

20-1792 ORIGINAL

In the Supreme Court of the United States

FILED

DEC 08 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Patricia Earnest; Janet Kelly,
Petitioner,

VS.

Joann Ellison, et al.,
Lawrence A. Belski,
Jack G. Gibbs, Jr., Alphonse P. Cincione
Respondent

On Petition for Writ of Certiorari

To the United States Court Of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Joann Ellison
1541 Delcastle Loop
Grove City, Ohio 43123

Patricia Earnest
1240 E. Cadron Gap Road
Conway, Arkansas 72032
(501) 499-6072

Jack G. Gibb Jr.
580 South High Street
Suite 300
Columbus, OH 43215
(614)224-3191

Janet Kelly
1860 Tree Brooke Lane
Snellville, GA 30078

QUESTION PRESENTED

Does a court of appeals deny a party due process under the 14th Amendment when it decides the case on a basis never litigated or passed on as a matter of fact or law in the trial court and raised for the first time on appeal.

PARTIES TO THE PROCEEDINGS

The parties are:

Patricia Earnest, Janet Kelly, petitioners

Joann Ellison, et al., individually and as Executor of
The Estate of John H. Ellison, Sr.,

Lawrence A. Belskis,

Jack G. Gibbs, Jr.,

Alphonse P. Cincione, respondent

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Patricia Earnest and Janet Kelly respectfully petitions for a writ of certiorari to review the judgment of the United States District Court Southern District of Ohio Eastern Division and of the United State of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The United States Court Southern District of Ohio Eastern Division opinion is unreported. Petition Complaint Appendix) The United States Court Southern District of Ohio Eastern Division denied Plaintiffs Complaint.

JURISDICTION

The judgment of the United States Southern District of Ohio Eastern Division was timely with the United States Court of Appeals for the Sixth Circuit and denied and the mandate filed in this case September 17, 2020. (Pet. App. 1). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, amend. 14, Sec. 1 , provides in relevant part:

.....No State shall.....deprive any person of life, liberty, or property,

Without due process of law;

Patricia Earnest and Janet Kelly on their claim of a constitution violation and in their complaint state enough facts to state a claim for relief and Patricia Earnest and Janet Kelly present a genuine issue for a trial and was denied a trial. That article establishes the principle of equality before the law and prohibits all forms of discrimination include arbitrary discrimination in law or by any authority and racial discrimination and any person who is denied or cannot enforce in the court of such State a right under any law providing for the equal civil rights of citizens of the United States or of all persons within the jurisdiction thereof; for any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law based on any the following:

On August 19, 2019, this action was filed in the United States District Court Southern District of Ohio Eastern Division pursuant to 28 U.S.C. §§ 1331 and 1343., in conjunction with the Civil rights Act of 1871, 42 U.S.C. sections 1983, 1985, 1988 and Fourteenth Amendments to the federal Constitution. Appellants Patricia Earnest, Janet (Kelley) Kelly sought in the complaint for compensatory and punitive damages for civil conspiracy with the underlying damage claims being tortious interference with contract of a WILL and the Business expectancy or interest and abuse of process.

On February 3, 2020 the district Court issue an Order dismissing Patricia Earnest and Janet Kelly complaint after the district court issue the order on February 3, 2020 Patricia Earnest , Janet Kelly file a Motion for Writ of Mandamus to set aside Court Order dated February 3, 2020 and Judgment by Honorable Judge Sarah D. Morrison on February 3, 2020 With Brief Incorporated and states the defendant Joann Ellison did not file an Answer after been serviced the summon of the Complaint upon the defendant, Joann Ellison.

The matter before the Court the issue is that the defendant did not file an Answer to the Complaint in the United States District Court for the Southern District of Ohio Eastern Division that is required by the United States District Court for the Southern District of Ohio Eastern Division pursuant to the Federal Rules of Civil Procedure.

That in the district court Joann Ellison did not file a motion to dismiss the Plaintiff's Complaint the Honorable Judge Sarah D. Morrison took her own

initiative to dismiss Plaintiff's complaint without the defendant filing a motion to dismiss Plaintiff's Complaint.

The Court error ("R&R") issue by the Magistrate Judge on January 3, 2020 (ECF No. 10).

The Plaintiff attach proof of service to the motion to set aside plaintiffs Patricia Earnest and Janet Kelly filed their "motion for Relief from Judgment or Order Motion to set Aside Court Order Dated October 28, 2019" on January 13, 2020. (ECF No. 11.) That filing, which the Court shall treat as an objection to the R&R, seemingly argues that service was not effected on the Defendant Joann Ellison she was served a summon and the summons's was served by the Sheriff and after being served a summons by the Sheriff Joann Ellison call Patricia Earnest and ask why was she served a summons complaint. The Magistrate Judge October 28, 2019 Ordered denying Plaintiffs motions for default for lack of service should not be denied. The Plaintiffs Motion for Writ of Mandamus to set aside Court order October 28, 2019 Order denying Plaintiffs Motions for default for lack of service.

In the district court the plaintiffs Motion for Writ of Mandamus to side Court Overruled and the relief sought and denies accordingly, the Court Overrules plaintiff's objections to the R&R and denies plaintiff's motion to set aside court order dated October 28, 2019. (ECF No. 11.) Plaintiff's Motion for Writ of Mandamus to set aside Court adopts the R&R (ECF No. 10) and dismisses Plaintiff's Complaint.

The Court erred in dismissing the Plaintiffs, Patricia Earnest, Janet Kelly the Complaint against the defendants in the district court.

Before us; in our presence , i, e, in our Court after file this Complaint in the United States District Court for the Southern District of Ohio Eastern Division the plaintiff is seeking a grand jury investigation and a Congressional Investigation.

Patricia Earnest and Janet Kelly lawsuit has been filed against Alphonse P. Cincione and in the state court the defendant has not filed an answer or responded to the Plaintiffs Complaint in the state court therefore the defendant failed to file an answer the defendant is in default.

The Defendant in the district court is in Default because the defendant has not filed an answer or has not responded to a summons within 21 days after service of the summon on the defendant Alphonse P. Cincione.

The Plaintiffs Patricia Earnest, Janet Kelly lawsuit has been filed against

the defendant Joann Ellison and the defendant has not filed an answer or responded to the Plaintiffs Complaint in the district court and is in default because the defendant has not responded to an summons within 21 days after service of the summons on the defendant Joann Ellison.

Patricia Earnest, Janet Kelly filed a timely Notice of Appeal and the Appeal was docketed on April 06, 2020 in the United States Court of Appeals for the Sixth Circuit and this Court has jurisdiction to hear this appeal pursuant to 28 U.S.C. §§ 1291. This appeal is from a final Order of judgment that disposes of all the parties' claims.

Statement of the Issues

The district court erred in dismissing the complaint in this action because:

- (1) The Judge should not have appointed his friends over the case.
- (2) Joann Ellison should have filed an answer after being served the summons upon her.
- (3) The district Court erred the defendant Joann Ellison fail to respond, judgment by default shall be entered against Joann Ellison for the demanded in the Complaint. Defendant must file your answer or motion with the Court. But the defendant did not file her answer or motion with the Court.

The Franklin County Sheriff's office Sheriff Dallas L. Baldwin 410 South High Street 2nd Floor, Columbus Ohio, 43215 Sheriff Service Return.

- (4) August 26, 2019 served to Alponse P. Cincione at 50 West Broad Street Ste. 700 Columbus, Oh 43215.

DALLAS L. BALDWIN, Sheriff Franklin County, Ohio the summon was serviced by Michael Turner deputy Sheriff of the Franklin County, sheriff Department in Ohio upon the Defendant Alphonse P. Cincione on August 26, 2019. DALLAS L. BALDWIN, Sheriff Franklin County, Ohio the summon was serviced by Tammy L. McCoy Deputy Sheriff of the Franklin County, Sheriff Department in Columbus Ohio upon the

Defendant Joann Ellison on August 27, 2019.

The defendant Alphonse P. Cincione fail to respond, judgment by default shall be entered against Alphonse P. Cincione for the demanded in the Complaint.

In the district court Defendant fail to file an answer or motion with the Court. The complaint should not have being dismissed.

Patricia Earnest and Janet Kelly who is denied or cannot enforce in the United States District Court for the Southern District of Ohio Eastern Division of such state a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

For any act under color of authority derived from any law providing for equal civil rights or for refusing to do any act on the ground that it would be inconsistent with such law.

STATEMENT

Factual Background

In the district court the Plaintiffs, Patricia Earnest, Janet Kelly filed their Motion for Writ of Mandamus to set aside Court Order dated February 3, 2020 and Judgment by the Honorable Judge Sarah D. Morrison on February 3, 2020 With Brief Incorporated be granted and for the Court to issue an order granted the Plaintiffs Complaint and for the Court to enter a judgment in favor for the Plaintiffs. And all other relief which Plaintiffs are entitled.

Procedural Background

In this action, Plaintiffs, Patricia Earnest, Janet Kelly some of the children of the estate of John H. Ellison A.K.A. John H. Ellison, Sr. Also the John H. Ellison AKA. John H. Ellison children did not hire the attorneys over the estate the attorneys was appointed by their friend the formal Judge and after appointing his attorney friends over the case the formal Judge step down off the case. It appear that the Honorable Lawrence A. Belski was award that the form Judge appointed his attorney friends over the case and after appointing his friends over the case the Judge step down off the case and the Honorable Lawrence A. Belskis is over the case.

The civil matter was file in the Probate Court of Franklin County, Ohio

that while Judge Lawrence A. Belskis with the help and assistance of the other defendants and co—conspirators, set in motion the actions that led to the claim in this matter, he appears to be immune from suit under *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099 (1978) because all of his illegal actions were taken concerning matters that was in his jurisdiction.

That the issue of judicial immunity should be visited by the Ohio Supreme Court or the Ohio State Legislature especially when a judge clearly commits illegal acts that would be criminal if committed by an ordinary citizen.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 1331 and 1343 to secure protection and redress deprivation of rights secured by 42 U.S.C. Section 1983, and the Fifth and Fourteenth Amendments of the United States Constitution and Pursuant to 28 § 115 Ohio is divided into two judicial districts to be Known as North and Southern Districts of Ohio.

The district court the motion to dismiss the Complaint and the district court dismissed the motion for writ of mandamus to set aside court order dated February 3, 2020 and judgment by the Honorable Judge Sarah D. Morrison on February 3, 2020 with brief incorporated and entered judgment for the appellees, Patricia Earnest, Janet Kelly filed their timely Notice of Appeal and paid the filing fee.

REASONS FOR GRANTING THE WRIT

This case presents an issue which goes to the essence of the appellate process and the fairness and constitutional legitimacy of the judicial process in deciding cases the same as other courts?

The general rule is “that a federal appellate court does not consider an issue not passed upon below.” *Singleton v. Wulff*, 428 U.S. 106, 120 (1976). This rule, like every other rule, has exceptions e.g., where the proper resolution is beyond any doubt or “injustice might otherwise result. *Id.*, citing *Turner v. City of Memphis*, 39 U.S. 350 (196) and *Hormel v. Helvering*, 312 U.S. 552, 557, (1941). As alleged in the original complaint filed on August 19, 2019, as well as the motion for writ of mandamus to set aside court order dated February 3, 2020 and judgment by the Honorable Judge Sarah D. Morrison on February 3, 2020 with brief incorporated, the facts relevant to the issues on this appeal consist of events and

occurrences that extend back to 2002 and relate to the Estate of John Ellison in the Probate Court of Franklin County Ohio the Honorable Lawrence A. Belskis, Judge.

John H. Ellison, Sr., is the father of Patricia Earnest and Janet Kelly and John H. Ellison, Sr., had a WILL and the WILL was never contested so it should not have being filed in Probate Court of Franklin County, Ohio. The Judge should have never appointed his friends over the Estate the attorney Jack G. Gibbs, Jr. and he was paid over \$34,000.00 and attorney Alphonse P. Cincione was paid over \$16,000.00 and attorney Bruce Randall was paid over \$ 8,000.00 also attorney Susan Wasserman was paid over \$6,000.00.

Patricia Earnest, Janet Kelly and are some of the children of the estate of John H. Ellison A.K.A., John H. Ellison Sr., who are the Plaintiffs in the district Court in this matter.

In the district court the defendants in this case are officers of the court who are Attorneys that was appointed by unnamed Judge who appear to be their friend. Who was appointed was Susan S. Wasseman, Alphones P. Cincione. Jack G. Gibbs Jr.

That in the district court the unnamed defendant is an Caucasian judge of the Probate Court of Franklin County, Ohio the Honorable Lawrence A. Belskis Judge of the probate Court of Franklin County, Ohio the unnamed defendant is an Caucasian Circuit Judge from a minority Judicial District that gives Liberal Whites candidates for judgeships advantages, and not the same judicial scrutiny, over other races or ethnic groups seeking a judgeship in the same Judicial District affirmatively carved out for Liberal Whites Candidates seeking judgeships.

That in the district court the named defendants are White Attorneys from the same Judicial District, who practiced law, at the times of all actions, complained of in this lawsuit, in same Judicial District as the unnamed defendants at all relevant times.

That the facts and inferences in this case will be clear that the unnamed defendants in this case conspired with the named defendants in this case to generate for them fees at the expense of the plaintiffs and unlawfully interfered

with a WILL which is an contract by John H. Ellison for his children and his business he owned. The defendants in this case to generated for them fees at the expense of the plaintiffs and unlawfully interfered with their contract and business expectancy with their father's broker, which resulted in tortious interference with the plaintiff's contract and business expectancy he had in a contract to represent estate of John H. Ellison A. K. A. John H. Ellison, Sr. that there is a WILL and no need for the case to be put in Probate Court of Franklin County, Ohio.

That the facts and interferences in this case will be clear that in the process of the unnamed defendants and the defendants illegally trying to pressure the plaintiffs into entering a so-called illegal distribution may be liable to the estate up to the value of the distribution and may be required to return all or any part of value of the distribution if a valid claim is subsequently made against the estate the account has not been settle because there are some money in some other account and places.

The rights of any person with a pecuniary interest in the estate are not barred by approval of an account pursuant to division (A) and (B) of this section. These rights may be barred following a hearing on the account pursuant to section 2109.33 of the Revised Code.

The State Court denied Patricia Earnest, Janet Kelly and Michael Ellison who are heirs the daughters and son of John H. Ellison A.K.A., John H. Ellison, Sr. that any person who is denied or cannot enforce in the Courts of such State a right under any law providing for equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof; for any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

DEFENITION OF A CIVIL CONSPIRACY

A "conspiracy" is an agreement to accomplish a purpose that is unlawful or oppressive or to accomplish, by unlawful or oppressive means, a purpose that is not in itself unlawful or oppressive." See AMI 714 Civil.

DEFINITION OF TORTIOUS INTERFERENCE WITH A WILL OR
INTERFERENCE WITH CONTRACTUAL RELATIONS TO THE WILL OR
BUSINESS EXPECTANCY, PROSSER AND KEETON ON TORTS, FIFTH
EDITION, SECTION 129 (1984)

"It is usually said that tort liability may be imposed upon a defendant who intentionally and improperly interferes with the plaintiffs rights under a contract or makes the contract rights more costly or less valuable."

That in the district court the Plaintiffs sustained damages in this matter because one or more of the defendants set in motion legal proceeding involving the plaintiffs concerning the distribution of the Estate of John H. Ellison A.K.A. John H. Ellison, Sr. in the Probate Court of Franklin County, Ohio the Honorable Lawrence A. Belskis, Judge. That while the Honorable Lawrence A. Belskis, Judge of the Probate Court of Franklin County, Ohio, with the help and assistance of the Co- Administrators Attorney Alphonse P. Cincione and the Co- Administrators Attorney Jack G. Gibbs, Jr., the Attorney Alphonse P. Cincione and Attorney Jack G. Gibbs, Jr. file a motion for instructions in the estate and requests instruction from the State Court on the investments that the Co-Administrators can make on behalf of the estate of John H. Ellison A.K.A. John H. Ellison, Sr. the Co-Administrators Attorney Alphonse P. Cincione and Co- Administrators Attorney Jack G. Gibbs Jr. sent a copy of a letter from Stephen Metcalf of Advest, who is the Investment advisor for this estate.

The letter was sent to the Stephen Metcalf who is the Investment at the Trust Division of Advest Bank and Trust Company. Patricia Earnest, Janet Kelly, and Michael Ellison they believe that all the money and the investments of the Estate of John H. Ellison A.K.A. John H. Ellison, Sr. has not been accounted for they believe it is more investments because there is investments that the company did not give them the full account number or tell them how much money is in the account.

There was a WILL in place there was no need to put the case in Probate Court of Franklin County, Ohio and after putting the case in Probate Court the unnamed

Judge appointed his friend Attorney Jack G. Gibbs Jr. and Attorney Alphones P. Cincione and the unnamed Judge step down off the case.

ALL PLEADINGS, UNDER OHIO LAW, MUST BE BASED UPON A REASONABLE INQUIRY CONCERNING THE LAW BY AN ATTORNEY THAT THE SAME IS WELL GROUNDED IN FACT AND IS WARRANTED BY EXISTING LAW OR GOOD FAITH ARGUMENT FOR THE EXTENSION, MODIFICATION, OR REVERSAL OF EXISTING LAW AND IS NOT INTERPOSED FOR ANY IMPROPER PURPOSE, SUCH AS TO HARASS OR TO CAUSE UNNECESSARY DELAY OR NEEDLESS INCREASE IN THE COST OF LITIGATION

This is a case where Jack G. Gibbs Jr., a friend of the unnamed Judge, was appointed by him presumably to represent the interest of the estate of John H. Ellison, Sr., but appeared in many instance in communications with the tort feasers' lawyers as trying to abort the estate from which John H. Ellison, Sr. would receive benefits by in writing schedule of claims Attorney Jack G. Gibbs, Jr. legal fees in the amount of \$ 34,401.90 and \$16,583.06 and Attorney Alphonse Cincione fees in the amount of \$ 22,750.00 also \$15,112.50 and there Attorney friends in legal fees S. Brewster Randall receive benefits in the amount of \$ 8,729.17 also Susan R.

Wasserman receive benefits in legal fee \$6,406.25 also Joseph F. Frasch, Jr. legal fee \$3,450.00.

FACTS CONSTITUTING BASIS FOR ALL CLAIMS IN THIS MATTER

On September 4, 2002 Attorney Alphonse P. Cincione and Attorney Jack G. Gibbs, Jr. file a motion for instructions in the Probate Court of Franklin County, Ohio there was no need to file a motion for instructions and requesting instructions from the court on the investments that the Co- Administrators can make on behalf of the Estate because a WILL was already in place.

That it appear there is money that has been received and including investments the Plaintiffs is seeking a writ of mandamus and a Writ of Prohibition and also is seeking a Federal Grand Jury Investigation and Congressional Investigation.

The Plaintiffs are seeking any past-due money or any investments that was not paid to the Estate and any intercept federal and/or state income tax refund intercept any other payments own to the estate and any federal Grants and any real property known and unknown.

"It is usually said that tort liability may be imposed upon a defendant who intentionally and improperly interferes with the Plaintiffs their rights under a WILL the defendants interference cause the plaintiffs to lose a right under the WILL or making the WILL less valuable.

Plaintiffs sustained damages in this matter because one or more of the defendants set in motion legal proceeding involving the plaintiffs concerning the distribution of the estate of John H. Ellison A.K.A. John H. Ellison, Sr. over \$191,086.81.

That in the district court the Plaintiffs Patricia Earnest sustained damages in this matter she was put out of her father house that he own.

Appellant-Plaintiffs sustained damages in this matter because the unnamed Appellees-defendant is an Caucasian judge of the Probate Court of Franklin County, Ohio the Honorable Lawrence A. Belskis Judge of the probate Court of Franklin County, Ohio the unnamed defendant is an Caucasian Circuit Judge from a minority Judicial District that gives Liberal Whites candidates for judgeships advantages, and not the same judicial scrutiny, over other races or ethnic groups seeking a judgeship in the same Judicial District affirmatively carved out for Liberal Whites Candidates seeking judgeships.

Appellant- Plaintiffs sustained damages in this matter because all of the named Appellees-defendants are White Attorneys from the same Judicial District, who practiced law, at the times of all actions, complained of in this lawsuit, in same Judicial District as the unnamed Appellees-defendants at all relevant times.

Appellant-Plaintiffs sustained damages in this matter because the interferences in this case will be clear that the unnamed defendant in this case conspired with the named Appellees-defendants in this case to generate for them fees at the expense of the appellant-plaintiffs and unlawfully interfered with a

WILL which is an contract by John H. Ellison for his children and his business he owned. The appellees- defendants in this case to generate fees at the expense of the appellant-plaintiffs and unlawfully interfered with their contract and business expectancy with their father attorney, which resulted in tortious interference with the appellant's-plaintiff's contract and business expectancy he had in a contract to represent estate of John H. Ellison A. K. A. John H. Ellison, Sr. that there is a WILL and there was no need for the case to be put in Probate Court of Franklin County, Ohio.

That the facts and inferences in this case will be clear that in the process of the unnamed defendant and the defendants illegally trying to pressure the plaintiffs into entering a so-called illegal distribution may be liable to the estate up to the value of the distribution and may be required to return all or any part of value of the distribution if a valid claim is subsequently made against the estate the account has not been settle because there are some money in some other account in other places and other business's.

Federal Tort Claims Act

An act passed in 1946, which confers exclusive jurisdiction United States District Courts to hear claims against the United States, "for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death, caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. 1346 (b).

In the district court Patricia Earnest, Janet Kelley motion for writ of mandamus to set aside court order dated February 3, 2020 and judgment by Honorable Judge, Sarah D. Morrison on February 3, 2020 with brief incorporated was denied and the district erred by denying Patricia Earnest, Janet Kelly motion.

Joann Ellison did not file an Answer after been serviced the summon of the Complaint upon the defendant, Joann Ellison.

The matter before the Court the issue is that in the district court the defendant did not file an Answer to the Complaint in the United States District Court for the Southern District of Ohio Eastern Division that is required by the United States District Court for the Southern District of Ohio Eastern Division pursuant to the Federal Rules of Civil Procedure.

Joann Ellison did not file a motion to dismiss the Plaintiff's Complaint the Honorable Judge Sarah D. Morrison took her own initiative to dismiss Plaintiff's complaint without the defendant filing a motion to dismiss Plaintiff's Complaint. The Court error ("R&R") issue by the Magistrate Judge on January 3, 2020 (ECF No. 10).

Patricia Earnest and Janet Kelly in the district court they attach proof of service to the motion to set aside plaintiffs Patricia Earnest and Janet Kelly filed their "motion for Relief from Judgment or Order Motion to set Aside Court Order Dated October 28, 2019" on January 13, 2020. (ECF No. 11.) That filing, which the Court shall treat as an objection to the R&R, seemingly argues that service was not effected on the Defendant Joann Ellison she was served a summons and the summons's was served by the Sheriff and after being served a summons by the Sheriff Joann Ellison call Patricia Earnest and ask why was she served a summons complaint. The Magistrate Judge October 28, 2019 Ordered denying Plaintiffs motions for default for lack of service should not be denied. The Plaintiffs Motion for Writ of Mandamus to set aside Court order October 28, 2019 Order denying Plaintiffs Motions for default for lack of service.

In the district court Plaintiffs Motion for Writ of Mandamus to side Court Overruled and the relief sought and denies accordingly, the Court Overrules Plaintiff's objections to the R&R and denies plaintiff's motion to set aside court order dated October 28, 2019. (ECF No. 11.) Plaintiff's Motion for Writ of Mandamus to set aside Court adopts the R&R (ECF No. 10) and dismisses Plaintiff's Complaint.

The district court erred in dismissing the Plaintiffs, Patricia Earnest, Janet Kelly the Complaint against the defendants.

In the district court plaintiffs seeking before us; in our presence , i, e, in our

Court after file this Complaint in the United States District Court for the Southern District of Ohio Eastern Division the plaintiff is seeking a grand jury investigation and a Congressional Investigation.

In the district court the Plaintiffs Patricia Earnest and Janet Kelly lawsuit has been filed against the defendant Alphonse P. Cincione and the defendant has not filed an answer or responded to the Plaintiffs Complaint therefore the defendant failed to file an answer the defendant is in default.

In the district court the Defendant is in Default because the defendant has not filed an answer or has not responded to a summons within 21 days after service of the summon on the defendant Alphonse P. Cincione.

That in the district court Patricia Earnest, Janet Kelly lawsuit has been filed against Joann Ellison and Joann Ellison did not filed an answer or responded to Patricia Earnest , Janet Kelly Complaint and is in default because Joann Ellison has not responded to an summons within 21 days after service of the summons on Joann Ellison.

In the district court Alphonse P. Cincione fail to respond, judgment by default shall be entered against Alphonse P. Cincione for the demanded in the Complaint. Defendant must file your answer or motion with the Court. But the defendant did not file his answer or motion with the Court.

That in the district court the defendant Joann Ellison fail to respond, judgment by default shall be entered against Joann Ellison for the demanded in the Complaint. Defendant must file your answer or motion with the Court. But the defendant did not file her answer or motion with the Court.

The Franklin County Sheriff's office Sheriff Dallas L. Baldwin 410 South High Street 2nd Floor, Columbus Ohio, 43215 Sheriff Service Return.
August 26, 2019 served to Alponse P. Cincione at 50 West Broad Street Ste. 700 Columbus, Oh 43215.

DALLAS L. BALDWIN, Sheriff Franklin County, Ohio the summon was serviced by Michael Turner deputy Sheriff of the Franklin County, sheriff Department in Ohio upon the Defendant Alphonse P. Cincione on August 26, 2019.

DALLAS L. BALDWIN, Sheriff Franklin County, Ohio the summon was serviced by Tammy L. McCoy Deputy Sheriff of the Franklin County, Sheriff Department in Columbus Ohio upon the Defendant Joann Ellison on August 27, 2019.

That in the district court Patricia Earnest and Janet Kelly who is denied or cannot enforce in the United States District Court for the Southern District of Ohio Eastern Division of such state a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

For any act under color of authority derived from any law providing for equal civil rights or for refusing to do any act on the ground that it would be inconsistent with such law.

The gravamen of Patricia Earnest and Janet Kelly argument in this appeal is that, under the peculiar set of facts of their case against the defendants-appellees, the district court erred in dismissing this civil action on the pleading because the original complaint assert legal claims cognizable under 42 U.S.C. § 1983 and plead specific facts in support of those claims.

The original complaint asked the court below to enjoin the Judge of the probate court of Franklin County, Ohio, Lawrence A. Blskis, Judge for carrying out the regime for the former judge.

. Patricia Earnest, Janet Kelly and Michael Ellison some of the children of the estate of John H. Ellison A.K.A. John H. Ellison, Sr.

The civil matter was file in the Probate Court of Franklin County, Ohio that while Judge Lawrence A. Belskis with the help and assistance of the other defendants and co—conspirators, set in motion the actions that led to the claim in this matter, he appears to be immune from suit under *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099 (1978) because all of his illegal actions were taken concerning matter that was in his jurisdiction.

3. That the issue of judicial immunity should be visited by the Ohio Supreme Court or the Ohio State Legislature especially when a judge clearly commits

illegal acts that would be criminal if committed by an ordinary citizen.

4. That the unnamed defendant is an Caucasian judge of the Probate Court of Franklin County, Ohio the Honorable Lawrence A. Belskis Judge of the probate Court of Franklin County, Ohio the unnamed defendant is an Caucasian Circuit Judge from a minority Judicial District that gives Liberal Whites candidates for judgeships advantages, and not the same judicial scrutiny, over other races or ethnic groups seeking a judgeship in the same Judicial District affirmatively carved out for Liberal Whites Candidates seeking judgeships.

5. That all of the named defendant are White Attorneys from the same Judicial District, who practiced law, at the times of all actions, complained of in this lawsuit, in same Judicial District as the unnamed defendant at all relevant times.

That the facts and inferences in this case will be clear that the unnamed defendant in this case conspired with the named defendants in this case to generate for them fees at the expense of the plaintiffs and unlawfully interfered with a WILL which is an contract by John H. Ellison for his children and his business he owned. The defendants in this case to generated for them fees at the expense of the plaintiffs and unlawfully interfered with their contract and business expectancy with their father attorney, which resulted in tortious interference with the plaintiff's contract and business expectancy he had in a contract to represent estate of John H. Ellison A. K. A. John H. Ellison, Sr. that there is a WILL and not need for the case to be put in Probate Court of Franklin County, Ohio.

That the facts and inferences in this case will be clear that in the process of the unnamed defendant and the defendants illegally trying to pressure the plaintiffs into entering a so-called illegal distribute may be liable to the estate up to the value of the distribution and may be required to return all or any part of value of the distribution if a valid claim is subsequently made against the estate the account has not been settle because there are same money in same other account. The total of John H. Ellison, Sr. aka John Henry Ellison, Sr. who is deceased the estimated value of the estate is: personal property \$ 5.000.00 and the Annual real estate rentals \$ 5.000.00 and the real estate \$ 90.000.00 and just that total of the estimated estate is \$100.000.00 that was about January 29, 2001. John Henry Ellison, Sr. who owned the Oak Wood Market .

The district court erred in dismissing the complaint in this action because: (1) Joann Ellison was not entitled be dismiss for the complaint against her(2) This case is not moot Patricia Earnest and Janet Kelly has a genuine issue for trial in the district court .(3) The cause action in the complaint states a claim of the Fourteenth Amendment denial the of due process of law and arbitrary discrimination and the federal law prohibitions against discriminatory treatment the state is obligated to comply with the provision under the equal protection under the Fourteenth Amendment to the federal Constitution and the action in the Complaint States a claim of denial of equal of equal protection under the Fourteenth Amendment to the federal Constitution.

This court reviews de novo a district court's judgment or order on the pleadings pursuant to federal Rule of Civil Procedure 12 (c)

Under the Federal Rule of Civil Procedure a pleading must contain a short and plain statement of the claim showing that the pleader is entitled to relief. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). The pleading standard of Rule 8 does not require detailed factual allegations, but it demands more than an unadorned, the-defendants-unlawfully-harmed-Patricia Earnest and Janet (Kelley) Kelly. *Iqbal*, 129 S. Ct. at 1949 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 555). Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement. *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 557).

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 570). A claim has facial plausibility when the plaintiffs pleads factual content that allows the court to draw the reasonable inference that the defendants is liable for the misconduct alleged.

Iqbal, 129 S. Ct. at 1949 (citing Twombly, 550 U.S. at 556). The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendants has acted unlawfully. Iqbal, 129 S. Ct. at 1949 (citing Twombly, 550 U.S. at 556). Where a complaint pleads facts that are merely consistent with the defendants liability, it stop shot of the line between possibility and plausibility of entitlement to relief. Iqbal, 129 S. Ct. at 1949 (citing Twombly, 550 U.S. at 557). Rule 12 (b)(6) does not countenance dismissal based on a judge's disbelief of a complaint 's factual allegations. Bell Atl., Corp. v. Twombly, 550 U.S. 544, 556 (2007) (citing Neitzke v. Williams, 490 U.S. 319, 327 (1989)).

The analysis and conclusions of the District Court
In its decision on Respondents there was not a motion to dismiss by the
Respondents the district court dismiss the Petitioners complaint and the individual were not entitled to be dismiss for the complaint and therefore Patricia Earnest and Janet (Kelley) Kelly has no claim for money damages the district court decision on dismiss the complaint the defendant was served a summons and the defendant fail to file an answer the summons that was served upon the defendant and this miscarry of justices and the district court decision was unreasonableness wrong Patricia Earnest and Janet Kelly who was denied or cannot enforce in the district Court of such a right under any law providing for the equal civil rights of citizens of the United States or of all persons within the jurisdiction thereof, for any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law and for equal protection of the law and equal protection is a clause from the Fourteenth Amendment to the United States Constitution. As to Joann Ellison, also the district court below stated the following:

Patricia Earnest and Janet (Kelley) Kelly argues that the allegation in their complaint show Joann Ellison did not file an Answer after been serviced the summon of the Complaint upon the defendant, Joann Ellison.

The matter before the Court the issue is that the defendant did not file an Answer to the Complaint in the United States District Court for the Southern District of Ohio Eastern Division that is required by the United States District Court for the Southern District of Ohio Eastern Division pursuant to

the Federal Rules of Civil Procedure. That defendant, Joann Ellison did not file a motion to dismiss the Plaintiff's Complaint the Honorable Judge Sarah D. Morrison took her own initiative to dismiss Plaintiff's complaint without the motion to dismiss Plaintiff's Complaint. The Court error ("R&R") issue defendant filing a by the Magistrate Judge on January 3, 2020 (ECF No.

10). The Plaintiff attach proof of service to the motion to set aside plaintiffs Patricia Earnest and Janet Kelly filed their "motion for Relief from Judgment or Order Motion to set Aside Court Order Dated October 28, 2019" on January 13, 2020. (ECF No. 11.)

That filing, which the Court shall treat as an objection to the R&R, seemingly argues that service was not effected on the Defendant Joann Ellison she was served a summon and the summons's was served by the Sheriff and after being served a summons by the Sheriff Joann Ellison call Patricia Earnest and ask why was she served a summons complaint. The Magistrate Judge October 28, 2019 Ordered denying Plaintiffs motions for default for lack of service should not be denied. The Plaintiffs Motion for Writ of Mandamus to set aside Court order October 28, 2019 Order denying Plaintiffs Motions for default for lack of service.

Plaintiffs Motion for Writ of Mandamus to side Court Overruled and the relief sought and denies accordingly, the Court Overrules Plaintiff's objections to the R&R and denies plaintiff's motion to set aside court order dated October 28, 2019. (ECF No. 11.) Plaintiff's Motion for Writ of Mandamus to set aside Court adopts the R&R (ECF No. 10) and dismisses Plaintiff's Complaint.

The Court erred in dismissing the Plaintiffs, Patricia Earnest, Janet Kelly the Complaint against the defendants.

Before us; in our presence , i, e, in our Court after file this Complaint in the United States District Court for the Southern District of Ohio Eastern Division the plaintiff is seeking a grand jury investigation and a Congressional Investigation.

The Plaintiffs Patricia Earnest and Janet Kelly lawsuit has been filed against the defendant Alphonse P. Cincione and the defendant has not filed an answer or responded to the Plaintiffs Complaint therefore the defendant failed to file an answer the defendant is in default.

The Defendant is in Default because the defendant has not filed an answer or has not responded to a summons within 21 days after service of the summon on the defendant Alphonse P. Cincione.

The Plaintiffs Patricia Earnest, Janet Kelly lawsuit has been filed against the defendant Joann Ellison and the defendant has not filed an answer or responded to the Plaintiffs Complaint and is in default because the defendant has not responded to an summons within 21 days after service of the summons on the defendant Joann Ellison.

The defendant Alphonse P. Cincione fail to respond, judgment by default shall be entered against Alphonse P. Cincione for the demanded in the Complaint. Defendant must file your answer or motion with the Court. But the defendant did not file his answer or motion with the Court.

The defendant Joann Ellison fail to respond, judgment by default shall be entered against Joann Ellison for the demanded in the Complaint. Defendant must

file your answer or motion with the Court. But the defendant did not file her answer or motion with the Court.

The Franklin County Sheriff's office Sheriff Dallas L. Baldwin 410 South High Street 2nd Floor, Columbus Ohio, 43215 Sheriff Service Return.

August 26, 2019 served to Alponse P. Cincione at 50 West Broad Street Ste. 700 Columbus, Oh 43215.

DALLAS L. BALDWIN, Sheriff Franklin County, Ohio the summon was serviced by Michael Turner deputy Sheriff of the Franklin County, sheriff Department in Ohio upon the Defendant Alphonse P. Cincione on August 26, 2019.

DALLAS L. BALDWIN, Sheriff Franklin County, Ohio the summon was serviced by Tammy L. McCoy Deputy Sheriff of the Franklin County, Sheriff Department in Columbus Ohio upon the Defendant Joann Ellison on August 27, 2019.

Patricia Earnest and Janet Kelly who is denied or cannot enforce in the United States District Court for the Southern District of Ohio Eastern Division of such state a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

For any act under color of authority derived from any law providing for equal civil rights or for refusing to do any act on the ground that it would be inconsistent with such law.

Patricia Earnest, Janet Kelly Motion for Writ of Mandamus to set aside Court Order dated February 3, 2020 and Judgment by Honorable Judge Sarah D.

Respectfully Submitted,

/s/ Patricia Earnest

Patricia Earnest

1240 East Cadron Gap Road

Conway, Arkansas 72032

Respectfully Submitted,

/s/ Janet Kelly

Janet Kelly

1860 Tree Brooke Lane

Snellville, GA 30078