

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Jeanetta Carter — PETITIONER
(Your Name)

vs.

Labor Ready Mid-Atlantic, Inc. et al. RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of the State of Virginia
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jeanetta Carter
(Your Name)

5211 Arlington Ave.
(Address)

Newport News, VA 23605
(City, State, Zip Code)

(804) 304-6087
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the findings of the Circuit Court of Newport News, Virginia, are against the law, when it affirmed a joint demurrer?
2. Whether a plain error exists in the findings of the Circuit Court of Newport News, Virginia?
3. Whether the Supreme Court of Virginia should have dismissed an appeal for failure to comply with the Rule 5:17(c)(1)(i), while the findings of the lower court are against the law and a plain error exists?

LIST OF PARTIES

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

[X] 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: Labor Ready Mid-Atlantic, Inc., c/o Equifax Workforce Solutions, Columbus, Ohio also known as Talx Corporation

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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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 State of Virginia, Newport News Circuit court appears at Appendix B 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☒ is unpublished.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 8/31/17.
A copy of that decision appears at Appendix A.

☐ 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

U.S. Sup. Ct. Rule 10(c) - provides a review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(2) a state court or a United States Court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

STATEMENT OF THE CASE

On January 28, 2015, the Petitioner, Jeanetta Carter, filed a civil lawsuit against the Respondents, Labor Ready Mid-Atlantic Inc., c/o Equifax Workforce Solutions also known as Talx Corporation. The allegations against the Respondents were defamation, intentional infliction of emotional distress, tortious interference with economic opportunity and contractual relations, and negligence. (Pet'r Br., Page 6, Para. 2; Page 7, Para. 1.)

A joint demurrer arose out of the alleged defamation, intentional infliction of emotional distress, tortious interference with economic opportunity and contractual relations, and negligence. (Defts. E' & J. Dem.)

The Circuit Court judge affirmed the joint demurrer and the petitioner appealed the case.

Petitioner encouraged the Supreme Court to consider the allegations.

(Pet'r Br., Page 6, Para. 2; Page 7, Para. 1.)

The Supreme Court of Virginia dismissed the appeal. (Sup. Ct. of Va. Final Order.)

Petitioner now seeks a writ of certiorari from this Court on the three important questions presented in this case.

REASONS FOR GRANTING THE PETITION

THE COURT SHOULD GRANT THE WRIT TO DECIDE WHETHER THE FINDINGS OF A STATE COURT ARE AGAINST THE LAW WHEN IT AFFIRMED A DEMURRER, WHETHER A PLAIN ERROR EXISTS IN THE FINDINGS OF THE STATE COURT, AND WHETHER A STATE SUPREME COURT SHOULD DISMISS AN APPEAL FOR FAILURE TO COMPLY WITH THE RULE 5:17(c)(1)(i), WHILE THE FINDINGS OF THE LOWER COURT ARE AGAINST THE LAW AND A PLAIN ERROR EXISTS.

While the findings of a lower court was against the law and a plain error existed, the Supreme Court of Virginia held that it was absolutely unacceptable to consider an Appellant's brief that did not comply with the Rule 5:17(c)(1)(i) of the Rules of the Supreme Court of Virginia. The Rule 5:17(c)(1)(i) provides under a heading entitled "Assignments of Error,"

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the petition shall list, clearly and concisely and without extraneous argument, the specific errors in the rulings below upon which the party intends to rely, or the specific existing case law that should be overturned, extended, modified, or reversed. An exact reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken shall be included with each assignment of error. This court should grant the writ of certiorari in this case because the trial court's alleged error is pointed

out in an appellate brief as grounds for reversal and it has not been, but should be, resolved by this Court. U.S. Sup. Ct. Rule 10.

Q. An assignment of error with a finding against the law and insufficient evidence.

Where an assignment of error is to the effect that the "findings are against the law," held, that such assignment is not understandable that a finding neither rests upon nor involves any question of law. Marcus v. Paulson, 328. (Def's. [] J. Dem., Page 2, Para. 3.)

Where appellant attacks conclusions of law upon the ground that they are "not based upon any evidence in the case, or upon the law applicable

to the case," held, that conclusions of law are based upon the findings, and not upon the evidence, that if findings are sufficient to support conclusions, and are unassailed, the conclusions will stand, even though the evidence be insufficient to support the findings; and while the assignment in question is unhappily worded, it is apprehended that appellant intended to question the sufficiency of the findings to support the conclusions, and, it will be so considered upon appeal. Id. (Dets. [J. Dem.]

B. Noticing a plain error.

An assignment of error is not necessary to give the court on appeal authority to notice a plain error.

United States v. Tennessee & C.R.
Co. 176 U.S. 242, 20 Sup. Ct. Rep. 165.

An appeal will not be dismissed for want of an assignment of errors, as the court, under the Rule 21, § 4, may, at its option, notice a plain error not assigned.
United States v. Pena, 175 U.S. 500,
20 Sup. Ct. Rep. 165.

C. Alabama Supreme Court's opinions about assignments of error.

The Alabama courts have not heretofore applied their rules respecting the preparation of briefs with the pointless severity shown here. In the early case of Bell v. Fulgham, 202 Ala. 217, 218, 80 So. 39, 40, the court said:

"The brief filed by appellant is characterized by a degree of informality and an apparent lack of attention to Rule 10 ... (predecessor to the present Rule 9); but the Rule is directory, and, from the time of its adoption, the court has exercised its discretion in the consideration of briefs which fairly and helpfully make the points upon which appellant relies. Agreeably with the practice thus established, the brief for appellant has been considered."

More recently, in Bolton v. Barnett Lumber & Supply Co., 267 Ala. 74, 75, 100 So.2d 9, the court stated again that its Rule governing the form of an appellant's brief was "directory"

and said that,

"If appellant's brief, even though not in compliance with the Rule, fairly and helpfully makes the points upon which appellant relies, this court may, in its discretion, consider it." (Pet'r BR.)

The court noted that it saw "no reason why there should be any real difficulty in complying with these Rules." Ibid.

In Madison Limestone Co. v. McDonald, 264 Ala. 295, 301, 87 So.2d 539, 544, the court treated as sufficient three assignments of error which were "not properly expressed." In City of Montgomery v. Mott, 266 Ala. 422, 96 So.2d 764, there were 25 assignments of error, none of which was referred

to by number in the appellants brief. The Alabama Supreme Court said that the brief did not "strictly conform" to the Rules governing "the form and contents" of appellants briefs, but that it did "not feel that the defects in the warrant a dismissal of the appeal." Id., 246 Ala. at 424, 96 So.2d at 767. The court stated:

"We have condoned noncompliance with the Rule in question when the Record is short and simple and when a strict compliance with the Rule is not essential to an understanding of the assignments of error which are argued in appellants brief.

(Pet'r Br.) Ibid. Kendall Alabama Co. v. City of Fort Payne, 262 Ala. 465, 466, 79 So.2d 801, 802 is to the same effect.

In State v. Farabee, 268 Ala. 437,
439, 108 So. 2d 148, 149-150, the court
said:

"As pointed out by the appellee, appellant's brief has not complied fully with the standards required by Supreme Court Rule 9.... A concise statement of so much of the record as fully presents every error and exception relied upon referring to the pages of the transcript did not appear under the heading, 'Statement of the case.' Only two general propositions of law were set out to sustain the seven assignments of error presented of appeal. And only one

Case was cited in appellant's argument, which seemed to argue several assignments together.

Nevertheless we will exercise our discretion and give consideration to the points argued..." (Italics added.) The court thus regarded as too unimportant to prevent consideration of the merits the very ground on which it relies here, even though it was accompanied by other failures to comply with the Rules.

In Brooks v. Everett, 271 Ala. 380, 124 So.2d 100, the court considered assignments of error although there were 38 of them, and none had been "specifically referred to in appellant's brief." Id., 271 Ala.

Q1 381, 124 So.2d at 102. The court said:

"... [w]e have held that, although appellant's brief does not comply with the Rule, if it fairly and helpfully makes the points upon which appellant relies this court may, in its discretion, consider those points on their merits." Ibid.

See also Shariba v. Hagood, 252 Ala. 158, 162, 40 So.2d 85, 89; Quinn v. Hannon, 262 Ala. 630, 632-633, 80 So.2d 239, 241; Thompson v. State, 267 Ala. 22, 25, 99 So.2d 198, 200

D. Other court's opinions about assignments of error

Assignments of error in findings of fact amount in substance to

the same thing as the alleged ERROR in finding as a matter of law that findings of fact could lawfully be made from evidence admitted and considered. Hathaway v. First Nat. Bank 134 U.S. 494, 10 Sup. Ct. Rep. 608.

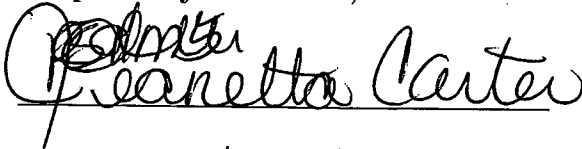
Assignments of ERROR which do not point out the exact words in the charge of the court complained of are not insufficient on that ground, where they indicate the matter complained of with sufficient clearness to enable the court to ascertain it from a mere inspection of the charge, and are in the exact form of exceptions which made the trial court fully aware of

their import, and gave it opportunity
to make corrections. HICKORY V.
United States, 160 U.S. 408, 16 Sup.
Ct. Rep. 327.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Peanetta Carter

Date: 11/29/17