

In the
Supreme Court of the United States

KAI HANSJURGENS,

Petitioner,

v.

DONALD BAILEY,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Paul L. Erickson
Counsel of Record
604 Vista View Drive
Asheville, NC 28803
(828) 214-1111
paul@paulerickson.com

QUESTIONS PRESENTED

1. Did the 11th Circuit Court of Appeals, decision below, conflict with other similar decisions of other U.S. Circuit Courts of Appeals as well as decide an important federal question in a way that conflicts with decisions by the Georgia Supreme Court, Georgia's court of last resort?
2. Did the 11th Circuit Court of Appeals create federal common law at odds with Petitioner's state-created rights, depriving Petitioner of the process due him under State law and violating the federalism principles of *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938)?
3. Did the 11th Circuit Court of Appeals commit reversible error by refusing to follow the law of the highest court in the State of Georgia, by affirming the U.S. District Court's order, which affirmed the Bankruptcy Court's order deeming the newly concocted means chosen by Plaintiff/Respondent, to revive his judgment, substantially complied with the law of the State of Georgia for reviving judgment?
4. Did the 11th Circuit Court of Appeals commit reversible error by its misunderstanding and misapplying the Federal Bankruptcy Rules of Procedure?

PARTIES TO THE PROCEEDINGS

Petitioner and Defendant-Appellant below

- Kai Hansjurgens

Respondent, and Plaintiff-Appellee below

- Donald Bailey

There is no corporate entity which is a Petitioner or Respondent before this Court. The only corporate entity that participated as a co-Defendant to Petitioner in the Bankruptcy Court adversary proceedings was Hako-Med USA, Inc. There is no parent or publicly held company owning 10% or more of that company's stock

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Eleventh Circuit
No. 22-10819

Kai Hansjurgens, *Plaintiff-Appellant*, v.
Donald H. Bailey, *Defendant-Appellee*.

Date of Final Opinion: January 12, 2024

Date of Rehearing Denial: May 8, 2024

U.S. District Court, Southern District of Georgia
No. 4:21-cv-105

Kai Hansjurgens, *Appellant*, v.
Donald H. Bailey, *Appellee*.

Date of Final Judgment: March 3, 2022

U.S. Bankruptcy Court, Southern District of Georgia
No. 07-41381-EJC

In Re: Donald H. Bailey, *Debtor*.

No. 09-04002-EJC

Donald H. Bailey, *Plaintiff* v. Hako-Med USA, Inc.,
and Kai Hansjurgens, *Defendants*.

Date of Final Order: April 1, 2021

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Kai Hansjurgens, respectfully submits this petition for writ of certiorari.



OPINIONS BELOW

The Opinion of the Court of Appeals for the Eleventh Circuit dated January 12, 2024, is reported in the Federal Reporter as *Hansjurgens v. Bailey* (*In re Bailey*), 90 F.4th 1158 (11th Cir. 2024). (App.1a) US District Court Revival Order dated February 22, 2022, *Hansjurgens v. Bailey*, 639 B.R. 262 (S.D. Ga. 2022). (App.24a) US Bankruptcy Revival Order dated April 1, 2021, *Bailey v. Hansjurgens*, US Bankruptcy Ct. SD GA Case 4:21-cv-00105-RSB-CLR. (App.48a).



JURISDICTION

The Eleventh Circuit entered its Opinion affirming the district court's revival of judgment order on January 12, 2024 and denied the petition for panel rehearing and rehearing en banc on May 8, 2024. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1) and 28 U.S.C. § 2101(c).



STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reproduced in the appendix at App.57a-61a.



INTRODUCTORY STATEMENT

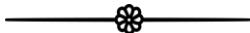
This case concerns how federal courts must apply state law to revive a federal civil judgment that has become dormant. Once dormant, the judgment cannot be enforced or executed. While the judgment here arose in a bankruptcy adversary proceeding in Georgia, Fed. R. Bankr. P. 7069 adopts without alteration Rule 69(a) of the Fed. R. Civ. P., which states in relevant part:

The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

In upholding the bankruptcy court and the district court’s decision to revive a dormant judgment against petitioner, the Eleventh Circuit held that only “substantial compliance” with Georgia state-law procedures is sufficient. However, the Georgia judgment revival regime known as *scire facias*¹ allows no such

¹ *Scire facias*: A judicial writ founded upon some matter of record, such as a judgment . . . requiring the person against whom it is brought to show cause why the party bringing it should not have

“substantial compliance” that ignores the express terms of the statute. Had the same case been presented to a Georgia state court, the binding appellate precedents of that state required the denial of judgment revival. The outcome cannot be allowed to be different only because the proceeding was decided by a federal court and not a state court.



STATEMENT OF THE CASE

1. Respondent, (Plaintiff-Appellee, below (herein “Bailey”), obtained a final judgment against Petitioner, (Defendant-Appellant, below (herein “Hansjurgens”) on April 7, 2011. He took no steps to execute on that judgment for seven years so the judgment became dormant under Georgia law on April 7, 2018. Under Rule 69 of Fed. R. Civ. P. made applicable by Rule 7069 of Fed. R. Bankr. P., that left him until April 7, 2021 to initiate either of the only two options available under Georgia law to revive a judgment: a new lawsuit to revive the judgment or a *scire facias* proceeding within the same action. OCGA § 9-12-60, et. seq., and case law, *Atwood v. Hirsch Bros.*, 123 Ga. 734, 51 S.E. 742 (1905)).

2. Instead of initiating either of those two options, but still before his April 7, 2021 deadline, on March 12, 2021, the Appellee filed an Emergency Motion to Revive Dormant Judgment in the bankruptcy court.

advantage of such record . . . (Black’s Law Dictionary 5th Edition 1979)

3. There was no service of a summons or a summons-like order to show cause as is required under Georgia law for both options.

4. On March 18, 2021, the Bankruptcy Court conducted a scheduling conference and decided that service of a mere motion and notice of hearing should be made by mail.

5. A copy of the motion and a notice of hearing for March 30, 2021, was then mailed to the Appellant's last known addresses.

6. No return of service was filed into the bankruptcy court's docket.

7. On March 30, 2021, the Bankruptcy Court held the hearing on Bailey's emergency motion to revive the dormant judgment and took the matter under advisement.

8. Neither Mr. Hansjurgens nor anyone on his behalf attended that hearing.

9. On April 1, 2021, the Bankruptcy Court issued its Order Granting the Emergency Motion to Revive Dormant Judgment.

10. Thereafter, Hansjurgens filed his timely pro se appeal to the District Court.

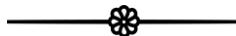
11. On February 22, 2022, the District Court affirmed the bankruptcy court's decision that the motion to revive judgment and mailing of the notice of hearing on the motion substantially met the requirements of federal rule of civil procedure though not in "the same manner and time" as required by Georgia statutory law on judgment revival.

12. Hansjurgens appealed that decision to the 11th Circuit Court of Appeals.

13. The 11th Circuit Court of Appeals affirmed the District Court's decision January 12, 2024. *Hansjurgens v. Bailey (In re Bailey)*, 90 F.4th 1158 (11th Cir. 2024).

14. Hansjurgens timely filed a Petition for Panel Rehearing and Rehearing En Banc on January 26, 2024.

15. That Petition for Panel Rehearing and Rehearing En Banc was denied May 8, 2024.



REASONS FOR GRANTING THE PETITION

I. THE DECISIONS BELOW CONFLICT WITH US SUPREME COURT PRECEDENT

The decisions below, including the 11th Circuit Court of Appeals decision disregarded the former prohibition of federal courts from establishing common law as held in *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938). In doing so, it converted a previously orderly system of reviving judgments in the 11th Circuit, into a system in chaos. The chaos is not limited to judgment revival cases but may be applied to any case. The new federal common law established by the decision below, allows for the arbitrary and capricious exercise by any federal court in the 11th Circuit to allow a judgment creditor to revive an expired or near expired judgment so long as the sitting judge concludes the judgment creditor's actions were close enough to the requisite state law.

By extension, it opens the door for any future federal litigant to seek to have any federal court overturn, any state court law or decision, even the controlling decision of the state's Supreme Court, (as was done below). The application of the 11th Circuit's *Bailey, supra*, decision is not limited to substantive issues, issues for good cause, but, as was done below, based on a mere whim couched in divining the spirit of the state law contrary to its interpretation by the state's highest court.

The resulting chaos may be infinite as the federal judiciary becomes a stomping ground or forum for any and every person who wants to challenge a state law, who has erred in failing to follow a state law and seeks relief from that error, or, as in the case below, who simply chose not to follow state law.

Prior to the decisions below, the substantive law of Georgia mandated that for a dormant judgment to be revived, the judgment debtor must follow either of two statutory mechanism both of which required the debtor be personally served with a summons or order directing him to appear in the issuing court on a date certain and show cause why the identified judgment should not be revived. By ruling that under Fed. R. Civ. P. 69(a) and 81(b), notice of the revival proceeding by mail instead "substantially complied" with this state-mandated process of personal service, the 11th Circuit Court of Appeals created federal common law at odds with Petitioner, Hansjurgens' (and similarly situated parties) state-created rights, deprived Petitioner and others of the process due him and them under state law and violated the federalism principles of *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), prohibiting the establishment of federal common law, and expanded

its newly created federal common law to all states within the 11th Circuit.

II. THE DECISIONS BELOW CONFLICT WITH DECISIONS BY A STATE COURT OF LAST RESORT

The improper Federal common law created by the 11th Circuit Court of Appeals conflicts with decisions of a state court of last resort. Georgia's Supreme Court, case of *Atwood v. Hirsch Bros.*, 123 Ga. 734, 51 S.E. 742 (1905), (App.62a) which was reaffirmed in *Popham v. Jordan*, 628 S.E.2d 660, 278 Ga. App. 254 (Ga. App. 2006). (App.66a) both held the only two methods for reviving a judgment in Georgia were set forth in OCGA § 9-12-60, et. seq., and both alternatives required service of a summons or order resembling a summons. The 11th Circuit's *Bailey*, *supra*, decision overruled the *Atwood* and *Popham* decisions and Georgia's Legislature which enacted Georgia's judgment revival statute, OCGA § 9-12-60, et. seq.

The 11th Circuit decision did not find or suggest that OCGA § 9-12-60, et. seq., or any of its provisions amounted to anything close to putting the Georgia federal judiciary into a procedural straitjacket which would have excused the mandate to follow state procedures. *Resolution Trust Corp. v. Ruggiero*, 994 F.2d 1221, 1226 (7th Cir. 1993).

They did not attempt to find just cause for Bailey's failure to follow Georgia state law because there was no just cause or excuse. He just chose not to follow it. The 11th Circuit ignored the inexcusable in disregard of state law to justify the unjustifiable.

III. THE DECISIONS BELOW CONFLICT WITH DECISIONS OF OTHER US CIRCUIT COURTS OF APPEALS

Contrary to every other Circuit Court of Appeals that have ruled on the applicability of state law in regard to revival of dormant judgments, the decision below entered by the 11th Circuit Court of Appeals held all a judgment creditor need do is substantially comply with the state law. If the law of a state also held that to be the case, its decision might be right. Georgia law was clear that the revival law must be strictly followed if a judgment creditor wished to revive a dormant judgment. Concluding it need not follow the law of the highest court in the state conflicts with decisions by the 9th Circuit Court of Appeals. *See: In re Smith*, 352 B.R. 702 (B.A.P. 9th Cir. 2006)(where the 9th Circuit held . . . the Arizona court ruled unequivocally that “[U]nder Arizona law, the time to file an affidavit of renewal of judgment is not changed or extended by the pendency of a bankruptcy case.” *Smith*, 101 P.3d at 640.11 In matters of state law, we are compelled to defer to the interpretation given such law by the state’s highest court. *See Marcus v. McKesson Drug Co. (In re Mistura, Inc.)*, 22 B.R. 60, 62 (9th Cir. BAP 1982).

See also: In re Romano, BAP No. NV-0 8-1139-DHMo (B.A.P. 9th Cir. 10/24/2008). (Adversarial final judgment no longer enforceable when state law requires strict compliance with unambiguous statutory procedures for renewal of federal bankruptcy judgment and debtor fails to timely comply). Unpublished Opinion. (Emphasis added)

The decision conflicts also with the 2nd Circuit Court of Appeals which again mandated that the dis-

trict court follow state law. In the case of *Havlish v. Hegna*, 15-2882-cv at 10 (2nd Cir. Dec 8, 2016) the 2nd Circuit held: “As noted above, there is no evidence on this record suggesting that the Hegna Parties ever sought revival under the mechanism outlined in N.Y.C.P.L.R. 5014(3), which permits judgment creditors to apply for a revival of their judgment liens in the year prior to expiration of the ten years.”(Emphasis added)

The decision conflicts with the 3rd Circuit Court of Appeals decision of *Augustin v. City of Phila.*, 897 F.3d 142 (3rd Cir. 2018) Like the other Circuits, the 3rd Circuit makes it clear that state law, which like Georgia provides only two options is applicable for addressing a dormant judgment lien writing: But as the City points out, an owner who wishes to do any of those things despite a lien has two prompt remedies. First, she may serve on the City a notice to issue a writ of *scire facias*,

The 5th Circuit Court of Appeals decision of *F.D.I.C. v. Shaid*, 142 F.3d 260 (5th Cir. 1998) mirrors Georgia: A dormant judgment may be revived by *scire facias* or by an action of debt brought not later than the second anniversary of the date that the judgment becomes dormant . . . we interpret the state statute the way we believe the state Supreme Court would, based on prior precedent, legislation, and relevant commentary. (Emphasis added) They had no reason to try and find the spirit of the revival statute. They just followed the law as enacted by the Texas legislature and interpreted by the Texas state courts.

The decision conflicts with the 7th Circuit Court of Appeals decision of *TDK Electronics Corp. v. Draiman*, 321 F.3d 677 (7th Cir. 2003) which recognized that

while *scire facias* was no longer part of the Federal Rules, it could be obtained by a motion under Rule 81(b). (Rule 69 says that state law applies, and although no federal rule expressly authorizes revival or reentry of a judgment, this office formerly was performed by the writ of *scire facias*, which still is obtainable by a more modern motion. See Fed. R. Civ. P. 81(b) . . .) (Emphasis added)

The decision conflicts with the 8th Circuit Court of Appeals decision of *Danzig v. Danzig*, 217 F.3d 620 (8th Cir. 2000) which applied Missouri state law to bar recovery on the judgment creditor was attempting to revive for failure to follow Missouri state procedures for revival of judgments.

The decision below conflicts with the 10th Circuit Court of Appeals. *See: Universitas Educ. v. Avon Capital, LLC*, 21-6044, 21-6049, 21-6133 (10th Cir. Aug 4, 2023) (The M[agistrate] J[udge] and the district court found that Universitas was entitled to enforce the judgment in Oklahoma under 28 U.S.C. § 1963. But they incorrectly failed to consider Oklahoma state procedural rules on the subject, as required by F.R.C.P. 69(a). Under O.S. § 12-735(B), a judgment becomes unenforceable after five years unless one of the subsequent actions specified in the statute is taken. Universitas's last relevant act was the issuance of a writ of garnishment to SDM on December 3, 2015. This means that Universitas's Oklahoma judgment expired five years later, on December 3, 2020.) (Emphasis added)

In all of the above cases the courts followed the Rule 69 mandate that state law must be followed and applied that to assure that if *scire facias* was pursued, it complied with the state's law. Now, in the 11th Circuit,

one only need to follow the newly created federal common law of anything goes if you can get a judge to approve it. *See: J&J Sports Productions, Inc. v. Los Ranchos Latinos, Inc.*, Case No. 22-13434 (11th Cir. August 1, 2024), citing *Bailey*, to support another poor effort to revive a judgment.

IV. THE DECISION OF THE 11TH CIRCUIT COURT OF APPEALS IS WRONG

A. The Decisions Below Deemed Non-Compliance Was Substantial Compliance

As it attempted to establish justification for its decision, the court below, redefined “accord with” as substantial compliance with the spirit of the law, and then bent the definition of substantial compliance to equate it with non-compliance. Respondent *Bailey* made no effort to comply with either of the two options Georgia’s legislature established for the revival of judgments. He merely filed a motion, which he labeled Emergency Motion to Revive Dormant Judgment.

As noted above, Georgia law provides only two mechanism to revive a dormant judgment. OCGA § 9-12-61-Dormant judgments revived by action or revived by scire facias; . . . Conspicuously missing from those two possibilities is a motion, emergency or otherwise. Because the procedure is so clearly expressed in OCGA § 9-12-60, et. seq., the Georgia courts have relentlessly required strict compliance since before the 1905 Georgia Supreme Court’s *Atwood*, *supra*, decision and continuing to the present *Popham v. Jordan*, 628 S.E.2d 660, 278 Ga. App. 254 (Ga. App. 2006) (App.66a) and *Mancuso v. Cadles of W. Va.*, 897 S.E.2d 486 (Ga. App. 2024). (App.70a) (“In the present case, it is undisputed that *Mancuso* was served with a

copy of the *scire facias* by a private process server. But OCGA § 9-12-63 expressly provides that the copy of the *scire facias* “shall be served by the sheriff of the county in which the party to be notified resides.” “The general rule is that ‘shall’ is recognized as a command, and is mandatory,” and “[w]e cannot by construction add to, take from, or vary the meaning of unambiguous words in a statute.”” (App.74a) *See Smith v. Spizzirri*, 601 U.S. ____ (2024) (Case No. 22-1218 May 16, 2024) (“the use of “shall” . . . created a mandatory obligation that left ‘no place for the exercise of discretion by a district court.’ . . .”). *Mancuso*’s state-mandated compliance resulted in Georgia maintaining an orderly and straight forward process for reviving judgments. There was and is no legitimate reason to make Respondent Bailey’s recalcitrance a basis for turning a once orderly system of justice into chaos. But that is where the 11th Circuit Court of Appeals is driving. But the 11th Circuit Court of Appeals is set on making that system one of chaos. *See: J&J Sports Productions, Inc. v. Los Ranchos Latinos, Inc.*, Case No. 22-13434 (11th Cir. August 1, 2024).

B. The Decisions Below Misunderstood and Misapplied the Federal Bankruptcy Rules of Procedure

The 11th Circuit Court of Appeals below, also struggled with the difference between application of the Federal Rules of Civil Procedure and the Federal Bankruptcy Rules of Procedure. Under Fed. R. Civ. P. 81(b) “The writs of *scire facias* and mandamus are abolished.” However, Rule 81 was not adopted as a bankruptcy rule. Thus, for bankruptcy cases, the writ of *scire facias* was not abolished. In any case, even if Rule 81 fully applies to bankruptcy proceedings, the

only writ of *scire facias* that it could have abolished was the federal, not state writ of *scire facias*.

To bolster its position that a writ of *scire facias* was something foreign to the federal system, the court below elected to disregard it noting in footnote 5 of its decision: “We need not decide this issue regardless of whether Hansjurgens preserved it.” *Bailey, supra*, (App.12a)

The 11th Circuit failed to recognize that the writ of *scire facias* was still available for the Bankruptcy Courts, (Fed. R. Civ. P. 81 which abolished the writ of *scire facias* and shifts that function to Rule 69 for all other federal cases) was not adopted in the Bankruptcy Rules of Procedure. It may have been that error that led it down the rabbit hole of its misapplication of Rule 69. Bending Rule 69 like a pretzel, the court sought to justify its position that, Bailey’s emergency motion substantially complied with Georgia’s procedure for issuing a writ of *scire facias*. The hurdle they had to overcome was that writs of *scire facias* require service of process like a summons, not service like a motion. Since no personal service was attempted by Bailey below, it was necessary that the court not address that requirement as it would have precluded it from ruling in favor of Bailey. The failure to serve the writ of *scire facias* on Hansjurgens was the primary basis for his contention that Bailey’s effort to revive his judgment was defective, out of time and his judgment had expired.

While the courts below took the position that Hansjurgens had no defense to the judgment, thus there was nothing to be accomplished by the hearing, the Georgia Supreme Court in *Donaldson v. Dodd*, 79 Ga. 763, 4 S. E. 157 (Ga. 1887) addressing such a possi-

bility wrote: “if he had none [defenses], he had a right to know that this judgment would be revived and his property be subjected to its payment.” Obviously, Hansjurgens’ most powerful defense was that the judgment had expired by law and was no longer enforceable. Again, not a fact the 11th Circuit was willing to consider.

C. The 11th Circuit Erred in Its Assessment of a Possible Remand

In its decision, the Court asserted:

Indeed, as a purely practical matter, there is nothing more that can be accomplished by remanding for strict compliance. Remanding would not change the ultimate result of the revival proceedings. . . .

Bailey, supra, (App.18a)

If the 11th Circuit were to remand to the District Court to require that it and the Bankruptcy Court apply Georgia law to the matter, there would be nothing to do but declare that Bailey’s judgment had expired because he did not timely file for a writ of *scire facias* or file a new action. It could save the lower court time by simply reversing the lower courts’ decisions. But, the result would be the opposite of the decisions in place by the lower courts’ and the 11th Circuit’s decisions.

To reach its conclusion that the remand would not change the ultimate result, the 11th Circuit had to continue its charade that Bailey had properly pursued the revival of his judgment. The 11th Circuit continued:

... To be sure, the district court could require personal service on Hansjurgens. But a revival motion may be timely even if service is not perfected during the dormancy period, so long as the motion is filed before the judgment expires. *Stahle v. Jones*, 60 Ga.App. 397, 3 S.E.2d 861, 862 (1939). *Bailey, supra*, at 1170 (App.18a).

That would only be true if the “revival motion” were one pertaining to a timely submitted or filed and issued writ of *scire facias*. Bailey never pursued a writ of *scire facias*. Also, he never filed a separate cause of action to revive his judgment.

Stahle, supra, which the 11th Circuit cited as supporting its assertion that a revival motion may be timely even if it is not perfected during the dormancy period, does not apply to all motions even if they were called or even deemed revival motions. Prior to the 11th Circuit’s misinterpretation of *Stahle, supra*, it only applied to motions regarding a timely filed writ of *scire facias*. In *Stahle, supra*, the judgment creditor had timely filed for a writ of *scire facias*. *Stahle* involved a situation “Where a *scire facias* has issued to revive a dormant judgment, and personal service on the defendant, as required by law, is not perfected, . . .” Under that circumstance, the court held:

Where the time limitation within which the petition for *scire facias* must have been filed had not expired on the date of filing the petition, but had expired before the date of the filing of the motion made by the plaintiff at the subsequent term of court, to amend the writ of scire facias and the order to perfect personal service on the defendant,

the court was not without jurisdiction to entertain the motion to amend, and to amend, the writ, and to order service perfected, on the ground that, at that time, the period of limitation within which the judgment could be revived had expired.

Stahle, supra, at 363

The court went on to explain:

By a perfection afterwards of legal service, pursuant to the amendment of the writ of *scire facias*, the suit would be a valid suit and would [3 S.E.2d 863] have been filed within the period of limitation. *Waldon v. Maryland Casualty Company*, 155 Ga. 76, 84, 116 S.E. 828; *Ellis v. McCrary, supra*.

Stahle, supra, at 363-364

It should be noted that the *Stahle* court distinguished a case similar to *Bailey*. The *Stahle* court cited *Donaldson v. Dodd*, 79 Ga. 763, 4 S.E. 157, (Ga. 1887), and noted: “In that case the order which was moved for and which was not granted was not an order providing for new process or service of the writ of *scire facias* on the defendant.” *Stahle, supra*, at 863.

In *Donaldson, supra*, the judgment creditor, like Mr. Bailey, sat on his rights for almost 10 years. Unlike Mr. Bailey, Mr. Donaldson filed for a writ of *scire facias* just before the expiration of the judgment after 10 years. However, Mr. Donaldson also filed a sloppy motion, not directed to his writ of *scire facias*. The *Donaldson*, court noted: “the defendant had never received a copy of the *scire facias*.” *Id.* 756. It pointed out that the court that granted his motion for leave to

personally serve the judgment debtor, “should have provided that he should be legally served with a copy of the *scire facias*, and not with a copy of an order to continue a case for the purpose of perfecting service.” *Id.* Bailey failed to have anything personally served on Hansjurgens.

As the *Donaldson*, court stated:

... in law the defendant had never received a copy of the *scire facias*. The legal effect on him was no more than if he had found the paper in the road. Therefore, if the court had granted an order to perfect service, it should have provided that he should be legally served with a copy of the *scire facias*, and not with a copy of an order to continue a case for the purpose of perfecting service.

Id. at 766

Bailey didn’t even bother to have a writ of *scire facias* issued much less served on Hansjurgens. The nonsense and absurdity of this case could not have been imagined by the *Erie*, court and it should not be inflicted upon all residents living within the 11th Circuit Court of Appeals.

D. The Decisions Below Mis-Applied Rule Fed. R. Civ. P. 69

In addition to being wrong for the reasons noted above, the decision below misstated and mis-applied Rule 69 Fed. R. Civ. P. Instead of assuring that the attempt to revive a judgment in the state of Georgia was in “accord” with Georgia law, the court’s below established that the revival of the judgment be in

accord with its chosen application of the Federal Rules of Civil Procedure.

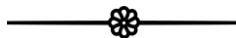
The court reasoned, because the writ of *scire facias* (the Georgia mandated law for revival of judgments) was no longer available under the Federal Rules, it could dispense with Georgia's requirement of issuing a summons to the judgment debtor and allow the judgment creditor to merely attempt to comply with the general notice requirements for motions under the Federal Rules. The court below spent four pages redefining "accord with" as meaning "substantial compliance". *Bailey, supra*, at 1167-1171 (App.13a-18a)

To get there, the court below had to incorrectly assert dictum in the case of *Chambers v. Bickle Ford Sales, Inc.*, 313 F.2d 252, 256 (2d Cir. 1963) was a holding ("holding that an enforcement hearing in lieu of a state *scire facias* action 'accords with the spirit of the Rules and seems to be a sufficiently close adherence to state procedures'").

The court below asserted: "... Georgia *scire facias* procedures do not squarely fit within the federal court system." *In re Bailey, supra*, at 1169 Based on that, the court below chose to force the Georgia revival statute to accord with the Federal Rules rather than have the judgment creditor comply with or be in accord with the Georgia statutes. It plowed that new path because no former path made under the law of Georgia would have allowed it to rule in favor of Bailey, which for unstated reasons was it clearly desired. That newly plowed path should be named Pandora's Way, the road to chaos, and anything goes in the eye of the beholder that wants to challenge a state law or regulation in federal court.

Bailey's inaction was so egregious, the court could not even apply a "good cause" standard to excuse it. There was none. With its new liberal approach to excusing the failure to comply with the statutory law, common law, rules of procedure, it is difficult to imagine any motion or argument being out of bounds or beyond the scope of exception as allowed and adopted by the court below in its *Bailey, supra*, decision.

Even worse, for all future property transfers in the 11th Circuit, all title insurance policies will have an exception for any unsatisfied judgment of record, no matter how old it is unless the transferor has filed seeking a declaratory judgment that under the 11th Circuit's decision in *Bailey* the judgment has not been somehow revived.



CONCLUSION

As a result of the 11th Circuit decision in *Bailey* below, all future judgments in the 11th Circuit will require a ruling by a Federal court as to whether or not the judgment has been revived in accord with the *Bailey*, doctrine or is expired. Furthermore, anyone who believes they have been aggrieved by a state decision, or, as was the case below, simply does not feel like following state law, may now file an "emergency motion", for relief (ignoring established state law requirement), loosely attempt to follow the notice provisions of the Federal Rules of Civil Procedure and, get the relief they are seeking.

With the *Bailey* decision below, a property title insurance underwriter issuing policies in any state in

the 11th Circuit whose laws establish that a judgment creates and automatic lien on real property, will now have the burden of searching all Federal court dockets to make certain there are no motions filed that might be deemed by a judge to result in the revival of a dormant judgment. That is an impossible task to accomplish. Transferring owners will routinely have to seek declaratory judgments in federal court that there are no *Bailey* judgments of record that have been or are capable of being revived. That is an undue burden being place upon the federal court system in the 11th Circuit.

The *Bailey* decision below makes a mockery of a system formerly established to provide orderly justice and runs contrary to every doctrine and principle once held sacrosanct under the application of federalism, state's rights and due process under the Constitution. It cries out for correction by this honorable court in the form of reversal as the storm of *Bailey*, chaos begins to rumble *See: J&J Sports Productions, Inc. v. Los Ranchos Latinos, Inc.*, Case No. 22-13434 (11th Cir. August 1, 2024) This case affords this honorable Supreme Court with an excellent vehicle to vindicate the faithful application of state law, state's rights and federalism.

This Court should grant the Petition, to begin the process of reversing the Eleventh Circuit Court of Appeals *Bailey* decision and ordering it to enter a decision establishing that the subject judgment Bailey sought to revive is expired under Georgia law and close the 11th Circuit's not well thought out opening of a Pandora's box.

Respectfully submitted,

Paul L. Erickson
Counsel of Record
604 Vista View Drive
Asheville, NC 28803
(828) 214-1111
paul@paulerickson.com

Counsel for Petitioner

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