

No. 19-5393

IN THE
Supreme Court of the United States

JOANNA M. EIERMANN,
Petitioner,
v.

LAHEY CLINIC FOUNDATION, INC.,
A/K/A LAHEY HOSPITAL AND MEDICAL CENTER
AND LAWRENCE R. BOWERS,
Respondents.

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

**BRIEF OF RESPONDENT,
LAHEY CLINIC FOUNDATION, INC.,
IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

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Dated: August 29, 2019

BATEMAN & SLADE, INC.

STONEHAM, MASSACHUSETTS

CORPORATE DISCLOSURE STATEMENT

Respondent Lahey Clinic Foundation, Inc.'s parent organization is Beth Israel Lahey Health, Inc.

QUESTIONS PRESENTED

I. Is my 9th amendment right being violated, by the Federal Appeals court by ignoring the fact that the State Court Justice, Richard G. Stearns dismissed my complaint, making the disparaging remark my allegations are “bizarre assertions”, without allowing for a review of my supporting documents, which were provide to the appeals court? [*sic*]

II. Are the Federal Appeals Court and the State Court of Massachusetts ignoring my right to the discovery of facts, supporting my allegations in that the defendants can provide information, which would allow for discovery of an inheritance promised to me by way of an irrevocable trust from Dr. Urban H. Eversole and of the whereabouts of his beloved wife’s remains, Made J. Eversole (my Great Aunt)? [*sic*]

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STATEMENT OF THE CASE

This case concerns a private dispute over the estate of the late Dr. Urban Eversole, who was an anesthesiologist with the Lahey Health system, and his wife Madge Eversole. Dr. Eversole left his entire estate to Ms. Eversole, who, in turn, left the bulk of the estate to the Lahey Clinic Foundation, Inc. (“Lahey”) in the late 1980s. Decades later, on or about August 21, 2018, Ms. Eiermann, Dr. Eversole’s great-grandniece, filed a *pro se* lawsuit claiming that Dr. Eversole instead intended to leave the estate in a trust for her and her family’s use, and that Lahey interfered with her right to that inheritance.

On November 7, 2018, U.S. District Court Judge Richard Stearns dismissed Ms. Eiermann’s Complaint in its entirety. As grounds, Judge Stearns found that the Complaint lacked “facial plausibility,” and failed to satisfy even one element of a claim for tortious interference with the expectancy of receiving a gift. He noted that Ms. Eiermann made “unsubstantiated and bizarre assertions that her great-aunt and great-uncle intended to leave their estates for the benefit of her and her family’s use.” Judge Stearns held that a brevis dismissal was appropriate because Lahey’s affirmative defense of statute of limitations was “clear on the face of plaintiff’s pleadings.”

Ms. Eiermann then appealed to the United States Court of Appeals for the First Circuit. Her appeal brief did not state a basis to set aside the district court’s findings that Ms. Eiermann had not satisfied the elements of a claim for tortious interference with the expectancy of receiving a gift, and did not explain how her claim could survive the

expiration of the statute of limitations. On May 1, 2019, the First Circuit granted Lahey's motion for summary disposition of the appeal for the reasons outlined by the district court in its decision below. Ms. Eiermann then filed this Petition for a Writ of Certiorari.

REASONS FOR DENIAL OF THE WRIT

I. Ms. Eiermann's petition does not present an issue worthy of a writ of certiorari.

Ms. Eiermann seeks a writ of certiorari from a summary affirmance by a federal court of appeals of a short order by the district court. While the pleadings present colorful factual allegations, they do not set out complex or novel issues of law and did not require extensive legal analysis by the district and circuit courts. Further, because of the simple nature of the prior dismissals, this case is not the subject of precedential opinion in the district court or court of appeals. The decision in this case also does not conflict with the decision of another United States court of appeals or a state court of last resort, and does not decide an important question of federal law. For these reasons, Ms. Eiermann's petition does not require further analysis by this Court.

II. Ms. Eiermann's Ninth Amendment rights are not implicated in this case.

The Ninth Amendment of the United States Constitution states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." In her petition for a writ of certiorari, Ms. Eiermann appears to misinterpret the word "disparage" in this

Amendment to mean a prohibition on insulting language. She asks if her rights were violated because Judge Stearns made “the disparaging remark my allegations are ‘bizarre assertions.’”

The Ninth Amendment does not have anything to do with a supposed right to be free from “disparaging remarks.” Instead, the Ninth Amendment “shows a belief of the Constitution’s authors that fundamental rights exist that are not expressly enumerated in the first eight amendments and an intent that the list of rights included there not be deemed exhaustive.” *Griswold v. Connecticut*, 381 U.S. 479, 492 (1965) (Goldberg, J., concurring). The phrase “deny or disparage” means to take away the unenumerated rights of the people; it does not refer to the more colloquial use of “disparage” to mean “belittle” or “denigrate.”

Ms. Eiermann’s reading of the text of the Ninth Amendment does not support her argument, nor is there any other basis for her to appeal a court’s decision based on her objection to the judge’s choice of words. Ms. Eiermann cannot point to any basis for this argument, including her citation to the “Crime Victims’ Rights Act,” 18.U.S.C. § 3771, which does not apply on its face because there is no allegation that Ms. Eiermann is the victim of a crime.

Ms. Eiermann is not entitled to review by this Court based on her displeasure with Judge Stearns’ language in his dismissal of her case, and her petition for a writ of certiorari should be denied as a result.

III. Ms. Eiermann is not entitled to “discovery of facts” if she has not stated a claim as a matter of law.

Because Ms. Eiermann’s Complaint failed to state the elements of a claim and was outside the applicable statutes of limitations, she was not permitted to conduct discovery. The dismissal prior to discovery was proper and did not violate any of Ms. Eiermann’s rights.

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” While Rule 8 relaxed previous technical pleading rules, it “does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) noted that the pleading standard “calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of” the alleged wrongdoing. 550 U.S. at 556.

Under these well-established pleading rules, Ms. Eiermann does not have a right to conduct discovery because there is no reasonable expectation that discovery would reveal evidence that would allow her to proceed with her claim. Her Complaint was insufficient—it failed to set out the elements of a claim or to explain how the statute of limitations would not apply. Ms. Eiermann’s petition for a writ of certiorari contains similar, conclusory misstatements of fact that she included in her Complaint; namely, that she had a “promised inheritance” from Dr. Eversole, and that she is seeking the recovery of Ms. Madge Eversole’s

remains, without providing any reasonable basis for her assertions that she is entitled to either. The District Court and the First Circuit were correct in their determination that, based on her insufficient pleadings, there was no basis for allowing this claim to proceed to discovery. Ms. Eiermann's inability to conduct discovery does not constitute grounds for review by this Court.

CONCLUSION

Ms. Eiermann has not stated any basis for this Court to reconsider the summary dismissals of her Complaint by the district court or court of appeals, and Lahey respectfully requests that the Court deny her petition for a writ of certiorari.

Respectfully submitted,

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