

No. 18-1060

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL WEISS, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF JANE L. MARSH, Deceased

Petitioners

vs.

STEPHEN MARSH AS EXECUTOR OF THE ESTATE OF MONROE F MARSH, Deceased,
et al.

Respondents

ON PETITION FOR A REHEARING OF WRIT OF CERTIORARI TO CALIFORNIA COURT
OF APPEALS, DISTRICT 4 DIVISION 3

Petition for Rehearing of Writ of Certiorari

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QUESTIONS PRESENTED

1. On the merits and as applied to the facts and evidence in this case did specified principles of fundamental justice under the US Constitution Equal Protection Clause, prohibit the California appeals court from affirming distribution of property not belonging in the Estate of Monroe F. Marsh and injure petitioners.
2. As a question of law could the California appeals court under the US Constitution Equal Protection Clause deny or ignore principles of lack of standing thereunder without considering proffered material changes in law and facts occurring since the time of prior appellate opinions and without prior, but currently operative, incurable facts/law.
3. Was any other U.S. Constitution Clause not specifically present in the Petition for Certiorari infringed upon by the California court of appeals in G054796 & G054553 to the injury of petitioners.

LIST OF PARTIES:

Stephen Marsh and Damon Marsh, Individually and as Co-Executors of Estate of Monroe F. Marsh; and, Michael Weiss, Individually and as Executor of Estate of Jane L. Marsh.

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JURISDICTION & STATUTORY BASIS

This petition is filed under this courts Rule 44, under its inherent jurisdiction, U.S. Const. Art 3 Sec 2, and 28 U.S.C. 1257, re U.S. Constitutional equal protection rights.

CONSTITUTIONAL PROVISIONS AND STATUTES See App 11.

STATEMENT OF THE CASE

For review is the order in 18-1060 dated April 15, 2019 denying certiorari which concerned, among other things, two petitions in probate for distribution and the grounds are restricted to Equal Protection Cl infringement.

ARGUMENT

1. The very first demurrer to Jane's civil complaint did not establish what Monroe owned during the marriage and consequently that as of the date of the confirmation of the sale Weiss lacked any interest in Monroe's estate. That contention is so far removed from the law of demurrer as established under Keidatz v. Albany (1952) 39 Cal.2d 826 [249 P.2d 264] and Goddard v. Security Title Insurance & Guarantee Co. (1939) 14 Cal.2d 47 [92 P.2d 804] as to show intentional infringement of the equal protection clause because demurrers establish only that a pleading did not presently state a viable cause and nothing at all established as a matter of fact on the merits because there was no evidentiary hearing to begin with.
2. There was never any fact or law that was fatal to pursuit of Jane L. Marsh's claims under the law and equity she was invoking.
3. Code of Civ.Proc. 367 says that every action must be prosecuted in the name of a real party in interest except as otherwise provided by statute. Probate Code 48 is a statute that otherwise provides because that statute says nothing about "parties" but rather "persons".
4. "It has been held that the affirmance by an appellate court of a void judgment imparts to it no validity. When defects can be shown, the judgment and all rights and titles founded thereon are void, even in the hands of a bona fide purchaser. It matters not whether it was rendered by the highest or the lowest court in the land--it is equally worthless. No one is bound to obey it. The oath of all officers, executive, legislative, or judicial compels them to disregard it." Pioneer Land Co. v. Maddux (1895) 109 Cal. 633 [42 P. 295] Petitioners can prove up existence of void judgments from the trial and appeals court by mere inspection of judgment rolls. **Petitioners only seek to void out orders; and, not rehash the merits of any determination.** Some facts are alluded to show the state of mind of the co-executors and justices, not re-determinations.
5. The equal protection of the laws, which, by the fourteenth amendment, no state can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of one individual is, without compensation, wrested from him for the benefit of another, or of the public. The equal protection of the laws--the spirit of common justice--forbids that one class should, by law, be compelled to suffer loss that others may make gain. The rights are basically the same whether considered under the US Privileges and & Immunity article or the 14th Amend. The Equal Protection Cl is applied to the Judiciary in our case as well as to Monroe's co-executors under Tulsa Professional Collection Services, Inc. v. Pope (1988) 485 U.S. 478 [108 S.Ct. 1340] and it was so violated.
6. Court orders which place a penalty, for failure to make good a claim or defense, the burden of which is so great as to intimidate Weiss from asserting that which he believes in to be his and Estate of Jane L. Marsh's rights, when no such equal penalty is imposed on others, infringes on their Equal Protection clause rights. There was zero evidence to refute the evidence in App. 13 p. 92 showing who purchased the \$640,000 cashier's check; who cashed the cashier's check and

why. A judgment contrary to the only evidence of record in the judgment roll shows an absence of the court's jurisdiction as a matter of law. All of her separate and community interests have been distributed to Stephen Marsh and his family. In our case judgment roll facts show attempted financial destruction of Jane L. Marsh, her estate, and Weiss. There is more to this case than simple money or property at stake due to court enforcement of 3 prefilng orders issued without subject matter jurisdiction. Weiss has been stigmatized, and remains subject to criminal contempt if he attempts to pursue claims in violation of those void prefilng orders.

7. Equal protection clause challenge could not have been made before due to absence of a clear showing of disparate intent. Now the disparate impact is sufficient to show such intent. Also fear of retaliation by the judiciary and Monroe's co-executors precluded such a challenge. What may have been only prior mistakes had turned into intentional discrimination by the time of preliminary distribution. That is why this petition is filed to raise grounds not previously presented such the Equal Protection Clause.

8. The title VII principle that once an employer offers an explanation for racial discrimination the plaintiff need only prove the explanation is pretextual because the first inquiry of *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792 [93 S.Ct. 1817] has been bypassed by the defendant himself, has been applied to the *Batson v. Kentucky* (1986) 476 U.S. 79 [106 S.Ct. 1712] context of discrimination in selecting jurors. If that principle is applied to our case once the appeals Court and/or Monroe's co-executors relied up upon its prior decisions as permanently barring any standing by Weiss all he has to do is to prove that those prior orders were used as a pretext to cover up infringement of the equal protection clause. And Petitioners herein has done so for two reasons: (1) the equal protection clause of the United States Constitution itself does not permit standing determinations to be based upon rigid, inflexible, per se, categorical facts or law which are not fatal in and by themselves and (2) there is no adequate and independent state ground of decision because California's law in the probate context defines each proceeding in probate as a separate distinct and independent hearing and that the Res at issue in one proceeding is not necessarily the Res in the next proceeding. The property res may decrease or terminate from petition to petition. The preliminary distribution petitions involve money never inventoried, nor accounted for in Monroe's estate as Monroe's devisees all filed waivers of accounting.

10. Petitioners had no occasion to rebut stale information in this probate matter in California per *Estate of Nicholas* (1986) 177 Cal.App.3d 1071 [223 Cal.Rptr. 410] because the probate inquiry depends on information current as of the date of a hearing; and, such error could not be harmless because there could be no comparative analysis of current information by which to measure the consequence of the error. Just as knowledge is the opposite of mistake, so is intent to withhold current information and instead use stale and currently incorrect information. The question as to how the co-executors of estate of Monroe F. Marsh came to acquire the \$982,000 proceeds from the sale of the Irvine condo without having to repay Jane L. Marsh \$640,000 used to eliminate the trust deed upon it, was a matter of "substantial consequence" as those words are used in equal protection clause analysis, just as was the matter of the state of mind of those distributing the same and preventing standing to hear any complaint concerning it. The jurisdiction and power of a court sitting in probate extends only to property belonging to a decedent. It is a violation of the United States Constitution due process clause for a court sitting in probate to distribute the property of a living person. Evidence of discriminatory intent by appeals court and the co-executors to deny equal protection of the laws was shown by the judgment roll facts that the co-executors won every time during the last 8 years save for one motion.

11. The appeals court and/or the co-executors singled out Weiss as a class of one based upon his legal status as a permanently barred stranger to the probate matter due to its prior orders regarding lack of standing. This is because they were Individual status determinations divorced from the present facts and law. No other case in California prejudices lack of standing under circumstances similar to our case; prejudgment is a structural defect, and prevents a full and fair hearing. The circumstances being that (1) no fatal fact or law has been determined to exist (2) because new facts and law were proffered and (3) because \$1.3 million miscarriage of justice was shown.

12. It was obvious that the drawing of lines for purposes lack of standing and prefilings orders, were to fence Weiss out any kind of participation in these and future probate proceedings.

13. Because the appeals court decisions were based on grounds irrelevant, Petitioners was denied equal protection of the laws whether the equal protection clause test is the compelling state interest test or the rational relationship test; and, both standards are alternatively invoked herein. In our case Probate Code 48 on interested persons standing specified its requirements in terms of a person having a property interest or a money interest in the decedent's estate that "may" (not must) be adversely affected; but, even such grounds are irrelevant to standards under the United States Constitution Equal Protection Clause. In our case this clause standing requirements are focused on a court, or other State Actor, namely intentional refusal to provide equal protection to persons before it. It's a dignitary infringement not a money or property infringement. Petitioners has made out a prima facie case of discrimination by showing that the impact disparity originated, at least in part, in a selection process against Weiss where subjective judgment rather than objective criteria was the basis of decision. In our case the Court has displayed its intent to deny Michael Weiss and Estate of Jane L. Marsh equal protection of the laws because it did not want to know the objective current facts and closed its eyes, ears, and mouth to such facts.

Intentional conscious disregard of objective current facts displayed intent to deprive Petitioners of the equal protection of the law. When a statute requires a court to be satisfied that a matter exists, mere assumption by the judge that the matter exists is not sufficient because the word "satisfied" means the fact must "appear in the record." That record is insufficient in our case.

14. The equal protection which the constitution secures is the reign of just and equal laws, not the reign of men; and, this is because the law is the definition and limitation of power of government and not the men elected to administer it.

15. Because discrimination is barred by the United States Constitution, no state may induce, encourage or promote private persons to accomplish what is forbidden to it thereunder; but, in our case it did. Any State which supports discrimination through any arrangement, is forbidden. Any form of a court order that is used to facilitate, reinforce and support private discrimination is forbidden under the equal protection clause. The existence of a permissible purpose cannot alone sustain an action which also has a severe impact of discrimination because it was pretextual as shown herein.

16. In our case there was significant State Actor assistance to an equal protection clause violation in numerous forms, including but not limited to money sanctions, the benefit of rulings on petitions made without sufficient time to read them, and the benefit of prefilings orders when the court had no subject matter jurisdiction. United States citizens as well as "persons within a state" must be able to defend themselves; and, in our case Weiss is such a person individually and as executor of Estate of Jane L. Marsh. It was Monroe F. Marsh's co-executors who were the plaintiffs bringing their two petitions for preliminary distribution etc as well as bringing their

petitions to confirm sale of real property. Continued finance by the appeals court, by way of compensation and attorney fees, of co-executors Equal Protection Cl infringements, is a threat to not only the government of California but the United States of America. See dissent in Moncharsh v. Heily & Blase (1992) 3 Cal.4th 1 [10 Cal.Rptr.2d 183].

17. Petitioners herein have standing to complain because the facts show a real and not a hypothetical controversy involving adverse parties and legally protected interest. The protected interest is that under the United States Constitution equal protection clause.

18. The appeals Court violated the equal protection clause by restructuring the probate process in a way that adversely affected Weiss individually and as executor of Estate of Jane L. Marsh, as a person and concerning his and Jane's property. It also eliminated a fully informed basis to adjudicate any future appeals. It preempted itself from exercising currently informed discretion. That results in not only structural defect; but, in a self perpetuating arbitrary, capricious and discriminatory, probate process.

19. The United States Constitution 14th amendment required conformity with inherent principles of justice and forbid that one man's right to property shall be taken for the benefit of another without compensation. Property to be recognized under the Constitution must be legally acquired as between living persons by contract or otherwise. The rights and privileges of acquiring, holding, and selling property also include the right to make contracts concerning that property. As applied to our case this refers to the Monroe F. Marsh trust deed and Jane L. Marsh's right to acquire whatever title her husband had when he executed it. The appeals court never pretended to interpret the terms and conditions of that trust deed but opined Monroe continued ownership without regard to his default and the other terms of his trust deed and Civil Code 2941(b)(1)(B)(I). One cannot separate a reconveyance deed from the terms of the trust deed; and to do so, is an equal protection clause violation because protection must be given to all the instruments that make up one transaction, not because it was Weiss who was making that objection.

20. Because the RT's in the proceedings for preliminary distribution and to confirm sale of real property, shows as a matter of fact, that the trial order was grounded on zero evidence produced at the time of hearing, then only the "validity or invalidity" of those orders remains to be resolved itself as a matter of law today.

21. To assume the existence of validity, like assumptions regarding substantial evidential support, remain just that: an assumption, and assumptions are not evidence and could never support any subsequent preclusion. Assumptions are the stuff advisory opinions and equal protection clause violations are made of.

WHEREFORE Petitioners pray the court grant a re-hearing on their petition for writ of certiorari and for such other restraining relief the court deems necessary and proper such as a GVR (Grant Certiorari, Vacate and Remand).

Respectfully Submitted

By _____

Michael Weiss, Attorney for Petitioners