

In The
Supreme Court of the United States

SHIRLEY JN JOHNSON, individual,

Petitioner,

v.

NEW DESTINY CHRISTIAN CENTER CHURCH, INC.,
Florida not for profit corporation a/k/a Paula White
Ministries; PAULA MICHELLE MINISTRIES, INC.,
Florida not for profit corporation a/k/a Paula White
Ministries; and PAULA MICHELLE WHITE, individually
and in her official capacity as President, Director and
Senior Pastor of New Destiny Christian Center Church,
Inc. a/k/a Paula Michelle Cain,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

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

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CORPORATE DISCLOSURE STATEMENT

There are no parties to the proceedings other than those listed in the caption.

Respondent, New Destiny Christian Center Church, Inc., is a Florida not for profit corporation also known as Paula White Ministries; and Respondent, Paula Michelle Ministries, Inc., is a now dissolved Florida not for profit corporation (dissolved in August of 2014). Respondent, New Destiny Christian Center Church, Inc., has no parent corporation nor is there any publicly held corporation that holds 10% or more of its stock.

RELATED CASES

Johnson v. New Destiny Christian Center Church, Inc., Florida not for profit corporation, a/k/a Paula White Ministries; *Paula Michelle Ministries, Inc.*, Florida not for profit corporation, a/k/a Paula White Ministries; and *Paula Michelle White*, individually and in her official capacity as President, Director and Senior Pastor of New Destiny Christian Center Church, Inc., and as Director and Incorporator of Paula Michelle Ministries, Inc., and as Director of Resurrection Life THC, Inc., a/k/a Paula Michelle Cain; No. 6:15-cv-1698-Orl-37TBS, U.S. District Court for the Middle District of Florida. Judgment entered August 1, 2018.

RELATED CASES – Continued

Johnson v. New Destiny Christian Center Church, Inc., Florida not for profit corporation, a/k/a Paula White Ministries; *Paula Michelle Ministries, Inc.*, Florida not for profit corporation, a/k/a Paula White Ministries; and *Paula Michelle White*, individually and in her official capacity as President, Director and Senior Pastor of New Destiny Christian Center Church, Inc., and as Director and Incorporator of Paula Michelle Ministries, Inc., and as Director of Resurrection Life THC, Inc., a/k/a Paula Michelle Cain; No. 18-13940-HH, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered May 20, 2019.

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

ARGUMENT

The Petition for Writ of *Certiorari* that SHIRLEY JN JOHNSON (the “Petitioner”) has filed with this Court should be summarily denied on the merits. The Petition contains numerous factual misstatements that the Respondents, NEW DESTINY CHRISTIAN CENTER CHURCH, INC., Florida not for profit corporation a/k/a Paula White Ministries; PAULA MICHELLE MINISTRIES, INC., Florida not for profit corporation a/k/a Paula White Ministries; and PAULA MICHELLE WHITE, individually and in her official capacity as President, Director and Senior Pastor of New Destiny Christian Center Church, Inc. a/k/a Paula Michelle Cain (collectively, “NDCC”), will point out for the Court herein. As a preliminary matter, there is no evidence to support the Petitioner’s assertion that District Court Judge Dalton altered evidence, ignored evidence, or treated the Petitioner inappropriately at any time.

The Petitioner’s questions presented are based on faulty premises. The first question asks whether the federal due process clause allows a judgment to stand where a district court judge altered and misrepresented evidence and ignored other evidence. Judge Dalton did not alter any evidence. Judge Dalton did not misrepresent any evidence. Judge Dalton did not ignore any evidence. The Petitioner’s contentions to the contrary must be rejected.

The Petitioner's second question presented asks whether the filing of a fabricated complaint equates to malice. There was nothing fabricated about the Complaint that NDCC ultimately dismissed with prejudice. The Petitioner was actively engaged in conduct that constituted a violation of the Copyright Act. 17 U.S.C. § 501 *et seq.* NDCC had the absolute right to protect its copyright interests by filing a lawsuit naming the Petitioner as a defendant. NDCC appropriately relied on the advice of counsel in proceeding forward with the copyright infringement lawsuit.

Ultimately, NDCC made the determination from a purely financial perspective that continuing to pursue the copyright infringement action did not make sound business sense. The pursuit of any litigation is expensive, and it became apparent that the expenses of litigation would far exceed any benefits to be gained through the successful completion of the litigation. As a result, the common sense financial decision to voluntarily dismiss the copyright infringement action with prejudice was made. Contrary to the Petitioner's protests, the filing of the copyright infringement lawsuit was never about harassment, intimidation, a personal vendetta, extortion, or any other improper purpose.

The Petitioner's third question presented asks whether the reliance on the advice of counsel is a valid defense to a malicious prosecution claim where a defendant has admitted that allegations contained within the underlying complaint were false. Once again, there is no testimony or any other evidence anywhere in the underlying record to suggest that the

allegations of the copyright infringement lawsuit were false. The Petitioner has continually misstated the true purpose in the filing of the copyright infringement action.

The only minor exception where there were allegations contained within the copyright infringement lawsuit that were not accurate had to do with whether the Petitioner in violating the Respondents' copyright protected works was doing so in order to derive some financial benefit. It was later determined that the Petitioner was not seeking to derive any personal financial benefit through her persistent copyright infringement. However, this takes nothing away from the fact that the Petitioner was in fact violating NDCC's copyright protected works. The mere fact that there were certain allegations contained within the copyright infringement lawsuit that ultimately proved not to be true takes nothing away from NDCC's ability to rely on advice of counsel as an affirmative defense to a claim of malicious prosecution.

In the Petition for Writ of *Certiorari*, the Petitioner claims that the Writ should be granted because the Eleventh Circuit Court of Appeals failed to correct a manifest injustice which included a violation of the judge's oath as set forth in 28 U.S.C. § 453. There is no evidence that Judge Dalton or any member of the three-judge panel who reviewed this case at the Eleventh Circuit violated the oath of judge.

The Petitioner alleges that Judge Dalton engaged in obstruction of the administration of justice by

altering video evidence and ignoring “smoking gun” evidence which she never identifies. This has been a recurring theme throughout the course of the Petitioner’s litigation with NDCC, in which she accuses Judge Dalton of wrongdoing. There is no evidence of any kind that Judge Dalton engaged in any wrongdoing at any point during the course of the underlying litigation. Judge Dalton did not obstruct justice, he did not alter or ignore evidence, and he did not reflect any bias in favor of NDCC. To the contrary, Judge Dalton entered a default against NDCC on the basis of discovery violations, and appointed counsel to assist the Petitioner in trying the case. The Petitioner’s contention that Judge Dalton was somehow biased in favor of NDCC is without merit.

The Petitioner contends that Judge Dalton hid the truth in order to protect NDCC. Judge Dalton did nothing of the kind. The simple fact of the matter is that Judge Dalton’s conclusions of law and findings of fact were based entirely on his accurate assessment of the evidence and testimony that were presented during the course of the two-day trial. The Petitioner was awarded a small amount of compensatory damages because that is all she was able to prove by a preponderance of the evidence. Likewise, Judge Dalton’s rejection of the Petitioner’s claim for punitive damages was not a function of any overt bias in favor of NDCC, but rather was a product of a reasoned assessment of the evidence when viewed in light of the standard required to support a claim for punitive damages under Florida law. There is no evidence to remotely suggest

that Judge Dalton hid evidence in an effort to protect NDCC.

The Petitioner curiously asserts that Judge Dalton's alteration of evidence was plainly laid out in the Petitioner's Reply Brief filed with the Eleventh Circuit Court of Appeals. Of course, a party to an appeal is not permitted to introduce any legal argument for the first time in a Reply Brief. Therefore, this contention must be rejected.

The Petitioner erroneously states that the Eleventh Circuit used the incorrect standard of review when reviewing the District Court's Final Judgment. The Petitioner suggests that the Eleventh Circuit should have applied the *de novo* standard of review rather than the abuse of discretion standard of review. The Petitioner's view of the law is inaccurate. While the Petitioner certainly would benefit from the application of the *de novo* standard of review, that is not the appropriate standard of review for the Eleventh Circuit to apply in this case. These were not questions of law that the Petitioner presented to the Eleventh Circuit. Rather, these were assessments that Judge Dalton made based upon his view of the evidence and testimony adduced during the course of a two-day trial. Given the nature of the issues raised with the Eleventh Circuit Court of Appeals, the abuse of discretion standard of review was the appropriate standard of review to apply.

The Petitioner next asserts that the Eleventh Circuit Court of Appeals improperly affirmed the trial

court's determination that NDCC relied in good faith on the advice of counsel in bringing the copyright infringement lawsuit. The Petitioner further contends that NDCC improperly invoked the attorney-client communication privilege in response to certain questions. The Petitioner then cites to inapposite legal authorities addressing the scope of the attorney-client communication privilege. Contrary to the Petitioner's assertions, the Eleventh Circuit properly reviewed the advice of counsel defense to the malicious prosecution claim, and determined that the District Court did not commit error in doing so. There was nothing improper in the Eleventh Circuit affirming the District Court on this issue.

The Petitioner next contends that the Eleventh Circuit ignored the decisional law of this Court mandating *de novo* review regarding procedural issues and the lack of any award of punitive damages. The Petitioner contends that the award of zero punitive damages is grossly inadequate. However, the record below makes clear that the Petitioner was simply unable to meet the very high burden that is mandated under Florida law in order to support a claim for punitive damages. Florida Statutes § 768.72. The decisions of this Court that the Petitioner contends the Eleventh Circuit overlooked simply have no application to the facts and circumstances of this case.

Next, the Petitioner contends that NDCC abused the judicial process by maintaining its copyright infringement action. This is the basis of her second lawsuit against NDCC reference in the Petition. The

Petitioner contends that the copyright infringement action was simply a form of harassment. As is the case throughout the Petition, this assertion lacks merit, and merely constitutes an attempt to relitigate the issues that have already been determined by the lower courts. NDCC properly relied on the advice of counsel in bringing the copyright infringement action against the Petitioner, and only dismissed the lawsuit when it determined that it was in its financial best interest to do so. There was no abuse of judicial process in maintaining the copyright infringement action.

The Petitioner then contends that NDCC's conduct was wilful, wanton, and reckless, thereby justifying an award of punitive damages. This Court is not the proper forum to litigate state law issues that have already been decided by the lower courts. The Petitioner argues that the mere award of any compensatory damages in a malicious prosecution action is a sufficient finding of malice to justify an award of punitive damages. This assertion is without merit when the factual findings of the District Court made it clear that the decision to file the copyright infringement lawsuit in the first place was supported by the advice of counsel. The fact that the District Court awarded compensatory damages at all was a function of the fact that NDCC was not allowed to defend itself on liability for compensatory damages based upon the default that had previously been entered.

Finally, the Petitioner asserts that Judge Dalton violated the Canons of Judicial Ethics and the Judicial Code of Conduct. The Petitioner claims that Judge

Dalton stared at her with distain. She claims that Judge Dalton allowed Pastor Paula Michelle White to “mouth” to him. It is not clear exactly what this means, however the record reflects no improper conduct by either Judge Dalton or any of the individual parties. The Petitioner claims that the behavior in the courtroom gave the appearance that Pastor Paula Michelle White could exercise influence over Judge Dalton, and that therefore Judge Dalton should have recused himself. Again, there is no basis in the record to support this claim.

CONCLUSION

There is nothing contained within the Petitioner’s Petition for Writ of *Certiorari* that would suggest that this Court should allow for briefing on the merits. The Eleventh Circuit properly concluded that the proceedings at the District Court should be affirmed in all respects. This case does not present any federal question, constitutional or otherwise. There is no evidence to suggest any violation of the due process clause of the Federal Constitution. There is no question of conflict of law that this Court would need to resolve. In the complete absence of any basis for this Court to exert its

jurisdiction over this matter, the Petitioner's Petition for Writ of *Certiorari* should be summarily denied on the merits.

Respectfully submitted,

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