

Case No. 20-6120

Supreme Court, U.S.
FILED

OCT 14 2020

OFFICE OF THE CLERK

ORIGINAL

SUPREME COURT OF THE UNITED STATES

JOHNNY TIPPINS, - Petitioner,

VS.

NWI-1, INC., et.al., - Respondents,

ON PETITION FOR WRIT OF CERTIORARI
FOR JUDGMENT BY SIXTH CIRCUIT
COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

JOHNNY TIPPINS #342855
Oaks Correctional Facility
1500 Caberfae Highway
Manistee, Michigan 49660

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APPENDIX B:	Sixth Circuit affirming petitioner's appeal dated October 11, 2017.
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Question Presented:

Should the Court of Appeals recall its November 21, 2017 mandate in order to prevent a miscarriage of justice where (1) the Sixth Circuit applied the three year statute of limitations and decline to apply Michigan's statute tolling provision pursuant to MCL § 600.5855; (2) applied erroneous state law on appeal, Michigan no longer has a common law discovery rule; (3) Plaintiff amended complaint excluding Defendants Lepetomane entities from lawsuit filed in state court that was not made apart of the record in federal courts. Because both Custodial and Successor Liquidation Trust Funds was erroneously included as Defendants this matter should be remanded to state court?

List of 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 judgment is the subject of this petition is as follows:

JOHNNY TIPPINS - Petitioner

NWI-1, Inc., - Respondent

Velsicol Chemical, ~~LLC~~ LLC - Respondent

LePetomane II Inc., - Respondent

LePetomane III Inc., - Respondent

Fruit of the Loom - ~~Respondent~~ Interested Party

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Johnny Tippins, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION(S) BELOW

for cases from federal courts:

The opinion(s) of the United States court of appeals appears at Appendix A to the petition and is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United Court of Appeals decided the original matter was October 11, 2017.

After filing a Motion to Recall Mandate, the date on which the United States Court of Appeals decided the motion to recall mandate, was September 2, 2020.

Thus, the jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

42 U.S.C. § 1983

42 U.S.C. § 1988

Mich. Compl. Laws § 600.5805(10)

Mich. Compl. Laws § 600.5855

Mich. Compl. Laws § 600.5827

Mich. Compl. Laws § 600.5838

28 U.S.C. § 1442(a)(1)

28 U.S.C. § 1452(a)

28 U.S.C. § 1332(b)

STATEMENT OF THE CASE

On October 11, 2017, the Sixth Circuit Court of Appeals affirmed the district court's dismissal of Petitioner Johnny Tippins' ("Tippins") 42 U.S.C. § 1983 complaint. The Sixth Circuit issued mandate, November 27, 2017. On October 1, 2018, this Court denied Petitioner's petition for writ of Certiorari. (See Case No. 17-9273, Johnny Tippins v. NW1-1, Inc., et.al.)

On July 21, 2020 and September 2, 2020, the Sixth Circuit Court of Appeals denied Petitioner's motion(s) to recall mandate. whereas Petitioner argued the Sixth Circuit made a clerical mistake and or a need to clarify the outstanding mandate; in the October 11, 2017 order, the Court of Appeals failed to apply state law statute Mich. Compl. Laws § 600.5855 fraudulent concealment statute after applying the Michigan's three year statute for personal injury, Mich. Compl. Laws § 600.5805 (10). Petitioner made the argument that in which was argued on direct appeal state employees in [this Court Case No. 17-9272, Johnny Tippins v. Patricia Caruso, et.al.,] concealed and committed affirmative acts and misrepresentations that prevented him to discover that the St. Louis drinking water contained p-CBSA, PBB's and the concealment of their identities supporting liability within the statute of

limitations.

The April 29, 2010 Memorandum that described such chemical(s) and Defendants awareness of such was known to these Defendants in Mid-October 2005. The April 29, 2010 Memorandum was not posted in any of the housing units within the statute of limitations period.¹

Particularly, the Sixth Circuit declined to recall the November 27, 2017 mandate. Although Petitioner erroneously presented argument under the exceptional circumstances of clerical mistake and the need to clarify outstanding mandate. Neither of those exceptions were proper before the Court.

Therefore, Petitioner Johnny Tippins establishes his position in this petition that a miscarriage of justice has taken place where the Sixth Circuit had failed to adhere to Petitioner's argument in his motion to recall ~~mandate~~ mandate that Michigan no longer has a common law discovery rule; tolling provisions are governed by statute. The Sixth Circuit was advised that LePichonne entities were excluded in the amended complaint that in which was not before the federal

¹ The April 29, 2010 Memorandum was given after Petitioner filed a grievance to the St. Louis Correctional Facility, February 9, 2014. On February 19, 2014, Tippins received documentations pursuant to MCL § 600.5855.

courts; the matter was required to remand to the state court. The tolling provision pursuant to Mich. Compl. Laws § 600.5835 to overcome the deficiency.

Therefore, this Court should grant this Petition and order the case to be remanded to the Sixth Circuit Court of Appeals.

PERTINENT CASE BACKGROUND

This collateral matter is being presented to this Court that in which is meritorious because Michigan no longer has a common law discovery rule. The state law tolling statute [Mich. Compl. Laws § 600.5835] was not considered on direct appeal. Along with the fact that LePetomane entities were excluded in Petitioner's state amended complaint. Which this matter stems from Tippins personal injury complaint that Defendants NWI-1, Inc., Velsicol Chemical LLC, LePetomane II Inc., and LePetomane III Inc., had caused him to contract Graves Disease after he was forced to drink contaminated water while incarcerated at the St. Louis Correctional Facility in St. Louis, Michigan from 2004-2007.