No.

In The
Supreme Court Of The United States

HALLMARK CARE SERVICES, INC. ET AL.,
Petitioners,

v.

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF SPOKANE ET AL.,
Respondents.

On Petition for a Writ of Certiorari To The
United States Court of Appeals
For the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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Questions Presented

Spokane County initiated and prosecuted, through members of its local superior court and without counsel, 124 actions against the Petitioners by mailing un-filed, ex parte letter orders; by entering ex parte orders without notice or hearing; and, by holding scores of expedited "drumhead" hearings through which the government summarily transferred clients to competing businesses; by entering money judgments against the Petitioners absent any due process. Petitioners promptly appealed, and while the state-court appeal was pending they filed due process claims in the local federal district court which ultimately dismissed the action based on the *Rooker-Feldman* doctrine and judicial immunity.

1. Does the *Rooker-Feldman* doctrine bar federal constitutional claims arising from a government action in the state trial court in before a final ruling in the matter was entered in the state courts?

2. Does the doctrine of judicial immunity extend beyond personally protecting the individual judges to shielding the government from a citizen's claims seeking redress for the damages arising from the unconstitutional actions of the state court?

Parties to the Proceedings

Petitioners, Hallmark Care Services, Inc., a Washington Corporation, d.b.a. Castlemark Guardianship and Trusts d.b.a. Eagle Guardianship; and, Lori Petersen, were the Plaintiffs in the trial court, the Appellants in the Court of Appeals, and Cross-Respondents in the Court of Appeals.

Respondents, the Washington State Superior Court for the County of Spokane and Spokane County were the Defendants in the federal district court, and respondents and cross-appellants in the Ninth Circuit Court of Appeals.

Corporate Disclosure Statement

Hallmark Care Services, Inc. is a nongovernmental corporate party. Hallmark Care Services, Inc. is wholly-owned by PJLA, LLC, a Nevada limited liability company. None of the ownership is publicly held.

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Petition for Writ of Certiorari

Petitioners Hallmark Care Services, Inc. and Lori Petersen respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Citations of the Opinions and Orders Entered in the Case

The Ninth Circuit entered its opinion and ruling in *Hallmark Care Services, Inc. et al. v. Superior Court Of The State Of Washington For Spokane and Spokane County*, Nos. 17-35678, 17-35717 on June 17, 2020. The opinion was unpublished. A copy of the opinion is attached hereto in the appendix starting on page 2.

The district court entered its opinion and ruling on July 27, 2017. *Hallmark Care Services, Inc. v. Superior Court of State of Washington For Spokane County*, No. 2:17-CV-00129-JLQ. United States District Court, E.D. Washington. The opinion was unpublished. A copy of the opinion is attached hereto in appendix starting on page 6.

Statement of Jurisdiction

The Ninth Circuit entered its Opinion on June 17, 2020. This Court has jurisdiction under 28 U.S.C. §1254(1).

On March 19, 2020, in light of the ongoing public health concerns related to COVID-19, this Court entered an order extending the deadline to file any petition for a writ of certiorari to 150 days from the date of the lower court judgment. The filing of this petition is timely.

Constitutional Provisions

United States Constitution, Amendment 14

No State shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case and Proceedings

The Petitioners to this Writ are Lori Petersen d.b.a Empire Care Services, CPG #9713, Hallmark Care Services Inc. d.b.a Castlemark Guardianship and Trusts, CPG# 5128; and Hallmark Care Services Inc. d.b.a. Eagle Guardianship and Professional Services, CPG# 5132 (together hereinafter referred to as "Hallmark").

A. Procedural Background

This case arose out of an action commenced by judicial members of the Superior Court of the State of Washington for Spokane County[1], the local county trial court, in which it, sua sponte, initiated, and self-prosecuted, actions in 124 separate cases by which it transferred the Petitioners' clients to competing businesses, and then entered money judgments against the Petitioners without affording them basic procedural due process like prior notice, the right to a fair hearing, nor the right to investigate and defend the claims made against them.

The Petitioners immediately appealed the orders and judgments to the Washington State Court of Appeals, Div. III, and then, while the appeal was

1 Referred to hereafter as the "Spokane County Superior Court."

still pending, filed a concurrent action in the United States District Court Eastern District of Washington in they claimed breach of due process under the Fourteenth Amendment and violation of the Separation of Powers doctrine.

The federal district court dismissed the action based on the *Rooker-Feldman* doctrine and judicial immunity. The Petitioners appealed the ruling to the Ninth Circuit Court of Appeals. While the appeal was pending before the Ninth Circuit Court of Appeals, the Washington State Court of Appeals entered its ruling in which it found that the trial court violated the Petitioners' right to due process, reversed all of the money judgments, and remanded the cases back to the trial court for further proceedings. On June 17, 2020, the Ninth Circuit Court of Appeals entered its ruling, without oral argument, in which it affirmed the ruling of the district court.

Hallmark Care Services, Inc. and Lori Petersen now petition this Court to review the lower courts ruling based on the fact that their application of the *Rooker-Feldman* doctrine is inconsistent with this Court's narrow application of that doctrine as stated in *Lance v. Dennis;* based on the fact that the personal immunity of judges cannot be expanded to

protect the government from its wrongful actions; and, based on the highly unusual and improper actions of the local State court in self initiating and self-prosecuting an inquisitorial action against the Petitioners. *Lance v. Dennis* 546 U.S. 459 (2006).[2]

B. Factual Background

In the State of Washington, professional guardians are appointed by the court to represent incapacitated persons, who have the right to charge fees for carrying out their duties. WASH. REV. CODE. §11.88.008 (1997). These guardians, formally known as certified professional guardians, or CPGs, can be either individuals or entity agencies. WASH. STATE CT. GEN. R. 23. Professional guardians are certified under Washington State Court General Rule 23; are licensed by the State of Washington; are governed by the Washington State Certified Professional Guardian Board (the "CPG Board") as established by the Washington State Supreme Court; and, are specifically subject to the Guardianship Program Rules promulgated by the CPG Board. WASH. REV. CODE. §2.72.030 (2009), WASH. STATE CT. GEN. R. 23, WASH. STATE CT. GUARDIANSHIP PROGRAM RULES. Any modification or termination of a guardianship is

2 This is a sister case to a later action arising from the same set of initial facts, but that was removed to the federal district court after remand from the State court of appeals.

supposed to be subject to a statutory procedure and process found in RCW 11.88.120.[3]

Initiation of State Inquisitorial Proceedings

On March 13, 2015 the Washington State Supreme Court affirmed and adopted the CPG Board's recommendation that Ms. Petersen was to be suspended from acting as a professional guardian for one year. This was a final order in a disciplinary action that applied exclusively to Ms. Petersen, a certified professional guardian; it did not apply to Hallmark Care Services Inc. d.b.a. Eagle Guardianship and Professional Services nor Hallmark Care Services Inc. d.b.a Castlemark Guardianship and Trusts each of which operated as a unique Certified Professional Guardianship Agency ("CPGA"); it did not remove any clients that were assigned to her[4]; and, it presumably provided that she could return to her duties as a professional guardian at the expiration of the suspension, subject to monitoring for a 24 month period.

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3 A copy of the statute is provided in the appendix at page 86.

4 The Washington State professional guardianship rules require a stand-by guardian who will take the place of a professional guardian when the assigned guardian is unable to act.

Judge K. O'Connor, Judge E. Kalama-Clark, Comm'r. R. Anderson[5], and A. Kemmerer, who held the title of "Coordinator"[6] of the Spokane County Guardianship Monitoring Program[7] in the superior court, were all members of the Spokane County Superior Court's Guardianship Monitoring Committee. As evidenced by the statements and declarations of these individuals, Judge K. O'Connor served as the Chair of the Superior Court Guardianship Monitoring Committee which in turn is charged with oversight of the Superior Court Monitoring Program. "The Guardianship Monitoring Committee is a program within the Superior Court Administrator's Office that facilitates the furtherance of the Court's responsibility to each incapacitated person who is under the protection of a guardianship."[8]

Four days after the Washington State Supreme Court affirmed one-year suspension of Ms. Petersen, Comm'r Anderson, a Spokane County Superior Court commissioner, member of the local

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5 Comm'r. Anderson was also a member of the Washington State CPG Board.

6 A copy of the Declaration of A. Kemmerer is included in the Appendix at page 97.

7 No court rule, statute, administrative rule, or rule making defined the powers or authorities of this program.

8 *See* Declaration of Judge Kathleen O'Connor, App. pg. 92.

Spokane County Guardian Committee, and member of the Washington State Certified Professional Guardian Board, sent an ex parte letter to Ms. Petersen, dated March 17, 2015, reminding Ms. Petersen that she was suspended, and demanding that she respond in writing within two days of her "specific plan as to each individual [that she] represent[ed]."[9] The letter included a list of guardianship cases not only for Ms. Petersen, but also for Hallmark Care Services, Inc. d.b.a Castlemark Guardianship and Eagle Guardianship and Professional Services. None of the guardianship s in the letter were assigned to nor before Comm'r Anderson.

Through counsel, Ms. Petersen replied to the ex parte letter stating that succession planning was already in place, and that the current standby guardian for Hallmark, and for all of the incapacitated persons ("IPs") assigned to Ms. Petersen, would "petition the Court [under WASH. REV. CODE. §11.88.120] to appoint Hallmark, an agency in good standing, as the successor guardian to during the term of Ms. Petersen's suspension. The response further pointed out that "out of the list of cases that [Comm'r Anderson] forwarded, only those under "Empire" or "Lori Petersen [were] actually

9 A copy of this letter is in the Appendix at page 82.

affected by this suspension, and that "the remaining cases where "Eagle" or "Castlemark" were separate licensees, in good standing, who were not subject to the suspension.

In furtherance of her duty to remove herself as a guardian during the term of the suspension, Ms. Petersen resigned from her governor positions with Hallmark Care Services. Hallmark held a meeting of the Shareholders on April 1, 2015 at which it elected a replacement director and officer. In addition to ensuring a firewall between Ms. Petersen and Hallmark during her one-year suspension, the certified guardianship agency added an additional professional guardian to be in compliance with Washington Court General Rule ("GR") 23.[10]

As of April 1, 2015, Hallmark had two CPGs of record, both in good standing, and the agency itself

10 Washington Court General Rule 23(d)(2) requires that agencies meet three requirements in addition to individual CPGs: (i) All officers and directors of the corporation must meet the qualifications of RCW 11.88.020 for guardians; (ii) Each agency shall have at least two (2) individuals in the agency certified as professional guardians, whose residence or principal place of business is in Washington State and who are so designated in minutes or a resolution from the Board of Directors; and (iii) Each agency shall file and maintain in every guardianship court file a current designation of each certified professional guardian with final decision-making authority for the incapacitated person or their estate.

met all of the GR 23 compliance requirements, and was in good standing.

The Guardianship Monitoring Committee, chaired by Judge K. O'Connor, held cloistered, non-public meetings in which the committee members privately discussed Ms. Petersen's suspension and her reply to Comm'r. Anderson's ex parte letter. Presumably, based on these discussions[11], Judge O'Connor drafted and sent ex parte letter directives to all professional guardians in Spokane County, and to all registered guardians ad litem in Spokane County, and to counsel for Ms. Petersen. Judge O'Connor then requested her colleague on the Guardianship Monitoring Committee, Judge Kalama-Clark, to issue orders in 124 separate causes of action to appoint guardians ad litem, and to appoint a special master[12] to oversee the "transition" of guardianships from Ms. Petersen and Hallmark to competing professional guardians, and an order requiring Ms. Petersen "to place $100,000 into the registry of the court or provide a $100,000 surety bond approved by the court to secure payment of ... the Special Master's fees."

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11 The dismissal of these actions denied Ms. Petersen the legal opportunity to make a discovery request for any minutes or records of the actual committee meetings.

12 A close friend to Judge O'Connor.

On April 7, 2015, A. Kemmerer, who held the title of "Coordinator"[13] of the Guardianship Monitoring Program[14] in the Spokane superior court, emailed copies four letter orders to Hallmark's counsel.

First, was an un-filed ex parte letter order from J. O'Connor of the Spokane County Superior Court to Certified Professional Guardians in Spokane County, not including those that worked for Hallmark, informing them that "[i]n the upcoming weeks, Guardians ad Litem will be contacting you to take on several cases due to the recent suspension of CPG Lori Petersen, effective April 28, 2015."[15] These professional guardians were for-profit, individuals and agencies that competed with Ms. Petersen and Hallmark in the guardianship service industry.

Second, was an un-filed ex parte letter order from J. O'Connor of the Spokane County Superior Court to guardians ad litem in Spokane County informing them that "the Court will assign Guardians ad Litem to each [of the 124 cases under Hallmark Care Services, Inc. or Lori Petersen] to

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13 A copy of the Declaration of A. Kemmerer is included in the appendix at page 97.

14 No court rule, statute, administrative rule, or rule making defined the powers or authorities of this program.

15 A copy of this letter is included in the appendix at page 74.

investigate the appointment of a guardian, successor guardian and/or standby guardian." [16]

Third, was un-filed ex parte letter order addressed to Hallmark's counsel from J. O'Connor of the Spokane County Superior Court stating, in part, that "[t]he Court will not appoint as a successor guardian any certified professional guardian associated with Hallmark or with entities falling under the Hallmark umbrella. A special master shall be appointed to oversee the transition process and individual guardians ad litem will determine successor guardians for these incapacitated persons. The Court will require $100,000 surety bond to secure payment of fees."[17]

None of these letters were entered into any record nor filed with the Clerk of the Spokane County Superior Court by J. O'Connor nor Comm'r. Anderson.

Last, was an ex parte General Order Appointing Special Master in 126 cases. This was the first order actually entered into the record.

The aforementioned letter orders and General Order Appointing Special Master were issued by the Spokane County Superior Court without prior notice

16 A copy of this letter is included in the appendix at page 75.

17 A copy of this letter is included in the appendix at page 78.

to Hallmark, without a hearing, and without an opportunity to present evidence or defend against the courts action. At the time these letters were sent and the General Order Appointing Special Master was issued, none of the guardianship cases that the letters and order pertained to were assigned to an of the three judicial members who executed the orders.

Ms. Petersen and Hallmark responded by filed a Motion for Reconsideration in each of the 124 cases alleging several errors and issues including: lack of jurisdiction for superior court to order or to expand on the disciplinary actions issued by the Certified Professional Guardian Board and affirmed by the Supreme Court; lack of legal authority to order the bond/penalty and the appointment of the special master; and denial of due process wherein Hallmark Care Services, Inc. was not provided notice, nor given a right to appear or defend against the order.

The Drumhead Hearings

On May 4, 2015, **before** the Motion for Reconsideration could be scheduled for hearing by the judge who executed the General Order, the Spokane County Guardianship Monitoring Program, through the superior court's commissioners, commenced hearings in which the Petitioners were summarily removed as the guardians of record, and

their clients were transferred to competing professional guardians absent any proof of wrongdoing, for all 124 IPs assigned to Lori Petersen and Hallmark.

At each of these hearings, the court commissioner acted as prosecutor, fact witness, and judge. No opposing counsel was present to argue the governments, or trial court's position; no notice of allegations against Hallmark and Petersen was served on them prior to any hearing; no evidence was entered in support of any allegations against Hallmark and Petersen; and the commissioner, acting as judge, prosecutor, and fact witness took no consideration of the continued due objections voiced by Hallmark and Petersen.

On May 8, 2015, the Spokane County Superior Court, itself, appeared, at the personal request of the judge who initiated the action[18], through a Notice of Limited Appearance by the Deputy Prosecutor of Spokane County to appear on behalf of the court at the hearing on the consolidated Motion for Reconsideration.

After receiving the notice of limited appearance on behalf of the Superior Court itself,

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18 A copy of the Declaration of Judge Kathleen M. J. O'Connor' is provided in the appendix at page 91.

counsel for Hallmark informed the commissioner overseeing the Spokane County Superior Court's the subsequent removal hearings, the next of which was on May 13, 2015, about the Notice of Appearance filed by counsel on the Court's own behalf. Counsel for Petersen/Hallmark further informed the bench that because the court's attorney was not present at the hearing, that it would be a violation of the rules of professional conduct[19] to communicate with a party, here the Superior Court, who was represented by counsel in a matter for which the appellants' attorney did not have permission from the court's attorney to do so. The trial court stated that the representation by counsel did not apply to these proceedings and moved forward with the proceedings despite the objection and notice. [20]

On May 15, 2015, after two weeks of hearings and orders already entered by the trial court in which Lori Petersen or Hallmark had their clients summarily removed from them, the Spokane County Superior Court scheduled and heard Hallmark's consolidated Motion for Reconsideration.

In that hearing several issues were brought before the trial court. The Spokane County Superior

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19 WASH. R. PROF. CONDUCT §4.2

20 This issue is referenced in the District Court's Opinion, a copy of which is provided in the appendix at page 13

Court's authority to appoint a special master for this matter; the authority and powers of the local Guardianship Monitoring Program, and the source of the enabling rule or statute creating the "agency;" the unknown identity of the claimant in the action; the trial court's likely violation of Petersen's and Hallmark's Fourteenth Amendment rights; the lack of authority to require a bond; and, the lack of due process in general.

In the trial court's oral ruling on Hallmark's and Petersen's Motion for Reconsideration held on May 18, 2015, the trial court admitted that ***the Superior Court was, itself, the original claimant and client of counsel in this action.*** The trial court also stated that the General Order Appointing Special Master "was presented to [her] ex parte without a court reporter present so no transcript was available. It was presented to [her] because it was not an order that would have been brought to the court commissioner, even though they handle most of our guardianship hearings, and because J. O'Connor was out on medical leave." The trial court refused to identify who, in fact, presented the order. With regard to the lawfulness of the order, the trial court stated that "the order only did two things - appointed special master and set bond." The trial court further went on to claim that the order

"does not remove Hallmark from any case nor does it order the appointment of any guardian in any case."

This last claim was contrary to the actual language in the order that clearly states the special master was appointed "to oversee the transition to and appointment of successor guardians for incapacitated persons serviced by the said Lori Petersen and the agencies of which she is a designated CPG or standby guardian."

The hearings instituted as a result of the Order Appointing Special Master did, in fact, result in two things: they forcibly removed Hallmark and Petersen as guardians from the cases rightfully assigned to them, and assigned a new guardian - a competing for-profit individual or agency - to the incapacitated party. These "hearings" ended on June 4, 2015.

Without notice, without hearing, without presentment, and with no opportunity for Hallmark to object or defend, the trial court entered money judgments against Ms. Petersen and Hallmark dated between June 5 and June 8, 2015.

Hallmark and Petersen promptly appealed each of the 124 cases for both the improper removal of as guardians and the money judgments to the Washington State Court of Appeals Division III.

On April 6, 2017, while the state-court appeal of the trial court's actions was still pending, Hallmark filed an action in the local federal district court asserting claims for Lack of Due Process, Judicial Abuse of Authority, and breach of Separation of Powers doctrine.

On July 27, 2017, the United States District Court for the Eastern District of Washington dismissed the action citing the *Rooker-Feldman* doctrine and judicial immunity. The district court, in its ruling it erred in stating that " appeal was eventually dismissed by Division III in April 2017." App. pg. 14. Contrary to this remark, the Washington State Court of Appeals, Div. III issued its ruling in the matter over a year later, on October 18, 2018, in which it reversed the money judgments and remanded the matter back to the trial court for further consideration.[21]

Hallmark filed a timely appeal of the district court's ruling to the United States Court of Appeals for the Ninth Circuit. On June 17, 2020 the Ninth Circuit, without oral argument, entered its opinion affirming the lower court.

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21 A copy of this ruling by the Washington State Court of Appeals, Div. III is provided in the appendix at page 28.

Argument For Writ of Certiorari

The Rooker-Feldman doctrine should not bar federal constitutional claims arising from a State action before a final ruling is entered in the state courts.

The *Rooker-Feldman* doctrine prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a de facto appeal from a final state-court judgment. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 285-286 (2005).

In the present case, the local federal district court applied the *Rooker-Feldman* doctrine on the basis that the federal action was filed subsequent to the orders and judgments entered by the local state trial court despite the fact that the orders and judgments were entered absent due process, and despite the fact that the trial court actions were all pending appeal in the state court of appeals. The Ninth Circuit agreed with that reasoning and affirmed the lower court's ruling.

But, that reasoning belies the underlying facts in this matter, the severe injustice and unconstitutionality of the local trial court's actions in this matter, and creates a corrupt loophole wherein

state courts can enter sua sponte, ad hoc judgments with impunity absent due process for the aggrieved party.

As this Court ruled in 2005, lower federal courts have variously interpreted the *Rooker-Feldman* doctrine to extend far beyond the contours of the *Rooker*[22] and *Feldman*[23] cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law under 28 U.S.C. §1738. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. at 281. In *Exxon*, this Court clarified the narrow *Rooker-Feldman* doctrine by stating that it is confined to cases of the kind from which it acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the federal district court proceedings commenced and inviting district court review and rejection of those judgments. *Id.* at 284.

In 2011, this Court further clarified the rationale and basis of the *Rooker-Feldman* doctrine by stating that "[t]his Court is vested, under 28 U.S.C. §1257, with jurisdiction over appeals from

22 *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

23 *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 463 (2006). Final judgments are those "rendered by the highest court of a State in which a decision could be had." 28 U.S.C. §1257.

This Court has made it very clear that "[n]either *Rooker* nor *Feldman* elaborated a rationale for a wide-reaching bar on the jurisdiction of lower federal courts, and our cases since *Feldman* have tended to emphasize the narrowness of the *Rooker-Feldman* rule. *Lance v. Dennis*, 546 U.S. at 463. But, several circuit courts, including the United States District Court for the Eastern District of Washington, and the Ninth Circuit in this matter, continue to apply a broad bar on jurisdiction of the district courts over state-court cases that have yet to reach a final determination as defined under 28 U.S.C. §1257. *See*, *e.g.*, *In re General Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 134 F.3d 133 (3d Cir. 1998); *Jordahl v. Democratic Party of Va.*, 122 F.3d 192 (4th Cir. 1997), *cert. denied*, 118 S. Ct. 856 (1998); *Richardson v. District of Columbia Court of Appeals*, 83 F.3d 1513 (D.C. Cir. 1996); *Campbell v. Greisberger*, 80 F.3d 703 (2d Cir. 1996); *Charchenko v. City of Stillwater*, 47 F.3d 981, 983 n.1 (8th Cir. 1995); *Lancellotti v. Fay*, 909 F.2d 15, 17 (1st Cir. 1990);

Based on the proceedings described above, the unique question and issue presented this Court with regard to the *Rooker-Feldman* doctrine is "can a State, and its State trial court avoid review and subvert the constitutional rights afforded to an individual process by entering judgments against a party without due process?" Or, in other words, can the *Rooker-Feldman* doctrine apply where the start party had no access to due process, where the state court system itself is originator of the issue and damages, and while an appeal of those actions was still pending in the state court of appeals?

Passing those questions through the filter of 28 U.S.C. §1257, and this Court's ruling in *Lance v. Dennis* yields a resounding answer of "no". The United States District Court and Ninth Circuit have ruled to the contrary, and the Petitioner's last opportunity for due process now lies at the steps of this Court.

The doctrine of judicial immunity should not extend beyond protecting individual judges to shielding the government from legitimate claims for the damages arising from the unconstitutional actions of the state court.

Under Washington Statute, ***all*** "local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation." WASH. REV. CODE § 4.96.010(1) (2011). No exception exists for courts, nor for administrative agencies of the courts. See *Id.*

Judicial immunity, and its counterpart quasi-judicial immunity, protect the ***individuals*** from civil suit for acts performed in their official capacities. *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). A judge loses his or her immunity where he or she acts in the "clear absence of all jurisdiction," or performs an act that is not "judicial" in nature.

Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 335 (1871), *Stump v. Sparkman*, 435 U.S. 349, 360 (1978).

To be clear, the defendants in this action were the County of Spokane Washington, and its Superior Court - not the individual judges.

This court has wisely recognized that caution should accompany any application of absolute immunity. *Forrester v. White*, 484 U.S. 219, 223-24 (1988). Absolute immunity, is "strong medicine" that can only be justified when the likelihood that of collateral liability for a judge performing his or her duties is high. *Id*. at 230.

Even though they were not named as defendants nor parties to the action, it is a worthy endeavor to discuss whether or not immunity should apply to some of the individual actors in this matter - actors whose immunity the local district court and Ninth Circuit Court of Appeals has extended to the Spokane County and the government of despite a statute, declaring that all local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith

purporting to perform their official duties. WASH. REV. CODE § 4.96.010(1)

Immunity is lost in two broad circumstances: a judge is not immune from liability for non-judicial actions, and a judge is not immune for actions not taken in the judge's judicial capacity. *Mireles v. Waco*, 502 U.S. 9, 11 (1991).

In this case, Judge O'Connor, who drafted and issued the letter orders commencing the state action, admits in her own declaration that "In [her] capacity as chair of the Guardianship Monitoring Program Committee [she] was aware that Appellant Lori Petersen's License to practice as a certified professional guardian was suspended by the Washington State Supreme Court effective April 27, 2015 for a period of one year." App. pg. 84. She further admitted that "[i]n light of Ms. Petersen's suspension, immediate action was necessary to replace her as the primary or standby guardian." And, while Judge Ellen Kalama-Clark refused to identify "who" brought the order for her to sign, Judge O'Connor admits that "[a]t [her] request, the Honorable Ellen Clark of the Superior Court issued an Order Appointing Special Master...." *Id.* at 94-95 And, Judge O'Connor declared that she personally requested the assistance of the Spokane County

Prosecuting Attorney, with whom she would be designated as the contact to advise and consult on the legal issues of the matter. *Id.* at 95.

In *Sparkman*, the this Court looked at two factors to determine whether an act by a judge is "judicial": the act itself, and the expectations of the parties. *Stump v. Sparkman*, 435 U.S. at 362. With respect to the nature of act, this Court looked at "whether it is a function normally preformed by a judge, and, with respect to the expectation of the parties, "whether they dealt with the judge in his judicial capacity." *Id*.

It is difficult to imagining that, with respect to the expectation of the claimant, a judge was being dealt with in her "judicial capacity" where none of the matters were assigned to nor before that judge; where that judge was personal acting on information she received in an administrative committee; where that judge issued letter "orders" without entering them into the record; where that judge cajoled another judge on the court to enter a ruling without notice or hearing to the parties; where that judge personally requested the assistance of counsel only after learning that her "orders" were being contested' and, where that judge personally entered here own

declaration in an appellate proceeding that was reviewing her actions.

To be blunt, this is not how our system is supposed to work.

Conclusion and Plea for Relief

The Fourteenth Amendment to the United States Constitution provides that a State shall not "deprive any person of life, liberty, or property, without due process of law." Amdt. 14, §1. The amendment does not make an exception when the State acts through its Judicial Branch.

The federal guaranty of due process extends to State action through its judicial, as well as through its legislative, executive, or administrative, branch of government. *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 680 (1930).

This Court has described "the root requirement" of the Due Process Clause as being "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." *Id.* quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971). Whether acting through its judiciary or otherwise, a State may not deprive a person of all existing remedies for the enforcement of a right which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it. *Id.*

Furthermore, due process requires a "neutral and detached judge in the first instance," *Concrete*

Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California, 508 U.S. 602, 618 (1993). "[J]ustice," indeed, must satisfy the appearance of justice. *Id.*

This Court has commented that "**[i]t would be very strange if our system of law permitted a judge to act as a grand jury and then try the very persons accused as a result of his investigations**." *In re Murchison* 349 U.S. 133, 137 (1955). But, that is almost exactly what happened in this case, and when these claims were brought before the federal court, they dismissed the action based on the *Rooker-Feldman* doctrine while the appeal was still pending, and further excused the State courts actions by expanding the personal judicial immunity of the judges to the shield the government.

The Courts are supposed to be the branch of government whose procedures are, by far, the most protective of individual rights. *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, 560 U.S. 702 (2010).

These are the issues that were brought before the United States District Court, which quickly dismissed the action before it could even begin, and that were affirmed by the Ninth Circuit Court of Appeals. These are the issues that are still yet to be

heard and litigated in any court or tribunal even after five years of litigation to prevent the the matters from being summarily swept under the rug.

Petitioners ask this court to review whether dismissal in the underlying matter was proper based on either the *Rooker-Feldman* doctrine or absolute judicial immunity extending from the individual judicial member to the county who was the judgment creditor in each of the judgments against the Petitioners that were ultimately reversed by the Washington State appellate court.

Respectfully submitted by John Pierce, Attorney for Petitioners.

s/John Pierce/
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