No._____

In The

Supreme Court of the United States

Bonnie R. Fowler

Petitioner

v.

State of Utah, Judge R. Hansen

M. R. McDougal & Associates, M.R. McDougal,

D. R. Schow, D.C. McDougal, B.K. Wamsley

Respondent(s)

On Petition For Writ Of Certiorari

To The Tenth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

1. Does the doctrines of res-judicata and collateral estoppel fail when the Petitioner has repeatedly disputed and proven that not any one of the necessary elements required for these types of dismissals have been established?
2. Does the doctrine of collateral estoppel bar or limit a subsequent case that now includes further harm of which was not ripe for adjudication in the first complaint?
3. Does the application of "State Actor" as presented in this case pose a federal question as to call for an exercise of this Court's supervisory power?

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5. Pg. 36-56 / Case 2:17-cv-00285-CW- BW. Report and Recommendation.
6. Pg. 57-58 / Case 2:17-cv-00285-CW. ORDER.
7. Pg. 59 / Mandate issued January 2, 2019.

OPINIONS BELOW

1. 2:16CV00163 DBP Magistrate Judge's Report and Recommendation.
2. 2:16CV00163 DAK/DBP Adopting the R&R and Dismissing on screening provisions of 12(b)(6) and 28 U.S.C. § 1915. 1/20/2017

3. Case 2:17-cv-00285-CW- BW. Report and Recommendation.

4. Case 2:17-cv-00285-CW. Order adopting the R&R and dismissing the case on claim preclusion/res-judicata.5/6/2018.

5. Case No. 18-4091, Fowler v. State of Utah, et al. Order and Judgment. Dismissing the case on claim preclusion/collateral estoppel. 11/30/2018

6. Request for Rehearing en banc Denied. 12/ 21/2018

7. Mandate issued 1/2/2019.

JURISDICTIONAL STATEMENT

1. The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari is 28 U.S. Code § 1254.the judgment or order in question is No.18-4091 (D.C. No. 2:17-CV-00285-CW). Order and Judgment November 30, 2018. With the 10th Circuit ORDER denying the Petition for Rehearing en banc dated December 21, 2018. Before BACHARACH, MURPHY, and MORITZ, Circuit Judges.

2. Rule 10. Considerations governing review of writ of certiorari of which both (a) and (c) apply

    (a) a United States court of appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

    (c) a state court or a United States court of appeals has decided an important question of federal law that has

not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

CONSTITUTIONAL PROVISIONS INVOLVED

1. Res Judicata: Claim Preclusion

   In order for CP to apply three factors must be met: (1) An earlier decision on the issue, (2) A final judgment on the merits, and (3) The involvement of the same parties or parties in privity with the original parties.

2. Collateral Estoppel

   In order for CE to apply, four factors must be met: (1) The issues in the second suit are the same as in the first suit. (2) The issues in the first suit must have been litigated (3) The issue in the first suit must have been decided. (4) The issues must have been necessary to the court's judgement.

STATEMENT OF THE CASE

The Petitioner Bonnie R. Fowler contends that the Appellees, Magistrate Judge, and Judge of the Federal District Court, and now the 10th Circuit Court have failed to meet its burden to establish any of the elements required to dismiss her case on claim preclusion.

Not identical cases and the petitioner reserved the right to relitigate, by now adding the missing parties, and adding the further harm caused of which could not have been litigated in the previous case as it was not ripe for judicial review at the time.

This case was improperly cut short, The Appellant like any other Appellant, should be allowed to substantiate her well-pleaded actionable federal civil rights claims in the federal district court.

ARGUMENT

The Supreme Court explained nearly 68 years ago in Lawlor v. National Screen Service Corp., 349 U.S. 322 (1955) , res judicata does not bar a suit, even if it involves the same course of wrongful conduct as alleged earlier, so long as the suit alleges new facts or a worsening of the earlier conditions. Citing **State** of **Ohio ex rel. Susan Boggs, et al. v. City** of **Cleveland, 655 F.3d 516 (6th Cir. 2011)**

In 2006 the 6th Circuit Court of Appeals held that, unripe claims cannot later serve as a basis for res judicata. Rawe v. Liberty Mut. Fire Ins. Co., 462 F.3d 521, 529-20 (6th Cir. 2006)

That is precisely the case here, with the court failing to prove any of the elements required for this application.

Res Judicata: Claim Preclusion

In order for CP to apply three factors must be met:

(1) An earlier decision on the issue,

The court fails to prove an earlier decision on the issue. The first case was dismissed on the screening provisions, these two determinations, the first being 28 U.S.C. § 1915 IFP, and the second being FRCP 12(b) (6) [failure to state a claim]. The Magistrate Judge had determined earlier in the case that the "failure to state a claim" was "denied as moot". Apendice 4. Pg 35

Clearly 28 U.S.C. § 1915 IFP is not a merits based rationale. Nor was the first suit dismissed "on the merits". The reasoning the court used the failure to state a claim defense was that the court didn't believe that the defendant lawyers could be state actors. The Appellant disputed this citing case,
Kim Milless Ruiz, Plaintiff-Appellant, V. Snohomish County Public Utility District No. . No. 14-35030 D.C. No. 2:13-Cv-01702-TSZ OPINION:

We have not decided the res judicata effect of an order—like the one at issue here—that contains two holdings, one "on the merits" and the other not "on the merits." But the

Restatement and at least one sister circuit have concluded that, in those circumstances, the earlier judgment is not res judicata because it was not "on the merits." See Restatement § 20 cmt. e ("A dismissal may be based on two or more determinations, at least one of which, standing alone, would not render the judgment a bar to another action on the same claim. In such a case, . . . it should not operate as a bar . . . [e]ven if another of the determinations, standing alone, would render the judgment a bar . . . ."); Pizlo v. Bethlehem Steel Corp., 884 F.2d 116, 119 (4th Cir. 1989) ("When a dismissal is based on two determinations, one of which would not render the judgment a bar to another action on the same claim, the dismissal should not operate as a bar.").

The 10th Circuit Court of Appeals determined that "But that case narrowly held a prior order dismissing a case for both lack of personal jurisdiction and untimeliness wasn't a prior judgement on the merits because one of those grounds (lack of

personal jurisdiction) wasn't a merits based rationale. See Ruiz, 824 F.3d at 1165. In contrast, the prior dismissal in this case was for failure to state a claim"

The Petitioner objected to this as the court forgot to apply the other screening provision of 28 U.S.C. § 1915 IFP in which the case was dismissed under. Any margin narrow or otherwise and furthered by this court's rulings actually proves that Fowler's argument succeeds!

This was, if anything a jurisdictional question of which the Plaintiff later proved that they denied her a constitutional right to fee waivers, making them state actors and acting under the color of law. Of importance is the footnote of the 10th Circuits Order and Judgment. (Pg. 23) " 4 Because we affirm based solely on claim preclusion, we do not reach Fowler's challenge to the district court's alternative ruling that the lawyers aren't state actors and can't be liable under §1983." If this was in fact their reasoning it must also be concluded that in order for it to be in their jurisdiction these attorney defendants were "state

actors" and it must be concluded as a finding of fact and conclusion of law. The Petitioner cited Ballard v. Wall, 413 F.3d 510 (5th Cir. 2005). The appellate court held that Judge Lambert was properly granted judicial immunity and thus upheld the District Court's grant of her motion to dismiss. However, the Fifth Circuit found the attorneys could be held liable as state actors, noting that private parties can be deemed state actors if they were "joint participants" with a government official in the unlawful action. The case was affirmed in part, reversed in part and remanded, As in the case of "M,L.B. v. S.L.J." Oyez, 11 Jun.2018. SCOTUS, and Ballard v. Wall, 413 F.3d 510 (5th Cir. 2005) "In a 6-3 opinion delivered by Justice Ruth Bader Ginsburg, the Court held that, just as a State may not block an indigent petty offender's access to an appeal afforded others, so Mississippi may not deny M.L.B., because of her poverty, appellate review of the sufficiency of the evidence on which the trial court found her unfit to remain a parent. "We place decrees forever terminating parental rights in

the category of cases in which the State may not 'bolt the door to equal justice,'" wrote Justice Ginsburg, "recognizing that parental termination decrees are among the most severe forms of state action.""

(2) A final judgment on the merits,

The court fails to show a final judgment on the merits of the case in question they want to apply claim preclusion to. There was no final judgement. In fact the petitioner reserved the right to relitigate because it was not on the merits. *Asher v. City of Cincinnati*, No. C-990345, 1999 Ohio App. LEXIS 6223, at *2 (Ohio Ct. App. Dec. 23, 1999). The lack of an appeal does not suddenly make the dismissal "on the merits" and therefore subject the new suit to the barrier of res judicata.

(3) The involvement of the same parties or parties in privity with the original parties.

The court fails here as well, acknowledging that the original

case involved only the four attorney defendants and their law firm. Admitting that the Appellant added the State and the 3rd District Court Judge, as neither were named as defendants in the first case and were not in privity with the original parties. These two parties have invoked their Eleventh Amendment Rights via counsel and are protected from suit with absolute Judicial immunity, respectively, and accordingly are not addressing the issues raised on appeal and do not take a position on them. The Appellant originally disagreed, as they are responsible for the violations of due process in the 3rd District Court case and that they colluded with the attorney defendants. If the Eleventh Amendment does not protect them from suit, then they shouldn't have been given immunity.

Collateral Estoppel

In order for CE to apply, four factors must be met:

(1) The issues in the second suit are the same as in the first suit.

The court fails as the issues in the second suit. The issues clearly were not the same as in the first suit. The first suit claimed violations of due process, equal protection of the laws, threats and intimidation under the color of law, a conspiracy to commit these actions, and amended to include USC 1986 which enforces a remedy to the defendants admitting to the counts against them and not preventing them.

The second suit of which the Appellant reserved the right to relitigate, not only added the State and 3rd District Court Judge as Defendants not in privey to the first case, but proved coercion, as required if these two parties were the missing link.

Further the Appellant added to the relief sought compensation for a worsening of the conditions due to the defendant's wrongful conduct. The petitioner suffered a stroke (arterial occlusion) causing permanent loss of vision in the left eye, on June 30, 2016, directly related to the continuous IIED. (the attorney defendants calling the Petitioner a poor loser using the Rooker- Feldman Doctrine just several

days prior, this only fueled the genuine fear of them as the lower courts and now the 10th circuit has relied on the false candor again and again.. This was not a part of the first case as no one could foresee this happening and certainly was not ripe for adjudication. Citing **State** of **Ohio ex rel. Susan Boggs, etal. v. City** of **Cleveland, 655 F.3d 516 (6th Cir. 2011)** in re Lawlor v. National Screen Service Corp., 349 U.S. 322 (1955), The Supreme Court reversed, explaining that even though "both suits involved essentially the same course of wrongful conduct," res judicata did not apply. *Id.* at 327 (internal quotation marks omitted). The Court noted that "such a course of conduct—for example, an abatable nuisance—may frequently give rise to more than a single cause of action." *Id.* at 327–28. The Court held that claims in the second suit based on events that had not yet occurred at the time of the first suit were not barred: "While the [earlier] judgment Precludes recovery on claims arising prior to its entry, it cannot be given the effect of extinguishing claims which did not even then exist and which

could not possibly have been sued upon in the previous case." *Id.* The Court further held that the plaintiffs' claims in the second suit survived res judicata to the extent that those claims alleged worsening of the earlier wrongful conduct:

Id. (emphasis added). "Under these circumstances," the Court explained, "whether the defendants' conduct be regarded as a series of individual torts or as one continuing tort, the [earlier] judgment does not constitute a bar to the instant suit." *Id.*

Lawlor retains its vitality to this day. *See, e.g.*, *Darney v. Dragon Prods. Co., LLC*, 592 F. Supp. 2d 180 (D. Me. 2009) (applying *Lawlor* to deny application of res judicata where the second complaint included new factual allegations, even though there was "facial similarity" with the first complaint). This Court has explained that Ohio courts follow the same principles. *See Duncan v. Peck*, 752 F.2d 1135, 1139 (6th Cir. 1985) (applying Ohio res judicata principles and explaining that "a judgment in a former action does not bar a subsequent action where the cause of action prosecuted is not the same, even

though each action relates to the same subject matter");

(2) The issues in the first suit must have been litigated

The court fails to prove that it was litigated. The Appellant requested a hearing on the merits by demanding a jury trial, only to have it dismissed on the screening provisions, Instead in the second suit the magistrate judge invoked res judicata/ claim preclusion, And on Appeal to the 10th Circuit, then the court dismissed on collateral estoppel and claim preclusion and now saying at this juncture "dismissed on the merits".

(3) The issue in the first suit must have been decided.

The court fails to support this issue as well. The first suit was never decided. The first case was never adjudicated because the court said that the issues were not valid because the defendants were not presumed to be state actors and without this element, it was not a federal case. The Federal District Judge said I needed to go back to the state court and sue them on perjury and false candor there.

(4) The issues must have been necessary to the court's judgement.

This fails as to the attorney defendants in the first suit as they admitted to (in writing) that they did threaten and intimidate the plaintiff. Furthermore the attorney defendants tried saying it was the other defendant, implying it was done in good faith, or that the plaintiff was eavesdropping on a private conversation. These defenses actually proved the Petitioner's case, although the court ignored them and dismissed on the screening provisions anyway.

CONCLUSION

The Petitioner Bonnie R. Fowler sought compensation in 2016 for damages caused by the attorney defendants violating her civil rights on numerous counts, but the suit was dismissed on the screening provisions. Since that time, worsening damage from the defendants IIED, and continued intimidation as being the direct cause of her permanent disability. The Petitioner has become a victim of the Respondents miscarriage

of justice, and has made her life a living nightmare, as they said they would. Based on these new facts, I reserved the right to file a new case and did so in a timely manner. The Court dismissed the second case without adjudication on res judicata without viable cause. Petitioner was then refused reconsideration.

Once and for all, justice falls on the Supreme Court of the United States to adjudicate this case as the lower courts have implemented and condoned this miscarriage of justice. This decision will uphold a valuable precedent and possibly deter attorneys from threatening and intimidating people, uphold the constitution, and hold them accountable for their actions.

The Petitioner prays that this Court grant the Writ of Certiorari and the Court should reverse.

Respectfully submitted March 18, 2019

Resubmitted April 15, 2019 corrected discrepancies.

Bonnie R. Fowler

UNSWORN DECLARATION

In compliance with 28 U.S. Code § 1746.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 18, 2019.

Resubmitted April 15, 2019

Bonnie R. Fowler