

No. 21-1277

In the
Supreme Court of the United States

DAVID ALLEN O'NEAL, DULY ELECTED CORONER,
CRAWFORD COUNTY, GA,
Petitioner,

v.

CRAWFORD COUNTY, GA,
Respondent.

**On Petition for Writ of Certiorari to the
Georgia Supreme Court**

**BRIEF OF RESPONDENT CRAWFORD
COUNTY, GEORGIA IN RESPONSE TO
PETITION FOR WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

1. Whether a claim is barred by the doctrine of *res judicata* when this Court has previously denied certiorari and it has already been appealed and ruled upon by every appellate court in a state.
2. Whether the Supreme Court of the United States will hear an issue concerning Georgia law when Georgia's court of last resort has ruled, and there is no valid constitutional ground upon which to challenge the same.
3. Whether an attorney has a constitutional right to avoid monetary sanctions levied against her by a court in which she practices merely because that court sits outside of the county of her residence.
4. Whether a general Chapter 7 bankruptcy discharge of an attorney's client automatically discharges the attorney herself from the judgment of a state court imposing joint and several liability on the attorney and client.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to the case in this Court within the meaning of Rule 14.1 (b)(iii):

United States Supreme Court, *David Alan O'Neal v. Crawford County, Georgia*, Case No. 17-341. Petition for Writ of Certiorari denied November 6, 2017.

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**BRIEF
JURISDICTION**

This Court lacks jurisdiction under 28 U.S.C. § 1257(a) because the decision below did not draw in question “the validity of a statute of any State” under the Constitution of the United States, nor was any right under the Constitution of the United States “specially set up or claimed” in the court below.

STATEMENT OF THE CASE

This is not the first appearance of this case before the Court. This Court heard and rejected Petitioner’s direct appeal in Case No. 17-341.

David Allen O’Neal was the duly elected Coroner of Crawford County, Georgia. This case arose out of a dispute between O’Neal and the County over the provision, or lack thereof, of a satisfactory county vehicle and cell phone allegedly incident to the performance of O’Neal’s duties as coroner.

Through his attorney (Bonnie) Michelle Smith, O’Neal filed suit against the County. The trial court, the Superior Court of Crawford County, dismissed this suit as frivolous. Pursuant to O.C.G.A. § 9-15-14, the Court determined that Crawford County was entitled to recover its attorney’s fees and costs of litigation, and that such fees and costs would be borne by both attorney and client as joint and several liability. A direct appeal was taken. The attorney’s fee award was upheld by the Georgia Court of Appeals and certiorari was denied by both the Supreme Court of Georgia and this Court.

However, when faced with post-judgment asset discovery from the County against her individually, the attorney, Michelle Smith, refused to respond according to the Georgia law. After a Motion to Compel was granted by the trial court, Michelle Smith instituted another round of appeals. The Georgia Court of Appeals and Georgia Supreme Court denied review, and she now files a second petition for certiorari from this Court.

In the meantime, O’Neal filed for personal bankruptcy in the Middle District of Georgia, Case No. 16-52380-AEC and received a standard Chapter 7 discharge. Michelle Smith argues now, and has argued to every appellate court in Georgia, that O’Neal’s bankruptcy discharge applies to her as well. It does not. She argues that the County has committed “overt constitutional violations” by seeking payment of debt that is owed by her. There are none.

REASONS FOR DENYING THE PETITION

Petitioner’s claim is barred by the doctrine of *res judicata*. Furthermore, her claim concerns issues of Georgia state law, which have already been heard and rejected by the final arbiter of Georgia state law, the Supreme Court of Georgia. As for the parts of her claim that reference either federal bankruptcy law or constitutional issues, there is little to no authority for the assertions made. For these reasons and the reasons that follow, Petitioner’s petition for writ of certiorari should be denied.

A. Petitioner Does Not Articulate Any Reason Under Rule 10 that the Court Should Consider This Case.

“A petition for a writ of certiorari will be granted only for compelling reasons.” U.S. Sup. Ct. R. 10. There are three fundamental reasons for review: a split of decisions among the Circuit Courts, a split of decisions involving the highest court of a state, or an important question of federal law that has not been, but should be, settled by this Court. *Id.* A petition is “rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” *Id.*

As this case does not involve a split amongst the circuits or state and federal courts, the only possible avenue of review would be under Rule 10(c). Yet the Supreme Court of Georgia has considered no important federal question. In fact, they have not decided a federal question at all. The law surrounding attorney’s fees is a state statute, O.C.G.A. § 9-15-14, and a writ of fifa (known as an execution in federal courts) is also a creature of Georgia state law. The Supreme Court of Georgia, as Georgia’s court of last resort, is the final arbiter of Georgia law. *Beal v. Missouri Pac. R. R. Corp.*, 312 U.S. 45, 50 (1941).

Petitioner’s claim is predicated on the supposition that Georgia’s state courts decided an important federal issue when they failed to extend O’Neal’s bankruptcy discharge to cover his joint obligor and attorney, Michelle Smith. This is inaccurate both under Georgia law and Federal Bankruptcy law. Georgia law allows for joint and several liability of client and attorney. *See*

O.C.G.A. § 9-15-14. Furthermore, an order based on 11 U.S.C. § 522 in O’Neal’s personal bankruptcy case does not afford relief to Michelle Smith.

In the frivolous litigation ruling from which this claim stems, Michelle Smith’s role as O’Neal’s attorney arguably makes a sanctions order against her more, not less, appropriate. If, for example, she had filed the same frivolous lawsuit in federal court, she would have been sanctioned under Fed. R. Civ. P. 11, as she signed the documents that were filed in court. *See generally, Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533 (1991). And, of course, there is the inherent authority of a trial court to control and sanction the conduct of the attorneys that appear before it. *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991). There is absolutely no constitutional basis for Michelle Smith’s claim that her rights were violated. Claims that the Georgia Supreme Court has decided an important federal issue are without merit, and the petition for writ of certiorari should be denied.

B. Petitioner’s Claims Are Barred by *Res Judicata*.

This matter previously came before the Court in Case No. 17-341. That was the direct appeal from the Superior Court order dismissing O’Neal’s complaint with prejudice and awarding joint and several monetary sanctions against O’Neal and Michelle Smith. *O’Neal v. Crawford County*, 339 Ga. App. 687, 792 S.E.2d 498 (Ga. Ct. App. 2016) *reconsideration denied* November 29, 2016, *certiorari denied*, *O’Neal v. Crawford County*, 2017 Ga. LEXIS 519 (Ga., June 5, 2017), *U.S. Supreme*

Court certiorari denied by O'Neal v. Crawford County, 2017 U.S. LEXIS 6681 (U.S., Nov. 6, 2017).

A final judgment on the merits of a claim precludes the parties from relitigating issues that were or could have been raised in the original action. *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981) (citing, *inter alia*, *Commissioner v. Sunnen*, 333 U.S. 591, 597 (1948)). Even if the original judgment on the merits was wrong or overruled by a subsequent case, the doctrine of *res judicata* still prevents relitigating on the same issues. *Angel v. Bullington*, 330 U.S. 183, 197 (1947). A judgment that may be voidable because it is based on an erroneous view of the law may only be corrected by direct review, not through another action on the same causes of action. *Reed v. Allen*, 286 U.S. 191, 201 (1932).

“[R]es judicata is not a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, ‘of public policy and of private peace,’ which should be cordially regarded and enforced by the courts . . .” *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299 (1917). This language is “even more compelling in view of today’s crowded dockets.” *Moitie, supra*, 452 U.S. at 401. The “indulgence of a contrary view would result in creating elements of uncertainty and confusion and in undermining the conclusive character of judgments, consequences which it was the very purpose of . . . res judicata to avert.” *Reed, supra*, 286 U.S. at 201.

Res judicata has four elements: (1) the parties are identical; (2) the previous judgment was rendered by a court of competent jurisdiction; (3) the prior action was concluded by a final judgment on the merits; and (4) the

same claim was involved in both actions. *Comer v. Murphy Oil USA, Inc.*, 718 F.3d 460, 467 (5th Cir. 2013).

The first step of this analysis is to find whether the parties in this case are identical to the first. In the present matter, the parties have been, since the filing of the original lawsuit in 2014, Crawford County, Georgia, and David Allen O’Neal. O’Neal has been represented by Michelle Smith for the entire duration of this suit. Therefore, the parties are identical.

The second step is to determine whether the previous judgments were rendered in a court of competent jurisdiction. This Court has defined “Court of competent jurisdiction” to mean any court “with the power to adjudicate the case before it.” *Lightfoot v. Cendant Mortg. Corp.*, 505 U.S. ___, 137 S.Ct. 553 (2017). That phrase is further understood to reference a court with subject matter jurisdiction. *Ex parte Phenix Ins. Co.*, 118 U.S. 610 (1886). This means that any court with subject matter jurisdiction is a court of competent jurisdiction. *Lightfoot, supra*, 137 S.Ct. at 560-561 (citing *Pennoyer v. Neff*, 95 U.S. 714, 733 (1878)).

The Georgia Constitution confers jurisdiction of cases in equity to the Superior Court in the county where a Defendant resides. Ga. Const. Art. VI, § 2, para. 3. This conferral of jurisdiction is sufficient under this Court’s precedents to make the Superior Court of Crawford County a court of competent jurisdiction. Therefore, this case was heard, and a final order issued, in a court of competent jurisdiction.

The third step is to determine whether the previous action was concluded by a final judgment on the merits. Georgia law defines a “final judgment” as any judgment where the case is no longer pending in a lower court. *See Rhymes v. East Atlanta Church of God, Inc.*, 284 Ga. 145, 146, 663 S.E.2d 670 (2008) (citing O.C.G.A. § 5-6-34(a)(1)). “The statutory requirement of a ‘final decision’ means that ‘a party must ordinarily raise all claims of error in a single appeal following final judgment on the merits.’” *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 429-430 (1985) (quoting *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981)).

In the present case, an order dismissing with prejudice the lawsuit as frivolous and awarding attorney’s fees and costs is certainly a final judgment on the merits. All of the claims brought by the lawsuit were settled and nothing was left pending below. Therefore, a final judgment on the merits was already issued in this case.

Finally, it must be determined whether the claim in both actions is the same. To determine the answer to this question, we need look no further than Petitioner’s original Petition for Writ of Certiorari, in case number 17-341. There Petitioner argued, *inter alia*, that Respondent was ultimately responsible for the sanctions against O’Neal because he was an agent of the county. *O’Neal v. Crawford County*, 339 Ga. App. 687, 689 n. 9, 792 S.E.2d 498 (Ga. Ct. App. 2016). This is the same argument made in this petition, amongst several other Constitutional claims, that are beyond reason.

Petitioner's arguments either have been or could have been decided upon, and this successive petition should therefore be denied.

C. Petitioner's Constitutional Rights Were Not, in Fact, Violated.

Petitioner argues that constitutional rights to due process and equal protection under the law were violated. Pet. Brief at 4. The crux of this argument is that Michelle Smith does not reside in the county of the Superior Court which sanctioned her, and therefore the Superior Court lacked personal jurisdiction.

At the outset, it must be noted that Petitioner's claims do not constitute a federal claim. This Court's precedents do not draw a distinction between the individual courts of a state, just the state courts and the federal courts *See, e.g., Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985); *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945); *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). The states have the right to set up their court systems how they see fit, and when a federal court references state courts, they refer to the authority that an individual state confers upon its own courts.

Personal jurisdiction in Georgia, like in the federal system, relies on whether the party had "minimum contacts" within the forum. *See Crossing Park Properties, LLC v. JDI Fort Lauderdale, LLC*, 316 Ga. App. 471, 729 S.E.2d 605 (Ga. Ct. App. 2012). Michelle Smith was unequivocally within the personal jurisdiction of the trial court, because she is a resident of the state of Georgia. The Superior Courts in Georgia

have jurisdiction in nearly all cases, and their jurisdiction is uniform throughout the state. Ga. Const. Art. VI, § 4, para. 1.

Petitioner made a conscious decision to file the lawsuit in the Superior Court of Crawford County. At that moment, she consented to that Court's rules. She knew, or was charged with the knowledge, that Georgia courts have the power to sanction attorneys who file frivolous lawsuits. She knew that by filing a lawsuit in the Superior Court of Crawford County she, as an officer of the court, was allowing it to exercise jurisdiction over her.

This alone should establish jurisdiction, but even if it did not, in Georgia,

In any civil action in any court of record in [Georgia], reasonable and necessary attorney's fees and expenses of litigation shall be awarded to any party against whom another party has asserted a claim . . . with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim . . . Attorney's fees and expenses . . . shall be assessed against the party asserting such claim . . . or against that party's attorney, or against both in such manner as is just.

O.C.G.A. § 9-15-14(a) (punctuation omitted). This is exactly what happened here. Michelle Smith and her client O'Neal brought a frivolous lawsuit against Crawford County, their lawsuit was dismissed, and Michelle Smith and her client were sanctioned jointly

and severally. *O'Neal v. Crawford County*, 339 Ga. App 687 at fn. 6, 792 S.E.2d 498 (2016). Michelle Smith is an attorney that practices civil litigation in the state of Georgia, and she surely had advance notice that she could be sanctioned for bringing a frivolous lawsuit.

Petitioner's constitutional claims fall apart here. She argues that she is entitled to equal protection of the law, a right guaranteed by the 14th Amendment. U.S. Const. Amend. XIV. This is precisely why her 14th Amendment rights were *not* violated, as she was sanctioned for filing a frivolous lawsuit in the same way that every other attorney in Georgia would be if they did the same thing. *See Ettrick v. SunTrust Mortgage, Inc.*, 349 Ga. App 703, 706, 824 S.E.2d 727, 730 (2019) (applying O.C.G.A. § 9-15-14 and assigning joint and several liability to client and attorney).

Petitioner argues that she is entitled to due process, another guaranteed right. U.S. Const. Amend. V and XIV. Her due process rights were in no way violated. She was afforded fair notice of the penalty she would face for filing a frivolous lawsuit. *See Johnson v. United States*, 576 U.S. 591 (2015) (holding that due process is violated when a law is so vague that it fails to provide fair notice). She was sanctioned by a court of competent jurisdiction which held personal and inherent jurisdiction over her as a member of the bar and was then afforded multiple direct avenues of appeal. The nature of the underlying lawsuit for or against the county or its employees, such as that in *Lue v. Eady*, 297 Ga. 321, 773 S.E.2d 679 (2015), or the general precepts of contract law, as in *Rivergate Corp. v McIntosh*, 205 Ga. App 189, 421 S.E.2d 737 (1992), are

irrelevant to the issue at bar, which is Michelle Smith's personal liability for a judgment rendered against her.

Petitioner must not be rewarded for her litigation tactics in this case, which amount to little more than using the justice system as a shield to protect her from her debt to Respondent. Petitioner is not a victim of some systematic constitutional oppression, and merely quoting Dr. Martin Luther King, Jr. does not establish such a constitutional violation. *See Pet. Brief at 7.*

D. The Bankruptcy Court Did Not Discharge Michelle Smith's Personal Debt.

Michelle Smith claims that the Bankruptcy Court's discharge order in O'Neal's case applied not just to O'Neal, but to her as well. This argument has no merit.

David O'Neal filed a Chapter 7 bankruptcy in the Middle District of Georgia in 2016. Michelle Smith was not a party to the case. As part of his personal bankruptcy, O'Neal filed a Motion to Avoid the Judicial Lien held by Crawford County under 11 U.S.C. § 522(f)(1)(A), which was granted by the Bankruptcy Court. As the bankruptcy court order exhibited by Petitioner indicates, this order "avoids the fixing of the judicial lien on the real and personal property of the debtor." The order provides no relief at all to Michelle Smith concerning her joint and several liability since she was not a Debtor in the bankruptcy.

At best, Michelle Smith could be considered a co-debtor of O'Neal in the bankruptcy case. It is axiomatic there is no relief for co-debtors in Chapter 7. The co-debtor relief present in the Bankruptcy Code itself applies only to consumer debts in Chapters 12 and 13.

See 11 U.S.C. §§ 1201 and 1301. The only other possibility would be a plan confirmation order with specific provisions regarding a third-party release. That is the situation cited in Petitioner's Brief. *See* Pet. Brief at 6 citing *In re Seaside Engineering*, 780 F.3d 1070 (11th Cir. 2015). But O'Neal has filed a Chapter 7 case. There was no plan and no co-debtor relief accorded. O'Neal's personal bankruptcy did not and could not have accorded to any relief to Michelle Smith.

CONCLUSION

The petition for writ of certiorari should be denied, as it was in Case No. 17-341.

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