No. ___

IN THE

Supreme Court of the United States

Miracle Hurston,

Applicant,

v.

The Indiana Gaming Company, dba

The Hollywood Casino Lawrenceburg,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI

Miracle Hurston (Pro Se)

1812 Grand Avenue

Middletown, OH 45044

513-375-8951

Miracle_1h1@hotmail.com

April 5, 2024

APPLICATION FOR AN EXTENSION OF TIME

WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI

To the Honorable Amy Coney Barrett Associate Justice of the United States and Circuit Justice for the Seventh Circuit: Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5 and 30.2, applicant Miracle Hurston, Pro Se, respectfully requests a 45-day extension, to and including June 3, 2024, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit. In support I state the following:

1. The Judgement in which review is sought is, *Hurston v. Ind. Gaming Co.*, No. 23-1099 (7th Cir. 2023), decided on November, 22, 2023. A copy of that decision is attached as Appendix 1. The Seventh Circuit denied my timely petition for rehearing en banc on January 18, 2024. A copy of that decision is attached as Appendix 2.

2. The current deadline for filing a petition for Writ of Certiorari is April 17, 2024. This Application has been filed at least 10 days prior to that date pursuant to Supreme Court Rule 13.5. I have not previously sought an extension of time.

3. I now seek a Writ of Certiorari for the United States Court of Appeals for the Seventh Circuit with respect to its en banc decision. This Court's jurisdiction to grant the same arises pursuant to 28 U.S. C. § 1254 (1).

4. This case reinforces a substantial and important question of federal law, clearly already established as construed by this court in regards to the review of

evidence of the record, "See Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000); Jackson v. Quanex Corp., 191 F.3d 647, 657 (6th Cir. 1999)." Christian v. Wal-Mart Stores, Inc., 252 F.3d 862, 867 (6th Cir. 2001); although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe." Reeves, 530 U.S. at 151, 120 S.Ct. 2097. We may not, however, make credibility determinations or weigh the evidence. Id. Which is now in conflict with the current decision by the Seventh Circuit Court of Appeals.

5. This case reinforces a substantial and important question of federal law, clearly already established as construed by this court in regards to a Plaintiff's burden to prove discrimination as an element of the prima facie case in order to proceed with a 42 U.S.C § 1981 claim. "See Clearly, a plaintiff asserting a § 1981 claim must prove intentional discrimination. Gen. Bldg. Contractors Ass'n v. Pennsylvania,458 U.S. 375, 389, 102 S.Ct. 3141, 73 L.Ed.2d 835 (1982). But it does not follow that the plaintiff must prove intentional discrimination as an element of the prima facie case. As the Supreme Court has explained, the "division of intermediate evidentiary burdens serves to bring the litigants and the court expeditiously and fairly to this ultimate question [of intentional discrimination]." Burdine,450 U.S. at 253, 101 S.Ct. 1089. According to the Court, the burden of establishing a prima facie case of discriminatory treatment is not meant to be "onerous."" Id. Which is now in conflict with the current decision by the Seventh Circuit Court of Appeals.

6. This case presents a question of law, long overdue, to be resolved by the Supreme Court of the United States; Whether the Supreme Court must finally set a precedent for the courts in the United States to ensure all pro se civil litigates have the right to "Equal Justice Under Law," "procedural Due Process," "and a fair Trial? Reinforcing the Fifth [Seventh, Fourteenth] Amendment: procedural Due Process Clause "no person shall be deprived of life, liberty, or property, without due process of law." Which is now in conflict with the current decision by the Seventh Circuit Court of Appeals.

7. This case is of extreme importance, and public interest.

8. The Respondent would not suffer any prejudice as a result of the Court granting an extension of time.

9. Good cause exists due to the substantial commitment this case requires of me to do extensive research, learn rules and procedures, enabling me to present cogent argument in the best interest of Justice for all Pro Se litigants.

WHEREFORE, I respectfully request that an order be entered extending the time for filing a petition for a Writ of Certiorari, for a period of 45-days in this matter, to and including June 3, 2024.

Respectfully Submitted,

April 5, 2024

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APPENDIX

APPENDIX 1

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

CERTIFIED COPY
A True Copy
Teste:
Deputy Clerk
of the United States
Court of Appeals for the
Seventh Circuit

Submitted November 21, 2023*
Decided November 22, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1099

MIRACLE HURSTON,
Plaintiff-Appellant,

v.

INDIANA GAMING COMPANY LLC,
d/b/a HOLLYWOOD CASINO
LAWRENCEBURG,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:19-cv-04890-TWP-DLP

Tanya Walton Pratt,
Chief Judge.

ORDER

Miracle Hurston sued Indiana Gaming Company LLC ("Indiana Gaming"), the operator of the Hollywood Casino Lawrenceburg, alleging race discrimination, breach of contract, and intentional infliction of emotional distress. The district court ruled

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

against Hurston at summary judgment. Because Hurston failed to create a genuine dispute of material fact on any claim, we affirm.

Background

Hurston, a Black man, was a frequent patron of Hollywood Casino (the "casino") in Lawrenceburg, Indiana, which is near the Cincinnati, Ohio, metropolitan area. He had a history of involvement in disturbances that eventually led the casino to take disciplinary action: a fight with another Black patron to which police were called (no discipline for anyone); a verbal altercation with a white patron (same); a verbal altercation with a waitress (Hurston ejected from casino, waitress suspended for three days); a verbal altercation initiated by a white patron (both parties ejected from casino, Hurston banned for thirty days); and an incident when Hurston cursed at an employee because of a malfunctioning ATM (one-week ban). Attempting to mend the relationship, Hurston spoke with the casino's general manager, who apologized for how Hurston was treated and promised to handle any future issues directly—a conversation Hurston believed to create an oral contract. Nevertheless, tensions reached a breaking point after Hurston admittedly used physical force against a white guest in response to racially disparaging statements. In response to this last disruption, the casino refused to book Hurston a hotel room while it investigated the incident, and it eventually banned him and the other guest for a year.

Hurston sued Indiana Gaming for the casino's actions. His fifth amended complaint alleged unlawful discrimination under 42 U.S.C. § 1981 and state-law claims of intentional infliction of emotional distress and breach of the purported oral contract. While the lawsuit was pending, but after the one-year ban had expired, Hurston returned to the casino in Lawrenceburg, which then banned him for life.

Litigation was contentious. During discovery, a dispute arose over whether Indiana Gaming and its attorneys had misrepresented their ability to produce incident reports from the casino's security system. The district court ordered defense counsel to show cause why she should not be sanctioned for knowingly making a false statement, and it held several evidentiary hearings on the matter. The court ultimately concluded that counsel had reasonably relied on misstatements from her client.

The parties then filed cross motions for summary judgment. Hurston also filed motions for default judgment and to recover excess costs as sanctions for the discovery violation. He also moved for leave to amend his complaint a sixth time to add claims about the lifetime ban. Hurston had tried to bring these claims in a separate lawsuit

nine months after the relevant incident, but the judge assigned to that case dismissed it for improper claim splitting (Hurston did not appeal that decision).

The district court denied Hurston's motions for default judgment and for leave to amend. As to the former, it explained that default judgment was too harsh a sanction for the misconduct. And in denying leave to amend, the court cited the late stage of the proceedings and the fact that, twice after the casino banned him for life, Hurston had amended his complaint without adding anything about the lifetime ban.

The court then entered summary judgment for Indiana Gaming, explaining that, for purposes of the § 1981 claim, no reasonable jury could conclude that the casino treated Hurston less favorably than any white patron. The court further determined that Indiana Gaming had offered Hurston's disruptive behavior as a legitimate, nondiscriminatory reason for banning him from the casino, and Hurston's evidence did not call the sincerity of the reason into question. As to Hurston's state-law claims, the court held that no contract existed as a matter of Indiana law and that no reasonable factfinder could determine Indiana Gaming's conduct to be extreme and outrageous.

After entering judgment, the court granted Hurston's motion for excess costs, concluding that Indiana Gaming and its attorneys had unreasonably multiplied the proceedings. They had made misstatements of fact and mischaracterized the show-cause order, turning a discovery inquiry into a four-day evidentiary proceeding.

Analysis

On appeal, Hurston first challenges the merits of the judgment for Indiana Gaming. We review the decision de novo and draw all reasonable inferences in favor of Hurston. *Schlaf v. Safeguard Prop., LLC*, 899 F.3d 459, 465 (7th Cir. 2018). We begin with the claim of racial discrimination under 42 U.S.C. § 1981.

Hurston's claim that the casino denied him the right to contract when it refused to book him a room and banned him from the casino for a year cannot withstand summary judgment because he lacks sufficient evidence of racially discriminatory intent. *See Pourghoraishi v. Flying J, Inc.*, 449 F.3d 751, 756–59 (7th Cir. 2006). Because he proceeded under the burden-shifting method, Hurston needed evidence from which a reasonable jury could find, among other things, that the casino treated him less

favorably than its white patrons.[1] *See Dunlevy v. Lanfelder*, 52 F.4th 349, 353 (7th Cir. 2022); *Dandy v. United Parcel Serv., Inc.*, 388 F.3d 263, 272–73 (7th Cir. 2004). The best evidence Hurston produces of disparate treatment is that the casino punished him for fighting with a white patron, but not a Black patron. But each time, the other combatant received the same treatment he did. Hurston disputes this by asserting that the white patron voluntarily stopped going to the casino. But what matters is that the casino treated the man outside the protected class the same as Hurston after this fight.

Further, Indiana Gaming provided a legitimate, nondiscriminatory reason for the casino's refusal to contract with Hurston. *See Dunlevy*, 52 F.4th at 353. The casino has a written policy to eject anyone who uses offensive or threatening language or commits an act of violence, regardless of whether the person is also a victim. Citing the six different altercations involving Hurston, Indiana Gaming asserts that the one-year ban responded to increasingly aggressive and disruptive behavior. And Hurston adduced no evidence that the stated reason is pretextual; he admits to each act that led to discipline. *See id.* Indiana Gaming's justifications are not "unworthy of credence" even if, as Hurston has attested, someone else instigated the scuffles he participated in. *de Lima Silva v. Dep't of Corr.*, 917 F.3d 546, 561 (7th Cir. 2019).

That brings us to the state-law claims. The parties apparently agree that Indiana law applies to the claims, and in any event, when no party raises a choice-of-law issue, the federal court may simply apply the substantive law of the forum state. *McCoy v. Iberdrola Renewables, Inc.*, 760 F.3d 674, 684 (7th Cir. 2014).

The district court ruled for Indiana Gaming on the claim for intentional infliction of emotional distress because, based on the evidence in the record, no reasonable factfinder could conclude that the casino's conduct was extreme and outrageous or that it caused Hurston's distress. *See Wilson-Trattner v. Campbell*, 863 F.3d 589, 596–97 (7th Cir. 2017) (applying Indiana law). We agree that it was not beyond all bounds of decency for the casino to ban someone who was involved in six altercations that violated its policies, regardless of who was at fault. *Compare McCollough v. Noblesville Schs.*, 63 N.E.3d 334, 342 (Ind. Ct. App. 2016) (allegedly shoddy investigation into employee misconduct which led to discipline not extreme and outrageous) *with State v. Alvarez ex rel. Alvarez*, 150 N.E.3d 206, 219 (Ind. Ct. App. 2020) (state's knowing failure

[1] We have not articulated the elements of a prima facie case of discrimination in § 1981 claims relating to a retail or service contract (as opposed to an employment contract). But neither party asks us to adopt the Sixth Circuit's extra elements, *see Christian v. Wal-Mart Stores, Inc.*, 252 F.3d 862, 872 (6th Cir. 2001), nor disputes the standard articulated by the district court.

to warn residents they lived and went to school on a lead-contaminated superfund site would be extreme and outrageous conduct). Hurston also lacked evidence that the ban from Hollywood Casino caused his emotional distress—which he describes as withdrawal symptoms resulting from his gambling addiction. He submitted no evidence that he could not have gambled elsewhere.

Hurston also challenges the decisions about Indiana Gaming's discovery violation. He first argues that default judgment was the appropriate sanction, but the district court did not abuse its discretion when it awarded him only excess costs. *See Equal Emp. Opportunity Comm'n v. Wal-Mart Stores E., L.P.*, 46 F.4th 587, 599 (7th Cir. 2022). Default judgment is a drastic sanction that is appropriate under FED. R. CIV. P. 37(b)(2)(A) or the court's inherent authority only if a party's discovery misconduct resulted from willfulness, bad faith, or fault; mere mistake or inadvertence is insufficient. *Id.*; *e360 Insight, Inc. v. Spamhous Project*, 658 F.3d 637, 642–43 (7th Cir. 2011). Although the district court concluded that the actions of one casino employee "demonstrate[d] a willfulness to mislead the [c]ourt," we cannot say that its decision to impose only a monetary penalty was beyond all reason. *See Wal-Mart Stores E., L.P.*, 46 F.4th at 599. The court's ruling compensated Hurston for the multiplied proceedings, and the violation did not prejudice him—it only partially impeded one of his three claims and did not affect the outcome of the case. Restraint was also warranted because the court was exercising, in part, its inherent power to levy sanctions. *Greyer v. Ill. Dep't of Corr.*, 933 F.3d 871, 877 (7th Cir. 2019).

Hurston also argues that the district court erred by entering final judgment before issuing sanctions. But contrary to Hurston's assertions, sanctions are a collateral matter, which courts generally can resolve after a judgment is rendered. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395–96 (1990). And here, the distinction hardly matters, because the court issued the sanctions order on the heels of the judgment, before Hurston even filed his notice of appeal. To the extent that Hurston contends that the court's findings on sanctions would have made a difference in how it resolved the summary judgment motions, he is wrong. The court learned nothing new between the time it ruled on the summary judgment motions and when it issued the sanctions order. The evidentiary hearings occurred months earlier, and the court had all relevant information about the discovery violation when it considered the cross-motions for summary judgment. Waiting to issue a decision on sanctions until it could assess the effect of the evidentiary dispute on the summary judgment motions seems a prudent act of case management.

Finally, the district court did not abuse its discretion by denying Hurston leave to amend his complaint a sixth time. *See Liebhart v. SPX Corp.*, 917 F.3d 952, 964 (7th Cir. 2019). Hurston could have raised the lifetime ban in two of his prior motions for leave to amend that the court granted. Allowing Hurston to amend his complaint after the parties had moved for summary judgment would have unduly prejudiced Indiana Gaming by requiring it to re-open discovery after nearly three years of litigation. *See id.* at 965–66; *Johnson v. Cypress Hill*, 641 F.3d 867, 872–73 (7th Cir. 2011). The district court was not required to accommodate this undue delay. And if Hurston wanted to proceed with claims about the lifetime ban in his separate case, he had the option of appealing the dismissal of that action.

Hurston has not developed any other argument—including about his claim that Indiana Gaming breached an oral contract—enough to warrant discussion. *See Shipley v. Chi. Bd. of Election Comm'rs*, 947 F.3d 1056, 1062–63 (7th Cir. 2020).

AFFIRMED

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

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Teste:
Deputy Clerk
of the United States
Court of Appeals for the
Seventh Circuit

FINAL JUDGMENT

November 22, 2023

Before
FRANK H. EASTERBROOK, *Circuit Judge*
MICHAEL B. BRENNAN, *Circuit Judge*
THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1099	MIRACLE HURSTON, Plaintiff - Appellant v. INDIANA GAMING COMPANY, LLC, doing business as HOLLYWOOD CASINO LAWENCEBURG, Defendant - Appellee
Originating Case Information:	
District Court No: 1:19-cv-04890-TWP-TAB Southern District of Indiana, Indianapolis Division District Judge Tanya Walton Pratt	

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

Clerk of Court

form name: **c7_FinalJudgment** (form ID: **132**)

APPENDIX 2

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

CERTIFIED COPY

A True Copy
Teste:
Deputy Clerk
of the United States
Court of Appeals for the
Seventh Circuit

January 18, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1099

MIRACLE HURSTON,
Plaintiff-Appellant,

v.

INDIANA GAMING COMPANY LLC, d/b/a HOLLYWOOD CASINO LAWRENCEBURG,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:19-cv-04890-TWP-DLP

Tanya Walton Pratt,
Chief Judge.

ORDER

Plaintiff-Appellant filed a petition for rehearing and rehearing en banc on December 29, 2023. No judge* in regular active service has requested a vote on the petition for rehearing en banc, and all the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore **DENIED**.

*Circuit Judge Pryor did not participate in the consideration of this petition.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

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Phone: (312) 435-5850
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NOTICE OF ISSUANCE OF MANDATE

January 26, 2024

To: Roger A. G. Sharpe
UNITED STATES DISTRICT COURT
Southern District of Indiana
United States Courthouse
Indianapolis, IN 46204-0000

No. 23-1099	MIRACLE HURSTON, Plaintiff - Appellant v. INDIANA GAMING COMPANY, LLC, doing business as HOLLYWOOD CASINO LAWENCEBURG, Defendant - Appellee
Originating Case Information:	
District Court No: 1:19-cv-04890-TWP-TAB Southern District of Indiana, Indianapolis Division District Judge Tanya Walton Pratt	

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

RECORD ON APPEAL STATUS:	Entire record returned consisting of
Exhibits:	1 USB flash drive containing exhibits

form name: **c7_Mandate** (form ID: **135**)

No. ___

IN THE

Supreme Court of the United States

Miracle Hurston,

Applicant,

v.

The Indiana Gaming Company, dba

The Hollywood Casino Lawrenceburg,

Respondents.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 5, 2024, as required by Supreme Court Rule 29, I have filed the enclosed Application with the Clerk of the Court for the United States Supreme Court via U.S. Mail for an Extension of Time to File Petition for A Writ of Certiorari. I also provided service to the opposing party's counsel via Email and U.S. Mail as follows:

Edward W. Hearns email: hearne@jbltd.com

Catherine A. Breitweiser-Hurst email: breitweiserhurstc@jbltd.com

11041 Broadway

Crown Point, IN 46307

April 5, 2024

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