

App No. _____

In the Supreme Court of the United States

Before the Honorable Justice

Elena Kagan

Shayla Mali Duke,
David Virgil Duke, et al.

Petitioner(s)

v.

Clyde Saiki, in his official capacity
as Director of the Department of Human Services, et al.

Respondent.

On Application for an Extension of Time
to File Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

**PETITIONERS' APPLICATION TO EXTEND TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

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Corporate Disclosure Statement

Pursuant to Supreme Court Rule 29.6, Petitioner DAVID VIRGIL DUKE states that it is an Oregon entity with a Home Care Services Recipient EIN, has a fiscal intermediary, TNT FISCAL INTERMEDIARY SERVICES, INC., that could be construed as a parent-like corporation, and no publicly held company owns 10% or more of its stock.

Additionally, Petitioner SHAYLA MALI DUKE states that it is an Oregon sole proprietor with no parent corporation and no publicly held company owns 10% or more of its stock.

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INTRODUCTION

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner(s) Shayla Mali Duke and David Virgil Duke respectfully request that the time to file their Petition for Writ of Certiorari in this matter be extended for 60 days up to and including April 18, 2022. The Court of Appeals filed and issued its judgment on November 17, 2021 (Appendix ("App.") A) denying Ms. Duke's request for appellate counsel, set forth in her opening brief; denying all pending motions; and affirming the underlying dismissal of this case with prejudice. On December 7, 2021, Ms. Duke moved the court for an extension of time to file a petition for rehearing en banc and/or a motion for rehearing by the panel. On December 8, 2021, her request was granted and the deadline to file a petition for rehearing or a motion for panel rehearing was reset to February 4, 2022. (App. B) The mandate then issued on February 14, 2022. (App. C) Earlier today, Ms. Duke filed an urgent motion to extend time to file a petition for rehearing until March 8, 2022 due to exigent and extraordinary circumstances, or to otherwise transfer the case to this court pursuant to either 28 USC 1631 or via an Administrative Writ of Mandamus. Absent an extension of time, the Petition for Writ of Certiorari would be due today, February 15, 2022. Petitioners are filing this Application on this same date, as opposed to less than ten days before that date. See S. Ct. R. 13.5. This Court would normally have

jurisdiction over the judgment under 28 U.S.C. 1254(1). I have conferred with my responding colleagues, and they take no position on this request. Accordingly, they do not oppose.

Background

This case arose out of controversy in which the Department of Human Services contacted Ms. Duke (then Ms. Rogers) to inform her she had to call off her wedding because if she were to get married she would lose all of her income because her fiancé had a disability and received in-home care services. She had announced her wedding plans a few months prior to her friends and family, and was humiliated to have to “unannounce” it just a few months later. They then contacted her to apologize and tell her they were wrong, and that she actually WAS “allowed” to get married. So she reannounced her wedding plans. Then once again, a new case worker told her that she could not. So once again, Ms. Duke had to “unannounce” her wedding plans. Finally, someone higher up contacted her for a 4th time to inform her that she could in fact get married thanks to 2 statutory state laws that were passed back in 1985 and 1987. The statutes were ORS 411.802 and 411.803. In 2012, she was finally allowed to proceed with her marriage to Mr. Duke. The only thing that changed was that Mr. Duke was required to become her employer, instead of the state. Although the job title and duties remained the same. Everything went well for about a year, until Mr. Dukes benefits were deeply reduced, which would have left him without care and thrown their family into severe poverty. So they had no other option but to request an Administrative

Hearing.

After a 10-month long battle, Mr. Duke finally prevailed and actually got quite a bit of an increase to his benefit hours in accordance to a proposed Administrative Order that became what they thought was a Final Agency order in Mr. Duke's favor. Things went well and the state honored the Final Order of January 2014 clear up until December 2015, when the Dukes moved from one county to another within the State of Oregon. It was than things got really ugly. The Dukes were basically ganged up on and targeted by both CPS and Senior Disability Services due to Mr. Duke's disability and the fact they were married and had children. This jumpstarted a 6 and a half year long legal battle, spanning across multiple jurisdictions due to the constant attempts by the state to bifurcate the issues and basically attempt to nullify and conceal the January 2014 final order in Mr. Duke's favor that brings us to where we are today.

Since then, and specifically within the underlying case(s) presently on appeal, a seemingly endless series of technical nightmares has ensued which is too much to go into at this juncture, but to summarize, the issue that is apparently before this Court (or that will be before this court upon the granting of this motion is whether alleged Plaintiffs' case should be dismissed with prejudice because alleged Plaintiffs allegedly "failed to file an amended complaint within 60 days" as allegedly ordered (see Doc. 98), however it is alleged Plaintiffs and Plaintiff in Error's assertion that no such order to do so was made with any semblance of clarity or plain language of such a requirement in the order(s) of such final notice

as required. Not to mention the fact that the “Motion to Dismiss” didn’t even seek to dismiss all of D.D.’s claims therefore it’s impossible to grant Defendant’s “Motion to Dismiss” while also dismissing Plaintiff-in-Error’s complaint in its entirety. Additionally, Plaintiff and Plaintiff-in-Error were finally given the “opportunity” to have their matters heard back within a state forum, which is where such proceedings are now presently proceeding, or are attempting to proceed (but for the existence and/or potential dismissal of this case with prejudice.)

Accordingly, this court’s attempt to circumvent the Joint Objectors’ choice of forum by proposing to dismiss any of their claims, especially with prejudice is clearly erroneous. Moreover, its Petitioners assertion that its erroneous for any court to expect them to comply with an imaginary, nonexistent order that was never even actually issued in the literal sense. And therefore the outcome of this proceeding and other is not only erroneous, but its completely void due the initial order in Mr. Duke’s favor back in January of 2014, which the Department had zero rights or authority to even attempt to alter or amend 2 years after the fact.

In other words, the judgment must be “more than just maybe or probably wrong” (*Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228, 233 (7th Cir. 1988)). Mere disagreement with the court’s ruling is not enough (see above Standards for Granting the Motion). A district court may alter or amend a judgment on this ground if the court, for example:, Based its ruling on incorrect factual assumptions (*Duarte v. Bardales*, 526 F.3d 563, 567 (9th Cir. 2008))(abrogated on other grounds by *Lozano v. Montoya Alvarez*, 134 S. Ct. 1224 (2014))

Reasons For Granting an Extension Of Time

The time to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. Lost Time Due to Exigent and Extraordinary Circumstances

In late November of 2021, a neglected 3-year old in the Plaintiffs' neighborhood began frequenting the Plaintiffs' residence to play with their own 3 year old child. Not soon after, the neglected 3 year old child was left completely abandoned in the Plaintiffs' full care and supervision without notice by the child's father. The child's father has since been located and incarcerated for a recent armed robbery and a plethora of other criminal charges. (*see Lane County Circuit Court, Case No(s). 21CR46632, 21CR42296, and 22CR07271*)

The neglected child is now staying with their aunt as of last week. Accordingly, the time-consuming ordeal of unexpectedly providing full care and constant supervision for a neglected, emotionally disturbed young child (while contemporaneously caring for their own 3 year old and 9 year old and also struggling to manage their own physical and cognitive disabilities) which had made it nearly impossible for Ms. Duke to invest even 10 to 20 minutes at a time and attention towards this case, is no longer an absolute impediment to her ability to prosecute this case.

Although, the usual struggle of being in excruciating pain during all waking hours, and dealing with ancillary medical problems arising from her

debilitating car accident in 2018 (which also occurred during the pendency of this 9 year long legal battle) are not easy to cope with by any means, she is at least able to work towards various deadlines absent the added stressor of having an additional 3 year old being abandoned in her care and custody for days and weeks on end.

2. Physical Inability to Access Computer Due to Theft and Disability

From January 5, 2022 through January 28, 2022, the Petitioner's endured a series of crimes including the theft of their entire mailbox full of mail (including the post and the cement the post was adhered to), as well as Ms. Duke's laptop computer, and nearly a decade of legal research, templates, documents, and case files, was burglarized during a home invasion. Each incident is attached to the same related case report number as it was obviously a sought out and targeted series of attacks. (*see Eugene Police Department, Case No. 22-00282 or contact Officer Gents @ 541-731-3730 or Sargent Joel Peckles*) Plaintiffs' are primarily homebound, and were physically unable to access another computer due to their physical mobility and cognitive-based disabilities from January 28, 2022 to February 12, 2022. Ironically, and unfortunately, this caused them to miss a total of 5 serious legal deadlines across each the Oregon Court of Appeals, the Ninth Circuit Court of Appeals, as well as in this Honorable Supreme Court of the United States. Not surprisingly, each of these cases ultimately have arisen from the same set of circumstances and the same initial Administrative Hearing of 2013 in which the Dukes had actually prevailed in. Even more ironic is the fact that the deadlines coincidentally happened

to fall on January 28th, February 4th, February 8th, February 11th, and now February 15th, almost all within the same exact time period between when her laptop was stolen and finally recovered.

At any rate, even if they were somehow able to get themselves to a location with an accessible computer during that time period, all of Ms. Duke's files and years of work and research, along with the initial drafts of her petition for panel rehearing, rehearing en banc, and her Petition for Writ of Certiorari to the Supreme Court of the United States, were not available and much of which is presently inaccessible if and until her lost data is recovered. But thankfully, at least Ms. Duke's computer was recovered, albeit on February 12, 2022.

While most of the Plaintiffs' hard drive is presently being recovered, Ms. Duke can at least now access her computer and piece things together from other drives. Nevertheless, one final extension of time of 60 days is vitally needed in order for the Dukes to continue prosecuting the case through to the finish. Otherwise, much of the last decade of Ms. Duke's life and effort will have essentially been wasted.

3. Matter of First Impression of Nationwide Importance

This case presents issues of importance to individuals with disabilities nationwide, especially those with physical disabilities and/or brain injuries, who face a potential personal crisis of not being "allowed" to marry whom they choose without the threat of subjecting themselves to poverty and homelessness. Its unconstitutional to convert an unalienable right into a privilege, and then charge a fee. Additionally, its indisputable that a void order can be challenged in any jurisdiction and at any time. If same-sex couples are allowed to marry whom

they choose, can't individuals with disabilities too? It sure doesn't seem that way without cases like this making it through the channels. As the en banc dissent has explained, "[t]he First Amendment freedom to associate is vital to a functioning civil society" and "or groups with 'dissident beliefs,' it is fragile."

4. Entitlement to Civil Pro Bono Appointment

I fought hard to obtain my pro bono appointment in this civil matter. The District Judge had no authority to revoke it. I should have been represented on appeal this entire time. But now, I am out of time so....

Conclusion

For the foregoing reasons, Petitioners respectfully request that the time to file the Petition for a Writ of Certiorari in this matter be extended 60 days, up to and including April 18, 2022.

Or in the Alternative
MOTION TO TRANSFER CASE TO
THE SUPREME COURT OF THE UNITED STATES
PURSUANT TO 28 USC 1631

Alternatively, 28 USC 1631 states:

“Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, within the jurisdiction of the United States Tax Court, to that court) in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.”

(Added Pub. L. 97-164, title III, § 301(a), Apr. 2, 1982, 96 Stat. 55;
amended Pub. L. 115-332, § 2, Dec. 19, 2018, 132 Stat. 4487.)

SUMMARY

Dated: February 14, 2022

Respectfully Submitted,


/s/ Shayla Mali Duke

SHAYLA M. DUKE

Autodidact In Pro Per Student of Law

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CERTIFICATE OF GOOD FAITH

I conferred with my opposite colleagues regarding this motion. Ms. Patricia G. Rincon, *attorney for Defendant(s)* DEPARTMENT OF HUMAN SERVICES, ET AL., and she has promptly responded back and takes no stance on these motion(s). I certify that this motion is filed in good faith and is not intended for purposes of harassment or

delay. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED ON FEBRUARY 14, 2022



/s/ Shayla Mali Duke

SHAYLA M. DUKE

Autodidact In Pro Per Appellant

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CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2022, I initially filed the foregoing notice with the each of the parties and the Clerk of this court by timely dispatching its delivery using a third-party commercial courier. I further certify that this constitutes valid proof of service on the Defendants. Not all parties are registered CM/ECF users. In which instance, such parties have been served by electronic means and in person service delivered by a third party unrelated to this case.

RESPECTIVELY SUBMITTED THIS 15TH DAY OF FEBRUARY, 2022,



/s/ Shayla Mali Duke

SHAYLA M. DUKE

Appellant

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