

**IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA**

ALICIA EVANS

Plaintiff,

v.

CLAYTON KEIM

Defendant.

Civil Action File No. 14-C-03887-1

BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR NEW TRIAL

COMES NOW Plaintiff Alicia Evans in the above-styled civil action, and files this brief in support of her motion for new trial and shows the Court as follows:

Statement of Facts

On July 25, 2017, this case proceeded to trial. Once the jury was selected and placed into the jury box, the Court told everyone in the courtroom that the trial would not begin until everyone had said the Pledge of Allegiance to the American flag. Everyone stood up and began saying the Pledge of Allegiance except Plaintiff who is a Jehovah's Witness and is not allowed to say the Pledge because of her religious beliefs. The jury could see that Plaintiff was not saying the Pledge or placing her hand over her heart. During closing argument, Plaintiff's counsel talked with the jury about the importance of taking the oath at the start of the trial. Defense counsel countered in his closing argument that the beginning of the trial was a solemn event where the jury not only took an oath but also "some of us said the Pledge of Allegiance."

Argument and Citation of Authority

A trial court may order a new trial anytime that the court feels that justice has not been done as a result of the verdict. O.C.G.A. § 5-5-20. This Court apparently has a tradition of having everyone say the Pledge of Allegiance at the beginning of each trial. In 99.99% of the

trials, there would be no issue with this process. But in the present case, Plaintiff is a Jehovah's Witness and could not place her hand on her heart and say the pledge because of her religious beliefs. Jehovah's Witnesses believe that they are only allowed to pledge allegiance to God and cannot do so to a flag or a country. Because Plaintiff was positioned between the jury box and the flag, everyone on the jury saw that Plaintiff did not have her hand on her heart or say the Pledge although everyone else in the courtroom, including the Defendant, said the Pledge of Allegiance. Because of the Court asking everyone to say the Pledge of Allegiance, Plaintiff was placed in the precarious situation of choosing between her religious beliefs and alienating herself from the jury. This was unfair and unduly prejudicial to the Plaintiff. *See West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943) (invalidating state law requiring Jehovah's Witness schoolchildren to recite the Pledge of Allegiance and to salute the flag) and *Wooley v. Maynard*, 430 U.S. 705, 97 S. Ct. 1428, 51 L. Ed. 2d 752 (1977), (striking down law that required Jehovah's Witnesses to display the state motto—"Live Free or Die"—on their license plates).

During the course of the trial, it was evident that the focus of the defense of the case was the credibility of the Plaintiff. Defense counsel's approach at trial was to point out each inconsistency in Plaintiff's testimony and medical records in an effort to show that Plaintiff was not being truthful about the cause of her injury. In closing argument, defense counsel pointed out that only "some of us said the Pledge of Allegiance" at the beginning of the trial. It is unknown whether or not the jury knew that Plaintiff's refusal to participate in the Pledge of Allegiance was due to her religion or just a conscious choice not to honor our country. But regardless, the jury was given the impression that Plaintiff did not care about America. In a case where Plaintiff's credibility was the main issue in the case, it was unduly prejudicial for the Court to create a

situation where it made the jury think that Plaintiff did not love America and care about our country. Plaintiff should not have to choose between her religion and hurting her chances of prevailing at trial. It is not hard to imagine that when the jury began deliberating whether or not to believe Plaintiff that in the back of their minds, if not in their discussions, was the fact that she refused to say the Pledge of Allegiance or put her hand on her heart. This was not fair and was unduly prejudicial to Plaintiff's case and likely affected the amount of the verdict. The only way to correct this injustice is to grant Plaintiff's motion for new trial and allow a new trial where the Pledge of Allegiance is not a part of it.

Conclusion

Accordingly, or for the foregoing reasons, Plaintiff respectfully requests that her motion for new trial be granted.

This 31st day of July, 2017.

FRIED ROGERS GOLDBERG LLC

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR NEW TRIAL has this day been served upon all counsel of record by placing a copy of same in the United States mail, in an envelope with adequate postage affixed thereon to ensure delivery, as follows:


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Dated on July 31, 2017.

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