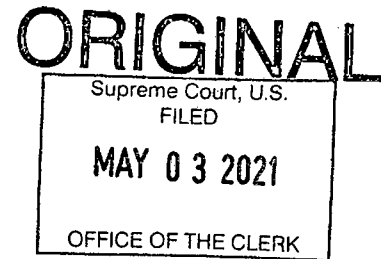


20-8176
NO. _____



IN THE SUPREME COURT OF THE UNITED STATES

LESLIE WILLIS, PETITIONER

v.

THE HON. LAWRENCE J. O'TOOLE, Individually, and in his Official Capacity as Administrative Judge for the Court of Common Pleas of Allegheny County Orphans' Court Division; TIMOTHY FINNERTY, Individually, and in his Official Capacity as Assistant County Solicitor; MICHAEL MCGEEVER, Individually and in his Official Capacity as Director, of Allegheny County Dept. of Court Records Wills/Orphans' Court Division; MELISSA DIESEL, Individually; WILLIAM TENNEY, Individually; JAMES UZIEL, Individually and in his Official Capacity as Deputy Records, for Allegheny County Department of Real Estate; and THE HON. JUDGE, KATHLEEN A. DURKIN, Individually, and in her Official Capacity for the Court of Common Pleas Orphans' Court Division, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO:

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

LESLIE WILLIS

P.O. BOX 1153, BOWIE, MARYLAND 20718¹

LWILLIS222@YAHOO.COM

¹ Petitioner's last legal address. At this time, Petitioner is in Pittsburgh, PA. Petitioner is domiciled in Maryland.

QUESTIONS PRESENTED

1. Whether a Court may grant summary judgment without jurisdiction; and where there is no absolute or quasi-judicial immunity; where there were no discovery proceedings in any court; where there is an allegation of judicial officials and county employees aiding and abetting a breach of fiduciary duty (fraud); and where the Action involves fundamental substantive constitutional rights (i.e. Petition Clause; Due Process Clause).
2. Whether a citizen of the United States may be denied a real estate property interest without a Hearing (i.e. Petition Clause; Due Process Clause; Equal Protection of the Laws).
3. Whether a Court may deny an in forma pauperis Petition without a hearing (i.e. Petition Clause; Due Process Clause).
4. Whether a 'not precedent' decision should involve fundamental substantive constitutional rights (i.e. Petition Clause; Due Process Clause).
5. Whether a Magistrate Judge or District Court may decide, under 28 U.S.C. § 1915, for a non-prisoner,² or prisoner, in forma pauperis litigant, whom an Action or Petition should not be brought against; or decide who should not be interested or adverse parties in an Action or Petition, contrary to rule of law

² Petitioner is a non-Prisoner, proceeding in forma pauperis.

as to joinder of parties (e.g. Fed.R.Civ.P. Rule 19 Required Joinder; or Rule 20, Permissive Joinder).³

6. Whether a Magistrate Judge or District Court may delay and/or refuse Fed.R.Civ.P. Rule 4(c)(3) U.S. Marshal service of process upon interested parties or adverse party defendants listed in the certificate of service for a Petition and or named on forms 285 filed with the Clerk.⁴
7. Whether it is unlawful or improper for the Courts or government to delay or refuse to perpetuate evidence of financial resources that may be available to an in forma pauperis litigant.⁵

³ Supplemental District Court Case No. 20-1833)

⁴ Supplemental District Court Case No. 20-1833)

⁵ Supplemental District Court Case No. 20-1833)

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:

See Appendix ____

RELATED CASES:

District Court for the Western District of Pennsylvania Case No. 18-290.

District Court for the Western District of Pennsylvania Case No. 20-1833

IN THE SUPREME COURT OF THE UNITED STATES PETITION FOR WRIT OF
CERTIORARI

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

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix ____ to the
petition and is unpublished (Not Precedent, Court of Appeals Docket #: 19-2094
ECF Documents Nos. 176, ECF No. 210; ECF No. 211; ECF No. 212).

The opinion of the United States district court appears at Appendix ____ to the
petition and is reported at 2:18-cv-00290-DSC-LPL, ECF Document No. 207.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- I. First Amendment (Petition Clause): First Amendment of the U. S. Constitution, U.S.C.A. Const. Amend. I - right to Petition the government for redress of grievances;
- II. Fourteenth Amendment Due Process Rights to (Real Estate) Property: U.S.C.A. Const. Amend. XIV, § 1- Due Process Clause; U.S.C.A. Const. Amend. XIV, § 1- Equal Protection Clause of the Fourteenth Amendment (Section 1) of the United States Constitution;
- III. 28 U.S. Code § 1367(a) – Supplemental Jurisdiction.

STATEMENT OF THE CASE

Petitioner's Action in the Court of Appeals for the Third Circuit ("CA3"), an Appeal from a 2018 Action (Case No. 2:18-CV-00290-DSC-LPL), involves a Section 1983 (42 U.S.C.S. § 1983) Action against individual state officials, and certain employees, for the ongoing violation of First Amendment Constitutional rights to petition the government for redress of grievances (Petition Clause), involving an in forma pauperis Petition denied without a Hearing; and violation of the Fourteenth Amendment substantive and procedural rights to due process and equal protection of the laws, involving real estate property sold without a Hearing. Additionally, in a Supplemental Action (District Court Case No. 20-1833), the matter involves a

delay and refusal of service of process; and a delay and refusal to perpetuate a Trust that has been undisclosed for more than seven years.

In the Court of Appeals for the Third Circuit:

NO APPELLATE JURISDICTION

1. The Third Circuit Court of Appeals generally, has Jurisdiction over Appeals from the District Court for the Western District of Pennsylvania pursuant to 48 U.S. Code § 1613(c); 28 U.S. Code § 1295; and Title II. Appeal from a Judgment or Order of a District Court in accordance with Rule 3 and 4 - Appeals as of Right. However, the District Court for The Western District of Pennsylvania, and the Third Circuit Court of Appeals improperly determine its jurisdiction. In Mitchell, “An appellate federal court must satisfy itself not only of its own jurisdiction, but also of that of the lower courts in a cause under review.” Mitchell v. Maurer, 293 U.S. 237, 244 (1934). The district court entered a Memorandum Order on April 12, 2019 (ECF No. 207). Petitioner filed a timely Motion for Reconsideration from that Order on April 26, 2019 (ECF No. 210; and ECF No. 217⁶ as Amended, with Addendum ECF No. 218, ECF No. 221, and Exhibits⁷) (“Motion for Reconsideration”). The district court denied, without review, Petitioner’s Motion for Reconsideration, stating that, “Plaintiff having filed an appeal...” (See: Memorandum Order (Cerccone) ECF No. 222⁸).⁹

⁶ ECF No. 216 and ECF No. 217 are the same document.

⁷ See Exhibits to ECF No. 218 at 219; Exhibits to ECF No. 221 at 224, 225, 226, 227, 229, 230, and 231.

⁸ “AND NOW, this 14th day of May, 2019, upon consideration of Plaintiff’s Motion for Reconsideration (Document No. 210) of this Court’s Memorandum Order dated April 12, 2019, the Plaintiff having filed an appeal to the United States Court of Appeals for the Third Circuit, IT IS HEREBY ORDERED that Plaintiff’s Motion for Reconsideration is DENIED. IT IS FURTHER ORDERED that the motions filed at ECF No. 213 and ECF No. 216 are DENIED as moot”

⁹ Note Also: In the District Court Order denying the Motion for Reconsideration (ECF No. 222), the Hon. District Judge Cerccone, denied Petitioner’s ‘Motion for Reconsideration’ at ECF No. 210, while rendering moot Petitioner’s *Amended* Motion for Reconsideration (ECF No. 216 and 217). Petitioner seeks review of the *Amended* Motion for Reconsideration (ECF No. 216 or 217).

However, Petitioner's Motion for Reconsideration was a Rule 59(e) Motion. Therefore, the district Court denial of Petitioner's Motion for Reconsideration was not in accordance with (4)(a)(4)(A), which states that, "If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure [i.e. Rule 59 (e)]—and does so within the time allowed by those rules¹⁰ —the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion... (4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered."

In Venen v. Sweet, the Court states, in reference to a motion for reconsideration, that, "As the appeal was taken from what was in fact an appealable order, the district court was required to consider the effect of that appeal on Judge Sweet's "Motion for Relief from [the] Order ...," and required to determine whether that motion provided one of the "limited circumstances" in which the court retained power to act (Venen v. Sweet, 758 F.2d 117, 122 (3d Cir. 1985))... had Judge Sweet, either before or after the filing of the notice of appeal, timely moved under Fed.R.Civ.P. 59(e) to amend or alter the judgment,... the notice of appeal would have had no effect and the district court would have had power to decide the motion."

Petitioner's Motion for Reconsideration is a Rule 59(e) Motion (The Court in Venen v. Sweet states that, "For purposes of Fed.R.App.P. 4(a), this court regards a motion labeled only as a motion for reconsideration as the functional equivalent of a Rule 59 motion ... to alter to amend a judgment" Venen v. Sweet, 758 F.2d 117, 122 (3d Cir. 1985)).

After filing a Notice of Appeal, Petitioner timely moved under Fed.R.Civ.P. 59(e) to amend or alter the judgment. Therefore, the notice of appeal had no effect and the district court had power

¹⁰ Time allowed for a Rule 59(e) Motion is 28 days (See: Notes of Advisory Committee on Rules—2009 Amendment).

to decide the motion. In fact, Petitioner timely filed a Motion for Reconsideration in the District Court Action, eighteen days prior to filing a Notice of Appeal. Subsequently, Petitioner filed Addendum, including a 'Statement of the Case,' and Exhibits to the Motion, all within the 28-day time limit for filing a Rule 59(e) Motion.¹¹

A decision to disregard Petitioner's Motion for Reconsideration ("Motion"), would be an injustice: In the Motion, Petitioner raises the issue of Appellees' aiding and abetting a breach of fiduciary duty (i.e. Fraud), and the statute of limitations involved, which are substantive issues (ECF No. 217 at ¶14; ECF No. 221 at p. 21 et seq.); Petitioner also raises the issue that the District Court improperly overlooked her 'Amended Requests for Relief' (at ECF No. 199), including Petitioner's claims as to her substantive and procedural Constitutional rights to a real estate property interest.

SUBSTANTIVE CONSTITUTIONAL RIGHTS AT ISSUE

2 Petitioner's claims involve her substantive Constitutional rights to real estate property.

The Court overlooked Petitioner's substantive First Amendment (Petition Clause) and Fourteenth Amendment Constitutional claims, which have not been tried in district Court. (See: Crews v. Petrosky, 509 F. Supp. 1199, 1205 (W.D. Pa. 1981) "We do conclude, however, that the task of determining whether this delay is constitutionally infirm must ultimately rest with a jury... we cannot conclude as a matter of law that no abuse of plaintiff's constitutional rights may have occurred... Because material issues of fact exist

¹¹ The District Court entered an Order indicating that it did not have jurisdiction to review Petitioner's Motion for Reconsideration, Petitioner, relying on the Hon. Judge Cercone, a Senior Judge's determination that the *federal* Court did not have jurisdiction to review the Motion after an Appeal was filed, did not file an appeal from that Order to challenge jurisdiction. Petitioner later cited the Motion for Reconsideration documents on Appeal, in this Court, because they were on the Record, and also filed a 'Motion to Expand/Supplement the Record,' primarily to include Exhibits or "Proof of Facts."

as to whether plaintiff's rights under 42 U.S.C. § 1983 have been violated, the motion ...for summary judgment will be denied.”¹² Here, Petitioner claims that Appellees delay and refuse to docket and adjudicate her (in forma pauperis) petitions pertaining to the real estate in the Estate (See: Amended Third Amended Complaint, ECF No. 195; and Amended Request for Relief, ECF No. 199;¹³ ECF No. 218 and ECF No. 221). (See also: Jackson v. Procunier, “A substantive right of access to the courts is one of the fundamental rights protected by the Constitution. Access to the courts is protected by the First Amendment right to petition for redress of grievances and by the Fourteenth Amendment guarantees of procedural and substantive due process. Interference with access to the courts may constitute the deprivation of a substantive constitutional right, as well as a potential deprivation of property without due process, and may give rise to a claim for relief under 42 U.S.C.S. § 1983. Any deliberate impediment to access, even a delay of access, may constitute a constitutional deprivation.” Jackson v. Procunier, 789 F.2d 307, 308, 1986 U.S. App.

- 3 In the District Court Memorandum Order ECF No. 207, the Court noted Petitioner's Motion for Reconsideration at ECF No. 210, but rendered Petitioner's *Amended* Motion for Reconsideration ECF No. 216 (also 217) moot.

¹² Petitioner's case is distinguished from Crews: Petitioner's Constitutional claims are civil and do not pertain to tort or negligence.

¹³ In review of the matter, per the Memorandum Order, ECF No. 207, the District Court intentionally and improperly overlooked Petitioner's Amended Request for Relief, ECF No. 199.

NO OPPORTUNITY FOR DISCOVERY

1. The (motions) panel decision conflicts with a decision of the United States Supreme Court in Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505 (1986), and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions.
2. The Court has overlooked Fed. R. Civ. P. Rule 56(b) Time to File a Motion, which states that, “Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.”
3. The Court has overlooked well established case law that a grant of summary judgment is improper if the non-movant has not had an opportunity for discovery. The non-movant must have some opportunity for discovery before summary judgment is granted. Moreover, the non-movant must have a full opportunity to conduct discovery (Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 n.5 (1986) “In our analysis here, we assume that both parties have had ample opportunity for discovery.” “[A]s long as the plaintiff has had a full opportunity to conduct discovery.” Id. at 257, 106 S.Ct. at 2514.
4. In this matter, Petitioner has not had any opportunity for discovery, nor full discovery. There was no scheduling in the District Court for any pre-trial discovery. Also, there was no trial. Additionally, the state Court denied all requests for discovery as to the real estate and personal property in the matter.
5. The Court overlooked Petitioner’s ‘Declarations Showing Need to Make Discovery in Opposition to Motion for Summary Action of Affirmance,’ citing proof of facts, even

though Petitioner did not have an opportunity for discovery (“We conclude only that the district court abused its discretion ... by entering summary judgment without having decided the pending discovery motions” (*Deere & Company v. Ohio Gear*, 462 F.3d 701 (2006))).

NO ABSOLUTE IMMUNITY

6. The Court overlooked established law/statute, and substantive Constitutional law (i.e. Petition Clause), that the DCR Appellees are not entitled to absolute immunity for docketing petitions, which is mandatory and not discretionary: “[W]hen an official does not exercise judicial or quasi-judicial discretion, courts have refused to extend the protection of absolute immunity. As a result, absolute immunity has been sparingly applied to suits under 42 U.S.C. § 1983...” (Citations omitted) *Crews v. Petrosky*, 509 F. Supp. 1199, 1203, U.S. Dist. (W.D. Pa. March 19, 1981). Additionally, the Court in *McKnight* states that, “While it is well-settled that quasi-judicial immunity may apply to those who perform functions closely associated with the judicial process, such as court clerks and prothonotaries, the rule only applies when the court employee is performing a function directly related to the court's decision-making activities or a function at the judge's direction. A court employee that exercises no discretion in the performance of his or her duties, such as an employee who performs pure ministerial duties, may not be entitled to quasi-judicial immunity ... Although a clerk of a court and his agents have important duties in the judicial process, their duties, such as docketing and filing papers with the court, are ministerial and mandatory acts which do not merit insulation from liability for damages by a grant of absolute quasi- judicial immunity.” (Emphasis added) *McKnight v. Baker*, 415 F. Supp. 2d 559, 560, 2006 U.S. Dist. (E.D. Pa. February 17,

2006). Thus, where Appellees are not entitled to absolute immunity, it would not be futile for Petitioner to amend her Complaint.¹⁴

JUDICIAL OFFICIALS

7. Petitioner avers that the Hon. Judicial Appellees are not entitled to absolute immunity. Petitioner has alleged that the Hon. Judicial Appellees aided and abetted a breach of fiduciary duty (i.e. Fraud) (See: District Court Case No. 20-1833) and 18-290 ECF No. 217; ECF No. 221). Also, a Judicial Official is not entitled to immunity for violation of Constitutional rights. These matters have not been tried on the facts in district court.

NOT FUTILE TO AMEND COMPLAINT

8. Where Appellees are not entitled to absolute immunity, it would not be futile for Petitioner to amend her Complaint.¹⁵
9. Additionally, the March 2, 2020 Opinion does not state that Petitioner is proceeding in forma pauperis in the Third Circuit Court of Appeals. Petitioner's Appeal is not Frivolous: See Petitioner's Amended Response, Addendum and Declarations showing need to make discovery, as well of proof of facts, which would otherwise escape review. Additionally, Petitioner's is seeking a remedy in equity in her claims against the dept. of real estate (Uziel).

¹⁴ Petitioner's amended Complaint would include her claims stated in her Amended Motion for Reconsideration (ECF No. 210; and ECF No. 217, as Amended, with Addendum ECF No. 218, ECF No. 221, and Exhibits) ("Motion for Reconsideration")

¹⁵ Petitioner's amended Complaint would include her claims stated in her Amended Motion for Reconsideration (ECF No. 210; and ECF No. 217, as Amended, with Addendum ECF No. 218, ECF No. 221, and Exhibits) ("Motion for Reconsideration")

NOT FRIVOLOUS

10. The Third Circuit Court of Appeals March 2, 2020 Opinion fails to mention that

Petitioner is proceeding in forma pauperis. Petitioner's Action in the Third Circuit Court of Appeals is not frivolous. Petitioner filed petitions and pleadings that she believed were necessary to present and support her claims in Court.

NO DEFERENCE TO JUDICIAL INSTRUCTIONS

11. The Court overlooked the fact that the Record does not support Appellees claim of

deference to judicial instructions (i.e. Order; Decree) in refusing to docket Appellant's in forma pauperis petitions/pleadings ("Petitions"), and Appellees offered no such proof of deference to judicial instructions. (*Crews v. Petrosky*, 509 F. Supp. 1199, 1203 (W.D. Pa. 1981) "Most courts have held that a clerk of courts is not clothed with absolute quasi-judicial immunity for duties which are essentially ministerial...n. 8 "There is one exception to this rule, which is not here relevant. Clerks, and other state officials who perform ministerial functions, may obtain absolute immunity when acting under command of court decrees or explicit instructions of a judge.") Here, there is no Order, Decree, nor any explicit instructions entered on the Orphans' Court docket in the matter, and no proof on the Record in District Court. Moreover, Appellant's Section 1985 conspiracy claim¹⁶ has not been to trial - there has been no fact-finding or trial proceedings as to Appellant's Section 1985 claims.

¹⁶ Appellant also cites claims under §1983. Hence: Appellant's §1985 Conspiracy claim is not her only claim in District Court.

12. The state court did not specifically deny Petitioner's Objections, no such order appears on the Record.

STATUTE OF LIMITATIONS

13. The Court overlooked that Appellant raised a substantive issue as to a statute of limitations concerning fraud (District Court ECF No. 217).

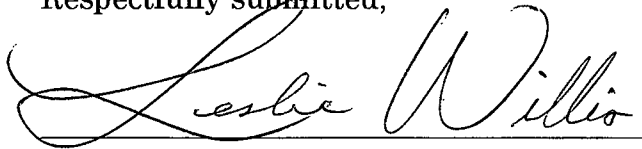
REASONS FOR GRANTING THE PETITION

The Questions are important for review, in the public interest, where judicial officials disregard procedure, rule of law, and precedent (S.Ct. Rule 10 departure from procedure), and particularly in matters involving in forma pauperis litigants.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

Respectfully submitted,

A handwritten signature in cursive script that reads "Leslie Willis". The signature is written in black ink and is positioned above a horizontal line.

Leslie Willis, Petitioner

Date: MAY 3, 2021

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 3, 2021

A handwritten signature in cursive script, reading "Leslie Willis", written in black ink. The signature is fluid and elegant, with the first name "Leslie" and last name "Willis" clearly distinguishable. The signature is positioned above a thin horizontal line.

Leslie Willis, Petitioner

(Signature)