No. 21-653

IN THE

SUPREME COURT OF THE UNITED STATES

Billy Mack Nichols Jr. #92713 — PETITIONER
(Your Name)

vs.

Gary R. Kerstein, Doctor — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, ~~Eighth~~ ~~Eigth~~ 8th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Billy Mack Nichols Jr. #92713
(Your Name)

P.O. Box 970
(Address)

Marianna, AR, 72360
(City, State, Zip Code)

N/A
(Phone Number)

Question(s) Presented

1) Whether the lower courts were wrong for not seeking out, or for not causing the medical doctor, defendant, to seek out the cause for my Central Diabetes Insipidus (excessive frequency of urination) so that it may be properly treated, as hospital records of the year 2016 stated the cause unknown and left the matter for the prison doctor, the defendant, to figure out, and,was the 8th and 14th Amendment to U.S. Constitution violated hereby.

2) Whether the lower courts were wrong for dismissing the case of my Central Diabetes Insipidus only due to false statement of defendant Kerstein that the hospital records of my 2016 year hospitalization stating that i have "excessive frequency of urination" do not exist, and whether this violated the Rule that credibility should not be assessed on summary judgment motion - Rule 56 civil procedure.

3) Whether the lower courts, the judges thereof that were assigned to this case were wrong for not recusing themselves from this case due to bias of the situation of my Central Diabetes Insipidus, as shown above in sections #1 and #2 above this page, and whether the 8th and 14th Amendments to U.S. Constitution violated hereby (the cruel and unusual punishment and equal protection clauses).

4) Whether in totality of the circumstances I was denied medical relief for a serious medical need of my Central Diabetes Insipidus and thereby am under the subjection of cruel and unusual punishment and the denial of equal protection of the laws including, but not limited to, Title 42 U.S.C. §1983.

5) Whether it was/is constitutional for the court clerk to stop me from serving summons by refusing to place seal of court on summons.

6) Whether the Constitution of U.S. was violated by the District Court having allowed to pass as proper the clerk of the court error of withholding the Plaintiff's/Petitioner's timely made "Notice of Objection Disposition" until after the District Court dismissed the case by falsely accusing the Plaintiff/Petitioner of having made no objections to the Recommend Disposition, and whether this also violated the Rules of Civil Procedure and is reversible and/or plain error.

LIST OF PARTIES

[N] All parties appear in the caption of the case on the cover page.

[ ] 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:

RELATED CASES

Billy Mack Nichols Jr. #92713 vs. Sonya Anissa Peppers, et.al., 5:14-cv-00448 (U.S. Dist. Ct., E. Dist. Arkansas) (2014-2016) see Appendix B

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PARTIES

Billy Mack Nichols, Jr #92713 Plaintiff

Gary R. Kerstein, Doctor Defendant

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**: NO OPINION MADE SEE APPENDIX A1

The opinion of the United States court of appeals appears at Appendix * to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.
[✓] NO OPINION MADE

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 1, 2021.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 21, 2021, and a copy of the order denying rehearing appears at Appendix A5.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY ~~INVOLVED~~ PROVISIONS INVOLVED

1.) This case involves Amendment XIV to the United States Constitution, which provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article.

2.) This case also involves Amendment 1 to the United States Constitution, which provides:

Congress shall make no law... abridging the freedom of speech... and to petition the Government for a redress of grievances.

3.) These above Amendments are enforced by Title 42 U.S.C. § 1983, United States Code:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any Rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declatory relief was unavailable

4.) The above mentioned Constitution Amendments and laws were violated by the ~~district and circuit~~ courts that exercised jurisdiction over this case.

STATEMENT OF THE CASE

1) The district and Appellate Judges were bias against me and did not recuse themselves from the case, and this was made evident by their rulings relying on false statement of the defendant that my hospitalization records dated May 26th - 29th of 2016 did not show I have excessive frequency of urination (Central Diabetes Insipidus) with the cause unknown on day of 5-38-16 when it was first recognized by the hospital doctor and nurses upon my request for them to see that it has been a cause of health problems for years.

2) Without the Judges of this case being bias against me, this case could not have been dismissed, as there was a false claim by the judges (district and appellate) that I do not have the Central Diabetes Insipidus.

3) My life is in danger and I am in need of help from the court.

Opening Statement

1) Defendant Kerstein fed the Court with some lies and/or some false statements/evidence numerous times within his filings made within this case, of which the Plaintiff has made filings to show the evident of those lies/false statements and/or evidence which was wrongly overlooked by the court for prejudicial reasons and the case was erroneously dismissed for the behalf and favor of defendant Kerstein (the court = district court).

2) Accordingly and additionally, the Court's judgment of dismissal is also ignorant to the "changed actions of defendant Kerstein and/or his medical staff about the medical treatment that was once given to the Plaintiff", and caused the Court to believe that the Plaintiff was no longer under the imminent danger of his serious physical injuries (Id at DOC #123 pgs. 11-17), defendant Kerstein has stopped/deceased some, or most, of these treatments even while the Plaintiff's injuries are still present, and had defendant Kerstein's reason been for "the medications being ineffective due to being of the least of strength treatments not sufficing for plaintiff's serious physical injuries and pain", then it would have only been right for defendant Kerstein to prescribe the Plaintiff to a more effective course of medical treatment, but instead nothing of the sort has been provided, defendant Kerstein just simply withdrew treatment seeing that the court moved to dismiss the case, and/or, simply for the retaliatory reasons of defendant Kerstein, and this is of the withdrawal of medical treatments that defendant Kerstein did not inform "the" court about with truthfulness, nor with honesty, of his reasons, in example, the Plaintiff has a swollen prostate gland, and the non-steroidal ant-inflammatory drugs of Excedrin or Meloxicam or Naproxen the only ones (NSAIDs) prescribed to the Plaintiff, has neither, so the Tamsulosin and Proscar, which are not NSAIDs, has no assistance nor help that the Tamsulosin and Proscar prostate gland medications are supposed to have of the NSAIDs. I was originally prescribed to Baclofen, Tamsulosin, Proscar, and Excedrine for my swollen prostate gland, and now my excessive urination problems are very excessive, resultantly.

3) The Court stated on lines 6-9 of pg. 12 of document 123-0, (of defendant Kerstein's actions) that "... He renewed Tylenol for pain, but discontinued Meloxicam (a non-steroidal anti-inflammatory drug) determining that Nichols did not need to be on both medications because there was "no significant objective findings." Note: the Plaintiff has a swollen prostate gland A) Tylenol is not a NSAID and has no anti-inflammatory effect, it cannot reduce inflammation or swelling, and therefore is of no benefit to the swollen prostate gland of the Plaintiff as are the NSAIDs. (Id at DOC #139-0 pgs. 11 and 12) and Defendant Kerstein knows this but rather chose to trick the court about it. The Plaintiff needs NSAIDs for all of his inflammation/swelling and/or even his arthritis problems.

DISCUSSION OF THE JUDGMENT ISSUES
FOR RELIEF AND ENFORCEMENT AND/OR EXECUTION

4) The Plaintiff needs relief for his constipation problems of stool hardening causing stooling difficulties and pain upon the Plaintiff, the Plaintiff was prescribed to stool softeners which began during his hospitalization during the year of 2016, this relieve the stool hardening and stooling difficulties of the Plaintiff and Plaintiff was suffering no adverse side effects of nausea to this day (nausea is the only possible side effect to stool softeners, which is only a detergent. Id at Doc #124 pg. 6) but defendant Kerstein told the Court trickery that he stopped the

Plaintiff's stool softener for other reasons that were inconsistent with the truth of the matter. (Id at Doc #113 section #13) as the truth of the matter is that the plaintiff is now only being physically assaulted by the hard stooling, constipation, difficulty stooling, extreme pains being caused heretofore. the Plaintiff prays this court for judgment relief, as in document #105 a cause for judgment of the matter was placed before court, the Plaintiff told the truth that defendant Kerstein did retaliation upon the plaintiff about this case and presented proof, even a sworn declarations and documentation, See (Id at document #105 pgs. 3 and 4) and the court erroneously denied this matter/document #105 as moot, see (Id Doc. #123 pg. 22 at section #2). Wherefore, I, Plaintiff, need a relief from judgment in this area also.

COURT MISCONSTRUED PLEADINGS OF THE PLAINTIFF

5) The standard walker that was issued to the Plaintiff is not working for the knee joint instability problems of the Plaintiff, nor for the ankle and feet pain/injuries of the plaintiff, as the standard walker does not perform the duty of a knee brace that the Plaintiff was priorly prescribed to by orthopedic doctor Charles Shock who was the original founder and diagnosed Plaintiff's right knee problems/injuries that cause the Plaintiff to have joint instability of his right knee, the knee brace was also issued/prescribed to aid in preventing the Plaintiff's right knee from swelling and/or from catching fluid from walking with bending the knee for in the fashion that normal people would without a knee brace.

A) I never told the court that the standard walker resolved the problems of my right knee joint instability nor my feet and ankle problems of limited mobility, severe discolorations in soles of both of my feet, nor did my amended complaint (Doc #8) change about defendant Kerstein having taken my wheelchair prescription and other helpful medications only due to retaliation (Id Doc #8 pgs. 5-7) and this standard walker has caused me additional health problems such as shoulder and back arthritis creaking pain/injuries.

CLERICAL MISTAKES / CLERK OF COURT INJUSTICE

6) In the Plaintiff not changing up his original nor his amended complaints of this case, so that they all show that the Plaintiff presently and truthfully claims imminent danger of serious physical injuries, was the Plaintiff also submitting summons to the Clerk for the duty to be fulfilled of Rule 4(b) the Clerk refused to obey/follow Rule 4(b) which provides: "On or after filing the complaint, the plaintiff may present a summons to the clerk for signatures and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the Plaintiff for service on the Defendant. A summons- or a copy of a summons that is addressed to multiple defendants - must be issued for each defendant to be served."

7) The clerk of the court wrongfully and/or illegally interfered with this case by stopping the plaintiff, (i.e. when the Plaintiff submitted summons to the clerk in compliance with the Rules, the clerk would simply do an illegal procedure of an electronic filing and docket entry of an "Motion for Summons" which was not supposed to have happened according to Rule 4(b) of Civil Procedure). the clerk never did sign nor placed the courts seal on any of the Plaintiff's properly filled out summons, but rather just kept the summons for months, prejudicially disabling the Plaintiff from prosecuting his case and/or from being able to effectively represent himself pro-se by the evidence, see also documents 35, 42 and 98.

A) The Plaintiff properly prepared each summons in accord to Rule 4(A)(B)(C)(D)(E) and it was the duty of the clerk to fulfill Rule 4(A)(1)(F)(G) signatures and seal.

B) The Plaintiff was timely to each complaint/amended complaint per Rule 4(m), and Rule 71(i)(2) states that only the court may dismiss a defendant.

8) Evidence and witnesses favorable to the Plaintiff that would have exposed the prejudice and abusiveness of malpractice upon me was withheld and/or kept in a closet as a result of each summons of Documents #35, 42 and 98 not being fulfilled by the clerk.

9) The other clerical mistake/clerk of court injustice was of the clerk of court not timely filing nor entering into the court in a timely fashion my Objections to the Recommended Disposition of this case, that the clerk of court did timely possess, and in this manner the clerk did deny the Plaintiff the right to object to the recommended disposition (Doc #123-0) meaning that the clerk refused to allow the Plaintiff to preserve error for appeal, and caused the District Judge to adopt the Recommended Disposition dismissing this case without hearing the timely filed objections of the Plaintiff, a clear violation of Rule 72(A)(b)(2)(3) and Rule 72(h)(3) provides: "The district judge "must" determine de novo any part of the magistrate judge's disposition "that has been properly objected to..."".

A) On day of August 11, 2020 Plaintiff, by U.S. Mail to Pro-Se law clerk, timely filed with the court a document titled "Plaintiff's Objections to Recommended Disposition" which the clerk of the U.S. District Court did file stamp on day of August 24, 2020, but did not enter/submit it to the court until after the court well issued it's Order and Judgment of Dismissal, (Documents #130 and #131) the Plaintiff filed other motions trying to inform the Court that he had sent objections to the Recommended Disposition and wanted to amend the objections (documents #133, 134, and 135), and Doc #133 was an amended objection, however, this was all to no avail, the clerk still had withheld, even during this time, the Plaintiff original and timely filed objections to Recommended Disposition causing the court to erroneously believe that the Plaintiff made no timely objection in the first place, resultantly documents #133, 134 and 135 were also denied, See Doc #137 and after all of this, the clerk finally submitted for open view and as a disclosure, the truth that the Plaintiff did timely object to the Recommended Disposition, see Doc #140-0, it was entered on day of 9-2-20 according to the clerk who also chose to title it as "Supplemental Objections" but the authentic document itself shows itself to be the Plaintiff's originally filed "Plaintiff's Objections to Recommended Disposition" and was mailed on day of 8-11-20.

B) There is no showing that this document #140 ever was ruled on, as the last order from the court denied document #139, which I had mailed long after I mailed document #140, clearly the clerk is in error and has wrongly caused my case to be dismissed by doing abuse of the electronic filing Rule. The clerk did abuse of power and discretion in this case, in violation of Rule 5(d)(4).

10) Rule 5(d)(4) of Civil Procedure provides: "The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local Rule or practice." Federal Rule of Civil Procedure.

11) Federal Rule of Appellate Procedure 25(A)(4) provides: "The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in a form as required by these Rules or by any local Rule or practice."

12) A remedy of the matter should be for all future filing to be made under seal per Rule 5.2(d) allowing direct filing to the judge per rule 5(d)(2)(B)l; and to reopen this case, and for any and all other relief this court deems just and proper. including, but not limited to, sanctions upon the clerk.

13) Rule 51 labels objections to also be as "Preserving a Claim of Error", and Rule 5(c)(1)(2) governs how and when to make objections, and due to all herein stated, listed and contained, herein sections #9-11 the clerk of court did stop the Plaintiff from having a timely made objection heard by the court, which was not supposed to have been made.

ADDITIONAL CLAIM OF PREJUDICE

14) It was an error of the court to footnote on page 20 of Doc #123 the false statement that "... The medical evidence unequivocally shows that Nichols does not have, and never had, active tuberculosis." and this is because not only did blood tests reveal activeness in the blood, which chest X-ray do not show nor diagnose, miliary tuberculosis causes neutropenia and leukopenia symptoms, and the Plaintiff submitted this evidence of blood test results to the court, which was ultimately and wrongly ignored by the court, as the Recommended Disposition was to prejudicially say that the Plaintiff's tuberculosis (TB), by chest X-ray, was inactive, as mentioned herein this section above, in the Plaintiff's written objections to the Recommended Disposition of this case, the Plaintiff pointed out the blood test results showing miliary tuberculosis activeness symptoms the leukopenia and neutropenia, but however as mentioned herein above this page, the clerk of court wrongly withheld the Plaintiff's timely made objections from the court, and I suffered prejudice.

15) Rule 56(E)(2) states: "If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may consider the fact undisputed for purposes of the motion."

16) Rule 56(f)(1)(3) states: "After giving notice and a reasonable time to respond, the court may grant summary judgment for a nonmovant; consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute."

17) At document #140 pg. 5 section #11 begins the topic of Plaintiff's miliary TB, which goes on to page #6 and it is this topic that genuinely disputes the court's claim that the Plaintiff's TB is not active, all of Plaintiff's injuries mentioned of in the complaint besides the metal ball in Plaintiff's right upper jaw, such as Plaintiff's feet, urination, nerve, arthritis,joint, bones, tissues, are all symptoms/results of his Central Diabetes Insipdus and/or TB, including the injury of Plaintiff's swollen prostate gland.

18) The court made the unproven statement that my TB has never been active, the court has not known me all of my life and neither has defendant Kerstein, and not listening to me of my medical problems is how I constantly over and over again be denied adequate medical care. I

know my history, and by the clerk having wrongfully withheld my objections to the Recommended Disposition (doc #123) from the court, the Recommended Disposition (doc #123) remained undisputed thereby and judgment was granted in favor of defendant Kerstein resultantly, by the District Judge having adopted the Recommended Disposition (Id at documents #130 and 131) the Plaintiff was indeed prejudiced.

19) The error of my objections to Recommended Disposition being wrongly withheld from the court prejudicing the Plaintiff in the manner(s) herein described and/or mentioned of is Reversible Error and was not supposed to have taken place, and by it having been placed on the court record as Document #140, the court should be well aware of this incident and is not to concur, as not to agree with it, as even 28 U.S.C.A. §2072(A)(b) provides: "The Supreme Court shall have power to prescribe general rules of practice and procedure and Rules of Evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeal. Such Rules shall not abridge, enlarge or modify any substantive Right. All law in conflict with such Rules shall be of no further force or effect after such Rules have taken effect."

A) And this does also mean, per 28 U.S.C.A. §2072, that the Ruling of the district court is not final, pertaining to this case, as it is against the Rules.

20) 28 U.S.C.A. §2072 provides: "Such Rules may define when a Ruling of a district court is final."

21) Another obstruction to justice is about the illegal procedure the court did about Plaintiff's request for admissions; the admissions does consist of the Defendant's guilt of being deliberately indifferent towards the Plaintiff having Central Diabetes Insipidus according to hospital records. (Id at Doc #92 section #1 (making reference to Doc #83 and 84) specifically Id at Doc #84 sections #1-3) the court declared as moot, erroneously.

A) A claim of the Plaintiff is that he, Plaintiff, had excessive frequency of urination problems even before his prostate gland became swollen, and that defendant Kerstein and his medical staff are using the fact that the Plaintiff's prostate gland eventually became swollen (due to Plaintiff's untreated diabetes and/or tuberculosis) as a scapegoat to not treat the plaintiff's diabetes mainly, and/or his tuberculosis effectively, as the Plaintiff is still presently suffering in symptoms. (i.e. Neutropenia and leukopenia Id at Docs #105, 104, 110).

B) The Court agreed with Defendant Kerstein, against the Rules, to ignore Plaintiff's diabetes and hospital records of it, and just do some medical treatment to the prostate gland of the Plaintiff (Id at Doc #123 section #2 at lines 4 and 10), and then the court falsely stated that the hospital records of me having diabetes insipidus does not exist. (Id at Doc #123 pg. 14 paragraph 2 lines 6-7), and the court wrongly speculated this due to having misconstrued a truthful statement that I made "that the hospital did lab work ruled out every other possible cause (of disease) for my excessive urination," and the main factor to consider is that this is not all that the hospital did in discovering that I have Central Diabetes Insipidus. See

Id at Doc #123 pg. 14 at footnote about all of this speculation and misconstrument of the plaintiff's complaint, which is against the Rules.

i) Rule 8(e) provides: "Pleadings must be construed so as to do justice."

22) The discovery Rules provides that the Plaintiff be permitted to prove his case, even by a preponderance of the evidence, which, in this case, would be the hospital records. and the court is to not be of accepting any false, immaterial statements of the defendant about it, as it did (Id at Doc #123 pg. 12 section #2 beginning at line #2) the court stated "... However according to Dr. Kerstein's sworn Declaration, "There is no objective medical finding or diagnosis of Mr. Nichols having Diabetes Inisipidus..."

A) The Plaintiff filed a pleading stating that defendant Kerstein did not even do a diabetes insipidus diagnosis upon the plaintiff, rather only a diabetes type 1 and type 2, as, when the blood test revealed Plaintiff to be suffering in a miliary TB symptoms of leukopenia and neutropenia, and being a cause of the diabetes insipidus, defendant Kerstein chose to issue no medical treatment to the Plaintiff about it, ordered his medical staff to give no medical treatment to the Plaintiff for this, even while knowing that neutropenia and leukopenia treatment is either blood transfusion or antibiotics, thats how serious the case of my diabetes insipidus and/or miliary TB is. I informed the court about this truthfulness despite defendant Kerstein's false declaration about it. ID at Doc #105, 108, 109, 112, 118. The Defendant filed a Response admitting, but ignoring, blood test results showing neutropenia and leukopenia of the Plaintiff, Id at Doc #119, (Defendant Kerstein falsely stated/insinuated that diabetes insipidus and/or tuberculosis does not cause leukopenia nor neutropenia)

23) It has long been held by the U.S. Supreme Court that the district court is not supposed to decide disputed facts or assess credibility on a summary judgment motion. Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 520 111 S. Ct. 2419 (1991); Anderson v. Liberty Lobby, Inc. , 477 U.S. 242, 255, 106 S. Ct. 2505 (1986). Thus, a court may not grant summary judgment because it thinks the prisoner's assertions about an incident or an injury are inconsistent with prison medical records. Scott v. Coughlin, 344 F. 3d 282, 289-90 (2d Cir. 2003)(Court should not have granted summary judgment based on perceived disparity between Plaintiff's sworn statement and medical records; doing so was an impermissible credibility determination and weighing of contradictory evidence.)

24) The plaintiff is in need of a medical pillow for the metal ball in his upper right jaw, to be reinstated.

25) The Plaintiff needs for all of his motions that were declared moot to be heard by the court, as not declared moot (see Doc #123 pg. 22 Sections #2 and 4)

IN THE UNITED STATES SUPREME COURT

Billy Mack Nichols Jr. #92713 **PETITIONER/APPELLANT**

vs. **No.**_____

Kerstein, Et. Al. **RESPONDENT/APPELLEES**

REASONS FOR GRANTING THE PETITION

~~**ASSIGNMENT OF ERROR**~~

~~Now Comes the Appellant, Billy Mack Nichols Jr. #92713, pro se, and for his Assignment of Error, Allegos and states as follows:~~

1.) The deliberate indifference standard requires a Plaintiff to show that the defendants had actual knowledge of an objectively cruel condition (in medical cases, a serious medical need) and did not respond reasonably to the risk. Farmer vs. Brennan, 511 U.S. 825, 837, 114 S. Ct. 1970 (1994).

2.) The medical records of my 2016 hospitalization is of direct or indirect evidence that the Appellee(s)/Defendant(s) know and knew that I have a serious medical need of Central Diabetes Insipidus and/or excessive frequency of urination that was unrelated, at that time, to an enlarged/swollen prostate gland, as Appellant having an enlarged/swollen prostate gland at that time did not exist, and the Appellant now having an enlarged/swollen prostate gland is only a result of untreated Central Diabetes Insipidus (CDI), and/~~of~~, a result of the Appellee(s) refusing to respond reasonably to the risk to me having CDI as it was reported to the Appellee(s) by hospital examination informing the Appellees of my excessive frequency of urination in the year of 2016, and/or, is a result of the Appellee(s) ignoring all of my complaints made before, during, and after, the year of 2016, of me having excessive frequency of urination problems which also is Tuberculosis (TB) related, and this also constitutes malpractice.

3.) In a similar case and/or situation, this 8th Circuit Court of Appeals held medical staff liable under the deliberate indifference standard because the medical staff thought the problem was something other than what the prisoner had told them. There was evidence contrary to the medical staff saying that they did not know the prisoner had a serious medical need, and this case was the case of Vaughn vs. Gray, 557 F. 3d. 904, 909 (7th Cir. 2009).

4.) It was and is clear I have a serious problem of the excessive frequency of urination (CDI) and the Appellee(s)/Defendant(s) has been disregarding it for an excessively long period of time, as the year is now 2021 and I still have not received any medical treatment for CDI, and, the fact that the risk is obvious can support a finding that the Appellee(s)/Defendant(s) knew about it, ~~an~~ stated by the U.S. Supreme Court in the case of Farmer vs. Brennan, 511 U.S. 825, 842-43, 114 S. Ct. 1970 (1994).

5.) The Appellee(s)/Defendant(s) refuses to pay attention to history, which resulted to me having to receive numerous complications of the CDI, complications that the Appellee(s) try to say are not complications of the CDI, and in doing this the district court was told by the Appellee(s)/Defendant(s) that the records of me having a hospital report of excessive frequency of urination does not exist, which the district court wrongfully adopted as the truth, (Id at DOC #123 pg. 14 lines 12-14 and footnote), and some of the resultant injuries and/or complications that I have received from the CDI ~~are~~ mentioned at DOC #124 includes digestive disorders, Neutropenia also, and the initial complaint mentions of others, and, the Appellee(s)/Defendant(s) fail to conduct the tests that CDI calls for (the water deprivation test and other CDI blood test, urine test, Etc.) only the diabetes mellitus was done, no miliary TB test was done, and the miliary TB test is the blood test for ~~TB~~ (Miliary Tuberculosis) as to how the TB bacteria is affecting the blood. The 2d Circuit Court of Appeals made a ruling similar to this case that made logical sense

which was that "Allegation of repeated failures to test for Hepatitus C despite the presence of known "danger signs" supported a deliberate indifference claim." Mckenna vs. Wright, 386 F. 3d. 432, 437 (2d Cir. 2004)

6.) I was allowed to proceed in forma pauperis with this case in the district court at first, and because of the lies of the Appellee(s)/Defendant(s), (defendant Kerstein with his subordinates reports), my In Forma Pauperis status was revoked, the lies that my 2016 year hospital records showing excessive frequency of urination did not exist. DOC #123

CONCLUSIVE ARGUMENT

7.) In determining whether there is a genuine issue of material fact, "the court must view "all" facts and make all reasonable inferences in favor of the non moving party." Matushita Electric Industrial Co., Ltd. vs. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348 (1986), However, the district court did not accept my version of the facts in the case at hand Nichols vs. Kerstein, Et. Al., due to the erroneous doing of credibility assessment to the Appellee(s) /Defendant(s).

8.) It has been well held that, "The court is not supposed to decide disputed facts or assess credibility, on a summary judgment motion. "Masson vs. New Yorker Magazine, Inc., 501 U.S. 496, 520, 111 S. Ct. 2419 (1991)," Thus a court may not grant summary judgment because it thinks the prisoner's assertions about an incident or an injury are inconsistent with prison medical records." Scott vs. Coughlin, 344 F. 3d. 282, 289-90. (2d Cir. 2003), as that court said, "Court should not have granted summary judgment based on perceived disparity between plaintiff's sworn statement and medical records; doing so was an impermissable credibility determination and weighing of contradictory evidence." This is supported by Rule 56 of civil procedure, as Rule 56 forbids credibility assessment on a summary judgment motion.

9.) HEREFORE the ruling made by the district court was against the Federal Laws of the United States of America and therefore should not stand, otherwise is to be of criminality against the Appellant/Plaintiff who claims to be under the imminent danger of serious physical injury(s).

CONCLUSION

10.) The decision of the district court should be reversed and remanded for further proceedings.

PROOF OF SERVICE

Executed to Clerk of Court on day of ~~October 1, 2024~~ November 22, 2021

by U.S. Mail.

VERIFICATION

I, Billy Mack Nichols Jr. #92713, pro-se Appellant, do hereby declare under the penalty of perjury that the forgoing is true and correct, to the best of my knowledge.

Respectfully Submitted, Billy Mack Nichols #92713, pro-se, Appellant

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Billy Mack Nix

Date: ~~10-1-21~~ 11-22-21