

No. ~~21-6855~~ **ORIGINAL**

IN THE SUPREME COURT OF THE UNITED STATES

DEVIN ANDRICH— PETITIONER

VS.

Supreme Court, U.S.
FILED

JAN 10 2022

OFFICE OF THE CLERK

JEROME FRANCIS MEYERS, JR., ET AL.— RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
THE ARIZONA COURT OF APPEALS – DIVISION ONE

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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QUESTIONS PRESENTED

1. Whether the court of appeals erred when deciding that a 2-hour trial “chess clock” did not violate Petitioner’s due process rights, because Petitioner did show harm suffered by the time limits when the state court did not allow Petitioner to complete examination of Respondent; did not allow Petitioner to testify in his own case; and did not allow Petitioner to call rebuttal witnesses to Respondent’s testimony.

PARTIES TO THE PROCEEDINGS

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:

Petitioner:

Devin Andrich was plaintiff in the state court and appellant in the court of appeals, and is petitioner in this Court.

Respondents:

The following parties were defendants in their individual capacities in the state court and appellees in the court of appeals, and are respondents in this Court:

Jerome Francis Meyers, Jr.

Lisa Freeman Meyers

Jason Pistiner

Kristinia R. Keating

Singer Pistiner P.C.

RELATED CASES

None

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APPENDIX B	Order of Arizona Court of Appeals Denying Motion for Reconsideration dated May 7, 2021
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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

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished. The opinion of the state trial court appears at Appendix C to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was April 20, 2021. A copy of that decision appears at Appendix A. A timely petition for rehearing was thereafter denied on the following date: May 7, 2021, and a copy of the order denying rehearing appears at Appendix B. The date on which the highest state court denied my petition for review was October 12, 2021. A copy of that decision appears at Appendix D. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment 14 provides, in relevant part:

No state...shall 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.

STATEMENT OF THE CASE

Petitioner is a former Arizona attorney disbarred by the Supreme Court of Arizona. Upon Petitioner's disbarment, Arizona Supreme Court Rule 72 clearly states:

"Respondent shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them, and any counsel representing them, of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property. Respondent shall deliver all files and records in pending matters to the client, notwithstanding any claim of an attorney lien."

Rule 72(c), Ariz. S.Ct.

"A disbarred or suspended lawyer, or a lawyer on disability status to the extent able, or the conservator shall keep and maintain records constituting proof of compliance with this rule. Proof of compliance, which shall include copies of notice sent pursuant to subsection (a) of this rule and signed returned receipts, shall be provided to chief bar counsel. Proof of compliance is a condition precedent to any application for reinstatement.

Rule 72(f), Ariz. S.Ct.

Respondents remain in last known possession of Petitioner's legal files and Petitioner's former clients' estate planning files. Respondents refuse to tell the State Bar of Arizona the location and whereabouts of the stolen client files. The State Court

dismissed Petitioner's conversion claim based on statute of limitations. Petitioner's sole recourse to comply with Arizona Supreme Court Rule 72 was to prosecute a promissory estoppel claim against Respondents.

During the trial, Respondent Jerome Meyers told his fourth separate story in the prior 2 years concerning the whereabouts of Petitioner's laptop:

"Q. [By Petitioner] So to set the timeline here, we've got January 2015, Mr. Steitz testifies he never had a laptop. Then we have May 2015, where you've testified you tell Bobby Thrasher you never had a laptop. Then we have -- fast-forward to 2018, we have a sworn statement from you and a statement made on behalf of your attorney that the laptop was returned to Mr. Steitz.

A. [By Respondent Jerome Francis Meyers, Jr.] I know. The --

Q. So I'll ask you today, Mr. Meyers, where is the laptop?

A. You know you have it. I do not have it, and you -- you know that.

Q. What became of the laptop?

A. You took it with you...I have stated multiple times that it was never left in my possession..."

Appendix E, App417-App418.

"Q. Mr. Meyers, don't you think it's time that Plaintiff's clients get their files back?

A. I believe you should have returned them."

Appendix E, App419.

But then while Petitioner attempted continuing his examination of Appellee Meyers, the trial court stopped the trial announcing that Respondent was out of time to find the laptop containing both the promissory estoppel promise at issue and the stolen client files:

"THE COURT: Wait, wait, sir. Mr. Andrich, we have exhausted your time.

MR. ANDRICH: Thanks, Judge.

THE COURT: We've actually gone over. So we've got a complete record. Of course Rule 40(b) gives me substantial discretion in managing the trial and to impose limits and to allocate trial time..."

Appendix E, App421.

Respondents moved for directed verdict when Petitioner could not produce the laptop containing the promises at issue. The trial court asked Petitioner to produce evidence. Petitioner informed the trial court that Petitioner had not yet testified, but the trial court refused permitting Petitioner's testimony:

"THE COURT: That's not evidence. Evidence is testimony or exhibits. Proposed findings of facts and conclusions of law are just that, they're proposed.

MR. ANDRICH: And I'm happy to testify, Judge. I just --

THE COURT: No, we've already exhausted your time, Mr. Andrich."

Appendix E, App426-App427.

On January 23, 2020, the trial court entered judgment for Appellees. *Appendix C.*

In the state court of appeals, Petitioner argues that a 2-hour "chess clock violated Petitioner's due process rights, because it prejudiced Petitioner from testifying and presenting his case.

The Arizona Court of Appeals rejected Petitioner's argument on the merits and affirmed the state trial court's ruling. *Appendix A.*

Petitioner sought discretionary review in the Arizona Supreme Court. The Arizona Supreme Court denied review of the petition. *Appendix D.*

REASONS FOR GRANTING THE PETITION

This case presents an important issue over which Arizona state courts depart from the U.S. Constitution and systemically violate due process rights of litigants. A 2-hour trial “chess clock” impinges on a litigant’s due process rights, because a mere 2 hour for presentation of trial evidence obstructs a litigant’s right to a fair trial. The U.S. Supreme Court recognized that the possibility of a due process court access claim in the civil context was novel, and noted the importance of court access when a judicial proceeding is the only available remedy. *See Boddie v. Connecticut*, 401 U.S. 371, 375-76 (1971). The U.S. Supreme Court explained that two important principles were embedded in due-process jurisprudence: (i) due process requires, at minimum, a “meaningful opportunity to be heard” for persons whose claims must be settled through the judicial process; and (ii) a statute or a rule may be held constitutionally invalid “when it operates to deprive an individual of a protected right.” *Id.* at 377-79.

“Among other rights essential to freedom, the First Amendment protects ‘the right of the people...to petition the Government for a redress of grievances.’” *Borough of Duryea, Pa. v. Guarnieri*, __ U.S. __, 131 S. Ct. 2488, 2491 (2011) (quoting U.S. CONST., Amdt. 1). The right to petition the government “includes a reasonable right of access to the courts.” *Hudson v. Palmer*, 468 U.S. 517, 523 (1984). The right of access is “ancillary to the underlying claim, without which a plaintiff cannot have

suffered injury by being shut out of court.” *Christopher v. Harbury*, 536 U.S. 403, 415 (2002); *see also Bracy v. Gramley*, 520 U.S. 899, 904 (1997) (“Due Process Clause clearly requires a fair trial in a fair tribunal[.]”) (citation and internal quotation marks omitted).

The presumption of access to judicial proceedings flows from an “unbroken, uncontradicted history” rooted in the common law notion that “justice must satisfy the appearance of justice.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573-74 (1980) (quoting *Levine v. United States*, 362 U.S. 610, 616 (1960)). “The right of access is thus an essential part of the First Amendment’s purpose to ‘ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government.’” *Id.* (quoting *Globe Newspaper v. Superior Court*, 457 U.S. 596, 604 (1982)).

The trial court stopped Appellant’s examination of an Appellee that remains in last known possession of a laptop, server hard drive and folders containing 300 former client files and the written promises that the trial court required Appellant produce to prove his case. The trial court informed Appellant that the record would require Appellant’s testimony. But when Appellant indicated that he intended testifying, the trial court denied Appellant his constitutional right to testify in his own case. As a result, the trial court denied Appellant meaningful access to the courts in violation of Appellant’s First and Fourteenth Amendment rights.

The state appellate court contends that Petitioner:

“...was harmed by the time limits — a requirement to prevail on a due process claim. *State v. Dunlap*, 187 Ariz. 441, 450 (App. 1996) (quoting *United States v. Lovasco*, 431 U.S. 783, 790 (1977)).”

Appendix A, p.8, ¶ 24.

Yet the trial court record objectively confirms the state trial court stopped Petitioner’s examination of the Respondent when Respondent was found to have lied on previous occasions concerning the location and whereabouts of Petitioner’s laptop.

Appendix E (Appendix to Petitioner’s Opening Brief to Arizona Court of Appeals 417-App419). Additionally, the state trial court knew that not only Petitioner had not testified in support of his case-in-chief, but Petitioner had also not completed presenting his case to the state trial court. In doing so, the state trial court erected a barrier that prevented Petitioner from prosecuting his case. *Christopher*, 536 U.S. 403, 415. Given that Petitioner’s former clients estate planning files have not been returned by Respondents, the state trial court, and subsequently the state appellate court, announce that the state judiciary wants attorney-client files to remain stolen by Respondents.

Petitioner struggles to locate any state or federal court trial where a 2-hour “chess clock” was imposed on a litigant. Most cases that Petitioner locates thus far identify an 8-clock time limit for each side to present its case. Arizona state courts setting a 2-hour trial “chess clock” and terminating the trial during a litigant’s examination of a defendant, simply because the 2 hours expired, chills the litigant’s meaningful access to the courts and bars litigants from petitioning the government for a redress of grievances.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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