

Supreme Court, U.S.

FILED

OCT 21 2021

OFFICE OF THE CLERK

NO. 20-7951

In The Supreme Court of The United States

EDUARDO FLORES

Petitioner

v.

PETER M. HOAGLAND 1 to 5

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA
COURT OF APPEAL, FOURTH APPELLATE DISTRICT

PETITION FOR REHEARING UNDER RULE 44

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Self-Represented

ORIGINAL

RECEIVED

NOV - 8 2021

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SUPREME COURT, U.S.

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APPENDICES:

The evidence attached to this petition was not previously presented due to intervening circumstances because the lawyer that was helping me with the petition advised me not to present any evidence.

1. The email from Richard V. Zavala, ESQ. Date Fri Feb 16, 2018
2. Notice of filing party Superior Court
3. Report from Dr. Peter M. Hoagland 04/25/214 time 16:05
4. Assessment sheet Emergency Department Wednesday June 25, 2008

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(i)

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**PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA
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PETITION FOR REHEARING

Pursuant to rule 44 on this court, the petitioner hereby, respectfully petition for rehearing case before a full nine member court.

1. This case involves a challenge by Respondent misrepresentation concealing medical records 2/28/14/ and the other date 3/20/14 and ignoring the EKG and catheterization.
2. Emergency department Sharp Grossmont Hospital assessment sheet Wednesday – June 25, 2008 time 15:26 order E.K.G and Respondent altered his report of April 25, 2014. Plan Discussion I did NOT uncover any significant heart disease, his risk of a cardiac complication from neurosurgery is Low. No further cardiology follow up is planned unless he gets worse.
3. From 2008 heart attack and ignoring the records knowing that I relied on his opinion. An induce reliance by petitioner in going through with the neurosurgery.

Accommodating a person's disability is required by federal and state law. The American with Disabilities Act (hereinafter "ADA") require that people with disabilities be afforded equal access to government buildings and services. 42 U.S.C. § 12101(b)(1)(2012). Because access to the judicial process is a fundamental right, the United States Supreme Court has held that Title II of the ADA is constitutionally valid. In *Tennessee v. Lane*, the Court held that "Title II unquestionably is valid...as it applies to the class of cases implicating the accessibility of judicial services [.]" 124 S.Ct. 1978, 1993 (2004). The Court observed that the "duty to accommodate is perfectly consistent with the well-established due process principle that '*within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard*' in its courts." Id. at 1994 (quoting *Boddie v. Connecticut*, 401 U.S. 371 , 379 (1971)) (emphasis added).

This includes equal access to the California court system which provides a path for all Californians to represent themselves in legal proceedings. "[T]he right to represent oneself in civil proceedings conducted in this state, though established by precedent rather than statute, is firmly embedded in California jurisprudence. This right is necessary to protect and ensure the free exercise of express constitutional rights, including the right to acquire and protect property and to access the courts. It is also implicitly recognized by statute. For these reasons we conclude that the right to present oneself in civil proceedings is a general law of this state". *Baba V: Board of supervision* (2004) 124 Cal.App.4th 504, 526.

QUESTION PRESENTED (Rule 14.1(a))

Whether the Supreme Court of the State of California, San Diego County, and the California Court of Appeal, Fourth Appellate District Violated the 14th Amendment of the United States Constitution and the American with Disabilities Act of 1990 by failing to provide Mr. Flores, a disabled self-represented litigant, with meaningful accommodation and equal access to the court.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The decision of the California Court of Appeal for which petitioner seeks review was issued on September 30, 2020. The decision of the California Court of Appeal on Petitioner's request for rehearing was issued on October 9, 2020. The California Supreme Court order denying petitioner's timely petition for discretionary review was filed on January 20, 2021. This petition is filed within 90 days of the California Supreme Court's denial of discretionary review, under Rules 13.1 and 29.2 of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United states Constitution, Amendment 14 provides, in relevant part: No state . . . shall 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.

Title 11 of the Americans with Disabilities Act sections 35.149 and 35.150 provide in relevant part: Except as otherwise provided in section 35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity... This paragraph does not—... Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with §35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity. 42 U.S.C § 12101(b)(1) (2012)

STANDARD OF REVIEW

'On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation and treats the demurrer as admitting all material facts properly pleaded. . . . The court does not, however, assume the truth of contentions, deductions, or conclusions of law. . . . The judgment must be affirmed "if any one of the several grounds of demurrer is well taken. . ." However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. . . . And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is reasonable possibility any defect identified by the defendant can be cured by amendment. . . .'

" (Payne v. National Collection Systems, Inc. (2001) 91 Cal.App.4th 1037, 1043, 111 Cal.Rptr.2d 260, quoting Aubry v. Tri-City Hospital Dist. (1992) 2 Cal.4th 962, 966-967, 9 Cal.Rptr.2d 92, 831 P.2d 317.)

STATEMENT OF APPEALABILITY

Entry of Judgement of dismissal after the trial court sustain a demurrer without leave to amend is appealable under Code of Civil Procedure section 904.1(a)(1)

ARGUMENT

The petition asks the Court to consider whether the state Trial Court and the California Court of Appeal, Fourth Appellate Division had a duty under the 14th Amendment of the United States Constitution and the American with Disabilities Act of 1990 to provide accommodations to Mr. Flores, a disabled, self-represented litigant. The petition for rehearing provides evidence of what happened in court, which supports Petitioner's contention that the state Trial Court erroneously dismissed Mr. Flores complaint after Opposing Counsel agreed to Mr. Flores filing a Third Amended Complaint and the Trial Court approved the agreement.

The Trial court decision to deem Mr. Flores a vexatious litigant violates the ADA the 14th Amendment United States Constitutional Guardian of Sipson (1988) 67 Cal.App.4th 921, 922, 931. Because the facts show that Mr. Flores being disabled did not understand that his remedy was an appeal.

The additional evidence demonstrates that on January 12, 2018, there was a verbal agreement between the parties and the Trial Court that was not appropriately recorded 42 U.S.C.12101(a)(6),(b)(1) (2012). The Parties and the Trial Court agreed that Mr. Flores would file a Third Amended Complaint. The email from Attorney Zavala explains that although Mr. Flores provided a Second Amended Complaint, this complaint was still deficient, and a Third Amended Complaint still needed to be filed as agreed. Since, the agreement at the January hearing was not recorded, the Trial Court considered only Mr. Flores second Amended Complaint at the May 4, 2018, hearing and dismissed the action without leave to amend, with all due respect.

Mr. Flores Being a man with a traumatic brain injury disability was left to explain the mix up to the court. Unfortunately, opposing counsel, Richard Zavala, was not present in court on May 4, 2018, and the attorney present, Mr. Gabriel Benrudi, at the hearing appearing in Mr. Zavala's place was unaware of the agreement. Mr. Flores suffering from significant cognitive defect due his disability was treated as if he made an error when the error was that of the Trial Court. There was no minute order or transcript 42 U.S.C § 12101(b)(1)

A written record, minute order, or transcript at *all* hearings would have accommodated Mr. Flores and provided him and the Trial Court with the clear guidance he needed to have his case heard on its merits. However, In California, accommodations and even a request for a court reporter must be made upon request. This is not an easy task for someone who suffers from mental deficits, as it requires that the person is aware of such accommodations or their right to have an official court reporter.

CONCLUSION

Petitioner Eduardo Flores Respectfully prays for a rehearing and reversal of the order on the October 4, 2021 denying petitioner for writ of certiorari to the Supreme Court of the United States.

11/04/2021

Date

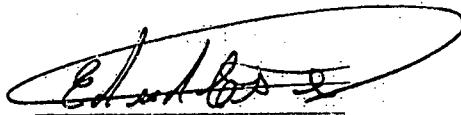


Eduardo Flores

CERTIFICATE OF PETITIONER

I hereby certify that this petition for rehearing is presented in good faith and not for delay.

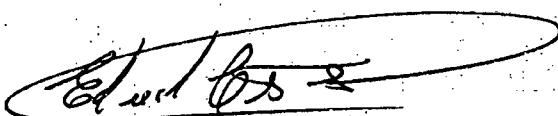
DATE 11/04/2021



EDUARDO FLORES

CERTIFICATE OF COMPLIANCE

I certify the petitioner for rehearing complies with the type – volume limitation set forth in Rule 33 of the Rules of the Supreme Court. The petitioner's petition for rehearing uses a proportional type face and 12 point front and contains 2086 words.



DATE 11/04/2021

EDUARDO FLORES

1128 Lemon Ave, El Cajon

CA, 92020

Date: 11/04/2021

Petitioner:



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