No. 25-980

IN THE

# Supreme Court of the United States

MARK DuHALL

*Petitioner,*

v.

MICHAEL SAMUELS
HEWLETT-PACKARD COMPANY

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE COLORADO SUPREME COURT

## PETITION FOR A WRIT OF CERTIORARI PETITIONER'S REPLY

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## REPLY TO RESPONDENTS' OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

Petitioner Mark DuHall respectfully submits this reply to Mr. Samuels and Hewlett-Packard Company's ("HP") Opposition to DuHall's petition for a writ of certiorari.

## A. SUMMARY OF DuHALL'S CASE

DuHall stopped at a red light, waiting for it to turn green, when he was suddenly and violently rear-ended by Samuels, who was in the employ of HP. DuHall was severely injured, and his car sustained damage. His car was not moving when Samuels crashed into him. Samuels admitted liability (Appendix B at 4a). DuHall testified in court regarding his injuries and damages, and witness testimony corroborated his injuries. DuHall has had numerous surgeries since as a result of this collision.

At trial, judgment was entered in favor of Samuels despite the admission of liability (Appendix A at 1a). DuHall filed a motion for judgment notwithstanding the verdict, which was denied (Appendix B at 3a – 5a).

DuHall e-filed his notice of appeal. He had technical difficulties filing his appeal, and the appeal was received by the E-system provider 2 minutes after midnight on the day it was due, September 22, 2016. The notice was accepted. DuHall filed his designation of record on October 6, 2016. On November 15, 2016, 53 days after the notice was accepted and the appeal

was in process, Samuels and HP raised the issue of the notice being untimely. (Petition at pp. 8, 8,9.)

The Colorado Court of Appeals dismissed the appeal for lack of jurisdiction. (Appendix C at 6a, 7a). Suffering injuries and surgeries from the rear end collision filed a motion to recall the Court's mandate, he was denied. (Appendix D at 8a).

Filing *pro se,* DuHall filed a motion for an extension of time to file a writ of certiorari because he underwent shoulder surgery during the period when he should have filed his petition with the Colorado Supreme Court. The motion was denied, and the case was dismissed (Appendix E at 9a).

DuHall petitions this Honorable Supreme Court for a writ of certiorari on the following grounds.

The Supreme Court has jurisdiction under 28 U.S.C. § 1257 because the Colorado Supreme Court dismissed DuHall's appeal. DuHall's petition implicates the Privileges and Immunities Clause of Article IV of the United States Constitution, the First Amendment, and the Fourteenth Amendment. The Fourteenth Amendment constrains the government from depriving DuHall of his property interests without due process. *Whiteside v. Smith,* 67 P.3d 1240 (2003). A fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Whiteside, ibid.* The Colorado Court of Appeals, and subsequently the Colorado Supreme Court, deprived DuHall of this right.

Samuels and HP forfeited their ability to raise the issue of the notice 53 days after the notice was accepted because the notice rule is a court-made rule, not a jurisdictional one. *Hammer v. Neighborhood Housing Services of Chicago,* 583 U.S. 17 (2017).

DuHall was denied due process and equal protection of the law when the Colorado Court of Appeals rejected the e-filed notice of appeal, despite C.A.R. 30(l)(1), which provides relief in the event of technical difficulties with e-filing.

## B. REPLY TO REASONS FOR OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

Mr. Samuels and HP'S argument for denying the Petition is two-fold. First, they argue that this Supreme Court Lacks jurisdiction to review the case. And second, that this case is a poor vehicle to decide the question presented. DuHall disagrees and kindly requests that the petition for certiorari be granted.

### 1. This Court has Jurisdiction to Review this Appeal.

This Court has jurisdiction to review this case pursuant to 28 U.S.C. § 1257(a) because the Colorado Supreme Court's Order is a final order (Appendix E at 9a).

28 U.S.C. § 1257(a) of the United States Code provides that "Final judgments or decrees rendered by the highest court of a State in which a decision could be

had, may be reviewed by the Supreme Court by writ of certiorari ..."

The Order of the Supreme Court of Colorado is final. In this case, the Court ordered "This case is DISMISSED" (Appendix E at 9a).

A final order is one that disposes of the entire case. *Final Order,* BLACK'S LAW DICTIONARY 1130 (8th Ed. 2004).

This is a final order because DuHall can no longer file any motions or pleadings in any court in Colorado. DuHall's only recourse is to petition the United States Supreme Court for a writ of certiorari.

Samuels and HP argue that the Colorado Supreme Court did not issue any order on "the merits" (Opposition Brief p. 6) and that the Colorado Court of Appeals' decision "is not a final judgment of the highest court of a State in which a decision could be had" (Opposition Brief p. 6). They cite *Banks v. California,* 395 U.S. 708, 708. The facts in *Banks* are not applicable to this case. In *Banks,* the Petitioner did not ask the Supreme Court of California to review the judgment entered by the Court of Appeals. In this case, DuHall filed a motion to recall the mandate, and the Court of Appeals denied the motion (Appendix D 8a). DuHall's only procedural option is to file for review on certiorari to the Supreme Court of Colorado. C.A.R. 49. DuHall sought an extension of time to file his petition for review due to surgery from the collision. The Supreme Court of Colorado denied his

application and dismissed the case (Appendix E at 9a). The ruling in *Banks* does not apply to this case.

Similarly, *Hammerstein v. Super. Ct. of Cal.,* 341 U.S. 491, does not apply to this case. In that case, the Petitioner failed to appeal the Superior Court's default judgment to the California Supreme Court before seeking review in the United States Supreme Court.

In *Sandquist v. California,* 419 U.S. 1066 (1974), the parties did not exhaust avenues for further state review. In this case, DuHall has exhausted every avenue in the state of Colorado for his appeal to be heard on the merits. The cited case, *Kuhns v. California,* 419 U.S. 1066 (1974), is also inapplicable. The Supreme Court of Colorado's decision makes clear that its ruling is final, and therefore the United States Supreme Court has jurisdiction to adjudicate this petition.

Samuels and HP also argue that the United States Supreme Court lacks jurisdiction under 28 U.S.C. § 1257 because DuHall did not file a timely petition for the writ of certiorari and his motion for an extension of time to file his petition was denied. They are wrong. The Supreme Court has jurisdiction because DuHall exhausted every available recourse under State law to file a petition for review, but the Colorado Supreme Court denied the motion and dismissed the appeal (Appendix E at 9a). In denying the motion for an extension of time and dismissing the case, the Colorado Supreme Court effectively ruled on

the merits. Its order denying DuHall's motion and dismissing the case is a ruling on the merits.

After the Court of Appeals rejected his notice of appeal as untimely with prejudice (Appendix C at 6a, 7a), DuHall is entitled, under due process, to seek recall of the Court of Appeals' mandate.

C.A.R. 41(e) provides for the recall of the mandate.

" The court of appeals may recall its mandate, and the supreme court may recall any appellate mandate as it deems appropriate. Upon recall of a mandate, re-issuance of the mandate may be stayed pursuant to subsection (c) of this rule." C.A.R. 41(e).

The Colorado Appellate Rules are replete with time constraints, but the rule governing recall of the mandate contains no time bar on seeking recall. The Court of Appeals gave no reason (Appendix D at 8a). The timing of the mandate was never in question.

Samuels and HP also argue that DuHall waited 17 days before filing for an extension (Opposition Brief pp. 5, 6). The Colorado Appellate rules allow for an extension of time to file a Petition for the writ of certiorari.

"After appearance is made and a docket fee paid, the supreme court for good cause shown may upon motion extend the time prescribed by these rules for filing a petition for writ of certiorari or may permit the petition to be filed after the expiration of such time.

Any initial motion for extension of time must include the date on which the court of appeals issued its opinion or the date on which the district court on appeal from the county court issued its order."
C.A.R. 56

The only conditions required for an extension of time are an appearance, payment of a docket fee, and good cause shown. The law permits DuHall to file for an extension of time. Due process and court rules allow for an extension of time to file documents because unforeseen circumstances occur. The Colorado Court of Appeals' denial of the notice of appeal because it was e-filed 3 minutes late is the government, through the courts, denying DuHall a property interest (his claim for damages from a rear-end collision) without due process.

## II. This is a perfect case for deciding the outcome of the question presented

This is a perfect case ("vehicle") (Opposition Brief p. 6) for deciding whether the Colorado Court of Appeals can dismiss an appeal under a court-made rule, C.A.R. 4(a), because an e-filed notice of appeal was filed at 12:02 am, after the notice was due, even though the appellees failed to raise the issue until 53 days after the Court accepted the notice.

Samuels and HP argue that this case is "a poor vehicle to decide the question presented" because the issue will not determine the outcome of the case

(Opposition Brief pp. 6-11). DuHall disagrees. DuHall was unable to appeal all the myriad issues from the trial court because the Court of Appeals denied his notice without due process, violating the Fifth and Fourteenth Amendments. Samuels admitted liability for a rear-end collision while DuHall was stopped at a stoplight. The trial judge failed to instruct the jurors properly, and judgment was entered for the defendant, Samuels and HP. DuHall filed a motion for judgment notwithstanding the verdict. The trial court erred in its ruling.

The trial court misconstrues CJI 2:4 (Appendix B at 3a – 5a). The instruction states that once the defendant admits legal liability, judgment should be entered for the plaintiff (DuHall), not the defendant (Samuels), who admitted liability. What would have been left to be decided is the nature and extent of the injury (and there are injuries) and the amount of damages, if any (and there are damages). Further, CJI 2:4 is supported by *Foster v. Phillips,* 6 P.3d 791 (Colo. App. 1999), which holds that where the defendant admitted duty and breach of that duty (as he did in this case), it was appropriate to instruct the jury that Samuels was liable as a matter of law for the damages suffered by DuHall. The court did not instruct the jurors in accordance with Colorado law. It is unjust and unlawful for DuHall to suffer injuries, damages, and successive surgeries from a rear-end collision, yet the result is $0 in damages, as if nothing had happened. The trial judge also cites *Kwik Way Stores, Inc. v. Caldwell,* 745 P.2d 672, 678 (Colo. 1987). The court was mistaken. *Kwik* does not apply because it *involved* a default judgment. In this case,

there was an admission and uncontroverted evidence of injuries and damages. Furthermore, as the Supreme Court ruled in *Kwik,* the trial court did not allow the defendants to fully participate in the hearing. Not so in this case.

The issue presented determines the outcome of the case: the denial of the notice of appeal is a denial of the appeal on the merits.

Samuels and HP argue that they timely moved to dismiss the appeal (Opposition Brief 6, 7). They did not timely raise the issue. Raising it 53 days after the Court accepted the filing constitutes forfeiture. The Court did not raise the notice issue *sua sponte.* It had accepted the filing. In *Eberhart v. U.S.,* 546 U.S. 12 (2005), the Supreme Court ruled that the government forfeited the untimeliness defense for failing to raise it until after the district court reached the merits. Similarly, because the notice rule is a claim-processing rule, Samuels and HP forfeited their ability to raise the issue 53 days after the Colorado Court of Appeals accepted the notice of appeal. Due Process guaranteed by the Fourteenth Amendment should apply to all parties. In *Swan v. Zwahlen,* 280 P.2d 439, the Colorado Supreme Court ruled that a lack of adherence to formalities that does not result in prejudice should not interfere with the determination of issues on the merits.

In *Hammer,* the Supreme Court asked whether equitable considerations may warrant an exception to Rule 4(a)(5)(C). *ibid* at 28. This question is particularly relevant where a 3-minute delay resulted

from transmitting a document through an E-System provider. This is a good case in which to consider the question presented.

C.A.R. 30(l) applies when a party is unable to complete the filing. In this case, DuHall completed and submitted the filing, and the court accepted it. 53 days later, Samuels and HP filed their opposition to the notice.

C.A.R. 30(l) allows for late filing where there is a technical error, including "technical problems experienced by the filer." The court did not reject the filing. Samuels and HP did not challenge the filing.

The standard for relief in the event of technical difficulties is "satisfactory proof" when filing "was not completed...". DuHall relied on the rule and filed his notice, which was accepted.

Samuels and HP cite the case of *Farm Deals, LLLP v. State,* 300 P.3d 921 (2012), but that case is inapplicable to this matter. It was an interlocutory appeal, and the petition was filed in the trial court rather than the court of appeals. DuHall's filing was complete despite technical difficulties and was accepted by the Court. The Court did not order the filing rejected. Having admitted the filing, the Court ought not to have rejected it when an opposing party raised the issue 53 days later.

In *Concelman v. Ray,* 36 Colo. App. 181 at 182 (1975), Coyte, J., in his dissent, stated that "The majority opinion is too stringent and prevents our

making a decision on the merits, contrary to the spirit of the Colorado rules of civil procedure." *Concelman, ibid.*, at 182.

Samuels and HP argue that there was no showing of "excusable neglect" (Opposition Brief pp. 9, 10). However, excusable neglect is not the standard required for C.A.R. 30(l). The standard is "satisfactory proof." They cite *Bosworth Data Services, Inc. v. Gloss,* 587 P.2d 1201. *Bosworth,* a 1978 decision, does not contemplate electronic filing or the provisions of C.A.R. 30(l). In considering whether neglect is excusable, the number of days a filing is late is one factor *(Bosworth*, at 1203). In this case, the filing was 3 minutes late and was accepted by the courts. The circumstances, the actual filing, and the time elapsed were all factors the Court should have considered in accepting the notice already e-filed.

Furthermore, the rule itself allows a party that has shown excusable neglect 35 days from the expiration of the original date to file before or after the time has expired. C.A.R. 4(a). In addition, C.A.R. 2 provides for a suspension of these rules upon a showing of good cause. The notice that was already filed should have been accepted pursuant to C.A.R. 30(l).

This is a particularly good case to settle the question presented.

## CONCLUSION

DuHall has been denied equal protection of the law by the Colorado Court of Appeals (the basis and source of all subsequent applications he made to the Court of Appeals and the Colorado Supreme Court).

The Petitioner respectfully requests that the Petition for the Writ of Certiorari be granted.

Respectfully submitted May 13, 2026

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