No.

In the Supreme Court of the United States

SERGIO MOMOX-CASELIS, individually and as Guardian Ad Litem for MARIA MOMOX-CASELIS; and SERGIO MOMOX-CASELIS and KRISTIN WOODS as Co-Special Administrators of the estate of M.M.; PETITIONERS

v.

TARA DONOHUE; LISA RUIZ-LEE; KIM KALLAS; JEREMY LAW; SHUUANDY ALVAREZ; LANI AITKEN; OSCAR BENAVIDES; PATRICIA MEYERS; COUNTY OF CLARK, a political subdivision of the State of Nevada

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

MARJORIE HAUF, ESQ.
Counsel of Record
H&P LAW
8950 W. Tropicana Ave., Ste. 1
Las Vegas, NV 89147
(702) 598-4529
mhauf@courtroomproven.com

QUESTION PRESENTED

Whether the Ninth Circuit Court of Appeals departed from the accepted and usual course of the standards established by this Court in *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986) for reviewing an order granting summary judgment such that this Court's exercise of its supervisory power is warranted?

RELATED PROCEEDINGS

United States District Court (D. Nev.):

Momox-Caselis v. Juarez-Paez, Case No. 2:16-cv-00054-APG-GWF (Dec. 26, 2018)

United States Court of Appeals (9th Cir.):

Momox-Caselis v. Donohue, No. 19-15126 (Feb. 3, 2021)

Momox-Caselis v. Donohue, No. 19-15126 (Mar. 29. 2021) (order denying petition for rehearing en banc)

TABLE OF AUTHORITIES

Cases

Statutes

Rules

In the Supreme Court of the United States

SERGIO MOMOX-CASELIS, individually and as Guardian Ad Litem for MARIA MOMOX-CASELIS; and SERGIO MOMOX-CASELIS and KRISTIN WOODS as Co-Special Administrators of the estate of M.M.; PETITIONERS

v.

TARA DONOHUE; LISA RUIZ-LEE; KIM KALLAS; JEREMY LAW; SHUUANDY ALVAREZ; LANI AITKEN; OSCAR BENAVIDES; PATRICIA MEYERS; COUNTY OF CLARK, a political subdivision of the State of Nevada

---

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion in the court of appeals (App., *infra,* App-1) is reported at 987 F.3d 835. The district court's order granting respondents' motion for summary judgment (App., *infra*, App-23) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 3, 2021. A petition for rehearing was denied on March 29, 2021 (App., *infra*, App-47). This petition is timely pursuant to this Court's order entered March 19, 2020, extending all filing deadlines to 150 days after orders denying timely petitions for rehearing. Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT

This petition arises from the court of appeals' affirmance of an order granting summary judgment against Petitioners in violation of the Rule 56(c) standards established by this Court in *Anderson v. Liberty Lobby,* 477 U.S. 242 (1986). Petitioners Sergio Momox-Caselis and Maria Momox-Caselis (the "Momox-Caselis's") are the natural born parents of deceased infant M.M., who died while under the care and supervision of Respondents. Respondents consist of individual employees of the Clark County Department of Family Services (the "Department Members") and Clark County, Nevada (the "County") (collectively, "Respondents").

Within a few months of the Respondents placing M.M. in the care of inexperienced and overwhelmed foster parents Joaquin and Maria Juarez (the "Juarezes"), M.M. died due to an overdose of Loratadine. (App., *infra*, App-89-190, 321-327, 500 and 512). Her death was ruled a homicide, and Joaquin Juarez subsequently committed suicide and left a note admitting to the murder of M.M. (App., *infra*, App-295-307, 321-327 and 512). Petitioners filed a lawsuit against Respondents in the United States District Court for the District of Nevada alleging violations of 42 U.S.C. § 1983 for the (1) improper placement of M.M. in a dangerous home after removal from her prior foster home where she was safe, (2) Respondents' deliberate indifference, and (3) failure to properly train or supervise the individual Respondents. Respondents also asserted a state law negligence and wrongful death claim. The district court granted summary judgment against Petitioners, and Petitioners appealed that order to the Ninth Circuit Court of Appeals.

On appeal, the court of appeals affirmed the order granting summary judgment in contravention of the Rule 56(c) standards established by this Court. First, the court of appeals incorrectly found that Petitioners waived their right to argue that Respondents were deliberately indifferent by ratifying questionable policies and procedures by raising it for the first time on appeal. (App., *infra,* App-12). This argument was in fact raised and argued before the district court. (App., *infra*, App-435-440).

Second, the court of appeals repeatedly weighed the evidence, which it may not do on summary judgment, and construed it in favor of the moving party rather than Petitioners, the non-moving parties. For example, the court of appeals found that there was no genuine issue of material fact regarding Respondents' deliberate indifference because Respondents produced "voluminous records" of their "rigorous licensing and training process." (App., *infra,* App-15). This finding ignored the evidence Petitioners presented that (1) these processes were not followed, (2) the Juarezes were improperly licensed under these procedures, (3) the Juarezes were not supervised, and (4) the voluminous record was conspicuously missing certain

policies and procedures that would have protected M.M. (App., *infra,* App-122-123, 192, 196, 222-236, 240-247, 352-356, 409, 476-479, 482, 485-490 and 492-503).

The court of appeals further found that Petitioners did not establish facts sufficient to bring the case with in the "state-created danger" exception to the Due Process clause's general limitation on extending affirmative rights to governmental aid or imposing duties upon the state to protect individuals from third parties. *See L.W. v. Grubbs,* 92 F.3d 894, 900 (9th Cir. 1996). Specifically, the court of appeals disregarded Petitioners' evidence that the licensing file raised multiple red flags, including, but not limited to, improper waivers of certain licensing requirements, errors in the file, missing information, inaccurate statements on the face of the application, and instead held that there was no genuine dispute of material fact because there was no evidence Respondents relied upon these facts when placing M.M. with the Juarezes. (App., *infra*, App-1-22, 122-123, 192, 196, 222-236, 240-247, 352-356, 409, 476-479, 482, 485-490 and 492-503). This raises an inference in favor of Respondents, the moving party, which directly contravenes the standards established by this Court in *Anderson v. Liberty Lobby,* 477 U.S. 242 (1986).

The court of appeals denied Petitioners' request for rehearing. This writ petition follows.

REASONS FOR GRANTING THE PETITION

This Court has discretion to grant of writ of certiorari. U.S. Sup. Ct. R. 10. Certiorari is appropriate when a court "has so far departed from the usual and accepted course of judicial proceedings, or sanctioned such a departure for a lower court . . ." *Id.* at 10(a).

Exercising its discretion, this Court has previously granted writs of certiorari to establish the relevant standards for the courts to follow in granting summary judgment. *See Anderson v. Liberty Lobby,* 477 U.S. 242 (1986); *Celotex Corp. v. Catrett,* 477 U.S. 317 (1986). Since these seminal opinions, this Court has granted writs of certiorari to enforce the application of its established summary judgment standards. *See, e.g., Tolan v. Cotton,* 572 U.S. 650, 651 (2014) (granting certiorari because "the Fifth Circuit failed to adhere to" this Court's "axioms" when deciding a motion for summary judgment).

In *Anderson*, this Court clarified that a genuine issue of material fact sufficient to preclude summary judgment exists if there is a factual "dispute[] over facts that might affect the outcome of the suit under the governing law." *Anderson,* 477 U.S. at 248. To make this determination, this Court instructed the lower courts to determine whether "a reasonable jury could return a verdict for the nonmoving party." *Id.* This Court further instructed that "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255.

Accordingly, it is not a "judge's function" to "weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Id.* at 249.

These standards were not followed by either the district court or the court of appeals. Instead, the court of appeals repeatedly weighed the evidence, and construed it in favor of the moving party rather than Petitioners, the non-moving party. The court of appeals found that there was no genuine issue of material fact regarding Respondents' deliberate indifference because Respondents produced "voluminous records" of their "rigorous licensing and training process," (App., *infra,* App-15), while ignoring the evidence Petitioners presented that (1) these processes were not followed, (2) the Juarezes were improperly licensed under these procedures, (3) the Juarezes were not supervised, and (4) the voluminous record was conspicuously missing certain policies and procedures that would have protected M.M. (App., *infra,* App-122-123, 192, 196, 222-236, 240-247, 352-356, 409, 476-479, 482, 485-490 and 492-503). This is a clear departure from the usual and accepted course of proceedings. *Anderson,* 477 U.S. at 249, 255.

The court of appeals further found that Petitioners did not establish facts sufficient to bring the case within the "state-created danger" exception to the Due Process clause's general limitation on extending affirmative rights to governmental aid or imposing duties upon the state to protect individuals from third parties. *See L.W. v. Grubbs,* 92 F.3d 894, 900 (9th Cir. 1996). Specifically, the court of appeals disregarded Petitioners' evidence that the licensing file raised multiple red flags, including, but not limited to, improper waivers of certain licensing requirements, errors in the file, missing information, inaccurate statements on the face of the application, and instead held that there was no genuine dispute of material fact because there was no evidence Respondents relied upon these facts when placing M.M. with the Juarezes. (App., *infra*, App-1-22, 122-123, 192, 196, 222-236, 240-247, 352-356, 409, 476-479, 482, 485-490 and 492-503). This raises an inference in favor of Respondents, the moving party, which directly contravenes the standards established by this Court in *Anderson,* 477 U.S. at 255. Accordingly, Petitioners respectfully request that this Court exercise its discretion to grant this writ of certiorari.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court exercise its discretion to grant this writ of certiorari.

Respectfully submitted this 27th day of August, 2021.

MARJORIE HAUF, ESQ.
Counsel of Record
H&P LAW
8950 W. Tropicana Ave., Ste. 1
Las Vegas, NV 89147
(702) 598-4529
mhauf@courtroomproven.com