

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington Circuit Court Judge

RECEIVED

JAN 22 2014

S.C. Supreme Court

Case No. 2011-CP-10-3651
Case No. 2010-SC-87-2381

Hoang Berry..... Petitioner,

v.

Stokes Import Collision..... Respondent

BRIEF OF PETITIONER

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STATEMENT OF ISSUE ON APPEAL

1. Should the Petitioner's case be remanded for retrial based on fundamental fairness?

STATEMENT OF THE CASE

On November 9th, 2010 the Petitioner filed a Complaint against Stokes Import Collision Center in the Small Claim Court of Charleston County. (R. p. 7). There was a bench trial on May 2nd, 2011. An Order of Disposition was filed on May 3rd, 2011 in favor of Stokes Import Collision. (R. p. 2). Finally, a Return was prepared and signed by the Honorable James Turner on June 3rd, 2011. (R. p. 3).

An Appeal was filed on May 23rd, 2011 in the Court of Common Pleas. (R. pp. 14-16). The Petitioner appeared in front of the Honorable Kristi L. Harrington on November 21st, 2011. On the 15th of December a judgment was entered in favor of Stokes Import Collision. (R. p. 5). The Order of Magistrate Turner was affirmed and the Petitioner's appeal was denied.

Petitioner filed a Notice of Appeal to the Court of Appeals on February 1st, 2012. On January 9th, 2013 an Order affirming the lower court was filed with the South Carolina Court of Appeals.

In an Order dated December 5th, 2013 the Supreme Court of South Carolina granted the Petitioner's petition for a writ of certiorari to review the Court of Appeals' decision.

FACTS

The Petitioner took her vehicle to Stokes Import Collision Center after she was in an automobile accident. The Petitioner's vehicle, a 1993 Honda Accord, was valued to be worth around three thousand (\$3000) dollars. Stokes Import Collision Center charged four thousand seven hundred fifteen (\$4,715.18)

dollars and eighteen cents to repair the vehicle. (R. pp. 10-13). Furthermore, Stokes Import Collision failed to complete the repairs that it claimed were done.

***The transcript from the Small Claim Court provided little to no assistance in providing actual testimony due to the fact that most of the testimony was inaudible.*

ARGUMENTS

- I. Should a litigant, with a limited understanding of the English language, have a right to a competent interpreter in Magistrates Court?

The Petitioner has limited English proficiency. Although, there is documentation (Judge Turner's Return) that states an interpreter was present at the Charleston County Small Claim trial, the actual transcript does not show the quality of communication or lack there of between the Petitioner and the Court. (R. p. 3) (R. pp. 17-41). The Petitioner believes and is concerned that there may have been a language barrier at both the bench trial in the Small Claim Court and at the appeal in Circuit Court.

The Circuit Court transcript does not make any reference to the presence of an interpreter for the hearing on December 15th, 2011. (R. pp. 42-47). In *Melton vs. Olenik*, 379 S.C. 45, 51 (Ct.App.2008), the Court found that

“[P]roceeding without the use of an interpreter prejudiced Kim. At the hearing, Melton attempted to explain the transaction and exchange of money. However, the testimony is confusing and at times incoherent, such that both attorneys and the judge often sought further clarification of Melton's statements.”

The *Melton* Court reversed and remanded for a new hearing, stating further “the court shall direct that a qualified interpreter must be present or alternatively, the court must make the necessary findings of waiver under the statute.” *Melton*, 379 S.C. 45, 54 (Ct.App.2008). Although *Melton* can be

distinguished in that the Petitioner had an interpreter at the bench trial, based on the transcript the quality of communication between the Petitioner and the Court is unclear.

Furthermore, there was no interpreter present at the Petitioner's appeal in the Circuit Court. The following excerpts from the Petitioner's appeal shows that a language barrier did and does exist and more than likely existed during the Petitioner's bench trial as well.

For example:

Transcript of Record, November 21st, 2011, Court of Common Pleas

Ms. Berry: The reason I appealed that day because I'm not communicating with the first judge. I thought that I give all to him picture, everything and he looked at that, but he not.

And also I have some --

(Transcript, page 2, lines 8 – 12) (R. p. 43, lines 8-12)

...

Ms. Berry: I'm here because I want to sue them.

The Court: Show who?

Ms. Berry: The Stokes Honda

The Court: I'm sorry?

Ms. Berry: The manager of Stokes Honda Collision.

The Court: Manager of who?

Ms. Berry: The manager from Stokes Honda.

The Court: Okay. What do you want to show them?

(Transcript, page 3, lines 5- 14) (R. p. 44, lines 5-14)

This shows that the testimony is confusing and that the judge sought further clarification of the Petitioner's statements.

Moreover, Section §15-27-155(A) of the South Carolina Code (2005) states:

[W]henever a party of witness to a civil legal proceeding does not sufficiently speak the English language to testify, the court may appoint a qualified interpreter to interpret the proceedings and the testimony of the party or witness. However, the court may waive the use of a qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a finding on the record that the waiver of a qualified interpreter is in the best interest of the party or witness and that this action is in the best interest of justice.

Again, the Petitioner's Circuit Court transcript does not make any reference to the presence of an interpreter nor does it address whether or not the Petitioner may need one. (R. pp. 42-47).

Finally, it is understood that a party is entitled to a fair trial and not a perfect one. The aforementioned Statute clearly states that a court may appoint a qualified interpreter. The Petitioner's communication issue with the court undermines the Petitioner's right to a fair trial. Although the Petitioner may not be entitled to a perfect interpreter, she is entitled to a competent and qualified interpreter according to the law.

- II. That the Petitioner's limited English proficiency deprived her of equal access to justice.

The Petitioner did not have equal access to justice and due process.

Under Article 1 Section 3 of the Constitution of South Carolina it states:

"The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protections of laws." (Emphasis added)

The language barrier between the interpreter, court and Petitioner was fundamentally unfair to the Petitioner. The Petitioner was deprived of equal

access to justice and due process. The Declaration of Rights in the Constitution of South Carolina states:

“...the citizens of South Carolina shall not be deprived of due process nor equal protections of law.”

Therefore, based on the Petitioner’s concern regarding her communication with the Small Claim Court and the absence of an interpreter at the appeal in Circuit Court, it is in the best interest of justice that the Petitioner’s claim be remanded for retrial.

- III. That the case record lacks the completeness necessary for a meaningful review of the Petitioner’s language barrier with the Small Claims Court.

In almost every instance that a female voice is mentioned in the Small Claims Court transcript it is considered inaudible. (R. pp. 32-40). Therefore, in that regard the Small Claims Court transcript does not provide any evidence that the Petitioner received equal access to justice at her bench trial. In *State of South Carolina vs. Ladson*, 373 S.C. 320, 327 (Ct.App.2007), the Court stated:

“The record before us does not permit meaningful appellate review. To hold this record is sufficient would guarantee the affirmance of Ladson’s conviction and twenty-five-year non-parolable sentence without a genuine review. We would simply be constrained to affirm based on an insufficient record and issue preservation principles... We hold Ladson has demonstrated clear prejudice.”

The *Ladson* Court reversed and remanded for a new trial. The Court went on further to state “[W]e are convinced that under the circumstances of this case the reconstructed record lacks the completeness and reliability necessary for this court to engage in meaningful appellate review.” *Ladson*, 379 S.C. 45, 54 (Ct.App.2008).

The Petitioner believes that there was a language barrier between herself and the Court and that she is prejudiced by the lack of an accurate record. Therefore, the Petitioner argues that it is in the best interest of justice that her claim be remanded for retrial.

CONCLUSION

The Petitioner's claim should be remanded for retrial. The language barrier was fundamentally unfair to the Petitioner. Therefore, the Petitioner's limited English proficiency deprived her of equal access to justice. Finally, the lack of a complete record prejudices the Petitioner in that she is unable to show this Court that a language barrier did exist through the Small Claims Court transcript.

Respectfully Submitted,



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January 5th, 2014

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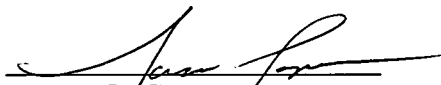
v.

Stokes Import Collision Center.....Respondent

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED a copy of the Petitioner's Brief, Record on Appeal and Appendix by depositing the requested amount of copies in the United States mail, postage prepaid, on January 6th, 2014, addressed to Respondent's attorney of record, **Clay Walker**, P.O. Box 61140, Columbia, SC 29260 and the Clerk, Supreme Court of South Carolina, P.O. Box 11330, Columbia, SC, 29211.

January 6th, 2014


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