19-1041

No.

In The
Supreme Court of the United States

ROSTISLAV KHRAPKO,
Petitioner,

v.

KRISTIN SPLAIN,
Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether discrimination with no legitimate rationale, motivated by government corruption violates the Equal Protection Clause of the United States Constitution?

2. Whether factually suggested allegations of government corruption, Due Process, and Equal Protection violations may be dismissed pursuant to domestic relations exception to federal jurisdiction?

3. Whether the Court of Appeals has jurisdiction over interlocutory appeal from the District Court Order which refused or denied declaratory relief and injunction against allegedly corrupt Decisions and Orders issued by referee Splain?

PARTIES TO THE PROCEEDINGS

Rostislav Khrapko, Petitioner, resident of Steuben County, NY, Plaintiff-Appellant below. Kristin Splain, Respondent, in her official capacity as Court Attorney Referee, Monroe County Family Court, Defendant-Appellee below.

Steuben County Court Clerk Jody Wood and Court Attorney Mark Schlechter are included in the caption of the Second Circuit case No. 19-2619 because they were in the Order appealed from, (Defendants-Appellees below). Kathryn Muller and Steuben County are included as Defendants in the action still pending in the District Court.

No corporations are involved in this proceeding.

RELATED PROCEEDINGS

The proceedings in the federal trial and appellate courts identified below are directly related to the above-captioned case in this Court.

Khrapko v. Splain, et al., Case No. 6:19-cv-06309-DGL (W.D.N.Y.). The Western District of New York entered an order dismissing the complaint with prejudice as to the Defendant Kristin Splain and two other Defendants from New York State on July 23, 2019.

Khrapko v. Splain, et al., Case No. 19-2619 (2nd Cir.). Timely interlocutory appeal was filed on August 14, 2019. The Second Circuit dismissed the appeal on December 12, 2019.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OPINIONS BELOW

The United States District Court for the Western District of New York issued Decision and Order on July 23, 2019 dismissing the complaint with prejudice as to Defendant Kristin Splain and two other Defendants, state employees. The Order has document number 16 in the District Court's docket No. 6:19-cv-06309-DGL and is reprinted in Appendix at App. 1-11.

The interlocutory appeal with the case number 19-2619 was filed by United States Court of Appeals for the Second Circuit on August 20, 2019. Appellant brief and joint appendix were filed on October 23, 2019, documents No. 24 and 25, the Second Circuit docket No. 19-2619. Upon due consideration an order dismissing the appeal was issued on December 12, 2019. The order was filed with document No. 31, the Second Circuit docket No. 19-2619 and reprinted in the appendix at App. 12.

JURISDICTION

The United States Court of Appeals for the Second Circuit filed the interlocutory appeal with the case number 19-2619 on August 20, 2019 and upon due consideration issued an order dismissing the appeal on December 12, 2019. The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment provides that "nor shall any State 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." U.S. Const. Amend. 14.

42 U.S.C. § 1983 provides as follows:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Colombia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity, or other proper proceedings to redress...".

Pursuant to 28 U.S.C. § 1292 the courts of appeals have jurisdiction to hear timely appeals from interlocutory orders of the types specified in that section. That section provides the courts of appeals with jurisdiction to hear appeals from: "(1) interlocutory orders from the district courts of the United States... granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions." 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE CASE

The 42 U.S.C. § 1983 Civil Rights action was commenced in the W.D.N.Y. Court on 04/26/2019. The District Court had original jurisdiction pursuant to

28 U.S.C. § 1331 because the complaint sought prospective declaratory and injunctive relief to prevent future alleged Constitutional violations.

In the underlying case referee Splain made a false statement of fact in contradiction to the evidence she admitted, and issued an order based on that false statement allowing the sale of an estate at Heritage Auctions to pay most of the $80,000.00 proceeds to attorney Colleen Zink in legal fees. The complaint provided documental evidence of 8 orders by referee Splain based on false statements of fact, actionable to the most valuable decisions, all of them falling in favor of attorney Zink and her client.

Based on the facts suggestive of judicial corruption Petitioner alleged that due process was violated (because knowingly issuing court orders based on false statements of fact is not the due process, and case fixing for bribes is not the due process).

As the lawsuit was being prepared, more claims were added to the complaint. These included claims of referee Splain obtaining, retaining, and abusing delegated judicial powers in violation of procedural due process and the claims of two other State Court employees assisting in the procedural violations.

Finally, claims were added against Steuben County for the policy of taking their piece of pie by falsifying court ordered spousal support as child support and reporting such falsified information to the Department of State and the IRS. These claims against the Steuben County are the only ones still pending in the District Court.

A motion to dismiss was filed by the Office of Attorney General of New York State, and it was a massive 22-page legal document. Every aspect raised

in that motion was responded and denied by Petitioner in detail. However, District Judge Hon. David G. Larimer dismissed the complaint against the State Defendants with prejudice. *See* App. 1-11.

An interlocutory appeal was filed from the part of the order which refused or denied declaratory relief and injunction against allegedly corrupt decisions and orders by referee Splain. In his brief Petitioner asked the Court of Appeals to remand the case and to outline a Constitutionally adequate and practically available avenue for the complaints factually suggestive of irrational and purposefully discriminating acts by State judicial officers to proceed to a jury trial.

Petitioner asserted the appellate jurisdiction pursuant to 28 U.S.C. § 1292(a) for the appeal from the part of the order which refused or denied declaratory relief and injunction and argued that:

(1) Factual pleadings suggested that issuing orders based on false statements of fact contradicting admitted evidence was irrational, perjured, purposeful, and corrupt.

(2) Building the case with allegedly irrational orders, all of them discriminating one party, is a purposeful discrimination.

(3) Procedural due process violations by the state court served to impose allegedly corrupt orders

(4) Claims alleging corruption, Due Process violations in state court proceedings, and equal protection violations may not be dismissed pursuant to domestic relations exception.

(5) There is no immunity from official capacity claims for prospective declaratory and injunctive relief.

However, 4 months after the appeal was filed, the Court of Appeals for the Second Circuit issued an order dismissing the appeal for a lack of jurisdiction. *See* App. 12. That order wrongfully relied on *Petrello v. White*, 553 F.3d 110, 113 (2d Cir. 2008). *Petrello* is similar to our case in that there was no suggestion that appellate jurisdiction rested on § 1291. No final judgement had been entered. In *Petrello* the Second Circuit Court had tested the applicability of § 1292(a)(1) to the interlocutory appeal and determined that the specific-performance order of the district court was not an injunction because it did not instruct to perform specific acts, was unenforceable, and did not impose any deadline to perform any act.

Contrary to *Petrello*, in our case the District Court refused and denied an injunction against the orders which were being enforced by the local law enforcement, already cased the material loss in excess of $100,000 to Petitioner, and still remain in effect despite being issued in violation of the United States Constitution. The citation used by the Circuit Court is relevant in terms of discussing an interlocutory appeal but is not applicable because the injunction refused by W.D.N.Y. District Court was for the orders injunctive in nature.

Adding to the confusion and to the error in the decision of the Court of Appeals, the text order stated that the case was dismissed for the lack of jurisdiction pursuant to 28 U.S.C. § 1291. As discussed above there was no indication in our case that § 1291 was invoked. The appeal was docketed as interlocutory and the appellate jurisdiction based on § 1292(a) was stated in the appellant brief.

REASONS FOR GRANTING THE PETITION

1. There is a Split in the Definitions of Equal Protection and Discrimination

An inconsistency in the approach to Equal Protection analysis used by the Circuits started before the *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) and continued thereafter. In *Olech* the Court held that the allegations that plaintiff "has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment" are sufficient "to state a claim for relief under traditional equal protection analysis". The Court did not reach the alternative theory of "subjective ill will' relied on by the seventh Circuit (although it was acknowledged by Justice Breyer). Still, the Seventh Circuit continues to use their "Vindictive Action" theory.

In *Engquist v. Oregon Dept. of Agriculture*, 553 U.S. 59.1 (2008) the Court again explained that the "Equal Protection Clause requires a "rational basis for the difference in treatment"". Still, the Second Circuit has a theory that "plaintiff must allege facts showing that.... the difference in or discriminatory treatment was based on "impermissible considerations such as race, religion, intent to inhibit or punish the exercise of constitutional rights, or malicious or bad faith intent to injure a person"". *See* App. 8. While the Second Circuit acknowledges the "class of one" theory developed by the Court in *Olech*, they largely ignore it as they did in the present case.

Petitioner stated that referee Splain "is being sued in her official capacity for violating the due process by making false statements of fact which are in direct contradiction to the evidence she admitted, and

issuing decisions and orders based on such statements, discriminating Plaintiff, causing damage to Plaintiff in excess of $100,000". The reason for the discrimination, as compared to the treatment received by the other party, was alleged to be "a conflict of interests arising from corruption". Petitioner presented an overwhelming factual evidence suggestive of purposeful discrimination, and alleged criminal intent.

Similar to *Olech,* our complaint can fairly be construed as alleging that referee Splain intentionally falsified evidence and stripped Petitioner of property. The complaint further alleged no legitimate rational basis for these actions. Wrongfully, such actions of referee Splain did not invoke the "impermissible considerations" theory of the Second Circuit, *see* App. 8, 9. Even robbery under color of law would not involve impermissible considerations such as race, religion, etc.... The "vindictive action" theory of the Seventh Circuit is also not invoked by discrimination for profit because there is no hatred involved, just the business of abusing power and collecting bribes by an intelligent judicial officer. Accordingly, and wrongfully, the Equal Protection claim was dismissed by the District Judge, while the "class of one" theory developed by the Court in *Olech* was ignored.

The District Court failed to follow a historic example from the Second Circuit, *Brut v. City of New York*, 156 F.2d 791 (2d Cir. 1946). In *Brut*, plaintiff specified 8 instances, in seven of them he was singled out for unlawful oppression. The allegations asserted "purposeful discrimination" and the Court of Appeals remanded the case. In our case, even a single incident of a highly qualified judicial officer making an actionable false statement of fact and issuing a high

value order based on that false statement suggests an act of purposeful discrimination with no legitimate rational basis. Despite of 8 such unlawful incidents documented in the complaint, all of them coherently falling in favor of one party, the District Court stated that "Plaintiff has not alleged any facts supporting an equal protection claim", *see* App. 9.

In *Brut* (1946) the logic used by the judges was simple and straightforward: there are multiple recurring occasions when plaintiff was put down by a government official – remand the case to the trial court and find out what's going on. As compared to the modern theory approach: no matter what the allegations are, Petitioner is a white male, there is no reason for hatred towards him, so, he is treated fairly by the court. Claim to be dismissed. This faulty approach puts the system above the law. Predictably, corruption in the family court system is commonly considered to be widespread and endemic.

2. The Court Must Assert Federal Jurisdiction Over Egregious Constitutional Violations by the Family Court System Which is Believed to Be Too Big to Fail

The question of domestic relations exception centers on the determination of constitutionality of the proceedings used in state court. Once it is alleged that the proceedings are unconstitutional, the fact that domestic issues are involved in the action does *not* provide a license to violate the Constitution. Rather, it is an aggravating factor because when families with children suffer from judicial corruption, discrimination, unlawful separation, it takes a heavy toll on the Nation and on future generations.

The matter of the controversy is the Constitutional violation. Petitioner was seeking a declaration that referee Splain had violated the Constitution. Petitioner challenged the underlying process that governed how the judgements were made. Being involved in a hearing of a matrimonial case does not give a license for judicial corruption, nor does it allow for systematic discrimination and violation of Equal Protection.

Still, federal judge David G. Larimer stated that: "To the extent that plaintiff's claims challenge the outcome, or any aspect of the underlying proceedings in state court, those claims are dismissed, pursuant to the domestic relations exception to federal jurisdiction." *See* App. 5.

Domestic proceeding may be outside of federal jurisdiction if the Constitution is not violated, as in *Allen,* where the Third Circuit, regrettably, did not recognize equal custody of their children as a constitutional right of fit parents after separation. *Allen v. DeBello,* 861 F.3d 433 (3rd Cir. 2017). In our case obvious Constitutional violations were alleged and factually suggested. There is no way to dispute that government corruption and perjury violate the Constitution as Ninth Circuit held in *Hardwick*:

> "There is no such thing as a minor amount of actionable perjury or of false evidence that is somehow permissible. Why? Because government perjury and the knowing use of false evidence are absolutely and obviously irreconcilable with the Fourteenth Amendment's guarantee of Due Process in our courts." *Hardwick v. County of Orange,* 844 F. 3d 1112 - 2017.

From a practical standpoint, corrupt courts tend to maximize the monetary value of their orders, the amount of money being transferred pursuant to such orders. In domestic relations cases men are believed to fall victims more often to the corruption in courts because it is easier to deprive men of property and future earnings, however, women are also known to become the victims, especially if they do not connect with the "right attorney". Children almost always become the victims of corrupt family courts because they can be used to pull the money from a parent or from government funding only if they are deprived of equal parenting by both biological parents.

United States is in the top percentage of children being raised by one parent, and this is not because Americans do not want to parent their children but because court orders reduce parents to visitors following a separation and deprive children of equally shared parenting.

Constitutional violations extend beyond the Fourteenth Amendment when domestic relations matters are decided by corrupt courts. To assess the consequences and implications of tolerating corruption in the court system we consider applicable Constitutional Amendments and the articles of the Universal Declaration of Human Rights herein below.

A corrupt judicial officer may arbitrarily issue any order based on the request of those who paid the bribe, depriving a person of liberty or security. Such orders are enforced by law enforcement personnel covered by immunity because they follow a judicial order. This violates Constitutional Amendments 4, 5, 14 and the Universal Declaration Articles 3 and 9.

A corrupt judicial officer may subject a person to prolonged and extended litigation, irrational and unjust decisions and orders to morally break down, and financially ruin individuals and force them into submission to injustice. This violates Constitutional Amendment 8 and Universal Declaration Article 5.

A corrupt judicial officer is not getting bribes for making just and equitable decisions. A corrupt officer sells official power to make and enforce discriminatory and unlawful rulings. This violates 14-th Constitutional Amendment and Universal Declaration Article 7, while Articles 16 and 17 may be specifically violated by family court.

Arbitrary or irrational orders removing children from fit parents issued by corrupt family court judges violate Universal Declaration Article 12 stipulating that no one should be subjected to arbitrary interference with his privacy, family, home, etc...

The lack of an effective remedy by a competent national tribunal for acts violating the fundamental rights violates Universal Declaration Article 8 and the principle of access to the courts. In the United States it is practically impossible for a Civil Rights suit to seek remedy in federal court against allegedly corrupt judges for the reasons addressed in this Petition. We pray for this Court to define a path to justice for those affected by government corruption.

Thus, it is paramount that the Supreme Court grants a Writ of Certiorari and sets an example of how the issue of corruption is address by the U. S. courts.

3. Recurring Wrongful Dismissal Is a Denial of Justice

The order to dismiss the appeal for the lack of jurisdiction was issued by the Second Circuit 4 months after the appeal was filed and a month and a half after appellant brief and joint appendix were filed. The Second Circuit order is confusing and inconsistent, it sited the case where § 1292(1)(a) was invoked but stated the lack of jurisdiction pursuant to § 1291, which was not in dispute. This dismissal of the appeal followed the wrongful dismissal of the complaint against State Defendants by the District Court (questions #1 and #2 of the Petition).

If the Second Circuit's order is affirmed it would create a dangerous precedent where District Court dismisses all the serious allegations of corruption, Due Process and Equal Protection violations, removes the Defendants from the suit and refuses injunctive or any equitable declaratory relief, and the appeal from that order is denied because a small portion of the suit was separated and is still pending.

From the practical standpoint nothing will change in the District Court as far as the order appealed from is concerned, but the burden is mounting on plaintiff (Petitioner), which may eventually force him to abandon the suit.

Wrongful dismissals of Civil Rights lawsuits at the federal court level place a heavy burden on Pro Se Plaintiffs. The Office of the State Attorney General serving as an attorney for State Defendants makes it even harder. However, filing a Civil Rights lawsuit in federal court is the only action against alleged corruption which is directly available to American citizens. Alternative and a more "friendly" approach

of asking State or Federal Government Agencies for help runs into a pattern of refusals, denials and dismissals as we present below.

The New York State Division of Human Rights accepts and investigates complaints about discrimination. These complaints need to match one of the specific categories such as race, religion, etc... Corruption of state employees and discrimination for profit is not on their list, and such complaints are not even considered by the Division. This is what they told over the phone, while not providing any written response. This approach mirrors the theory of Equal Protection employed by the Second Circuit and is discussed in question #1 of this Petition.

The office of Attorney General of NY has several bureaus accepting public complaints. Public Integrity Bureau is the only one dealing with corruption of state employees. They never answered complaints from Petitioner, which is consistent with the fact that Attorney General represents allegedly corrupt state employees in federal lawsuits.

The local District Attorney's Office referred Petitioner to a special investigator who responded a few times via e-mail. The most recent response was that he "briefed and updated District Attorney in regard to the information provided. If the Federal Judge wishes for the matter to be reviewed by the State Attorney's Office, please advise our office, and our office will conference with the State Attorney General's Office if they open an investigation." This indicated that the District Attorney takes orders from the Attorney General, who represents Defendants in the federal lawsuit, which does not give much hope for help against alleged corruption in the State Court.

Another resource would be the FBI. Petitioner submitted letters to the FBI with a detailed info regarding alleged judicial corruption, however, there was no response.

Yet another Government Agency is the U.S. Department of Justice, Civil Rights Division, Criminal Section. After receiving the second letter from Petitioner they responded that "The Criminal Section prosecutes criminal cases involving: Civil Rights violations by persons acting under color of law, such as federal, state, or other police officers or correction officers; hate crimes", etc... There was nothing about corruption of judicial officers or other court employees. They suggested that Petitioner may want to contact the FBI, which he already did, with no success.

There is a complaint mechanism built into the state judicial system itself, and it consists of two parts. Complaints about judges are to be submitted to the Commission on Judicial Conduct. That Commission typically responds that judicial acts by a judge on the bench are off limits for them. As such, they provide no remedy against judicial corruption, unless a complaint contains forensic evidence of the money changing hands, which is not available to Petitioner.

Complaints about Court Attorney Referees and other judicial officers in Western NY who are not judges need to be submitted to the Deputy Chief Administrative Judge Michael Coccoma in Albany. They have never taken any action other than forwarding the complaints to Rochester, NY. Later, when the Civil Rights lawsuit was filed in federal court, they stopped responding at all. They take no

action even as referee Splain has not recused herself while being sued in federal court and has stalled the proceedings for over a year while her delegated mandate gives her one month for a decision. She effectively keeps the State Court proceedings hostage, the fact which was obscured in the District Court Order by multiple error remarks about "ex-wife". Apparently, the internal complaint mechanism built into the state judicial system is not functional as far as alleged judicial corruption is concerned.

Finally, democratic election of judges in Western New York could provide a protection from outright violations on the bench, so that bad judges would not be re-elected for the next 10-year term. But this democratic mechanism may be disabled by travelling judges. In the Steuben County, according to the court Clerk's office, all contested divorce cases are assigned to a Monroe County Family Court judge elected in Monroe County. He travels 1.5 hours on a highway coming from Rochester to Bath, NY, makes all the decisions here for us and leaves back to Rochester. It should be noted that contested divorce cases are by far the most expensive cases with attorney's fees several times higher than in average proceedings. It is problematic for Steuben County residents to inform the judge's electorate in Monroe County about his performance on the bench in Steuben County.

The futile efforts described herein suggest that in NY State no effective remedies exist for Constitutional violations by allegedly corrupt state court employees, other than a Civil Rights lawsuit in federal court. As discussed herein, this option is practically unavailable for most victims. Each corrupt family court professional may be responsible for

extensive Constitutional violations, and thousands of victims. Still, very few cases reach federal court and almost none proceed to a trial due to the wrongful claim of domestic relations exception to federal jurisdiction and other false claims of the lack of jurisdiction. The Supreme Court should grant a Writ of Certiorari and clear the path for US citizens to seek protection guaranteed by the 14-th Amendment of the United States Constitution.

CONCLUSION

For the foregoing reasons the Court should grant a Writ of Certiorari.

Respectfully submitted,

February 14 2020 Rostislav Khrapko

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APPENDIX

APPENDIX

TABLE OF CONTENTS

Page