

23-7392

Supreme Court, U.S.
FILED

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In The
SUPREME COURT OF THE UNITED STATES

ELAINE MICKMAN

Petitioner

vs.

PHILADELPHIA PROFESSIONAL
COLLECTIONS, LLC.

Respondent

ON PETITION FOR WRIT OF CERTIORARI
from the December 5, 2023 Rehearing Order from the
Third Circuit Court of Appeals No. 22-2598& 23-1263

Elaine Mickman, pro se
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i.

QUESTIONS PRESENTED

1. Does Circuit Court *Summary Action* undermine and effectively convert the **right to appeal** a US District Court Order into a **discretionary appeal**, thereby depriving due process and eroding the federal appeal process compounded by non-uniform and varying rules among the Circuit Courts?
2. Shouldn't "Continuing Tolling" and the "Equitable Tolling Principles" be recognized and affirmed by the U.S. Supreme Court to uniformly resolve the "left-open" time extension arbitrarily decided by the Courts?

PARTIES TO THE PROCEEDING

Petitioner Elaine Mickman is an individual and the plaintiff in the U.S. District Court case No. 21-cv-04221.

Respondents Philadelphia Professional Collections, LLC and White & Williams, LLP are an enterprise and defendants in U.S. District Court case No. 21-cv-04221.

STATEMENT OF RELATED CASES

Third Circuit Court Nos. consolidated 22-2598 and 23-1263

U.S. District Court No. 21-cv-04221

JURISDICTION

The Supreme Court of the United States has jurisdiction of this matter under 28 U.S.C. 1254 Court of appeals; Certiorari.

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1.

OPINIONS BELOW

1. Third Circuit Court Nos. consolidated 22-2598 and 23-1263

December 5, 2023 Order for SUR PETITION FOR REHEARING:

“Denying Petition for en banc rehearing and denying Petition for panel rehearing filed by Appellant Elaine Mickman.”

October 2, 2023 “Judgment Affirmed.”

2. U.S. District Court No. 21-cv-04221:

Order: December 22, 2022.. *“Upon consideration of defendant’s Motion to Dismiss Plaintiff’s Amended Complaint (Doc. No. 38) and the plaintiff’s response (Doc. No. 40), it is ORDERED that the motion is GRANTED. IT IS FURTHER ORDERED as follows:*

1. *Plaintiff’s Amended Complaint is DISMISSED WITH PREJUDICE; and*
2. *Plaintiff’s Motion to Certify Notice of Appeal under Fed. R.Civ. O. 54(b) (Doc. No. 39) is DENIED as moot.”*

***3. U.S. District Court No. 21-cv-04221:** Order: August 1, 2023 *“IT IS FURTHER ORDERED that plaintiff’s notice of appeal is deemed filed as of February 8, 2023”.*

2.

INTRODUCTION

Petitioner urges the U.S Supreme Court to review this case to ensure due process for fair and full appeal review as intended by F.R.Civ.P. The Circuit Courts have varying local rules that can preclude a party's full appeal by Summarily Disposing of full briefing and opportunity to present First Impression questions or "left-open" matters such as "Equitable Tolling Principles" or "Continuing Tolling".

Petitioner is a pro se indigent senior with medical disabilities who was deprived Constitutional rights to resolve an underlying state court matter initiated by Respondents who indisputably "employed the aid of a state official under the *color of law*" to ensure Petitioner could not be heard via an improper order for a fair trial and resulting in a subsequent negative domino effect for Petitioner. Following the state court case conclusion, Petitioner filed suit in U.S. District Court against Respondents for independent causes of action which occurred at the state court action including Respondents depriving Petitioner constitutional rights. U.S. District Court denied Petitioner's October 13, 2021 "Motion Requesting For Appointment Of Attorney" when her suit included a section 1983 Civil Rights claim against Respondents. Plaintiff believes her claims could have been well-pled better-articulated, and prevailed if an attorney was appointed to represent her, contrary to the declining party in *Buccolo, 308 F. App'x 574, 575 (3rd Cir. 2009)*.

3.

Petitioner timely filed appeal of the December 22, 2022 U.S. District Court dismissal order stating statutes were time-barred while the Court overlooked or misconstrued “continuing tolling” and “equitable tolling” when circumstances prevented timely legal redress. The Court calculated time statutes from the time the underlying suit was sent rather than from the time Petitioner was violated or denied rights. Respondent’s time-expired state court case against Petitioner wasn’t barred.

STATEMENT OF THE CASE

Petitioner is an individual who was egregiously deprived Constitutional rights, oppressed, and exploited by Respondents for years beginning with their suing Petitioner outside her jurisdiction in state court for breach of contract for an alleged unverified debt more than 4 yrs. after the time statute expired. The Respondents *placed fraud on the court* by deceiving and misrepresenting material facts to the state Court to obtain an Order which effectively used the legal force of the Court to deprive and strip Petitioner the right for a fair trial by precluding her testimony to defend and present her case when 14th Amendment property rights were at stake. Respondents testified in state court with statements of which Petitioner was court-order-stifled and precluded from responding or defending under testimony, depriving her due process to a fair state trial which should have been reversed on error or abuse of discretion. Upon state case conclusion, Petitioner filed a **private**

4.

42 US § 1983 suit in US District Court against Respondents for their depriving and violating her federally protected constitutional rights under *color of law* via Respondents “*obtaining significant aid from a state official*”. U.S. District Court dismissal overlooked *color of law* including a private party’s aid from a state official. U.S. District court stated section 1983 suits require the defendant to be a state actor. Petitioner’s suit included FDCPA, UTPCPL, private Civil RICO 1964(c) and fraud which were all dismissed by U.S. District Court when an appointed attorney for Petitioner could have well-pled the claims. Petitioner’s 3rd Circuit appeal involves Substantial Questions including the Circuit Court’s *Summary Disposal* which did not consider “continuing tolling” or “equitable tolling” for extending time statutes. The 3rd Circuit relied upon U.S. District Court’s Opinion to deprive full briefing by varying Circuit rules for Summary Dismissal when F.R.Civ.P. do not intend to curtail due process for appeal.

“*The 1st and 3d Circuit rules allow for summary affirmance when “no substantial question is presented.” 1st Cir. R. 27.0(c); 3d Cir. R. 27.4. Other circuit rules provide for summary action when the appeal “is frivolous and entirely without merit” (8th Cir. R. 47A; 11th Cir. R. 42-4) or when “it is manifest that the questions on which the decision in the appeal depends are so insubstantial as not to justify further proceedings” (9th Cir. R. 3.6(b)). The D.C. Circuit’s rules do not spell out a standard, but its case law requires that a party seeking summary disposition must “establish...that the merits of his case are so clear that expedited action is justified” and that “no benefit will be gained from further briefing and argument of the issues presented.”*

5.

REASONS FOR GRANTING WRIT OF CERTIORARI

“The Judiciary Act of 1891 created the structure and accessibility of appellate Courts to make the right to appeal possible and feasible. The appellate process is a systemic way to ensure that the judiciary remains independent and impartial”.

However, the “varying” Circuit rules undermines Constitutional appellate ability and contradicts the Judiciary Act of 1891. Summary disposition variations among federal courts are especially prejudicial to a pro se party in need of full briefing (formal or informal) to present an argument regarding applicable laws and material facts which opposing parties often deny, mischaracterize, or obfuscate. While some circuit courts may summarily dispose of an appeal, the same appeal may be advanced for full briefing in another Circuit Court which unfairly, inequitably, and arbitrarily applies the law depending on judicial jurisdiction. The unfair method of summary disposition was not contemplated in the Federal R.C.P., undermines the law, and can diminish rights provided in the Constitution depending on judicial jurisdiction. A “Substantial Question” is the standard for determining summary disposition, yet the 3rd Circuit relied upon U.S. District Court’s Opinion to dismiss Petitioner’s case primarily alleging time-barring statutes, but the Court overlooked “equitable tolling” of statutes and the Supreme Court’s exceptions to the general accrual rule known as the “continuing violations or conspiracy doctrine”.

6.

U.S. District erroneously misapplied time-barring statutes by calculating from the beginning of the underlying state case prior to some of the violations which occurred years later during the case. *“As the Court put it in Zenith Radio, in the context of a continuing conspiracy to violate the antitrust laws, ...each time a plaintiff is injured by an act of the defendants, a cause of action accrues to him to recover the damages caused by that act and that the statute of limitations runs from the commission of the act.”*

U.S. District Court time-barred Petitioner’s private civil rights violation claim against Respondents and also misconstrued the nature of Petitioner’s 42 US § 1983 claim against Respondents for depriving her of a fair state trial December 2018 and March 2019 post-motion hearing by stifling her defense and case presentation via erroneously using the legal force of a state official’s order, but the case was not concluded until August 2021. U.S. District Court misapplied the time-statute to the date of June 2015 when the initial state suit was sent to Petitioner.

U.S. District Court overlooked that an attorney or private party may be a state actor if they employ the state to enforce or execute a state-provided procedure which violated a party a federally protected constitutional or statutory right by state action or action under *color of law. Flagg Bros., Inc. v. Brooks, 436 U.S.149, 156, 98 S. Ct. 1729, 1733, 56L.Ed.2d 185 (1978).*

7.

A deprivation must be caused by the exercise of some right or privilege created by the state or by a rule of conduct imposed by the State, and the party charged with the deprivation must be a person who, if not a state actor, “*obtained significant aid from a state official*”. It can’t be overstated that the Court enforced for a party and

attorney, Respondents, to strip their opponent, Petitioner, of civil rights.

Petitioner timely pleaded in the U.S. District Court within the continuing toll time statute upon conclusion of the state case in August 2021, yet U.S. District Court applied a time-barring statute from the beginning of the case in June 2015 prior to the violation occurrence which gave rise to Petitioner’s independent federal claim.

Summary disposition is rarely appropriate in cases involving questions of first impression in that court, or where there is a conflict among the courts on a controlling legal principle, such as this instant case where the Court ignored the 3rd Circuit’s February 2019 ruling in *Barbato v Greystone Alliance LLC* which concluded debt nature is irrelevant, and entities regularly collecting debts are subject to debt collection laws. The 3rd Circuit relied on U.S. District Court which relied on Respondents alleging there were no substantial questions and that the time statutes were barred for actions which Petitioner was prevented from asserting or for independent causes of action stemming from the state trial.

8.

While mandatory authority requires the Courts to follow the decisions of higher courts in the same jurisdiction, the lower Court parted from *stare decisis* and disregarded the 3rd Circuit's controlling legal decision in their February 2019 "holding" in "*Crown Assets*"/"*Barbato*". Petitioner's FDCPA claim was never heard in state Court, nor remanded by the state appeals court, therefore, the FDCPA claim should have been justifiably and equitably "tolled" by U.S. District Court when in fact another Circuit Court would have "tolled" the claim based on precedence of tolling for equitable reasons. The 3rd Circuit overlooked that the claims are not time-barred from the time of the cause of actions which created the independent claims in the U.S. District with exception to the FDCPA claim which could be "equitably tolled". "*Whether tolling of a statute of limitations has occurred raises an issue of law involving statutory interpretation; the issue is one of law reviewed de novo.*" *Weddel v. Sec'y, Health & Human Servs.*, 100 F.3d 929, 931 (Fed. Cir. 1996). In *Rotkiske v Klemm*, the Court left open extending the statute of limitations based on equitable principles, such as equitable tolling and an equitable fraud-specific discovery rule that the limitations period does not begin to run until the plaintiff discovers the violation and if the failure to discover the violation involved the defendant's fraud. In *TRW Inc. v Andrews*, 534, U.S. 1, 37 (2001), "*Ordinarily applicable time trigger does not apply when fraud on the*

9.

creditor's part accounts for the debtor's failure to sue within one year of the creditor's violation." Related and subsequent matters gave rise to Petitioner's U.S District Court case dismissed primarily relying on time-barring. Petitioner argues "continuing" or "equitable" tolling should be applied because violation actions were committed at later dates during the state case which potentially could have been resolved at conclusion, substantiating that Petitioner was prevented by the **Younger** abstention from filing a federal claim while the state underlying action was pending and not concluded. Respondents did not deny the claims in Petitioner's suit, rather Respondents focused on time-statute barring regardless Respondent's underlying suit against Petitioner was actually time-barred by statute. (Petitioner's opposing party "PPC" sent suit mid-June 2015 "alleging" billing from 2009 until June 2011. Some additional billing continued past June 2011 for 2 1 /2 yrs. is disputable and represents fraudulent ill-gotten gains since a state court judge determined in a September 2019 Opinion that the case was over June 2011.) Petitioner has no other remedy to recompense for her lost claims other than U.S District Court as in **Monroe v Beard, 536 F.3d 198, 205 (3rd Cir. 2008)**. Summary disposition is an action that bypassed the intended appeals process while Respondents escape accountability for their violations of federal and state law, and liability to Petitioner who they injured when there are genuine questions.

10.

The Circuit Courts should not have varying rules that deviate from their ordinary procedures to preclude full briefing and oral argument, rather the rules should be uniform throughout federal Courts. Substantial questions exist and the outcome can not be fairly determined based on the 3rd Circuit reliance on the U.S. District Court's Opinion. The U.S. District Court's abuse of discretion regarding "tolling" is a factor in their opinion regardless the appellate Court owes no deference to the trial court's legal conclusions. A "left-open" legal principle overlooked or misconstrued by the U.S District Court was relied on by the 3rd Circuit without full and fair consideration. Summary Action is a breakdown in the appeal process by its lack of uniformity which is unfair and anti-pro se. Summary Disposition of Petitioner's appeal specifies it is not an opinion of the full Court and does not constitute binding precedent, thereby arbitrarily dismissing Petitioner's appeal without full or meaningful review. A discretionary remedy is inappropriate for cases with arguable legal issues or debatable facts. In *Semmerling v Bormann*, 970 F.3d 886, 888 (7th Cir. 2020) "this court generally disfavors motions for summary affirmance". "It ought to be employed only when the appropriateness of such a course is clear and only with great solicitude for the substantial rights of the parties." *Williams v Chrans*, 42 F.3d 1137, 1139 (7th Cir. 1994).

11.

CONCLUSION

The U.S. Supreme Court has authority to implement rules that are uniform among the Circuit Courts and affirm extending time statute tolls for circumstances.

Petitioner was deprived the most elemental right to defend and present her case at a state court case which gave rise to independent causes of action Petitioner filed in the U.S. District Court. Petitioner was then “crippled” by the U.S. District Court’s dismissal, only to be precluded from a full and fair Circuit Court appeal due to varying Circuit Court rules that are not intended by the F.R.Civ. P. in addition to abuse of discretion regardless of the U.S. Supreme Court’s “left-open” legal principle that needs to be decided giving “equitable or continuing tolling” to extend time-statutes for parties that were prevented from timely filings by abstentions or other reasonable circumstances.

Wherefore, Writ of Certiorari should be **GRANTED**.

Respectfully Submitted,

 May 2, 2024

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IN THE SUPREME COURT OF THE UNITED STATES

This hereby verifies the forgoing in the Petition for Writ of Certiorari to be true
and correct to the best of my knowledge and was filed in good faith.

 May 2, 2024

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