

ORIGINAL

23-7435

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
FEB 06 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

MARIETTE HARRIS PETITIONER(S)

vs.

MILES W. ELLIS, ET AL. RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO
ALABAMA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

MARIETTE HARRIS (PRO SE)
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QUESTION PRESENTED

1. The first question presented is whether petitioner Mis. Harris filed on time for the Alabama Discovery rule section 6-5-482(a) Ala code 1975 the six-month discovery rule.
2. The second question presented is whether the petitioner Mis Harris met the burden of proof to overcome the motion for summary judgement.

LIST OF PARTIES

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 judgement is the subject of this petition is as follows:

- Miles W. Ellis MD
- Jack Hughston Memorial Hospital

RELATED CASES

- Mariette Harris v. Miles W. Ellis, M.D. et al.*, Russell County Circuit Court:
CV-21-38

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TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

- Alabama Rules of Civil Procedure, Rule 12 (b)(6)
- Ala. Code 1975., 6-5-482
- Medical Malpractice Liability Act (ALMA) 6-5-29

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 judgement below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is unpublished.

The opinion of the Russell County Circuit Court appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was November 9, 2023. A copy of that decision appears at Appendix B

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Alabama Rules of Civil Procedure, Rule 12 (b)(6)
 - to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.
- Ala. Code 1975., 6-5-482
 - (a) All actions against physicians, surgeons, dentists, medical institutions, or other health care providers for liability, error, mistake, or failure to cure, whether based on contract or tort, must be commenced within two years next after the act, or omission, or failure giving rise to the claim, and not afterwards; provided, that if the cause of action is not discovered and could not reasonably have been discovered within such period, then the action may be commenced within six months from the date of such discovery or the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier; provided further, that in no event may the action

be commenced more than four years after such act; except, that an error, mistake, act, omission, or failure to cure giving rise to a claim which occurred before September 23, 1975, shall not in any event be barred until the expiration of one year from such date.

- (b) Subsection (a) of this section shall be subject to all existing provisions of law relating to the computation of statutory periods of limitation for the commencement of actions, namely, Sections 6-2-1, 6-2-2, 6-2-3, 6-2-5, 6-2-6, 6-2-8, 6-2-9, 6-2-10, 6-2-13, 6-2-15, 6-2-16, 6-2-17, 6-2-30, and 6-2-39; provided, that notwithstanding any provisions of such sections, no action shall be commenced more than four years after the act, omission, or failure complained of; except, that in the case of a minor under four years of age, such minor shall have until his eighth birthday to commence such action.

- Medical Malpractice Liability Act (ALMA) 6-5-29

STATEMENT OF THE CASE

This appeal involved claim(s) of medical malpractice filed by the Petitioner, Ms. Harris, referred to Mariette Harris, seeking damages against Miles W. Ellis, M.D., (respondent referred to Dr. Ellis) and Jackson Hughston Memorial Hospital (respondent referred to JHMH).

On December 14, 2021, Ms. Harris, in her own individual capacity, filed a complaint against Dr. Ellis and JHMH. Ms. Harris filed an amended complaint on December 17, 2021, and a second amended complaint on April 19, 2022. Dr. Ellis, through their undersigned counsel, filed a Brief Support of Motion to Dismiss to Rule 12(b) on April 14, 2021. In conjunction, JHMH, through undersigned counsel, filed a “Motion to Dismiss” to Rule 12(b)(6) on April 26, 2022.

On May 2, 2022, Dr. Ellis filed a Brief in support of Motion to Dismiss Petitioner’s Complaint, Amended Complaint, and Second Amended Complaint. In response to the Motion to the Motion to Dismiss, Ms. Harris appeared at the oral argument in opposition to the Motion to Dismiss. On July 19, 2022, Ms. Harris, in her own individual capacity, filed a “Reply Brief in Support of Motion Not to Dismiss.” On July 22, 2022, the respondents filed a “Response to Ms. Harris’ Reply in Brief Support of Motion Not to Dismiss”.

On August 18, 2022, Ms. Harris through undersigned counsel, filed a “Memorandum of Law IN Support of Petitioner’s Motion for Leave to File an Amended Complaint and Motion to Deny the Respondent’s Pending Motion to

Dismiss or in Alternative Summary Judgment as Moot.” On September 1, 2022, the trial court granted the Motion to Amend, and through undersigned counsel, Ms. Harris Third Amended Complaint was filed on September 2, 2022. On September 30, 2022, the respondents filed a “Motion to dismiss and accompanying Brief to the Petitioner’s third Amended Complaint.” The Court held oral arguments on October 24, 2022, and on November 10, 2022, the court granted the “Respondent’s Motion to Dismiss.”

On November 23, 2022, Ms. Harris filed a “Motion to Reconsider.” On December 5, 2022, the respondents filed a “Response in Opposition to the Motion to Reconsider.” December 21, 2022, the trial court denied the motion without a hearing. On January 24, 2022, Ms. Harris filed her Notice of Appeal to the Supreme Court of Alabama. On November 9, 2023, the Alabama Supreme Court denied review.

REASONS FOR GRANTING THE PETITION

The petition should be granted because this is an issue that effects a large portion of Americans. Doctors and hospitals should be held responsible for knowingly prescribing recalled medications that cause long lasting and devastating side effects on their patients.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark L. Smith". The signature is fluid and cursive, with a long horizontal line extending from the end of the first name.

Date: April 12, 2024