

22-5728

Case Number: \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

GLENN SPRADLEY,

Petitioner,

VS.

PAT FRANK, Clerk of Hillsborough  
County Circuit court; Edwina Baker,  
Deputy Clerk of Hillsborough County  
Circuit Court; and Hillsborough  
County of Tampa, Florida,

Respondents.

**ON PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

GLENN SPRADLEY, PRO SE  
DADE CORRECTIONAL INSTITUTION  
19000 S.W. 377th Street SOUTHWEST 377<sup>TH</sup> STREET  
FLORIDA CITY, FLORIDA 33034

## **QUESTIONS PRESENTED**

1. Whether a complaint's conclusory allegations of municipal liability state a cause of action, according to this Court's prior precedent.
2. Whether Florida's counties lack control over the offices of the Clerks of Circuit Courts.
3. Whether Florida Clerks of Circuit courts are part of the local government.
4. Whether the record supports the granting of summary judgment.
5. Whether the state created common law right to initially select venue is protected by due process.
6. Whether a denial of parole extends to access to the courts, under this Court's prior precedent.
7. Whether plaintiff may suffer an actual injury, under the Court's prior precedent, notwithstanding that his case was litigated in other courts.

## **LIST OF PARTIES**

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

## **RELATED CASES**

There are no cases in other courts that are directly related to the case in this Court.

## **TABLE OF CONTENTS**

OPINIONS BELOW .....	1
JURISDICTION .....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..	2
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	9
A. Conflict of Decisions .....	9
B. Importance of the Questions Presented .....	11
CONCLUSION .....	15

## **INDEX TO APPENDICES**

APPENDIX	A. -- Decision of United States Court of Appeals.....	1
APPENDIX	B. -- Decision of United States District Court .....	13
APPENDIX	C. -- Decision of United States District Court .....	25
APPENDIX	D. -- Order of United States Court of Appeals denying rehearing .....	<u>32</u>

## TABLE OF AUTHORITIES CITED

<b>CASES</b>	<b>PAGES</b>
Beard v. Hambrick, 396 So.2d 208 (Fla. 1981) .....	10
Buford v. Watkins, 88 Fla. 392, 102 So. 347 (Fla. 1923).....	9
Casey v. Lewis, 518 U.S. 343, 135 L.Ed.2d 606, 116 S.Ct. 2174 (1996) .....	10, 11
Dekalb Stone v. County of DeKalb, 106 F.3d 956 (11 <sup>th</sup> Cir. 1997) .....	15
Inverness Coca-Cola Bottling Co. v. McDaniels, 78 So.3d 100 Fla. 1955) .....	14
Leatherman v. Tarrant County Narcotics Intelligence & Coordinating Unit, 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993) .....	9, 11
McCormick v. City of Ohio, 230 F.3d 319 (7 <sup>th</sup> Cir. 2000) .....	9
Shane v. Fauver, 209 F.App'x. 87 (3 <sup>rd</sup> Cir. 2006) .....	7, 10
Sinclair v. Fontenot, 2000 U.S. App. LEXIS 40591 (5 <sup>th</sup> Cir. 2000) .....	10
Spiller v. City of Tex. City Police Dep't, 130 F.3d 162 (5 <sup>th</sup> Cir. 1997) .....	9

## **STATUTES AND RULES**

47.011, Fla. Stat. ....	3, 7, 14
95.11(5)(f), Fla. Stat. ....	3
42 U.S.C. §1983 ....	2, 9
56(a), Fed.R.Civ.P. ....	3
56(c), Fed.R.Civ.P. ....	4
56(f)(2), Fed.R.Civ.P. ....	11

## **OTHERS**

Art. V, Section 16, Fla. Const. ....	2, 6
Art. VIII, Section 1(d), Fla. Const. ....	3, 3, 6
1.02, Hillsborough County Charter ....	4

**IN THE**  
**SUPREME COURT OF THE UNITED STATES**  
**PETITION FOR WRIT OF CERTIORARI**  
**PRAYER**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished. The opinion of the United States District Court appears at Appendix B to the petition and is reported at 2020 U.S. Dist. LEXIS 2306. The other opinion of the United States District Court appears at Appendix C and is also unpublished.

**JURISDICTION**

The date on which the United States Court of Appeals decided my case was May 16, 2022. A timely petition for rehearing was denied by the United States Court of Appeals on July 15, 2022, and a copy of the order denying rehearing appears at Appendix D. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## **CONSTITUTIONAL AND STATUTORY**

### **PROVISIONS INVOLVED**

The First Amendment to the United States Constitution provides, in pertinent part, the following:

Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part, the following:

... nor shall any State deprive any person of life, liberty, or property, without due process of law ....

These Amendments are enforced by Title 42, Section 1983, United States Code, which provides, in relevant part:

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, suit in equity, or other proceeding for redress ....

Article V, Section 16, of the Florida Constitution provides that “[t]here shall be in each county a clerk of the circuit court who shall be selected pursuant to the provisions of Article VIII section 1.

Article VIII, Section 1 (d) of the Florida Constitution provides, in relevant part, the following:"

There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court. ...A county charter may not abolish the office of a sheriff, a tax collector, a property appraiser, a supervisor of elections, or a clerk of the circuit court; transfer the duties of those officers to another officer or office; change the length of the four year term of office; or establish any manner of selection other than by election by the electors of the county.

Section 47.011, Fla. Stat., provides, in relevant part, the following:

Actions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located.

Section 95.11(5)(f), Fla. Stat., provides, in relevant part, that

Actions other than for recovery of real property shall be commenced as follows: ... WITHIN ONE YEAR ... Except for actions described in subsection (8), a petition for extraordinary writ, other than a petition challenging a criminal conviction, filed by or on behalf of a prisoner as defined in s. 57.085.

Fed.R.Civ.P. 56(a) provides, in relevant part, that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

Fed.R.Civ.P. 56(c) provides, in relevant part, the following:

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by : (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answer, or other materials, or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed.R.Civ.P. 56(f)(2) provides in relevant part, that “[a]fter giving notice and a reasonable time to respond, the court may ... grant the motion on grounds not raised by a party ....”

Hillsborough County Charter 1.02 provides:

As used in this Charter, the term “the county government” means the government of Hillsborough County, but such term does not include and this Charter does not affect ... any constitutional officer, as defined in Section 1(d) of Article VIII, Florida Constitution: clerk of court, property appraiser, tax collector, sheriff or supervisor of elections; ... and the relationship of the county government to them shall be the same as it would have been if this Charter had not been adopted.

## **STATEMENT OF THE CASE**

An inmate at Union Correctional Institution, (UCI) in Union County, Florida, Petitioner initially filed a complaint, under 42 U.S.C. §1983, in

Hillsborough County Circuit Court in Tampa, Florida, against Frank, the Clerk of that court, Baker, a deputy clerk, and Hillsborough County. (Doc. 2) The Clerk had the case removed to federal court, with the consent of the County. (Doc. 1).

The complaint was amended to correct a misnomer concerning Baker, who was erroneously named Baler. (Doc. 34). The amended complaint alleged that pursuant to an unwritten policy, practice, or custom adopted, utilized, or established by the County and/or Frank, Baker repeatedly refused to file the mandamus complaint petitioner sought to file in Hillsborough County Circuit court, under the sword-wielder doctrine, against the Florida parole Commission (FPC) for considering improper matters in denying him parole and earlier parole interviews, in violation of petitioner's right to proper consideration for parole. The explanation Baker gave for the first refusal was that she could not locate a felony case (on file in Hillsborough County Circuit Court). The complaint alleged that the petitioner returned the complaint for filing a second time, indicating he was not seeking to file the complaint in any felony case, but Baker transferred the complaint to Pinellas County Circuit Court, where petitioner was convicted and sentenced, and the complaint was dismissed for improper venue. The complaint alleged petitioner missed the one-year filing deadline and was forever precluded from pursuing his cause of action against the FPC in his choice of forums and venue. Finally, the

complaint alleged petitioner was actually injured in his access to courts as well as his state created right to initially select venue.

The County filed a motion to dismiss, (Doc. 39) which the district court granted. (Doc. 78) The court concluded that under Florida law, Hillsborough county has no authority to direct or control Frank's function of accepting complaints and petitions for filing with the courts, and that Frank is not a policymaker for the County with regard to that function; accordingly, the County has no §1983 liability for Frank's policies regarding that function. The Florida law considered was Frank being an "independent elected constitutional officer", under Article III, Section 1(d) of the Florida Constitution, rather than an employee of the County, the County charter, recognizing the Clerk's independence, as well as the other constitutional officers defined in Section 1(d), of Article VIII, of the Florida Constitution, the Clerk's office being established by Article V, Section 16 of the Florida Constitution, and the Clerk's powers and duties being derived from Florida's constitution and statutory law, Fla. Stat., §28.001, et seq.

After answering the complaint, Baker and Frank filed a joint motion for summary judgment. (Doc. 112) Petitioner opposed the motion, among other things, referring to Frank's amended number one and 14<sup>th</sup> answers to Petitioner's First Set of Interrogatories, showing that Baker transferred the complaint. (Doc. 124) Petitioner presented Baker's interrogatory answers, showing that their refusal to file

the complaint was pursuant to a practice or policy of the Clerk's office. He also presented Florida common law, holding that he has a right to initially select venue, that venue, when not objected to, is appropriate in any (Florida) court having jurisdiction, and that he has the right to a second venue selection, if the first selection is wrong. Petitioner also filed an opposing affidavit, declaring that had his complaint been filed in Hillsborough County and an issue raised concerning proper venue, he would have sought venue in any county where it was proper under the sword-wielder doctrine. (Doc. 125).

Nevertheless, the district court granted summary judgment on all of petitioner's claims. (Doc. 164) As to petitioner's Fourteenth Amendment claim, the court concluded that section 47.011, Fla. Stat., does not create a liberty interest for individuals who file an action in Florida, and even if it did, there is no evidence that either Baker or Frank transferred the complaint. Regarding petitioner's First Amendment claim, citing Shane v. Fauver, 209 F. App'x 87 (3 Cir. 2006) the court concluded that petitioner's right of access to the courts does not extend to litigation concerning parole; accordingly, the failure to file the complaint did not actually injure petitioner and therefore does not give rise to a First Amendment access to courts claim. The court went to conclude that even if his right of access to the courts extended to his mandamus complaint, petitioner was not denied access to the courts, because his complaint was considered by the court in Pinellas County, dismissed,

appealed, reversed and transferred to Leon County, where it was dismissed because petitioner was barred from bringing pro se complaints in that court. Finally, the court concluded that petitioner has not alleged or shown that when he attempted to refile his complaint in Hillsborough County, he was entitled to equitable tolling of the one-year limitation period, considering he timely attempted to file his complaint but it was returned to him.

The Court of Appeals affirmed, holding that petitioner did not “show” the County had a custom or policy that was deliberately indifferent to his constitutional rights. Petitioner’s one isolated incident of Frank failing to file and transferring his mandamus complaint is insufficient, and his allegations of other instances by stating the County had an unwritten policy are conclusory and speculative. While a single incident can be sufficient to establish a municipality’s liability for its unconstitutional policy, Frank was not a policymaker for the County such that liability could be imposed for her refusal to file and her alleged transfer of his complaint. The court concluded that the County lacked control over the Clerk’s office. The court said that even if petitioner’s right to initially select venue was protected by due process, there is no evidence in the record indicating that either Frank or Baker caused the complaint to be transferred. And even if his complaint gave rise to a right of access to the courts, petitioner cannot show he was actually injured because his case was litigated in other courts.

## REASONS FOR GRANTING THE WRIT

### A. Conflict of Decisions

In the wake of Leatherman v. Tarrant County Narcotics Intelligence & Coordinating Unit, 507 U.S. 163, 168, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993), courts have reached different conclusions concerning whether this Court abrogated the heightened pleading standard in cases of municipal liability. In the case at bar, the Eleventh Circuit appears to have decided that petitioner's conclusory allegations of municipal liability are insufficient. However, while some Courts of Appeals have held that conclusory allegations are insufficient, see Spiller v. City of Tex. City Police Dep't, 130 F.3d 162, 167 (5<sup>th</sup> Cir. 1997) ("The description of a policy or custom and its relationship to the underlying constitutional violation ... cannot be conclusory: it must contain specific facts."), some courts have held otherwise. See McCormick v. City of Ohio, 230 F.3d 3219, 324-25 (7<sup>th</sup> Cir. 2000), interpreting Leatherman as permitting the mere pleading of legal conclusions when bringing a §1983 municipal liability suit.

The lower courts' holding that "the County lacked control over the clerk's office" appear to be in direct conflict with the Florida Supreme Court's holding that "the office of the clerk of the circuit court is a constitutional 'county office.'" See Buford v. Watkins, 88 Fla. 392, 428, 102 So. 347, 358 (Fla. 1923).

Like the district court, the Court of Appeals seems to have held that under Florida law, a Clerk of Circuit Court is not a part of the local government. However, the lower courts' decision is indirect conflict with the Florida Supreme Court's decision in Beard v Hambrick, 396 So.2d 708, 711 (Fla. 1981). There, the Florida Supreme Court held that

In our opinion, there is no reasonable way to construe article VIII, section 1, other than to include sheriffs "as well as other named county officers as part of a county" and, as such, within the definition of a political subdivision as used in subsection (a) of the section. To hold otherwise creates an artificial governmental entity for sheriffs and other named county officials that was not intended by either the legislature or the framers of our constitution.

(emphasis added)

Citing Shane v. Fauver, *supra*, the district court held that access to the courts does not extend to parole proceedings. Suggesting that even if it does, petitioner has not shown an actual injury, the Court of Appeals affirmed. However, Shane v. Fauver is in direct conflict with Sinclair v. Fontenot, 2000 U.S. App. LEXIS 40591, \*10 (5<sup>th</sup> Cir. 2000). There, citing this Court's precedent in Casey v. Lewis, 518 U.S. 343, 135 L.Ed.2d 606, 116 S.Ct. 2174 (1996), the Fifth Circuit held that "[g]iven the priority afforded to the prisoner's liberty interest, ... Sinclair's challenge to the denial of parole is within the ambit of challenges to conviction or condition of confinement for which access to the court is constitutionally

protected, and does not constitute ‘other litigating capacity’ to which the right of access may be impaired. *Id.*, at 11

### **B. Importance of Questions Presented**

This case presents a fundamental question concerning the interpretation and application of this Court’s decision in Leatherman concerning the abandonment of the heightened pleading standard in municipal liability cases.

This case raises fundamental questions of interpretation and application of the access to the courts provision of the First Amendment to the United States Constitution.

This case presents a fundamental question of the application and interpretation of actual injury, according to this Court’s decision in Lewis v. Casey, *supra*.

This case also raises fundamental questions concerning the application and interpretation of the rules governing summary judgment.

### **C. Summary Judgment**

First, petitioner’s failure to show actual injury and his failure to show entitlement to equitable tolling when he attempted to refile his mandamus complaint in Hillsborough County were not grounds for summary judgment, and because the district court failed to give the required notice under Fed.R.Civ.P. 56(f)(2), the court should not have granted summary judgment on either ground.

Nevertheless, there was evidence in the record that petitioner's complaint was twice dismissed, reversed with adverse consequences, that he missed the deadline for timely filing in Hillsborough and Leon counties, and that he was hindered in his efforts to pursue his claim against the FPC.

The record also shows that on motion for summary judgment, as grounds for the motion, respondents never presented evidence that neither of them transferred the complaint or that petitioner could not prove at trial that either of them did so. Instead, respondents claimed that there was no evidence that they transferred the complaint pursuant to a custom or policy. Thus, they failed to carry their burden that there was no genuine issue of material fact in dispute as to whether Baker, if not Frank, transferred the complaint. In fact, the respondents assumed the transfer. (Doc. 131, page 2).

The record contains evidence that in opposing the respondents' motion for summary judgment, petitioner presented evidence that Baker, if not Frank, transferred the complaint. That evidence consists of petitioner's citation to Doc. 86, Frank's amended interrogatory answer number one stating that the person who returned petitioner's pleadings was Baker and the attachment of Frank's interrogatory answer number 14, stating the following:

The Defendant's deputy clerk returned the pleading to the Plaintiff because, after reviewing the contents of the petition and its attachments, the deputy clerk determined that the petition should be

filed in Pinellas County. The Plaintiff attempted to file the petition a second time. The Defendant's deputy again did not file the pleading but transmitted it to circuit court for the Sixth Judicial Circuit. The petition was dismissed by that court.

The deputy clerk who returned and then transferred the Plaintiff's pleadings did not do so pursuant to the Defendant's policies, written or unwritten. The Plaintiff will no be able to present evidence showing that such a policy existed. In fact, the Defendant's policy is not to return or transfer pleading based on improper venue. The deputy clerk who returned and then transferred the Plaintiff's pleadings acted in violation of the Defendant clerk's policy.

Doc. 124, page 9 (wherein Doc. 86 was cited but not attached)

There is also other evidence in the record from which it could be reasonably inferred that Baker transferred petitioner's mandamus complaint. That evidence consists of Baker's written communication with petitioner concerning his criminal felony cases and telling petitioner where he must file , which is where the complaint was transferred, filed and dismissed.

Nevertheless, the lower courts considered Frank's inconsistent answer to petitioner's second set of interrogatories and Baker's interrogatory answer to petitioner's First Set of Interrogatories to hold that there is no evidence that either of them transferred the complaint and from which a jury could make such a finding. See Doc. 164, pages 7, 8, and Appendix A, page 10.

Thus, in violation of the rules governing summary judgment, the lower courts refused to consider some of petitioner's evidence, refused to draw reasonable inferences in his favor, weighed the evidence, determined credibility, decided the dispute concerning the transfer, and granted summary judgment on grounds not raised without giving petitioner notice that said grounds would be considered.

Finally, while there may not be summary judgment evidence of a transfer policy, there is evidence that the respondents' refusal to file the complaint was pursuant to a practice of the Clerk's office. See Doc. 124, Exhibit F, page 4, Baker's first interrogatory answer. Moreover, the respondents did not dispute that the complaint should have been accepted for filing. See Doc. 112, page 6. Thus, the respondents may be held liable for refusing to file the complaint.

While the petitioner may not have a statutory right to initially select venue under Section 47.011, Fla. Stat., he does have a state-created common law right to initially select venue. See Iverness Coca-Cola Bottling Co. v. McDaniels, 78 So.2d 100, 102 (Fla. 1955).

There being a genuine issue of material fact in dispute as to whether Baker transferred the complaint, petitioner submits that his state-created common law right to initially select venue is protected by the due process clause of the

Fourteenth Amendment to the U.S. Constitution. See DeKalb Stone v. County of DeKalb, 106 F.3d 956, 960 (11<sup>th</sup> Cir. 1997).

## CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

Glenn Spradley

Dated: September 22, 2022