

IN THE SUPREME COURT OF THE UNITED STATES

DOROTHY BINNS,
Petitioner,
v.
CITY OF MARIETTA, GEORGIA,
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

**OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI**

Daniel W. White
Douglas R. Haynie
HAYNIE, LITCHFIELD & WHITE, PC
222 Washington Ave NE
Marietta, GA 30060
770-422-8900
Attorneys for Respondent

Dated: November 15, 2018

i.

QUESTIONS PRESENTED

Whether a housing agency's denial of the request of a disabled individual who seeks a larger housing subsidy payment than the payment that is provided to similarly situated, non-disabled individuals amounts to a refusal to provide a "reasonable accommodation" under the terms 42 U.S.C.S. § 3604(f)?

Whether an individual who has not demonstrated entitlement to a benefit – the use of a lower rent payment standard for her monthly contribution to her own rent payment – may assert a claim for denial of due process after she has been determined by the housing agency to be ineligible under the applicable standards?

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BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The unpublished opinion of the 11th Circuit Court of Appeals appears at Appendix A to the petition and may be found at 704 F. App'x 797. The opinion of the United States district court appears at Appendix B to the petition, and is unpublished.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The relevant portion of the Fair Housing Act, 42 USC § 3601, et seq., provides at 42 USC § 3604(f):

It shall be unlawful: ...

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

- (A) that person; or
- (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
- (C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes--

- (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling

INTRODUCTION

This case involves the request of an individual diagnosed with rheumatoid arthritis who sought to receive a larger housing subsidy payment from her housing agency than the subsidy that other similarly situated, non-disabled individuals receive under the applicable housing standards. Petitioner claimed the larger housing subsidy should have been granted as a “reasonable accommodation” under the Fair Housing Act, 42 USC §3604(f), necessary to afford her an equal opportunity to use and enjoy her dwelling. The city’s housing department asserted that its actions were consistent with the Fair Housing Act and the relevant federal regulations. The district court and court of appeals agreed.

Petitioner also asserted that her due process rights were violated when the city’s housing department did not allow her to “appeal” its determination that she was not eligible to apply for a hardship exemption, by which she sought to contribute less money to her rent payment than was required under the applicable regulations. The city maintained, and the lower courts agreed, that petitioner was not entitled to a hearing on that eligibility determination, because she could not show that she had a protected property interest in a benefit that she was not entitled to receive.

Petitioner also sought to bring a claim that the housing agency had denied her right to equal protection of the law, stating that the city’s housing policy had a discriminatory effect on elderly, disabled individuals. However, she produced no evidence to support a claim under either a disparate treatment or disparate impact

analysis. Likewise, petitioner was unable to produce any evidence to support her claim that the housing agency's denials were motivated by retaliation, harassment or conspiracy.

Petitioner asks this court to grant certiorari to review the unanimous decision of the court of appeals to determine whether the lower courts overlooked or misapplied the law. Pet (i). She makes this request despite the admonition in Rule 10 that "a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Petitioner has not pointed to any disagreement between the circuit courts on the interpretation of the laws applied in this matter and she has grossly overstated the legal importance of her isolated and fact specific claims. Respondent respectfully requests that petitioner's request for a writ of certiorari be denied under the applicable standards set forth in Rule 10.

STATEMENT OF THE CASE

1. Factual Background

Petitioner Dorothy Binns ("Binns") participated in the Section 8 Housing Choice Voucher Program, administered by Respondent City of Marietta ("the City") administered on behalf of the U.S. Department of Housing and Urban Development. Pet. Appx. A (I)(A). In 2006, Binns sued the City for refusing to grant her a voucher separate from the one she held for her son. *Id.* The merits of that case were never reached, because the City agreed as part of a negotiated settlement to give Binns a voucher of her own. Pet. Appx. B, p. 2.

Pursuant to that settlement Binns applied for her voucher in 2011, listing herself and her son as the household members and also requesting that the City approve a live-in aide as a reasonable accommodation for her rheumatoid arthritis. Pet. Appx. A (I)(A). The City approved her request for a live-in aide and granted her a two-bedroom subsidy based on her three-person household (herself, her son, and the live-in aide). *Id.* Binns incorrectly states in her petition that the City advised her that her two-bedroom subsidy would only accommodate her son and herself. The City specifically advised her by letter that the two-bedroom subsidy was the appropriate subsidy for a household composed of three persons. Pet. Appx. B, p. 2.

In 2012, Binns requested that the City remove her son from her “Household Composition.” Pet. Appx. A (I)(A). After removing her son, the City reduced her subsidy payment to the amount permitted for a one-bedroom unit, as the subsidy was now based on a two-person household (Binns and her live-in aide). *Id.* Binns then filed a request for a reasonable accommodation, seeking a larger subsidy payment, claiming that she needed a separate room for her live-in aide. *Id.* The City denied her request. Binns appealed that denial and was granted a hearing that was held in May of 2021. Pet Appx. B, p. 3. The City’s hearing officer considered her appeal and affirmed the denial of the additional subsidy. *Id.*

In May of 2012 Binns also submitted a request for a “hardship exemption” to the minimum rent requirement. The City denied that request, too, informing her that she did not meet the HUD requirements to apply for that exemption. Pet. Appx. B, p. 4.

2. Procedural History

In May 2013, Binns brought an action against the City in the United States District Court for the Northern District of Georgia, alleging that the City violated her rights under the Americans with Disabilities Act (“ADA”), the Rehabilitation Act (“RA”), and the Fair Housing Act (“FHA”) by denying her request for a reasonable accommodation of a larger housing subsidy. Pet. Appx A (I)(B). Second, also claimed that City violated her right to due process by not giving her an opportunity to appeal its denial of her request for a hardship exemption to the minimum rent requirement.

Id.

Third, she brought an equal protection claim, alleging the City’s policy of refusing to grant a larger subsidy to people with live-in aides caused a disparate impact on elderly and disabled participants in the Housing Choice Voucher program.

Id. Finally, she alleged the City’s actions were the result of retaliation, harassment, and conspiracy. *Id.*

The parties moved for summary judgment and the district court granted the City’s motion and denied Binns’ motion, dismissing all of her claims. Upon the grant of summary judgment, the City voluntarily dismissed its only counterclaim against petitioner. *Id.*

Petitioner appealed that order to the 11th Circuit Court of Appeals where a three-judge panel unanimously affirmed the district court’s grant of summary judgment without a hearing, finding that the district court had correctly applied the

law to the undisputed facts in the record. Pet. Appx. A (III)(A-D). The court of appeals also found that petitioner had abandoned several claims by not addressing them in her appeal and that she had impermissibly attempted to raise several claims for the first time. *Id.* Petitioner sought a rehearing *en banc* which was denied. Pet. Appx. C.

REASONS FOR DENYING THE PETITION

Petitioner, in stating the Question Presented by her petition, has proposed that this Court grant certiorari to consider “whether the Lower Courts violated...overlooked, misapplied, neglected or made any vital legal errors in their Holdings...” Petition, i. Such a request does not meet the standards set forth in Rule 10 of the Rules of the U.S. Supreme Court, which indicate that certiorari will only be granted for compelling reasons, such as a split in circuit decisions or an important question of federal law that has yet to be decided by the Court. More importantly this request directly contracts the admonition in Rule 10 that certiorari will rarely be granted “when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”

1. The standard for a failure to accommodate claims is well settled

Petitioner has not pointed this Court to any split in the circuit courts about the case law that governs this matter or any important federal question that has yet to be answered by the courts. To the contrary, she cites many of the same cases that the district court and court of appeals used to guide their decisions. In support of her claim that the City refused to grant her a reasonable accommodation she cites to

United States v. Hialeah Hous. Auth., 418 F. App'x 872, 875 (11th Cir. 2011). Petition p. 12. The Hialeah decision recites the standard that must be met to present a failure to accommodate claim:

To prevail on a failure to accommodate claim, 'a plaintiff must establish that (1) he is disabled or handicapped within the meaning of the FHA, (2) he requested a reasonable accommodation, (3) such accommodation was necessary to afford him an opportunity to use and enjoy his dwelling, and (4) the defendants refused to make the requested accommodation.' Id.

The court of appeals applied this exact standard from Hialeah and affirmed the district court's ruling that Binns' "request for a larger subsidy did not amount to a failure to provide a reasonable accommodation because the City's actions were consistent with the relevant federal regulations." Pet. Appx. A (III)(A). Petitioner argued below that the federal regulations determining the number of rooms for a particular family unit do not apply to handicapped individuals, but provided no authority for that proposition. *Id.*

The Hialeah decision was an unpublished case, but the standard it cited to was taken directly from two published cases that originated in two separate circuits. *See, Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1219 (11th Cir. 2008); DeBois v. Ass'n of Apartment Owners of 2987 Kalakaua, 453 F.3d 1175, 1179 (9th Cir. 2006). Thus, Petitioner is not seeking to have this Court answer a new, important federal question or seeking to have the Court resolve divided circuit decisions. Instead, she

is simply asking this Court to take the recognized standard for a failure to accommodate claim and apply it differently to the facts in this case.

2. Petitioner's due process claims rely on two established precedents of this court that were properly applied

Petitioner makes similar arguments regarding her due process claims in this matter, asking the Court to correct what she argues is the misapplication of well-stated law. Binns cites directly to two well-established precedents from this court when arguing that she was deprived of her due process rights: Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, (1972) and Perry v. Sindermann, 408 U.S. 593 (1972). The district court and the court of appeals both relied on the Roth decision in support of their holding that Binns was required to show “a legitimate claim of entitlement to” the benefit she sought. Pet. Appx. A (III)(B), Pet. Appx. B, p. 17. Both courts correctly applied the Roth standard in finding that she had not demonstrated that she was eligible to seek a “hardship exemption” from the minimum rent standard, because she did not even meet the requirements of the minimum rent standard. Pet. Appx. A (III)(C). There is no disagreement about the law that applies in this case, Petitioner simply wants it applied differently. That is not a proper case for granting certiorari.

3. Certiorari should not be granted to correct assertions of erroneous factual findings

Petitioner's equal protection claims and her claim that the City was motivated by retaliation or harassment were not supported by the evidence. The district court

and court of appeals both found that Petitioner had not presented evidence necessary to support her claim for equal protection, under either a disparate treatment or disparate impact analysis. Indeed, the district court found with regards to her disparate treatment claim: “the evidence shows that [the City] treated her the same as any other similarly situated, non-handicapped persons by following the regulations to determine the size of her subsidy.” Pet. Appx. B, p. 19, Pet. Appx. Likewise, the lower court also held that she had failed to present any statistical evidence that would support a disparate impact claim. *Id.* The court of appeals properly upheld both factual findings. Pet. Appx. A (III)(C). Both courts also agreed that Binns failed to present any evidence to support her claims for retaliation. Pet. Appx. B, p. 20, Pet. Appx. A (III)(D). Respondent has no doubt Petitioner wishes the have the district court had reached different conclusion about the undisputed evidence in this matter. However, Petitioner had an opportunity to convince the court of appeals that the factual findings were wrong, and a writ of certiorari is not the vehicle by which such errors should be corrected. For this reason, Respondent asks the Court to deny Petitioner’s writ of certiorari.

CONCLUSION

The court of appeals properly reviewed the record below in the light most favorable to Binns and found that the district court properly dismissed Petitioner’s claims. The Petitioner has failed to point this court to any split in circuit decisions on the applicable federal law, nor has she identified any new compelling federal question that has yet to be decided. Instead, Petitioner simply seeks to have this court reapply

the law and make different factual conclusions. For this reason certiorari is not appropriate and the City respectfully requests that this Court affirm the unanimous decision of the court of appeals.

Submitted this 15th day of November, 2018.

HAYNIE, LITCHFIELD & WHITE

/s/ Daniel W. White

Daniel W. White
Douglas R. Haynie

Attorneys for Appellee City of Marietta, Georgia

CERTIFICATE OF SERVICE

I, Daniel White, hereby certify consistent with Rule 29 of the US Supreme Court that I have this date served a true and correct copy of the foregoing RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI by depositing same in the United States mail, in a properly addressed envelope, with sufficient postage affixed thereon, addressed to:

Ms. Dorothy Binns
9030 Southcrest Court
Jonesboro, GA 30238
pro se Petitioner

This the 15th day of November, 2018.

HAYNIE, LITCHFIELD, & WHITE

/s/ Daniel W. White
Daniel W. White

222 Washington Ave.
Marietta, GA 30060
770-422-8900
dwhite@hlw-law.com