

No. 20-5098

IN THE
SUPREME COURT of the UNITED STATES

MIKHAIL S. TSUKERMAN,

Petitioner,

v.

WESTERN COMMUNITY UNIT SCHOOL
DISTRICT NO. 12,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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LIST OF PARTIES

Mikhail Tsukerman – Petitioner (Plaintiff)

Western Community Unit School District No. 12 – Respondent (Defendant)

LIST OF PROCEEDINGS

- Mikhail Tsukerman vs. Western Community Unit School Dist. No. 12, U.S. District Court for the Central District of Illinois No. 16-3214
- Mikhail Tsukerman vs. Western Community Unit School Dist. No. 12, U.S. District Court of Appeals for the Seventh Circuit No. 19-3075

STATEMENT OF THE CASE

After the United States District Court Central District of Illinois ordered the Petitioner to pay costs upon refiling suit pursuant to Federal Rule of Civil Procedure 41(d) the Petitioner asserted that he should not have to pay. The District Court dismissed the refiled action and the Seventh Circuit Court of Appeals affirmed.

On July 26, 2016, the Petitioner filed suit in the United States District Court, Central District of Illinois. (CDIL No. 16-3214, Doc. 1) On April 20, 2018, after discovery had been conducted and the Respondent had filed a Motion for Summary Judgment, the Petitioner, who by then was represented by counsel other than that which filed the Complaint, filed a Stipulation for Dismissal pursuant to FRCP 41(a)(A)(ii) and the District Court entered a Text Order dismissing the action without prejudice on April 23, 2018. (CDIL Doc. 36). FRCP 41(a)(A)(ii).

On April 16, 2019, the Petitioner, filed a *pro se* pleading in the District Court which was interpreted as an Amended Complaint. (CDIL Doc. 37). In asserting that he had one year to refile the action, the Petitioner conceded his prior counsel had advised against refiling suit. (CDIL Doc. 38, Letter from counsel-filed by Petitioner).

On April 30, 2019, the Respondent filed Defendant's Combined Motion to Dismiss, or Alternatively, Strike Pursuant to FRCP 12(g) and, Alternatively, for Summary Judgment Pursuant to FRCP 56 noting that the District Court had been divested of jurisdiction, that the filing was untimely, that the filing was procedurally inadequate, that summary judgment for the Respondent was still warranted, that the Petitioner's allegations regarding improper conduct during discovery did not state

a cause of action and also that costs should be awarded to the Respondent pursuant to Federal Rule of Civil Procedure 41(d). (CDIL Docs. 39, 40). In the Motion, the Respondent argued, and still maintains, that the District Court was divested of and did not retain subject matter jurisdiction after the case was closed on April 23, 2018 and that the Illinois savings statute did not apply. The District Court never reached the issue of subject matter jurisdiction as it issued an order of costs upon refiling pursuant to Federal Rule of Civil Procedure 41(d). (CDIL 3:16-cv-3214, Docs. 39, 40). (The Respondent also pointed out that the Petitioner had erroneously asserted that persons other than Western Community Unit School District No. 12 were parties to the litigation, that the Petitioner was improperly attempting to name school personnel and defense counsel as parties upon refiling and that the District Court had not exercised jurisdiction over these persons. (CDIL Docs. 39, 40)).

In a Text Order of May 14, 2019, the District Court found Federal Rule of Civil Procedure 41(d) applied. The District Court declined to award attorneys' fees as requested by the Respondent, but stayed the matter until the Petitioner paid expenses of \$3,524.00 incurred before the voluntary dismissal of April 20, 2018. The Petitioner never paid the expenses nor ever expressed willingness to pay. On May 24, 2019, the Petitioner filed a Motion to Waive Payment which the District Court denied. (CDIL Docs. 46, 47, 48, 49, 50; Text Order of May 30, 2019). On August 30, 2019, the District Court ordered the Petitioner to show cause why the case should not be dismissed for want of prosecution. The Petitioner responded by raising arguments about the substance of the case, restating numerous arguments that had already been

made, and indicating no intent to comply with the District Court order on payment, stating in conclusion “[t]o summarize, the Plaintiff confirms his willingness, readiness and ability to prosecute this case and intends to promptly proceed once the unjust and oppressive obstacle in the form of the Defendants’ demand for the Plaintiff to pay them \$3,524.00 is removed.” (CDIL Doc.51, ¶. 26). In a Text Order of September 30, 2019, the District Court dismissed the case with prejudice for want of prosecution. (CDIL Doc. 52).

On October 21, 2019, the Petitioner filed a Notice of Appeal in the Seventh Circuit Court of Appeals. (CDIL Doc. 53). On March 5, 2020, after the parties fully briefed the matter, the Seventh Circuit entered an Order affirming the District Court and entered judgment for the Respondent. (Seventh Circuit No. 19-3075, Docs. 21, 22). The Petitioner then sought rehearing, which was summarily denied. (Seventh Circuit 19-3075, Doc. 24).

The Petitioner has now filed a Petition for A Writ of Certiorari before this Court. Notably, after the mandate from the Seventh Circuit, the Petitioner has submitted additional filings with the Central District of Illinois. On June 18, 2020, the Petitioner filed a Motion to Relieve from Final Judgment of Dismissal with Prejudice Pursuant to Federal Rule of Civil Procedure 60(b) (CDIL Doc. 59). The Respondent has filed a Response to the Rule 60(b) motion. (CDIL Docs. 60, 60-1). The Respondent has also filed Motion for Sanctions pursuant to Federal Rule of Civil Procedure 11. (CDIL Doc. 61). The Rule 60(b) motion and the Respondent’s Motion for Sanctions remain pending before the Central District of Illinois.

ARGUMENT

The Petition for A Writ of Certiorari gives no compelling reason for this Court to review the decision of the Seventh Circuit. The asserted questions presented for review in the Petition are vague and chimerical, as was the similarly tenebrous statement of issues the Petitioner claimed before the Seventh Circuit. Nonetheless, the Seventh Circuit explained that it affirmed the District Court according to the plain language of Federal Rule of Civil Procedure 41. (7th Cir. Order of March 5, 2020 – Doc. 21; citing Fed. R. Civ. P. 41, *Esposito v. Piatrowski*, 223 F.3d 497, 502 (7th Cir. 2000)). At best, the Petition does no more than attack the exercise of discretion by District Court which was affirmed by the Seventh Circuit. Most importantly, the Petition does not identify any conflict with other decisions or a departure from the usual course of proceedings.

Notably, the Petition contains numerous, unfounded assertions about the purported merits of the Petitioner's suit and inappropriate attacks upon both the Respondent's employees and defense counsel. The Petition errantly lists the Respondent's principal and defense counsel as parties and unjustifiably impugns their character. The Petition even attacks Petitioner's last counsel who represented him at the time the case was voluntarily dismissed. Moreover, the Petition belies a fundamental misunderstanding of litigation, even claiming that Petitioner's counsel had been intimidated into inaction by the Respondent filing a motion for summary judgment. (Petition at page. 7). The Petition should be denied.

CONCLUSION

The Petition for A Writ of Certiorari should be denied.

Dated: August 14, 2020

Respectfully submitted,

BECKER, HOERNER & YSURSA P.C.

A handwritten signature in black ink, appearing to read "TJ Hunter", is written over a horizontal line.

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