

No. 21-1137

IN THE
SUPREME COURT OF THE UNITED STATES

BYRON WENDELL PHILLIPS,
Petitioner,

v.

THE LIFE PROPERTY MANAGEMENT
SERVICES LLC, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United
States Court of Appeal for the Eleventh Circuit

**BRIEF IN OPPOSITION TO PETITION FOR A
WRIT OF CERTIORARI BY RESPONDENTS
THE LIFE PROPERTY MANAGEMENT
SERVICES LLC, 3321 PEPPERTREE CIRCLE
DECATUR LLC, AND TONYA CARTER**

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**COUNTERSTATEMENT OF QUESTIONS
PRESENTED**

1. Whether Petitioner's Amended Complaint was properly dismissed for failure to serve process where he only sent process to Respondents by mail; and
2. Whether Petitioner's Amended Complaint was properly dismissed for failure to state a claim under 42 U.S.C. §1983 because Respondents were not acting under color of law when they arranged to have his unlicensed vehicle towed from their private property.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Supreme Court Rule 29.6, Respondents The Life Property Management Services LLC and 3321 Peppertree Circle Decatur LLC certify that they have no parent corporation and no public corporation owns 10% or more of its stock.

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STATEMENT OF THE CASE

Procedural Background

On February 21, 2020, Petitioner filed his Complaint against over fifteen (15) Defendants (now Respondents). Respondent 3321 Peppertree Circle Decatur LLC (“Peppertree”) is the private landowner of the apartment complex. Respondent The Life Property Management Services, LLC (“LPM”) is the private management company of the complex, and Respondent Tonya Carter was a LPM employee.

On May 18, 2020, Petitioner then filed an Amended Complaint. On June 22, 2020, the District Court ordered Petitioner to “properly serve all Defendants with the Amended Complaint no later than July 24, 2020” and to “file the corresponding proofs of service within 7 days after service was effectuated.” The Court further warned Petitioner that “[f]ailure to do so may result in the dismissal of this action.”

On July 22, 2020, a Summons to Respondent Carter “c/o Sharonda Gray or Other Authorized Agent for The Life Property Management Services, LLC 2853 Henderson Mill Rd. Stone Mountain, Georgia 30083” was issued. On July 30, 2020, Petitioner filed an Affidavit of Service stating as follows:

I, byron-wendell: Petitioner [sic], certified that on the 15th day of July, 2020 a true and correct copy of the Amended

Complaint was served, at the last known mailing address, upon (1) The Life Property Management Services, LLC; (2) Tonya Carter; (3) 3321 Peppertree Circle Decatur LLC . . . via deposit in the U.S. Mail.

The Certified Mail Receipts dated July 15, 2020 were addressed to LPM and Carter at 2853 Henderson Mill Rd., Tucker, Georgia 30083. The Certified Mail Receipt dated July 15, 2020 was addressed to Peppertree at 300 Colonial Center Pkwy, STE 100 N, Roswell, GA 30076. The Certified Mail to LPM and Carter were returned to sender and on July 22, 2020, Petitioner amended the Certified Mail Receipts dated July 22, 2020 addressed to LPM and Carter “c/o Sherando Grey or other authorized agent” at 2853 Henderson Mill Rd., Stone Mountain, Georgia 30083.

On August 12, 2020, LPM filed its Motion to Dismiss pursuant to Rule 12(b)(2), (5), and (6) for lack of service, lack of personal jurisdiction, and failure to state a claim. Then, on September 11, 2020, Petitioner filed an “Affidavit of Service and Good Cause Request” stating that on August 11, 2020, the Summons for Carter was “reissued to the address where LPM was contacted. The 30-day period for Tonya Carter to return a signed Waiver or answer by Motion expired on 9/10/2020.” The “Affidavit” was signed by Petitioner as a “sovereign principal, non-negotiable autograph, all rights served *sui juris*,” and without any indication that Petitioner was a duly

appointed Georgia notary public pursuant to O.C.G.A. § 45-17-1, *et seq.* In the “Affidavit,” Petitioner further stated that on August 19, 2020, the Summons and Amended Complaint were served upon LPM via Certified Mail at 2853 Henderson Mill, Atlanta, GA 30341, but Petitioner attached the USPS “statement of the delivery area being blocked or inaccessible.” As to Peppertree, Petitioner stated the Certified Mail Receipt was addressed to Peppertree at 300 Colonial Center Pkwy, STE 100N, Roswell, GA 30076, but “the Return Receipts have not been obtained” and Peppertree had “not responded by Waiver nor by Motion.”

On December 11, 2020, Petitioner filed Requests for Entry of Default against Peppertree and Carter and attached his “Affidavits” contending that Peppertree was served on July 15, 2020 and Carter was served on August 11, 2020. On December 16, 2020, Respondents Carter and Peppertree filed their Motions to Dismiss, along with their Responses in Opposition to Petitioner’s Request for Entry of Default.

On March 23, 2021, the District Court issued an Order denying Petitioner’s motions for entry of default and granting these Respondents’ motions to dismiss. The District Court found that Petitioner failed to serve or obtain waivers of service from Respondents, and Petitioner only attempted service “by mailing a copy of the complaint, the summons, and a waiver of service form to the Defendants through the United States Postal Service” and “therefore, failed to perfect service in a manner

provided by the Federal Rules of Civil Procedure.” Petition for Writ of Certiorari, Appendix, p. 25a. In addition, the District Court further found that Petitioner’s claims under section 1983 failed because these Respondents were not acting under the color of law in having Petitioner’s vehicle towed from the private property they owned or managed. Petition for Writ of Certiorari, Appendix, p. 28a. That same date, judgment was entered, and the action was dismissed. Petition for Writ of Certiorari, Appendix, p. 33a.

Petitioner subsequently appealed to the Eleventh Circuit Court of Appeals, which affirmed the District Court’s ruling. Petition for Writ of Certiorari, Appendix, pp.1a-7a.

Petitioner now seeks a Writ of Certiorari from this Court, hoping to convince this Court that the USPS is a “person” who can effect service and that these Respondents were acting under the color of law, in spite of federal and Georgia law holding otherwise.

REASONS FOR DENYING CERTIORARI

A petition for a writ of certiorari will be granted only for compelling reasons. *See Rule 10.* Here, the Petitioner presents no such compelling issue for this Court's review. Specifically, there is no conflict between circuit courts on decisions involving a matter of an important federal question. There is no conflict between a decision of a circuit court and a state court of last resort on a matter of an important federal question. There is no conflict regarding an important federal question between a U.S. Court of Appeals decision and other Supreme Court decisions. And the Eleventh Circuit has not so far departed from the accepted and usual course of judicial proceedings so as to require this Court's intervention. Instead, the District Court and the Eleventh Circuit applied well-established precedent governing timely and proper service and the elements of a recognizable claim under section 1983 against these private Respondents.

Quite simply, *pro se* Petitioner is upset that his unlicensed vehicle was towed from a private apartment complex. Petitioner filed the instant action for an alleged civil rights violation under 42 U.S.C. § 1983 against a roster of over fifteen (15) individuals and entities who were somehow tangentially involved in the alleged towing, including these Respondents.

Petitioner failed to follow Fed. R. Civ. P. 4 by timely and properly serving these Respondents. Despite well-established federal and Georgia law providing otherwise, Petitioner continues to insist

that service by only U.S. Mail was proper because the United States Postal Service (“USPS”) is a “person.”

Petitioner’ *pro se* status does not insulate him from dismissal for failing to comply with the Federal Rules of Civil Procedure or from failing to state a recognizable claim of action upon which relief could be had. This Court has specifically stated that “we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.” *McNeil v. U.S.*, 508 U.S. 106 (1993).

Further, Respondent The Life Property Management Services, LLC (“LPM”) is the private management company of the complex, and Respondent Tonya Carter was a LPM employee. These Respondents are not officers of the government. Petitioner’s lease provision regarding vehicle registration is “not sufficient to transform the private actors [these Respondents] into state actors,” as held by the Eleventh Circuit, and there is no recognizable action under section 1983.

The Petition is replete with incognizable and baseless allegations of “abuse of personal jurisdiction,” “fraud and/or corruption,” and “conspiracy.” Despite Petitioner’s claims, there was no fraud. There is no conspiracy. There was no rebellion “against the Constitution.” It is impossible and unnecessary for Respondents to respond to all of Petitioner’s unfounded and slanderous accusations against Respondents, the District Court, and the Eleventh Circuit. Further, none of these unfounded

accusations are a compelling reason to grant the Petition. Instead, Respondents focus on the rule of law at hand, and Petitioner's failure to follow such rules. As the District Court aptly pointed out "[i]t seems that Phillips, when he wants to, knows how to serve a summons and a complaint consistent with the federal rules." Petition for Writ of Certiorari, Appendix, p. 25a n.67.

Accordingly, this Court should deny the Petition for certiorari.

I. THE ELEVENTH CIRCUIT FOLLOWS AND APPLIES THE STANDARD SET FORTH BY FEDERAL RULE OF CIVIL PROCEDURE 4 FOR SERVICE, AND THUS ITS HOLDINGS DO NOT CONFLICT WITH THE FEDERAL RULES OF CIVIL PROCEDURE OR THE PRIOR DECISIONS OF THIS COURT.

Petitioner's repeated insistence that he should be allowed to effect service of process by U.S. Mail because the "USPS, a parent corporation, is a person," is in direct contravention to well-established federal and Georgia law disallowing service only by mail. Fed. R. Civ. P. 4(e); O.C.G.A. § 9-11-4(e). As such, the Eleventh Circuit correctly decided that Petitioner abandoned any claim that the District Court improperly granted Respondents' motions to dismiss based on defective service by failing to argue that his service complied with the Federal Rules of Civil Procedure. Further, even if the claim was not abandoned, the Eleventh Circuit correctly decided

that the District Court did not err in dismissing Petitioner’s Complaint for defective service because Respondents were not timely and personally served and they did not return a waiver of service.

Petitioner argues that he “exercised his freedom of choice . . . as to which person would serve his papers,” and Rule 4 “makes no distinction between an artificial person and a natural person.” Petition for Writ of Certiorari, Appendix, p. 4. Yet, Petitioner’s argument directly contravenes a plain reading of Rule 4(c)(2) specifically contemplating service by a “natural person,” stating that “[a]ny person who is at least 18 years old and not a party may serve a summons and complaint.” Further, a plain reading of O.C.G.A. § 9-11-4 governing service in Georgia requires service by a “natural person,” including the marshal or sheriff, a U.S. citizen specially appointed for service, or a certified process server. Petitioner argues that corporations have been interpreted to be “persons,” but the cases cited by Petitioner do not provide that the USPS, a corporation, is a person authorized for service of process. *See, e.g., Covington & L. Turnp. Co. v. Sandford*, 17 S.Ct. 198 (1896). In addition, the definition section of the Federal Debt Collection Procedure in 28 U.S.C. § 3002(2), also cited by Petitioner, specifically provides that the definition of “person” is “as used in this chapter.” To the contrary, the Eleventh Circuit has interpreted “delivery” to mean “personal service” and specifically affirmed the dismissal of a complaint when the only service attempt was via certified mail by USPS to the defendant corporation’s registered agent. *See Dyer v. Wal-Mart Stores, Inc.*, 318 Fed. Appx. 843, 844 (11th

Cir. 2009); *see also Hunt v. Nationstar Mortgage, LLC*, 684 Fed. Appx. 938, 941 (11th Cir. 2017). Thus, the Eleventh Circuit has already rejected Petitioner’s argument that service via USPS as a “person” counts as “personal service.” The Eleventh Circuit’s decision is therefore not in conflict with its prior decisions. And no other Court of Appeals has held that certified mail is sufficient service under Rule 4 where such service is not authorized by state law. In fact, the Fifth Circuit has similarly held that service by mail is not expressly permitted by Rule 4, and an individual could only be served by mail if permitted by applicable state law. *Caceres-Mejia v. Watson*, 718 Fed. Appx. 307, 308 (5th Cir. 2018) (affirming dismissal of a *pro se* plaintiff’s complaint because the plaintiff did not file the requisite proof to establish that defendant acknowledged service of process in accordance with Mississippi state service rules). *Compare Clark v. Andover Securities*, 44 Fed. Appx. 228, 229 (9th Cir. 2002) (process was properly served by certified mail because California state law authorizes service by certified mail). But Georgia law does not authorize service of process directly to a defendant by mail and actual notice of the action is immaterial. *KMM Indus. v. Professional Placement Assn.*, 164 Ga.App. 475, 297 S.E.2d 512 (1982); *Wilkerson v. Voyager Cas. Ins. Co.*, 171 Ga.App. 834, 834, 321 S.E.2d 346, 347–48 (1984). Petitioner’s claims of conflicts with prior decisions of this Court and other jurisdictions thus lack any merit.

Accordingly, the District Court and Eleventh Circuit properly found that these Respondents were not personally served and did not return a waiver of

service under Rule 4. There is no compelling reason to grant the Petition for certiorari.

II. THE ELEVENTH CIRCUIT FOLLOWS AND APPLIES THE STANDARD SET FORTH BY FEDERAL RULE OF CIVIL PROCEDURE 12 BASED ON PETITIONER'S FAILURE TO STATE A CLAIM UNDER 42 U.S.C. § 1983.

The Eleventh Circuit also did not err in affirming the dismissal of Petitioner's complaint for failure to state a claim under section 1983 because these Respondents were not acting under the color of law. Petitioner argues that "seizing an unlicensed vehicle is a right or privilege created by the State and it is a rule of conduct imposed by the State (O.C.G.A. § 40-2-8(b)(1))," and these Respondents are state actors because the "private parties' conduct is chargeable to the State." Petitioner is remiss in failing to note that Respondents did not actually "seize" his vehicle, but it was instead towed by Quick Drop. Petitioner's continued reliance on a lease provision requiring compliance with Georgia vehicle registration laws is similarly unavailing. As the Eleventh Circuit pointed out, the lease provision is "not sufficient to transform the private actors into state actors." *Lugar v. Edmondson*, 457 U.S. 922, 937 (1982). Indeed, in a case analogous to the instant matter, the Seventh Circuit specifically affirmed the dismissal of a *pro se* plaintiff's claim under section 1983 against an apartment building owner for alleged violations of his constitutional rights by towing and selling his car, which was left parked on the landlord's

property. *Beyer v. Village of Ashwaubenon*, 444 Fed. Appx. 99, 101 (7th Cir. 2011). The Seventh Circuit found there was no state action because the “impetus and the actors remain private.” *Id.* As such, there is no conflict between circuit courts.

Moreover, Petitioner’s argument that “his research efforts confirmed that the State is misclassifying the people of Georgia and their personal property” does not impart any liability against these Respondents as private actors not involved in such “misclassification.” Even accepting Petitioner’ allegations as true, the seizure and retention of an individual’s personal property does *not* give rise to liability under section 1983 “if a meaningful post- deprivation remedy for the loss is available.” *See Lindsey v. Storey*, 936 F.2d 554, 561 (11th Cir. 1991). As the District Court and Eleventh Circuit stated, Georgia statute O.C.G.A. § 51-10-1 “provided an adequate post-deprivation remedy when a plaintiff claims that the state has retained his property without due process of law,” and therefore Petitioner failed to state a recognizable claim under section 1983.

In sum, even accepting Petitioner’s allegations as true, there are no cognizable allegations to support his claim for deprivation of rights under section 1983. Therefore, dismissal was proper and there is no compelling reason to grant the Petition for Certiorari.

CONCLUSION

Based upon the foregoing arguments and authorities, and because neither the District Court nor the Circuit Court decisions raise important questions of law requiring this Court's review, Respondents The Life Property Management Services LLC, 3321 Peppertree Circle Decatur LLC, and Tonya Carter, respectfully request that this Honorable Court DENY the Petition for Writ of Certiorari.

Respectfully submitted,

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