
No. 20-5531

**IN THE
SUPREME COURT OF THE UNITED STATES**

CYNTHIA HOLMES ALSO KNOWN AS C HOLMES
ALSO KNOWN AS CYNTHIA HOLMES, M.D.,

Petitioner,

v.

JAMES Y. BECKER, INDIVIDUALLY; M. M. CASKEY, INDIVIDUALLY;
HAYNSWORTH SINKLER BOYD, P.A.; AND MIKELL R. SCARBOROUGH,
IN OFFICIAL CAPACITY AND, AS INDICATED, INDIVIDUALLY RE UNOFFICIAL ACTS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

**BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

Andrew F. Lindemann
Counsel of Record
LINDEMANN & DAVIS, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

Counsel for Respondent
Mikell R. Scarborough

TABLE OF CONTENTS

Table of Authorities	ii
Statement of the Case.....	1
Reasons for Denying The Petition	5
Conclusion	7

TABLE OF AUTHORITIES

Cases

<i>Exxon Mobil Corp. v. Saudi Basic Industries Corp.</i> , 544 U.S. 280 (2005).	5
<i>Holmes v. East Cooper Community Hospital, Inc.</i> , 408 S.C. 138, 758 S.E.2d 483 (2014).	3
<i>Holmes v. Haynsworth Sinkler & Boyd, P.A.</i> , 408 S.C. 620, 760 S.E.2d 399 (2014).	3, 4
<i>In re Collie</i> , 410 S.C. 556, 765 S.E.2d 835 (2014).	3
<i>Lance v. Dennis</i> , 546 U.S. 459 (2006).	5

Statutes

S.C. Code Ann. § 15-11-10.	1
S.C. Code Ann. § 15-11-15.	1

STATEMENT OF THE CASE

The Respondent Mikell R. Scarborough is the Master-in-Equity for Charleston County. A Master-in-Equity is a part of the unified state court system in South Carolina. *See*, S.C. Code Ann. § 15-11-10. A Master-in-Equity is the equivalent of a state circuit court judge. *See*, S.C. Code Ann. § 15-11-15 (“[t]he equity court is considered a division of the circuit court, and the master-in-equity, as judge of the equity court, is entitled to all the benefits and subject to all the requirements of the South Carolina Bar and the rules of the Supreme Court in the same respect as circuit court and family court judges”).

The Petitioner Cynthia Holmes filed a Second Amended Complaint that joined Judge Scarborough as an additional Defendant in this action. The allegations of the Second Amended Complaint clearly reflect that the Petitioner is suing Judge Scarborough as a result of judicial acts and rulings he made as the Master-in-Equity as part of ongoing state court litigation of which she is a party. Specifically, the Petitioner alleges that Judge Scarborough “wrongfully issued the ex parte February 9, 2017 Order.” *See*, Second Amended Complaint, ¶ 7.¹ That Order states the following:

A supplemental proceeding hearing is scheduled to take place in this matter on March 10, 2017. The court is advised by the Clerk of Court's office that Cynthia Holmes, M.D., has filed several motions in this matter in violation of the Supreme Court's order filed December 3, 2009 directing the "Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice of law in this state." Given the broad language of this directive and the fact that the motions have been filed by Dr. Holmes, pro se, the court orders the Clerk of Court's

¹ Although the Petitioner uses the term “ex parte” to describe the February 9, 2017 Order, the proper term is “sua sponte.”

office to strike all motions filed by Dr. Holmes in this matter and as well as future motions, if any.

The Petitioner complained Judge Scarborough “acted without jurisdiction in a non-judicial capacity to ‘scrub’ already paid for, filed, and docketed matters.” *See*, Second Amended Complaint, ¶ 19. She further complains that the February 9, 2017 Order “wrongfully confiscated unearned filing fees for public or other wrongful use.” *See*, Second Amended Complaint, ¶ 19.

The Petitioner also challenged a subsequent discovery and sanctions order issued by Judge Scarborough on June 23, 2017 in the same litigation. She alleges that “Plaintiff was wrongfully sanctioned after providing the requested tax returns for failure to provide in whole or in part confidential, privileged, patient healthcare information. The Plaintiff timely paid the wrongful \$2500.00 sanction and is prejudiced thereby.” *See*, Second Amended Complaint, ¶ 19.

The Respondent Scarborough filed a Motion to Dismiss seeking his dismissal from this action based upon the application of the *Rooker-Feldman* doctrine and absolute judicial immunity. In her Order filed March 29, 2019, United States District Judge Bruce H. Hendricks granted Judge Scarborough's motion on both grounds. The district court ruled: "From a review of Plaintiff's second amended complaint, it is clear that she is suing him for judicial acts he made as the master-in-equity in connection with state court litigation in which Plaintiff was a party." The district court further ruled that "it is clear that Scarborough issued the orders in question in his judicial capacity and not in the absence of jurisdiction, as they were made pursuant to orders of reference from the circuit court."

The Petitioner filed an appeal to the Fourth Circuit Court of Appeals which affirmed the dismissal of Judge Scarborough by an unpublished decision issued November 25, 2019.

By way of additional factual background, the Petitioner is a physician and an attorney.² The Petitioner has been involved in a series of lawsuits since 1999 against the East Cooper Community Hospital related to the revocation of her staff privileges. That litigation resulted in subsequent lawsuits including a legal malpractice lawsuit filed in 2002 against the attorneys who represented her in the 1999 litigation, including James Becker, one of the co-Defendants in this action, as well as Sinkler & Boyd, P.A., the successor of which is another co-Defendant, Haynsworth Sinkler Boyd, P.A.

In 2009, the South Carolina Supreme Court issued an Order in the appeal captioned *Doe v. Duncan*, denying the Petitioner’s petition for writ of certiorari in that particular appeal. That Order (“Doe Order”) included a finding that the Petitioner “has engaged, and continues to engage in, vexatious litigation related to [the revocation of her medical privileges].” As a result, the State Supreme Court “direct[ed] the Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice law in this state.”³

In the Petitioner’s legal malpractice action against Becker, the Haynsworth law firm, and others, the state trial court granted a directed verdict to all defendants and also awarded the defendants sanctions in the amount of \$200,000. That sanctions order was affirmed by the South

² The Petitioner, who is also known as Cynthia Collie, had her law license definitely suspended by the South Carolina Supreme Court in 2014. *See, In re Collie*, 410 S.C. 556, 765 S.E.2d 835 (2014).

³ A detailed procedural history of the Petitioner’s litigation may be found in three opinions of the South Carolina Supreme Court: *Holmes v. East Cooper Community Hospital, Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2014); *In re Collie*, 410 S.C. 556, 765 S.E.2d 835 (2014); and *Holmes v. Haynsworth Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014).

Carolina Supreme Court in 2014. *See, Holmes v. Haynsworth Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014). The malpractice defendants then commenced supplemental proceedings to collect the \$200,000. On December 30, 2016, State Circuit Court Judge Roger Young issued a Rule to Show Cause in Supplementary Proceedings and Order of Reference (filed January 3, 2017), which referred the supplemental proceedings to Judge Mikell R. Scarborough, the Master-in-Equity for Charleston County, and authorized Judge Scarborough “to entertain and rule upon all motions necessary to dispose of this matter” and “to enter a Final Order.” The date for the supplemental proceedings hearing was not stated in Judge Young’s Order. Thereafter, State Circuit Court Judge Deadra L. Jefferson issued an identical Order filed January 18, 2017, which set the hearing for March 10, 2017, before Judge Scarborough. As part of the supplemental proceedings commenced in January 2017, Judge Scarborough issued the two orders at issue in this federal court litigation.

REASONS FOR DENYING THE PETITION

In her Petition for Writ of Certiorari, the Petitioner fails to set forth any basis for review by this Court. The district court, as affirmed by the Fourth Circuit, correctly ruled that the Petitioner's claims against Judge Scarborough are barred by judicial immunity. In essence, Judge Scarborough is being sued for the issuance of two orders. His February 9, 2017 Order was issued *sua sponte* to strike the Appellant's filed motions, but Judge Scarborough was merely applying and giving effect to the 2009 Doe Order issued by the South Carolina Supreme Court to prohibit further motion filing by the Appellant when she proceeded *pro se*. The issuance of that February 9, 2017 Order was a judicial act well within his jurisdiction. The June 23, 2017 Order granted a motion to compel discovery and awarded monetary sanctions against the Appellant. The issuance of that Order was also a judicial act well within his jurisdiction. The Circuit Court had issued an Order of Reference to the Master-in-Equity to proceed to finality with the supplemental proceedings, which included adjudicating or otherwise disposing of motions. Both orders at issue were issued after the Order of Reference and as part of those supplemental proceedings. Thus, as the lower courts ruled, Judge Scarborough was properly dismissed based upon absolute judicial immunity.

As an alternative but also meritorious defense, the lower court found that the claims against Judge Scarborough are barred by application of the *Rooker-Feldman* doctrine which prevents a federal district court from exercising jurisdiction over a case brought by a "state court loser" challenging a state court judgment rendered before the district court proceedings commenced. *Lance v. Dennis*, 546 U.S. 459, 460 (2006). The *Rooker-Feldman* doctrine generally prohibits lower federal courts from reviewing state court decisions.

The application of the *Rooker-Feldman* doctrine was explained by this Court in the case of *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), as follows: "[t]he *Rooker*–

Feldman doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." 544 U.S. at 284.

In sum, the *Rooker-Feldman* doctrine applies if a state court loser is challenging a state court decision by alleging that the state court decision caused him injury. That is what has been asserted in the present case against Judge Scarborough. The Petitioner alleges she has been injured by Judge Scarborough's issuance of the February 9, 2017 Order, and thus, all of her claims are barred by the *Rooker-Feldman* doctrine. Likewise, to the extent the Petitioner makes some mention of the June 23, 2017 Order, any claims related to that order, including the sanctions award of \$2,500, are also barred by the *Rooker-Feldman* doctrine. The district court, as affirmed by the Fourth Circuit, was thus correct in dismissing the claims against Judge Scarborough on that additional basis.

In short, there is no basis for the issuance of a writ of certiorari.

CONCLUSION

For the foregoing reasons, the Respondent Mikell R. Scarborough submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Andrew F. Lindemann
Counsel of Record
LINDEMANN & DAVIS, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

Counsel for Respondent
Mikell R. Scarborough

September 28, 2020