No. 19-744

In The

SUPREME COURT OF THE UNITED STATES

LESLIE T. JACKSON,
Petitioner,

v.

DISTRICT OF COLUMBIA
Respondent.

On Petition For A Writ Of Certiorari To The District Of Columbia Court Of Appeals

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. IS THE LOWER COURT CLERK AND JUDGE LEGALLY BOUND TO FOLLOW THIS COURT'S PRECEDENT AND IN PARTICULAR ITS PRECEDENT IN *ARTIS V. DISTRICT OF COLUMBIA*, 138 S. Ct. 594 (January 22, 2018) AND IN THAT REGARD WILL AN INVOLUNTARY ADMINISTRATIVE DISMISSAL WITHOUT PREJUDICE ON SUBJECT MATTER JURISDICTION BAR A SUBSEQUENT SIMILAR CASE UNDER THE 30-DAY STATUTE OF LIMITATION IN D.C. Code Chapter 1 § 623.

2. WHETHER A MATERIAL MISTAKE OF FACT, WHICH IMPACTS JURISDICTION, IN AN ADMINISTRATIVE DISMISSAL WITHOUT PREJUDICE IS A FINAL DECISION ON THE

MERITS THAT CANNOT BE APPEALED.

3. PURSUANT TO COURT PRECEDENT AND LOCAL COURT RULES OF CIVIL PROCEDURE 41, IS AN INVOLUNTARY DISMISSAL WITHOUT PREJUDICE ON JURISDICTIONAL GROUNDS A FINAL ADJUDICATION ON THE MERITS THAT IS SUBJECT TO *RES JUDICATA* IN A SUBSEQUENT SIMILAR CASE.

4. CAN A PARTY WHO FAILS TO CORRECT A MATERIAL MISTAKE OF FACT IN A LEGAL DECISION UNDER WHICH IT GREATLY BENEFITED AND SEVERELY PREJUDICED THE OTHER PARTY BE VIEWED TO "ACQUIESCE" AND WOULD THAT "ACQUIESCENCE CONSTITUTE A CONSTRUCTIVE AGREEMENT AND A TACIT APPROVAL OF THAT MISTAKE –

CAN THAT APPROVAL BE EXPRESSED OR IMPLIED WHEN THE PARTY HAS FULL KNOWLEDGE OF ITS RIGHT TO OBJECT BUT TAKES NO ACTION TO EFFECTUATE A DIFFERENT OUTCOME. *See* Collins Dictionary of Law © W.J. Stewart, 2006.

5. DOES THE CLERK OF THE D.C. Court of Appeals HAVE THE LEGAL AUTHORITY TO AFFIRM THE LOWER COURT'S DISMISSAL OF APPEAL WITHOUT PREJUDICE ON JURISDICTIONAL GROUNDS AND DOES THE CLERK HAVE THE AUTHORITY TO ENTER A FINAL JUDGMENT OF ADJUDICATION ON THE MERITS IN CONTRADICTION TO HIS OR HER AUTHORITY PURSUANT TO LOCAL CIVIL RULE 41 THAT ONLY PERMITS A CLERK TO DISMISS

AN APPEAL WITHOUT PREJUDICE.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion of the District of Columbia Court of Appeals, the highest state court, to review the merits at Appendix A. And the unpublished related and relevant memorandum decisions of the District of Columbia Superior Court and administrative forums are herein included as Appendix 1-5.

JURISDICTION

The date on which the District of Columbia Court of Appeals, the highest state court, decided my case was on March 18, 2019. A copy of that decision appears at Appendix 1.

A 60-day extension of time to refile the petition for writ of certiorari was granted on June 10, 2019 and is due on August 9, 2019.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The United States Constitution, Article I created federal courts of which the District of Columbia courts were a part of until passage of the 1970 Reorganization Act. United States Constitution Article III established the District of Columbia Superior Court and the District of Columbia Court of Appeals and defined its functions and the roles of

personnel.

D.C. Code Chapter I § 623.03, et seq. is the District of Columbia Comprehensive Merit Personnel Act (CMPA) in which it provides for compensation to personnel who are injured while in the performance of their job. The 84 Statute 475, Public Law 91-358, July 29, 1970, 473 Public Law 91-358 is the District of Columbia Court Reform and Criminal Procedure Act of 1970 that is sometimes referred to as the Reorganization Act of 1970.

STATEMENT OF THE CASE

Ms. Jackson had two workplace injuries in January 2006 and December 2009 while she worked as an attorney at the District of Columbia Housing Authority from October 31, 1996 until December 2010. While she was employed, she filed two workers compensation claims pursuant to D.C. Code

Chapter 1 § 623, *et seq.* of the CMPA. And those claims were accepted fourteen months (April 2011) and seven months (July 2006) after filing for benefits, which is beyond the allotment of time specified in the Act. But Respondent did not pay benefits. Additionally, she filed a charge of discrimination and retaliation against her employer with the U.S. Equal Employment Opportunity Commission (EEOC) while she was employed. The EEOC found retaliation.

In April 2011, Petitioner filed a timely request for an administrative hearing at the District of Columbia Department of Employment Services (DOES) regarding Respondent's April 2011 acceptance of claim but nonpayment and claimed aggravation of injuries in the January 2006 accepted

claim. The matter was assigned to a hearing officer.

At DOES the parties participated in an initial conference, discovery and briefing. In November 2011, Petitioner filed suit in D.C. Superior Court seeking unpaid workers compensation.

In December 2011, Respondent's DOES administrative hearing officer dismissed Petitioner's hearing request without prejudice for lack of jurisdiction, finding no case or controversy because he determined that Respondent accepted the claim and mistakenly concluded that Respondent is paying compensation and benefits. App. 3a-3c. Respondent did not move to correct the mistake regarding payment, nor did it appeal.

Instead of appealing or moving to correct the hearing officer's December 2011 Determination Order (DO) Respondent attached a copy of the DO to

pleadings for summary judgment and dismissal in Superior Court, which were subsequently granted. And Petitioner was barred from presenting any evidence at trial in Superior Court relating to workers compensation as a result.

In July 2013, at the pretrial conference and after Petitioner's workers compensation case had been dismissed a Superior Court judge asked Respondent on the record if the District of Columbia had ever paid compensation and benefits. And Respondent's counsel said "They never commenced, Your Honor." App. 5b. Nonetheless, the judge continued his bar of workers compensation evidence. Petitioner's case was pending in Superior Court until late November 2013, but Petitioner appeal the jurisdictional dismissal to the Court of Appeals and

almost four years later in February 2017 the Court of Appeals affirmed on jurisdictional grounds, but the case never reached the merits, yet the clerk's opinion, without a fact finder below discussed what he deemed facts.

In the spring of 2017 Petitioner filed an administrative appeal and requests for hearings with the District of Columbia Compensation Review Board (CRB), DOES and the District of Columbia Office of Administrative Appeals. COB dismissed it as untimely. App. 2.

In July and September 2017, the same DOES hearing officer who, in December 2011, involuntarily dismissed Petitioner's hearing request without prejudice concluded that Petitioner is entitled to a hearing because his 2011 DO is without prejudice and was not a final adjudication on the

merits. App. 4.

Nonetheless, in August 2017, D.C. Office of Administrative Hearings dismissed for lack of jurisdiction because it decided Petitioner's request is subject to the 30-day statute of limitation in the CMPA, which directly contradicts DOES's September 12, 2017 order and DOES is the fact finder forum. CRB disagreed with DOES and affirmed the Office of Administrative Hearings jurisdictional dismissal.

Petitioner appealed CRB decision to Court of Appeals (CA). The clerk of CA cited CA precedent only and decided *res judicata* barred Petitioner's appeal and hearing requests, even though Petitioner cited *Artis v. District of Columbia*, 138 S. Ct, 594 (January 22, 2018) as authority and precedent.

REASONS FOR GRANTING THE PETITION

I. AN INVOLUNTARY DISMISSAL WITHOUT PREJUDICE UNDER THE FEDERAL RULES OF CIVIL PROCEDURE 41 IS NOT *RES JUDICATA* AND A DECISION ON THE MERITS

A dismissal without prejudice is a dismissal that does not operate as an adjudication on the merits according to local civil and Federal Rule of Civil Procedure 41(a)(1) and it does not have *res judicata* effect; thus, does not bar the same cause of action filed at any date. *Cf. Semktek Int'l Int'l. v. Lockheed Martin Corp.*, 531 U.S. 497 (2001).

A fundamental rule of appellate jurisdiction is the need for a final judgment or order that disposes of all claims and adjudicates the rights and liabilities, but a party is also entitled to a fair opportunity at due process. *Cohen v. Board of*

Trustees of UDC, 819 F.3d 476 (D.C. Cir. 2016).

II. THIS CASE PRESENTS A QUESTION OF EXCEPTIONAL IMPORTANCE WARRANTING REVERSAL OF THE D.C. COURT OF APPEALS AND JUSTIFIES A HEARING ON THE MERITS

Black's Law Dictionary (17th Edition) defines a dismissal without prejudice as "removal from the court's docket in such a way that the plaintiff may refile the same suit on the same claim", *Id.*, at 482 and defines "dismissal without prejudice as '[a] dismissal that does not bar the plaintiff". Whereas a dismissal with prejudice constitutes an order that is immediately appealable that "plainly disposes of the entire case on the merits and [leaves] no part of it pending before the court." *Green Tree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79, 86 (2000).* A dismissal without prejudice is not appealable

because it isn't a final judgment. *Id.*

Consistent with at least thirty-one circuits and the Restatement Second of Judgments and earlier dismissal on alternative grounds, where one is a lack of jurisdiction, is not *res judicata*.

Any finding made by act when the court has determined that it does not have subject matter jurisdiction carries no *res judicata* consequences. *See* Federal Practice § 4421 at 576-78 (If a first decision is supported by both finding that deny the power of court to decide the case on the merits and findings that go to the merits, preclusion is inappropriate as to the findings on the merits. A court that admits its own lack of power to decide shall not undertake to bind a court that does have the power to decide). (Footnotes omitted).

A lower court may not predetermine the *res*

judicata effect of its judgment. *See Medellin v. Texas,* 552 U.S. 491, 513 n. 9 (2008) ("A lower court adjudicating a dispute may not be able to predetermine the *res judicata* effects of its own judgment" (quoting *Phillips Petro. Co. v. Shutts,* 472 U.S. 797 (1985).

II. WHETHER THE CLERK OF THE DISTRICT OF COLUMBIA COURT OF APPEALS ON HIS OR HER OWN SIGNATORY AUTHORITY AND WITHOUT THE SIGNATURE OF AN ARTICLE I JUDGE CAN AUTHOR OPINIONS AND DECISIONS OF THE 1COURT PURSUANT TO ARTICLES I AND III OF THE U.S. CONSTITUTION, DISTRICT OF COLUMBIA REORGANIZATION ACT OF 1970 AND RULES OF THE COURT

Article I created courts in the District of Columbia. Then Article III established federal courts in the District of Columbia when it was under federal rule. But in 1970, the District of Columbia

Court Reorganization Act was passed which provided that the D.C. Court of Appeals "shall consist of a chief judge and eight associate judges." §11-702 , 84 STAT Public Law 91-358, July 29, 1970. And provided that "[e]ach judge, when appointed shall take the oath prescribed for judges of courts of the United States." *Id.*

Clerks are not approved by the United States Constitution and Senate to render decisions for the court, which requires the signature of an appellate judge and an oath of office - which a District of Columbia Court of Appeals' clerk does not take (in the Federal Rules of Appellate Procedure clerks of the federal appeals courts are required to take an oath for the office and have restrictions for the office).

"The District of Columbia Court of Appeals

shall conduct its business according to the federal rules of appellate procedure unless the court prescribes or adopts modifications of those rules." *Id.* at § 11-743. Modifications of those rules were promulgated as Rules of the District of Columbia Court of Appeals and particularly Rule 45 states in relevant parts:

> Clerk's Duties: (a) When Court Is Open. The Clerk's office will be open during hours on all days except Saturday, Sundays and legal holidays. The Court of Appeals is always open to accept the filing of any papers related to an appeal and to consider and dispose of emergency matters.

Neither the Reorganization of Courts Act of 1970 or the court's rules grant authority to the clerk of the court to solely entertain and dispose of or adjudicate cases on the merits or to dispose of them with prejudice.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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Date: August 9, 2019