8/31/23

No. 23-222

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In The

Supreme Court of the United States

-♦-

DAWN M. WHITE, by her
Next Friend PATRICK J. WHITE
Petitioner,

v.

UNITED STATES,
Respondent.

-♦-

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

-♦-

PETITION FOR WRIT OF CERTIORARI

-♦-

Dawn M. White, by Her Next Friend
Patrick J. White, Pro Se
234 Teri Ln
Prattville, AL 36066
334-531-2922

QUESTION PRESENTED

Can a husband represent the interests of his wife in a pro-se capacity if they meet the criteria previously established by this Court for a close relationship and a hinderance to the wife's ability to represent herself?

PARTIES TO THE PROCEEDING

Petitioner Dawn M. White through her next-friend and husband, Patrick J. White was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings. Respondent United States of America was the defendant in the district court proceedings and appellees in the court of appeals proceedings.

RELATED CASES

- *Dawn M. White, et al. v. United States of America,* 2:21-cv-00667-RAH-CWB, U.S. District Court for the Middle District of Alabama, Northern Division. Judgement entered October 20, 2022

- *Dawn M. White & Patrick J. White v. United States of America, No. 22-13736, U.S. Court of Appeals for the Eleventh Circuit. Judgement entered June 8, 2023*

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Dawn M. White, through her husband and next-friend Patrick White, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The Eleventh Circuit's opinion is reported at Dawn M. White, Patrick J. White v United States of America, (11th Cir. 2023) and reproduced at App. 1. The Eleventh Circuit's denial of petitioner's motion for reconsideration and rehearing *en banc* is reproduced at App. 19. The opinions of the District Court for the Middle District of Alabama is reproduced at App. 5

JURISDICTION

The Court of Appeals entered judgment on June 8, 2023 App. 1. The court denied a timely petition for rehearing *en banc* on August 1, 2023 App. 19. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case does not involve interpretation of statutory or constitutional provisions.

INTRODUCTION AND STATEMENT OF THE CASE

Petitioner was a patient of and treated in Respondent's clinic on Maxwell Air Force Base, AL.

when she was prescribed the migraine abortive medication Maxalt. Maxalt, a Triptan class of medication, has a known and well documented history of adverse side effects including cardiac rhythm disruptions, especially in patients with certain pre-existing conditions. Several of these pre-existing conditions are documented in Defendant's medical records of Plaintiff-Appellant's treatment. On 2 January 2014, Plaintiff-Appellant suffered a sudden cardiac arrest resulting in Anoxic Encephalopathy and Non-Ischemic Cardiomyopathy.

In October 2017 and after extensive rehabilitation, both on an in and out-patient basis, Petitioner's neurologist, Dr. Ashish Vyas, informed Petitioner's husband that her significant cognitive and partial functional impairment are likely permanent in spite of a neuro-psychiatry evaluation and her extensive rehabilitation efforts. Immediately following this determination by Dr. Vyas, Petitioner's husband filed a tort claim with the Respondent via a Standard Form 95 with the Air Force Judge Advocate's Office on Maxwell AFB, AL.

Petitioner's husband remained in regular contact with the Air Force Judge Advocates Office at Andrews AFB, ME, where the case was transferred. On multiple occasions, Air Force personnel explained their investigation was still ongoing and requested additional time to properly assess the claim. Believing the Air Force was negotiating in good faith, Petitioner's husband granted their requests. Almost four years later, in June 2021, The Air Force Judge Advocate's Office issued a final denial letter to Plaintiff-Appellant's husband.

In November 2021, Petitioner's husband timely filed a claim against the Respondent on his wife's behalf. In October 2022, the District Court for the Alabama Middle District dismissed, with prejudice, Petitioner's claims, in part, finding that Petitioner's husband could not represent his wife in spite of their close relationship and her documented mental deficits.

Petitioner's husband appealed the District Court's decision to dismiss the case to the Eleventh Circuit Court of Appeals in November 2022. The Eleventh Circuit Court of Appeals also dismissed Petitioner's appeal again stating Petitioner's husband could not represent his wife and consequently they could not address other issues raised on appeal. Petitioner's husband then timely submitted a Petition for Reconsideration and Rehearing en banc which was also denied by the Circuit Court.

REASONS FOR GRANTING THE PETITION

The decision by the Eleventh Circuit to deny Patrick White the opportunity to represent his wife, Dawn White is in direct contradiction to both decisions by other circuits as well as the long-standing position of this Court allowing next-friend representation. This Court should grant review to correct the improper and inconsistent ruling by the lower court

At the onset of this claim, Respondent both acknowledged and accepted Patrick J. White as the representative for his wife, Dawn M. White as evidenced in their motion for an extension of their time to file a timely response to Petitioner's initial

claim, App 21. Additionally, The District Court also initially accepted Patrick J. White by granting respondent's motion.

Respondent, after being granted an extension, then made a motion to dismiss in part stating Patrick J. White, as a non-attorney, was not entitled to represent Dawn M. White. Despite multiple objections by Patrick J. White, Respondent's argument ultimately served as part of the basis for the District Court's dismissal of Petitioner's initial claim, App 5.

The District Court, in their opinion, stated in part, "...The law of this circuit prohibits non-attorneys from proceeding pro se in an action brought on behalf of another." (emphasis added) This argument is flawed first and foremost as it presumes the circuit has the power of the legislature and can make its own laws. The U.S. Constitution, Section 1, states "All legislative Powers herein granted shall be vested in a Congress of the United States..."

The District Court's *A SIMPLE GUIDE TO FILING A CIVIL ACTION* states "Do not worry that your COMPLAINT is not professionally written. It should be typed if possible. The Court will take into consideration that you are a PRO SE litigant and untrained in drafting legal documents."

In Matzker v. Herr, 748 F.2d 1142, 1146 (7th Cir. 1984), the court held that "A complaint drafted by a pro se litigant "however inartfully pleaded," is held "to less stringent standards that formal pleadings drafted by lawyers." Hughes v. Rowe,449 U.S. 5, 9, 101 S. Ct. 173, 175, 66 L.Ed.2d 163 (1980). The district

court's role is to ensure that the claims of pro se litigants are given "fair and meaningful consideration." Caruth v. Pinkney,683 F.2d 1044, 1050 (7th Cir. 1982), cert. denied,459 U.S. 1214, 103 S.Ct. 1212, 75 L.Ed.2d 451 (1983). Accordingly, courts must construe pro se complaints liberally. Estelle v. Gamble,429 U.S. 97, 106, 97 S.Ct. 285, 292, 50 L.Ed.2d 251 (1976)." This District, however, appears to have done anything but that by allowing the Respondent flexibility in terminology, timeliness, and statute interpretation while holding the Pro Se Petitioner to a strict adherence of the same. For example, the Magistrate's recommendation appears to take issue with Patrick White's efforts to pursue action "on behalf of" (App 7) Dawn White as opposed to the legal phrase "next friend". Regardless of whether phrased "on behalf of", "third-party", or "next friend", it can be clearly discerned Patrick White intends to represent Dawn White to whom he is married and who has a documented mental and cognitive deficit.

I. The opinion of Eleventh Circuit Court to deny third-party standing conflicts with decisions made by other District Courts within this Circuit creating a split within the circuit

The District Court for the Southern District of Alabama, in 2009 recognized "next-friend" or third-party standing to the parents of a minor child. Doe v. City of Demopolis, CIVIL ACTION 09-0329-WS-N (S.D. Ala. Jun. 30, 2011). As recently as 2021 the Middle District of Alabama granted "Next Friend" status in A.A. v. Buckner, Civil Action 2:21CV367-ECM (wo) (M.D. Ala. Oct. 29, 2021). And, among

others, this court accepted a "Next Friend" as a representative in Doe v. Swearingen, No. 21-10644 (11th Cir. Oct. 21, 2022)

II. The opinion of the Eleventh Circuit Court directly conflicts with the decisions of other circuits and substantially affects the application of equal justice.

The Court's decision is inconsistent with how other Circuit Courts of Appeal have viewed third-party representation. The Tenth Circuit explained, in SS Pawn Shop, Inc. v. City of Del City, 947 F.2d 432, 438 n. 5 (10th Cir. 1991) one of the requirements for third-party standing is a "genuine obstacle that prevents the third party from asserting his or her rights" thus acknowledging the right of a third-party to assert the rights of another in certain circumstances. In 2006 the Tenth Circuit again acknowledged in certain circumstances an individual may be granted "next friend" status and thus again recognized the right of third-party representation (McDonald v. Coyle 175 Fed. Appx 947. 948-49 (10th Cir. Apr. 6, 2006)),

In Miller v. Albright, 523 U.S. 420, 118 S. Ct. 1428 (1998), the District of Columbia Circuit ruled "This Court applies a presumption against third-party standing as a prudential limitation on the exercise of federal jurisdiction, see, e.g., Singleton v. Wulff, 428 U.S. 106, (1976), and that presumption may only be rebutted in particular circumstances: where a litigant has suffered injury in fact and has a close relation to a third party, and where some hindrance to the third party's ability to protect his or her own interests

exists, see Powers v. Ohio, 499 U.S. 400 (1991)." This finding asserts under certain conditions third-party standing is appropriate.

Additionally, the Fifth Circuit has also found third-party standing appropriate in Canfield Aviation v. Natl. Transp. Safety Bd., 854 F.2d 745 (5th Cir. 1988) when it held "When examining standing issues in cases such as the one here, courts must be sure (1) that the litigant and the person whose rights he asserts have interests which are aligned; (2) that the litigant is as effective a proponent of that right as the third party; and (3) that the third party lacks the ability to assert his own right." Singleton v Wulff, 428 U.S. 106 (1976). Again in 1978 it found "The actual practice of entertaining such so-called "next friend" applications, while not common, may occasionally be useful or even necessary." Weber v. Garza, 570 F.2d 511 (5th Cir. 1978)

III. The opinion of the Eleventh Circuit Court is contrary to precedent established and maintained by the Supreme Court of the United States.

The Supreme Court found in favor of third-party standing in Griswold v. Connecticut, 381 U.S. 479 (1965) where it granted standing to a physician to represent couples they treated. In 1975, in Warth v. Seldin, 422 U.S. 490 (1975) "...this Court has allowed standing to litigate the rights of third parties...". In Singleton v. Wulff, 428 U.S. 106 (1976), the Supreme Court again opined that third-party standing is appropriate when there is a close relationship with the third-party and when some hindrance prevents the

holder of the right from suing on their own behalf. In U.S. Department of Labor v. Triplett, 494 U.S. 715 (1990) the Court found in favor of Triplett in the role of a third-party to represent the interests of his clients.

In addition, concerning standing as a "next friend" or third party, in 1990, the Court ruled "...one necessary condition is a showing by the proposed "next friend" that the real party in interest is unable to litigate his own cause due to mental incapacity, lack of access to court, or other similar disability." Whitmore v. Arkansas, 495 U.S. 149 (1990). Again, the Supreme Court addressed the issue in Kowalski v. Tesmer, 543 U.S. 125 (2004) where they again found in favor of third-party standing.

CONCLUSION

The judgment of the Eleventh Circuit should be overturned and Patrick J. White should be allowed to represent his wife, Dawn M. White.

Respectfully Submitted

/s/ Patrick J. White

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APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

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