

NO. 19-7463

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

TERRANCE A. BURLISON,

PETITIONER,

v.

DAVID R. ELLSPERMAN, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS CLERK
OF COURT FOR MARION COUNTY, FLORIDA,

RESPONDENT.



ON PETITION FOR WRIT OF CERTIORARI TO
THE FLORIDA COURT OF APPEALS
FOR THE FIFTH DISTRICT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Florida Court of Appeals for the Fifth District abused its discretion in awarding defendant attorney's fees pursuant to sec. 1988.

PARTIES TO THE PROCEEDINGS

Terrance A. Burlison, petitioner.

David R. Ellsperman, individually and in his official capacity as clerk of court for Marion County, Florida, respondent.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of this court rules, petitioner Terrance A. Burlison states that he has no parent company and no publicly held corporation owns 10% or more of its stock.

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PETITION FOR WRIT OF CERTIORARI

TERRANCE A. BURLISON, appearing Pro Se respectfully petitions this court for a writ of certiorari to review the order of the Florida Court of Appeals for the Fifth District.

OPINION BELOW

The unpublished order of the Florida Court of Appeals for the Fifth District is included herein as Appendix 1.

JURISDICTION

This Court has jurisdiction of the petition to review the order of the Florida Court of Appeals for the Fifth District pursuant to 28 U.S. Code 1257(a). The order was filed on October 22, 2019 and petitioner's petition for issuance of a written opinion rehearing and rehearing en banc was denied on November 22, 2019.

The circuit court had subject matter jurisdiction pursuant to 42 U.S.C. 1983 Civil action for deprivation of rights.

STATUTE INVOLVED

42 U.S.C. sec. 1988(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981,1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C.A. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C.A. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C.A. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

STATEMENT OF THE CASE

TERRANCE A. BURLISON filed in the Circuit Court of the Ninth Judicial Circuit for Osceola County, Florida a complaint pursuant to Title 42 U.S. Code 1983 against DAVID R. ELLSPERMAN individually and in his official capacity as clerk of court for Marion County, Florida for violation of certain protection guaranteed to him by the Fourth Amendment of the Federal Constitution.

Defendant, ELLSPERMAN filed an unverified motion to transfer venue without supporting affidavits of two unrelated citizens of the county not kin to the defendant or his attorney.

The trial judge entered an order transferring venue from Osceola County to Marion County, Florida.

On appeal the Florida Court of Appeals Fifth District issued a PCA without an opinion and then proceeded to award defendant attorney's fees.

REASONS FOR GRANTING THE PETITION

This Court should grant the petition and review the order of the court of appeals because its decision is in conflict with this Court's decision in James v. Boise, 577 U.S. _____ (2016) on an important point of federal law. In James, this Court held State Supreme Courts are bound by the U.S. Supreme Court's interpretation of federal statutes, including those that permit a prevailing defendant to recover attorney's fees.

This seemingly fundamental proposition was overridden in this case by the court of appeals when it entered its order awarding attorney's fees to a prevailing defendant in a 42 U.S. 1983 lawsuit without first deciding whether the plaintiff's claim was frivolous, unreasonable, or without foundation.

Both federal and state courts hearing federal civil rights claims under 42 U.S.C. sec. 1983 have discretion to award prevailing party (other than the federal government) reasonable attorney's fees under 42 U.S.C. sec. 1988(b). The U.S. Supreme Court however, has restricted such awards to prevailing defendants only to cases in which the plaintiff's lawsuit was frivolous, unreasonable, or without foundation. Sec 1988(b) is a federal statute, so the Supreme Court's interpretation is final and binding on all courts, federal or state.

The Florida Court of Appeals, like any other state court is bound by this court's interpretation of federal law. The state court erred in concluding otherwise.

CONCLUSION

For the foregoing reasons, Mr. BURLISON respectfully requests that this court issue a writ of certiorari to review the order of the Florida Court of Appeals.

Respectfully submitted,



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