

No. 24-1224

---

IN THE  
**Supreme Court of the United States**

---

DENVER WARD,

*Petitioner,*

*v.*

LAURA FISHER, *et al.*,

*Respondents.*

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

---

**BRIEF IN OPPOSITION OF THE  
RESPONDENT DR. LAURA FISHER**

---

JAMES K. SECREST, II  
*Counsel of Record*

EDWARD J. MAIN  
SECREST, HILL, BUTLER & SECREST  
7134 South Yale, Suite 900  
Tulsa, OK 74136  
jsecrest@secresthill.com  
(918) 494-5905

*Attorneys for Respondent  
Dr. Laura Fisher*



## QUESTIONS PRESENTED

1. Whether a court appointed custody evaluator in a state court Paternity Action, an officer of the court under state law, is entitled to *quasi*-judicial immunity for alleged acts and omissions in connection with the state court paternity proceedings?
2. Whether it is appropriate, by writ of certiorari, to address the propriety of a holding that a court appointed custody evaluator in state court paternity proceedings, an officer of the court under state law, is protected from liability by *quasi*-judicial immunity pursuant to governing state law?
3. Whether it is appropriate, by writ of certiorari, to address the propriety of a holding that a court appointed custody evaluator in state court paternity proceedings, an officer of the court under state law, is protected from liability by *quasi*-judicial immunity pursuant to relevant opinions of the United States Court of Appeals for the Tenth Circuit?
4. Whether it is appropriate for this court, by writ of certiorari, to address the scope of *quasi*-judicial immunity of a court appointed custody evaluator in state court custody proceedings based upon a purported dispute with the scope of *quasi*-judicial immunity, as stated by an intermediary court of appeals of a separate state?
5. Whether a difference in the scope of *quasi*-judicial immunity as recognized under the law of separate states is a dispute warranting review by this Court by writ of certiorari?

6. Whether this Court should grant certiorari review of the questions raised when it recently denied certiorari review in a separate case which raised identical questions?

**PARTIES TO THE PROCEEDINGS**

Petitioner, Denver Ward (Appellant in Court of Appeals,  
Plaintiff in District Court),

Respondent, Dr. Laura Fisher (Appellee in Court of  
Appeals, Defendant in District Court),

Respondent, Ms. Carol Swenson (Appellee in Court of  
Appeals, Defendant in District Court),

Respondent, Brad Gundy (Appellee in Court of Appeals,  
Defendant in District Court).

*iv*

**CORPORATE DISCLOSURE STATEMENT**

None of the parties to this proceeding is a corporation; no disclosure statement is required.

**TABLE OF CONTENTS**

	<i>Page</i>
QUESTIONS PRESENTED .....	i
PARTIES TO THE PROCEEDINGS.....	iii
CORPORATE DISCLOSURE STATEMENT .....	iv
TABLE OF CONTENTS.....	v
TABLE OF CITED AUTHORITIES .....	vi
STATEMENT OF THE CASE .....	1
REASONS FOR DENYING A WRIT.....	3
1. Petitioner Does Not Raise An Issue Warranting Review On Certiorari .....	3
2. This Court Recently Denied Certiorari Review Of The Issues Raised By Petitioner In The Present Case.....	6
3. The Tenth Circuit Properly Affirmed the Dismissal of Ward’s Claims Against Dr. Fisher.....	9
CONCLUSION .....	15

## TABLE OF CITED AUTHORITIES

	<i>Page</i>
<b>Cases</b>	
<i>Dahl v. Charles F. Dahl, M.D., P.C.</i> , 744 F.3d 623 (10th Cir. 2014).....	5, 13
<i>Falk v. Sadler</i> , 341 S.C. 281, 533 S.E.2d 350 (S.C. Ct. App., 2000).....	5, 6
<i>Perrigo v. Wiseman</i> , 11 P.3d 217 (Okla. 2000).....	14
<i>Shophar v. City of Olathe</i> , 2017 U.S. Dist. LEXIS 93069, 2017 WL 2618494 (D. Kan. June 16, 2017) .....	5
<i>Stumpf v. Sparkman</i> , 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978) .....	13
<i>Vietti v. Welsch and McGough, PLLC</i> , Case No. 21-CV-0058-WPJ-SH, 2024 WL 870562 (N.D. Okla. Feb. 29, 2024).....	6-9
<i>Walker v. New Mexico</i> , 2015 U.S. Dist. LEXIS 197638, 2015 WL 13651131 (D.N.M. Sept. 21, 2015) .....	5

*Cited Authorities*

	<i>Page</i>
<b>Constitutional Provisions</b>	
S.C. Const. art. V, Section 1 . . . . .	5
S.C. Const. art. V, Section 9 . . . . .	5
<b>Statutes and Rules</b>	
43 O.S. 2021, §120.7(A) . . . . .	3
Rule 10 . . . . .	4, 6
Rule 10(a) . . . . .	4, 5, 6
<b>Other Authorities</b>	
<i>Dorland's Illustrated Medical Dictionary</i> , p. 1295 (Philadelphia: W.B. Saunders Co., 26nd ed., 1985) . . . . .	10



## STATEMENT OF THE CASE

Respondent, Dr. Laura Fisher (hereinafter “Dr. Fisher”), adopts and incorporates by reference the Response of the Respondent, Carol Swenson (“hereinafter “Swenson”).

Petitioner, Denver Ward (hereinafter “Ward”), a Texas resident, is the father of a minor child, H.A.B., on whose behalf he pursues this claim as well as on his own behalf; Ward has never been married to H.A.B.’s mother (hereinafter, “Mother”). Ward became aware the Mother allegedly abused H.A.B. and commenced an action (in Texas) on or about January 3, 2016. Petitioner’s Appendix C, Notice of Removal, Petition, ¶¶1, 11-15, pp. 38a, 39a. Ward also reported the alleged abuse the Oklahoma Department of Human Services (hereinafter, “ODHS”). On January 28, 2016, Mother commenced an action in Oklahoma, *Billingsly v. Ward*, Case No. FP-2016-21, District Court of Tulsa County, State of Oklahoma (hereinafter, the “Paternity Action”). Petitioner’s Appendix C, Notice of Removal, Petition, ¶15, p. 39a.

Dr. Fisher was appointed Child Custody Evaluator by the court in the Paternity Action on April 14, 2016; by that appointment, Dr. Fisher became a “court expert” with reporting obligations to the court. 43 O.S. 2021, §120.7(A). By the same Order, the court directed Ward to pay for Dr. Fisher’s services, although the court reserved the possibility of reallocating those fees. Petitioner’s Appendix C, Notice of Removal, Petition, ¶16, p. 39a. Dr. Fisher’s role and duties were a product of the court’s Order, not by a contractual agreement with Ward.

Swenson was appointed Guardian *Ad Litem* (“GAL”) by the court in the Paternity Action on August 8, 2016; by that appointment, Swenson became an officer of the Court. Petitioner’s Appendix C, Notice of Removal, Petition, ¶18, p. 40a. Swenson’s role and duties were a product of the court’s Order, not by a contractual agreement with Ward.

Ward, a resident of Texas, obtained temporary physical custody and control of H.A.B., although her Mother was allowed professionally supervised visitation which would occur in Texas. The Order shows that Dr. Fisher’s name was deleted as the supervisor for the visitation by the Mother in Texas; Dr. Fisher is a resident of Oklahoma, not Texas; removal of her name merely reflects the fact that the Mother’s visitation, in Texas, would have to be supervised by somebody already in Texas. The modification of the Order does not show an intent to exclude Dr. Fisher from continuing her role as Custody Evaluator in Oklahoma.

Ward respected Dr. Fisher’s qualifications enough to use her affidavit to support his Motion for an Emergency Order. In that affidavit, Dr. Fisher stated that, when she completed her initial custody evaluation November 21, 2016, she “did not have information from a medical professional to substantiate the concern for medical child abuse”; Dr. Fisher is a licensed psychologist in the State of Oklahoma. At no time did Dr. Fisher indicate that she was not qualified to act as a Custody Evaluator although evaluating medical issues would require medical testimony.

The Court of Appeals properly affirmed the District Court’s dismissal of Ward’s claims against Dr. Fisher

with prejudice; Ward's Petition for Certiorari should be denied. All of Ward's claims against Dr. Fisher arise from her role as the Court Appointed Custody Evaluator in the Paternity Action, a position which renders Dr. Fisher an Officer of the Court and entitles her to *quasi*-judicial immunity. 43 O.S. 2021, §120.7(A). Ward does not allege any action taken by Dr. Fisher unrelated to her functions as a Court Appointed Evaluator. Ward contends that Dr. Fisher did not report the Mother's abuse of H.A.B. to the ODHS, but any information she had was acquired in her role as Court Appointed Custody Evaluator, and subject to her *quasi*-judicial immunity. Ward himself previously reported the alleged abuse to ODHS.

### **REASONS FOR DENYING A WRIT**

#### **1. Petitioner Does Not Raise An Issue Warranting Review On Certiorari**

The Rules of this Court provide examples of the kinds of questions this Court might consider as warranting certiorari review. However, Ward does not raise such a question. This Court's Rule states:

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision

of another United States court of appeals on the same important matter; 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 United States court of appeals;

(c) a state court or a United States 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.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Rule 10. Considerations Governing Review on Certiorari, pp. 5-6.

Ward apparently relies upon Rule 10(a) by contending:

There is a significant split of authority in the lower courts regarding whether Swenson

and Fisher are immune from constitutional due process violations. In South Carolina, for example, the court held that a GAL is not immune and remains “liable for actions beyond the scope of her duties.” *Falk v. Sadler*, [341 S.C. 281,] 533 S.E.2d 350 (S.C. [Ct.App.] 2000). Other courts, such as Utah, Kansas, and New Mexico, have determined that immunity applied even if the court-appointed actors went outside the scope of their duties. *Dahl v. Charles F. Dahl, M.D., P.C.*, 744 F.3d 623 (10th Cir. 2014) (applying Utah law); *Shophar v. City of Olathe*, 2017 U.S. Dist. LEXIS 93069, 2017 WL 2618494, at \*11 (D. Kan. June 16, 2017); *Walker v. New Mexico*, 2015 U.S. Dist. LEXIS 197638, 2015 WL 13651131, at \*5 (D.N.M. Sept. 21, 2015)). Because of this split, this Court should review the courts’ decisions in this case.

Petition for Certiorari, p. 9. Ward asserts that there is a “split” citing *Falk v. Sadler*, *supra*, which is an opinion of the South Carolina Court of Appeals, not an opinion of the South Carolina Supreme Court. That is, as an opinion of the Court of Appeals, it is not “a decision by a state court of last resort” for purposes of Rule 10(a). *See*, South Carolina Constitution, Art. V, Section 1 (judicial power vested in a Supreme Court and a Court of Appeals), Section 9, (“The decisions of the Supreme Court shall bind the Court of Appeals as precedents”).

Additionally, the South Carolina Court of Appeals in *Falk v. Sadler*, applied a principle under the law of South Carolina; it does not appear to interpret the requirements of “an important federal question” for purposes of Rule

10(a). The South Carolina law for applying *quasi*-judicial immunity is distinct from how that principle is applied under Oklahoma law, as interpreted by the United States Court of Appeals for the Tenth Circuit.

Finally, Ward does not contend that the United States Court of Appeals for the Tenth Circuit or the District Court for the Northern District of Oklahoma misquoted the standard for *quasi*-judicial immunity as enunciated by the Tenth Circuit or as applicable within the State of Oklahoma; instead, Ward only seeks to have that standard interpreted and applied pursuant to the opinion of the South Carolina Court of Appeals in *Falk v. Sadler*, *supra*. Petition for Certiorari, pp. 9, 12. As demonstrated above, the opinion in *Falk v. Sadler* does not warrant this Court granting the Petition for Certiorari. Rule 10(a). It further follows that the Tenth Circuit's Order and Judgment "properly stated [the] Rule of Law" applicable to Ward's claims although he would prefer that it be applied differently. That is, at best, Ward's "asserted error consists of . . . the misapplication of a properly stated rule of law", but "[a] petition for a writ of certiorari is rarely granted" to address such an issue, and ought not to be granted in the present case. Rule 10. It follows that Ward's Petition for Certiorari should be denied.

## **2. This Court Recently Denied Certiorari Review Of The Issues Raised By Petitioner In The Present Case**

This Court denied the Petition for Writ of Certiorari in *Vietti v. Welsh & McGough*, No. 24-1033; the same issues are raised in Ward's Petition in the present matter, which should be denied as well.

Ward filed his Petition for Certiorari with this Court May 29, 2025; the Petition for Certiorari in *Vietti* was distributed May 13, 2025, for a conference to be held May 29, 2025, after which the *Vietti* Petition was denied June 2, 2025. Ward’s counsel of record and associated attorneys in the present matter also represented the Petitioner in *Vietti*. Although there are some slight variations in wording, Ward’s questions presented, numbers 1-5, in the present matter are virtually identical to the five questions presented in the *Vietti* Petition for Certiorari. To be more specific both Petitions for Certiorari raise issues regarding the application of *quasi*-judicial immunity under Oklahoma law and allege due process violations by the Respondents under similar circumstances.

Both the present matter and *Vietti* arose from decisions of the United States District Court for the Northern District of Oklahoma. In his Statement of the Case, Ward states: “The District Court extended the holding from *Vietti v. Welsch and McGough, PLLC*, Case No. 21-CV-0058-WPJ-SH, 2024 WL 870562 (N.D. Okla. Feb. 29, 2024) to Respondents [Swenson and Fisher],. . .” Petition for Certiorari, p. 6. Ward sought a stay of proceedings in the District Court because at the time, the ruling in *Vietti* was on appeal to the Tenth Circuit. Respondents objected on the grounds of delay and that the *Vietti* ruling applied well settled law. The District Court noted the four factors relevant to the Court’s exercise of its discretion to grant the stay, and stated:

Ward does not make it past the first factor. He makes no argument about the forecasted success of his appeal in *Vietti* (and by extension the forecasted success of the identical arguments

in this case). Dkt. No. 35. It is not enough to rely on the sheet fact that an appeal is pending. The *Vietti* decision rejected Ward's counsel's arguments based on well-settled Oklahoma and Tenth Circuit law. *See, e.g.*, 2024 U.S. Dist. LEXIS 36302, 2024 WL 870562 at \*3-4 ("Despite this binding, on-point authority, Plaintiff urges the Court to consider South Carolina law. . . . The Court declines Plaintiff's invitation to apply South Carolina law, especially considering there is controlling Tenth Circuit and Oklahoma caselaw directly on point."). Because Ward has not, and likely cannot, demonstrate a likelihood of success on the merits, the Court progresses no further in the analysis of whether a stay would be appropriate. It clearly would not be.

Petitioner's Appendix B, Opinion & Order, June 12, 2024, pp. 17a-17b.

The Tenth Circuit Court of Appeals made absolutely no reference to the *Vietti* case whatsoever. *See generally*, Petitioner's Appendix A, Order & Judgment of the United States Court of Appeals for the Tenth Circuit, filed April 1, 2025, pp. 1a-13a.

Ward raises two issues not addressed in the Tenth Circuit Opinion to which his Petition for Certiorari is addressed, justifying it because they were argued *Vietti*. Petition for Certiorari, Argument & Authority Supporting Grant of Certiorari, §I, Swenson & Fisher, pp. 11-12, n. 1 & p. 16, n. 4. The Tenth Circuit held that the claims against Fisher were properly dismissed because she was entitled



to *quasi*-judicial immunity; Ward's other issues would not alter that holding, either in the Petition for Certiorari currently before the Court, or the one in *Vietti* for which certiorari was denied.

Accordingly, Ward's Petition for Certiorari should be denied.

**3. The Tenth Circuit Properly Affirmed the Dismissal of Ward's Claims Against Dr. Fisher**

The United States Court of Appeals for the Tenth Circuit correctly affirmed the Opinion and Order of the United States District Court for the Northern District of Oklahoma which dismissed Ward's claims against Dr. Fisher. Both Courts considered the proper standard for *quasi*-judicial immunity and correctly applied that standard to Dr. Fisher, as is disclosed by Ward's own description of the basis for his claim and Dr. Fisher's role as alleged by him.

In his Statement of the Case, Ward cites extensively to Appendix C, his underlying State Court Petition attached to the Notice of Removal of his action from state court to federal court. Petition for Certiorari, pp. 4-5; Appendix C, Notice of Removal, Petition, pp. 37a-51a. In that Petition, Ward identified the kind of suspected abuse he alleged in the Paternity Action:

The specific type of abuse by Mother was medical abuse of a child, also referred to as factitious disorder imposed on another or, Munchausen Syndrome by Proxy.

Appendix C, Notice of Removal, Petition, ¶13, p. 39a. Munchausen’s Syndrome has also been defined as “a condition characterized by habitual presentation for hospital treatment of an apparent acute illness, the patient giving a plausible and dramatic history, all of which is false.” *Dorland’s Illustrated Medical Dictionary*, p. 1295 (Philadelphia: W.B. Saunders Co., 26th ed., 1985). Expert medical testimony would be necessary to evaluate alleged abuse of this sort.

Ward also alleged that, after he became aware of the suspected abuse, he commenced an action on or about January 3, 2026, but that was in Texas. Actually, the Mother commenced the underlying Paternity Action in Oklahoma on January 28, 2016. Nevertheless, Ward further alleged that:

On or about April 14, 2016, the court in the Paternity Action appointed Defendant Fisher to act as a licensed therapist in the role of a child custody evaluator to protect the best interest of the child, H.A.B., in the Paternity Action. . . .

. . . .

On or about June 20, 2016, during Plaintiff’s first interview with Defendant Fisher, Plaintiff reported his concerns regarding Mother’s abuse of H.A.B.

Appendix C, Notice of Removal, Petition, ¶¶16 & 20, pp. 39a, 41a. Whatever knowledge Dr. Fisher had of the alleged abuse was obtained in her capacity as court appointed custody evaluator. As part of his claim against Dr. Fisher, Ward states:

On November 21, 2016, Fisher noted the abuse in the child custody evaluation submitted to the court, but stated that she did not have the expertise to evaluate those allegations. Even knowing about the extreme child abuse, Fisher recommended and the court awarded joint custody.

Petition for Certiorari, p. 4 (record citations omitted). The Tenth Circuit addressed this allegation:

Dr. Fisher performed a custody evaluation and completed her initial report in November, 2016. At that time, Dr. Fisher “had concerns about the medical history of” H.A.B., but “did not have information from a medical professional to substantiate the concern for medical child abuse.”

Appendix A, Tenth Circuit Order & Judgment, p. 3a (record citation omitted). The Court of Appeals then stated that, once Dr. Fisher received professional medical evaluations of the treatment to which the child was subjected, she recommended removing the child from the Mother’s custody.

Two points must be noted: first, at all times Dr. Fisher was acting within the scope of her role as a court appointed custody evaluator; and, second, Dr. Fisher did not claim to be unqualified to perform her role as custody evaluator although she acknowledged the need for professional medical analysis of the child’s treatment, given the nature of the alleged abuse (“Munchausen Syndrome by Proxy”).

Ward asserts: “Even knowing about the extreme child abuse, Fisher recommended, and the court awarded joint custody.” Petition for Certiorari, p. 4. What Dr. Fisher “recommended” to the Court in the Paternity Action was precisely within her role as a court appointed custody evaluator; Ward takes exception to her recommendation, but that does not deprive Dr. Fisher of *quasi-judicial* immunity.

Ward further asserts that, when the Court in the Paternity Action awarded custody to Ward (a Texas resident), it allowed supervised visitation by the Mother (which would occur in Texas). Ward mischaracterizes the Court’s Order by alleging it “specifically excluded Fisher from supervising visitation between mother and child.” Petition for Certiorari, p. 4. What the court actually did was to cross out Dr. Fisher’s name as the person providing the supervision, which had to be performed in Texas and, therefore, not by Dr. Fisher. Dr. Fisher’s appointment as court ordered custody evaluator was never rescinded, and nothing prevented Dr. Fisher from acting in that role in Oklahoma. The court’s order did not *exclude* Dr. Fisher from performing those functions, although it did not *specify* that she would be the person who would have to render them in Texas. Nothing deprives Dr. Fisher of *quasi-judicial* immunity.

Ward further alleges that, “despite documenting her knowledge of child abuse, Fisher also did not report the abuse as required by statute.” Petition for Certiorari, p. 4. As Ward recognizes, he first informed Dr. Fisher of the abuse allegations after she had been appointed by the court as custody evaluator, and any additional information she acquired was in her role as custody evaluator. The

information Dr. Fisher had about child abuse cannot be separated from her role as custody evaluator, and does not detract from her *quasi*-judicial immunity.

Plaintiff states:

The Tenth Circuit extended *quasi*-judicial immunity to both Swenson and Fisher, relying almost exclusively on *Dahl v. Charles F. Dahl, M.D., P.C.*, Define Benefit Pension Tr., 744 F.3d 623 (10th Cir. 2014). Appendix. A at pp. 7a-8a.

Petition for Certiorari, p. 12 (footnote omitted). The Tenth Circuit did state:

There are, of course, “limits to the scope of th[is] immunity.” [Dahl, 744 F.3d] at 630. But those cases are the exception, rather than the rule. As the Supreme Court noted long ago, a party entitled to judicial or quasi-judicial immunity does not lose that immunity simply because “the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction.” *Stumpf v. Sparkman*, 435 U.S. 349, 356-57, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978).

Appendix A, Tenth Circuit Order & Judgment, pp. 7a-8a. Based on the citation to this Court’s authority, “quasi-judicial immunity would apply to an action . . . in excess of his authority” which is distinguished from “act[ion] in the clear absence of all jurisdiction.” Ward, improperly,

attempts to collapse the distinction between an action “in excess of authority” with one “in the clear absence of all jurisdiction”, but that is not the law of this Court, the Tenth Circuit, or the State of Oklahoma.

Ward also states:

Under Oklahoma state law, “[a] court-appointed guardian *ad litem* in a custody matter is immune from suit by the ward or by any other party, *for all acts arising out of **or relating to** the discharge of his duties as a guardian ad litem.*” *Perrigo v. Wiseman*, 11 P.3d 217, 217-218 (Okla. 2000) (emphasis added).

Petition for Certiorari, p. 12 (Ward’s italics; boldface and underline added). Ward acknowledges that this principle would also apply to a court ordered custody evaluator but the emphasized phrase “relating to” broadens the scope of immunity. Ward points to no act or omission by Dr. Fisher which does not “relat[e] to” her role as court appointed custody evaluator. Her only information about the dispute between Ward and the Mother, with regard to their child, was exclusively a product of her services as custody evaluator and necessarily “relat[ed] to” her capacity as such.

In summary, *quasi*-judicial immunity precludes any liability on the part of Dr. Fisher to Ward based on his claims in this action. The Tenth Circuit properly affirmed the dismissal of Ward’s claims against Dr. Fisher by the District Court. This Court should deny Ward’s Petition for Certiorari because there has been no error of any sort to be corrected.

**CONCLUSION**

WHEREFORE, premises considered, the Respondent, Dr. Laura Fisher, prays this Court to deny Ward's Petition for Writ of Certiorari. The Tenth Circuit Court of Appeals, correctly affirmed the dismissal of Ward's claims against the Respondent, Dr. Laura Fisher.

Respectfully submitted,

JAMES K. SECREST, II  
*Counsel of Record*  
EDWARD J. MAIN  
SECREST, HILL, BUTLER & SECREST  
7134 South Yale, Suite 900  
Tulsa, OK 74136  
jsecrest@secresthill.com  
(918) 494-5905

*Attorneys for Respondent*  
*Dr. Laura Fisher*