful act by the Appellate Court. On Respondent's June 20, 2019 Response (Appendix K) on P. 1, Paragraph 4, Respondent admits that Atty. Coold received the Magistrate's Order before he left on his vacation. He had ample time to respond.

Favoritism was shown to the party that was represented by a lawyer, over a pro se litigant.

The Lower Courts should have reported Atty. Gold for committing a violation of the Code of Professional Responsibility, Canon 1 A lawyer should assist in maintaining the integrity and competence of the legal profession, Disciplinary Rules, DR 1-102 Misconduct (4). It states:

> "(A) A lawyer shall not:
> (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

Respondent and Atty. Gold participated in fraud by submitting a frivolous Complaint on Account (Appendix F) with a fraudulent attached invoice as an exhibit. It was postdated— over one year after the job ended, and it did not have any signature on it to authorize the additional work. Also, Respondent and Atty. Gold did not abide by the fineprint on the contract for "written orders" or a "payment outline" as indicated in Appendix I.

Pursuant to the Code of Judicial Conduct, Canon 3. A Judge shall perform the duties of Judicial Office Impartially and Diligently D. Disciplinary Responsibilities (2), it states:

> "A Judge who has knowledge that a lawyer has committed a violation of the Code of Professional Responsibility shall report the violation to a tribunal or other authority empowered to investigate or act upon the violation."

The Lower Courts did not abide by Canon 3 D(2).

The Appellate Court abused its discretion, when it granted Respondent's Motion for Sanctions and Attorney's fees and affirmed the Magistrate's Order of September 18, 2019, awarding Respondent $2,722.50. Petitioner's conduct was not egregious. She engaged in conduct that was standard practice — appealing a decision from the Court of Common Pleas that was wrongful. The decision was not even a final appealable order. The Appellate Court erred when it failed to see that Petitioner's actions did not constitute frivolous conduct to result in a judgment against her for $2,722.50.

In reference to all of the above, Petitioner was deprived of her constitutional due process rights, because she is a pro se litigant.

Was it fair to impose sanctions and attorney's fees on Petitioner, when Petitioner did not get an opportunity to respond at the evidentiary hearing?

The evidentiary hearing was held on August 15, 2019. Petitioner could not attend because of her impaired health at age 96 and the hot weather in August. Petitioner filed a Motion to Stay regarding the postponing of the hearing, but it was denied.

On September 18, 2019 Magistrate Sheth-Massacci issued a decision from the August 15 2019 evidentiary hearing and wrongfully awarded Respondent $2,722.50, (Appendix N), she wrongfully stated:

> "Appellee established that it spent $2,722.50 in attorney fees defending the appeal. This is, therefore, unrebutted, and appears, on its face, quite reasonable. Accordingly, the Magistrate awards Appellee its attorney fees, pursuant to App. R. 23 Appellant, Ann Karnofel, is ordered to pay Appellee Superior Waterproofing, Inc., $2,722.50."

Petitioner could not Rebut the wrongful $2,722.50 Award To Respondent, because she was not granted a continuance of the evidentiary hearing. As previously indicated Petitioner encountered a difficult time in attempting to obtain a copy of the CD disc of the August 15, 2019 evidentiary hearing.

This case has to be heard by the highest court in the United States because older, pro se litigants' Rights need to be protected, that is, receiving a fair day in court. The $2,722.50 award was not supported by a good faith argument. Respondent had a witness by the name of Michael Grove. What were his qualifications and how did they come to the conclusion of $275.00/hour when $125.00/hour is applied, when the parties are the United States of America or any of its officials or agencies? Considering that Atty. Gold filed a timely Response, Appendix K, if it was not for the Appellate Court extending the time, Atty. Gold should not receive anything. The lawyers who participate in cases with the government are specialized, unlike Atty. Gold with contract litigation.

The companion case herein has been in the courts since 2014. Respondent started the frivolous and fraudulent case. Delores and Petitioner were merely defending themselves against a dishonest contractor and a dishonest lawyer. To now penalize them for participating in conduct that is standard practice is unreasonable and unjust. The amount is outrageous. Respondent and Atty. Gold should be paying Petitioner and Delores for framing them for privity, res judicata, sanctions and attorney's fees.

It was not fair to impose sanctions and attorney's fees upon Petitioner, when she did not get the right to be heard in court.

The Lower Courts decisions were not supported with credible evidence or any evidence. Petitioner's complaints were heard by the Mahoning-Trumbull Counties' Better Business Bureau. Respondent did not respond to the Better Business Bureau's Complaint, and it received a lower rating. Older Americans are subjected to fraud, because they are more trusting. Petitioner presented a Reasonable Question for review in her Appeal; however, App. R. 23 was wrongfully applied, just as the $2,722.50 award to Respondent.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ann Karnofel

Date: October 3, 2020