

No. 19-1426

ORIGINAL

Supreme Court, U.S.
FILED

JUN 18 2020

OFFICE OF THE CLERK

In the
SUPREME COURT OF UNITED STATES

Paul Pecina Jr.

Petitioner,

vs.

Robert A. McDonald, Secretary,
United States Department of Veterans Affairs
Respondent

On Petition for a Writ of Certiorari to the
United State Court of Appeals
for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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June 18, 2020

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SUPREME COURT, U.S.

I. QUESTIONS PRESENTED

1. Did the Third Circuit Court of Appeals and the lower Western District Court of Pennsylvania depart from the accepted and usual course of judicial proceeding as to call for an exercise of the Supreme Court's supervisory powers?

2. Was the standard of review that the Third Circuit Court applied to determine whether or not relief can be justified for fraud in conflict to the standard of review that the Supreme Court applied in the Supreme Court's relevant decision of United States v. Sierra Pacific Industries Inc?

3. Did the Third Circuit Court of Appeals render their decision to affirm on reliance of a fraudulent record?

4. Did the Third Circuit Court misapprehend that the conduct of the lower District Court and Officers of the Court rises to the level of fraud on the court?

II. PARTIES TO THE PROCEEDING

Petitioner

Paul Pecina Jr. *plaintiff* in District Court represented by counsel who is now respondent after judgement by District Court.

Paul Pecina Jr. *pro se plaintiff* for motion to District Court to set aside settlement. Paul Pecina Jr. *pro se appellant* in Third Circuit Court of Appeals.

Respondent

Robert A. McDonald, Secretary, United States Department of Veterans Affairs *defendant* in District Court, *appellee* in Third Circuit court of appeals

Donovan J. Cocas, Esquire *Counsel for*
Defendant - appellee

Laura S. Irwin, Esquire *Counsel for*
Defendant - appellee

Jenifer Andrade, Esquire *Counsel for defendant in District Court*

Former Counselors for Petitioner

Joel Sansone, Esquire *former counselor for Petitioner*

Massimo Terzigni, Esquire *former counselor for Petitioner*

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IV. TABLE OF AUTHORITIES

Cases

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Constitutional Provision

United States Constitution, Amendment XIV

V. PETITION FOR WRIT OF CERTIORARI

Paul Pecina Jr. by pro se respectfully petitions this Court for a writ of certiorari to review the judgement of the Third Circuit Court of Appeals and to review the lower District Court's ultimate abuse of discretion to deny equitable relief and the egregious conduct of the District Court in collusion with Officers of the Court.

VI. OPIONIONS BELOW

The Third Circuit Court's opinion is published as Pecina v Mcdonald
18-3048 (3rd Cir. Dec. 6, 2019)

The District Court's opinion is published as
Pecina v Mcdonald
No. 2:2015 cv 00264-Documents 49 (W.D. Pa. 2017)

VII. JURISDICTION

Mr. Pecina's petition for rehearing or rehearing en banc to the Third Circuit Court was denied on February 3, 2020. Mr. Pecina invokes this Court's jurisdiction under 28 U.S.C. 1254, having timely filed this petition for a writ of certiorari within 150 days in compliance to extension order of March 19, 2020 from the date of the Third Circuit Court denying petition for rehearing or rehearing en banc.

VIII. CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State; 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 law.

IV. STATEMENT OF THE CASE

Introduction

The Case of Pecina v. McDonald was subjected to exceptional and extraordinary circumstances. Preliminary, pretrial mediation was conducted by the District Court in violation of local District Court rules of ADR. The settlement was procured by fraud that was imposed by the lower District Court. Officers of the Court colluded with the lower District Court's imposition of a fraudulent scheme of the mixed-motive statute during mediation and procured Pecina into a settlement by the fraudulent mixed-motive scheme, 42 U.S.C. 2000e-5(g)(2)(B). Pecina's case was a pretextual disability employment discrimination case and because the evidence that proves pretextual disability employment discrimination was withheld from Pecina at the time of mediation, the District Court and Officers of the Court were able to procure Pecina into a settlement by fraudulent misrepresentation of the mixed-motive statute in violation of 29 U.S.C. 622 (f)(1)(g), Officers of the court colluded together and unlawfully filed stipulation of dismissal, Fed. R. Civ. P. 41 (a)(1)(A)(ii), during a mandatory 7-day revocation period to have the case dismissed with prejudice, which occurred during the settlement's 7-day revocation period. By provisions prescribed in the statutory law of the 7-day revocation period, the judgement is deemed void.

The Third Circuit Court on appeal by Pecina, rendered a judgement in affirmance and issued a Mandate to the District Court's void judgement.

The Third Circuit Court's holding is that because Pecina knew of the fraud at the time of settlement, and before entry of stipulation of dismissal, Pecina could not have obtained relief at the District Court level. The Third Circuit Court misapprehended that the stipulation of dismissal was unlawfully entered, and the Lower District Court perpetrated fraud on the record after dismissing the case during the 7-day revocation period.

A. BACKGROUND

Petitioner, Paul Pecina Jr.'s counselors filed a pretextual disability employment discrimination claim under the Rehabilitation Act of 1973 against Respondant, Robrert McDonald/VAPHS. Pecina was suing VAPHS for a non-discriminatory placement into the permanent plumber position he applied to for vacancy "833758" in January of 2013. During the hiring process of vacancy "833758", Pecina reported discriminatory comments made by a supervisor to VAPHS HR department. VAPHS' management thereafter, passed over Pecina's application and posted a second and third fake redundant vacancy announcement to divert Pecina away from filing a formal EEO complaint for vacancy "833758". Pecina made application to the second fake redundant (status) vacancy announcement. It was pointless and redundant for Pecina to apply to the third fake (public) vacancy announcement. VAPHS then sent an email notification to Pecina that the second fake vacancy announcement was canceled. Pecina then learned that candidates were hired despite the cancellation. Pecina timely filed a formal EEO complaint. VAPHS's EEO investigator conducted an investigation and found VAPHS's management's conduct was pretextual and VAPHS's management was unworthy of belief.

B. CIVIL ACTION IN WESTERN DISTRICT COURT

Pecina's complaint in a civil action against VAPHS proceeded through preliminary proceedings then onto some discovery. Pecina's counselor obtained VAPHS's answers to plaintiff's first set of interrogatories. The interrogatories contained the summary sheet of vacancy "833758". The interrogatories also contained the summary sheet of the third false vacancy announcement "881931", which disclosed the third vacancy announcement was also canceled on June 5, 2013, despite the fact that VAPHS provided testimony and documents to VAPHS's EEO investigator that candidates were hired from the third vacancy announcement "881931".

The summary sheet of vacancy "833758" disclosed the name of a candidate who was on the same path as Pecina and received preferential treatment by VAPHS, the other candidate was awarded one of the 5 available permanent plumber positions in vacancy "833758".

Pecina's counselor never disclosed the interrogatories to Pecina until June 22, 2016, after the mediation was conducted on May 27, 2016. Pecina's counselor was in possession of the interrogatories from January 27, 2016 to June 22, 2016. It was vital evidence Pecina should have been privledge to, at the time of depostion and mediation.

When VAPHS's counselor deposed Pecina, VAPHS's counselor asked Pecina if he had reviewed documents to prepare for depositon, Pecina aswered "no" on the record. When Pecina's Counselor asked VAPHS's witnesses if they each had reviewed documents to prepare for despositon, each witness answered "yes".

On Friday, May 27, 2016, the lower District Court ordered parties to participate in a mediation.

At the outset of mediation, VAPHS posted vacancy announcement "1693681" for permanent plumber positon.

Judge Cercone was the presiding judge for the case. Judge Cercone's law clerk conducted the mediation. Preliminary, the law clerk acting as mediator was in violation of Western District Court's local ADR policies and procedures. Mediation is supposed to be conducted by an outside party. Judge Cercone's policy and procedures states that Judge Cercone will only participate in non-jury cases, meaning the law clerk should not have conducted the mediation. Pecina's case is a jury case. During the mediation, the law clerk did not abide by the standards of a mediator, and imposed the mediation into a fraudulent litigation of a mixed-motived statute.

The first 4 rounds of negotiation consisted of VAPHS proposing an offer of a monetary settlement without a job offer. Each round Pecina was adamant that the job offer must be part of the settlement. Pecina was not willing to accept VAPHS 's monetary offer without a job offer. On the 5th round, the mediator abandoned a

neutral position and pointed out to VAPHS that if they could establish a mixed-motive defense, the court could not force VAPHS to hire Pecina, even if he prevailed at trial. VAPHS instantly established a fraudulent mixed-motive defense. VAPHS's mixed-motive defense did not conform to the prescribed stipulations of the mixed-motive statute. VAPHS did not plead an affirmative defense of mixed-motive. If VAPHS truly had a mixed-motive defense, it would have been preemptive for VAPHS to disclose that they can establish a mixed-motive defense at the outset of mediation, and there would not have been any reason for VAPHS to post a vacancy announcement on USAJOBS website at the time of mediation. VAPHS would not have been tempted to participate in the fraud created by the mediator.

At the time of mediation, Pecina was ignorant of the mixed-motive statute. The mediator presented VAPHS's instant fraudulent mixed-motive defense to Pecina in the manner of bias misrepresentations which made Pecina believe he could not be awarded the permanent plumber position by the court. The mediator told Pecina that in a mixed-motive case, the court is barred from ordering re-instatement. The mediator did not give a full and complete description of the mixed-motive statute. The mediator's presentation was not impartial, and failed to include that VAPHS must prove with a preponderance of evidence they would make the same decision in absence of protected activity in order to establish a mixed-motive defense. Re-instatement was an erroneous term, and also confusing term for the mediator and the Officers of the Court to use, because Pecina was never terminated from a permanent position at VAPHS. Pecina's case was a pretextual disability discrimination case. Pecina's counselors pleaded VAPHS's unlawful disability employment discrimination was pretextual in the Complaint.

Pecina's counselors perpetrated legal malpractice, they did not disclose the evidence they had in their possession to Pecina and to the mediator that they have evidence to dispute VAPHS's mixed-motive defense, and the mediator's bias fraudulent presentations of the mixed-motive statute. Pecina's counselor also did not inform the mediator that VAPHS did not plead an affirmative defense of mixed-motive defense in their Answer to the Complaint.

After the mediator's presentation of the mixed-motive statute, Pecina asked the mediator, "what is mixed-motive?" The mediator would not answer. Pecina asked his counselors to define what mixed-motive was and his counselors would not properly explain. Pecina also asked the mediator, "What you are saying is the job offer could not be on the table?" The mediator responded and said, "Yes, the job offer can not be on the table."

The mediator asked Pecina's counselors if they would like to pause the mediation and come back the next week to resume. Pecina's counselor declined, and told the mediator, "We are going to get this mediation done today". The mediator left Pecina and his counselors for private consultation. Pecina's counselor told Pecina that it looks like it is time to accept the monetary offer. The mediator then conveyed two more rounds of negotiation which ended in a monetary settlement without a job offer. Stipulations of the settlement for the settlement amount, and the no application clause were memorialized on record at the end of mediation.

The mediation was held and concluded on Friday May 27, 2016. Over the weekend, Pecina did some research on the mixed-motive statute. Pecina learned that the mediator's presentation of the mixed-motive statute was fraudulent. Without privilege to interrogatories, Pecina could only speculate that the mediator's presentations were fraudulent. At 5:26 am on May 31, 2016, Pecina sent a three page email to his counselors that he did not want to accept the settlement as it stands. Pecina's counselors sent a text message stating that they spoke to the Court and asked Pecina to come to their office before heading to Court. When Pecina arrived at his counselor's office, they were printing settlement papers. After a brief discussion, Pecina's Counselors told Pecina, "Even though you may be right about the mixed-motive statute, the Court is going to enforce the settlement. Upon reliance of his counselors advice, Pecina signed the settlement papers containing a 7-day revocation clause.

On June 1, 2016 the next day, Pecina sent an email to his counselors asking if the settlement can be removed from the Court, an act of revoking his acceptance. Pecina's Counselor did not respond to Pecina's email. On June 2, 2016, Pecina's

counselors colluded with VAPHS counselor, and filed stipulation of dismissal without Pecina's knowledge and legal consent on day 2 of the 7-day revocation period in violation of 29 U.S.C. 626 (f)(1)(g). On June 3, 2016, District Court dismissed the case with prejudice, on day 3 of the 7-day revocation period.

On June 6, 2016, the law clerk for district Court filed back dated fraudulent document [35]. Document [35] was dated for May 27, 2016. The document was titled, "Status Conference before Judge Cercone." This document is complete fraud because there never was a status conference before Judge Cercone. Pecina has never met Judge Cercone. The mediation was held on May 27, 2016 and conducted by Judge Cercone's law clerk.

On June 22, 2016, Pecina went to his counselors' office to receive the settlement check and a copy of the counselors' file which included the interrogatories. When Pecina got home and read the interrogatories, Pecina instantly discovered that the rug had been pulled out from underneath him. Pecina discovered that his counselors had the final piece of evidence that was needed to prove pretextual disability discrimination without a doubt.

On July 22, 2016, Pecina timely filed a pro se motion to have the case reopened, and the settlement set aside. District Court ordered briefing schedule for Pecina's motion. VAPHS and Pecina's counselors filed a response brief. Pecina's motion was denied by District Court. It took District Court 8 months to draft an opinion, and deny Pecina's motion on March 21, 2017. The District Court's opinion claimed that there was no fraud to justify relief, and that Pecina's motion was a product of rumination.

Eight months later, Pecina discovered fraud on the Court. Pecina filed a second motion for fraud on the Court on November 27, 2017. The District Court did not order any briefing schedule. VAPHS and Pecina's counselors did not file a response brief. It took the District Court eight months to deny Pecina's second motion on August 8, 2018. District Court did not address any issues Pecina raised. District Court simply denied motion for the same reason stated in District Court's opinion of March 21, 2017.

C. THIRD CIRCUIT COURT OF APPEALS

On September 17, 2018, Pecina timely filed a notice of appeal within the meaning of Fed. R. Civ. P. 60 (d)(3). The Third Circuit Court of Appeal had jurisdiction under 28 U.S.C. 1291. Pecina filed an informal brief. VAPHS filed response brief. VAPHS disclosed a very important matter in their response brief. VAPHS disclosed that it was the mediator that brought the fraudulent mixed-motive scheme into the mediation. VAPHS's disclosure of information that it was the mediator that brought the fraudulent mixed-motive litigation into mediation only came to light to Pecina when VAPHS disclosed the information in their response brief filed to the Third Circuit Court of appeals on May 17, 2019.

The Third Circuit Court affirmed Pecina's appeal on the basis that Pecina's brief stated he immediately knew of the fraud, and because Pecina knew of the fraud at the time of settlement, and before stipulation of dismissal, Pecina could not have obtained relief. The Third Circuit Court's decision prompted Pecina to closely examine the record. Pecina discovered that stipulation of dismissal and the case was dismissed with prejudice in violation of the 7-day revocation period. Pecina timely filed a petition for rehearing. Pecina's brief in petition for rehearing presented all of the facts pertaining to the unlawful entry of stipulation of dismissal. Pecina's brief presented the facts of District Court dismissing case was in violation of 29 U.S.C. 622 (f)(1)(g) therefore, rendered as void. Pecina presented facts that District Court filed fraudulent document [35] to cover up the misconduct of mediation.

The Third Circuit denied rehearing and rehearing en banc. Pecina filed a motion to recall mandate with more description of facts and Pecina also filed a motion for independent action for fraud on the court, with more explicit facts. The Third Circuit Court denied both motions.

X. REASONS FOR GRANTING THE PETITION

It is clear and evident that the judicial machine was tainted at the Western District Court level.

The Supreme Court is asked to recognize and decide on that the fraud that became known at the time of settlement can justify relief, because the settlement itself was procured by the fraud, and the stipulation of dismissal was unlawfully entered. The Supreme Court is also asked to recognize and decide on that the instances of producing a fraudulent record after the fraud became known rises to the level of fraud on the court, therefore, relief can ultimately be justified.

Pecina v Mcdonald case was subjected to a very unusal and unethical mediation. Mediation is part of the ADR process. Alternative Dispute Resolution is where an outside party conducts a mediaition to find common ground between the parties. ADR attempts to form amicable settlement. It is not mandatory for the mediation to result into a settlement. Western District Court has a panel of mediators approved to conduct mediations. Law clerks are not on the panel. Mediators must follow the standards of conduct of a mediator. Here in Pecina's case, the law clerk stepped in and conducted the mediation. Pecina did not know at the time of mediation that the mediator was the law clerk serving Judge Cercone who was presiding over the case. The law clerk violated the standards of conduct of a mediator, and helped VAPHS overcome Pecina's adamant demand of a job offer as part of the settlement during the court ordered mediation. The law clerk was in a unique and unethical position. In the event that the law clerk acting as mediator intentionally or by mistake commits wrongdoing during the mediation, the law clerk will jeopardize the judicial machine when the law clerk has to defend himself in the opinion he drafts for the Judge for a motion, the Court is no longer

functioning impartially. The law clerk was also in the position to use the Judge's computer stamp signature as protection without the Judge's knowledge. Only a law clerk acting as mediator while serving a Judge is in the position to have many forms of judicial immunity to protect his misconduct, whether or not it was intentional. An outside mediator cannot control or influence the judicial machine like a law clerk can do acting as mediator while serving a Judge presiding over the case that the law clerk mediated. Having the ability to draft an opinion to circumvent the misconduct of an improper mediation is not the process of the judicial machine.

Because the District Court was implicated to the fraud that induced Pecina into a settlement, Pecina was never going to be granted justified relief by the District Court.

It is not the discretion of any Court to selectively participate in a mediation and coerce a plaintiff into a settlement on fraudulent terms.

The Third Circuit Court's holding that Pecina could not have obtained relief because he knew of the fraud at the time of settlement and before stipulation of dismissal, falls short and conflicts to the standard of review the Supreme Court applied to its relevant decision in United States v. Sierra Pacific Industries Inc. The Supreme Court reviewed all of the circumstances pertaining to the fraud that was known, the Third Circuit Court did not. Had the Third Circuit Court reviewed all of the circumstance pertaining to the fraud that was known, the Third Circuit Court's decision would be to Remand instead of Affirm.

The Third Circuit Court misapprehended that the settlement was procured into settlement by a fraudulent 2-step process. The settlement was procured by fraud during the mediation on May 27, 2016. The fraud only became known after settlement was procured during mediation, Because Pecina became aware of the fraud after procurement of settlement, Pecina was induced by fraud by his

counselors to sign settlement papers. The settlement contained a mandatory 7-day revocation clause.

The Third Circuit Court's holding that Pecina knew of the fraud at the time of settlement, and before entry of stipulation of dismissal, does not hold any weight. The settlement was signed on May 31, 2016, and the stipulation of dismissal was entered on June 2, 2016. In accordance to 29 U.S.C. 622 (f)(1)(g), from May 31, 2016 to June 2, 2016, the settlement was not legally known or voluntary, nor effective or enforceable. In accordance to 29 U.S.C. (f)(1)(g), the entry of stipulation of dismissal on June 2, 2016, is rendered as unlawfully entered and void. In accordance to 29 U.S.C. (f)(1)(g), the District Court's judgement to dismiss the case is rendered as void.

The Third Circuit Court's mandate is allowing the District Court and Officers of the Court to get away with violating the law to procure a settlement by fraud and covering up fraudulent misconduct on the record. The Third Circuit Court's mandate is allowing VAPHS to circumvent the lawful remedies Pecina is entitled to under the Federal Rehabilitation Act of 1973.

Pecina was an ignorant plaintiff at the time of mediation. Pecina's case involves Officers of the Court and the District Court perpetrated fraud during mediation to procure the settlement and perpetrated fraud on the record to cover up misconduct. It was because of the nature of the fraud, the process of appeal to the Third Circuit Court became a stepping stone to unravel all of the facts of evidence of fraudulent misconduct. The proceedings of the appeal brought relevant facts into light that were shadowed by the Officers of the Court and District Court manipulating the record with unlawful fraudulent proceedings. The Third Circuit Court declined to exercise rehearing when Pecina petitioned for rehearing with all of the facts, including the relevant facts that came to light prompted the Third Circuit Court's basis to affirm. Therefore, now that all of the facts are on the table and the Third Circuit Court declined to review all of the facts, the relevant facts that came to light calls on the Supreme Court to exercise its supervisory powers.

XI. CONCLUSION

For the foregoing reasons, Mr. Pecina respectfully requests that this Court grant the petition for certiorari.

Dated June 18, 2020

Respectfully Submitted,



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