

No. 22-903

IN THE SUPREME COURT OF THE
UNITED STATES

JAY GOODLEY,
Petitioner

vs.

CHARLES M. GREENE,
Respondent

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

PETITION FOR WRIT OF CERTIORARI
AND APPENDIX

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QUESTIONS PRESENTED

Preface

A Florida state circuit court judge was *automatically disqualified by law* immediately upon a case being assigned to him by an *Order of Recusal*. The Plaintiff was a litigant in the case. Upon the Defendant's recusal the case was reassigned to another judge by the clerk of the court. After the judge reassignment the Defendant reversed his recusal by entering an order he titled *Amended Order of Recusal*. He then used this Amended Order of Recusal as a conduit for approximately two years to fully reengage in the very case in which he was recused from by taking the following actions: *changing laws, holding hearings, entering orders and conferring with other judges in the case.*

Questions

1. Whether a person can be treated equally under the law when a judge is changing the law?
2. Whether it is a normal judicial function for a judge who is automatically disqualified by law, via a court order and with that case having been *reassigned* to another judge by the clerk of the court, to then be changing laws, holding hearings, entering orders and conferring with other judges in the very case he/she was recused from?
3. Whether a judge is still operating in a "judicial capacity" when presiding in a case *after* he/she has been disqualified from that case and with that case having been *reassigned* to a new presiding judge?

(i)

PARTIES TO PROCEEDING

Jay Goodley – Plaintiff

Charles M. Greene Defendant

CORPORATE DISCLOSURE

The United States Eleventh Circuit Court of Appeals.

The United States District Court for the Southern
District of Florida.

The Seventeenth Judicial Circuit Court of Florida.

The Florida Office of the State Court of Administration.

RELATED CASES

- Goodley v. Greene, No. 0:21-CV-61284-RAR,
United States District Court Southern District of Florida.
Plaintiff files a Title 42 § 1983 entered June 22, 2021.

- Goodley v. Greene, No. 0:21-CV-61284-RAR,
United States District Court Southern District of Florida.
Defendant files a Motion to Dismiss entered July 19,
2021.

- Goodley v. Greene, No. 0:21-CV-61284-RAR,
United States District Court Southern District of Florida.
Judgement entered September 17, 2021.

- Goodley v. Greene, No. 21-13978-CC, United
States District Court Southern District of Florida.
Plaintiff files Notice of Appeal on Order Granting
Defendants Motion to Dismiss entered November 15,
2021.

- Goodley v. Greene, No. 21-13978-CC, United States Court of Appeals for the Eleventh Circuit. Judgement, entered September 9, 2022. (Non - Published Opinion; by the Honorable Judges Rosenbaum, Grant and Edmonson affirming the U.S. District Courts order Granting Defendant Motion to Dismiss).

- Goodley v. Greene, No. 21-13978-CC, United States Court of Appeals for the Eleventh Circuit, entered September 21, 2022. (Plaintiff filed Petition for Panel Rehearing).

- Goodley v. Greene, No. 21-13978-CC, United States Court of Appeals for the Eleventh Circuit. Judgement, entered November 18, 2022. (Order denying Plaintiff's Petition for Panel Rehearing).

- Goodley v. Greene, No. _____ (to be filed) Supreme Court of the United States.

PETITION FOR WRIT OF CERTIORARI

Jay Goodley petitions the Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case entered on September 9, 2022.

OPINIONS BELOW

Denial for the Plaintiff's Petition for Panel of Review is attached as Appendix A. The Appellate Courts: DO NOT PUBLISH – Opinion is attached as Appendix B. The U.S. District Courts: Order Granting Defendants Motion to Dismiss is attached as Appendix C.

JURISDICTION

The Judgement of the Court of Appeals was entered on September 9, 2022. A Petition for Panel Rehearing was denied on November 18, 2022. This court's Jurisdiction rests under 28 U.S.C. § 1254.

FEDERAL STATUTES & RULES INVOLVED

Statutes - 28 U.S.C. § 455

Rules - 28 Code of Federal Regulations § 7616 (c) states:

“In the event of a disqualification or recusal of a Judge as provided in paragraph (a) or (b) of this Section, The Chief Administration Officer or the Attorney General shall refer the matter to another judge for further proceeding”, & the Fourteenth Amendment of the U.S Constitution which provides a citizen a fair procedural due process and “equal protection of the laws”. (1)

STATEMENT OF THE CASE

Introduction

This case in pertinent is about judicial function and judicial immunity. Not since *Stump v. Sparkman*, 435, U.S. 349, (1978) has there been a case so precedential concerning judicial function and judicial immunity. This case is of national concern because the Supreme Court of the United States has not ruled on judicial function and judicial immunity that involved a judge who was "automatically disqualified by law" and then took multiple actions in the case in which they were recused. These acts included changing laws, holding hearings, making rulings and entering orders.

By way of background

In early February 2018 the Defendant, Judge Charles M. Greene, was automatically disqualified by law in a case in which the Plaintiff was a litigant by an order titled: Order of Recusal. (see App. D). In mid – February 2018 the clerk of the state circuit court reassigned the case to another judge. Although recused, on March 6, 2018 Judge Greene held a telephonic hearing in this case. On March 8, 2018 as result of the March 6, 2018 telephonic hearing, Judge Greene ruled and entered two orders simultaneously. One order was titled Amended Order of Recusal. (see App. E). The second order, in its abbreviated title, was: Petition to Pay Monthly Expenses of the Ward. (see App. F). This second order in part *changed a Florida State law*. *Florida Statute 744.3031(4)* was changed:
From: "The authority of an emergency temporary

guardian expires 90 days after the date of appointment or when a guardian is appointed whichever occurs first. The authority of the emergency temporary guardian may be extended for an additional 90 days upon showing emergency conditions still exist".

To: "The authority of the Emergency Temporary Guardian is hereby extended until the dispositive motions filed on behalf of Jay Goodley are addressed by this Court or a permanent guardian is appointed" (see App.F,pt.4).

In *Scheuer v. Rhodes*, 416 U.S. 232, 94. S. Ct. 1683, 1687 (1974) it was ruled:

"When a state officer acts under a state law in a manner violative to the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official representative character and is subjected in his person to the consequences of his individual conduct".

After March 2018 Judge Greene continued to interfere in the case from April 2018 - February 2020 by holding additional hearings and entering additional orders.

Statement of Proceedings

In June 2021 the Plaintiff filed a complaint under Title 42 § 1983 at the U.S. District Court for the Southern District of Florida for Fourteenth Amendment Rights violations he was subjected to. In September 2021 the Defendant was granted a Motion to Dismiss based upon Plaintiff's alleged: 1) lack standing; 2) judicial immunity and 3) judicial function. In November 2021 the Plaintiff appealed

the U.S. District Courts decision to the U.S. Eleventh Circuit Court of Appeals. On September 9, 2022 the Appellate Court affirmed the U.S District Court's ruling but also ruled the Plaintiff *had suffered an injury in fact as a result of the alleged constitutional violation*. (See App.B, Pg.4a, footnote 2). (The District Court erred on "*standing*"). The Plaintiff filed a Petition for Panel Rehearing in September 2022. The Plaintiff's Petition for Panel Rehearing was denied on November 18, 2022.

Facts Relevant to Questions Presented

The doctrine of absolute judicial immunity applies to a state circuit court judge. A state circuit court judge taking actions normally performed by judges is entitled to absolute judicial immunity. A judge will not be deprived of immunity because the actions he took were in error, malicious or in excess of his/her jurisdiction. However, in this unique case a disqualified judge – changing a state law, holding hearings, making rulings, entering orders and conferring with judges about the case he was recused from – does not fall within the scope of that immunity. In determining whether a judge's act is "judicial" for the purposes of immunity, the Supreme Court considers (1) whether the act is normally performed by judges and (2) whether the complaining party *was dealing with the judge in his judicial capacity*. (see *Stump v. Sparkman*, 435 U.S.349 (1978).

(a) Here the Plaintiff *was not dealing with the judge in his judicial capacity* when the complained of acts occurred in March 2018 because the case had been

reassigned to another judge in February 2018.

(b) Holding hearings, entering orders and conferring with other judges are acts normally performed by a judge. However, in this particular case these are not acts normally performed by a recused judge, as again, Judge Greene was recused from the case in early February 2018. The Supreme Court has instructed courts to look only to "the nature and function of the act, not the act itself" see *Mirles v. Waco*, 502 U.S. 9, 13, 112 S. Ct. 286, 116 L. Ed. 2d. (1991) (quotations omitted) (see also *Forrester v. White*, 484 U.S. 219, 229, 108 S. Ct. 538, 98 L. Ed. 2d. 555 (1988)). However, what differentiates this unique case from other cases is that the judges in *Mirles v. Waco*, *Forrester v. White* and *Stump v. Sparkman* were not automatically disqualified by law when taking actions in their respective cases. Whereas again, Judge Greene was automatically disqualified by law when the complained of acts occurred. A judge who is recused and then acts in the very case he/she was recused from creates an adjudication quagmire on how a court would look at "the act itself" as criminality may be in play. Additionally, the Defendant acted *without authority* not just in excess of authority. One of the Defendant's post recusal acts was to continue to enter orders in the case. Well settled Florida case law states: "Once the trial judge recused himself he had *no further authority to enter orders*". (see *Bolt v. Smith*, 594 So. 2d. 864 (Fla. 5th D.C.A.). Therefore, a Florida judge entering orders after being recused is without authority and such acts are ministerial or administrative acts, not normal judicial functions. (5)

REASONS FOR GRANTING WRIT

- No case law has been cited by any U.S. Court involved in this litigation where a judge has been "*automatically disqualified by law*" and then fully reengaged in that very case, with a new judge having been assigned to the case. This includes but is not limited to the heavily cited Florida divorce case titled: *Kalmanson v. Lockett*, 848 So.2d 374, 380 (Fla.D.C.A. 2003).

- The Supreme Court has previously ruled that if a judge acts after he/she has been automatically disqualified by law then he/she is acting without jurisdiction and that suggests he/she is engaging in criminal acts of treason and maybe engaged in extortion and interference with interstate commerce. Judges do not have immunity from criminal activity.

- *Florida Statute 38.10*, concerning disqualification, states: "the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitutions of judges".

- A recused Florida judge who changes a Florida state law (as in this case) has committed a fraud on the court; since such an act interferes with a court's normal process of adjudication. The changing of a Florida state law is a normal *Florida legislative function*; not a normal *Florida judicial function*.

A judge is not entitled to immunity for criminal activity even if such activity occurs within a courthouse. This standard applies whether or not a judge possess subject matter jurisdiction. Subject matter jurisdiction is not a license for a judge to change the law.

CONCLUSION

Mr. Jay Goodley respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted,

Jay Goodley 03/10/2023

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