

No. 24-5502

IN THE
SUPREME COURT OF THE UNITED STATES

William L. Mitchell, Jr.,
Petitioner

Supreme Court U.S.
FILED
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v.

Frank Kendall, III, Secretary of the Air Force,
Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under Federal Rules of Civil Procedure 41(a)(1)(A) and (B), the “Effect” of a second voluntary dismissal “acts as an adjudication on the merits.” Given the fact a second voluntary dismissal by the Plaintiff in federal district court involved the same claim, does it form a basis for appeal under FRCP 41(a)(1)(A) and (B)?

RELATED CASES

- *Mitchell v. Department of Air Force*, No. 14-cv-847, U.S. District Court for the Northern District of Texas. Notice of Voluntary Dismissal November 18, 2014.
- *Mitchell v. Department of Air Force*, No. 14-cv-847, U.S. District Court for the Northern District of Texas. Judgment entered December 4, 2015.
- *Mitchell v. Department of Air Force*, No. 16-10043, U.S. Court of Appeals for the Fifth Circuit. Judgment entered September 27, 2016.
- *Mitchell v. Kendall*, No. 21-cv-912, U.S. District Court for the Northern District of Texas. Judgment entered May 3, 2022.
- *Mitchell v. Kendall*, No. 22-cv-00443, U.S. District Court for the Northern District of Texas. Notice of Voluntary Dismissal August 11, 2023.
- *Mitchell v. Kendall*, No. 23-11035, U.S. Court of Appeals for the Fifth Circuit. Judgment entered March 27, 2024.
- *Mitchell v. Kendall*, No. 23-11035, U.S. Court of Appeals for the Fifth Circuit. Judgment entered May 2, 2024.
- *Mitchell v. Kendall*, No. 23-11035, U.S. Court of Appeals for the Fifth Circuit. Judgment entered June 5, 2024.

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PETITION FOR A WRIT OF CERTIORARI

William L. Mitchell, Jr. respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

There were no opinions rendered over the course of appeal proceedings; therefore, all related Orders are UNPUBLISHED.

JURISDICTION

The judgment of the court of appeals was entered on March 27, 2024. A motion for reconsideration was timely filed and Denied on May 2, 2024. A petition for rehearing *en banc* was then timely filed, but was also Denied June 5, 2024. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

The Panel decision applies precedent cited in *Griggs v. S.G.E. Mgmt., L.L.C.*, 905 F.3d 835 (5th Cir. 2018) which does not appear to have relevance or application to the case at hand. Further, the Plaintiff filed a Reply Brief in response to arguments in Brief of Appellee which appears to have been overlooked in light of the Panel's dismissal of the appeal. Such an oversight suggests possible politicization of this case which has persisted from the outset, as far back as May 17, 2002 when Plaintiff first attempted to file a complaint of racial discrimination.

The United States Air Force Heartland of America Band (USAF HOAB) was an illegal organization while Plaintiff was assigned between 1998 – 2005 because there were no checks and balances in place to prevent the abuse of power by the Chain of Command. When Plaintiff initiated a formal complaint of racial discrimination, it essentially brought the issue to light, so the complaint process was politicized to protect the existence of the organization at the Plaintiff's expense. The reason there has been so much resistance to this case, is the persistent denial of Whistleblower Protections to the Plaintiff has been essential to protecting HOAB. So the interest of justice is at issue.

Further, in regards to the Panel's decision, it overlooks the fact the Plaintiff voluntarily dismissed two distinct cases involving the same claim in federal district court. Under FRCP 41(a)(1)(A) and (B), the "Effect" of a second dismissal "acts as an adjudication on the merits," and therefore should not have been given the disposition of a dismissal "without prejudice" as the Panel determined. A dismissal without prejudice was determined in 2022, and Plaintiff promptly re-filed the case to incorporate key evidence into the COMPLAINT in compliance with requirements identified in the district court's dismissal of the case.

REASONS FOR GRANTING THE WRIT

On August 11, 2023, the Magistrate Judge filed a report titled **SECOND FINDINGS, CONCLUSIONS, AND RECOMMENDATION REGARDING DEFENDANT'S MOTION TO DISMISS** (2nd FC&R) dated August 10, 2023.

Due to the fact there was a formal objection to the related ORDER, the Plaintiff voluntarily dismissed the case and subsequently filed NOTICE OF APPEAL.

There were numerous objections, filed by the Plaintiff, to interlocutory rulings and orders during the course of preliminary proceedings; the majority of which the District Judge neither acknowledged nor responded to. Those objections ultimately led to the voluntary dismissal of the case. Being that it was a second voluntary dismissal by the Plaintiff in federal district court involving the same claim, it forms the basis for the appeal under FRCP 41(a)(1)(A) and (B).

The Panel decision cites *Griggs v. S.G.E. Mgmt., L.L.C.*, 905 F.3d 835 (5th Cir. 2018) as establishing precedent for dismissal. As explained in Plaintiff's Motion For Reconsideration and Reinstatement of the Appeal dated April 8, 2024, the case has no relevance or application to the case at hand because it does not involve the *two dismissal rule*. It appears to be a convenient precedent which serves the Panel's objective to dismiss the appeal, but the issues involved and the circumstances of dismissal significantly contrast.

Plaintiff has not been ordered to participate in arbitration with the Defendant, Secretary Frank Kendall, III, and dismissal was a voluntary dismissal initiated by the Plaintiff in the face of preliminary proceedings which were prejudicial to the unfair advantage of the Defendant. Under FRCP 41(a)(1)(B), the “Effect” of a second voluntary dismissal by the Plaintiff is the following: “...if the Plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal acts as an adjudication on the merits.” Adjudication on the merits should translate to a “final decision,” which constitutes a Final Order or Judgment, and should therefore cross the finality threshold for appellate review. A final decision is one that “ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment.”

Plaintiff’s civil action from 2021 was promptly re-filed in 2022 to incorporate evidence required to meet or exceed the threshold of the “Plausibility Standard.” Notwithstanding, the case has faced considerable resistance, and preliminary proceedings have been prejudicial to the unfair advantage of the Defendant. To address concerns, Plaintiff filed three Formal Complaints of Judicial Misconduct. But with the imposition of an indefinite Stay, Plaintiff reached out to the White House, Pentagon Officials, Congressman Williams, and Ms. Opal Lee for assistance. A Formal Review was then initiated on behalf of President Biden.

After the Presidential Review had commenced, a Congressional Inquiry was initiated and served to highlight documentation which had been submitted but overlooked by the Board during adjudication of respective applications. This documentation is now front and center, and can no longer be ignored: The fact the issuing Commander of both Adverse Administrative Actions and Negative Evaluations, Major Kelly Bledsoe, was fired as a result of the Congressional Inquiry initiated in 2002 by the Plaintiff in response to Retaliatory Personnel Actions Prohibited by virtue of Whistleblower Protections. These actions by Plaintiff's Commander were in direct violation of Title 10 U.S. Code 1034, Protected Communications; Prohibition of Retaliatory Personnel Actions.

Whistleblower Protections are fundamental to the rights of all Americans, but especially to service members who perform their duties under both the U.S. Constitution, and the Uniform Code of Military Justice or UCMJ. Denial of those protections precludes members from fulfilling their sacred oath 'to protect and defend the Constitution against all enemies, foreign and domestic.' Which are the circumstances the Plaintiff was subjected to, a situation where the U.S. Constitution was circumvented by an unchecked Chain of Command. The only refuge was through agencies extending the inherent benefits and privilege of protected communications, but due to the fact those protections were denied, retaliation ensued and has persisted. This Court has the authority to help rectify

the injustice and ensure those protections, not only for the Plaintiff, but for all who wear the uniform in service to our country.

CONCLUSION

The Panel failed to provide an opinion in response to arguments presented by Plaintiff which contested the disposition of dismissal from federal district court as being “without prejudice.” An opinion was important in this case, because if disposition of Plaintiff’s most recent voluntary dismissal was in fact “without prejudice,” he is within his rights to re-file the case in federal district court. But that would not be consistent with FRCP 41(a)(1)(A) and (B).

For the foregoing reasons, Plaintiff respectfully requests that this Court issue a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fifth Circuit.

DATED this 3rd day of September, 2024.

Respectfully submitted,

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