

No. 20-5552

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

FILED
APR 22 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Jeremy Kerr - PETITIONER

vs

State of Ohio - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Jeremy Kerr 686-150

North Central Correctional

PO Box 1812

Marion, OH 43301

QUESTIONS PRESENTED FOR REVIEW

Does a state court violate the 14th Amendment to the United States Constitution when it issues a Default Judgment against a non-legal entity?

Does a state court violate the 14th Amendment to the United States Constitution when it amends an individual after default judgment against a non-legal entity?

Does a state court violate the 14th Amendment to the United States Constitution when it dismisses a correct action because a prior action was dismissed without any specification of whether the dismissal was with or without prejudice?

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TABLE OF AUTHORITIES

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LIST OF ALL PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgments are the subject of this petition are as follows:

Governor M ike DeWine
Vern Riffe Center
77 S. Hight St., 30th Floor
Columbus, OH 43215

Attorney General Dave Yost
James A. Rhodes State Office Tower
30 E. Broad St., 14th Floor
Columbus, OH 43215

Sixth Appellate District
Court of Appeals Building
1 Constitution Ave
Toledo, OH 43604-6104

Judge Reeve Kelsey
One Courthouse Square
Bowling Green, OH 43402

Supreme Court of Ohio
65 South Front St
Columbus, OH 43215

LIST OF ALL PROCEEDINGS

In the Common Pleas Court of Wood County, Ohio

Case No. 2011-CV-0853
Keith Lenz -vs- Kerr Building, Inc.
Date of Judgment,

Case No. 2013-CV-0643
Keith Lenz -vs- Kerr Building, Inc.
Date of Judgment,

In the Ohio Court of Appeals, Sixth Appellate District

Case No. 2019-WD-047
State ex rel Jeremy Kerr -vs- Judge Reeve Kesley
Date of Judgment, August 8, 2019

In the Supreme Court of Ohio

Case No. 2019-1196
State ex rel Jeremy Kerr -vs- Judge Reeve Kelsey
Date of Judgment, March 25, 2020

STATEMENT OF THE BASIS OF JURISDICTION

Petitioner respectfully prays that a writ of certiorari issue to review the merits of the following Opinions of the Ohio Supreme Court, which appears at Appendix A to this Petition for Writ of Certiorari:

State ex rel Jeremy Kerr -vs- Judge Reeve Kelsey
Decided on March 25, 2020
Ohio Supreme Court case no. 2019-1196
2020-Ohio-

Petitioner invokes this Court's jurisdiction under 28 U.S.C. 1257(a). Further, Supreme Court Rule 10(c) provides that review on a writ of certiorari will be granted only for compelling reasons, such as, when a state court has decided an important federal question in a way that conflicts with relevant decisions of this Court. The facts of the case satisfies Supreme Court Rule 10(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment Fourteen

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive a person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

Initial Trial Court Proceedings

In 2011, Keith Lenz ("Lenz") sued Kerr Building, Inc. regarding a contract dispute in the Common Pleas Court of Wood County, Ohio [case no. 2011-CV-0853] with Judge Reeve Kelsey ("Judge Kelsey") presiding.

[Kerr Building, Inc. is not a legal entity. Appendix B is a copy of an Affidavit from the Ohio Secretary of State indicating that his office has "NO RECORD" of any Ohio corporation, trade name, or fictitious name known as "KERR BUILDING, INC."]

After Kerr Building, Inc. failed to answer Lenz's complaint, Judge Kelsey entered a default judgment in Lenz's favor, against non-legal entity Kerr Building, Inc.

Lenz then filed a "Motion to Pierce the Corporate Veil to Seek Damages Against Jeremy Kerr Individually". Judge Kelsey denied the motion, stating that Jeremy Kerr ("Kerr") must be amended as a defendant and properly served with the complaint. Judge Kelsey then granted Lenz leave to amend Kerr under Ohio Civil Rule 15.

Lenz filed an Amended Complaint under Ohio Civil Rule 15, which added Kerr as a defendant, and added a new claim; "Officer's Liability for Corporate Action".

Kerr filed a Motion to Dismiss the Amended Complaint arguing that Judge Kesley lacked authority, following the entry of default judgment against Kerr Building, Inc. to amend Kerr under Ohio Civil Rule 15. Judge Kesley denied the motion.

Prior to the filing of the Amended Complaint, Lenz never

moved Judge Kelsey to vacate the Default Judgment against Kerr Building, Inc., nor did Judge Kelsey enter an order vacating the Default Judgment.

Second Lawsuit

In 2013, Lenz filed a second lawsuit [case no. 2013-CV-0643] alleging that Kerr had fraudulently transferred real property to Beaver Creek Development Co, LLC., a company that Kerr had a membership interest.

Kerr filed a MOTION to Dismiss aruing that Judge Kelsey lacked subject matter jurisdiction of the case because (1) the judgment in the prior case is null and void due to the fact that "Kerr Building, Inc." is a non-legal entity; and, (2) Kerr was illegally amended to the prior lawsuit.

Judge Kelsey denied the motion by finding that [REDACTED] "Kerr Building, Inc." is a legal entity, and that he had authority to amend Kerr after default judgment.

Kerr did not appeal the judgment because Ohio Appellate Courts only have subject matter jurisdiction to hear errors of valid judgments. Under Ohio Law, the vacation of a void judgment may be sought by a motion to vacate, a writ of mandamus, or a writ of prohibition.

Writ of Mandamus

On June 24, 2019, Kerr filed a Complaint for Writ of Mandamus against Judge Kelsey in the Sixth Appellate District [case no. 2019-WD-047] in which Kerr claimed that the judgments Judge Kelsey rendered against Kerr violated his right to due process of law

guaranteed by the 14th Amendment to the United States Constitution.

In the proceeding, Kerr first established that the Default Judgment against non-legal entity "Kerr Building, Inc." is null and void. Patterson v V&M Autobody, 63 Ohio St 3d 573. Accordingly, Judge Kelsey lacked subject matter jurisdiction because no action had been commenced under Ohio Civil Rule 3. Patterson, supra.

Kerr then established that the Ohio Supreme Court mandated in Kraly v Vennewkirk, 69 Ohio St 3d 627 that a trial court lacks authority under Ohio Civil Rule 15 to amend a party (1) in the absence of a showing that the original complaint contained a misnomer or mistake, [Lenz never satisfied this requirement]; (2) to add ~~a~~ new claim, [the Amended Complaint adds a new claim]; and, (3) while retaining the original defendant, [Kerr Building, Inc. was retained as a defendant in the Amended Complaint].

Kerr further established that it is a long standing legal concept that a complaint may not be amended under Rule 15 after default judgment because once judgment has been entered, the complaint merges into the judgment and, therefore, Judge Kelsey lacked subject matter jurisdiction to review the complaint. FDIC v Weise Apartments, 192 FRD 100; Paganis v Blonstein, 3 F.3d 1072

In addition, the Ohio Supreme Court had mandated that the attempt to amend a party after the mere filing for default judgment "raises the spectre of prejudice". Peterson v Teosodio, 34 Ohio St 2d 161. [Ohio Civil Rule 15 requires the motion to be filed in a timely manner].

Kerr concluded that the void judgments rendered against Kerr violate his right to due process of law guaranteed by the 14th

Amendment to the United States Constitution.

On August 6, 2019, the Appellate Court sua sponte dismissed Kerr's Complaint for failing to state a claim. It reasoned that the Ohio Secretary of State's Affidavit only states that "Kerr Building, Inc." is not a registered "Fictitious Name" or "Trade Name", and because O.R.C. 1329.10(C) authorizes actions against non-registered "Fictitious Names" and "Trade Names", Judge Kelsey had subject matter jurisdiction of the case.

The Appellate Court ignored Kerr's Rule 15 claim, as well as, O.R.C. 1329.02(A) which prohibits the abbreviation "Inc." in the names of a "Fictitious Name" or "Trade Name".

Direct Appeal

On August 28, 2019, Kerr filed a Direct Appeal to the Ohio Supreme Court [case no. 2019-1196].

In the proceeding, Kerr initially argues that the name "Kerr Building, Inc." can never be mistaken for a "Fictitious Name" or "Trade Name" because O.R.C. 1329.02(A) prohibits the use of the abbreviation "Inc." in the name of a "Fictitious Name" or "Trade Name".

Kerr then re-stated his argument that the default judgment against non-legal entity "Kerr Building, Inc." is null and void. Patterson v V&M Autobody, 63 Ohio St 3d 573, Accordingly, Judge Kelsey lacked subject matter jurisdiction because no action had commenced under Ohio Civil Rule 3. Patterson, supra.

Kerr then re-established that Kraly v Vennewkirk, 69 Ohio St 3d 627 prohibits the amending of a party (1) in the absence of a showing of a misnomer or mistake [Lenz never satisfied this requirement]; (2) to add a new claim [the Amended Complaint adds

a new claim]; and, (3) while retaining the original party [the Amended Complaint retains "Kerr Building, Inc." as a defendant].

Kerr also reminded the Ohio Supreme Court that had previously mandated that the attempt to amend a party after the filing for a default judgment "raises the spectre of prejudice". Peterson v Teosodio, 34 Ohio St 2d 161.

Kerr then concluded, that the void judgments rendered against him violate his right to due process of law guaranteed by the 14th Amendment to the United States Constitution.

On March 25, 2020, the Ohio Supreme Court affirmed the Judgment of the Sixth Appellate District by applying Ohio Civil Rule 41(B)(3). The Ohio Supreme Court explained that because it did not specify whether it's dismissal in Kerr's prior case [the writ of mandamus filed in case no 2018-0100] was with or without prejudice, the prior dismissal operates as adjudication of the merits, thus Kerr's current claim is barred by res judicata.

[See Appendix A and Appendix D]

The application of Ohio Civil Rule 41(B)(3) directly conflicts with this Court's Decision in Semtek Int'l v Lockheed Martin Corp, 531 US 497 which prohibits the use of Rule 41 when the merits of the prior case were not adjudicated.

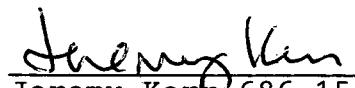
REQUEST FOR GRANTING THE WRIT

Supreme Court Rule 10 prescribes that a petition for writ of certiorari will not be granted only for compelling reasons, such as, when a state court has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The facts of this case, and the documents attached in the Appendix, on it's face, demonstrates a clear violation of Kerr's right to due process of law, and when presented this question of federal law, each level of the Ohio Courts settled the issue in a way that conflicts with this Court's decisions.

WHEREFORE, Petitioner requests this Court to grant his Petition for Writ of Certiorari.

Respectfully submitted,



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