

19-543

No. _____

FILED

OCT 23 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

JEFFREY WILLS LUSK,

Petitioner,

v.

CROWN POINTE CARE CENTER et al.,

Respondents.

On Petition For Writ Of Certiorari
To The Tenth District Court Of Appeals
For The State Of Ohio

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

May the executor and sole beneficiary of an estate without creditors represent the estate *pro se*?

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PARTIES TO THE PROCEEDING

Petitioner Jeffrey Wills Lusk was the plaintiff in the common pleas court proceedings and appellant in the court of appeals proceedings. Respondents Crown Pointe Care Center, SHCP Franklin, Inc., Central Ohio Hospitalists, Inc., d/b/a MedOne Hospital Physicians, Daniel Lawrence Miller, M.D., Brian Kenneth Pulliam, C.N.P., Atlas Healthcare Solutions, Inc., Foundations Health Solutions, Inc., Christa J. King, N.H.A., and Lynn Marie Gutridge, R.N. were the defendants in the common pleas court proceedings and appellees in the court of appeals proceedings.

RELATED CASES

- *Jeffrey Wills Lusk v. Crown Pointe Care Center et al.*, No. 18CV-2941, Court of Common Pleas, Franklin County, Ohio. Judgment entered July 9, 2018.
- *Jeffrey Wills Lusk v. Crown Pointe Care Center et al.*, No. 18AP-549, Tenth District Court of Appeals for the State of Ohio. Judgment entered April 16, 2019.
- *Jeffrey Wills Lusk v. Crown Pointe Care Center et al.*, No. 18AP-549, Tenth District Court of Appeals for the State of Ohio. Judgment entered May 29, 2019.
- *Jeffrey Wills Lusk v. Crown Pointe Care Center et al.*, No. 2019-0913, The Supreme Court of Ohio. Denial to Accept Jurisdiction entered September 17, 2019.

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PETITION FOR A WRIT OF CERTIORARI

Jeffrey Wills Lusk petitions for a writ of certiorari to review the judgment of the Tenth District Court of Appeals for the State of Ohio in this case.

OPINIONS BELOW

The Tenth District's decision is reported at *Lusk v. Crown Pointe Care Ctr.*, 2019-Ohio-1326 and reproduced at App. 7-19. The Tenth District's denial of petitioner's application for en banc consideration and motion to certify a conflict is reproduced at App. 1-6. The Supreme Court of Ohio's entry declining to accept jurisdiction of petitioner's appeal is reproduced at App. 28. The decision and entry of the Court of Common Pleas of Franklin County, Ohio is reproduced at App. 20-27.

JURISDICTION

The Tenth District Court of Appeals entered judgment on April 16, 2019. App. 7-19. The court denied a timely application for en banc consideration and motion to certify a conflict on May 29, 2019. App. 1-6. The Supreme Court of Ohio declined to accept jurisdiction of petitioner's appeal on September 17, 2019. App. 28.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case does not involve interpretation of statutory or constitutional provisions.

INTRODUCTION AND STATEMENT OF THE CASE

The issue presented in this case involves a genuine and current conflict between the United States Court of Appeals for the Second, Fifth, and Sixth Circuits and the Tenth District Court of Appeals for the State of Ohio that is significant and substantially important because it will determine the standard of review all U.S. courts use when reviewing cases where an executor and sole beneficiary of an estate without creditors represents the estate *pro se*, whereby, because the executor is the only party affected by the disposition of the suit, he or she is, in fact, appearing solely on his or her own behalf, 28 U.S.C. § 1654 does not bar the action.

Petitioner Jeffrey Wills Lusk (“Lusk”) was appointed Executor *pro se* of the estate of Dorothy Jean Ross Lusk, his mother, September 9, 2016. The estate was classified as an estate for Right of Action only without creditors. The decedent’s will requested Lusk, her son, be appointed her executor, and named Lusk as sole beneficiary. Additionally, the decedent’s will specifically recognized decedent has a daughter, Barbara Elizabeth Lusk Proctor, and specifically made no

provision for her. Respondents never contested Lusk was the estate's sole beneficiary and the estate had no creditors. On April 6, 2018, Lusk filed a wrongful death and survivor action, individually and as Executor, *pro se*, against respondents in the Court of Common Pleas, Franklin County, Ohio. The Court Dismissed Lusk's wrongful death and survivor claims, other than on their merits, July 9, 2018. App. 20-27.

Lusk timely appealed *pro se* to the Tenth District Court of Appeals for the State of Ohio. The Court Dismissed Lusk's appeal April 16, 2019 as a matter of first impression, ruling an "estate" is a "natural person", and Lusk could not represent another "person" *pro se*. App. 7-19. The Court stated they found no statutory or caselaw on the subject, but could have followed the U.S. Court of Appeals for the Sixth Circuit's Order that an executor and sole beneficiary of an estate without creditors may represent the estate *pro se*.¹ If the Court made such a ruling they would have been adhering to The Supreme Court of Ohio's Opinion that Ohio will treat the Sixth Circuit's Decisions as persuasive.² Lusk timely filed his application for en banc consideration and motion to certify a conflict. The Court Denied Lusk's application for en banc consideration and motion to certify a conflict May 29, 2019. App. 1-6. Lusk timely appealed *pro se* to The Supreme Court of Ohio. The Court declined to accept jurisdiction of Lusk's appeal September 17, 2019. App. 28.

¹ See *Bass v. Leatherwood*, 788 F.3d 228 (6th Cir. 2015).

² See *State v. Burnett*, 93 Ohio St.3d 419, 2001-Ohio-1581.

The U.S. Court of Appeals for the Second and Fifth Circuits reached the same conclusion as the Sixth Circuit did in *Bass*.³ Thus, there is no conflict among the U.S. Courts of Appeal that an executor and sole beneficiary of an estate without creditors may represent the estate *pro se*. It only remains for the Supreme Court of the United States to make the U.S. Courts of Appeal's rulings cited above the standard of review for all U.S. courts to eliminate the existing conflict between the Tenth District Court of Appeals for Ohio and the U.S. Court of Appeals for the Second, Fifth, and Sixth Circuits. Under this standard, Lusk's appeal could not have been dismissed by the Tenth District Court of Appeals for the State of Ohio without violating the Supremacy Clause.

REASONS FOR GRANTING THE PETITION

The Tenth District Court of Appeals for the State of Ohio's Decision created a conflict of exceptional importance regarding the proper standard of review where an executor and sole beneficiary of an estate without creditors represents the estate *pro se*. Additionally, the Court's Decision creates unnecessary forum shopping for *pro se* executors who are sole beneficiaries of estates without creditors. This Court should grant review to eliminate the discrepancy between the circuits

³ See *Guest v. Hansen*, No. 08-4642 (2d Cir. 2010), and *Rodgers v. Police*, 819 F.3d 205 (5th Cir. 2016).

and balance of U.S. courts, and clarify a uniform standard of review.

When a court dismisses a case filed by an executor and sole beneficiary of an estate without creditors *pro se* the dismissal constitutes a judicial trespass on the executor's right to self-representation guaranteed under 28 U.S.C. § 1654.

I. The Tenth District Court of Appeals for the State of Ohio's Decision created a conflict with the United States Court of Appeals for the Second, Fifth, and Sixth Circuits regarding an executor and sole beneficiary of an estate without creditors representing the estate *pro se*.

The Court's Decision has the practical effect of the structural eviction of a valid cause of action. This issue could impact any civil case where an executor and sole beneficiary of an estate without creditors represents the estate *pro se* without an effective cure. The abuse is not uncommon, and, as in this case, had a devastating impact on an otherwise valid case.

If this case had been filed in the U.S. Court of Appeals for the Sixth Circuit, the Court could not have dismissed Lusk's appeal based upon his *pro se* status.⁴ The Court's Dismissal of Lusk's cause of action, other than on its merits, prevented Lusk from timely filing

⁴ See *Bass v. Leatherwood*, 788 F.3d 228 (6th Cir. 2015).

his cause of action in the Sixth Circuit because the Dismissal did not toll the statute of limitations.

This Court should grant review to prevent the need to forum shop to have a valid cause of action actually heard. Otherwise, it is a harsh penalty to have a valid cause of action dismissed, other than on its merits, simply due to not knowing ahead of time the normal appropriate court hierarchy will not allow self-representation of one's own interests, known to be guaranteed by 28 U.S.C. § 1654.

The only permanent cure available for this issue is for this Court to grant review to eliminate the discrepancy between the circuits and balance of U.S. courts, thereby, creating a uniform standard of review. This would be a reasonable, fair, and just resolution to this case, and any future cases with the same issue.

The Supreme Court of the United States should therefore grant this petition for writ of certiorari in order to articulate a uniform standard and eliminate the discrepancy between the Tenth District Court of Appeals for the State of Ohio and the circuits. Further, the approach adopted by the Tenth District Court of Appeals for the State of Ohio in *Lusk* should be specifically rejected. Petitioner urges the Court to reject the Tenth District Court of Appeals for the State of Ohio's Decision and adopt the standard articulated by the Sixth Circuit in *Bass*. Adoption of this standard would prevent the future dismissal of cases filed by an executor and sole beneficiary of an estate without

creditors *pro se*, thus, avoiding irreparable harm from occurring.

CONCLUSION

For the foregoing reasons, the Court should grant a writ of certiorari.

Respectfully submitted,

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