

No. 94222-6

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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JESSICA SIMPSON,  
Plaintiff-Appellant,

v.

LINDA GIPSON,  
Defendant-Respondent.

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PETITION FOR REVIEW

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JESSICA SIMPSON  
547 Crockett Lake Drive  
Coupeville, WA 98239  
*Appellant, Pro Se*

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**A. Identity of Petitioners**

Jessica Simpson, the Plaintiff below, asks this Court to accept review of the Court of Appeals decision terminating review, designated in Part B of this petition.

**B. Court of Appeals Decision**

The Court of Appeals affirmed the trial court's order which denied Appellant's request for a continuance of a motion for summary judgment, and instead granted default summary judgment on Defendant's unopposed motion. *Simpson v. Gipson*, No. 75029-1-I, at 1-3 (Jan. 17, 2017).

A copy of the decision, filed January 17, 2017, is in the Appendix at pages A-1 through A-5.

**C. Issues Presented for Review**

1. Whether it is an abuse of discretion to deny a mentally disabled and indigent Plaintiff a brief CR 56(f) continuance because the failure to do so is a violation of her Constitutional rights to Due Process and Equal Protection?

2. Whether a trial court abuses its discretion when it fails to consider a person's limitations from disability and indigence when exercising judicial discretion considering a CR 56(f) continuance?

**D. Statement of the Case**

Plaintiff-Appellant Ms. Simpson is an indigent woman with autism who was a patient at a hospital where Defendant-Respondent Dr. Gipson was employed in 2014. Ms. Simpson alleged that Dr. Gipson choked her, and filed a lawsuit against the hospital as Dr. Gipson's employer. That lawsuit was dismissed on December 14, 2015. As an indigent, mentally disabled, unrepresented litigant Ms. Simpson, rather than appealing that dismissal, mistakenly filed a subsequent lawsuit within 30 days against Dr. Gipson individually on January 11, 2016.

Defendant promptly filed a Motion for Summary Judgment on January 25, 2016 on the basis of *res judicata* and collateral estoppel. That MSJ was noted for February 22, 2016. Counsel for Ms. Simpson was retained on February 18, 2016, immediately filed a Motion for Continuance, and at the hearing on February 22, 2016 advised the Court that he needed a 90-day continuance to "prepare for this case, and perhaps either amend the Complaint or whatever is necessary to respond to the summary judgment motion." *Simpson v. Gipson*, No. 75029-1-I, at 3 (Jan. 17, 2017).

The trial court denied the continuance, stating that it had been given "no reason for continuing this case other than there may be something,

somewhere somehow.” *Id.* Thus, granting basically a default order on an unopposed motion for summary judgment, foreclosing Plaintiff from exercising her basic due process rights of notice and a reasonable opportunity to develop her response to the MSJ, from accessing justice via the judicial motion hearing process itself, and denying her equal protection of the laws as a disabled person.

Division I of the Court of Appeals affirmed because Plaintiff did not articulate what specific discovery would be obtained if the continuance was granted, nor how any evidence would raise a genuine issue of material fact that the case was not barred by *res judicata* and/or collateral estoppel. Essentially, the Court used the existence of the *res judicata*/collateral estoppel argument itself to deny the request for time to develop argument and evidence against the *res judicata*/collateral estoppel argument. Thus again foreclosing Plaintiff from exercising her constitutional rights to due process, equal protection, and access to justice.

## **E. Argument Why Review Should Be Accepted**

### **1. Overview**

By denying Ms. Simpson’s timely and reasonable request for a continuance, both the trial and appellate courts abused their discretion when failing to consider her disability and its effect on her ability to navigate and comply with procedural rules and obtain counsel. Ms. Simpson is also indigent – combining lack of resources, disability-related communication

issues, and disability-related social skill impairments results in compounded barriers to Ms. Simpson's fundamental right to access to justice. Whether judges must consider a person's disabilities when exercising judicial discretion in administering trial court cases is a significant question of law under the 5<sup>th</sup> Amendment Due Process Clause of the U.S. Constitution; Article 1, Section 3 of the WA Constitution; the Equal Protection Clause of the 14<sup>th</sup> Amendment of the U.S. Constitution, and Article 1, Section 12 of the Washington Constitution.

Review should be granted because this case involves "a significant question of law under the Constitution of the State of Washington or of the United States." RAP 13.4(b)(3). Review should also be granted because whether courts must consider disabilities when exercising their broad powers of judicial discretion in the administration of their cases is a matter of substantial public interest that should be determined by this Court pursuant to RAP 13.4(b)(4).

**2. The denial of Due Process and Equal Protection rights to a mentally disabled indigent litigant involves a significant question of law under both the Constitutions of the State of Washington and the United States.**

It is error as a matter of law to ignore a disabled person's constitutional rights when denying a continuance. There is a constitutional basis for a continuance to allow counsel to prepare and potentially amend

the Complaint. The trial court instead required counsel to articulate what discovery was needed, before being the reasonable opportunity to determine what discovery and legal theories may exist.

“Due process of law is [process which], following the forms of law, is appropriate to the case and just to the parties affected. It must be pursued in the ordinary mode prescribed by law; it must be adapted to the end to be attained; and whenever necessary to the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought. Any legal proceeding enforced by public authority, whether sanctioned by age or custom or newly devised in the discretion of the legislative power, which regards and preserves these principles of liberty and justice, must be held to be due process of law.” *Hagar v. Reclamation Dist.*, 111 U.S. 701, 708 (1884), *Accord*, *Hurtado v. California*, 110 U.S. 516, 537 (1884).

Due process *must be* “...appropriate to the case and just to the parties affected...it must be adapted...whenever necessary to the protection of the parties...” *Id.* In the case at hand, Ms. Simpson clearly did not receive due process because the Court did not adapt its decision to account for Ms. Simpson’s particular limitations in obtaining counsel. Had it considered her disability, the Court would have made the very reasonable accommodation of a brief continuance to allow her counsel to become familiar with the case, prepare a proper response to the Motion for Summary Judgment, and/or even amend the pleadings such that the Defendant’s argument regarding *res judicata* and collateral estoppel would be rendered ineffective.

As a disabled individual, Ms. Simpson has been denied due process of law and equal protection of the law; because of her disability, she needed

some minor accommodation from the Court (in this case, a brief continuance) and the denial of that accommodation was a violation of her constitutional rights.

**3. Whether judicial discretion requires consideration of disability-related limitations when administering trial court cases is a matter of substantial public interest.**

This Court should accept review because whether the trial courts must consider a person's disability when exercising judicial discretion, is a matter of substantial public interest that should be determined by this Court pursuant to RAP 13.4(b)(4).

**F. CONCLUSION**

The trial court's abuse of discretion in failing to grant the continuance created several compounded issues. As mentioned above, her counsel could have amended the complaint to defeat the arguments made in Defendant's MSJ, or he may have elected to submit a late Notice of Appeal of the 12/14/15 decision. Although the MSJ was decided more than 30 days after the date of the judgment, the complaint forming the basis of the second lawsuit was filed a full three days prior to the deadline to file the Notice of Appeal. Had her newly retained counsel been allowed time to review the case, he may have realized that the "new" case may have been more properly framed as an appeal. RAP 18.8(b) allows for the extension of time



to file a Notice of Appeal in order to prevent a “gross miscarriage of justice.” It is possible that, in this case with a disabled litigant, that that standard would have been deemed met.

The Petition for Review should be granted, and the decisions of the Court of Appeals and the trial court should be reversed. Judgment should be entered as a matter of law for Ms. Simpson, and her attorney fees and costs incurred throughout this appeal should be awarded.

Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2017.

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Jessica Simpson  
Appellant, *Pro Se*