

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TERRY A. BURLISON,

Petitioner,

v.

PAM ANGUS, Individually and in
Her official capacity as a Marion
County deputy clerk,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

Terry A. Burlison
3031 Stillwater Dr.
Kissimmee, Florida 34743
(407)955-8159

QUESTION PRESENTED

Under 42 U.S.C. 1983 when a public official violates clearly established law though her pre-seizure conduct and the conduct caused the loss of property is the official protected by absolute immunity.

LIST OF PARTIES

Terry A. Burlison petitioner on review, was the plaintiff-appellant below.

Pam Angus , Individually and in her official capacity as a Marion County deputy clerk respondent on review, was defendant-appellee below.

No corporations are involved in this proceeding.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix p.1-4 to the petition and is reported at Burlison v. Angus, 737 F. Appx ,523-25 (11th Cir. 2018).

The opinion of the United States district court appears at Appendix p.5-7 to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was September 11, 2018.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date November 14, 2018 and a copy of the order denying rehearing appears at Appendix p.8-9.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLED

The Fourth Amendment provides that “[T]he right of the people to be secure

in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" U.S. Const. Amend. IV.

Section 1983 provides in pertinent part as follows:

Every person who, under color of any statue, ordinance, regulation, custom, or Usage, of any State or Territory or the District of Columbia, subjects, or causes To be subjected, any citizen of the United States or other person within the Jurisdiction thereof of the deprivation of any rights, privileges, or immunities Secured by the Constitution and laws, shall be liable to the party injured in an At law, suit in equity, or other proceeding for redress***

42 U.S.C. 1983

INTRODUCTION

This case presents one issue whether, under 42 U.S.C. 1983, a public official who engages in unconstitutional conduct and through that conduct proximately causes the deprivation of a federally protected right is entitled to absolute immunity.

Deputy clerk P. Angus for Marion County, Florida caused the loss of possession of Terry Burlison's mobile home through her reckless conduct which caused the loss, Burlison brought a 1983 claim. The district court sua sponte dismissed the complaint for absolute immunity and the court of appeals affirmed.

The panel majority held that the district court correctly concluded that Burlison's claim against Angus was patently frivolous, and therefore could be dismissed without notice and an opportunity to respond. Angus, as a deputy clerk

of court, was entitled to absolute judicial immunity on Burlison's claim for money damages, because in issuing the challenged writ of possession in favor of Burlison's landlords, she was following a direct order of a Marion County, Florida judge.

The panel majority's new found absolute immunity rule is in error, and deeply misunderstands this Court's interpretation of 1983, because the panel failed to account for the fact that the record contained no "proof" that a Marion County judge had played any role in directing deputy clerk to issue a writ of possession in favor of the landlord on September 28, 2012 in violation of the mandatory statutorily imposed 10 day waiting period after judgment is entered before applying for writ of possession in 723 eviction. Fla. Stat. 723.062

This Court should exercise its certiorari jurisdiction in this case. The panel majority, clearly misinterpreted 1983 absolute immunity. The panel closed the door on a valid claim. The panel majority's decision should not be allowed to take root.

STATEMENT OF THE CASE

A. Factual Background

On or about September 28, 2012 deputy clerk of court for Marion County, Florida , Pam Angus committed malfeasance while in office when she issued a writ of possession before the entry of judgment, in her official capacity which is wholly illegal and wrongful.

The writ is illegal and wrongful because its issuance “violated” the mandatory statutorily imposed 10 day waiting period after judgment is entered before applying for writ possession in 723 eviction.¹ The unlawful issuance of the writ caused Marion County Sheriff, Officer Dunlap to evict Burlison without a valid court order. The participation of the sheriff in an improper eviction constitutes a seizure of property. This violated fourth amendment rights protected by the United States Constitution.

As a result, Angus is liable for damages caused by her illegal and wrongful acts in a manner exhibiting wanton disregard of human rights safety, or property.

B.Proceeding in the District Court

Terry A. Burlison , on behalf of himself , filed suit for damages against deputy clerk Pam Angus alleging that the clerk caused the unconstitutional loss of Burlison’s property. Burlison v. Angus, App. 10-12

The district court stated “It is apparent from the face of the Complaint that in taking the challenged actions, Angus was acting in her role as deputy clerk of the Circuit Court. Angus would be entitled to either absolute or qualified immunity for her actions. So the claims against her are patently frivolous.” The District Court sua sponte dismissed with prejudice Burlison’s 1983 claim.

p.4

C.The Court of Appeals’ Decision

¹ Florida Statute 723.062 Removal of mobile home owner; process

(1) In an action for possession, after entry of judgment in favor of the mobile home park owner, the clerk shall issue a writ of possession to the sheriff, describing the lot or premises and commanding the sheriff to put the mobile home park in possession. The writ of possession shall not issue earlier than 10 days from the date judgment is granted.

Burlison appealed the district court's order dismissing the complaint. The panel majority held that the district court correctly concluded that Burlison's claim against Angus was patently frivolous, and therefore could be dismissed without notice and an opportunity to respond. Angus, as a deputy clerk of court was entitled to absolute judicial immunity on Burlison's claim for money damages, because in issuing the challenged writ of possession in favor of Burlison's landlords, she was following a direct order of a Marion County, Florida judge.

Petitioner seek review of this holding.

REASONS FOR GRANTING THE PETITION

I. The Decision of the Eleventh Circuit as to clerk Angus Contravenes This Court's 1983 Rulings.

Terry Burlison was deprived of his Fourth Amendment right to be free from unreasonable searches and seizures. "The first inquiry in any 1983 suit ***is whether the plaintiff has been deprived of a right 'secured by the Constitution and laws.'" Baker v. McCollan, 443 U.S. 137, 140 (1979) (quoting 1983). The panel majority failed to resolve that inquiry.

Clerk Angus is liable under 1983 for proximately causing the violation of Burlison's Fourth Amendment right. By its terms, 1983 authorizes the imposition of liability upon a public official who, acting under the color of state law, "subjects or causes to be subjected, any citizen ***to the deprivation of any rights" protected by federal law. 1983 (emphasis added); see also Baker, 443

U.S. at 142 ("[A] public official is liable under 1983 only if he causes the plaintiff to be subjected to deprivation of his constitutional rights.") (quotation marks and citation omitted). Because 1983 is "read against the background of tort liability that makes a man responsible for the natural consequences of his actions," Monroe v. Pape, 365 U.S. 167, 187 (1961), overruled on other grounds by Monell v. Dep't of Social Services of City of New York, 436 U.S. 658 (1978), this Court imposes a proximate cause requirement to establish 1983 liability, see Brower v. County of Inyo, 489 U.S. 593, 599 (1989); Memphis Community School Dist. V. Stachura, 477 U.S. 299, 305-306 (1986) (noting that common-law principles control the issuance of damages under 1983); Imbler v. Pachtman, 424 U.S. 409, 417 (1976) (stating that 1983 "creates a species of tort liability").

The panel majority held that Angus, as a deputy clerk of court was entitled to absolute judicial immunity on Burlison's claim for money damages, because in issuing the challenged writ of possession in favor of Burlison's landlords, she was following a direct order of a Marion County, Florida, judge.

Accordingly, Tarter, 646 F.2d at 1013 the only authority the panel majority cited to justify its erroneous holding does not support Pam Angus's entitlement to absolute immunity because there is no order from a Marion County judge directing her to issue a writ of possession violating the mandatory statutorily imposed 10 day waiting period.

A. The panel majority's decision ignores this Court's doctrine that, Under 1983, both liability and immunity are personal, meaning That the actions of each public official are subject to independent

The panel majority's opinion completely absolves clerk Angus based on clerk Angus's absolute immunity, in the face of a constitutional violation, is at odds with established principles of law. This panel majority's holding conflicts with this Court's instruction to analyze each officer's conduct independently.

A government actor may be liable for the constitutional violations that another committed where the actor "set in motion a series of events that the defendant[s] knew or reasonable should have known would cause others to deprive the plaintiff of his constitutional rights." Trask, 446 F.3d at 1046 (alterations original) (quotation marks and citation omitted); see also Monroe v. Pape, 365 U.S. at 187 (holding that 1983 liability should be "read against the background of tort liability that makes a man responsible for the natural consequences of his actions").

B. The panel majority's decision conflicts with this Court's instruction to read 1983 in harmony with the common law

The panel majority's holding conflicts with this Court's instruction to read 1983 "in harmony with general principles of tort immunities and defenses." Filarsky v. Delia, 566 U.S. 377, 389 (2012)(quoting Imbler, 424 U.S. at 418)

The panel majority's holding – that clerk Angus is not liable because Angus is immune from suit – does not sound in the common law; to the contrary, it is a clear derogation thereof. No immunity extends to clerks of court acting outside the scope of their jurisdiction, as is true of judges. See Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 343, 20 L. Ed. 640 (1872)

The dismissal of Burlison's action by the district court on the basis of the clerk's immunity was incorrect.

Here, the district court dismissed the action without notice on the ground of either absolute or qualified immunity without conducting a hearing. This Court has taken a dim view of dismissing a plaintiff's claims on the ground of either absolute or qualified immunity without conducting a hearing. Slavin v. Curry, 5 Cir. 1978, 574 F.2d 1256, 1262. Because the scope of a defendant's absolute immunity depends on the scope of the authority vested in the office he holds, a hearing is generally necessary to develop the facts that bear on what the scope of authority was and on whether the acts complained of fell within that authority. In this case the clerk or judge has no authority to violate the state's mandatory statutorily imposed 10 day waiting period before applying for a writ of possession after the entry of judgment. A clerk may subject himself to personal civil liability where he acts outside the scope of dues set forth by constitution, statute or rules of court. Where the clerk exceeds the power conferred on him by law, he cannot shelter himself by the defense that the damage was caused by an act or omitted under color of office and not personally. First National Bank v. Filer, 145 So. 204 (Fla. 1933)

C. The Decision of the Eleventh Circuit Misperceives This Court's Doctrine in Tarter v. Hury

Tellingly, the panel majority cited only one case Tarter v. Hury, 646 F. 2d 1010, 1013 (5th Cir. Unit A June 1981), to ground its absolute immunity to clerk P. Angus. But the panel majority misperceived Tarter. This Court's opinion does not support the holding that clerk Angus's absolute immunity from Burlison's seizure claim necessarily immunizes clerk Angus from 1983 liability. Bradley v. Fisher, 80 U.S. (13 Wall) 335, 343, 20 L. Ed. 646 (1872) p.8

Court clerks enjoy an even narrower ambit of immunity than judges and prosecutors. They have absolute immunity from actions for damages arising from acts they are specifically required to do under court order or at a judge's direction, only qualified immunity from all other actions for damages. Williams v. Woods, 5 Cir. 1980, 612 F. 2d 982, 984-85. Whether the court clerk here enjoy either absolute or qualified depends on facts not discernible from the record and of which the district court did not, and probably could not, take judicial notice. The claims for damages against the court clerk therefore are not now dismissable on the basis of immunity.

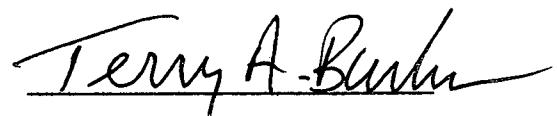
II. The Panel Majority Holding is an Outlier Among the Decisions of the Federal Courts of Appeal and Should not be Allowed to Take Root.

The panel majority's holding is an erroneous outlier among federal appellate opinions addressing the 1983 liability of court clerks in civil rights actions. Following this Court's interpretation of 1983, the federal courts of appeal have uniformly held that court clerk liable actions taken without jurisdiction. The panel majority decision, therefore, has no place in the garden of federal appellate precedent. This Court should uproot it before it spreads. This Court should not allow court clerks to recklessly cause situations in which the cause the seizure of property, but face no liability under 1983. The result betrays 1983's common-law roots, departs from this Court's instructions regarding the statute's interpretation, and misperceives that absolute immunity like 1983 liability,

attaches personally. The court of appeals erred, and this Court should grant certiorari to ensure its careful calibration of federal rights and remedies under 1983. Now, that this Court has the whole picture , it should look upon it: Deputy clerk Angus is not entitled to absolute immunity.

CONCLUSION

The petition for writ of certiorari should be granted.



Terry A. Burlison

3031 Stillwater Dr.

Kissimmee, Fl. 34743

(407)955-8159