NO. 23-_____

In the Supreme Court of the United States

EMILY EVANS AND MELANIE WELCH,

Petitioners,

v.

CITY OF ANN ARBOR, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, under Fed. R. Civ. P. 60(d), a federal court had the authority, and obligation, to vacate a judgment obtained in a state court, where the documentary and trial testimony evidence unequivocally demonstrated that the prevailing party's principal witness committed perjury during the trial on a central issue in the lawsuit, suborned by his attorney-an officer of the court-and where the defendant was not represented by an attorney during the trial, because the judge proceeded to conduct the trial even though the defendant's attorney failed to appear for the trial, despite the fact that the court had not granted his motion to withdraw, and did the federal court abuse its discretion by refusing to apply Rule 60(d) without even addressing the defendant's claim, or the unequivocal evidence, that the plaintiff's principal witness had committed perjury, suborned by his attorney.

2. Whether a declaratory judgment that a state judge had violated the defendant's right to due process under the 14th Amendment was appropriate where the judge proceeded to conduct a jury trial even though the defendant's attorney failed to appear for the trial, and the attorney's motion to withdraw had not been granted, and where the evidence indicated that the judge's decision to conduct the trial without the defendant's attorney present was motivated by a retaliatory motive against the defendant because the defendant's mother had been urging the court to adjourn the trial so that the defendant could retain new counsel, and where the court's appointment of a receiver to enforce the judgment obtained via the

suborned perjury continued to have ongoing and future adverse effects on the defendant.

3. Whether the *Rooker-Feldman* doctrine, state preclusion law, or the statute of limitations precluded applying Fed. R. Civ. P. 60(d) to vacate a judgment which had been obtained in a state court based on the principal witness's commission of perjury, suborned by his attorney, and the perjury could not be raised as an appellate issue in the state court because the trial court had proceeded to conduct the trial without the defendant's attorney present, and therefore no attorney was present to make an evidentiary objection to the admission of the perjurious testimony, which in turn precluded raising the issue on appeal under the state's appellate rules and case law.

4. Whether the federal court abused its discretion by denying the plaintiff's motion for leave to file a Second Amended Complaint in which the plaintiff had corrected the court's assertion that the plaintiff had not adequately pled the claim to vacate the state court judgment under Fed. R. Civ. P. 60(d), where the proposed Second Amended Complaint remedied the alleged pleading deficiency by clearly and specifically citing Rule 60(d) in the proposed Second Amended Complaint.

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiffs-Appellants below

- Emily Evans
- Melanie Welch

Respondents and Defendants-Appellees below

- Meadowlark Builders LLC
- Douglas Selby
- Matthew Krichbaum, in his official and individual capacities
- Howard and Howard Attorneys, PLLC
- Brandon J. Wilson, Esq.
- Hon. Timothy Connors, in his official capacity only
- Hon. Carol Kuhnke, Chief Judge of the Washtenaw County Circuit Court, in her official capacity only
- Kirk Brandon
- Dave Anderson
- Harry Ramsden
- Tina Roperti
- Michigan Quality Electric
- Derek Tuck
- David Giles
- Rob McCrum
- Arbor Insulation

- Meadowlark Energy
- Robert Patterson

Parties Below Who Have No Interest in the Outcome of this Petition per Sup. Ct. R. 12.6

- The City of Ann Arbor, Michigan
- James Worthington, in his official and individual capacities
- Craig Strong, in his official and individual capacities
- Property Management Specialists, Inc.

LIST OF PROCEEDINGS

United States District Court (E. D. Mich.)

No. 3:21-cv-10575

Evans, et al. v. City of Ann Arbor, et al.

Opinion and Order Granting Defendant Motions to Dismiss, and Declining Supplemental Jurisdiction: Feb 25, 2022

Order Denying Plaintiffs' Motion for Reconsideration: July 28, 2022

Opinion and Order Denying Plaintiffs' Motion for Leave to File Second Amended Complaint: Aug 17, 2022

United States Court of Appeals for the Sixth Circuit

No. 22-1774

Evans, et al. v. City of Ann Arbor, et al.

Opinion Denying Appeal: Aug 10, 2023

Order Denying Petition for En Banc Rehearing: Oct 2, 2023

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

REHEARING ORDER

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL PROVISIONS

STATUTES

JUDICIAL RULES

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

OPINIONS BELOW

The opinion of the Sixth Circuit Court of Appeals, Case No. No. 22-1774, is included below at App.1a, *reh'g denied*, (6th Cir. October 2, 2023) is included below at App.1a The order of the U.S. District Court for the Eastern District of Michigan, (E.D. Mich. Feb. 25, 2022), is included below at App.45a, *reconsideration denied*, (E. D. Mich. July 8, 2022), is included below at App.36a.

JURISDICTION

The Court of Appeals entered Judgment on August 10, 2023, (App.1a), *reh'g denied*, (6th Cir. October 2, 2023) (App.93a). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

RELEVANT JUDICIAL RULE

Fed. R. Civ. P. 60 states, in relevant part:

> (b) Grounds For Relief From A Final Judgment, Order, Or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;

[. . .]

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

[. . .]

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) *Timing*. A motion under Rule 60(b) must be made within a reasonable time —and for reasons (1). (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality*. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers To Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. § 1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud

INTRODUCTION

This petition raises compelling issues relating to the authority of a federal court, and its appropriate exercise of discretion, in the application of Fed. R. Civ. P. 60(d) to vacate a state court judgment in which there is indisputable documentary and trial testimony evidence indicating that the principal trial witness for the plaintiff committed perjury, and that the perjury was suborned by the plaintiff's attorney, an officer of the court. These circumstances were compounded by the fact the trial judge proceeded to conduct the jury trial despite the fact the defendant's attorney failed to appear for the trial, when the trial judge had not granted his motion to withdraw as the defendant's attorney, leaving the defendant helpless and without counsel during the trial. Petitioners maintain that by so doing, rather than adjourning the trial in order to enable the defendant to retain new counsel, the judge violated the defendant's due process rights under the 14th Amendment. This violation had the further consequence that, when the principal witness for the plaintiff committed perjury, suborned by his attorney, there was no attorney present representing the defendant to make an evidentiary objection that the evidence was inadmissible because it constituted perjury. Because no objection was made, under Michigan's rules of appellate procedure, and its case law, the defendant was precluded from raising the issue of the plaintiff's perjury on appeal, resulting in the appellate courts' affirmance of a significant money judgment against the defendant.

Three years after the judgment was entered and petitioner had exhausted all of her state court appeals, she filed a lawsuit in the United States District Court for the Eastern District of Michigan, seeking to have the judgment vacated pursuant to Fed. R. Civ. P. 60 due to the plaintiff's commission of a fraud on the state court due to his commission of perjury, suborned by his attorney. Without addressing the issue regarding whether the plaintiff's principal witness had committed perjury, suborned by his attorney—a claim which petitioners had pled in their Complaint and First Amended Complaint, and had articulated in several trial briefs-the trial court dismissed the claim based on the *Rooker-Feldman* doctrine. Petitioners maintain this ruling was erroneous, because by virtue of the evidence of perjury, suborned by an officer of the court, the petitioners were not challenging the judgment which was obtained in the state court, but were challenging the unlawful manner in which the judgment was obtained, to which the *Rooker-Feldman* doctrine did not apply. In addition, since the defendant was not represented by an attorney at trial, and therefore no objection to the admission of the perjury had been made at the trial, and consequently could not be raised as an issue in the state court appeals, neither *res judicata* nor collateral estoppel barred raising the issue in an independent action filed in federal court, since the issue had never been addressed by the state appellate courts, and under the circumstances could not have been addressed by the state appellate courts, since Michigan's appellate rules and case law precluded raising the issue on appeal. The Sixth Circuit Court of Appeals affirmed the dismissal of the claim against the respondents, also without addressing the petitioners' claim that the judgment had been obtained by the

commission of perjury, suborned by an officer of the court.

This petition accordingly raises significant issues regarding the administration of justice, and the authority, indeed the obligation, of a federal court pursuant to Fed. R. Civ. P. 60(d) to redress a miscarriage of justice which has occurred in a state court resulting from an officer of the court suborning perjury in the course of a state court trial, and the state court trial judge violating a litigant's right to due process by proceeding to hold a jury trial without the litigant being represented by counsel.

STATEMENT OF THE CASE

On November 25, 2015, Emily Evans signed a one-page contract with Meadowlark Builders, represented by its sales manager, Dave Anderson, to perform remodeling work on a home she owned in Ann Arbor, Michigan. The contract price was $50,893.00. Evans paid 50% up front. As the work progressed, Evans and her mother, Melanie Welch, expressed dissatisfaction with the quality of the workmanship.[1] Before the work was completed, the CEO of Meadowlark, Douglas Selby, called the work crew off the job, and demanded payment of the balance. When Evans refused to pay, Meadowlark filed suit against her in the Washtenaw County Circuit Court on April 20, 2016, for breach of contract.

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[1] Because Evans had suffered a traumatic head injury in an automobile accident which affected her cognitive functions, her mother communicated with Selby and Meadowlark's employees regarding the work.

Meadowlark attached what it claimed was the contract to the Complaint. (R.70, Exhibit 14) The purported contract consisted of the one-page Evans had signed, plus four additional pages which were not attached to the contract Evans had signed. Meadowlark was represented by attorney Brandon Wilson. Evans retained attorney Joshua Castmore to defend her.

While the lawsuit was pending, Evans filed a complaint with the Michigan Department of Licensing and Regulatory Affairs ("MDLARA"). On December 27, 2016, MDLARA issued a Formal Complaint against Meadowlark and Selby. (R.70, Exhibit 15) The Complaint contained four counts. The First Count asserted Meadowlark had violated the Michigan Administrative Code. R. 338.1533(1), by failing to put all agreements between it and Evans in writing and have all agreements signed by both parties. The Second Count asserted the contract had been procured by a salesperson, Anderson, who was not licensed as a builder or contractor, in violation of Michigan Administrative Code R. 338.1536. The Third Count asserted Meadowlark had violated the Code by aiding and abetting a person in the unlicensed practice of an occupation. The Fourth Count asserted Meadowlark's conduct had evidenced a willful departure from the plans or specifications. Attached to the Complaint as Exhibit A was the one-page contract Evans had signed, plus four "Scope of Work" pages which had not been provided to Evans, and were not part of the contract. Attached to the Complaint as Exhibit B were three work change orders which MDLARA asserted Meadowlark had "failed to provide copies of … to homeowner that were signed by both parties."

On June 13, 2017, a Consent Order was entered with respect to the Complaint. (R.70, Exhibit 16) The Consent Order stated, in relevant part:

> Respondents [Meadowlark and Selby] admit the allegations in the Complaint, with the exception of Counts III and IV, which Respondents deny and shall be dismissed.…
>
> Therefore, IT IS FOUND that the facts alleged in the Complaint constitute violation(s) of MCL 338.604(h) and MCL 339.604(l).
>
> IT IS ORDERED that Counts III and IV of the Complaint are DISMISSED.

The Stipulation attached to the Consent Order was executed by Meadowlark and Selby, and stated, in relevant part:

1. Respondent and the Department agree that Counts III and IV of the Complaint shall be dismissed by the Board.
2. <u>The facts alleged in the Complaint constitute violation(s) of MCL 339.604(h) and MCL 339.604(l).</u>
3. Respondents understand and intend that by signing this Stipulation Respondents are waiving the right … to require the Department to prove the charges set forth in the Complaint by presentation of evidence and legal authority.…
6. This Order is approved <u>as to form and substance by Respondents</u> and the Department and may be entered as the final order of the Board in this matter. (Emphasis added.)

On September 13, 2017, Wilson filed a motion *in limine* to exclude a number of documents from being offered as evidence, including the MDLARA Complaint, the Consent Order and Selby's signed Stipulation. These documents were attached to the motion as Exhibits G and I. (R.70, Exhibit 19) The fact that Wilson attached these documents to the motion *in limine* indicated he was aware Selby had signed the Stipulation, approved as to form and substance. Castmore did not file a response opposing the motion, which the court granted. (R.70, Exhibit 20)

Four days before trial, Castmore filed an Emergency Motion To Withdraw As Counsel. (R.70, Exhibit 21) He requested that the court afford, "Evans a reasonable amount of time to either retain new counsel or to prepare to represent herself *in Pro Per*." The trial judge, Timothy Connors, did not rule on Castmore's motion to withdraw. On the date of trial, October 2, 2017, neither Castmore nor Evans appeared. Welch was in the courthouse and was informed Judge Connors was going to adjourn the trial so Evans could retain a new attorney. (*See* ¶83 of the First Amended Complaint, R.57, "FAC".) When Judge Connors took the bench, however, he remarked about a relative of the defendant making communications in the building "in forms of emails and personal appearance, who is not the attorney of record and is not the plaintiff but is a relative of the plaintiff [*sic*]," referring to Welch, who was in the courtroom. (R.70, Exhibit 7, p. 4) He proceeded to note he had not discharged defendant's attorney, who was not present, nor was the defendant, and stated he was going to empanel a jury and proceed with the trial. This took Wilson by surprise, because he was under the impression the trial was going to be adjourned,

"based upon what I was told before you took the bench," and had sent his witnesses home. (*Id.* at 5)[2]

The trial resumed when Wilson's witnesses returned. When Wilson called Selby to testify, he asked Selby if there were exclusions in "your contract, Exhibit 4?" which had previously been identified by Anderson as the contract between Meadowlark and Evans. But Exhibit 4 was the five-page document the MDLARA had ruled violated Michigan law, and which Selby had conceded violated Michigan law by signing the Stipulation, approved as to form and substance. Selby testified the contract excluded electrical work on the kitchen and bathrooms, "because they were previously remodeled." (R.70, Exhibit 7, 60-61) Wilson asked Selby about work on the lower bathroom and garage, all of which Selby testified were excluded based on exclusions in Exhibit 4. But Exhibit 4 was not the contract Evans had signed. It was the five-page document Selby had acknowledged violated Michigan law by signing the Stipulation, approved as to from and substance, all of which Wilson knew because he had attached the documents to his motion *in limine.* Wilson proceeded to ask Selby to identify various change orders for work he claimed were not included in the original contract and which he claimed Evans was refusing to pay for. (R.70, Exhibit 7, 67-74). But all of the change orders Selby accused Evans of not paying for were included in Exhibit B of the MDLARA Complaint, which MDLARA charged in Count I of the

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[2] Evans has filed a legal malpractice lawsuit against Castmore, which is currently pending. However, since Castmore did not have professional malpractice insurance when he was representing Evans in 2017, the prospect that she will recover any damage award against him is in doubt.

Complaint violated Michigan law because Evans had not signed them. Wilson offered the change orders as evidence of work which was part of the contract and which Evans was refusing to pay for.

At the trial's conclusion, Judge Connors entered a default judgment against Evans on the breach of contract claim in the amount of $55,096.27. Evans, acting *pro se*, filed a Claim of Appeal with the Michigan Court of Appeals. On February 5, 2019, the Court issued an unpublished decision denying the appeal. (R.70, Exhibit 26) Evans filed an application for leave to appeal in the Michigan Supreme Court, which was denied.

Evans borrowed money to pay off the construction lien the judgment placed on the home. Meadowlark moved to have a receiver appointed in order to generate monies to pay off the balance of the judgment, consisting of Wilson's attorney fees. Judge Connors granted the motion and appointed Matthew Krichbaum receiver. (R.70, Exhibit 32) Krichbaum has continued to bill Evans for his receiver fees, now totaling $40,882.34. He also placed a lien on any recovery Evans may obtain in her legal malpractice lawsuit against Castmore.

Petitioners commenced this lawsuit in the United States Eastern District Court on March 15, 2021. Selby and Meadowlark moved for dismissal pursuant to Fed. R. Civ. P. 12(b)(6), contending that the claim to vacate the judgment pursuant to Rule 60 failed to state a claim. The District Court agreed, and dismissed the Rule 60 claim in a decision dated February 25,

2022. (App.XXa)[3] Petitioners filed a timely appeal in the Sixth Circuit Court of Appeals. The Court of Appeals dismissed the appeal in an unpublished decision (App.XXa), and rejected the motion for rehearing *en banc* (App.XXa).

ARGUMENT

I. SELBY COMMITTED PERJURY, SUBORNED BY WILSON, A BASIS FOR VACATING A JUDGMENT OBTAINED VIA A FRAUD ON A STATE COURT COMMITTED BY AN OFFICER OF THE COURT, PURSUANT TO EQUITABLE JURISDICTION UNDER RULE 60(d)

A. Selby Committed Perjury, Suborned by Wilson

A signed stipulation, approved as to form and substance, constitutes an acknowledgement that the ruling stipulated to accurately reflects the content of

[3] The First Amended Complaint included a takings claim against Ann Arbor and a claim of civil conspiracy under 42 U.S.C. § 1983 against Meadowlark, Howard & Howard, and Judge Connors. These claims were also dismissed by the District Court, affirmed by the 6th Circuit Court. Petitioners are not raising these claims in their petition. The only issue before the Court is whether the evidence presented to the District Court unequivocally demonstrated that Selby committed perjury during the trial, suborned by his attorney, pursuant to which the District Court had the discretion to vacate the state court judgment pursuant to Rule 60(d); that the claim was not precluded by the *Rooker-Feldman* doctrine, nor by Michigan preclusion law; and that the District Court's abused its discretion by not implementing Rule 60(d) to vacate the judgment.

the ruling, and is legally valid. Consequently, a stipulation approved as to form and substance may not be challenged, absent fraud.

> But once stipulations have been received and approved they are sacrosanct. Neither a hearing officer nor a judge may thereafter alter them. … Any deviation therefrom results in a denial of due process for the obvious reason that both parties by accepting the stipulation have been foreclosed from making any testimonial or other evidentiary record.

Dana Corp. v. Emp. Security Comm., 371 Mich. 107, 110 (Mich. 1963). In *Longo v. Minchella*, 343 Mich. 373 (Mich. 1955), the Court observed, *id.* at 377:

> We are of the opinion that the cross bill of complaint was correctly dismissed and the motions to set aside and modify the decree were correctly denied. The consent foreclosure decree was a true consent decree. It was approved as to form and substance by intervenors' attorneys, was labeled as such and was considered and referred to as such by all parties. … The record before us does not indicate otherwise. There is no claim made that intervenors' consent to the entry of the decree was involuntarily given or was the result of fraud, misrepresentation or mistake. Therefore the parties cannot attack it or appeal from it.… (Citations omitted.)

See also Scott v. Reif, 659 F. App'x 338, *4, note 4 (6th Cir. 2016) (unpublished) (R.72, Exhibit 35) ("In Michigan, a stipulation as to form—rather than form

and substance—concedes only that the order correctly embodies the ruling of the court.") (emphasis added).

By stipulating to the Consent Order, admitting Counts I and II of the MDLARA Complaint, Selby and Meadowlark were conceding that the five-page document it claimed Evans had breached violated Michigan law. The purported contract thereby violated public policy, and was void and unenforceable. *See Mahoney v. Lincoln Brick Co.*, 304 Mich. 694 (Mich. 1943); *Alexander v. Neal*, 364 Mich. 485 (1961); *Federoff v. Ewing*, 386 Mich. 474 (Mich. 1971); *Epps v. 4 Quarters Restoration, LLC*, 498 Mich. 518 (2015).

When Selby testified at the trial that the five-page document was the valid contract between Meadowlark and Evans he was suing Evans for allegedly breaching, he contradicted his own Stipulation, and thereby committed perjury. An illegal contract, which is against public policy and therefore void and unenforceable, cannot be breached. Wilson, an officer of the court, knew Selby had signed the Stipulation approved as to form and substance, since he had attached it to his motion *in limine*, and is chargeable with knowledge of its significance, and consequently with suborning Selby's perjury.

Neither Selby, nor Wilson, nor Wilson's law firm denied that Selby had committed perjury, suborned by Wilson, in any of their briefs. Instead, they chose to ignore the issue altogether, raising instead specious and irrelevant arguments in order to divert attention from the perjury claim. In his brief in support of the motion to dismiss, Selby misrepresented the Michigan Supreme Court's holding in *Epps*, *supra*, claiming the decision supported his position regarding the enforceability of the contract. In point of fact, the holding in

Epps supported Evans' position, not Selby's. In *Epps*, a married couple sued the home restoration company with which they had contracted for home improvement services. It turned out the company was not licensed under Michigan law and had been filing insurance claims with the couple's homeowners insurance company, had been receiving checks from the insurance company, and had been negotiating those checks, all without the knowledge of the married couple. The couple sued the unlicensed builder, claiming that since the builder was not licensed, they did not have to pay the builder and requested that the contract be declared illegal and unenforceable. Unlike the instant case, the builder was not suing the couple to enforce the contract against the married couple. The trial court granted the couple's motion for summary disposition and denied the builder's motion for summary disposition. The Michigan Court of Appeals affirmed.

The Michigan Supreme Court affirmed in part, and reversed in part. The issue was whether the fact the builder was not licensed precluded it from defending against the couple's breach of contract claim. The Court held it did not. The Court distinguished between the homeowner's lawsuit for breach of contract, versus the builder's right to assert a defense to that claim. As to the homeowner's right to sue, the Court held the contract was voidable by virtue of the builder being unlicensed, but was not void *ab initio*. But Evans never contended that the contract with Meadowlark was void *ab initio*. With regard to the builder's right to sue the homeowner, the Court held that the contract was void and unenforceable. Citing its decision in *Alexander v. Neal*, *supra*, the Court stated, 498 Mich. at 542:

> In *Alexander*, we held that a residential builder was barred from bringing an action to collect compensation for a roof he had installed absent the requisite license. We further opined that the licensing statute was enacted "to protect the public from incompetent, inexperienced, and fly-by-night contractors," and that "contract[s] made in violation of a police statute enacted for public protection [are] void and there can be no recovery thereon."

(Emphasis added.)

Moreover, even if the contract as to Meadowlark was only voidable by Evans, Evans exercised her right to void the contract by terminating it before Meadowlark sued her. On March 16, 2016, Evans sent Meadowlark a letter terminating the contract. (R.72, Exhibit 9) In the letter, Evans listed everything which Meadowlark had done incorrectly, or had not done at all, breaching their contract. Thus, while the contract was not void *ab initio*, before the lawsuit was even filed, Evans had already exercised her right to void the contract, rendering the contract unenforceable.

B. The District Court Had the Authority to Vacate the State Court Judgment Pursuant To Rule 60(d) and Abused Its Discretion by Failing to Do So

That Selby committed perjury during the trial, suborned by Wilson, is indisputable, supported by the Stipulation approved as to form and substance, and his trial testimony identifying the five-page document he had stipulated violated Michigan law, and was therefore void and unenforceable, as the contract he

claimed Evans had breached. Under these circumstances, the federal court had the authority under Fed. R. Civ. P. 60(d) to vacate the judgment which had been granted in a Michigan state court three years earlier.

Fed. R. Civ. P. 60(b) and 60(d) state, in relevant part:

> (b) Grounds For Relief From A Final Judgment, Order, Or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> […]
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> […]
>
> (6) any other reason that justifies relief.
>
> […]
>
> (d) Other Powers To Grant Relief. This rule does not limit a court's power to:
>
> (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
>
> (2) grant relief under 28 U.S.C. § 1655 to a defendant who was not personally notified of the action; or

> (3) set aside a judgment for fraud on the court. (Emphasis added.)

The provisions under both 60(b) and 60(d) invoke a federal court's inherent equity jurisdiction. As the Court stated in *Barrett v. Secretary of Health and Human Serv*, 840 F.2d 1259, 1262-63 (6th Cir. 1987), "According to Wright and Miller, '[t]he reference to 'independent action' in the saving clause [of Rule 60(b)] is to what had been historically known simply as an independent action in equity to obtain relief from a judgment.' 11 C. Wright A. Miller, FEDERAL PRACTICE PROCEDURE § 2868, at 237-38 (1973)." In *Mitchell v. Rees*, 651 F.3d 593, 595 (6th Cir. 2011), the Court stated this rationale also applies to independent actions instituted in federal court under Rule 60(d)(1), and that the traditional inherent equity authority of federal courts applies to such actions. *See also Fox ex rel. Fox v. Elk Run Coal Co.*, 739 F.3d 131, 135-36 (4th Cir. 2014); *Aldana v. Del Monte Fresh Produce N.A.*, 741 F.3d 1349, 1359 (11th Cir. 2014).

While Rule 60(b)(6) may only be utilized to vacate a judgment which was issued in the same court in which the action has been filed, this is not true of actions brought under Rule 60(d)(1) or (3), since such actions invoke the full power of the federal courts' inherent equity jurisdiction. Supreme Court decisions which were issued before Rule 60 was enacted recognized the federal courts' inherent equity jurisdiction to vacate judgments which were issued in state courts. In *Barrow v. Hunton*, 99 U.S. 80 (1878), the Supreme Court addressed the question whether a federal court had jurisdiction to vacate a judgment obtained in a Louisiana state court. The Court distinguished between two types of cases: "whether the proceeding to procure

nullity of the former judgment in such a case as the present is or is not in its nature a separate suit, or whether it is a supplementary proceeding so connected with the original suit as to form an incident to it, and substantially a continuation of it." If the latter, then the federal court did not properly assert jurisdiction. "On the other hand, if the proceedings are tantamount to a bill in equity to set aside a decree for fraud in the obtaining thereof, then they constitute an original and independent proceeding, and according to the doctrine laid down in *Gaines v. Fuentes* (92 U.S. 10), the case might be within the cognizance of the Federal courts." The Court held the lawsuit was not an independent action, therefore the District Court did not have jurisdiction and the federal court's judgment had to be reversed. By its analysis, the Supreme Court recognized that an independent action contesting a judgment rendered in a state court may, under appropriate circumstances, be filed in federal court under a federal court's equity jurisdiction.

The analysis set forth in *Barrow* was implemented by the Supreme Court in *Johnson v. Waters*, 111 U.S. 640 (1884), in which the creditor of the estate of a deceased resident of Louisiana filed an independent action in federal court to set aside a judgment issued by a Louisiana state court confirming the sale of the decedent's real estate, which the creditor claimed was obtained by fraud. The Court stated, *id.* at 667:

> In such cases the court does not act as a court of review, nor does it inquire into any irregularities or errors of proceeding in another court, but it will scrutinize the conduct of the parties, and if it finds that they have been guilty of fraud in obtaining a

> judgment or decree, it will deprive them of the benefit of it, and of any inequitable advantage which they have derived under it.

The Court accordingly declared the judgment which was procured in the Louisiana state court via fraud as null and void.

The Supreme Court had occasion to reaffirm the jurisdiction of a federal court acting in equity to set aside a judgment obtained by fraud in state court in *Marshall v. Holmes*, 141 U.S. 589 (1891), in which Marshall, a citizen of New York, claimed that Mayer had obtained several judgments against her in a Louisiana state court, based on false testimony by Mayer and a letter which Marshall maintained was forged. The Supreme Court, citing the decisions in *Barrow* and *Johnson*, stated, *id.* at 599:

> These authorities would seem to place beyond question the jurisdiction of the Circuit Court to take cognizance of the present suit, which is none the less an original, independent suit, because it relates to judgments obtained in the court of another jurisdiction. While it cannot require the state court itself to set aside or vacate the judgments in question, it may, as between the parties before it, if the facts justify such relief, adjudge that Mayer shall not enjoy the inequitable advantage obtained by his judgments. A decree to that effect would operate directly upon him, and would not contravene that provision of the statute prohibiting a court of the United States from granting a writ of injunction to stay proceedings in a state court. It would

> simply take from him the benefits of judgments obtained by fraud.

(Emphasis added.)

The validity of the holding in *Marshall* was reaffirmed by the Supreme Court in *United States v. Beggerly*, 524 U.S. 38, 47 (1988).

As noted in *Mitchell* and *Fox*, *supra*, Rule 60(d)(1) and (d)(3) codify the inherent equity jurisdiction of the federal courts, and in so doing incorporate the rulings of the Supreme Court in *Barrow*, *Johnson* and *Marshall* regarding the inherent equity jurisdiction of federal courts to set aside a judgment obtained in another jurisdiction, even a state court, if the judgment was obtained via fraud. Rule 60(d) applies with particular force where the fraud on the court has been perpetrated by an attorney, as an officer of the court.

In *Klapprott v. United States*, 355 U.S. 601 (1949), the United States Attorney filed a complaint to have the plaintiff's citizenship revoked, on the grounds he had been a supporter of the Nazi Party. The federal court entered a default judgment against him, cancelling his certificate of naturalization. More than four years after the default judgment was entered, he filed a lawsuit to set aside the default judgment. The District Court dismissed his petition, which was affirmed on appeal. The Supreme Court granted *certiorari* and reversed, stating, *id.* at 615:

> Petitioner is entitled to a fair trial. He has not had it. The Government makes no claim that he has. Fair hearings in accord with elemental concepts of justice, and the language of the "other reasons" clause of 60(b) is broad enough to authorize the Court to set aside

> the default judgment and grant petitioner a fair hearing.

Evans likewise has never had a fair trial, having been deprived of her constitutional due process right to be represented by counsel at her trial. Surely, she deserves as much right as an alleged Nazi sympathizer to due process and to having a judgment acquired through perjury and its subornation by an officer of the court vacated. *See also Demjanjuk v. Petrovsky*, 10 F.3d 338, 352-53 (6th Cir. 1993) ("As an officer of the court, every attorney has a duty to be completely honest in conducting litigation."); *In re Genesys Data Technologies, Inc.*, 204 F.3d 124, 130 (4th Cir. 2000) (judgment obtained in a state court may be vacated if obtained by an attorney committing a fraud upon the court); *Great Coastal Exp. v. International Broth*, 675 F.2d 1249, 1357 (4th Cir. 1982) ("Involvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud on the court."); *In re Golf 255*, 652 F.3d 806, *6 (7th Cir. 2011) ("[A] lawyer's perjury is deemed fraud on the court but simple perjury by a witness (perjury not suborned by a lawyer in the case) is not.") The perjury which Selby committed during the trial, suborned by Wilson, continued to reverberate as a fraud on the Michigan Court of Appeals, and up through the Michigan Supreme Court, because based on that perjury the Court of Appeals accepted Selby's claim the contract was the five-page document which Selby perjuriously identified as the contract at the trial, and that Evans' failure to pay the balance Selby claimed was still due constituted a breach of contract.

There is no time limit for filing an independent action alleging fraud on the court pursuant to Rule 60(d).

See Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238, 246 (1944) ("The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud."); *U.S. v. One Toshiba Color Television*, 213 F.3d 147, 157 (3d Cir. 2000) ("[N]early overwhelming authority exists for the proposition that there are no time limits with regards to a challenge to a void judgment because of its status as a nullity….")

Selby claimed the petitioners had failed to expressly cite Rule 60(d) in the FAC as the basis for setting aside the judgment. Petitioners instead cited Rule 60(b)(3) and (6). This claim is irrelevant, for two reasons. First, under the holding in *Johnson v. City of Shelby*, 574 U.S. 10 (2014), a claim may not be dismissed pursuant to a 12(b)(6) motion for failing accurately to state the legal claim upon which the plaintiff is entitled to relief, as long as the plaintiff has sufficiently alleged facts in the Complaint which support an applicable claim. "The federal rules effectively abolish the restrictive theory of the pleadings doctrine, making it clear that it is unnecessary to set out a legal theory for the plaintiff's claim for relief." *Id.* at 12, quoting *Wright & Miller*, *supra*. The FAC sufficiently set forth the facts warranting equitable relief under Rule 60(d)(1) and (d)(3). In fact, the District Court recognized this, stating (R.126, PageID. 12199): "It appears [Plaintiffs] alternatively attempt to characterize their lawsuit either as an independent action for relief from judgment or one to set aside a judgment for fraud on the court, though Rule 60(d) is not explicitly mentioned and is alluded to only ambiguously." This is sufficient under the holding in *Johnson*, *supra*, to deem Rule 60(d) to have been invoked. Then, in note 2, the Court stated:

"Even if Plaintiffs purport to invoke Rule 60(d), it is not clear they can do so when Michigan's state courts provide avenues for bringing fraud to the attention of the courts." This assertion was contrary to the holdings of the Supreme Court in *Barrow*, *Johnson* and *Marshall*. While relief under Rule 60(d) was inartfully pled, the trial court recognized an effort to plead an independent action pursuant to Rule 60(d) was being made. The judgment was procured by an officer of the court committing a fraud on the trial court by suborning perjury, rendering the judgment subject to being vacated pursuant to Rule 60(d).

C. Neither the *Rooker-Feldman* Doctrine Nor Michigan Preclusion Law Barred the Claim in Federal Court

Neither the *Rooker-Feldman* doctrine nor Michigan claim preclusion case law precluded filing the action in federal court to vacate the Michigan trial court judgment. The *Rooker-Feldman* doctrine does not bar this lawsuit, rather it expressly allows this kind of lawsuit—a lawsuit which challenges the legitimacy of a state court judgment because the judgment was obtained via a fraud on the state court via perjury and the subornation of perjury. This was made clear in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), in which the Supreme Court held the lower courts were improperly applying the *Rooker-Feldman* doctrine to dismiss cases on the purported basis of lack of jurisdiction. The Court stated, *id.* at 284, 293:

> The *Rooker-Feldman* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought

> by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. *Rooker-Feldman* does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions.
>
> * * *
>
> Nor does § 1257 stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court. If a federal plaintiff "present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party … then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion." … (Emphasis added; citations omitted.)

This is precisely Evans' claim here—she is asserting an independent claim based on the fact the judgment was obtained by a fraud on the state court, via the commission of perjury during the trial. *McCormick v. Braverman*, 451 F.3d 382 (6th Cir. 2006), for example, involved a divorce proceeding extending over 28 years, from 1976-2004. The central issue was who possessed ownership rights to marital real property which the husband had conveyed to the wife via a quitclaim deed. The wife in turn conveyed the entire interest to her three daughters. When the husband passed away,

his estate argued that the property belonged to the estate. This issue percolated for several years in various Michigan courts, until one of the daughters filed two lawsuits in the federal court. The court dismissed both lawsuits, on the basis it did not have jurisdiction under the *Rooker-Feldman* doctrine. The Sixth Circuit reversed, stating, *id.* at 392:

> None of [Plaintiff's] claims assert an injury caused by the state court judgments; Plaintiff does not claim that the state court judgments themselves are unconstitutional or in violation of federal law. Instead, Plaintiff asserts *independent claims* that those state court judgments were procured by certain Defendants through fraud, misrepresentation or other improper means, and that a state statute is vague and overbroad. (Italics in the original; emphasis added.)

In *Todd v. Weltman, Weinberg Reis Co., L.P.A.*, 434 F.3d 432 (6th Cir. 2006), an attorney garnishing the plaintiff's social security benefits filed a false affidavit in state court. After the state court initially froze the plaintiff's account, the state court ruled the social security benefits were exempt. The plaintiff then filed a lawsuit in federal court, claiming the lawyer had violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692e and 1692f. The defendant filed a motion to dismiss, arguing the lawsuit was barred by the *Rooker-Feldman* doctrine. The court rejected the motion, and the Sixth Circuit affirmed, stating, *id.* at 437:

> The *Rooker-Feldman* doctrine does not preclude jurisdiction over Plaintiff's claim. Defendant in the instant case claims this Court lacks subject matter jurisdiction because

> Plaintiff's federal claim is inextricably intertwined with the Ohio state court decision that Defendant's affidavit was valid. This argument ignores the fact that Plaintiff here does not complain of injuries caused by this state court judgment, as the plaintiffs did in *Rooker* and *Feldman*. Instead, after the state court judgment, Plaintiff filed an independent federal claim that Plaintiff was injured by Defendant when he filed a false affidavit. This situation was explicitly addressed by the *Exxon Mobil* Court when it stated that even if the independent claim was inextricably linked to the state court decision, preclusion law was the correct solution to challenge the federal claim, not *Rooker-Feldman*.

As in *McCormick* and *Todd*, petitioners are not contending that the judgment entered by Judge Connors was itself unconstitutional or violated federal or state law. Petitioners are not objecting to the judgment itself. They are objecting that the evidence by which it was obtained constituted a fraud on the court, due to the admission of perjured testimony, suborned by an attorney. This constitutes an independent claim that is not barred by *Rooker-Feldman*.

In *In re Sun Valley Foods Co.*, 801 F.2d 186 (6th Cir. 1986), the Court stated, *id.* at 189:

> There is … an exception to the general rule that precludes a lower federal court from reviewing a state's judicial proceedings. A federal court "may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident or mistake…." … The

> district court below stated: "there has been no evidence … [of] facts such as fraud, accident or mistake which … deceived the Court into a wrong decree…" We are bound to accept the district court's factual findings unless those findings are "clearly erroneous." … The district court's findings in this case are not clearly erroneous and we therefore affirm its decision to dismiss Sun Valley's § 1983 claims against the Michigan state officials.

(Emphasis added; citations omitted; footnote omitted.)

Here, however, the District Court failed to make any factual findings regarding whether Selby had committed perjury during the trial, despite the fact petitioners repeatedly raised the issue in numerous briefs. In fact, given the unequivocal documentary and trial testimony evidence, had the District Court directly addressed the issue and found that there was no evidence of perjury, subornation of perjury, or fraud on the trial court, the findings would have been clearly erroneous and constituted reversible error.

The Court of Appeals rejected Evans' claim her lawsuit was not barred by the *Rooker- Feldman* doctrine (Doc.70, at *12), even though the Court did not contest her contention that Selby committed perjury, suborned by Wilson. Rather, the Court erroneously concluded she forfeited the argument by virtue of the fact her attorney failed to oppose Meadowlark's motion *in limine*. But this was a *non sequitur*. The fact Castmore did not oppose Meadowlark's motion *in limine*, which resulted in barring Evans from offering the MDLARA Complaint, Consent Order and Selby's Stipulation as evidence <u>in her favor</u>, did not entail that Selby could

consequently contradict his Stipulation, thereby committing perjury. It does not follow from the fact that a litigant is precluded from raising evidence in its favor, by failing to oppose its exclusion, the adversary thereby has free rein to contradict the evidence, and commit perjury—which is precisely what Selby, assisted by Wilson, did. To allow this would turn the rules of evidence on their head. Courts have recognized that granting a motion *in limine* regarding a party's admission does not render the excluded evidence irrelevant. The evidence may still be introduced to impeach testimony which contradicts the admission. *See, e.g., U.S. v. Williams*, 272 F.3d 845 (7th Cir. 2001) (where defendant contradicted his admissions in a proffer which had been excluded pursuant to a motion *in limine*, prosecution allowed to impeach the defendant using the proffer); *U.S. v. Dortch*, 5 F.3d 1056 (7th Cir. 1993) (same). Here, because the court proceeded to hold the jury trial without Evans being represented by counsel, Evans had nobody at the trial who could challenge Selby's perjury using the Stipulation which he had moved to exclude, but should have been admissible for impeachment.

The Court proceeded to state that because the Michigan Court of Appeals rejected Evans' attempt to contest the trial court's granting the motion *in limine*, she was precluded under *Rooker-Feldman* from raising Selby's perjury, by virtue of which he procured the judgment. The one, however, had nothing to do with the other. It is true that since Evans was bound by the actions of her attorney's failure to contest the motion *in limine*, she could not contest the validity of the motion on appeal. But this did not entail that she was precluded from contesting Selby's right to contradict

his Stipulation and commit perjury. She could not contest Selby's commission of perjury on appeal, because, since no attorney was present to register an objection to Selby's perjury, she was precluded from raising it as an appellate issue. But she was not precluded from raising the issue in an independent action filed in federal court pursuant to Rule 60(d).

Moreover, neither *res judicata* nor collateral estoppel applied to preclude raising the perjury claim. The elements of *res judicata* were explained in *Adair v. State*, 470 Mich. 105 (Mich. 2004), as follows, *id.* 121:

> The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action. The doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first.... (Citations omitted.)

Since Judge Connors refused to allow Evans time to retain a new attorney, the claim Selby had committed perjury could not be raised on appeal, since no objection had been made to preserve it for appeal, and therefore *res judicata* did not apply. *Taskey v. Paquette*, 324 Mich. 143 (Mich. 1949); *Cabana v. City of Hart*, 327 Mich. 287 (Mich. 1950). While the Michigan Court of Appeals addressed the issue of whether Judge Connors improperly denied Evans' motion to amend her counter-complaint to add charges of fraud, the fraud claims in question had nothing to do with the perjury, since it occurred at the trial, after the motion to amend was argued. The fraud argument raised on

appeal related to the allegation Selby had charged Evans for work which Meadowlark had not performed.

Collateral estoppel likewise did not bar the lawsuit. The Michigan Supreme Court explained the doctrine of collateral estoppel in *Monat v. State Farm Ins. Co.*, 469 Mich. 679 (Mich. 2004), as follows, *id.* at 683:

> Generally, for collateral estoppel to apply three elements must be satisfied: (1) "a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment"; (2) "the same parties must have had a full [and fair] opportunity to litigate the issue"; and (3) "there must be mutuality of estoppel." … "[M]utuality of estoppel requires that in order for a party to estop an adversary from relitigating an issue that party must have been a party, or in privy to a party, in the previous action.…" (Citations omitted.)

In *Monat*, the Court held mutuality of estoppel was no longer required if the claim of estoppel was being asserted defensively. Here, none of the remaining factors are satisfied. The principal factual issue raised in this lawsuit is whether Meadowlark benefited from perjury committed by Selby. This factual issue was never litigated, because Judge Connors precluded it by proceeding to hold a jury trial without any attorney representing Evans. Judge Connors crippled Evans' ability to defend herself, and in turn compromised her right to raise Selby's perjury on appeal. Evans did not have a full and fair opportunity to litigate the issue, since she was not represented by counsel at the trial. Consequently, collateral estoppel did not bar the federal lawsuit.

D. Petitioners Were Erroneously Denied Leave to File a Second Amended Complaint

Fed. R. Civ. P. 15(a)(2) states, in relevant part: "[A] party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." The Court underscored this axiom in *Johnson v. City of Shelby*, *supra*. None of the factors listed in *Brown v. Chapman*, 814 F.3d 436, 442-43 (6th Cir. 2016), as a basis for denying leave to amend applied. There had been no undue delay, bad faith or dilatory motive, since petitioners moved to amend within two weeks of the entry of the Court's Opinion and Order dismissing the federal claims. Petitioners had no reason to move to amend while the motions to dismiss were pending. No discovery had occurred. Petitioners had not repeatedly failed to cure prior defects, since only one amended complaint had previously been filed.

Nor was the amendment futile. *See Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417 (6th Cir. 2000); *Sinay v. Lamson Sessions Co.*, 948 F.2d 1037 (6th Cir. 1991); *Johnson v. City of Shelby*, *supra*. In Count III of the proposed Second Amended Complaint, which was attached to the motion (R.129), petitioners corrected the deficiencies which the District Court claimed existed in its Opinion and Order. In particular, petitioners specifically cited Rule 60(d) and made clear they were seeking to have the District Court vacate the state court judgment at issue pursuant to Fed. R. Civ. P. 60(d) based on the perjury which Selby committed during the trial, perjury which Evans was unable to defend herself against because there was no attorney at the trial to object to the admission of the

perjury. The District Court did not rule on the question whether Selby committed perjury, because it held application of Rule 60(d) was barred by the statute of limitations. As demonstrated above, there is no statute of limitations which applies to independent actions brought pursuant to Rule 60(d). Consequently, the District Court's refusal to grant petitioners leave to amend their Complaint was contrary to Rule 15(a)(2).

II. A DECLARATORY JUDGMENT THAT JUDGE CONNORS VIOLATED EVANS' CONSTITUTIONAL RIGHTS WOULD HAVE PROSPECTIVE EFFECT

Although Judge Connors is an employee of the State of Michigan, the 11th Amendment did not preclude this lawsuit because Evans was not seeking to recover damages from him, but only requested a declaratory judgment that he violated her constitutional rights. *See Ex parte Virginia*, 100 U.S. 339, 346 (1879) ("The prohibitions of the Fourteenth Amendment are directed to the States, and they are to a degree restrictions of State power. It is these which Congress is empowered to enforce, and to enforce against State action, however put forth, whether that action be executive, legislative, or judicial."; *Ex parte Young*, 209 U.S. 123 (1908); *Kentucky v. Graham*, 473 U.S. 159, 167, n. 14 (1985); *Supreme Court of Virginia v. Consumers Union*, 446 US. 719, 735 (1980) ("[W]e have never held that judicial immunity absolutely insulates judges from declaratory or injunctive relief with respect to their judicial acts.")

The District Court rejected petitioners' claim against Judge Connors on the basis that when he decided to proceed with the jury trial, he was acting in an adjudicatory capacity, and therefore the District Court did not have subject matter jurisdiction under

Article III of the Constitution. However, when Judge Connors decided to proceed with the jury trial, despite the fact Evans did not have an attorney present to represent her, he was not acting in an adjudicatory capacity. He was acting in a vindictive and retaliatory capacity. Petitioners alleged in ¶¶83-84 of the FAC (R.57), that Judge Connors had indicated when Evans' attorney failed to appear for the trial that he was going to adjourn the trial so Evans could retain a new attorney, which was her constitutional right under the 14th Amendment. Judge Connors reversed himself—even to the surprise of Meadowlark's attorney, who had already sent his witnesses home, expecting the trial to be adjourned. It is evident from the trial transcript Judge Connors reversed himself because he was annoyed by the conduct of Evans' mother, Melanie Welch, in her efforts to have the trial adjourned. In sum, Judge Connors retaliated against Evans because he was annoyed with Evans' mother. He was being vindictive. (R.72, Exhibit 7, pp. 4-5) The allegations as set forth in the FAC constitute plausible allegations under the standard set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and as such are deemed to be true and accurate for purposes of evaluating a 12(b)(6) motion.

The fact that Judge Connors' decision to proceed with the trial, without an attorney representing Evans, occurred in the past does not mean a declaratory judgment that this violated Evans' constitutional rights would only have retrospective effect. Since no attorney was present to defend Evans, no attorney was present to object to Selby's perjury, suborned by Wilson; no attorney was present to preserve Evans' right to raise Selby's perjury on appeal. This left the

judgment unchallenged, which became the basis for Krichbaum's receivership, which he is continuing to enforce, billing Evans every month for his fees and asserting a lien on her potential future recovery in her legal malpractice lawsuit. A declaratory judgment that Judge Connors violated Evans' constitutional rights by proceeding with a jury trial without Evans represented by an attorney, resulting in the admission of Selby's perjury, requiring vacating the judgment, would simultaneously vacate the appointment of Krichbaum as receiver, for there would be no judgment for him to enforce, and likewise no receiver fees. This would, accordingly, afford prospective relief.

Just as a declaratory judgment is appropriate to preclude the continued future enforcement of an unconstitutional statute by a state officer under *Ex parte Young*, *supra*, a declaratory judgment is appropriate to preclude the continued enforcement by a state judge of a judgment which resulted from the violation of a litigant's constitutional rights. *See, e.g., Ward v. City of Norwalk*, 640 F. App'x 462 (6th Cir. 2016) (lawsuit seeking a declaratory judgment against judge in his official capacity for jailing plaintiff longer than necessary to pay off accrued fines, and continuing such conduct, not barred). The requested declaratory judgment that Judge Connors violated Evans' constitutional rights, resulting in a judgment he continues to enforce, and thereby continues to violate her constitutional rights, affords prospective relief, as required.

CONCLUSION

Emily Evans has been the victim of an egregious travesty of justice, caused by the combination of a state court judge, who was irritated by her mother's efforts to protect her daughter's rights, violating Evans' constitutional rights by vindictively proceeding to hold a jury trial without any attorney present to represent her, compounded by the commission of perjury by the plaintiff's chief witness, suborned by an officer of the court. This claim has never been rebutted, because it has never been addressed. None of the respondents denied that this occurred; rather, they refused to discuss the claim in their briefs. Likewise, neither the District Court nor the Court of Appeals addressed the perjury claim. The Sixth Circuit, on the respondents' request, and contrary to the petitioners' request, declined to conduct oral argument.

This travesty of justice has had catastrophic financial and emotional consequences for Evans. Fed. Rule Civ. P. 60(d) provides a mechanism to redress this travesty, "to prevent a grave miscarriage of justice," *Beggerly*, *supra*, 524 U.S. at 47. It was adequately pled under *Johnson*, *supra*, yet the District Court refused to implement it, and did so without noting or discussing the perjury, and its subornation, notwithstanding the irrebuttable documentary and testimonial evidence proving the perjury and its subornation had occurred, was provided. This constituted an abuse of discretion. This grave miscarriage of justice continues to affect Evans' life, through the actions of the receiver whom the state court judge appointed, and whose motions for fees the state court judge has continued to grant.

As long as that judgment stands unrectified, it represents a stain on the administration of justice in Michigan and on its judiciary.

At the conclusion of its decision, the Court of Appeals expressed sympathy for Ms. Evans. However, Evans does not want sympathy. She wants justice—the justice she is entitled to under the above cited case law; the justice she was denied by the trial court conducting a jury trial without her being represented by counsel and the ensuing subornation of perjury by an officer of the court; the justice a federal court has the power to provide her, and has the duty, pursuant to its obligation to administer justice, to provide her, via implementation of Rule 60(d).

Justice Cardozo, in his work THE NATURE OF THE JUDICIAL PROCESS (Yale University Press, 1921) (Lecture I), quoted the jurist Eugen Erhlich as stating: "There is no guarantee of justice except the personality of the judge." It is imperative that this petition be granted in order to prove this assertion wrong, to prove that cases are decided in accordance with the letter and spirit of the law, regardless of the personalities of the judges involved.

Respectfully submitted,

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