

In the
Supreme Court of the United States

ESTATE OF BASAVAPUNNAMMA K. RAO,

Deceased.

PADMA RAO,

Petitioner,

v.

MIDLAND TRUST COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the
Illinois Appellate Court, First District

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

Unfortunately for Respondent, it is inarguable that Dr. Rao has a due process right as an estate beneficiary to challenge the actions of the Estate Administrator in Probate Court that affect estate property. Dr. Rao also has an additional due process right to protect her direct property interest in the wrongful death action that is for her personal benefit. Both of these property rights require Dr. Rao to have standing to be heard as to the Probate Court's approval of the Estate Administrator's proposed settlement that compromised these property rights of Dr. Rao in the separate medical malpractice case.

Accordingly, the Illinois Appellate Court violated Dr. Rao's constitutional rights by denying her standing for this probate case on appeal where the Estate Administrator's actions are being challenged. The probate trial court had correctly allowed Dr. Rao standing to oppose the Estate administrator's conduct, and the Illinois Appellate Court's decision reversing the trial court's finding that Dr. Rao has standing violates her constitutional right to due process to be heard and to obtain appellate review in this probate matter.

Respondent's main argument asserts that Illinois Courts hold that Dr. Rao has no ability to control a different case, the Law Division malpractice case. However, Dr. Rao must have standing under the Due Process Clause guarantee in the Probate Court (or any court) that decides her property interests, regardless of whether Illinois Courts hold otherwise in direct contradiction to the Fourteenth Amendment. While

Respondent also insists that this Court must defer to the Illinois Court's conclusion that Dr. Rao has no standing to protect her property rights, it is this Court's obligation and purpose to uphold the supremacy of the U.S. Constitution against any states' violation of the Fourteenth Amendment's mandate—"nor shall any State deprive any person of life, liberty, or property, without due process of law."

I. DR. RAO'S ALLEGED LACK OF CONTROL OVER THE SEPARATE MEDICAL MALPRACTICE CASE IN THE LAW COURT IS IRRELEVANT TO HER DUE PROCESS STANDING IN THE PROBATE COURT TO OPPOSE THE ACTIONS OF THE ESTATE ADMINISTRATOR IN THAT PROBATE COURT THAT AFFECT HER PROPERTY RIGHTS.

Respondent's main argument is that Dr. Rao cannot have standing in this probate case due to an Illinois court precedent denying an estate beneficiary's ability to control separate tort actions in the separate court for these tort actions. As Respondent's Header I puts it—"The administrator alone possesses the sole right of action or control over a wrongful death and survival act cause of action." (Opposition Brief ("Opp.Br.") at 19, emphasis in original). Respondent's argument—entirely in reliance on Illinois law involving the completely separate tort case—is frivolous for numerous reasons.

First, this appeal concerns the probate case at issue and on appeal here, where Dr. Rao is appealing the probate trial court's supervision of the administrator's conduct in that separate medical malpractice action. Where the probate case is affecting Dr. Rao's property rights both as an Estate beneficiary and as true party

in interest in the wrongful death action, Dr. Rao's ability to control the other court in the separate malpractice action is simply irrelevant. Or put another way, Dr. Rao's purported lack of ability to control the medical malpractice action cannot possibly terminate any due process standing she already has to protect her property rights in this probate matter on appeal.

The second reason Respondent's argument is baseless is that due process does not examine who has the right to "control" a process as Respondent asserts, but whether a party has any property rights at all which are then entitled to due process protection. Any person with such property rights has standing to be heard in the court under due process. The root requirement of the Due Process Clause is that an individual be given an opportunity for a hearing before she is deprived of any significant protected interest. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985). Such a protected individual is usually not in "control" of the process under which they may be deprived of property, but they are still entitled to standing and the opportunity to be heard to protect that property. This opportunity to be heard was properly allowed by the probate trial court here, but was unconstitutionally denied by the Illinois Appellate Court.

Third, Respondent is entirely mistaken in asserting that this Court must defer to Illinois case law as to what constitutes the necessary due process under the United States Constitution. Dr. Rao is appealing to correct the unconstitutional deprivation of due process by the Illinois Appellate Court in this matter, and it is this Supreme Court which decides whether the proper due process guarantee has been followed

to protect Dr. Rao’s constitutional due process rights here—not the Illinois Courts’ “process” precedents.

A. The Probate Court’s Order Did Grant Dr. Rao Standing in the Probate Court Decision Now on Appeal to Oppose the Administrator’s Proposed Settlement That Was Fully Briefed and Then Approved in the Probate Court—And This Is Precisely the Issue on Appeal Here.

The Respondent accuses Dr. Rao of somehow “misleading” this Court by correctly and “only” stating that the Probate Court’s January 15, 2019 Order granted Dr. Rao standing in the Probate Court to challenge Estate Administrator Petitions filed before the Probate Court. (Opp.Br.22). Yet this is precisely the issue here on appeal. On appeal is Dr. Rao’s opposition to the Estate Administrator’s Petition to Approve the Settlement that was fully briefed in the Probate Court. The Probate Court approved the Petition over Dr. Rao’s opposition, but granted Dr. Rao’s motion for immediate appeal of its decision. It is this Probate Court Order approving the Settlement Petition that is being appealed here.

The Respondent argues that Dr. Rao should have also addressed other Probate Court decisions that are not on appeal here. The Respondent does not explain why this is so, and of course these decisions are completely irrelevant to the issue actually on appeal.

Moreover, even if Respondent was correct that these other Probate Court decisions are somehow part of this appeal—and they are not—they have no relevance at all as to the issue of whether Dr. Rao has due process standing to be heard here to protect her property rights. If she does, then any contrary trial

court decision was just as wrong as the Illinois Appellate Court's decision and likewise cannot stand.

B. Dr. Rao Has a Property Interest in the Survival Act Claim and Wrongful Death Claim as Both an Estate Beneficiary and a Wrongful Death Claimant, and Thus Has Due Process Rights to Be Heard to Protect Her Property Interests Therein.

i. The Illinois Court Precedent Regarding “Control” Over the Law Division Case Cannot Terminate Dr. Rao’s Due Process Rights to Be Heard in the Probate Court Regarding Her Property Interest.

Respondent first argues that because Dr. Rao allegedly has no right to any “control over the lawsuit” in the Law Division court pursuant to the Illinois case of *Will v. Northwestern*, she somehow lacks standing to protect any of her due process rights in the property at issue in that lawsuit in the Probate Court, or even to be heard as to the required settlement approval in that Probate Court. Once again, this argument is frivolous for numerous reasons.

First, due process does not examine who has the right to “control” a process as Respondent asserts, but whether a party has any property rights at all which are entitled to due process protection. Regardless of any entities’ right to control a lawsuit involving multiple parties, such control cannot defeat Dr. Rao’s standing to be heard when it is her property rights that are being compromised in the settlement of such lawsuit, and it is her personal property rights entitled to the due process guarantee.

Second, Respondent is again entirely mistaken that this Court must defer to the Illinois courts as to what constitutes necessary due process under the United States Constitution. It is this Supreme Court which decides whether the proper due process guarantee has been followed to protect Dr. Rao's property rights here—and whether Illinois Courts believe they can deny such due process is entirely irrelevant to Dr. Rao's actual due process rights under the U.S. Constitution. According to Respondent's logic, America would still have segregation and Jim Crow because this Court must defer to whatever a state wishes to do to its citizens.

Lastly, it is the Probate Court's decision approving the Estate Administrator's Petition for Settlement that is the subject of this appeal. Accordingly, the alleged Illinois Court precedent that Dr. Rao would lack standing in the Law Court is not relevant to this appeal and does not affect her standing to protect her property rights in the Probate Court.

ii. Dr. Rao Is Not Judicially Estopped from Protecting Her Property Rights in the Probate Court.

Respondent's new judicial estoppel argument is frivolous. First and most obviously, the same party requirement is completely absent because the Motion to Strike was filed on behalf of the Estate by Estate counsel, as the Motion itself states: "The Estate requests that this Court strike the appearance and Sanctions Motion filed by Anita Rao." (Opp.Br.27; Pet. App.26a). Dr. Rao is thus not judicially estopped by this prior Estate Motion in which she had no personal participation in her individual capacity whatsoever.

Respondent also presents no evidence in the record that the element of “successfully maintained the first position, and receiving some benefit thereby” applies here. In fact, the Estate’s Motion to Strike the Sanctions was not granted at all—instead, Anita’s Sanctions Motion was fully briefed and remains pending. In addition, an inability to participate directly in the Law Division Court is not inconsistent with the ability to participate in the separate Probate Court about estate matters there. These positions are not “totally inconsistent” as required—in fact they are not inconsistent at all.

iii. Dr. Rao as Administrator Objected to the Settlement Order—She Filed a Motion to Vacate the Settlement Order, a Motion That Remained Pending Past Her Removal as Administrator.

Respondent’s next argument may be its most bizarre and factually baseless, claiming that Dr. Rao “while acting as Administrator of the Estate, failed to file written objections or appeal of the settlement and distribution orders.” (Heading iii, Opp.Br.27). Nevertheless, Respondent even admits that Dr. Rao “as the then-Administrator, did proceed to file the Motion to Vacate the Settlement and Distribution Orders.” (Opp.Br.27). Such Motion to Vacate is indeed a “written objection” under any definition of that term, and Respondent’s claim otherwise is ridiculous.

Moreover, Dr. Rao could hardly appeal the Motion to Vacate as Administrator when it remained pending at the time of her removal. In addition, Dr. Rao’s prior actions as Estate Administrator in Law Division are irrelevant to her due process rights to be heard in

Probate Court regarding her individual property interest.¹

C. Dr. Rao Has a Property Interest in the Survival Act Claim and Wrongful Death Act Claim That Were Compromised in the Settlement That Was Approved in the Probate Court Over Her Opposition, and Is Now the Subject of This Appeal.

Respondent has made two vague arguments in this section that do not weigh against review here. Respondent first asserts again that the Illinois Court in *Will v. Northwestern University* held that the Estate Administrator alone “possesses the sole right of control over a Wrongful Death Act or Survival Act cause of Action” (Opp.Br.30). As Dr. Rao has already shown in Part B above, whatever an Illinois Court believes about “controlling” a lawsuit is utterly irrelevant to Dr. Rao’s due process right to have standing to protect her property rights, and to at least be heard in court to protect her individual property interests.

Respondent next notes that although the Probate Court specifically granted Dr. Rao standing as heir to oppose the Petition to Settle that is the subject of this appeal, Respondent states that the Probate trial court did not grant Dr. Rao “any greater standing than that afforded to any heir or legatee” (Opp.Br.30). But this is precisely the standing that was denied by the Illinois Appellate Court—the question here is whether Dr. Rao as heir does have any standing at all to protect her rights as heir by opposing the Petition

¹ Further, Respondent’s claim that there had been a “multi-day” mediation is also erroneous.

to Settle that compromises those property rights. As to Respondent's reliance on other trial court decisions not at issue on appeal here, Part A above further shows that Respondent's argument is both inaccurate and utterly irrelevant to the actual due process analysis.

II. DR. RAO POSSESSES PROPERTY INTERESTS AS BOTH AN ESTATE BENEFICIARY FOR THE SURVIVAL ACT CLAIM WHICH ACCRUES TO THE ESTATE, AND AS THE PARTY IN INTEREST IN THE WRONGFUL DEATH ACT ACTION.

Despite the heading in Respondent's brief Part II that Dr. Rao purportedly does not have a property interest here (Opp.Br.31), Respondent does not even attempt to refute Dr. Rao's Petition claim that she has a property interest in the Survival Act Claim as an Estate beneficiary. Accordingly, Respondent has already conceded this entire issue of Dr. Rao's property interest here—as an admitted heir, Dr. Rao has a property interest in the Estate and Estate claims such as the Survival Act Claim. Respondent pretending otherwise in its heading is frivolous and intentionally misleading.

Respondent's additional points in this section are also meritless.

A. Respondent Does Not Dispute That Dr. Rao Has a Property Interest in the Wrongful Death Action Under *Powell*, the Applicable Holding for Due Process Considerations Here.

This Court has repeatedly held that a party is entitled to due process to be heard to protect their property interest. Regarding the property interest in a wrongful death action, the Illinois Supreme Court

holds that the “decedent’s spouse and next of kin are the true parties in interest in a wrongful death action” and that the action is for the “exclusive benefit of the surviving spouse and next of kin.” *In re Estate of Powell*, 12 N.E.3d 14, 20-21 (Ill. 2014). Thus, Respondent does not and cannot argue that Dr. Rao lacks any property interest in the wrongful death action under this *Powell* holding, and accordingly Dr. Rao must have standing to be heard and protect her property interest in the wrongful death action under the Due Process Clause.

While Respondent argues that *Powell* itself did not hold that Dr. Rao has standing to protect her property rights, this is irrelevant to the due process analysis. Once Dr. Rao has a property right at issue, she has the constitutional due process guarantee to be heard and protect such property rights. It is this property right in need of protection which grants her due process standing here, not any standing opinion of an Illinois court.

B. The Constitution Requires That Dr. Rao Have Personal Standing to Protect Her Personal Property Interests.

Without citation to any due process precedents, Respondent blithely asserts that Dr. Rao is not entitled to be heard under due process to protect her property interests because she is purportedly protected by the Estate Administrator’s duty to act in the best interests of the Estate. (Opp.Br.32). But even if Respondent believes there has never been a negligent or corrupt or incompetent administrator in history, or one who was anything less than perfect in performing such duty, this Court’s precedents still entitle Dr. Rao to

personally be heard to protect her personal property rights. *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). Moreover, under *Powell* the Wrongful Death Act claim solely belongs to Dr. Rao instead of the Estate, and thus there is no entity protecting Dr. Rao's property rights for that claim whatsoever if Dr. Rao is denied standing to assert her due process rights over this property.

III. COMPELLING GROUNDS FOR REVIEW ARE PRESENT HERE BECAUSE ILLINOIS COURTS ARE REFUSING TO FOLLOW THE CONSTITUTIONAL DUE PROCESS GUARANTEE.

Respondent's final two arguments are that review is not appropriate because: (1) "Illinois law is so definitely clear" (Opp.Br.34); and (2) no matter of federal law has been raised "Other than Petitioner claiming that the Due Process Clause of the Fourteenth Amendment has been violated" (Opp.Br.35). As to the first assertion, if Illinois law is clearly depriving Dr. Rao and other similarly situated individuals of any due process right to be heard to protect their property interests, this is a very strong reason for review by this Court under the Supremacy Clause to enforce the Constitution and stop these continued constitutional violations by Illinois as soon as possible.

As to Respondent's malign dismissal that the Due Process Clause is simply not worthy of this Court's attention, this Court's precedents repeatedly emphasize the importance of due process: "Parties whose rights are to be affected are entitled to be heard." *Fuentes*, 407 U.S. at 80. This is a basic aspect of the duty of government to follow a fair process of decision-making when it acts to deprive a person of his possessions.

Id. “For when a person has an opportunity to speak up in his own defense, and when the State must listen to what he has to say, substantively unfair and simply mistaken deprivations of property interests can be prevented.” *Id.* at 81. The Court must act here, as it has in *Fuentes* and all the cases cited in the opening brief, to protect Americans’ right to due process in their state courts.



CONCLUSION

Respondent’s main argument is that this Court should defer to the Illinois Courts’ decision to deprive Dr. Rao of any standing to be heard regarding her property rights in the Probate Court. The United States Constitution demands otherwise and mandates due process for all its citizens. Therefore, review should be granted.

Respectfully submitted,

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