

ORIGINAL

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

FILED
JUL 13 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

NATALIA NEAL, Petitioner

vs

OREGON EYE CARE, LLC; COMPLETE VISION AND EYE CARE; and

SHARON NEAL,

Respondents

On Petition for Writ of Certiorari to the Oregon Supreme Court

APPLICATION FOR EXTENTION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI PURSUANT TO RULE 13(5)

To the Honorable Elena Kagan, Supreme Court Justice and Circuit Justice to the
area covered by the Ninth Circuit:

1. Petitioner, Natalia Neal-(pro se), pursuant to Rule 13(5), Rules of the
Supreme Court, respectfully seeks a sixty (60) day extension of time from
August 3, 2022, and through October 2, 2022 within which to file her

Natalia Neal, Petitioner, Pro Se
17373 SE Forest Hill Drive
Damascus, OR 97089
Email: natalianeal3075@gmail.com / Tel.:(503)473-2363

RECEIVED
JUL 19 2022
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SUPREME COURT, U.S.

petition for writ of certiorari in this Court. The jurisdiction of this Court is invoked under 28 U.S.C. §1257. This application is submitted more than ten (10) days prior to the scheduled filing date for the Petition. The pertinent dates are:

January 20, 2022 - Issuance of Order by the Oregon Supreme Court, in case No. S069082 NATALIA NEAL vs OREGON EYE CARE, LLC; COMPLETE VISION AND EYE CARE; and SHARON NEAL, denying petition for review. A copy of the order is attached hereto as **Exhibit A**.

May 5, 2022 - Issuance of Order by the Oregon Supreme Court denying reconsideration. A copy of the order is attached as **Exhibit B**.

August 3, 2022 - Deadline for filing a petition for writ of certiorari in the United States Supreme Court, unless extended.

2. The basis of Appellant's Petition for a Writ of Certiorari is that the dismissal of the appeal in this case violated her right to due process under the 14th Amendment to the U.S. Constitution. ("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").

The failure of a court to provide Appellants with the means of exercising the right of appeal that others are able to exercise is simply so "unfair" as to be a denial of due process. *Griffin v. Illinois* (US Supreme Court) 351 U.S. 12 (1956) • 76 S. Ct. 585 "*Held: Petitioners' constitutional rights were violated, the judgment of the Illinois Supreme Court is vacated, and the cause is remanded to that Court for further action affording petitioners adequate and effective appellate review. Pp. 13-26. Judgment vacated and cause remanded*" *Griffin v. Illinois* (US Supreme Court) 351 U.S. 12 (1956) • 76 S. Ct. 585 Decided Apr 23, 1956.

The U.S. Supreme Court stated that at all stages of the proceedings, the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discriminations. *See Cole v. Arkansas*, 333 U. S. 196, 333 U. S. 201; *Dowd v. United States ex rel. Cook*, 340 U. S. 206, 340 U. S. 208; *Cochran v. Kansas*, 316 U. S. 255, 316 U. S. 257; *Frank v. Mangum* 237 U. S. 309, 237 U. S. 327." "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." – *Griffin v. Illinois* (US Supreme Court) 351 U.S. 12 (1956).

Petitioner intends to ask the U.S. Supreme Court for a writ of certiorari on that question of constitutional violation and severe conflict with U.S.

Supreme Court rulings.

3. The Oregon Court has dismissed Petitioner's appeal for the failure to pay \$500 undertaking fee. The order of dismissal attached as **Exhibit C**.

However, Petitioner has explained to the Oregon court, with each motion filed, that the reason behind of inability to post an undertaking for costs is a financial situation of Petitioner – Petitioner is a person with a limited income and many dependents in her household.
4. The Oregon Court stayed the issuance of the appellate judgment on June 2, 2022, pending the filing of a petition for writ of certiorari with the United States Supreme Court. A copy of that order is attached hereto as **Exhibit D**.
5. Petitioner is a person with a limited income and many dependents in her household. She can not afford a legal representation and to pay a lawyer to file a petition for writ of certiorari with the United States Supreme Court and. Petitioner respectfully asks that this Court grants an extension of time so that Petitioner is able to do a legal research and prepare the petition pro se.

6. The Respondent's position on this application for extension of time to file a petition for writ of certiorari is unknown.
7. This proceeding involves a question of the constitutionality and application of a statute of the State of Oregon, and neither the State nor any agency, officer, or employee thereof is a party. 28 U.S.C. § 2403(b) may apply and this document is being served on the Attorney General for the State of Oregon. To Petitioner's knowledge the Oregon Supreme Court (pursuant to 28 U.S.C. § 2403(b)) has not certified to the State Attorney General the fact that the constitutionality of a statute of the State of Oregon is drawn into question.

For the foregoing reasons, the Petitioner, respectfully prays that this Court grants an extension of sixty (60) days from August 3, 2022, and through October 2, 2022, within which to file her petition for writ of certiorari.

VERIFICATION

I hereby declare that the foregoing statements contained herein, and exhibits attached hereto are true and correct to the best of my knowledge

and belief, and that I understand they are made for use as evidence in Court and I am subject to penalty for perjury.

Respectfully submitted on July 12, 2022



Natalia Neal, Petitioner, Pro Se
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IN THE SUPREME COURT OF THE STATE OF OREGON

NATALIA NEAL,
Plaintiff-Appellant,
Petitioner on Review,

v.

OREGON EYE CARE, LLC; COMPLETE VISION AND EYE CARE; and SHARON
NEAL,
Defendants-Respondents,
Respondents on Review.

Court of Appeals
A173520

S069082

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.



MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
1/20/2022 12:13 PM

c: Trevor Robins
Natalia Alexandrovna Neal

jr

ORDER DENYING REVIEW

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

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IN THE SUPREME COURT OF THE STATE OF OREGON

NATALIA NEAL,
Plaintiff-Appellant,
Petitioner on Review,

v.

OREGON EYE CARE, LLC; COMPLETE VISION AND EYE CARE; and SHARON
NEAL,
Defendants-Respondents,
Respondents on Review.


Court of Appeals
A173520

S069082

ORDER DENYING PETITION FOR RECONSIDERATION

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.


MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
5/5/2022 12:23 PM

c: Trevor Robins
Natalia Alexandrovna Neal

ms

ORDER DENYING PETITION FOR RECONSIDERATION

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

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IN THE COURT OF APPEALS OF THE STATE OF OREGON

NATALIA NEAL,
Plaintiff-Appellant,

v.

OREGON EYE CARE, LLC; COMPLETE VISION AND EYE CARE;
and SHARON NEAL,
Defendants-Respondents.

Clackamas County Circuit Court No. 19LT17273

Court of Appeals No. A173520

**ORDER AFFIRMING DENIAL OF WAIVER, REDUCTION, OR LIMITATION OF
UNDERTAKING; DISMISSING APPEAL**

Respondent Sharon Neal moves to dismiss the appeal on the ground that appellant has failed to comply with ORS 19.300. Appellant opposes the motion to dismiss, and separately moves for review of the trial court's denial of her renewed motion for waiver, reduction, or limitation of undertaking, pursuant to ORAP 8.40. Respondent opposes the motion for review. For the reasons explained below, the court affirms the trial court's denial of waiver, reduction, or limitation of undertaking, and the motion to dismiss is granted.

Appellant filed her notice of appeal on February 27, 2020. Appellant filed her first motion for waiver, reduction, or limitation of undertaking with the trial court on March 2, 2020; the trial court denied that motion. In April of 2020, this court granted appellant's motion to waive appellate filing fees. From September to December of 2020, appellant filed four motions for extensions of time for which to file the opening brief, all of which the court granted.

On December 30, 2020, respondent moved to dismiss the appeal, pursuant to ORAP 7.40, on the ground that appellant had failed to comply with ORS 19.300's requirement that she file an undertaking for costs on appeal. Attached to the motion to dismiss are a copy of respondent's notice of noncompliance and intent to move to dismiss, a certificate of service that the notice was served on appellant on November 5, 2020, by first-class mail, and a certificate of service that the motion to dismiss itself had been served on appellant on December 30, 2020, by first-class mail.

Appellant, for her part, argues that she cannot afford to pay the \$500 undertaking for costs, and that respondent "never served appellant with her motion to dismiss appeal nor with any prior oral or written notice," in violation of ORAP 7.40(1). Appellant also informed the court, in response to respondent's motion to dismiss, that she had filed a renewed motion for waiver, reduction, or limitation of undertaking with the trial court.

**ORDER AFFIRMING DENIAL OF WAIVER, REDUCTION, OR LIMITATION OF UNDERTAKING;
DISMISSING APPEAL**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
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On March 17, 2021, the trial court entered an order denying appellant's renewed motion for waiver of undertaking. Thus, on March 19, 2021, appellant filed her motion for review of that order, pursuant to ORAP 8.40. Respondent objects to the motion for review, arguing that she has been prejudiced by the many times that this appeal has been delayed as a result of appellant's motions, and asserts that "[t]here is no factual or legal reason proffered by the Appellant why this court should" overrule the trial court's March 17 denial of waiver of undertaking.

Under ORS 19.310(2), the trial court may "waive, reduce or limit an undertaking on appeal upon a showing of good cause, including indigence, and on such terms as are just and equitable." When a party moves for review of a trial court order relating to an undertaking, the court reviews the trial court's decision *de novo* upon the record. ORS 19.360(2). Upon review of the trial court's decision relating to an undertaking, in addition to considering the party's ability to pay for the undertaking, the court may also consider the likelihood that the party will prevail on appeal.¹ See *Salazar and Salazar*, 135 Or App 391, 395, 898 P2d 1366 (1995). There is no requirement, on the part of any court, to waive, reduce, or limit the undertaking upon proof of an appellant's indigency. *Id.* at 395.

In this case, appellant has not demonstrated a likelihood of success on appeal, and, therefore, the court is not persuaded that the trial court erred in denying appellant's renewed motion for waiver, reduction, or limitation of undertaking. Accordingly, the court affirms the trial court's denial of appellant's renewed motion for waiver, reduction, or limitation of undertaking.

The court now turns to the motion to dismiss. ORS 19.300 provides that an appellant "must serve and file an undertaking for costs within 14 days after the filing of a notice of appeal." A motion to dismiss an appeal for lack of an undertaking for costs "shall not be filed without at least seven days' notice to the appellant." ORAP 7.40(1). It is undisputed that, in this case, appellant did not comply with ORS 19.300; appellant filed her notice of appeal on February 27, 2020, and did not file an undertaking for costs as required by the statute. Considering that the court has affirmed the trial court's denial of appellant's renewed motion for waiver of undertaking, appellant's only remaining argument for denying respondent's motion to dismiss is that respondent never served appellant with either the motion or respondent's notice of intent to move for dismissal. Respondent insists that she properly served the notice and the motion on appellant and has provided certificates of service for both of those documents. According to the certificate of service of notice of respondent's intent to move to dismiss for lack of undertaking, that notice was served on appellant on November 5, 2020.

¹ The purpose of an undertaking for costs on appeal is to provide a fund from which the respondent may readily recover costs incurred on appeal in the event that the appellant does not prevail.

**ORDER AFFIRMING DENIAL OF WAIVER, REDUCTION, OR LIMITATION OF UNDERTAKING;
DISMISSING APPEAL**


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According to the certificate of service of the motion to dismiss, that motion was served on appellant on December 30, 2020. Thus, based on the record before this court, it appears as though respondent has complied with the service requirements of ORAP 7.40(1). See also *Mullens v. L. Q., Development*, 312 Or 599, 609, 825 P2d 1376 (1992) ("Because both a statement that a notice of appeal was timely mailed and a statement that the notice was not received could be true, a certificate of mailing may be sufficient to prove proper mailing even where the party to whom the mailing allegedly was made swears by affidavit that he or she did not receive it."); ORAP 7.40(3) ("The filing of an undertaking in response to a motion to dismiss shall not, in and of itself, be a sufficient response to the motion."). Accordingly, the motion to dismiss is granted.

In sum, the court affirms the trial court's March 17, 2021, order denying appellant's renewed motion for waiver, reduction, or limitation of undertaking. In addition, the motion to dismiss is granted.

Appeal dismissed.


THERESA M. KIDD
APPELLATE COMMISSIONER
4/14/2021 8:39 AM

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

Costs: Allowed, payable by: Appellant

c: Natalia Alexandrovna Neal
Oregon Eye Care LLC
Complete Vision and Eye Care
Trevor Robins

ej

**ORDER AFFIRMING DENIAL OF WAIVER, REDUCTION, OR LIMITATION OF UNDERTAKING;
DISMISSING APPEAL**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

IN THE COURT OF APPEALS OF THE STATE OF OREGON

NATALIA NEAL,
Plaintiff-Appellant,

v.

OREGON EYE CARE, LLC; COMPLETE VISION AND EYE CARE;
and SHARON NEAL,
Defendants-Respondents.

Clackamas County Circuit Court No. 19LT17273

Court of Appeals No. A173520

**ORDER GRANTING MOTION TO PROCEED *PRO SE*, AND GRANTING MOTION TO
STAY ISSUANCE OF THE APPELLATE JUDGMENT**

Counsel for respondent Sharon Neal, Trevor Robins, filed a deficient motion to withdraw as retained counsel on April 14, 2022. The court has taken no action on the motion, but in another case involving the same circumstances regarding counsel's request to withdraw, the court informed the parties that, in light of counsel's failure to perfect his motion, the court would consider a motion by a represented person requesting to proceed *pro se*. Respondent Sharon Neal now so moves. The motion is granted.

Appellant, for her part, moves to stay issuance of the appellate judgment pending the filing and disposition of appellant's petition for writ of certiorari in the United States Supreme Court. Respondent objects, asserting that the appellate judgment should issue immediately. The motion is granted, and the appellate judgment is stayed pursuant to ORAP 14.10.

Pursuant to ORAP 14.10(2), the stay will automatically terminate in 90 days unless (1) the court extends the stay for good cause shown or (2) appellant files a notice within the period of the stay that she has filed a petition for writ of certiorari with the United States Supreme Court, in which case the stay will continue until final disposition by the United States Supreme Court.



THERESA M. KIDD
APPELLATE COMMISSIONER
6/2/2022 9:36 AM

c: Natalia Alexandrovna Neal
Trevor Robins
Sharon Neal
Oregon Eye Care LLC
Complete Vision and Eye Care

ej

**ORDER GRANTING MOTION TO PROCEED *PRO SE*, AND GRANTING MOTION TO STAY
ISSUANCE OF THE APPELLATE JUDGMENT**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

Ex. Dp-1 of 1

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on July 12, 2022, I mailed via USPS Priority Mail the foregoing "APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI PURSUANT TO RULE 13(5)" to the Clerk of the United States Supreme Court at the following address:

Supreme Court of the United States
Attn: Clerk of Court
1 First Street, NE
Washington, D.C. 20543

I further certify that on this date, I served a copy of the foregoing on all parties required to be served by United States Postal Service First-Class mail, postage prepaid and addressed as follows:

Oregon Eye Care, LLC;
Complete Vision and Eye Care
and Sharon Neal, Respondents
17700 SE Forest Hill Drive
Damascus, Oregon 97089

Ellen Rosenblum, Oregon Attorney General
1162 Court Street NE
Salem, OR 97301

Dated July 12, 2022



Natalia Neal, Petitioner, Pro Se
17373 SE Forest Hill Drive,
Damascus, Oregon 97089
Email: natalianeal3075@gmail.com
Tel: (503) 473-2363