

No. 21-228

ORIGINAL

Supreme Court, U.S.
FILED

AUG 13 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL MURPHY

— PETITIONER

(Your Name)

vs.

RICHARD SARTA, ET AL

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS OF TENNESSEE

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL MURPHY

(Your Name)

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QUESTION(S) PRESENTED

WHETHER THE TENNESSEE STATE TRIAL AND APPELLATE COURTS ARE USING A CONSTITUTIONALLY VAGUE PROCEDURE¹, TENN.R.CIV.P. 59.04, TO DENY CITIZENS SIMILARLY SITUATED HEREIN AN OPPORTUNITY TO BE HEARD AND TO VIOLATE THEIR CIVIL RIGHTS WITHOUT RECOURSE AND THEIR CONSTITUTIONAL RIGHT TO A JURY TRIAL, THEREBY THWARTING JURISDICTION AND BLOCKING THEIR ACCESS TO JUSTICE.

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:

RICHARD SARTA,
CHRISTINA SARTA(TIMM), AND
REBECCA KECK D/B/A ,
INGENUITY 101

RELATED CASES

NONE

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A DECISION OF COURT OF APPEALS OF TENNESSEE

APPENDIX B DECISION OF STATE TRIAL COURT OF TENNESSEE

APPENDIX C DECISION OF SUPREME COURT OF TENNESSEE

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>ALBERT V. FRYE</u> 145 S.W.3D 526(TENN. 2004)	5
<u>GAASSAWAY V. PATTY</u> TENN.APP. 604 S.W.2D 60	5
<u>LEGENS V. LECORNU</u> W2013-018-COA-R3-CV, 2014 WL 2922358(CT. APP. JUNE 26,2014)	5
<u>PARKS V. MIDATLANTIC FINANCE CO. INC.</u> 343 S.W.3D 792 (TENN.CT.APP. 2011)	5

STATUTES AND RULES

TENNESSEE RULE OF CIVIL PROCEDURE 59.01	4,5
TENNESSEE RULE OF CIVIL PROCEDURE 59.04	4,5
TENNESSEE RULE OF APPELLATE PROCEDURE 4(B)	4,5

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 _____ 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.

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 March 17, 2021.
A copy of that decision appears at Appendix C. (See March 19, 2020 Order,
589 U.S.)

A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

TENNESSEE RULE OF CIVIL PROCEDURE 59.04	4,5
TENNESSEE RULE OF CIVIL PROCEDURE 59.01	4,5
TENNESSEE RULE OF APPELLATE PROCEDURE 4(B)	4,5

STATEMENT OF THE CASE

A JURY TRIAL CONCERNING A PREMISES LIABILITY PERSONAL INJURY CASE ON JUNE 6, 2019, RESULTED IN DEFENDANTS PREVAILING. PLAINTIFF MICHAEL MURPHY FILED A MOTION FOR NEW TRIAL ON JULY 18, 2019, AND AN AMENDED MOTION FOR NEW TRIAL ON OCTOBER 8, 2019, ALLEGING AMONG 12 ASSIGNMENTS OF ERROR THE FAILURE TO DECLARE A MISTRIAL DUE TO DEFENDANTS' COUNSEL'S MISCONDUCT IN OPENING REMARKS TO THE JURY PANEL INCLUDING PRESENTING A SIGN MARKED "NO" IN LARGE RED INK AS A REPLICA OF THEIR JURY VERDICT FORM, EXCLUDING RES IPSA LOQUITUR AS A THEORY OF LIABILITY, ALLOWING AN EXPERT WITNESS TO BASE HIS OPINION ON A REPORT BY AN INSURANCE ADJUSTOR EMPLOYEE (WHO DID NOT TESTIFY), AND MISCONDUCT FROM TWO JURORS WHO WITHHELD CRUTIAL AND PERTINENT INFORMATION IN VOIR DIRE REGARDING IMPARTIALITY, INCLUDING A JUROR WHO IT WAS LATER DISCOVERED HAD BEEN SUED IN AT LEAST 12 PRIOR LAWSUITS AS A DEFENDANT OR OFFICER OF HIS EMPLOYER (COUNTY JAIL), WITH SEVEN OF THE LAWSUITS CURRENTLY PENDING AT THE TIME OF TRIAL.

A MOTION TO ALTER OR AMEND WAS FILED BY PLAINTIFF ON DECEMBER 5, 2019. BASED UPON TENN.R.CIV.P. 59.04 AND 59.01, AS WELL AS TENN.R.APP.P. 4(B), WHICH WAS DENIED ON FEBRUARY 13, 2020. THE TRIAL COURT HAD PREVIOUSLY DENIED THE MOTION FOR NEW TRIAL, AND FOR COSTS, IN ONE HEARING AND IN ONE ORDER ENTERED. AN APPEAL WAS TAKEN ON MARCH 16, 2020, TO THE STATE COURT OF APPEALS, AND ON OCTOBER 14, 2020, IT DECIDED THAT IT LACKED JURISDICTION BY FINDING THAT THE TENN.R.CIV.P. 59.04 WAS SUPPOSEDLY A "MOTION TO RECONSIDER" AND THEREFORE DID NOT TOLL THE APPEAL PERIOD. THE STATE SUPREME COURT DECLINED TO GRANT AN APPEAL ON MARCH 17, 2021.

THE MATTER IS NOW BEFORE THIS HONORABLE UNITED STATES SUPREME COURT.

REASONS FOR GRANTING THE PETITION

THE TENNESSEE STATE COURTS OF APPEAL AND THE TRIAL COURTS USE TENN.R.CIV.P. 59.04 AS SYSTEMIC SUBJECTIVE MEANS TO DENY CITIZENS ACCESS BEFORE THE COURTS BY DECLARING THAT THESE ARE "MOTIONS FOR RECONSIDERATION" AND THEREFORE DO NOT QUALIFY AS MOTIONS TO ALTER OR AMEND AND SUBSEQUENTLY DO NOT TOLL THE APPEAL PERIOD UNDER TENN.R.CIV.P. 59.04 AND 59.01, AND TENN.R.APP.P4(B), LEAVING PARTICIPANTS WITHOUT ANY RECOURSE TO BE HEARD. THESE RULES ARE CONSTITUTIONALLY VAGUE AND USED TO BLOCK THE RIGHT TO A JURY TRIAL.

ALLOWING STATE COURTS TO ACT IN THIS MANNER GOES BEYOND THE PARTICULAR FACTS OR PARTIES INVOLVED HEREIN, AND IS AN ISSUE OF NATIONAL IMPORTANCE TO THE PUBLIC AND EFFECTS OTHERS SIMILARLY SITUATED.

THERE IS NO LOGIC OR JUSTICE IN STATE DECISIONS SUCH AS LEGENS V. LECORNU W2013-01800-COA-R3-CV, 2014 WL 2922358 (CT.APP. JUNE 26, 2014) AND ALBERT V. FRYE 145 S.W. 3D 526 (TENN. 2004) THAT SEEK TO DENY THE OPPORTUNITY TO BE HEARD AND CONSIDERED ON APPEAL. AT THE SAME TIME, STATE DECISIONS RUN COUNTER AND DECLARE THAT A COURT SHOULD EXERCISE ITS DISCRETION IN FAVOR OF ALLOWING A CASE TO BE HEARD ON ITS MERITS IN PARKS V. MIDATLANTIC FINANCE CO. INC. 343 S.W.3D 792 (TENN.CT.APP. 2011), AND ALLUDES TO THE FACT OF THE STATE SUPREME COURT'S POLICY OF LIBERALITY IN RESOLVING DOUBT AS TO THE PROPER CONSTRUCTION OF STATUTES AND RULES REGULATING APPEALS IN FAVOR OF THE RIGHT OF APPEAL IN GASSAWAY V. PATTY TENN. APP. 604 S.W. 2D 60.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Murphy PRO SE

Date: AUGUST 13, 2021