

23 - 7526

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
MAY 07 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. _____

Thomas Webster

Petitioner

-against-

Natalie Haskin's et al.,

-Respondents-

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE 9TH CIRCUIT

Thomas Webster T-14
2100 Napa Vallejo Hwy.
Napa Ca.
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QUESTION PRESENTED

Question One (1).

The lower Court and the Court of last resort affirmed a decision to allow the Defendant to introduce a crucial piece of evidence, an expert witness's report after the closing of motions and discovery.

The Plaintiff was never allowed a meaningful opportunity to assess the merits of the document and to adequately reply.

This creates a question of law that is of great importance and is of a departure so far from the accepted and usual course of judicial proceedings, and/or has been sanctioned by a lower court, and affirmed by the court of last resort as to call for an exercise of this courts supervisory powers.

This decision if left uncorrected would affect courts in all fifty states and the District of Columbia, and the judicial system as a whole.

LIST OF PARTIES AND RELATED CASES

LIST OF PARTIES

[X] All parties do not appear in the caption of the Case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Thomas Webster ,

PETITIONER,

VS.

Pam Ahlin, Natalie Haskins, Rhonda Love, Dean Percy, Melody Samulson ,
sued in his/her official capacities;

Respondent(s).

RELATED CASES

Thomas Webster

Case No. 18-01969 EJD (PR)

v

Melody Samulson

Dismissed with leave to amend

filed on, (9/25/2018)

Dismissed on 11/28/2018 as being duplicative

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OPINIONS BELOW

The opinion(s) of the United States court of Appeals for the 9th circuit is unreported and appears at Appendix A to the petition and is unpublished. (A)

The opinion(s) of the United States District Court for the Northern District of California appears at Appendix B to the petition and is unpublished. (B)

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case
was November 3rd 2024.

[X] A timely petition for rehearing was denied by the United States Court of
Appeals on the following date: December 12th 2023, and a copy of the
order denying rehearing appears at Appendix A.

[X] An extension of time to file the petition for a writ of certiorari was granted
to and including May 10th 2024 on January 22nd 2024
in Application No. 23A 670.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution, which provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The Amendment is enforced by Title 42, Section 1983, United States Code:

Every person who under the 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 at law, suit in equity, or other proper proceedings for redress, except that in any action brought without judicial counsel officer for an act or omission taken in such officer's official judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statue of the District of Columbia.

STATEMENT AND FACTS OF THE CASE

This case is fairly simple in that I was not allowed discovery of an expert's report which was the deciding factor made by the court.

1. On March 4th 2020 the district court issued a scheduling order (ECF 42) as follows :
Exhaustion Motion Filing Deadline : August 04, 2020
Deadline to Amend Pleadings : November 04, 2020
Discovery Deadline : January 04, 2021
Dispositive Motion deadline : March 15, 2021
2. On March 15th 2021 the defendant submitted a declaration by Phillip G. Allingham, the defendant's attorney containing nine (9) exhibits, exhibit eight (8) was a report from a retained expert Dr. Mathis. (ECF 71)
3. The district court based their decision on this expert opinion, see, (ECF 71), "finally even assuming plaintiff provided sufficient evidence...Plaintiff claim against Defendant fails. Defendant provided the expert medical opinion of Dr. Mathis". (ECF91) Page 17, lines 14,16,18
4. This expert's report is in violation of the Federal Rules of Civil Procedure 26.
5. "A principle purpose of summary judgment is "to isolate and dispose of factually unsupported claims." *Celotex Corp. v Catrett*, 477 U.S. 317, 323-324, 106 S. Ct. 2548, 91 L. Ed. 2D 265 (1986)
6. I immediately brought this obvious improper submission to the attention of the district court. (ECF 83) Page 6, No.2, referencing Dr. Mathis's report being made in bad faith
7. I stated the record did not support the findings of ("a procedure"), the defendant claimed in this experts report. see, (ECF 83 Page 7 No.3, "The Plaintiff can find no substantiation of the "PROCEDURE" the Defendant keeps referring to."

8. Fed. R. Civ. P. 26(a)(2)(C) A summary of the facts and opinions to which the witness is expected to testify is required. Adequate disclosures are critical because "[i]f a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at trial, unless the failure was substantially justified or harmless.
9. If a party violated Rule 26(a), it is that party's burden to show that the violation is substantially justified or harmless. See *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1107 (9th Cir. 2001).
10. On April 1, 2021, Plaintiff filed a second request for an order compelling further discovery of the March 15th filing, from defendant Haskin's, (ECF74), within one week (7days) after the court submitted this report.
11. Fed. R. Civ. P. 26(a)(2). *Hochen v. Bobst Group, Inc.*, 290 F.3d 446, CCH Prod. Liab. Rep. ¶ 16339, 59 Fed. R. Evid. Serv. (CBC) 138 (1st Cir. 2002)...."expert's testimony was excluded for failure to designate expert testimony".
12. Stated in the district courts order granting summary judgment to the defendant, (ECF 71, page 4, "B" Evidentiary Objections) "Plaintiff raises various objections to much of Defendant's statement of undisputed material facts, as well as to specific portions of the declaration of defendant Haskin's and Dr. Mathis". (ECF 83)
13. I filed a appeal with the court of last resort under Federal Rule of Appellant Procedure Rule,10.2 UNSUPPORTED FINDING OR CONCLUSION, as the record did not support Dr. Mathis's claims. see; informal opening brief to the ninth circuit court of appeals.
14. ("The Appellant court may also affirm a summary judgment on any ground that has support in the record weather or not relied upon by the lower court. *Valdez v Rosenbaum*, 302 F.3d 1039, 1043 (9th Cir 2002))" which in this case the record will not support the report which was cited as the deciding factor.

15. I concurrently filed a motion of Fraud on the Courts under Federal Rule of Civil Procedure 60(b)(2).
16. F.R.C.P. Rule 60(b), 10th Circuit, *Jennings v Rivers*, 394 F.3d 850, 854-856 (10th Cir. 2005) (motions made within time for Fed. R. Civ. P. 59(e) motion, but asserting ground for relief specified under Fed. R. Civ. P. 60(b), should be evaluated under standards applicable to Fed. R. Civ. P. 60(b) motions), which the court of last resort denied.
17. The District Court stated in ECF 91, page 3, line 23, "The court thoroughly reviewed the evidence it deemed admissible, material, and appropriate.", An Expert Opinion filed after discovery closed is far from appropriate.
18. The District Court stated in ECF 91, page 6, lines 6, 7 "To the extent Plaintiff has identified that a fact is in dispute, but fails to provide supporting evidence or otherwise demonstrate that the evidence relied upon by the Defendant is inadmissible, such a fact will be accepted as undisputed.", I stated the record did not support Dr. Mathis claims, and I let the record speak for itself.
19. Defendant's opposition to plaintiff's request to stay, page 2 line 23) "nonmovant must present specific facts explaining his inability to make a substantive response...demonstrating how postponement will enable him to show the absence of a genuine fact and defeat summary judgment", *Washington v Allstate Ins. Co.*, 901 F.2d 1281,1285 (5th Cir. 1990)..
20. The District Court stated that an expert witness would not be needed in (ECF 84) "V" page 7, lines 9,10,11, "...Plaintiff's allegations are not so complex as to require the appointment of an expert witness", yet the District Court cited the experts testimony the deciding factor in their decision.

REASONS FOR GRANTING THE PETITION

- (a) a U.S. court of appeals has entered a decision in conflict with another U.S. court of appeals; has decided an important federal question in a way that conflicts with a decision by a State court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
- (b) a State court of last resort has decided an important federal question in a way that conflicts with the decision of another State court of last resort or of a U.S. court of appeals;
- (c) a State court or a U.S. court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

CONFLICTS WITH DECISIONS OF OTHER COURTS

F.R.C.P. Rule 60(b), *10th Circuit* Jennings v Rivers, 394 F.3d 850, 854-856 (10th Cir. 2005)(motions made within time for Fed. R. Civ. P. 59(e) motion, but asserting ground for relief specified under F. R.C.P. 60(b), should be evaluated under standards applicable to Fed. R. Civ. P. 60(b) motions) which the court of last resort denied.

Fed. R. Civ. P. 26(a)(2)...”expert’s testimony was excluded for failure to designate expert testimony”, under *Hochen v. Bobst Group, Inc.*, 290 F.3d 446, CCH Prod. Liab. Rep. ¶ 16339, 59 Fed. R. Evid. Serv. (CBC) 138 (1st Cir. 2002).

The Appellant court may also affirm a summary judgment on any ground that has support in the record weather on not relied upon by the lower court. *Valdez v Rosenbaum*, 302 F.3d 1039, 1043 (9th Cir 2002))" which in this case the record will not support the report cited as the deciding factor.

The holdings of the following courts in *Sabo v Fiskars* US Dist. Ct. I 2015 LEXIS 182643 "a summary of facts and opinions the witness is expected to testify" and that violation of Federal Rules of

Civil Procedure, Rule 26 (a)(2)(C) adequate disclosures are critical because " if a party fails to provide information or identify a witness as required by Rule 26(a) or (e) the party is not allowed to use that information or witness to supply evidence on a motion at a hearing, or at trial, unless the failure was substantially justified or harmless;"

An order granting or denying summary judgment generally is reviewed de novo, the appropriate standard of review for purely or predominately legal issues, *Lovell v Chandler*, 303 F3d 1039, 1052 (9th Cir. 2002) ; *Torres-Lopez v May*, 111 F.3d 633, 638 (9th Cir. 1997) (application of statute).

Federal Rule Civil Procedure 37 (c)(1) "if a party violated rule 26 (a)(it is that party's burden to show that the violation is substantially justified or harmless see: *Yeti by Molly Ltd. v Deckers Outdoors Corp.* 259 F .3d 1101,11097 (9th Cir. 2001)

CONCLUSION

I Thomas Webster affirm that on May 7th 2024 I submitted this petition using the mailbox rule, and being readily familiar with the mail collection system here at Napa State Hospitals the mail deposited that day will be picked up and deposited into the U. S. mail the next day.

Thomas Webster 

May 7th 2024