

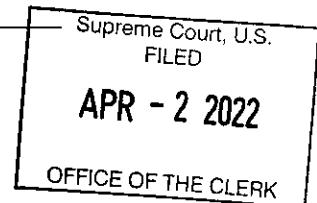
21-~~7550~~¹ **ORIGINAL**
No. 21A356

IN THE SUPREME COURT OF THE UNITED STATES

SHARON NEAL, Petitioner

v.

NATALIA NEAL, Respondent



On Petition for Writ of Certiorari to the Oregon Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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Submitted: April 2, 2022

I. Questions Presented

Oregon allows a court within its state to involuntarily dismiss an action or claim for failure of a plaintiff to comply with **any** order of its courts (Oregon Rules of Civil Procedure ‘ORCP’ 54(b)(1)). This unrestrained power is fundamentally in conflict and runs afoul with the protections of the United States Constitution, and the United States Supreme Court’s rulings to protect the citizens’ rights to due process (*Hovey v. Elliott*). Dismissal for not complying with an order related to failure to prosecute an action, (e.g., failure to serve the summons and complaint, comply with pre-trial rules) or order related to discovery (e.g., depositions, subpoenas) bearing on the merits of the case is one thing, but failing to comply with **any** type of order is another. ORCP 54(b)(1) must read with the due process requirement of *Hovey* in mind – that there must be a nexus between the violation of the order and either diligent prosecution of the case or the merits of the case to trigger the court’s inherent authority to dismiss an action. This Court has an opportunity in this case to define (or to uphold its precedents in the face of a clear departure on) the limits of authority to which a court has the power to involuntarily dismiss a case.

The questions presented are:

- 1) Is it a violation of due process to involuntarily dismiss a case with prejudice for a party’s failure to pay a monetary sanction that bears no relevance to the merits of the case?
- 2) Is it a violation of due process and equal protection to involuntarily dismiss a case with prejudice for a party’s failure to pay a monetary sanction who has been found indigent by the prosecuting court?
- 3) Is a State authorized to make laws that contain unrestrained determiners (i.e., “any”) allowing its judiciary to act outside the guaranteed protections to due process and equal protection provided by the United States Constitution?

II. Statement of Related Proceedings

This case arises from the following proceedings:

- *Sharon Neal v. Natalia Neal*, Oregon Supreme Court, No. S068512 (order denying review and rehearing of Oregon Court of Appeals affirming without opinion the judgment of the trial-court, entered November 4, 2021); and
- *Sharon Neal v. Natalia Neal*, Oregon Supreme Court, No. S068318 (Order denying without prejudice petition for writ of mandamus challenging the Oregon Court of Appeals decision affirming without opinion the judgment of the trial-court, entered Mar. 11, 2021); and
- *Sharon Neal v. Natalia Neal*, Oregon Court of Appeals, No. A169261 (order affirming without opinion the judgment of dismissal of the trial-court, entered October 6, 2021); and
- *Sharon Neal v. Natalia Neal*, Clackamas County Circuit Court for the State of Oregon, No. 18CV02117 (judgment of dismissal with prejudice, entered October 18, 2018)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of the Court's Rule 14.1(b)(iii).

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V. Petition for Writ of Certiorari

Sharon Neal, a resident of the State of Oregon, appearing pro se, respectfully petitions this Court for a writ of certiorari to review the judgment of the Oregon Court of Appeals (Oregon Supreme Court denied review) affirming without opinion the trial-court's judgment of dismissal with prejudice of her civil action.

VI. Opinions Below

The Oregon Court of Appeals decision without opinion denying Sharon Neal's direct appeal is reported as *Neal v. Neal*, (A169261), 480 P3d 940-946 (Oregon App. February 10, 2021). That order is attached at Appendix ("App") at **App-1**. The Oregon Supreme Court denied Sharon Neal's petitions for review and then rehearing on November 4, 2021. That order is attached at **App-8**.

VII. Jurisdiction

Sharon Neal's petition for rehearing to the Oregon Supreme Court was denied on November 4, 2021. Sharon Neal invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257. Sharon Neal filed and was granted a motion for extension of time to file this petition for writ of certiorari up to and including April 3, 2022, by order on January 24, 2022. This petition is being filed within that allowed time.

This proceeding draws into question the constitutionality of a statute of the State of Oregon, and therefore 28 U. S. C. § 2403(b) may apply and this petition is being served on Oregon's Attorney General.

VIII. Constitutional And Statutory Provisions Involved

United States Constitution, Amendment XIV:

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.

Oregon Rules of Civil Procedure (54)(b)(1):

Failure to comply with rule or order. For failure of the plaintiff to prosecute or to comply with these rules or **any** order of court, a defendant may move for a judgment of dismissal of an action or of any claim against that defendant. (*Emphasis added in bold*)

IX. Statement of the Case

This Court held over 100 years ago in Hovey v. Elliott, that due process prevented the trial court from summarily striking a defendant's answer as punishment for failure to comply with the trial court's order that the party deposit into court the funds at issue in the lawsuit. In Hammond Packing Co. v. Arkansas,

that rule was modified where this Court found no due process violation in striking the pleadings of a party that had failed to comply with a discovery order. The Court reasoned that the refusal to produce the requested materials "was but an admission of the want of merit in the asserted defense.".

Consistent with those two cases, the Courts in this country have held that due process requires a 'nexus' that limits the imposition of the severe sanctions of dismissal or default to extreme circumstances in which the deception relates to the matters in controversy and prevents their imposition merely for punishment of an infraction that did not threaten to interfere with the rightful decision of the case.

Inconsistent with that constitutional protection to due process, the State of Oregon enacted Oregon Rules of Civil Procedure 54(b)(1), which allows a court to involuntarily dismiss a case for failure to comply with **any** order of the court.

This case presents a question as to within what constitutional limits a State can authorize a judicial authority to involuntarily dismiss an action with prejudice.

1. The involuntary dismissal with prejudice of Sharon Neal's case

On January 18, 2018, Plaintiff, Sharon Neal ("Sharon") commenced the subject case against Defendant, Natalia Neal ("Natalia") (ex-daughter-in-law) on claims arising from a resulting trust on real property, which property has been Sharon's residence since she and her late husband constructed the home in 1974. During the course of the litigation, Sharon (who at the time was 78 years old and

has been on limited social security income) was granted multiple fee waivers by the court for filing fees and court costs on a finding of indigence (**App-10**).

On January 23, 2018, a hearing was held on Sharon Neal's motion for a preliminary injunction to prevent the sale, lease or hypothecating of the property pending the litigation. On February 2, 2018 (entered, February 12, 2018), the preliminary injunction was granted, but also included a provision that the parties could neither file for nor request further injunctive relief on matters which the court had adjudicated at the hearing held on January 23, 2018.

On February 6, 2018, Sharon applied for an elder abuse restraining order against Natalia in another court due to acts of abuse that had occurred on February 3rd and 5th 2018. On application for the restraining order, Sharon was asked under oath to list the acts of abuse within the past 180 days; which she complied, listing the recent acts of abuse by Natalia in February and prior abuse in December.

That court issued the restraining order ex-parte on February 6, 2018, and in response Natalia filed a motion to dismiss the order. The basis of Natalia's motion to dismiss was wide-ranging, including an allegation that Sharon was "forum shopping" by filing the petition in another county other than her primary residence; that Sharon had previously filed for other elder abuse protective orders against Natalia which were denied; (and germane to this action) that Sharon had violated

the preliminary injunction in this case by applying for further injunctive relief on matters that had been adjudicated at the January 23, 2018 hearing.

The court considering the elder abuse protective order denied all of Natalia's objections, and included a specific finding that the application for the order did not violate the preliminary injunction in this case. That court extended the restraining order for an additional year on a finding that Sharon was being abused by Natalia and the order was necessary to protect Sharon from further injury. That continuing order was entered on March 6, 2018 (**App-14**); and on April 8, 2018 with no appeal having been filed the order and its findings became final.¹

Contemporaneously with Natalia filing an objection to the restraining order, she also filed a motion for sanctions in the court prosecuting this subject resulting trust case making the same argument -- that Sharon raising (with the court that issued the elder abuse protective order) incidents of abuse that occurred prior to the preliminary injunction hearing on January 23rd was a violation of that injunction.

On April 30, 2018, Natalia's motion for sanctions came on for hearing. Sharon argued that listing the recent and prior acts of abuse was a requirement of the application for an elder abuse restraining order and those disclosures are protected by immunity; that the court issuing the restraining order was aware of the preliminary injunction and stated it would not consider incidents that happened prior to January 23rd in its decision on the restraining order; that the court issuing

1 - Natalia filed a motion ten months after the elder abuse protective order was issued asking the court prosecuting the resulting trust case to have that restraining order (issued by the other court) dismissed, but that action was enjoined by the Oregon Court of Appeals (**App-16b and 16c**).

the restraining order found that Sharon's disclosures of past abuse by Natalia was not a violation of that order; and that res judicata barred Natalia's second attempt at asking for sanctions, which were already pointedly denied by the other court.

After the argument, the court made a finding on the record that part of the issues in the preliminary injunction that were raised (elder abuse) at the January 23rd hearing were again raised in the court issuing the restraining order, and found that to be a violation of the injunction (notwithstanding the findings of elder abuse) and sanctioned Sharon \$500, which was later amended to include \$1,990 in attorney fees (for bringing the sanctions motion) to a total of \$2,490.

On May 22, 2018, Sharon filed a renewed motion to vacate the sanction order on the ground that listing the incidents was mandated by the State and that she had immunity under Oregon law (ORS 124.075) to make such disclosures. On August 6, 2018, the motion came on for hearing and was denied. The judge instructed Natalia's counsel to prepare the order. The order that was submitted to the court and then signed included language not discussed at the hearing that to "avoid dismissal" Sharon had to pay the sanction of \$2,490 within sixty days.

On or about October 9, 2018, the limited judgment of \$2,490 not having been paid, Natalia's counsel submitted a declaration to the Court with a proposed "General Judgment of dismissal" stating that the sanctions in the amount of \$2,490 had not been paid by October 6, 2018, as ordered by the court. The court did not

set a hearing on the application for entry of judgment. Sharon was not given an opportunity by the trial-court to challenge the statements in the declaration of Natalia's counsel or object to the proposed judgment of dismissal with prejudice. The Court signed the judgment (**App-2**) without a hearing soon after the declaration and proposed judgment were submitted, on October 18, 2018.

On the undisputed record of this case, Natalia admittedly, under oath, never paid anything toward the property, which Sharon and her late husband paid the entirety of the mortgage, taxes, insurance and carrying costs of over one million dollars. The property and home has been their residence since they built it in 1974. Prior to the entry of the judgment of dismissal, an order was entered that staunchly rebuked Natalia's motion for summary judgment (**App-17**) in the case. That order was based on a finding that 'genuine material issues of fact' exist on Sharon's claims. By this case being dismissed with prejudice, Sharon has been barred to have those claims tried for reasons that have no relation at all on the merits, which has resulted in an unjust loss of her and her late husband's life's work and savings.

2. Direct Appeal

On direct appeal, Sharon Neal raised many issues, including a renewal of her argument that the dismissal of her case with prejudice was a violation of her right to due process on the grounds that the failure to pay a sanction that had no bearing

at all on the merits of the case was not permissible under the constitutional protections to due process. Specifically, on appeal she stated: (App-50)

"Whether a party has been denied due process of law under the Fourteenth Amendment is reviewed for errors of law. *State v. Weller*, 2410 Or App 6901 (2011); *State v. Nelson*, 166 Or App 189 (2000)"

Sharon further raised in a collateral mandamus proceeding (App-7) that the court finding her indigent (App-10 to 13) and unable to afford to pay court fees of less than \$200, and then involuntarily dismissing her case with prejudice for failure to pay the \$2,490 sanction within 60 days was unjustly abridging her 14th amendment constitutional protections to due process and equal protection.

This Court held in Bearden v. Georgia, 461 U.S. 660 (1983) that if a State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacked the resources to pay it. Williams v. Illinois, 399 U.S. 235; Tate v. Short, 401 U.S. 395. The Court held "in revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay." *Id.* at 672.

In this case, the trial-court already had a record of why Sharon could not pay the \$2,490 sanction, in that the court on a finding of indigence had waived (multiple times, App-10 to 13) her court costs and filing fees (of less than \$200).

In Bearden, the U.S. Supreme Court synthesized its prior precedent,

explaining, “[d]ue process and equal protection principles converge” when someone is jailed for inability to pay: The Due Process Clause guards against practices that are “fundamentally unfair or arbitrary,” and the Equal Protection Clause protects people from being “invidiously denied” justice that would be available to those with the financial resources to pay. *Id.* at 665-66.

In this case, (while not the same as imprisonment), a dismissal with prejudice in a civil proceeding is the most severe of sanctions. For the court to declare Sharon indigent and then deprive her right to justice by involuntarily dismissing her case with prejudice for inability to pay a fine known to be insurmountable is an act that contravenes the rights to due process and equal protection of the 14th amendment.

Early on in the appeal of that decision, Sharon applied for injunctive relief from the Oregon Court of Appeals to prohibit Natalia Neal from evicting her from the property. The Court of Appeals acting through the Appellate Commissioner granted that relief by order (**App-3**) on December 3, 2018, and stated:

“Plaintiff has made at least a preliminary showing of a reasonable likelihood of prevailing in this appeal and ultimately prevailing in the action if this court reverses and remands for further proceedings. Plaintiff also has made a preliminary showing that, absent injunctive relief, she likely will be irreparably harmed by being evicted from the property and residence that she and her late husband purchased and in which she has lived for many years.”

Order of James W. Nass, Oregon Court of Appeals
Commissioner. Filed: December 3, 2018

Following the issuance of that injunctive relief, Sharon applied for a stay of the trial-court's judgment of dismissal. The stay was granted by the Oregon Court of Appeals order (**App-4**) on January 17, 2020, with the following finding:

"The judgment of dismissal at issue on appeal did not result from the trial court's consideration of the merits of appellant's claims. Instead, the trial court dismissed the action because plaintiff had failed to pay sanctions in the amount of \$2,490 and otherwise failed to follow orders of the trial court. If she were to prevail on appeal, she would obtain a remand to the trial court so that her case could be considered and disposed of on the merits."

(Emphasis added as underline above)

Order of Theresa Kidd, Oregon Court of Appeals
Commissioner. Filed: January 17, 2020

On October 6, 2021, the Oregon Court of Appeals issued a decision without an opinion to affirm the trial-court's dismissal with prejudice of Sharon's case. Sharon immediately filed for a writ of mandamus with the Oregon Supreme Court to compel the Court of Appeals to reverse the decision as the affirmance without opinion was a patent violation of her constitutional rights to due process. The writ of mandamus was denied without prejudice (**App-7**), allowing Sharon Neal to file a petition for review on the matter. Subsequently, Sharon filed a petition for review. On November 4, 2021, the Oregon Supreme Court denied (**App-8**) a rehearing of the Court of Appeals decision to affirm the judgment without opinion.

X. REASONS FOR GRANTING THE WRIT

To avoid erroneous deprivations of the right to due process, this court should clarify the limit of a judicial authority's power to dismiss a cause with prejudice for reasons that have no bearing on the merits of a case.

To comply with principles of constitutional due process, when a court exercises its inherent authority to dismiss a claim for violations of its orders, "[t]here must be a nexus between the party's actionable conduct and the merits of the case." *Halaco Eng'g Co. v. Costle*, 843 P.2d 376, 381 (9th Cir. 1988); see *Fjelstad v. Am. Honda Motor Co.*, 762 F.2d 1334, 1338 (9th Cir. 1985) ("Due process limits the imposition of the severe sanctions of dismissal or default to 'extreme circumstances' in which 'the deception relates to the matters in controversy' and prevents their imposition 'merely for punishment of an infraction that did not threaten to interfere with the rightful decision of the case'."), quoting *Wyle v. R.J. Reynolds Indus., Inc.*, 709 F.2d 585, 589, 591 (9th Cir. 1983).

This nexus requirement, or, more accurately, due process requirement, is derived from the United States Supreme Court's decisions in *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 349-54, 29 S.Ct. 370, 53 L.Ed. 530 (1909), and *Hovey v. Elliott*, 167 U.S. 409, 413-14, 17 S.Ct. 841, 42 L.Ed. 215 (1897). See *Wyle*, 709 F.2d at 589, *Phoceene Sous-Marine, S.A. v. U.S. Phosmarine, Inc.*, 682 F.2d 802, 806 (9th Cir. 1982).

In Hovey, the Court held that due process prevented the trial court from summarily striking a defendant's answer as punishment for failure to comply with the trial court's order that the party deposit into court the funds at issue in the lawsuit. 167 U.S. at 411-12, 413-14, 17 S.Ct. 841. That rule was modified in Hammond, where the Court found no due process violation in striking the pleadings of a party that had failed to comply with a discovery order. The Court reasoned that the refusal to produce the requested materials "was but an admission of the want of merit in the asserted defense." 212 U.S. at 351, 29 S.Ct. 370; see also *Societe Internationale Pour Participations Industrielles Et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 210, 78 S.Ct. 1087, (1958).

Petitioner's case was not dismissed based on failure to comply with a discovery order, or any basis connected to the merits or the diligent prosecution of the case. Rather, she failed to pay a monetary sanction (\$500 fine and associated attorney fees of \$1990) imposed because she violated a provision in a preliminary injunction order issued in the case, which prohibited her and the Defendant from re-litigating matters that had been adjudicated at the hearing on the injunction. Specifically, the Petitioner filed for an elder abuse restraining order against the Defendant in another court that was granted after the injunction, and the Oregon court found the application for the elder abuse order violated that injunction.

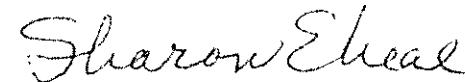
It is not disputed that the monetary sanction for which Petitioner's case was dismissed had to do with an elder abuse restraining order application and nothing at all to do with the merits of this case, which involve title to real property. It is also undisputed that the court found (more than once) that the Petitioner is indigent and unable to pay \$200 and \$110 in filing fees, meaning necessarily the court knew Petitioner could not pay the \$2,490 sanction. This (insurmountable) sanction being entirely unrelated to the merits of the lawsuit, for which the indigent Petitioner's failure to pay was punished by the involuntary dismissal and extinguishment of her case with prejudice, is a flagrant violation of both the 14th Amendment rights to due process and to equal protection. Nonetheless, the Oregon Rules of Civil Procedure 54(b)(1) allows such action by its plain language, by using the word "any" to describe what type of order violations warrant involuntary dismissal.

This case presents this Court with an opportunity to clarify the limit of a judicial authority's power to dismiss a cause with prejudice. Absent intervention by this Court, the State courts reliance on rules allowing such involuntary dismissals with prejudice, without checks and balances, will work to undermine the carefully-crafted procedural safeguards that this Court has spent over 100 years developing.

XI. CONCLUSION

For the foregoing reasons, Sharon Neal respectfully requests that this Court issue a writ of certiorari to review the judgment of the Oregon Court of Appeals.

DATED this 2nd day of April, 2022. Respectfully submitted,



Sharon Neal, Petitioner, Pro Se