

19-1433
No. _____

In the
Supreme Court of the United States

AUTUMN STAVELY, individually and as personal representative of her children,

Petitioner,

— v. —

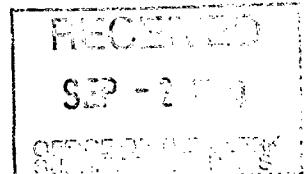
JEFFERY G. NORMAN, D.C.; PETERSON WELLNESS CENTER; BRANDON DURFEE, PA-C; RYAN J. STOLWORTHY, M.D.; IHC HEALTH SERVICES dba INTERMOUNTAIN MEDICAL GROUP; LOGAN REGIONAL HOSPITAL; and IHC HEALTH SERVICES, INC. dba LOGAN REGIONAL HOSPITAL,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF UTAH**

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

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QUESTIONS PRESENTED

Did the Supreme Court of Utah violate Petitioner Autumn Stavely's and her counsel's Fourteenth Amendment due process rights when it sanctioned both Ms. Stavely and her counsel for filing a frivolous appeal, following their allegation of judicial bias?

Is an Appellate Court required to review a district court's denial of a motion to disqualify a judge or motion for a change of venue when the petitioner erroneously alleged the mere acquaintance of two of the defendants with a district judge arose to the level of an improper extrajudicial relationship?

PARTIES TO THE PROCEEDING

Petitioner Autumn Stavely, individually and as personal representative of her children, is the Plaintiff in the district court proceedings and was the Petitioner to both the Court of Appeals of Utah and the Supreme Court of Utah. Respondents Jeffery G. Norman, DC; JC Norman, Inc. dba Peterson Wellness Center; Brandon Durfee, PA-C; Ryan J. Stolworthy, MD; IHC Health Services, Inc. dba Intermountain Medical Group (Robert Duncan, MD); Logan Regional Hospital; and IHC Health Services, Inc. dba Logan Regional Hospital are the Defendants in the district court proceedings and were the respondents before the Court of Appeals of Utah and the Supreme Court of Utah.

RELATED CASES

Stavely v. Norman, No. 20190891 Utah Supreme Court, Order entered April 1, 2020.

Stavely v. Norman, No. 20190787-CA Utah Court of Appeals, Petition Denied September 27, 2019.

Stavely v. Norman, No. 150100054 First District Court of Utah, Order entered September 11, 2019.

Stavely v. Norman, No. 20190056 Utah Supreme Court, Order entered May 7, 2019.

Stavely v. Norman, No. 20190110-CA Utah Court of Appeals, Petition Denied February 28, 2019.

Stavely v. Norman, No. 20180049-CA Utah Court of Appeals, Petition Denied January 9, 2019.

Stavely v. Norman, No. 20180884-CA Utah Court of Appeals, Petition Denied November 19, 2018.

Stavely v. Norman, No. 20180779-CA Utah Court of Appeals, Petition Denied October 29, 2018.

Stavely v. Norman, No. 20180294-CA Utah Court of Appeals, Petition Denied May 9, 2018.

Stavely v. Norman, No. 20180213-CA Utah Court of Appeals, Petition for Extraordinary Relief denied April 24, 2018.

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STATEMENT OF THE CASE

NATURE OF THE CASE:

Petitioner Autumn Stavely has alleged various acts of medical negligence against Respondents in a lawsuit filed in the First Judicial District Court, Cache County, State of Utah. In brief, Respondents dispute all of Petitioner's allegations of negligence and assert that they complied with the standard of care applicable to their respective medical specialties. Because the facts giving rise to Petitioner's allegations of negligence¹ are irrelevant to the merits of her petition for writ of certiorari, Respondents do not address those allegations.

As demonstrated below in the Course of Proceedings, Petitioner has asserted that the Honorable Judge Kevin Allen had extrajudicial relationships with both Dr. Duncan and Dr. Stolworthy, stating that, "Dr. Stolworthy and his brother-in-law were close friends stemming back to high school and Dr. Duncan's attorney revealed that Judge Allen had Dr. Duncan over to Judge Allen's home for dinner."²

Petitioner's petition for writ of certiorari, however, deemphasizes and even omits key history and details, such as Petitioner's failure to timely respond to Respondents' request for fees and Petitioners' counsel's statement that he was "okay" with Dr. Duncan's "relationship" to Judge Allen following Judge Allen's disclosure that he did not remember Dr. Duncan.

¹ Pet. for Writ of Cert. at 6.

² *Id.* at 7-8.

COURSE OF PROCEEDINGS:

Petitioner's statement of the course of proceedings presents non-germane procedural history and matters which have no bearing on the questions they bring before this Court.³ As she has done during the proceedings below, Petitioner has omitted key facts and relevant procedural history in order to paint an inaccurate picture of bias and improper sanctions by Utah's trial and appellate courts. In order to provide a more complete and accurate record, Respondents present the following facts regarding the proceedings below:

On November 9, 2018, Petitioner moved to disqualify Judge Allen.⁴

On November 20, 2018, Judge Allen referred Petitioner's motion to disqualify to Presiding Judge Angela Fonnesbeck for consideration.⁵

On December 17, 2018, Judge Fonnesbeck denied the motion to disqualify Judge Allen.⁶

On December 26, 2018, Petitioner sought permission from the Supreme Court of Utah for interlocutory appeal of the denial of the motion to recuse.⁷

³ Petitioner's procedural history is also selective and at times omits crucial context, and includes argument and assertions which are not supported by the record. Apart from being irrelevant to the issues before this Court, Petitioner's claim that Ms. Stavely was "constructively fired from her job as a teacher's assistant at the Logan School District for filing a lawsuit against the local hospital" (Pet. for Writ of Cert. at 9) is incorrect and unsupported by the evidence.

⁴ See Docket #599.

⁵ See Docket #606.

⁶ See Memorandum Decision dated 12/17/18, Docket #609.

⁷ See Docket #613.

On January 9, 2019, the Utah Court of Appeals denied the Petitioner's petition for interlocutory appeal, following transfer to that court from the Supreme Court of Utah.⁸

On January 28, 2019, Petitioner filed a petition in the Supreme Court of Utah seeking certiorari review of the Utah Court of Appeals' denial of interlocutory review.⁹

On February 21, 2019, Respondents opposed the petition for certiorari and requested an award of fees pursuant to Rule 33 of the Utah Rules of Appellate Procedure UT R APP P 33, arguing that the petition for certiorari to the Supreme Court of Utah met the standard of being both frivolous and interposed for the purpose of delay.¹⁰ Petitioner failed to file a response to Respondents' opposition and request for fees.

On May 7, 2019, the Supreme Court of Utah denied Petitioner's petition and granted Respondents' request for fees.¹¹ The court's order remanded the matter "to the district court for the limited purpose of ascertaining the amount of those fees."¹²

On May 9, 2019, Petitioner requested that the Supreme Court of Utah conduct a hearing pursuant to Rule 33 of the Utah Rules of Appellate Procedure with regard to the fee award.¹³

On May 16, 2019, Respondents objected to the request, arguing that it had been rendered moot by the court's prior order of remand and that Petitioner had

⁸ See Docket #620.

⁹ See Pet. for Writ of Cert. to the Utah Sup. Ct. dated 1/28/19.

¹⁰ See Opposition to Pet. for Writ of Cert. to the Utah Sup. Ct. dated 2/21/19.

¹¹ See Utah Sup. Ct. Order dated 5/7/19, Docket #710.

¹² *Id.*

¹³ Request for Hearing on Attorney Fees, Docket #720.

waived the opportunity to be heard on the fees issue by failing to timely respond to the request pursuant to Rule 50(d) of the Utah Rules of Appellate Procedure.¹⁴

On May 23, 2019, Respondents submitted attorney fee affidavits to the district court relating to the opposition to certiorari, pursuant to the schedule established by the district court on remand.¹⁵

On May 30, 2019, Petitioner objected to Respondents' attorney fee affidavits, arguing that the Utah Supreme Court's award of fees violated due process and that the district court should deny any award of fees on that basis.¹⁶

On June 2, 2019, before the Utah Supreme Court, Petitioner replied to Respondents' May 16, 2019 objection to Petitioner's request for a hearing regarding the fee award, again contending that the award violated due process, that the petition was not frivolous, and that the court should exercise its supervisory authority to remove Judge Allen from this case.

On June 3, in the district court, Respondents replied to Petitioner's May 30, 2019 opposition to attorney fee affidavits, arguing that the award did not violate due process and that Petitioner had failed to establish that the district court could ignore the mandate of the Supreme Court of Utah's remand order.¹⁷

¹⁴ See Docket #724.

¹⁵ See Docket #731.

¹⁶ See Docket #735.

¹⁷ See Docket #737.

On June 20, 2019, the full Supreme Court of Utah reviewed and denied Petitioner's request, explaining that Petitioner failed to reply in a timely manner to the request for fees.¹⁸

On September 11, 2019, the district court issued a memorandum decision addressing the attorney fee issue and other pending motions and awarding Respondents \$8,796 USD in fees.¹⁹ Finding the amount appropriate and not excessive, the court further ruled that,

Plaintiff has failed to demonstrate any violation of Plaintiff's constitutional rights or that this Court has the authority to deny attorney fees to Defendants, which were specifically authorized by the Utah Supreme Court. Plaintiff's constitutional arguments challenging the grant of attorney fees should be addressed to the court that granted such fees, the Utah Supreme Court or, alternatively, to the U.S. Supreme Court.²⁰

On September 23, 2019, Petitioner sought interlocutory review of the September 11, 2019 decision.²¹ The Utah Supreme Court transferred that petition to the Utah Court of Appeals.

On September 27, 2019, the Utah Court of Appeals denied interlocutory review of the September 11, 2019 decision.²²

On October 25, 2019, Petitioner filed another petition for certiorari to the Supreme Court of Utah,²³ to which Respondents replied in opposition accompanied with a second request for fees.²⁴ The Supreme Court of Utah denied certiorari, and as

¹⁸ Utah Sup. Ct. Order dated 6/19/19, Docket #742.

¹⁹ Dist. Ct. Memorandum Decision, Docket #757.

²⁰ *Id.* at 21.

²¹ See Docket #762.

²² See Docket #776.

²³ Pet. for Writ of Cert. to the Utah Sup. Ct. dated 10/25/19, Docket #797.

²⁴ Opposition to Pet. for Writ of Cert. from Utah Sup. Ct. dated 11/25/19.

requested by Respondents, awarded fees against Petitioner's attorney for yet again abusing the appellate process.²⁵

On June 16, 2020, Petitioner filed a petition for writ of certiorari with this Court, to which this brief in opposition responds.

STATEMENT OF RELEVANT FACTS:

Petitioner's statement of the case includes a great deal of extraneous and inconsequential procedural history. Petitioner also includes extensive argument concerning the merits of her motion to disqualify the Honorable Judge Kevin Allen.²⁶ Respondents will address only Petitioner's statements of fact to the extent such statements are relevant to the issues presented and/or to correct misstatements of fact.

During an October 2, 2017, scheduling conference, counsel for Logan Regional Hospital and Dr. Duncan informed Judge Allen that: (1) Judge Allen had served as a religious instructor for Dr. Duncan during Dr. Duncan's training to become a missionary for the Church of Jesus Christ of Latter-Day Saints in the 1980s;²⁷ (2) Dr. Duncan subsequently had dinner at Judge Allen's house in Oklahoma in the 1980s, while Dr. Duncan was serving his mission and while Judge Allen was attending law school;²⁸ and (3) Dr. Duncan crossed paths with Judge Allen at a wedding reception "a few years" before the hearing.²⁹

²⁵ Utah Sup. Ct. Order dated 4/1/20.

²⁶ Pet. for Writ of Cert. at 7-8.

²⁷ Pre-Trial Conference Transcript, Docket #551, at 10:1-2, 11-12.

²⁸ *Id.* at 10:2-5, 13-19.

²⁹ *Id.* at 10:5-6.

In response, Judge Allen commented, "Well, no offense to Dr. Duncan, but I don't remember him at all";³⁰ he further commented, "I mean, if he were to walk through this room, I—I don't think I'd remember him at all."³¹ After Judge Allen confirmed not remembering Dr. Duncan, Petitioner's counsel stated, "then I'm okay."³²

Following the aforementioned discussion, Judge Allen volunteered, as to Dr. Stolworthy, that: (1) he knew him;³³ (2) Dr. Stolworthy, "was good friends with [his] brother-in-law in high school";³⁴ and (3) if he saw Dr. Stolworthy in the street he would, just as he would with many people he knows in Cache County, Utah, "say Hi" to him.³⁵ Judge Allen stated that he did not believe his acquaintance with Dr. Stolworthy was cause for him not to hear the case.³⁶

Petitioner's November 9, 2018, motion to disqualify argued that Judge Allen's prior personal interactions with Dr. Duncan, along with adverse rulings made by Judge Allen, mandated his disqualification for bias.³⁷ In this motion, Petitioner did not raise any arguments relating to Dr. Stolworthy.³⁸

Petitioner's motion to disqualify Judge Allen was ultimately heard by the Honorable Judge Angela F. Fonnesbeck. Judge Fonnesbeck's Memorandum Decision denying the motion to disqualify considered, and rejected, Petitioner's argument that

³⁰ *Id.* at 10:20-21.

³¹ *Id.* at 10:23-24.

³² *Id.* at 11:21-25.

³³ *Id.* at 12:1.

³⁴ *Id.* at 12:1-2.

³⁵ *Id.* at 12:2-5.

³⁶ *Id.* at 12:5-6, 25.

³⁷ Motion to Disqualify the Honorable Judge Kevin Allen, Docket #599.

³⁸ *Id.*

any interactions with Dr. Duncan or any adverse rulings warranted the recusal of Judge Allen. Based on her review of the motion and the record, Judge Fonnesbeck determined that Petitioner had mischaracterized the record in filings with the court and had omitted important information describing the record.³⁹

Specifically, Judge Fonnesbeck noted that Petitioner made “inaccurate” statements, omitted important information, “grossly misstate[d]” certain facts, “cherry-picked and isolated” certain statements and then presented them out of context, and had “not given this Court accurate or complete facts regarding these serious allegations.”⁴⁰

Petitioner’s January 28, 2019 petition for certiorari to the Supreme Court of Utah repeated her prior mischaracterizations of Judge Allen’s interactions with Dr. Duncan (as she has done yet again in her petition for writ of certiorari to this Court),⁴¹ completely disregarding Judge Fonnesbeck’s rulings⁴² concerning the significance of the temporal remoteness of Judge Allen’s interactions with Dr. Duncan and Judge Allen’s inability to even recall meeting Dr. Duncan.

In requesting an award of fees pursuant to Rule 33 of the Utah Rules of Appellate Procedure, Respondents’ February 21, 2019, opposition asserted (with supporting citations to the record) that the prior petition was not grounded in fact because it mischaracterized the statements made by Judge Allen and categorically

³⁹ See Memorandum Decision, Docket #609, at 4, 6, 8.

⁴⁰ See *id.* at 4, 8.

⁴¹ Pet. for Writ of Cert. from Utah Sup. Ct., Docket #643, at 4-5, 7-8, 15.

⁴² Memorandum Decision, Docket #609, at 4.

failed to acknowledge or address key facts about those statements and the true nature of Judge Allen’s “relationships” with Dr. Duncan and Dr. Stolworthy.⁴³

Additionally, Respondents’ opposition argued that: (a) the prior petition was not warranted by existing law because Petitioner failed to identify any law supporting her claim that the error in ruling on disqualification deprived the lower court of subject matter jurisdiction; Petitioner also ignored Utah authority indicating a contrary conclusion; (b) the prior petition was not based on a good faith argument to change established law regarding disqualification because it failed to acknowledge existing law; and (c) the prior petition was made for delay as demonstrated by the procedural history, including that Petitioner sought appellate review of every substantive order entered by the district court from a January 16, 2018, order until the time of the opposition.⁴⁴

Petitioner’s May 30, 2019, objection to Respondents’ fee submissions in the district court relied on *Holt v. Virginia*, 381 U.S. 131 (1965) and asserted that the Supreme Court of Utah had sanctioned Petitioner for merely seeking to disqualify a biased judge.⁴⁵ Respondents’ June 3, 2019, reply distinguished *Holt*, explaining that the sanction was based on the quality of the petition and not on the fact that it related to alleged bias, and pointed out that Petitioner received due process through the opportunity to respond to the request for fees – although she failed to avail herself of that opportunity.⁴⁶

⁴³ Opposition to Pet. for Cert. from Utah Sup. Ct. at 5-6, 14-15, 17-18.

⁴⁴ *Id.* at 18-19.

⁴⁵ See Docket #735.

⁴⁶ See Docket #737.

The district court's ruling determining the amount of fees specifically addressed Petitioner's due process argument (including her reliance on *Holt*) and Respondents' opposing arguments and ruled that "... [Petitioner] has failed to demonstrate any violation of [her] constitutional rights...."⁴⁷

REASONS FOR DENYING CERTIORARI

In substance, Petitioner raises two questions related to the due process right to an unbiased tribunal: (1) whether that right prohibits sanctioning a party for filing frivolous appeals on an order denying a motion to disqualify; and (2) whether the right to an unbiased tribunal mandates immediate interlocutory review of an order on a motion to disqualify. Considering the facts and the procedural posture of this matter, these questions do not merit this Court granting certiorari.

I. PETITIONER'S STATED REASON DOES NOT SUPPORT REVIEW

The crux of Petitioner's argument rests upon a single case, *Holt v. Virginia*, 381 U.S. 131 (1965), which is easily and significantly distinguishable from the matter at hand. There is simply no conflict between the decisions handed down by Utah's appellate courts and *Holt*, or any other authorities cited by Petitioner.

Contrary to Petitioner's claim, neither Petitioners nor her counsel have been sanctioned for simply alleging judicial bias. Rather, the sanctions imposed by the Utah Supreme Court were imposed for filing two appeals which were both frivolous and brought for the purpose of delay.⁴⁸

⁴⁷ Memorandum Decision, Docket #757, at 20.

⁴⁸ Opposition to Pet. for Writ of Cert. to the Utah Sup. Ct. dated 2/21/19, at 17-19; Utah Sup. Ct. Order dated 5/7/19; Opposition to Pet. for Writ of Cert. to the Utah Sup. Ct. dated 11/25/19, at 17-19; Utah Sup. Ct. Order dated 4/1/20.

Respondents' request for sanctions pursuant to Rule 33 of the Utah Rules of Appellate Procedure was supported by specific factual arguments, accompanied by citation to the record. Those arguments did not depend in any way on the fact that Petitioner sought review of denial of a motion to disqualify. Rather, they were based on Petitioner's failure to fully and fairly cite to the relevant portions of the record in support of her position and her improper and repeated mischaracterization of the trial court's rulings.

Holt is also distinguishable in that Petitioner received a hearing before an impartial judge in the district court on her motion to disqualify and had the opportunity to present arguments to the Supreme Court of Utah as to whether sanctions should be imposed pursuant to Rule 33 of the Utah Rules of Appellate Procedure.⁴⁹ Having by inaction waived the opportunity to present argument to the court on the sanctions, Petitioner cannot now claim that sanctions were imposed by that court without due process.

Petitioner's other cited authorities present no conflict with the rulings of Utah's appellate courts, because none of those authorities address the substantive issues of whether due process is violated by imposing sanctions for frivolous appeals, nor whether an appellate court is required to immediately review a district court's erroneous denial of a motion to disqualify a judge.

⁴⁹ In *Holt*, the sanctions were imposed on the attorneys without the opportunity for a hearing. See *Holt*, 381 U.S. 131, at 137 ("The issue of truth or falsity of these charge was not heard, the trial court choosing instead to convict and sentence petitioners for having done nothing more than make the charges.").

II. PETITIONER'S AUTHORITIES DO NOT SUPPORT GRANTING REVIEW

None of Petitioner's cited authorities suggest that mere allegations of judicial bias mandate an immediate interlocutory appeal. The fundamental authority of the U.S. Constitution is not in question. Recognizing that law as paramount does not require the conclusion that a claim of error negates both the mandate rule and the rules of appellate procedure. The right of a party to assert judicial bias and be heard on that claim⁵⁰ is simply not implicated because Petitioner received an impartial hearing on that claim and was not sanctioned for filing that motion.

The issue of whether adverse rulings of a trial court judge can support a claim of judicial bias is not within the proper scope of this Court's review. The Supreme Court of Utah has already declined to hear an appeal on the merits of the trial court's ruling denying the motion to disqualify, which action was abundantly supported by the arguments in Respondents' prior opposition.⁵¹

In *Liteky v. U.S.*, 510 U.S. 540 (1994), this Court recognized the possibility that adverse rulings could support a claim of judicial bias; however, it made it very clear that this would be in the rarest of circumstances: the example of such circumstances offered in the opinion of the Court involved a judicial comment claiming German-Americans' "hearts are reeking with disloyalty."⁵² Petitioner has failed to identify any

⁵⁰ See *Holt v. Virginia*, 381 U.S. 131 (1965); See also *Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980).

⁵¹ In addition to describing the mischaracterizations of Judge Allen's statements referred to above, that opposition also delineated the error in Petitioners' claims about what Judge Allen said regarding the obligation to hear difficult cases and in their interpretation of the Code of Judicial Conduct. In response to Petitioners' repetition of those erroneous claims and arguments (Pet. for Writ of Cert. to Utah Sup. Ct. at 7-9, 11), Respondents refer the Court to their prior opposition.

⁵² *Liteky v. U.S.*, 510 U.S. 540, 555 (1994).

comparable comment from Judge Allen or any other portion of the record below in this matter which would rise to such circumstances.

As demonstrated below,⁵³ Petitioner's assertion that Judge Allen's passing familiarity with Dr. Duncan or Dr. Stolworthy somehow calls his impartiality into question is without merit. Nonetheless, Petitioner presented her allegations of bias for consideration by the trial court and Utah's appellate courts. Despite Respondents' refutation of her claims and clear rulings rejecting her arguments, Petitioner used the same discredited arguments and authorities to continue to re-argue the same allegations of bias she now raises before this Court. Ultimately, Petitioner was sanctioned by the Supreme Court of Utah for filing a frivolous appeal, not for simply alleging bias. For these reasons, the authorities cited by Petitioner do not support granting review.

III. U.S. SUP. CT. RULE 10 DOES NOT SUPPORT GRANTING REVIEW

As applied to the circumstances of this case, the considerations outlined in U.S. Sup. Ct. Rule 10(a) do not support granting this petition:

Review by writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for special and important reasons. The primary consideration is whether a decision on the question(s) presented is likely to have significant precedential value. The possibility of an error... without more, ordinarily will not justify review.

As noted above, Petitioner's questions are not connected to the facts of the case. There exists no precedential value in granting Petitioner's petition where the sanctions levied against her were based on the frivolity of her multiple appeals and her failure

⁵³ Opposition to Pet. for Writ of Cert. to the Utah Sup. Ct. at 5-6, 14-15, 17-18.

to fully and fairly cite to the record below rather than for seeking to recuse Judge Allen.

Further, Petitioner has not proposed a question for review related to anything other than the potential of ordinary error. As set forth in U.S. Sup. Ct. Rule 10(a), claims of error do not typically warrant granting certiorari. In the absence of any meaningful articulation of the manner in which review of this matter would result in significant precedential value, the Court should deny certiorari.

CONCLUSION

Petitioner's proffered reason for review – supposed denial of due process rights by way of sanctions for frivolous appeals – is not supported by the U.S. Sup. Ct. Rule 10 considerations for granting certiorari. Even if such considerations were present, which they are not, they would not warrant certiorari in this matter because there is no conflict between the Utah courts' rulings and the authorities cited by Petitioner.

For the reasons set forth above, Respondents respectfully request this Court to deny Petitioner's writ of certiorari.

Respectfully submitted this 28th day of August, 2020.

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