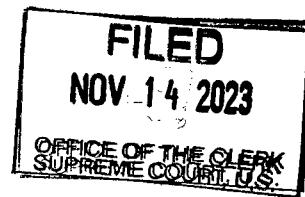


25-6031 ORIGINAL

NO. _____



IN THE

SUPREME COURT OF THE UNITED STATES

ANDRIA DODWELL-WRIGHT

PETITIONER,

VS.

NATIONWIDE INSURANCE COMPANY, ET AL.,

RESPONDENT(S)

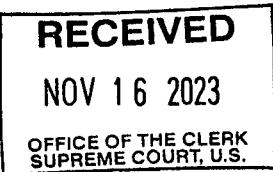
ON PETITION FOR A WRIT OF CERTIORARI TO

DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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ANDRIA DODWELL-WRIGHT
3011 "O" STREET SE
WASHINGTON, DC 20020
202-557-4465



QUESTION PRESENTED

- I. Whether the DC Superior Court and the DC Court of Appeals violated the Human Rights Act and the Americans with Disabilities Act by dismissing Petitioner's Claims against Respondents without any defense or consideration of Petitioner's hearing loss disability.

LIST OF PARTIES

All parties do not appear in the caption of 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: Nationwide Mutual Insurance Company, Fatoumata Diallo and Mory Traore.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5TH Amendment to the U.S. Constitution

11TH Amendment to the U.S. Constitution

14TH Amendment to the U.S. Constitution

Americans with Disabilities Act (ADA)

42 U.S.C. §§ 12101-12213

Human Rights Act of 2010

A.D.A. P.L. 110-325

OPINION BELOW

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

The opinion of the DC Court of Appeals to review appears at Appendix A to the Petition and is unpublished.

JURISDICTIONAL STATEMENT

The date on which the DC Court of Appeals decided this case was February 8, 2023. A timely Petition for Rehearing or Rehearing *En Banc* was there after denied on August 16, 2023, and a copy of the order denying rehearing appears at Appendix C. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a)

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STATEMENT OF THE CASE

The Petition for a Writ of Certiorari is taken from the Orders of the DC Court of Appeals affirming the decision of the DC Superior Court's Order dismissing Petitioner's Complaint against Respondents for failure to prosecute.

On or about May 20, 2014 Petitioner, Andria Dodwell-Wright, ("Petitioner" or "Wright") was involved in a car accident with Respondent, Fatoumata Diallo ("Respondent" or "Diallo") in the 5200 block of Georgia Avenue NW, Washington, DC. Dodwell-Wright was traveling South on Georgia Avenue NW in the right hand lane and she was turning right into the parking lot of a Popeye's Chicken Carry out Restaurant. There, Diallo's car collided with Dodwell-Wright's car as Diallo attempted to come from behind and pass Dodwell-Wright. A DC Metropolitan Police Officer was called to the scene and the Officer determined that Diallo was at fault and the officer issued Diallo a ticket.

It was later discovered that Diallo was not the owner of the car but that Respondent Mory Traore ("Respondent" or "Traore") owned the vehicle. Dodwell-Wright went to the hospital within 24 hours after the accident. Petitioner was diagnosed with severe trauma to her neck and lower back, as well as, other injuries directly caused by the accident. Dodwell-Wright

received extensive therapy for a six month period and continues to suffer pain and repercussions as a result of the accident.

On May 22, 2017 Dodwell-Wright filed a Verified Complaint in the DC Superior Court Civil Division against her insurance carrier, Respondent Nationwide (“Respondent” or “Nationwide”) and against Diallo and Traore alleging Bad Faith (Count I), Fraud (Count 2), Breach of Contract (Count 3), Negligence (Count 4) and Damages (Count 5). Dodwell-Wright alleged in the Verified Complaint that Nationwide owed to Plaintiff a duty of care to investigate and settle the matter in a way that was beneficial, that Nationwide failed to adequately address Dodwell-Wright’s issues by suitably settling the matter and that as a result Nationwide was liable for all of the torts listed in the Verified Complaint. The Verified Complaint further alleged that Diallo and Traore were liable for the Counts listed above in that Diallo was directly responsible for the accident and Traore of the car also bore responsibility for the accident as the owner. Petitioner’s efforts to reach out to them to settle the matter. Dodwell-Wright sought compensatory damages in the amount of \$30,000.00 and punitive damages in the amount of \$90,000.00 jointly and severally against Respondents.

Nationwide filed a Motion to Dismiss Dodwell-Wright’s Verified Complaint on or about August 29, 2019 and pursuant to DC Superior Court

Civil Rule 12 (b)(6). Specifically, Nationwide alleged that Dodwell-Wright's pro se Complaint was fatally flawed in form and substance, jumbled together and that the Verified Complaint did not comply with the pleading requirements set forth under DC Superior Court Civil Rules 8 and 10. Nationwide alleged that Dodwell-Wright's claim for breach of contract failed in that Dodwell-Wright did not allege in her Complaint which parts of the contract Nationwide breached and therefore this Respondent was unable to prepare a tailored defense since it did not have notice of the legal basis for the causes and damages brought by Petitioner. Nationwide went on to argue its Motion to Dismiss that Dodwell-Wright is barred from bringing bad faith, fraud and negligence claims because the District of Columbia does not recognize the tort of bad faith, fraud or negligence brought by insured against her insurer in a first party insurance dispute. Nationwide argued in the Motion to Dismiss that claims of this nature must be addressed under contract law (re-breach of contract). Nationwide argued in their Motion to dismiss the Complaint with prejudice that based upon the above, the Verified Complaint failed to state a claim upon which relief can be granted and therefore dismissal under Rule 12(b)(6) was appropriate.

On September 27, 2019 Dodwell-Wright filed a Memorandum of Points and Authorities in Opposition to Nationwide's Motion to Dismiss the

Complaint. The gist of Dodwell-Wright's opposition to the Motion to Dismiss is that dismissal for failure to state a claim upon which relief could be granted was too stringent a standard and that it was not certain at this stage that Dodwell-Wright could not prove her claims. In addition, Petitioner argued that the Verified Complaint stated in short and concise paragraphs the facts of the case and a short and concise statement of Dodwell-Wright's claims for breach of contract, bad faith, fraud and negligence. Further, Dodwell-Wright argued that dismissal under this standard 12(b)(6) was inappropriate and that Petitioner should be given the opportunity to conduct discovery, witness testimony and other such tools provided by law to gather information in support of Petitioner's claims. DC Superior Court Civil Rule 56(c). Dodwell-Wright went on to argue that minimally she should be given the right to amend the Verified Complaint generally as justice and fairness should dictate.

On October 7, 2019 the trial court entered an Order dismissing Dodwell-Wright's Verified Complaint against Nationwide with prejudice. The trial court's position is that Dodwell-Wright has not alleged sufficient facts to support her claims of breach of contract, bad-faith, fraud, or negligence and the trial court opined that Petitioner's claims are subsumed into her breach of contract claim. The trial court opined that even if the

claims for bad-faith, fraud and negligence can be subsumed under a breach of contract claim, the facts as presented in the Complaint do not give sufficient specificity as to the policy terms that Nationwide violated. The trial court further opined generally that since the District of Columbia does not recognize the torts of bad-faith, fraud or negligence arising out of a contractual relationship except in limited circumstances, and since Dodwell-Wright failed to adequately plead breach of contract, then dismissal of the Verified Complaint as to Nationwide for failure to state a claim was appropriate under Rule 12 (b) (6).

Dodwell-Wright filed a timely Motion to Vacate, Alter or Amend Order Granting Defendant's Motion to Dismiss Plaintiff's Complaint with Prejudice. Rule 59(e). Dodwell-Wright argued generally in the Rule 59(e) Motion that Petitioner was unaware that the trial court had given additional time to permit Petitioner an opportunity to amend the Verified Complaint. Dodwell-Wright argued that she misunderstood the lower court's directive that she file an amended complaint by September 27, 2019 and believed that she had until September 27, 2019 to file an opposition to Nationwide's Motion to Dismiss. Further, Dodwell-Wright explained in the Rule 59(e) Motion that she suffered from a hearing loss in one ear, which caused her to misunderstand the trial court's directives. Petitioner argued that the

Verified Complaint stated a plausible claim for breach of contract in that the Complaint alleged that Nationwide had a contract with Petitioner, that it owed to Petitioner a duty of care to settle Petitioner's claims and that this Respondent breached that duty. Dodwell-Wright argued further that her claims for breach of contract, bad faith fraud, negligence and damages should not have been dismissed under Rule 12(b)(6) and that the trial court applied too strict a standard by dismissing Dodwell-Wright's claims with prejudice at this stage without discovery and without Dodwell-Wright having an adequate opportunity to amend her Complaint.

While Dodwell-Wright's Rule 59(e) Motion to Vacate or Alter the Order entered on October 7, 2019, was pending Diallo and Traore filed a Motion, pursuant to DC Code § 12-301, to Dismiss Dodwell-Wright's Verified Complaint for failure to state a claim as time-barred by the Statute of Limitations. Dodwell-Wright filed a Brief as to the Statute of Limitations and Fraud Allegations in response to Diallo's and Traore's Motion to Dismiss accompanied with a Motion for Leave to File the Brief out of Time. Respondents' Motion to Dismiss and Petitioner's Brief in response were filed on January 16, 2020 and January 24, 2020 respectively. Briefly, Diallo and Traore argued in their Motion to Dismiss that Dodwell-Wright filed the Amended Complaint two days out of time since the accident occurred on May

20, 2014 and Dodwell-Wright filed on May 22, 2017. Dodwell-Wright countered that the three years Statute of Limitations under § 12-301 expired on May 22, 2017 in that May 20, 2017 fell on a Saturday. Therefore the last day to file fell on that following Monday which was May 22, 2017. DC Superior Court Civil Rule 6(a). Dodwell-Wright went on to argue in the Brief that she plead fraud with particularity because Diallo and Traore bore direct responsibility for causing the accident, failed to settle with Dodwell-Wright and denied any culpability in causing Dodwell-Wright's injuries.

On February 5, 2020 the trial court entered an Order denying Petitioner's Motion to Vacate, Alter or Amend its Order granting Nationwide's Motion to Dismiss with Prejudice and denying Diallo's and Traore's Motion to Dismiss based on Statute of Limitations and granting Dodwell-Wright's Motion for Leave to File the Brief as to the Statute of Limitations and Fraud Allegations. The trial court upheld its decision of October 7, 2019 finding no "persuasive reason to overturn its decision". The lower court reiterated its position that Dodwell-Wright knew that the date for filing the amended complaint was September 27, 2019 and that any opposition to Nationwide's Motion to Dismiss was to be filed by October 4,

2019.¹ Further, the trial court reiterated that Dodwell-Wright's claims were subsumed under the breach of contract claim and that the Complaint did not sufficiently allege breach of contract. The lower court ruled in the Order of February 5, 2020 that the Verified Complaint was within the 3 year statute of limitations under DC Code § 12-301 and therefore the claims against Diallo and Traore stood.

The trial court in its Order of February 5, 2020 and at the status hearing held on November 15, 2019 set a status hearing in the case for February 21, 2020. Dodwell-Wright failed to attend the hearing for medical and personal reasons. The trial court dismissed Petitioner's Complaint against Diallo and Traore for want of prosecution pursuant to DC Superior Court Civil Rule 41(b).

On March 6, 2020 Dodwell-Wright filed a Motion to Reinstate the Case. Dodwell-Wright alleged in the Motion that she failed to attend the hearing due to medical reasons and presented a doctor's excuse as an Exhibit. The trial court entered an Order on April 1, 2020 denying the Motion to Reinstate

¹ Petitioner would note here that despite the trial court's assertions at the hearing held on September 13, 2019 there was no prior transcript that indicated that Dodwell-Wright was given until September 27, 2019 to file an amended complaint. In Addition, Petitioner would also note that there appears to be no written order entered setting the dates for filing the amended Complaint.

on grounds that Petitioner's grounds including the doctor's excuse were insufficient to reinstate the case.

Dodwell-Wright noted an appeal from the Orders entered by the trial court granting the Nationwide's Motion to Dismiss with Prejudice and the Order denying the Motion to Vacate, Alter or Amend the Order of dismissal. This Notice of Appeal was filed on March 6, 2020. (A, 118-119). On July 20, 2020 Dodwell-Wright noted an appeal from the Order entered on April 1, 2020 dismissing the Complaint as to Diallo and Traore for failure to prosecute.²

On February 28, 2023 the DC Court of Appeals affirmed the decision of the trial court. Petitioner filed a Petition for Rehearing or Rehearing *En Banc* after an extension of time to file was granted by the Appellate Court. On August 16, 2023 the DC Court of Appeals denied both the Petition for Rehearing and the Petition for Rehearing *En Banc*.

REASONS FOR GRANTING THE WRIT

² The Notices of Appeal became ripe on June 19, 2020, pursuant to the DC Court of Appeals Administrative Orders based on the COVID-19 Pandemic emergency.

The Americans with Disability Act (ADA) is a federal civil rights law that prohibits discrimination against people with disabilities in everyday activities. The ADA prohibits discrimination on the basis of disability just as other civil rights laws prohibit discrimination on the basis of race, color, sex, national origin, age and religion. The ADA guarantees that people with disabilities have the same opportunities as everyone else. Examples of disabilities protected by the ADA include cancer, diabetes, post-traumatic stress disorder, HIV, Autism, cerebral palsy, deafness or hearing loss, blindness or low vision, epilepsy, mobility disabilities such as those requiring the use of a wheelchair, walker or cane, and intellectual disabilities.

The ADA requires all state and local government entities, including the courts to accommodate the needs of persons with disabilities who have an interest in court activities, programs and services. Disability rights are civil rights protected by the Fifth, Fourteenth and Eleventh Amendments to the U.S. Constitution and the Bill of Rights. Disability rights are basic human rights. Therefore, persons with disabilities are entitled to the equal protection of the laws inherent under 14th Amendment to the U.S. Constitution. U.S. Code, Title 42 Chapter 126 (Equal Opportunity for individuals with disabilities) §§12101-12213; Human Rights Act of 2010.

The files records in the instant case clearly reflect that Petitioner came before the DC Superior Court with a severe hearing disability, to the extent that she misunderstood or did not hear the trial court's directive that she file an amended complaint. Petitioner sought to alter the dismissal of her claims with prejudice on grounds that she did not comprehend the fact that she was supposed to file an amended complaint on September 27, 2019 followed by filing an opposition to Nationwide's Motion to Dismiss the Complaint with Prejudice on October 4, 2019. Instead, Dodwell-Wright filed an opposition to Nationwide's Motion to Dismiss and requested an opportunity to amend her Complaint on September 27, 2019.

Simply put, Petitioner did not hear the court's directives. Petitioner argued that she neither heard nor understood the court's directive that she was already given time to file an amended complaint. The trial court knew that Dodwell-Wright had a severe hearing loss and the court neither provided Petitioner with any enhanced hearing devices nor did the court place its directives in a written order given this situation.

Had Dodwell-Wright been given the liberal right to amend her Complaint by the court she could have advanced her claims and avoided dismissal of those claims with prejudice. The trial court violated Petitioner's civil and human rights by taking the draconian stand that it did.

The DC Court of Appeals upheld the decision by the trial court on grounds that the lower court did not abuse its discretion in denying Petitioner the right to amend the Complaint before dismissal with prejudice. The State Appellate Court also violated Petitioner's disability rights and failed to provide to Petitioner equal protection of the laws. Neither the Superior Court nor the Court of Appeals applied the heightened standards required for persons appearing before the courts with disabilities that the ADA is designed to protect.

Petitioner reserves the right to file a supplement to this Petition for a Writ of Certiorari.

CONCLUSION

Based upon the facts, issues and arguments presented above, Dodwell-Wright prays that the Petition for a Writ of Certiorari be granted.

Respectfully submitted,



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