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Supreme Court, U.S.

FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTINA PAYLAN, M.D.,

Petitioner

v.

COMANECI DEVAGE et al.

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the standard for judicial recusal requires a second look with establishment of a strict uniform criteria whereby the largely relied upon discretionary case-by-case analysis standard is abandoned, given that the average American is increasingly concerned with lack of judicial accountability engrained into the American legal system?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Christina Paylan, M.D. respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

DECISION BELOW

The decision of the United States Court of Appeals for the Eleventh Circuit is published at 847 Fed.Appx. 595 2021 WL 613666 as *Paylan v. Dirks*, which is the consolidated case with the instant case.

JURISDICTION

The Eleventh Circuit entered judgment on February 17, 2021. Automatic 150 day extension pursuant to COVID pandemic places the date of filing to July 17, 2021. This Court's jurisdiction is invoked under 28 U.S.C. §1254

RELEVANT CONSTITUTIONAL PROVISION

The Fourteenth Amendment to the United States Constitution guarantees an absence of actual bias on the part of a judge. *Williams v. Pennsylvania*, 136 S. Ct. 1899, 195 L. Ed. 2d 132 (2016). A district court judge whose husband was the supervising police officer involved in the criminal investigation of the party before judge, has actual bias, irrespective of whether the judge was later divorced from the police officer husband and irrespective of whether the police officer retired from the arresting agency by the time the civil rights suit was filed before the district court judge.

INTRODUCTION

This petition addresses the constitutional infringement that the wide latitude the current criteria for judicial recusal imposes.

In today's environment where accountability in the judicial system is increasingly in demand by the public, the standard for recusal of a district court judge is in need for a second look.

Carrying her husband's last name and having two underage children with him apparently did not qualify as criteria for recusal for a Tampa, Florida district court judge where her husband was the supervising police officer in Petitioner's criminal investigation that was the basis of Petitioner's civil rights suit after becoming the prevailing party in said criminal investigation. If a district court judge can deny recusal in a case where her husband was the supervising police officer criminally investigating one of the parties in the case, there is dire need for systemic overhaul in standards relating to judicial recusals. President Obama appointed Judge Honeywell did not see anything wrong with this whole scenario, going on further to grant 12(b) motions for all law enforcement Respondents where she departed from the norm and relied on facts outside the four corners of the operative complaint in order to rule in favor of all those relating to her husband's employment.

From all accounts, Judge Charlene Honeywell was married to Lieutenant Gerald Honeywell in 2010 when a criminal investigation was initiated against Petitioner by Tampa Police Department. An Assignment Schedule squarely placed Lieutenant Honeywell as the supervising police officer assigned to Petitioner's

criminal investigation. In 2011, under Lieutenant Honeywell's team, Petitioner was falsely arrested not just once, but twice. After three long years, in 2014, Petitioner became the prevailing party in this criminal investigation. Subsequently, in 2015, Petitioner filed suit in Middle District of Florida alleging false arrest and malicious prosecution pursuant to 42 U.S.C §1983 and other state law violations. The lawsuit landed on Judge Charlene Honeywell's desk. Having heard that Judge Honeywell may have a family member affiliated with the local arresting agency, Tampa Police Department, Petitioner moved to disqualify Judge Honeywell pursuant to 28 U.S.C. § 455 (a) . Judge Honeywell denied the recusal motion by reasoning that she did not "currently have any family members" employed by Tampa Police Department. Judge Honeywell provided no information as to when her divorce from Lieutenant Honeywell was and no information as to her husband's involvement in Petitioner's criminal investigation as the supervising police officer. Two magistrate judges felt differently when both cited to family members being employed by either the arresting agency or the prosecuting agency as their grounds for *sua sponte* recusal. But not Judge Honeywell.

What followed was three years of questionable remarks and outright obstruction for Petitioner to conduct discovery at the direction of Judge Honeywell. The first time when Petitioner appeared before Judge Honeywell, before Petitioner could even open her mouth to say anything, Judge Honeywell busted out saying that doctors do not get special treatment in her courtroom. This remark was a red flag and a result of Judge Honeywell's actual bias towards Petitioner. In the following three

years, discovery stays were issued and these were also red flags because the stays were a design to ensure that Petitioner did not get close to taking the deposition of her husband, Gerald Honeywell. Ruling on the 12(b) motions in favor of law enforcement vis-à-vis a substantial departure from the standard for granting 12(b) motions was yet another red flag. Judge Honeywell relied on an ongoing criminal case that was outside the four corners of Petitioner's operative complaint in granting Respondents relating to her husband's employer their Rule 12(b) motions.

Plain and simple, because of her actual bias, Judge Honeywell wanted to kill this suit and all her rulings were consistent with that of a tainted and biased judicial intent.

Petitioner raised these issues on appeal to the Eleventh Circuit Court of Appeals but it was overlooked. A pro se civil appeal is at the bottom of the pile for judicial consideration as they are handled by staff attorneys. The way the unpublished opinion is written and the writing style of the opinion gives this away. *See Attached Unpublished Opinion.* The glaring fact that not a single pro se litigant has been granted oral argument in the past 20-year history of oral argument calendar by the Eleventh Circuit Court of Appeals also speaks volumes as to what kind of attention pro se civil appeals are afforded by the Eleventh Circuit.

STATEMENT OF THE CASE

1. In 2011, Petitioner minding her own business and practicing cosmetic surgery in South Tampa, Florida, was falsely arrest and maliciously prosecuted by Tampa Police Department and the local state prosecuting agency.

2. It was soon discovered that the arrest was initiated by the brother-in-law of Petitioner's fiancé who was a police officer with the Tampa Police Department. The brother-in-law was in a cat-n-dog fight with Petitioner's fiancé over financial matters. Having run out of options in civil proceedings to regain what he believed was due to the brother-in-law, brother-in-law abused his authority as police officer by participating in fabricated probable cause and fraudulent search warrant in order to have Petitioner and her fiancé arrested at their residence on June 9, 2011.
3. From 2011 through 2014, there was contentious criminal prosecution. Petitioner mounted a rigorous defense to demonstrate that this was all about a disgruntled family member abusing his authority as a police officer.
4. In 2014, the state appellate court discharged the frivolous prosecution making Petitioner as the prevailing party for two false arrests and the one malicious prosecution.
5. In 2015, Petitioner filed her civil suit alleging violations of her civil rights under federal and state law.
6. The case was assigned to President Obama appointed Judge Charlene Honeywell.
7. Within one month of filing the civil suit, Petitioner filed her motion to recuse Judge Honeywell based on information that she had a family member who was affiliated with the local arresting agency. Petitioner's motion was denied by Judge Honeywell who stated that she did not "currently have any family

members" employed by Tampa Police Department. No other factual information was provided in the denial of the recusal motion.

8. Three years went by with rulings thwarting discovery and preventing Petitioner from being able to take the deposition of the district court judge's husband.
9. In 2016, all Respondents moved to dismiss pursuant to Rule 12(b).
10. In March 2017, report and recommendation was filed by magistrate judge to grant all of the law enforcement respondents their Rule 12(b) motions.
11. Immediately following the report and recommendation, but before the final decision by district court judge, all pretrial conference and trial dates were vacated *sua sponte* by order of the court.
12. Within two weeks, the report and recommendation was approved in its entirety by Judge Honeywell. The decision relied on a pending criminal case that was outside of the four corners of the complaint.
13. During the same time, in March and April 2017, Petitioner filed successive motions to disqualify the district court judge. One of these recusal motions was following the submission of the Assignment Schedule for Gerald Honeywell filed by Counsel for Tampa Police Department. This Assignment Schedule unequivocally confirmed that Lieutenant Honeywell was the supervising police officer over Petitioner's criminal investigation in 2011- the very same criminal investigation for which Petitioner had filed instant suit after becoming the

prevailing party when the subsequent criminal prosecution was discharged by state appellate court.

14. All recusal motions were denied and Petitioner appealed.
15. On February 17, 2021, the Eleventh Circuit Court of Appeals affirmed the decision of the district court after consolidating this case with another district court case that had been removed to district court from state court, *Paylan v. Dirks*.

REASONS FOR GRANTING THE PETITION

I. STANDARD FOR JUDICIAL RECUSAL NEEDS A SECOND LOOK

Accountability in the judicial system is an increasing public concern. Vaguely defined recusal criteria has contributed to this public concern. The average American is already appalled at the fact that a judicial officer cannot ever be sued for mistakes born out of negligence or ill-will during the scope of their judicial conduct. In the current state of affairs where judicial officers have such absolute immunity, the criteria for recusal should be tightly and clearly defined, not loosely left to be decided on a case-by-case basis with judicial discretion by the person who is the target of a recusal motion.

Barriers are needed where rules are established that no judge can preside over a case where a family member, current or former, has taken an adverse position against a party. This seems commonsense but clearly it is not because based on the loosely defined recusal criteria, Judge Honeywell was able to wiggle out of recusing herself. Her reasoning for denying the recusal motions was either that she

was divorced from her supervising police officer husband who investigated Petitioner or that at the time of the suit, the husband was no longer working for the arresting agency. Commonsense tells us that the relevant time would not be the time of the lawsuit but the time when the criminal investigation was initiated under the district court judge's husband's supervision.

The sheer fact that the current standards do not require factual disclosures in judicial recusals leaving the public in the dark is sufficient grounds for a second look at these standards. Most of the information regarding judicial officers are sealed in court records pursuant to public records exemptions in most states. As such, without a mandatory disclosure by the district court judge, there is no way for the average citizen to know what the facts are. For instant, when did Judge Honeywell divorce her husband? What was the relationship with her husband at the time of Petitioner's criminal investigation? And if she is divorced from her husband, what is her current financial relationship with her husband such that what kind of an impact an adverse decision in against her husband's current or former employer in Petitioner's lawsuit may have the judge and her husband adversely?

All of these questions remain unanswered about the district court judge while Petitioner, as a cosmetic surgeon, now has to live with the effect of not being able to pursue any redress for her false arrests and malicious prosecution.

Because judicial recusal touches on such a central nerve as fundamental due process under the Fourteenth Amendment, if one district court judge can defend the indefensible of presiding in a case where a party was criminally investigated by

the district court judge's own husband, then there is unequivocal need for revisiting the standards for judicial recusal.

II. JUDICIAL RULINGS THAT DEPART SO FAR FROM THE NORM MUST BE VIEWED AS STEMMING FROM BIAS

Relying on facts that are outside the four corners of an operative complaint is the hallmark of what *not* to do when ruling on a Rule 12(b) motion. Not accepting as true the allegations made in the complaint is another on the checklist for "don'ts" in ruling on a motion to dismiss. *See Erickson v. Pardus*, 551 U.S. 89, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007).

However, Judge Honeywell did just that. This departure from the norm along with the contextual circumstance that her husband was the supervising police officer in charge of Petitioner's criminal investigation, Judge Honeywell's ruling in 12(b) motions in favor of all those related to her husband or his employer, does not look or smell good at all.

Lack of judicial accountability is one of the most leading factors for the average American to lose confidence in the legal system. The average American knows that decisions made by a doctor, an accountant or a plumber are all subject to suit if such decisions negligently result in damages for the individual. That is not the case when it comes to judicial decisions. This is ever more the reason why criteria for judicial recusal should be revisited by this Court. A uniform standard should be constructed abandoning the current loosely defined criteria of case-by-case analysis. Rules should be set out to assure the public that judicial recusal is mandatory without

any ifs or buts, in cases where there is a familial involvement relating to the district court judge.

CONCLUSION

For all the foregoing reasons, this petition should be granted.


RESPECTFULLY SUBMITTED BY,
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