No. 20-592

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 Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

LUKE W. O'BANNAN
COUNSEL OF RECORD
KIRKPATRICK & STARTZEL, P.S.
108 NORTH WASHINGTON ST., STE. 201
SPOKANE, WASHINGTON 99201
LOBANNAN@KS-LAWYERS.COM
ATTORNEY FOR RESPONDENTS

QUESTION PRESENTED

Whether the Court should review a decision that created no circuit split, decided no important federal question, and correctly applied both the Rooker-Feldman doctrine and judicial immunity.

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INTRODUCTION

Plaintiffs again request review by this Court of legal actions stemming from discipline of Plaintiff Lori Petersen by the Certified Professional Guardian Board and the appointment of replacement guardians for 124 incapacitated persons. This Court previously declined review of the underlying matter, in which the Washington State

Court of Appeals affirmed appointment of guardians replacing Plaintiffs. *Matter of Guardianship of Holcomb*, 5 Wash. App. 2d 1044, review denied, 193 Wash. 2d 1002, 438 P.3d 131 (2019), and cert. denied sub nom. *Hallmark Care Servs., Inc. v. Superior Court of Washington*, 140 S. Ct. 122, 205 L. Ed. 2d 41 (2019).

Ms. Petersen's one-year suspension resulted in the appointment of replacement guardians. Hearings for the appointment of a replacement guardian were held in open court and counsel for the Plaintiffs attended each hearing and were allowed to make objections. Plaintiffs pursued appeals at the state court intermediate appellate court and the Supreme Court of the State of Washington. Instead of relying on the state court appellate process, Petitioners also filed this lawsuit against Spokane County and the Superior Court of the State of Washington for Spokane County.

The district court dismissed the action because it attempted to use the federal court as an alternative channel for appealing the state court rulings. The court also found that judicial immunity applied to prevent the Petitioners from suing a court

because they disagreed with the court's ruling. The Ninth Circuit affirmed on both grounds.

Petitioners' request for review is a reformulation of their arguments and fails to discuss any of the reasons for granting review described in United States Supreme Court Rule 10. There is no circuit split, there are no important federal issues, and neither the circuit court nor district court departed from the usual course of proceedings. Petitioners request review by this Court because they did not obtain the result they desired from the Ninth Circuit.

The Petition for a Writ of Certiorari is comprised of argumentative assertions that often mischaracterize or misstate the facts. For example, the first sentence in the Questions Presented section provides that "Spokane County initiated and prosecuted, through members of its local superior court and without counsel, 124 actions against the Petitioners by mailing unfiled, ex parte letter orders." This is inaccurate.

Spokane County did not 'initiate' any actions. Each of the "124 actions" is a guardianship action that began with a petition that alleged an individual was

incapacitated and requested the court appoint a guardian. *See* Wash. Rev. Code § 11.88.030.

The Spokane County Superior Court did not 'prosecute' these actions, but appointed guardians to care for the incapacitated persons. "The court having jurisdiction of a guardianship matter is said to be the superior guardian of the ward, while the person appointed guardian is deemed to be an officer of the court." *In re Guardianship of Cornelius*, 181 Wash. App. 513, 523, 326 P.3d 718, 723 (2014).

The guardianship actions were never 'against' the Plaintiffs. The Plaintiffs were involved in these actions as court-appointed guardians at the time of Ms. Petersen's suspension. Ms. Petersen's suspension required the appointment of replacement guardians in each of these cases, and the Superior Court communicated the sudden need for replacement guardians in letters to other local certified professional guardians. These communications were not are likely what Petitioners' refer to as "unfiled, ex parte letter orders." In sum, the assertions in the first sentence of the petition are inaccurate or mischaracterizations.

Instead of directly addressing each inaccuracy or mischaracterization in the petition, Respondents instead provide the following counterstatement. This is done for the sake of brevity and clarity, while simultaneously taking seriously the Court's admonition in U.S. Sup. Ct. R. 15(2) to point out perceived misstatements of fact or law contained in the petition. Respondents submit the following counterstatement as the most efficient method for bringing misstatements to the attention of the Court.

STATEMENT OF THE CASE

In December of 2009, Washington's Certified Professional Guardian Board ("Board") began receiving complaints about Plaintiff Lori Petersen's treatment of incapacitated persons in her care. *In re Disciplinary Proceedings Against Petersen*, 180 Wash. 2d 768, 773-74, 329 P.3d 853 (2014). Ms. Petersen was a certified professional guardian who had previously served on the Board including sitting on the Standards of Practice Committee ("SOP Committee"). *Id*. A professional guardian is appointed under ch. 11.88 Wash. Rev. Code and acts as the guardian of three or more incapacitated persons but is not a family member of the incapacitated persons. Wash. Rev.

Code § 11.88.008. Each guardianship action begins with a petition that alleges an individual is incapacitated and requests the court appoint a guardian. Wash. Rev. Code § 11.88.030. Ms. Petersen worked as a professional guardian and charged fees for carrying out the duties of a court-appointed guardian. *See*, Wash. Rev. Code § 11.88.008.

The SOP Committee investigated the complaints and found Ms. Petersen violated the standards of procedure. The Board suspended Ms. Petersen from practicing as a guardian for one year and, on March 13, 2015, the Washington State Supreme Court upheld Ms. Petersen's suspension. *In re Disc. of Petersen*, at 779, 792.

At the time of her suspension, Ms. Petersen was guardian of 37 individuals in Spokane County and was the designated certified guardian for Hallmark Care Services d.b.a. Castlemark Guardianship and Trusts d.b.a. Eagle Guardianship (hereafter "Hallmark"). Certified professional guardianship agencies, such as Hallmark, are required to designate at least two individuals in the agency that are certified professional guardians. Wash. General Rule 23(d)(2).

On March 17, 2015, Spokane County Superior Court Commissioner Anderson sent Ms. Petersen a letter requesting Ms. Petersen provide the court with her plan for transitioning guardianship of the numerous incapacitated people within her care. Ms. Petersen agreed that wards under the care of Empire Care were impacted by her suspension but refused to provide information about Hallmark, Castlemark, and Eagle. On April 7, 2015, Chair of the Spokane Superior Court Guardianship Committee, Judge Kathleen O'Connor, sent counsel for Ms. Petersen and Hallmark a letter indicating dissatisfaction with their failure to cooperate and lack of transparency. Judge O'Connor indicated a special master would be appointed to oversee the transition of guardianships of incapacitated persons within the care of Ms. Petersen or Hallmark.

On April 7, 2015, Judge Ellen Clark ordered appointment of Retired Judge Paul Bastine as special master with the following duties:

(a) The Special Master shall oversee the appointment, administration and management of all Guardian Ad Litems appointed to investigate

appropriate successor guardians to Lori Petersen and the agencies of which she [is] designated as CPG.

(b) The Special Master shall investigate the potential successor certified professional guardians and their ability to absorb new clients.

(c) The Special Master shall report back to the Court with recommendations as to the appropriateness of the successor certified professional guardian based on the totality of the circumstances.

Plaintiffs moved for reconsideration of this order, arguing lack of jurisdiction, lack of legal authority, and lack of due process.

A deputy prosecuting attorney with the Spokane County Office of the Prosecuting Attorney responded to the motion at the request of Judge O'Connor, who screened herself from the proceedings. On May 18, 2015, Judge Ellen Clark heard argument on the motion and affirmed the appointment of the special master.

On April 10, 2015, Spokane County Superior Court Commissioner Tony Rugel ordered the appointment of a Guardian Ad Litem ("GAL") in each of the 125

guardianship actions. Each GAL was instructed to review the guardianship file and recommend appropriate successor guardian. The GALs performed their investigations and provided the court with reports recommending successor guardians for the incapacitated people. Between May 4, 2015, and June 4, 2015, one of the two Spokane County Superior Court Commissioners held a review hearing for each guardianship. Plaintiffs, through counsel, appeared at each hearing and presented or preserved objections to removal as guardian.

Ultimately, Ms. Petersen and Hallmark were removed as guardians of record in each case. The court also imposed guardian ad litem fees on Hallmark. Plaintiffs' counsel moved for reconsideration of the superior court's actions, raising numerous issues including due process challenges. Plaintiffs appealed the matter to the Washington Court of Appeals, Division III. *Matter of Guardianship of Holcomb*, 5 Wash. App. 2d 1044 (2018) (unpublished).

Plaintiffs assigned error to "the order appointing the special master; the order removing appellants as guardians and appointing a successor guardian; and the

judgment assessing GAL fees against one of them." *Id*. Finding "Ms. Petersen and Hallmark were not aggrieved parties with respect to the orders appointing a special master and removing them as guardians" the Court of Appeals "dismissed the appeal of those categories of orders, leaving the judgments assessing GAL fees as the sole subject matter of this appeal." *Id*. The Court of Appeals consolidated the cases and issued an unpublished decision reversing the money judgments only, and remanding for further proceedings. Although the Court of Appeals ruled that "entry of the money judgments violated both CR 54(f)(2) and Ms. Petersen's and Hallmark's right to due process" this conclusion was not supported by any discussion of the constitutional right to due process. *Id*.

Plaintiffs filed the instant federal court action on April 6, 2017, while their state-court appeal remained pending. Plaintiffs generally alleged that Spokane County judges and commissioners violated Plaintiffs' procedural due process rights by failing to follow court rules and procedures in removing them as guardians. Defendants moved to dismiss the Complaint, arguing that Plaintiffs' claims were barred

by the doctrine of absolute judicial immunity, that Plaintiffs could not demonstrate a constitutionally protected property interest in the continued guardianships, and that Plaintiffs' claims were precluded by the state court judgment under Full Faith and Credit and res judicata. Defendants also moved for sanctions against Plaintiffs for filing a frivolous complaint. The district court raised, sua sponte, the issue of subject matter jurisdiction under the *Rooker-Feldman* doctrine. The parties were given an opportunity to brief the issue and did so.

The district court then entered an order dismissing Plaintiffs' Complaint and denying Defendants' request for sanctions. The district court based its dismissal on lack of subject matter jurisdiction and further held that Plaintiffs' claims were barred by absolute judicial immunity. The court noted Defendants other arguments for dismissal but determined that it did not need to address them in light of its rulings on *Rooker-Feldman* and judicial immunity. Plaintiffs appealed to the Ninth Circuit the order of dismissal and Defendants cross-appealed on the denial of sanctions.

While that appeal remained pending, the Washington State Court of Appeals reversed the assessment of guardian ad litem fees against Plaintiffs but did not alter the decision to remove them as guardians. *Matter of Guardianship of Holcomb*, 5 Wash. App. 2d 1044. Plaintiffs unsuccessfully sought review by the Supreme Court of the State of Washington. *Matter of Guardianship of Holcomb*, 193 Wash. 2d 1002, 438 P.3d 131 (2019). Plaintiffs then petitioned for review by this Court, which was likewise denied. *Hallmark Care Servs., Inc. v. Superior Court of Washington*, 140 S. Ct. 122, 205 L. Ed. 2d 41 (2019).

In March, 2019, Plaintiffs filed a new lawsuit against the Defendants with similar allegations to those previously asserted and dismissed. Defendants successfully moved for summary dismissal of this second suit and Plaintiffs appealed the dismissal to the Ninth Circuit. On June 17, 2020, the Ninth Circuit issued two unpublished decisions affirming the dismissal of Plaintiffs' claims. *Hallmark Care Servs., Inc. v. Superior Court of Washington for Spokane Cty.*, 809 F. App'x 424 (9th Cir. 2020); *Hallmark Care Servs., Inc. v. Superior Court of Washington for Spokane Cty.*, 809 F.

App'x 435 (9th Cir. 2020). Plaintiffs concurrently petition for review of both of these decisions.

ARGUMENT

None of the considerations for review on certiorari are present in this case. Plaintiffs have not pointed to a circuit split or demonstrated any reason the Ninth Circuit's unpublished order is in conflict with the decision of another United States court of appeals, or a state court of last resort. Instead of addressing the considerations set out by court rule, Plaintiffs allege the misapplication of a rule of law.

Plaintiffs request review because there are issues "still yet to be heard and litigated in any court or tribunal even after five years of litigation…" *Petition*, at 30. In reality, federal and state trial and appellate courts have considered and rejected Plaintiffs' claims and arguments. There is no reason for this Court to further extend the years of fruitless litigation.

I. The district court and circuit court correctly applied the *Rooker-Feldman* doctrine and the Plaintiffs were able to appeal procedural defects through the state appellate court.

Plaintiffs argue that the *Rooker-Feldman* doctrine did not apply because, at the time of dismissal by the district court, there was no final ruling because Plaintiffs' state-court appeal was still unresolved. This argument is self-defeating. Plaintiffs admit that the state-court system offered them appellate channels for reviewing and correcting procedural deficiencies. Thus, there was no need for Plaintiffs to file the present federal action based on alleged procedural abnormalities.

Under the *Rooker-Feldman* doctrine, federal district courts lack subject matter jurisdiction to hear cases brought by "state-court losers complaining of injuries caused by state-court judgments" and "inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). This doctrine is founded on the principle that the Supreme Court is the only federal court with the power to modify or reverse a state court judgment. *Id*., at 284-

85 (discussing *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923)). The Rooker-Feldman doctrine prohibits a district court from exercising jurisdiction over the "de facto" equivalent of an appeal from a state court judgment. *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir. 2012) (citing *Noel v. Hall*, 341 F.3d 1148, 1155 (9th Cir. 2003)). A forbidden de facto appeal occurs where the plaintiff "complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court." *Id*. (quoting *Noel*, 341 F.3d at 1163).

Plaintiffs brought this action in a federal district court complaining of the state court's rulings. This was a forbidden de facto appeal.

Furthermore, there was no need to seek redress in the federal courts because the state appellate courts provided avenues to correct any alleged procedural defects. Plaintiffs, in fact, thoroughly availed themselves of the appellate process. Plaintiffs appealed to the Washington State Court of Appeals and were partly successful. Plaintiffs then sought a more favorable outcome and petitioned for further review by the state supreme court and this Court. Both petitions were denied.

There was no need to file a separate lawsuit in the federal district court and doing so was the de facto equivalent of an appeal. This attempt at using the district court to review a state court's decision is precisely what the *Rooker-Feldman* doctrine prevents.

II. Plaintiffs' claims arising from alleged judicial misconduct are all barred by judicial immunity.

Plaintiffs argue that the lower courts erred in dismissing their claims because "the defendants in this action were the County of Spokane Washington, and its Superior Court – not the individual judges." Plaintiffs do not provide authority supporting this attempt to circumvent judicial immunity by suing a municipality and division of the state court. The Plaintiffs' claims were all based on the allegedly improper removal of Plaintiffs as guardians, which was accomplished by order of the court commissioners.

Importantly, this issue was not litigated in this action. Plaintiffs raised this argument in their second appeal to the Ninth Circuit. In that appeal, Plaintiffs

argued "it is important to note that no judges . . . were included as defendants in this appealed action." In the very next sentence, however, Plaintiffs argued that "on remand, certain individual judges and commissioners can be, and should be, joined as defendants in the action." Obviously, the conduct complained of by Plaintiffs is the conduct of judges and commissioners.

"Judicial or quasi-judicial immunity is not available only to those who adjudicate disputes in an adversarial setting." *In re Castillo*, 297 F.3d 940, 948 (9th Cir. 2002), as amended (Sept. 6, 2002). "Rather, the immunity is extended in appropriate circumstances to non jurists who perform functions closely associated with the judicial process." *Id*. Absolute quasi-judicial immunity applies "to court clerks and other non-judicial officers for purely administrative acts—acts which taken out of context would appear ministerial, but when viewed in context are actually a part of the judicial function." *Id*., at 952. "Court clerks have absolute quasi-judicial immunity from damages for civil rights violations when they perform tasks that are an integral part of the judicial process." *Mullis v. U.S. Bankr. Court for Dist. of Nevada*, 828 F.2d

1385, 1390 (9th Cir. 1987). All conduct complained of by the Plaintiffs was judicial in nature, entitling defendants to judicial immunity.

There is no merit to Plaintiffs' arguments on the misapplication of law by the lower courts.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

LUKE W. O'BANNAN
COUNSEL OF RECORD[1]
KIRKPATRICK & STARTZEL, P.S.
108 NORTH WASHINGTON ST., STE. 201
SPOKANE, WASHINGTON 99201
LOBANNAN@KS-LAWYERS.COM
ATTORNEY FOR RESPONDENTS

[1] Mr. O'Bannan's Application for Admission to the U.S. Supreme Court Bar has been filed and is currently pending with the Clerk of the Court.