No. 20-565

IN THE

SUPREME COURT OF THE UNITED STATES

George Matthews and Nina Matthews

Petitioners,

vs.

David Merbaum and Andrew Becker

Respondents.

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

REPLY BRIEF

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Pro-Se Petitioners

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I. Additional Question Presented

1. Whether the Eleventh Circuit Court of Appeals should have terminated the Defendant on this after receiving the case on appeal

II. Argument and Reply

The Eleventh Circuit Court of Appeals erred when it terminated the Defendant after the case was transferred the appeal court

1. Respondents have not been forthcoming to this Court. They are aware they were not identified as Defendants originally by the District Court. They were added to the action only after the case was submitted to the appeal court.
2. In the conclusion of the decision entered by Judge Jones he concluded that Matthews v. State Farm No. 1:10-cv-01641 was an old case which ended in 2012 and this statement was correct, however the Matthews filed a new case against their former attorneys David Merbaum and Andrew Becker for a Motion for Contempt.
3. The Mathews served by sheriff David Merbaum and Andrew Becker. David Merbaum and Andrew Becker received the complaint from Fulton Sheriff. (Matthews v. State Farm No. 1:10-cv-01641, N.D. Ga, Case Docket, *Motion for Contempt Against Attorneys David Merbaum and Andrew Becker with Brief in Support*, July 2, 2019, Doc 111).

4. David Merbaum and Andrew Becker filed their reply *Response in Objection to Motion for Contempt* as Merbaum Law Group, PC and their reply was signed by Plaintiffs' former attorneys David Merbaum and Andrew Becker (Matthews v. State Farm No. 1:10-cv-01641, N.D. Ga, Case Docket, *Response in Objection to Motion for Contempt*, July 17, 2019, Doc 115).
5. David Merbaum and Andrew Becker's objected that they should not be held in contempt because they should not be held in violation based on Judge Hunt's October 25, 2010 ex-parte hearing.
6. Although Judge Jones heard arguments by the Plaintiffs the Matthews and David Merbaum and Andrew Becker of Merbaum Law Group Judge Jones concluded that the Matthews argument was based on an old case Matthews v. State No. 1:10-cv-01641).
7. In Judge Jones conclusion he stated "Plaintiffs are cautioned and warned that any future filings that a without a plausible legal basis in the case *sub judice* (that has been closed since 2012) may be subject to monetary and other sanctions deemed appropriate by this Court and applicable rules/law." However, the Judge erred when he concluded the matter presented before him was between the Matthews and State Farm who were the Defendants in the original case which ended in 2012 (Matthews v. State Farm No. 1:10-cv-01641)

8. Additionally State Farm's attorneys are identified on Matthews v. State Farm as Mark Dietrichs and Kathleen Marsh and they were not served by the Matthews nor did not they file any reply to the court.
9. The Matthews filed an appeal to the District Court because of the errors on the case and served David Merbaum and Andrew Becker who represented Merbaum Law Group.
10. When the Matthews became aware that David Merbaum and Andrew Becker representing Merbaum Law Group had not filed an appearance into the case or any response they contacted the Eleventh Circuit Court of Appeal. Shortly after the appeal court was notified the court terminated State Farm as the Defendants on the appeal action and added David Merbaum and Andrew Becker of Merbaum Law Group as the Interested Party - Appellee. This action removed the original Defendants State Farm for which Judge Jones had entered his decision. George Matthews et al v. Andrew Becker, Docket Report, No. 19-15001, shows: State Farm and Fire & Casualty Company status as Terminated: 02/11/2020).
11. The result of the Eleventh Circuit COA action meant that Plaintiff's Matthews were not appropriately appealing the decision as entered by the District Court because the Defendants were replaced with David Merbaum and Andrew Becker which was not the same case as Matthews v. State Farm. The action taken by the Eleventh Circuit COA to remove the Defendant State

Farm resulted in the Eleventh Circuit COA being presented with a different argument than what Judge Jones had entered a decision on.

12. It was alarming that the Eleventh Circuit thought it appropriate to create an appeal for an entirely different Defendant once the case reached the appeal court which. (Matthews v. State Farm No. 1:10-cv-01641, N.D. Ga, December 11, 2019, Doc 117)

13. When the Eleventh Circuit COA sent out the original Briefing Notice it was sent to Defendant State Farm which was the wrong party. On February 11, 2020 amd re-noticed the appropriate party which had responded to the Motion for Contempt in the District Court which was David Merbaum and Andrew Becker of Merbaum Law Group (Matthews et al v. Andrew Becker (Docket Report) No. 19-15001, Briefing Notice to David Merbaum and Andrew Becker, February 11, 2020).

14. This restarted the court rule which required attorneys to file into the case within 14 days. Pursuant to 11th Cir. R. 46-5 All attorneys (except court appointed attorneys) must file an Appearance of Counsel Form in each appeal in which they participate within 14 days after notice is mailed by the clerk. Additionally the 11th Cir. R. 46-6 outlines the Clerk's Authority to Accept Filings. (a) Filings from an Attorney Who Is Not Authorized to Practice Before this Court. (1) Subject to the provisions of this rule, the clerk may conditionally file the following papers received from an attorney who is not authorized to practice before this court, unless the attorney has been

suspended or disbarred from practice before this court or has been denied admission to the bar of this court. Attorneys were due to file an appearance by February 26, 2020. The next day February 27, 2020 David Merbaum and Andrew began filing into the case violating without making an appearance as attorneys which violated 11th R. 46-5.

15. The Mathews filed a motion to the appeal court requesting they require David Merbaum and Andrew Becker to adhere to the rule (Matthews et al v. Andrew Becker, No. 19-15001, *Motion to Disqualify Attorney's Filing Certificate of Interested Persons Form Due to Failure to File an Appearance of Counsel Form,* March 2, 2020). Attorneys responded by filing an objection stating that they would not file an appearance unless required by the appeal court. Attorneys also filed a sanction against the Matthews for raising the issue that they were not adhering to the rule. (Matthews et al v. Andrew Becker, No. 19-15001, *Objection to Motion to Disqualify Attorney's Filing Certificate of Interested Persons Form Due to Failure to File an Appearance of Counsel Form with incorporated motion for sanctions,*).

16. The Eleventh Circuit COA denied the attorneys request to sanction but also denied the Matthews motion and did not rise to require attorneys to sign an entry of appearance in order to proceed before the court (Matthews et al v. Andrew Becker, No. 19-15001, Order, March 30, 2020).

17. The appeal sent to the Eleventh Circuit COA was obviously flawed upon arrival from the District Court. State Farm should not be allowed to use

Judge Jones conclusion in an future litigation because the Matthews did not file a Motion for Contempt against State Farm. The Motion for Contempt was filed against David Merbaum and Andrew Becker. As such, the warning entered by Judge Jones was entered in error. The conclusion entered by Judge Jones was also not applicable to David Merbaum and Andrew Becker of Merbaum Law Group because it was entered for Defendant State Farm. The concerning issue before this Court is that David Merbaum and Andrew Becker have filed to use the flawed ruling by Judge Jones to sanction the Matthews being aware it was an erroneous decision and not applicable to their case.

18. The decision by Judge Jones should not have been upheld, but overturned once it reached the appeal court.

Respondents Case was dismissed in Cobb Superior Court and they hold no judgment against the Petitioners

19. Specifically Respondents have excluded the fact that their case before Cobb Superior Court was dismissed without prejudice and never re-filed. Petitioners owe nothing to Respondents David Merbaum, Andrew Becker or Merbaum Law Group.

20. The Respondents have excluded the outcome of their filing before Cobb Superior Court. Merbaum Law Group v. Nina Matthews was dismissed from Cobb Superior Court *sua sponte* which means it was Cobb Superior Court

who exercised its power to dismiss the case and not the Plaintiffs. The dismissal of a case *sua sponte* also means that the court has stepped out of its passive role in the litigation process and taken action to ensure proceedings are fair and proper (Cobb Superior Court Cobb County State of Georgia, No. 15-1-3*498*-51, December 12, 2019, Doc #260, *Final Order Dismissing Case Without Prejudice*).

21. OCGA 9-11-41, which governs dismissal of actions, contemplates both voluntary dismissals upon plaintiff's motion of stipulation, pursuant to OCGA 9-11-41(a), and involuntary dismissals pursuant to OCGA 9-11-41(b) for, inter alia, the "failure of the plaintiff to....comply with...any order of court." The trial court's sua sponte dismissal order does not specify under which it operates, but our Supreme Court has found that a sua sponte dismiss may function as an involuntary dismissal. Such an involuntary dismissal is authorized by OCGA 9-11-41(b)")(emphasis supplied), citing Cramer, Inc. v. Southeaster Office Furniture Wholesale Co., 171 Ga.App.514,515(1), 320 S.E.2d 223 (1984)(where party made no formal motion to dismiss, this Court found that "while it is true that OCGA 9-11-41(b) contemplates a motion by a defendant, the court may exercise inherent power to dismiss sua sponte)(citations omitted). Although OCGA 9-11-41(b) imposes certain requirement for its application, neither party objected or moved for reconsideration of its dismissal.

22. Attorneys for Merbaum Law Group never filed any motion to Cobb Superior Court to reconsider their case after the order was entered to dismiss the case.

23. The dismissal of a lawsuit generally deprives the trial court of jurisdiction to take further action in a case. A dismissal "deprive[s] the trial court of jurisdiction and [leaves' the parties in the same position as if the suite had never been filed." (Citation omitted.) *Lakes v. Marriott Corp., 264 Ga.* 475, 478, 448 S.E.2d 203 (1994).

24. Attorneys David Merbaum and Andrew Becker and Merbaum Law Group know or should have known the ramifications of Cobb Superior Court's action to dismiss their case and their decision not to re-file their case because they failed to re-file their case.

25. Effective December 12, 2019 Cobb Superior Court divested itself of jurisdiction and therefore could not take any further action on Merbaum Law Group v. Nina Matthews.

26. Attorneys did not re-file their case to Cobb Superior Court and Attorneys did not file any appeal. Attorneys took absolutely no legal action after Cobb Superior Court dismissed their case without prejudice. The claims by Respondents before this Court that somehow their case was preserved or upheld are false (Cobb Superior Court Cobb County State of Georgia, No. 15-1-3*498*-51, December 12, 2019, Doc #260, *Final Order Dismissing Case Without Prejudice*).

III. Additional Reasons to Grant the Petition

27. It was clear that the District Court sent a flawed error to the Eleventh Circuit COA It was also clear that the Eleventh Circuit COA believed they had received a flawed case because they attempted to remedy the issue by removing the Defendants State Farm and replacing them with the Plaintiff's originally intended Defendant David Merbaum and Andrew Becker of Merbaum and Becker.

28. The error made in the District Court by ruling a case for the wrong Defendants was so severe it is difficult to believe that the Eleventh Circuit COA could believe that justice could prevail in a case where they took action to replace the Defendants on an appeal.

29. As a result of the error by the District Court who erroneously considered the Motion for Contempt against State Farm instead of David Merbaum and Andrew Becker this meant that the Plaintiff's filed action Motion for Contempt did not hold the intended Defendant accountable.

IV. Conclusion

Petitioners prayerfully request the this Court grant their petition for certiorari.

DATED this 1st day of February 2020

Respectfully submitted,

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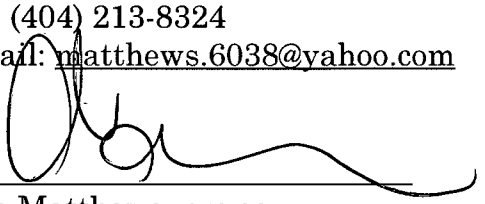

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