No. 24-5291

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Ethan Printemps-Herget — PETITIONER
(Your Name)

vs.

Megan J Brennan — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

9th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ethan Printemps-Herget
(Your Name)

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(City, State, Zip Code)

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QUESTION(S) PRESENTED

Are Pro Se litigants entitled to participate fully in the legal process?

How are pro se litigants expected to know case law to identify precedent? As stated to the court of appeals, I have no idea if I am presenting anything pertinent to this case.

If the federal government is funding teams of thousands of attorneys to defend some of their employees, why not all federal employees?

Is it appropriate to provide legal representation for an agency or individual acting in violation of laws or regulations? Would it not be the party seeking to uphold the integrity of the law whom should be represented by the federally funded agencies?

Is witness testimony sufficient to bar summary judgment before trial?

Can documents excluded from discovery by a party later be used freely in court by that party?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

There are no Related Cases

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PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was March 25, 2024. A timely petition for rehearing was denied by the United States Court of Appeals on May 15, 2024, and a copy of the order denying rehearing appears at Appendix C .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 USC §1654
In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

28 USC §1254(1)
Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
(1)By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree

STATEMENT OF THE CASE

In 2013, I began working for the United States Postal Service (USPS), the respondent, as a City Carrier Assistant. During Orientation, I was terminated for a belief that I had misled them about my injury. I was not allowed to speak during the dismissal beyond pointing out that a pen I had

been accused of stealing was in the possession of the person conducting the meeting. I subsequently filed an Equal Opportunity Employment Committee (EEOC) complaint and was restored to my position through mediation. A copy of the mediation agreement was not provided, despite repeated requests. During the following year I was subjected to disparate treatment because of the perceived limitation due to injury. The most specific was an argument between the station manager and a union steward wherein the station manager yelled that I was not eligible to opt on a route because I was on extended probation because I had lied about my leg injury. The station manager would have no way of knowing about the leg injury or the termination other than direct communication from human resources about the matter. The exclusion of opting on to specific routes continued, my last request to opt on a route was in August of 2014. Also in August of 2014, I was placed on a vehicle-mounted route at a different station which I had not received proper training for and was shortly called into a meeting about my route performance. This meeting was conducted without representation or witnesses despite repeated invocation of my Weingarten Rights. During the meeting, the station manager, Mr. Taylor was extremely hostile and aggressive causing an acute stress disorder which caused insomnia and led to a temporary inability to drive. A Worker's Compensation claim was filed requesting a continuation of pay and access to treatment. I was instead removed from the schedule. I sought treatment on my own which took several months. During this time, I made several attempts to submit Family and Medical Leave (FMLA) which were rejected because they came from my primary care doctor and not a mental health professional. In December of 2014, the first mental health appointment available to me, I received treatment appropriate to the condition and FMLA paperwork which was accepted by the respondent setting a return to work date of December 15, 2014. My employment was then terminated on December 14th, 2013 for "failure to maintain schedule." In violation of the approved FMLA leave.

I contacted the respondent multiple times with copies of the termination letter and FMLA approval to allow the correction of the error with no response. I contacted the Bureau of Labor's Wage and Hour division and was repeatedly refused by their USPS specialist because she claimed that letter carriers were exempt from FMLA protection. I contacted the Department of Labor's Whistleblower Protection office on the suggestion of a union representative and they began an investigated before a supervisor called several month later saying she was closing out the investigator's cases. I was told by Worker's Compensation that I took too long to provide medical evidence of my injury despite having utilized first available appointments throughout the process. The EEOC decided that the respondent's actions were too infrequent to constitute continuous retaliatory action despite outlining several incidents of disparate treatment and the specific practice of denying attempts to opt on routes being denied after the first station manager stated clearly that opt denial was related to my first EEOC complaint.

In 2018, I was given a final decision by the EEOC giving me the right to file a lawsuit in district court where I asked for appointment of counsel because I was unclear as to the entire process of litigation.

Despite being denied, I repeatedly requested representation and was granted counsel at the first pretrial conference. My counsel immediate sought to correct my initial filing mistakes as to the causes of the suit and remedies requested, but we were told they weren't timely. These corrections included which laws my perceived disability was governed by. Errors made because I do not have adequate training or education in the law to conduct complicated business such as filing a lawsuit or appeal. These mistakes carried through to the appeal, were I was again denied repeated requests to appoint representation.

The Court of Appeals specifically refers to my lack of understanding of the appeals process in their decision and goes on to say that I should have been the one to produce documents related to my employment which are solely in the possession of the respondent. They take no notice that both the documents in question and the documents submitted by the respondent were requested by, and not produced in response to, my discovery request.

REASONS FOR GRANTING THE PETITION

It is of vital importance that laws are enforced equally amongst the populace. This means that educational and financial constraints should absolutely not be a primary factor in determining the outcome of litigation.

I was not able to use the low income consultation offered through the state bar of Oregon because I did not have access to fifty dollars for an hour of attorney's time. The legal aid agencies appear to have a blind spot for individual federal employees as the state agencies do not take federal cases and the larger agencies such as the ACLU do not usually represent individuals. From the forums I have read online, federal employees who have their rights violated by their employer appear to be a large group of individuals often pushed beyond their means because the federal government delays cases for years. Pro se litigants also appear to have little to no chance of winning a case to begin with. The internet is full of forums telling lawyer's not to worry if they are going up against pro se litigants and telling litigants that they absolutely need the expertise brought y having a attorney represent their rights.

I had requested from the outset appointment of Pro Bono counsel from the courts because I am extremely unclear on the entire process of litigation. I have also raised the question of

counsel in regard to being excluded from fully participating in the process of appeal where acceptable answers to exclusion appear to include that I am appearing *pro se (appendix D)*. I have the right to appear *pro se 28 USC §1654*. Respondent has also failed to produce proof of service for the answering brief in 22-35230 before the 9th circuit court of appeals. The only copy of the respondent's answering brief was a "corrected" copy which was apparently ordered by the 9th circuit without notifying me of the order. This corrected copy included a proof of service dated several days before the postmark which would mean that it was improperly served. The Court of Appeals and the respondent indicated that this was acceptable, but everything I have been able to find on the topic insists that a valid and truthful declaration of proof of service accompany any documents filed with the court.

When the respondent and the court chose to exclude me for representing myself in matters pertaining to my case, the need for counsel became instrumental to appearing during the entire proceeding. I have repeatedly asked for assistance to balance the army of federally employed attorneys provided to the respondent. When the federal government violates its own laws and regulations against an employee, there need to be a provision to at least advise that employee what violations have occurred and how they can proceed with a complaint because google do not provide reliable legal information. I have to assume that there are other communications and procedures I missed out on y not having counsel because of the blatant manner in which my participation was dismissed. The discretion of the court to decide whether or not appointment of counsel is justified does not appear to be a sufficient guide when the court is fine accepting my lack of counsel as justification for not even notifying me of filings or orders to amend said filings.

As to the evidence I offered to satisfy my burden during pretrial conference was a direct witness to a station manager alleging that I was on an extended probation because of my leg injury. The 9th circuit court has "repeatedly held that a single discriminatory comment by a plaintiff's supervisor or decisionmaker is sufficient to preclude summary judgment for the employer." *Domingues-Curry v. Nev. Transp. Dep't, 424 F.3d 1027, 1039 (9th Cir. 2005)* To the extent that the parties' claims rely on the credibility of witnesses, those issues must e resolved at trial, not on summary judgment. *McGinest v GTE Service Corp. 30 F.3d at 1112.* Hon. Judge Mossman said in the pretrial hearing that I had satisfied my burden and we could proceed to trial in the pretrial conference I was able to attend.

The respondent failed to comply with discovery procedures outlined in FRCP 26. The footnote on the March 25, 2024 decision implies that these factors have no bearing on the ultimate decision to dismiss. I feel strongly that they do have direct importance, especially where it concerns producing documents that were solely in the possession of the respondent. The decisions indicate that I should have documents explicitly outlining the respondent's knowledge of my injuries and supposed limitations which would have been covered by my discovery request (Appendix E). How can my established burden of proof be unestablished by a document I have never been granted access to by my employer? How can a document which should have been included in discovery be the crux of the summary judgment?

Again, by being a federal employee unlawfully terminated by a federal agency, I was excluded from any of the legal aid organizations I could find to contact. My financial constraints prevented me from retaining a lawyer for even a reduced rate. My educational background led to my omission of key causes to that lawsuit when filling out the initial forms and I was not given opportunity to correct then when finally given access to counsel. The delays and denials of access balanced with the unimaginable financial resources of the federal government being given to the federal employees who violated the law have created an unassailable mountain I would not be subjected to were I working for a state, local or private employer resulting in a critical need for representation by counsel.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ethan Printemps-Herget

Date: August 5th, 2024