

No. 20-1695

In The
Supreme Court of the United States

TODD PHILLIPPI,
Petitioner,
v.

HUMBLE DESIGN, L.L.C.
AND WARREN DAVID HUMBLE,
Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR REHEARING

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PREAMBLE

Pursuant to Rule 44.1 of this Court, Petitioner Todd Phillippi, respectfully petitions for a rehearing of the denial of a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit Court of Appeals.

The Fifth Circuit failed and refused to undertake a De Novo review or any review of the violation of the 14th Amendment of the Constitution and Due Process of law regarding the lack of Jurisdiction of the District Court to enter any Judgments or Orders after a FRCP 41(a)(1)(A)(ii) dismissal without a Court Order.

Jurisdiction of a District Court, over a person or subject, is a mandatory requirement guaranteed by the Constitution of the United States of America. This Petition establishes the lack of Jurisdiction over the matter and the violation(s) of the 14th Amendment of the Constitution

PETITION FOR REHEARING

The original certiorari petition asked this Court to resolve issues of first impression:

(1) Whether the Federal Courts had any Jurisdiction over a matter which had been dismissed by a FRCP 41(a)(1)(A)(ii) dismissal without a Court Order;

(2) Whether a Court of Appeals could refuse to De Novo review a Denial of a FRCP Rule 60 (b) Motion, and;

(3) Whether the existence of a Judgment in the original suit is mandatory for the District Court to Order Attorney fees under FRCP 54.

The Fifth Circuit Court of Appeals refused to review in any manner the question of “Jurisdiction over a matter which had been dismissed by a FRCP 41(a)(1)(A)(ii) dismissal without a Court Order” and failed to review the remaining questions.

It is hardly in dispute that the Fifth Circuit’s “Holdings”, actions and inactions represents a stark departure from precedent of this Court and every other Circuit Court of Appeals.

In fact, the Fifth Circuit Court of Appeals has specifically held that the Federal Courts lose Jurisdiction over a matter and that an award of Attorney fees are a nullity after a FRCP 41(a)(1)(A)(ii) dismissal without a Court Order. *Bechuck v. Home Depot U.S., Inc.*, 814 F.3d 287, 291 (5th Cir. 2016)

REASONS FOR REHEARING

A petition for rehearing should present intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. See Rule 44.2.

14th AMENDMENT TO THE CONSTITUTION AND DUE PROCESS

This matter is the fundamental Constitutional right under the 14th Amendment of the Constitution

regarding “Due Process” of Law. (Substantial grounds not previously presented or considered)

This matter is the imposition of Jurisdiction over Petitioner(s) when there were no contacts, ties or relations between the Petitioner and the District Court (“State”) and the deprivation of life, liberty or property without Due Process of Law.

In order for any Court to make a lawful judgment on a case, the Court must have both subject matter jurisdiction (the power to hear the type of case) as well as personal jurisdiction (the power over the parties to the case).

Jurisdiction is the foundational building block of Due Process under the 14th Amendment to the Constitution.

The 14th Amendment “... does not contemplate that a state may make binding a judgment *in personam* against an individual ... with which the state has no contacts, ties, or relations. Cf. *Pennoyer v. Neff*, *supra*; *Minnesota Commercial Assn. v. Benn*, 261 U.S. 140.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)

Acting without Jurisdiction is to do a prohibited deprivation “of life, liberty and property without due process of law” under the 14th Amendment of the Constitution.

The initiating lawsuit was dismissed (before any Judgment) on August 5, 2016 by way of a FRCP 41(a)(1)(A)(ii) dismissal without a Court Order. (Ex. 2) The District Clerk correctly noted on the Docket Sheet “Case Closed”.

“That document itself closes the file. There is nothing the defendant can do to fan the ashes of that action into life and the court has no role to play. This is a matter of right running to the plaintiff and may not be extinguished or circumscribed by adversary or court. There is not even a perfunctory order of court closing the file. Its alpha and omega was the doing of the plaintiff alone. He suffers no impairment beyond his fee for filing.” *Bechuck v. Home Depot U.S., Inc.*, 814 F.3d 287, 291 (5th Cir. 2016)

“Its as if the parties had never brought the suit.” “The court loses jurisdiction over the litigation.” “Its as if the case had never been filed.” *Yesh Music v. Lakewood Church*, 727 F.3d 356, 359 (5th Cir.2013); *Bechuck v. Home Depot U.S., Inc.*, 814 F.3d 287, 293 (5th Cir. 2016)

What jurisdiction does a Federal Court have over a lawsuit that has not been filed? The Federal Courts have **No Jurisdiction** over a suit that has never been filed. The District Court had no contacts, ties, or relations with Petitioner after the FRCP 41(a)(1)(A)(ii) dismissal on August 5, 2016 (Ex. 2).¹

However, the District Court imposed subject matter jurisdiction and personal jurisdiction over Petitioner, when the District Court entertained a Motion under “FRCP Rule 54 ” and imposed Attorney fees against Petitioner.(After the FRCP 41(a)(1)(A)(ii) dismissal on August 5, 2016 (Ex. 2))

¹ There were no issues regarding Sanctions so the Inherent power to Sanction is not relevant.

FRCP 54 (d) (2) (B) (ii) mandates that a Motion to obtain Attorney fees "Must"

"...specify the judgment", that allows for the award of attorney fees.

"...under Rule 54(b). A district court must first determine that it is dealing with a "final judgment." *Curtiss-Wright Corp. v. General Electric Co.*, 446 U.S. 1, 7 (1980)

"To enter a Rule 54(b) ... judgment, the district court must have (in the case in chief) disposed of "one or more . . . claims or parties." Fed.R.Civ.P. 54(b). That requirement is jurisdictional, is reviewed de novo, and may be raised by this court even though the parties may not have challenged it." *Eldredge v. Martin Marietta Corp.*, 207 F.3d 737, 740 (5th Cir. 2000)

There were no Judgments, in this case, at the time of the FRCP 41(a)(1)(A)(ii) Dismissal. The District Court cannot rule on a FRCP 54 Motion when there is no "Final Judgment". To act as the District Court did is to violate the Due Process rights of the Petitioner and to deprive Petitioner of its "Life, Liberty and **Property**" (In fact, the District Court used the FRCP 54 Motion to create a Judgment of "Prevailing Party" and then used that newly created "Judgment" as the basis for awarding Attorney Fees under FRCP 54.)

The District Court lacks Jurisdiction to rule on a FRCP 54 Motion after a FRCP 41(a)(1)(A)(ii) Dismissal. Moreover, FRCP 54 can confirm the existence of a previously entered Judgment, but

cannot create its own Judgment to gain FRCP Rule 54 Jurisdiction.

The Fifth Circuit Court of Appeals violated the fundamental 14th Amendment Constitutional rights of Petitioner and the Parties by imposing Jurisdiction after the District Court's Plenary or Original Jurisdiction had been terminated.

Here's an example of how the Fifth Circuit acts on the issue of Due Process.

In the published opinion, Automation Support, Inc. v Humble, 982 F. 3d 392 (Ex. 3 at Page 4, last line of the 2nd paragraph) the Fifth Circuit says it would consider assessing fees (against the attorney) under 28 U.S.C. Sec. 1927. Motion and Response were made. The Fifth Circuit after realizing there was no sanctionable conduct dropped that Motion.

In" Exhibit 4" The Fifth Circuit declared "... the simplest path is to award attorney fees under the TTLA" (Ex. 4 Page 2) The Fifth Circuit, without Notice or Opportunity to Respond or Defend issued attorney fees against ... Todd Phillippi, Petitioner.² This is a fundamental violation of the 14th Amendment of the Constitution and a prohibited violation of Due Process.

The Fifth Circuit gave no Due Process.

The Fifth Circuit used the "Prevailing Party" "finding" to allow for the imposition of Attorney fees

² The Fifth Circuit, a second after filing its attorney fees order, filed the Writ of Mandate sending the cause back to the District Court so Petitioner could not seek "En Banc" rehearing.

against Petitioner, Todd Phillippi. "Prevailing Party" is the finding that the Fifth Circuit specifically stated "will not be reviewed". (EX. 3, page 2)

Petitioner, Todd Phillippi was not a Party in the case when that "finding" of "Prevailing Party" was made. The Fifth Circuit has now made a substantive finding that the Respondent, Humble is a "Prevailing Party" over, Petitioner, Todd Phillippi, a person who was never a Party to the underlying dismissed case. "Due Process of Law?"

CONCLUSION

Good cause exists for the Supreme Court of the United States to reconsider its denial of Certiorari.

The issue of the violations of the 14th Amendment and Due Process are fundamental to the Rule of Law and are of the type that the Constitutional Congress were considering when Protecting against the ineffectiveness of the Articles of Confederation and to secure the rights of individuals to life, liberty and property against a tyrannical government.

The District Court and the Fifth Circuit have imposed Jurisdiction where none exists. District Court and the Fifth Circuit have violated the 14th Amendment of the Constitution. District Court and the Fifth Circuit have denied Petitioner and Plaintiff's right to Due Process of Law and thereby deprived them of Hundreds of Thousands of Dollars in Property.

Finally, on this issue, The Fifth Circuit has imposed Jurisdiction on Petitioner in a case that was dismissed 5 years ago, and effectively was never filed per the Fifth Circuit, so that the Fifth Circuit can Order a taking of Ten Thousand Dollars of Petitioner's Property.

Additionally, as to the Administration of the lower Courts by the Supreme Court of the United States³:

The Fifth Circuit Court of Appeals is in conflict with the decision(s) of every other Court of Appeals on the issue of Jurisdiction of the Federal Courts after a FRCP 41(a)(1)(A)(ii) Dismissal

The Fifth Circuit Court of Appeals is in conflict with the decision(s) of The Fifth Circuit Court of Appeals on the issue of Jurisdiction of the Federal Courts after a FRCP 41(a)(1)(A)(ii) Dismissal

The Fifth Circuit Court of Appeals is in conflict with the decision(s) of every other Court of Appeals on the issue of the Standard of Review on Appeal of a denial of a FRCP Rule 60(b) Motion.

The Fifth Circuit Court of Appeals is in conflict with the decision(s) of The Supreme Court of the United States Regarding the issue of Due Process of Law and Jurisdiction over Parties;

The Fifth Circuit Court of Appeals is in conflict with the decision of The Supreme Court of the United States in *Buckhannon Board Care Home*

³ The specific conflicts are more comprehensively briefed in the Petition for Certiorari

v. West Va. D.H.H.R., 532 U.S. 598 (2001); regarding the necessity of a “Judicial Imprimatur” on an Order to be a “Prevailing Party”.

These actions by the District Court and the Fifth Circuit Court of Appeals are violations of the bedrock principles of the 14th Amendment to the Constitution and Due Process. The Original Intention of the Constitution is entirely violated by their actions.

The Jurisdiction of the Federal Courts ended on August 5, 2016. This is a Manifest Injustice.

PRAYER

Petitioner Prays, the Supreme Court of the United States of America, Order that the Jurisdiction of the Federal Courts terminated on August 5, 2016 and all Actions, Orders and Judgments thereafter are nullities in this matter.

Thank you for the opportunity.

Respectfully submitted,

/s/ Todd Phillippi

Todd Phillippi

Pro Se

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CERTIFICATION PURSUANT TO RULE 44

I hereby certify that this Petition for Rehearing is restricted to the grounds specified in Rule 44 of the Rules of the Supreme Court of the United States and that this Petition for Rehearing is presented in good faith and not for delay.

/s/ Todd Phillippi

No. 20-1695

In The
Supreme Court of the United States

TODD PHILLIPPI,

Petitioner,

v.

HUMBLE DESIGN, L.L.C.
AND WARREN DAVID HUMBLE,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

APPENDIX

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Denial of Petition for Writ of Certiorari,
dated October 4, 2021 A1

Joint Stipulation of Voluntary Dismissal
with Prejudice of Plaintiff's Claims Against
Defendants, filed August 5, 2016 A2

Opinion of the U.S. Court of Appeals for the
Fifth Circuit, filed December 8, 2020 A4

Opinion of the U.S. Court of Appeals for the
Fifth Circuit, filed April 6, 2021 A8

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**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 4, 2021

Mr. Todd Phillippi
411 North 8th Street
Midlothian, TX 76065

Re: Todd Phillippi
v. Humble Design, L.L.C., et al.
No. 20-1695

Dear Mr. Phillippi:

The Court today entered the following order in
the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/ Scott S. Harris, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**CIVIL ACTION NO. 3:14-cv-04455
JURY**

**AUTOMATION SUPPORT, INC. d/b/a
TECHNICAL SUPPORT, and
SOYOKAZE, INC.,
Plaintiffs,**

v.

**BECKY WALLACE,
WARREN DAVID HUMBLE and
HUMBLE DESIGN, LLC,
Defendants.**

**JOINT STIPULATION OF VOLUNTARY
DISMISSAL WITH PREJUDICE OF
PLAINTIFFS' CLAIMS AGAINST
DEFENDANTS**

COME NOW, Automation Support, Inc. d/b/a Technical Support, and Soyokaze, Inc. ("Plaintiffs") and Warren David Humble and Humble Design, LLC ("Defendants"), and pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), hereby dismiss with prejudice all claims and all associated relief requested in such claims filed in this case by Plaintiffs.

Defendants reserve the right to seek recovery of their attorney's fees and costs from Plaintiffs in accordance with their answer and motion for

summary judgment and supporting brief on file
herein (Dkt. 34, 46-47).

Respectfully submitted,

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FILED December 8, 2020

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20-10386

AUTOMATION SUPPORT, INCORPORATED,
doing business as TECHNICAL SUPPORT,
Plaintiff-Appellant,

TODD PHILLIPPI,
Movant- Appellant,
versus

HUMBLE DESIGN, L.L.C.; WARREN DAVID
HUMBLE,
Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:14-CV-04455

Before WIENER, COSTA, and WILLETT, *Circuit
Judges.*

GREGG COSTA, *Circuit Judge:*

This case began almost six years ago when Automation Support, Inc., sued former employees and one employee's new company, Humble Design, L.L.C., under the Texas Theft Liability Act (TTLA). But what started as a case about theft of trade secrets has mutated into a protracted dispute over attorney's fees – a dispute we already resolved.

After a year and a half of litigation in the district court, the parties agreed to voluntarily dismiss all claims with prejudice. In the joint stipulation, defendants Humble Design and Warren Humble reserved the right to seek attorney's fees under the TTLA, which is a "loser pays" law. *See* Tex. Civ. Prac. & Rem. Code Ann. § 134.005(b). The magistrate judge later awarded those fees.

Multiple rounds of appeals and motions to vacate the judgment ensued. In 2018, we affirmed the magistrate judge's decision and remanded for the district court to award appellate attorney's fees. *Automation Support, Inc. v. Humble Design, L.L.C.*, 734 F. App'x 211, 216 (5th Cir. 2018). When Automation Support and associated individuals¹ tried, belatedly, to appeal again, we dismissed for lack of jurisdiction. *Automation Support, Inc. v. Humble Design, L.L.C.*, 796 F. App'x 223, 224 (5th Cir. 2020).

Automation Support is appealing once more. The current appeal concerns its most recent motion for relief from judgment under Rule 60(b), in which it again argued that the magistrate judge did not have jurisdiction to award attorney's fees. The magistrate judge denied the motion in March 2020, and this appeal is timely only as to the order denying that Rule 60 motion. Automation Support cannot appeal the underlying judgment that issued years ago.

To the extent Automation Support argues that the defendants were not prevailing parties, we have

¹ The plaintiffs in this case also include Automation Support's owners, Renee and Bill McElheney, and former attorney Todd Phillippi, all of whom purport to act on behalf of the company. We refer to the plaintiffs collectively as "Automation Support."

already rejected that argument. *See Automation Support*, 734 F. App'x at 215-16. Under the law of the case doctrine, "ordinarily an issue of fact or law decided on appeal may not be reexamined either by the district court on remand or by the appellate court on subsequent appeal." *United States v. Lee*, 358 F.3d 315, 320 (5th Cir. 2004) (citation and quotation marks omitted); *see Musacchio v. United States*, 136 S. Ct. 709, 716 (2016). We held in 2018 that the defendants were entitled to attorney's fees. *Automation Support*, 734 F. App'x at 216. Our ruling was final then and remains so today.

Automation Support's new attack – that the Rule 41 joint dismissal deprived the district court of jurisdiction to later award fees – is wrong. This latest effort to undo the fee award flies in the face of well-established law that a court can award attorney's fees after a voluntary dismissal. *See, e.g., Zimmerman v. City of Austin*, 969 F.3d 564, 568-69 (5th Cir. 2020) ("Ancillary enforcement jurisdiction extends to fees."); *Qureshi v. United States*, 600 F.3d 523, 525 (5th Cir. 2010) (explaining that a court retains authority to award attorney's fees after a Rule 41 dismissal); *see also Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990) (noting it is "well established that a federal court may consider collateral issues after an action is no longer pending" and listing attorney's fees as an example).² District

² An old Fifth Circuit decision holds that a district court lacks jurisdiction to enter a fee award once the plaintiff files a self-executing dismissal without prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(i). *See Williams v. Ezell*, 531 F.2d 1261, 1264 (5th Cir. 1976). Although the Supreme Court rejected that view in *Cooter*, 496 U.S. at 395, *Williams* continues to cause confusion about a district court's ability to consider fee motions after a Rule 41 dismissal. *See, e.g.,*

courts routinely award fees after an entry of final judgment. *Cooter*, 496 U.S. at 395 (recognizing that "even 'years after the entry of a judgment on the merits,' a federal court could consider an award of counsel fees" (quoting *White v. N.H. Dep't of Emp. Sec.*, 455 U.S. 445, 451 n.13 (1982))).

Instead of accepting our earlier ruling, Automation Support has inundated the district court and our court with rounds of frivolous filings attempting to secure a different outcome. Because of Automation Support's stubborn, bad-faith refusal to recognize what we held three years ago, defendants may file a motion with this court for appellate attorney's fees under 28 U.S.C. § 1927.

"We meant what we said, and we said what we meant." *See* DR. SEUSS, *HORTON HATCHES THE EGG* (1940). We once again AFFIRM the judgment of the district court.

Lightsource Analytics, LLC v. Great Stuff, Inc., 2014 WL 4744789 (W.D. Tex. Sept. 23, 2014). Today we make explicit what our cases like *Qureshi* have long recognized: the Supreme Court overruled *Williams v. Ezell* to the extent it states that a Rule 41 dismissal deprives a court of jurisdiction to rule on a fee request or other ancillary matter. *See Qureshi*, 600 F.3d at 525; *see also Dunster Live, LLC v. LoneStarLogos Mgmt. Co.*, 908 F.3d 948, 951 (5th Cir. 2018) (reviewing order, entered after Rule 41 dismissal, that denied fee request and affirming because a dismissal without prejudice does not produce a prevailing party).

FILED April 6, 2021

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20-10386

AUTOMATION SUPPORT, INCORPORATED,
doing business as TECHNICAL SUPPORT,
Plaintiff-Appellant,

TODD PHILLIPPI,
Movant- Appellant,
versus

HUMBLE DESIGN, L.L.C.; WARREN DAVID
HUMBLE,
Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:14-CV-04455

Before WIENER, COSTA, and WILLETT, *Circuit
Judges.*

PER CURIAM:

This order concerns a motion for an award of attorney's fees by Appellees Humble Design and Warren David Humble for the second unsuccessful appeal brought by Appellants Automation Support and Todd Phillippi. The court's opinion noted that the appellees had the right to obtain fees, *Automation Support, Inc. v. Humble Design, L.L.C.*,

982 F.3d 392, 395 (5th Cir. 2020). The motion is opposed only by Automation Support.

Beginning with their ill-fated first appeal, *Automation Support, Inc. v. Humble Design, L.L.C.*, 734 F. App'x 211 (5th Cir. 2018), Automation Support and Phillippi have continuously challenged the district court's authority to award statutorily permitted attorney's fees. Our court's initial opinion affirmed the district court's power to award those fees under the Texas Theft Liability Act (TTLA). *Automation Support*, 734 F. App'x at 215-16. Our most recent opinion again underscored the court's ability to award fees and explained that the appellees could also seek fees for this appeal. *Automation Support*, 982 F.3d at 394-95.

The court characterized some arguments advanced by the parties as being in bad faith and indicated that a fee award for the appeal was justified for that reason. *Id.* at 395. But given that this dispute involves multiple appellants, not all of whom put forward these arguments, the simplest path is to award fees based on the TTLA. That statute enables prevailing parties to recover "court costs and reasonable and necessary attorney's fees" regardless of bad faith. Tex. Civ. Prac. & Rem. Code § 134.005(b). This includes appellate fees as we recognized in awarding appellate fees for the last appeal. *Automation Support*, 734 F. App'x at 216.

The appellees' opposed motion for attorney's fees therefore is GRANTED IN PART. The court has reviewed appellees' billing records and concludes that \$20,000 in appellate fees is reasonable. We slightly reduced the fee request to account for some uncovered billing entries, such as time spent reviewing a petition for certiorari to the Supreme

Court for the last appeal. Because the appellants made different arguments in this appeal requiring distinct responses, it is reasonable is to hold Automation Support and Phillippi responsible for \$10,000 each.