No. 24-5797 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

DEANDRE ARNOLD,

Petitioner,

v.

TYARIELLE PATTERSON,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether a claim for the intentional infliction of emotional distress concerning parental interference in violation of a state child custody order under diversity jurisdiction is barred under the Domestic Relations exception if the violation of such state child custody order is not an element of the claim sought?

Whether a judicial order is sufficient for disqualification of a Circuit Judge under *Liteky* if the judicial order in question evidences a reasonable or actual appearance of bias, prejudice, partiality and/or antagonism as to make any fair judgment impossible?

Whether the application of this court's holdings in *Berger* and *American Steel Barrel* as it relates to facts antedating a trial to prevent a discontented litigant to oust a *trial* judge because of adverse rulings apply to a *Circuit* Judge acting under their appellate jurisdiction of a *trial* court's order?

PARTIES TO THE PROCEEDING

The Petitioner is Deandre Arnold and is the Appellant in the Eleventh Circuit Court of Appeals.

The Respondents is Tyarielle Patterson, the ("Appellee"). The Appellee was never summoned nor participated in the district court or appellate proceedings below as the district court action was dismissed *sua sponte* before the Appellee was ever served summons.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner states that he has no parent company, and no publicly held company owning 10% or more of any stock.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Deandre Arnold, the appellant below, respectfully petitions the Court for a Writ of Certiorari to review the judgments of the United States Court of Appeals for the Eleventh Circuit entered in on July 24th, 2024, and September 3rd, 2024.

ORDERS AND OPINIONS ENTERED BELOW

On 5/24/2024, Middle District Judge Thomas Barber for the Tampa Division entered an order dismissing the Petitioner's case for lack of jurisdiction. (App. A) On 7/24/2024, district judge Barber denied Petitioner's motion to proceed "in forma pauperis" ("IFP") on appeal. (App. B) On 7/24/2024 Circuit Judge Robert Luck entered in an order denying Petitioner's motion to proceed "in forma pauperis" ("IFP") on appeal. (App. C.). On 9/3/2024, Circuit Judge Robert Luck entered an order denying Petitioner's motion to disqualify. (App. D.).

JURISDICTION

The Eleventh Circuit denied Petitioner's IFP motion on July 24th, 2024, and denied the Petitioner's motion to disqualify on September 3rd, 2024. This petition is timely filed pursuant to Supreme Court Rule 13.1. This court has jurisdiction under 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

I. Background Facts.

A. Petitioner's Complaint in the District Court.

On May 1st, 2024, Petitioner ("Arnold") filed a diversity action against his child's mother, ("Patterson or Appellee") in the Middle District Court of Florida, Tampa Division, alleging that as early as November 18th, 2023 and as recent as April 12th, 2024 and continuing, that Patterson by oral and written communication knowingly and willingly committed 39 (thirty-nine) counts of extortion against him in violation of Fla. Stat. § 836.05 by maliciously threatening an injury to

Arnold – a malicious threat of illicitly retaining possession of their minor child in violation of their child custody order. [*Arnold v Patterson*, 8:24-cv-01054, Doc. 1. Par. 1-9]. Arnold alleged that Patterson engaged in these acts with the intent to compel him to voluntary accept service of summons of a child support contempt action filed by Patterson in the State of Georgia in return for the court-ordered possession of their minor child. [Id. Par. 112-116]. Arnold alleged that Patterson purportedly filed a contempt action in the State of Georgia in December of 2022 and had since November of 2023 conditioned the court ordered parenting time of Arnold's minor child on his voluntary acceptance of summons in this action. [Id. Par. 1, 72]. Screenshot images of the parties texts communications were in fact included in the complaint in which one message read, "*Once* he served she [referring to the parties minor child] can come." [Id. pg. 15-16] Arnold alleged that these acts caused him severe emotional and psychological trauma. [Id. Par. 111].

Thus, Arnold filed two (2) counts against Patterson. In the first count, Arnold sought damages for the Intentional Infliction of Emotional Distress ("IIED") based on the Appellee's violation of Florida extortion statute, Fla. Stat § 836.05. [Id. Par. 109-118] In the second count, Arnold sought punitive damages against Patterson for her acts in committing IIED. [Id. Par. 119-125]. Arnold sought $1,500.00 for each day of Appellee's extortionate interference, $30,000.00 for the IIED and $50,000.00 in punitive damages. Arnold never challenged any state court order, never sought to have the district court intervene in any child custody proceeding nor was the relief requested dependent upon the status of the parties in any state court order.

II. **Statement of the Proceedings**.

B. Dismissal of Petitioner's Complaint by the district court, filing of a Notice of Appeal and the denial of pauper status on appeal.

On May 2nd, 2024, less than 24 hours after the Complaint was filed, Fla Middle District judge for the Tampa Division, Thomas Barber, dismissed Arnold's action in a three (3) page order

for the lack of jurisdiction. (App. A.) Importantly to note, this would be the third consecutive assignment of Judge Barber to Arnold's federal cases filed in the Middle District court in a span of less than six (6) months. Judge Barber's order alleged the following, to wit: "The Court previously dismissed a substantially similar case filed by Plaintiff, finding that (1) **to the extent** he was seeking review of state court proceedings, the action was barred by the Rooker-Feldman doctrine; (2) **to the extent** Plaintiff asked the Court to intervene in an ongoing state court proceeding, the Court would decline to do so under the Younger abstention doctrine; and perhaps most importantly, (3) **the action appeared** to fall squarely within the domestic relations exception to federal court jurisdiction. See Arnold v. Patterson, No. 8:23-cv-2708-TPB-TGW, 2023 WL 8778501 (M.D. Fla. Dec. 19, 2023). Plaintiff appealed the dismissal of that case, and the appeal remains pending. Rather than await the Eleventh Circuit's decision, Plaintiff instead elected to file a largely duplicative lawsuit. **For the same reasons discussed in the Court's prior order in Plaintiff's other case, this case is dismissed for lack of jurisdiction**. (App. A) Also within Judge Barber's order, he warned Arnold that if he continued to file frivolous or duplicative cases here or in any other federal court he would be subject to monetary sanctions or an order directing the clerk to reject his future filings. (App. A p.3).

On May 2nd, 2024, Arnold filed a Notice of Appeal against judge Barber's order dismissing Arnold's case for lack of jurisdiction and on May 17th, 2024, filed a Motion to proceed IFP on appeal. On May 24th, 2024, judge Barber denied Arnold's IFP motion on the grounds that his complaint lack any arguable basis in law or fact and was frivolous.

C. Petitioner files Motion to proceed IFP in the United States Court of Appeals and motion to expedite a ruling on his IFP motion.

On May 3rd, 2024, Arnold's appeal was docketed in the United States Court of Appeals for the Eleventh Circuit. On May 29th, 2024, Arnold filed his IFP motion in the court of appeals.

On May 30th, 2024, Arnold filed an "Emergency Motion to Rule on IFP Motion within 8 days to Prevent An Impediment of Justice". In such motion, Arnold contended that the 11th Circuit discriminated against him and pauper filers on the basis of their poverty absent the least restrictive means by burdening him under circuit court rules, which rules deprived him of the benefit of briefing until said circuit court ruled on his motion to proceed IFP. [USCA11 24-11420, Doc. 30, pg. 9-14] Arnold contended that the 11th Circuit treated him differently than paid filers who received the immediate benefit of briefing on appeal.

D. Circuit court judge Robert Luck denies Petitioner's Motion to proceed IFP and Emergency motion to rule on his IFP motion.

On July 24th, 2024, approximately fifty-seven (57) days after Arnold filed his IFP motion in the court of appeals and during this court's summer term, Circuit Court Judge Robert Luck entered in an order denying Arnold's IFP motion. (See App. C) Circuit judge Robert Luck's order gave no reasons for the dismissal, his order only stated, "Deandre Arnold's motion for leave to proceed in forma pauperis on appeal is DENIED as the appeal is frivolous." (App. C p. 2.) The clerk's procedural order gave Petitioner notice of a fixed time to pay his filing fee within 14 days of said order to avoid the dismissal of his appeal. (App. C. pp. 1).

E. Petitioner Files Motion for Panel Review and Motion to extend time to pay filing fee until a ruling on his Motion to Disqualify.

Pursuant to 11th Cir. R. 27-2, orders denying pauper status are "subject to review by the court." Arnold sought such review 14 days later on 8/7/2024, by filing a "Motion for Review **by Panel of the Court** of Circuit Judge Robert Luck's Order Denying Appellant Pauper Status" and a "Motion for Extension of Time to Pay Filing Fee and to File Notice of Payment of Filing Fee" in the Circuit court. In Arnold's motion for extension of time, Arnold alleged that he intended to file a motion to disqualify Robert Luck and to void the order denying his IFP motion contending

that partiality and antagonism played a role in the order requiring him to now pay filing fees and that the need to pay any filing fees would become fruitless if the order was void. Arnold alleged that because the dismissal of said appeal before such motion was decided affected his ability to be heard on his motion, he requested an extension until the court ruled on said motion.

F. Petitioner's Files Motion to Disqualify Circuit Judge Robert Luck.

On August 8th, 2024, Arnold filed a Motion to Disqualify Judge Robert Luck contending that facts showed that judge Luck had an actual or reasonable prerequisite intent to obstruct or to reach a decision adverse to him evidencing bias, partiality, prejudice and antagonism as to make any fair judgment impossible. [USCA11 24-11420, Doc. 15. p. 12-16]. Arnold alleged that the entry of Luck's order denying his IFP motion evidenced an intent to reach a decision adverse to him because although judge Luck was presumed to know the law and had the experience to apply it, the facts showed he abandoned the law and his experience to delay the rightful review of the order appealed from – the merits of the order dismissing his complaint and to weaponize his poverty by conditioning further review of those merits on his payment of a filing fee. [Id. Doc. 15, p. 12] Arnold based this contention on legal claims that showed that the denial of his IFP motion as frivolous, was frivolous in of itself which delayed the review of the merits dismissing his action. [Id. Doc. 15, p. 16-20]. The relief requested that Judge Luck disqualify himself and that his order denying Arnold's IFP motion be vacated void. [Id. Doc. 15, p. 16].

G. Circuit Judge Robin S. Rosenbaum Grants Petitioner's Motion for extension of time to pay filing fee.

On August 20th, 2024, a separate circuit judge other than Robert Luck, circuit judge Robin Rosenbaum entered an order stating verbatim "Appellant's motion for extension of time to pay the filing fee 14 days after his motion for reconsideration and motion to disqualify are ruled on is granted." . .

H. Circuit Judge Robert Luck denies Petitioner's Motion to Disqualify.

On September 3rd, 2024, Circuit Judge Robert Luck entered in a one (1) page order denying Arnold's motion to disqualify. (App. D) His order gave no reasons for the denial.

I. Circuit Judge Robert Luck and Robin Rosenbaum denies Arnold motion for panel review, construed as a Motion to Reconsider.

On 9/10/2024, Circuit judges Robert Luck and Robin Rosenbaum entered an order construing Arnold's motion for panel review filed on 8/7/2024 as a motion for reconsideration and they denied the motion under legal grounds relevant to a motion to reconsider. In the motion, Arnold explicitly stated and argued that he did not seek nor files a Motion to Reconsider from Robert Luck's 7/24/2024 court order which had the effect to be rolled back to the judge who entered the order but sought review by a panel pursuant to 11th Cir. R. 27-1(d)(3). [Doc. 13. p. 5]. Pursuant to 11th Cir. R. 27-1(d)(3), "A single judge may… [and] is authorized to act, subject to review by the court, on the following motions:… (3) to appeal in forma pauperis pursuant to FRAP 24 and 28 U.S.C. §1915(a)." No time limit was given to seek such review however Arnold sought such review of the 7/24/2024 order within 14 days of that order as Arnold's motion was filed on 8/7/2024 following the denial of his IFP motion on 7/24/2024 – within 14 days.

J. Arnold files Petition for Panel Rehearing of the denial of the motion to reconsider.

On 9/24/2024, Arnold filed a Petition for Panel Rehearing against the order entered in by circuit judges Luck and Rosenbaum on 9/10/2024 denying Arnold's construed motion for reconsideration. Arnold contended that judge's Luck and Rosenbaum's construing of his petition for panel review as a motion to reconsider was a clear error in law and that their denial of his IFP motion was a clear misapplication of correct precedent to the facts. Arnold requested that a panel of the court reverse and vacate their decision and Grant his IFP motion. This appeal followed seeking review of judge Luck's order denying Arnold's IFP motion and his motion to disqualify.

REASONS FOR GRANTING THIS WRIT

The grant of Certiorari is necessary because the United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings that it calls for an exercise of this Court's supervisory powers for judicial acts that exceed the jurisdiction of the lower court. The Eleventh Circuit Court judge's decision not only forecloses diversity tort actions for claims of intentional infliction of emotional distress based on claims alleging parental interference which claims for relief do not involve the elements of a failure to act or to perform to a child custody order, but outright considers them frivolous. For tens of thousands of pauper filers such as the Petitioner who are economically challenged and cannot afford the payment of filing and docketing fee's, they're motion to proceed IFP on appeal without payment stands no chance when it is presented to a judge of the Eleventh Circuit Court of Appeals, especially the judges who enters these orders below. In fact, even if the filing fee was paid, the Eleventh circuit court would simply certify that any paid filer's action similar to Arnold's is frivolous, thereby foreclosing protections sought in a federal forum. This is becoming the current status quo in the Eleventh Circuit which completely eviscerates any attempts to have these cases decided on their merits which affects tens of thousands of litigants across several states who *will* be deprived of a federal court forum for claims alleging tort injuries contrary to this court's dominant instruction. This type of disavowing must be met by this court's supervisory powers and Arnold's case is an excellent case to bring such court within the bounds of the usual course of judicial proceedings.

I. A FEDERAL TORT SUIT FOR IIED INVOLVING CLAIMS WHICH ELEMENTS DO NOT INVOLVE A FAILURE TO ACT OR TO PERFORM TO A CHILD CUSTODY ORDER IS NOT BARRED UNDER THE DOMESTIC RELATIONS EXCEPTION.

Under the contentions of the Eleventh Circuit, any Federal tort suit involving claims which elements do not involve a failure to act or to perform pursuant to a state court order is

frivolous. Although the Circuit court did not give reasons in its denial of Arnold's IFP motion, one may assume that it follows the district court's reasoning in denying the IFP motion. One of the reasons the district court determined that Arnold's complaint was frivolous was because of the domestic relations exception. (App. B, A. p. 2) Arnold contends in any event, the domestic relations exception cannot apply to any federal tort case for IIED which involves the violation of a child custody order if its claims for relief do not involve the elements of a failure to act or to perform to a child custody order. Arnold alleges that the Florida case of *State v Roberts* is an excellent case to determine whether the elements of his extortion claims involve a failure to perform to a child custody order, considering his claims of extortion are based on Florida law. In considering the factors to determine jurisdiction under the omission-to-perform a duty, *State v Roberts*, citing the *Caruso* court, stated one of the factors were "[W]hether the charged offense... **forms the foundation or essence of an offense**, even though the omission is not the offenses only element." State v Court Roberts, 143 So. 3d 936 (Fla. Dist Ct. App 2014)[1]. Arnold sought damages against his child's mother for IIED based on her acts of extortion under Florida law. Neither of the elements of extortion under Florida law require any violation of a custody order. Under Florida law, "[T]o prove the crime of extortion the State must prove the following four elements... [1] verbal communication... [2] by such communication threatened an injury to the person ... [3] the threat was made maliciously... [4] with the intent to extort money... or with intent to compel the person so threatened... to do any act... against his or her will." Duan v

[1] "[I]n *People v Caruso*, 119 Ill.2d 376, 116 Ill. Dec. 548, 519 N.E.2d 440 (1987), the court held that the father's acts of harboring his children in Ohio and failing to return them to the mother in violation of an Illinois custody order subjected him to prosecution in Illinois... The *Caruso* court found this language consistent with the Supreme Court's holding in Strassheim v. Daily, 221 U.S. 280, 285, 31 S. Ct. 558, 55 L. Ed. 735 (1911), that acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect." State v Court Roberts, 143 So. 3d 936 (Fla. Dist Ct. App 2014).

State, 970 So. 2d 903 (Fla. Dist. Ct. App. 2007).; *Duan v State, 970 So. 2d 903 (Fla. Dist. Ct. App. 2007)* (A threat to a person's *mental* well-being can constitute a threat of injury to a person). These four elements are absent any mentioning of a failure to perform to a child custody order.

Domestic relations are cases concerning child custody decrees and divorces which are historically based on "[H]usband and wife, parent and child, belong[ing] to the laws of the States and not to the laws of the United States." *Ankenbrandt v. Richards, 504 US 689 – Supreme court (1998)*. Although Arnold's claims mention that the Appellee unlawfully kept court-ordered custody away from Arnold, those claims do not form the foundation or essence of Arnold's claims for extortion under Fla law for which his ultimate claim is based upon (Extortion). Thus, his claims cannot remotely be regarded as such as to "[R]egulate the domestic relations of society and produce an inquisitorial authority in which federal tribunals enter the habitations and even into the chambers and nurseries of private families." *Ankenbrandt v. Richards, 504 US 689 – Supreme court (1998)*. Because Arnold's claims do not involve any adjudication concerning the elements of the violation of a state court custody order, no Domestic Relations can be applicable to the relief requested under Article III jurisdiction in Arnold's case.

II. THE ELEVENTH CIRCUIT'S DECISION IS IN CONFLICT WITH THIS COURT'S DECISION IN *ANKENBRANDT*.

Continuing, this court said "[T]hat the domestic relations exception encompasses only cases involving the issuance of a divorce, alimony, or child custody decree." *Ankenbrandt v. Richards, 504 US 689 – Supreme court (1998)*. This court made that determination when viewing its decision in *Barber* for which the domestic relations exception authority stemmed from. With reference to *Barber*, this court said "[W]e are unwilling to cast aside an understood rule that has been recognized for nearly a century and a half, we feel compelled to explain why we will continue to recognize limitation on federal jurisdiction." *Id*. This court determined "[W]hen

Congress amended the diversity statute in 1948 to replace the law and equity jurisdiction on with the phrase "all civil actions," we presume Congress did so with full cognizance of the Court's nearly century-long interpretation of the prior statues, which had construed the statutory diversity jurisdiction to contain an exception for certain domestic relations matters." *Id.* This court then concluded that "[T]he *Barber* court did not intend to strip the federal court of authority to hear cases arising from the domestic relations unless they seek the granting or modification of a divorce or alimony decree." *Id. Ankenbrandt* then concluded that the Court of Appeals erred by affirming the district court's ruling declining jurisdiction based on domestic relations exception to diversity jurisdiction. It said "[B]ecause the allegations in this complaint do not request the District Court to issue a divorce, alimony, or child custody decree, **we hold that the suit is appropriate for the exercise of § 1332 jurisdiction** given the existence of diverse citizenship between petitioner and respondent and the pleading of the relevant amount in controversy." Id. This court's dominant instruction has been followed by multiple Federal district and circuit courts to the letter and even prior cases are consistent with its ruling. For instance, *See Drewes v. Ilnicki, 863 F. 2d 469 (CA6 1988)* (holding that the exception does not apply to a tort suit for intentional infliction of emotional distress). *Id.*; *Raftery v. Scott, 756 F.2d 335, 338 (4th Cir. 1985)* (district court has jurisdiction over damages for intentional infliction of emotional distress where former husband alleges that former wife has taken custody of child illegally).

Arnold's claims is almost an identical case of *Raftery*. But unlike *Raftery*, Arnold did not allege the interference with his parenting time caused him emotional distress, he alleged that the Appellee's acts of extortion did by her conditioning the court ordered custody of his child on his voluntary acceptance of summons in a child support contempt action. [*Arnold v Patterson*, 8:24-cv-01054, Doc. 1. Par. 112-116]. These claims in no way seek the issuance of any child custody

decree in the Federal court. Arnold's suit "[N]o way [sought] such a decree; rather, it alleges that [Patterson] ... committed torts against [him]. *Catz v. Chalker, 142 F. 3d 279 (6th Cir. 1998)*.

A. Intentional Infliction of Emotional Distress claims does not depend on the determination of the Appellant's parental status.

Under Florida law, a parent may sue for IIED for parental interference regardless if that parent is a custodial parent. "[W]ith regard to the [tort] of intentional infliction of emotional distress claim, the trial court erred in determining that the father lacked standing and in dismissing the claim... The concept of "standing" in terms of custodial rights is therefore irrelevant if the father can satisfy **the four elements of the tort**. *Stewart v. Walker 5 So. 3d 746 (Fla. Dist. Ct. App. 2009)*. Importantly to note, even the four elements of IIED do not require the violation of a child custody order.[2] Arnold's IIED claim against his child's mother for *parental* interference does not depend upon his parental status in which he is currently without "physical" custody or was seeking physical custody in a pending trial. Arnold has standing to sue Patterson for IIED based on her extortion and no status related to a court order questions his claim. This is precisely why Arnold did not sue Patterson for interference of a custodial relationship because he would in fact "[L]ack standing to bring this suit because he is not the custodial parent." *Id.*

B. The Child Custody and Child Support Orders were not implicated in any way as to be barred by the Domestic Relations Exception under diversity jurisdiction.

Arnold's claims is simply one involving the extortionate usage of a child support order by his child's mother conditioning his court ordered child custody on his voluntary acceptance of a summons in a child support contempt action. These are "acts" that Arnold alleged caused him IIED for which damages were sought. There can be no arguable claim that any enforcement of

[2] "With regard to the [IIED] claim... the elements of this cause of action are... (1) The wrongdoers conduct was intentional or reckless... (2) the conduct was outrageous... (3) the conduct caused emotional distress... and (4) the emotional distress was severe." *Stewart v. Walker 5 So. 3d 746 (Fla. Dist. Ct. App. 2009)*.

Arnold's child custody order would occur making the domestic relations applicable even if the relief requested by Arnold was even provided. The whole subject of domestic relations was only designed for those "[R]emedies which are attendant to domestic situations sitting before state courts in which federal courts are poorly equipped to handle the task... However, Federal courts [are] equally equipped [as state courts] to deal with complaints **alleging the commission of torts**" and breach of contract." *Chevalier v. Estate of Barnhart, 803 F. 3d 789 (6th Cir. 2015)*. Because Arnold sought damages for extortion which does not involve the issuance of a state court order and did not seek claims which elements depended upon the violation of a child custody order the Domestic Relations exception cannot even arguably apply to Arnold's case.

III. THE ELEVENTH CIRCUIT'S DECISION WAS FAR DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS.

"[T]he Supreme Court has explained the difference between an assertion that is frivolous and an assertion that is wrong... An assertion is not frivolous unless it lacks an arguable basis in either law or fact." *Daker v. Commissioner, Ga Dept. of Corrections, 820 F. 3d 1278 (2016) quoting Neitzke v. Williams, 490 US 319 – Supreme Court (1989)*. The appeal below was so overwhelmingly far from any frivolity, that for the Eleventh Circuit Court of Appeals to consider it frivolous exceeds the bounds of the usual course of judicial proceedings. There was absolutely no legitimate basis to conclude that Arnold's appeal was frivolous or not a case cognizable under Article III jurisdiction. Although the Circuit court judge did not give any reasons in his order in holding Arnold's appeal frivolous, it is clear that the usual suspect doctrines barring similar suits like Arnold's (i.e. Rooker-Feldman, Younger Abstention and the Domestic Relations exception) is the only legal basis that could be utilized to bar a suit similar to Arnold, before its eventual review of the facts to find no basis for the dismissal. In fact, it is these three doctrines that the district court gave in dismissing Arnold's complaint for the lack of jurisdiction. As Arnold has

already expressed how abstention based on the Domestic Relations is inapplicable, Arnold now addresses how neither of the additional doctrines asserted by the District court apply as well.

A. The Younger Abstention Doctrine did not Apply to Arnold's Complaint.

It is clear that "[Y]ounger requires that the federal relief the plaintiffs seek... interfere with those [state] proceedings, and that if it would not interfere..., then the federal court has no basis for abstaining." *Wood v. Fredrick, No. 21 12238 Court of Appeals 11th Circuit (2022)*. The Younger Abstention Doctrine did not apply. Arnold only sought to punish the Appellee for using state court orders for extortionate purposes, not to prevent any state proceeding. Also, this type of relief was not unique in any way to flail against any proceeding directly nor indirectly in such a manner that *Younger* could be asserted to apply in the belief that it may coerce the Appellee from going through with any state proceeding. If anything, Arnold's relief could prevent the Appellee from *possibly* enforcing a state court order "in a criminal manner." However, emphasis must be placed on the word "*possibly*" because the Appellee could in fact continue to act in a manner that Arnold alleged was criminal, making any *possible* coercion, speculation to begin with. So even still, this *possible* interference via any indirect coercion would not result in any justification to bar Arnold's suit under *Younger* because the entire premise of its "possible" inteference would be based only on speculation when "[O]nly the clearest of justifications merit *abstention*." *Leonard v. Alabama State Bd. of Pharmacy, 61 F.4th 902 (2023)*. For Arnold's civil complaint to be barred by *Younger*, his claims or the relief must first have invited Federal intervention of a state court proceeding. Because Arnold's claims did not, *Younger* could not even arguably apply.

B. No facts were asserted that the filings were state initiated for *Younger* to apply.

Abstention has only been appropriate in cases in which the state court proceeding is state initiated. *See Sprint Communications, Inc. v. Jacobs quoting Guillemard Ginorio v. Contreras-*

Gómez, 585 F.3d 508, 522 (C.A.1 2009) ("[P]roceedings must be coercive... in most cases, state-initiated, in order to warrant abstention."); "[I]n cases of this genre, a state actor is routinely a party to the state proceeding and often initiates the action." *Id.* Arnold's complaint only mentions that a child support case was purportedly filed by Appellee. [Arnold v Patterson, 8:24-cv-01040, Doc. 1. Par. 1, 72]. That private child support action does not implicate any state interest of the state and was not "[I]initiated by the "State in its sovereign capacity."" *Sprint Communications, Inc. v. Jacobs, 134 S. Ct. 584 - Supreme Court (2013)*.[3]

C. The Rooker-Feldman Doctrine did not apply to Arnold's civil complaint.

As to *Rooker-Feldman*, it is well known that its doctrine applies only to state court losers seeking to overturn state court orders, "[B]ecause the claim was based on [the] belief that the state court's ruling was wrong, and ... essentially asks the district court to "review and reverse the Georgia court." *Casale v. Tillman, 558 F. 3d 1258 – Court of Appeals (2009)*. Arnold's claims are based on the alleged illicit conditioning of Arnold's court ordered parenting time upon his voluntary acceptance of service of summons of a child support contempt action filed by the Appellee for which damages for IIED were sought. These claims are not tailored to challenge any state court order directly nor indirectly. The claims only challenge the illegal usage thereof. There is no case that Arnold can find or existing in which the Rooker-Feldman Doctrine barred a Federal suit that did not challenge a state court order and was yet ruled frivolous, other than the Petitioner's case in the district court. (See App. A-B) But even with the district court concluding Arnold's case as frivolous, it did not conclude the complaint was barred by *Rooker-Feldman*, it stated verbatim, "**To the extent** that [Arnold] was seeking review of state court proceedings, the

[3] For the circuit court to think otherwise would be to "[E]xtend Younger to virtually all parallel state and federal proceedings, at least where a party could identify a plausible important state interest. That result is irreconcilable with our dominant instruction." *Sprint Communications, Inc. v. Jacobs, 134 S. Ct. 584 - Supreme Court (2013)*.

action was barred by the Rooker-Felman Doctrine." (See App. A) The Circuit court judge did not provide any reasons at all for denying Arnold's IFP motion, which on information and belief, he would have surely done if there was *any* legitimate reason. Simply because Arnold's claims nor did his relief request or invite any challenges to a state court order, *Rooker-Felman* cannot even be asserted to arguably apply to any of the facts of Arnold's case. As such, to conclude that Arnold's complaint was frivolous overall, was a frivolous judicial court order in of itself.

IV. CIRCUIT JUDGE ROBERT LUCK WAS DISQUALIFIED UNDER *LITEKY.*

"[T]o satisfy the requirements of Section 455(a), a party seeking recusal must offer facts, and not merely allegations, that evidence partiality." *US v. Montemayor, Dist. Court ND No. 1:09-cr-00551-WSD-2 (2016)*. Further, "[S]ome extrajudicial matter is neither a necessary nor a sufficient condition under any of the recusal statues." *Liteky v. United States, 510 US 540 Supreme Court (1994)*.[4] **This court has never held that all judicial rulings were not sufficient to disqualify a judge**. "[W]e said in American Steel Barrel that the recusal statue "was never intended to enable a discontented litigant to oust a judge because of adverse rulings … but to prevent his future action in the **pending cause**." *Id*. This court made clear that the only reason adverse rulings "alone" could not satisfy the disqualification of a federal judge is only because, "[T]hey cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required when no extrajudicial source is involved." *Id*. Arnold contends that disqualification is warranted if a judicial ruling evidences that degree of favoritism or antagonism that fair judgment is impossible even if no extrajudicial source is involved. Arnold further alleges that this is especially true in the United

[4] The court further said "[W]e found it obvious in *Berger* that the [recusal] affidavit "must be based upon facts **antedating the trial**, not those occurring **during the trial**." *Liteky v. United States, 510 US 540 Supreme Court (1994)*.

States Court of Appeals where such court acts a reviewing court "on appellate review" as mentioned in *American Steel Barrel* and not a "trial court" as mentioned in *Berger* for which it was said that "bias or prejudice... against a judge **must be based upon something other than rulings** in the case," [*Berger v United States, 255 US 22 – Supreme Court (1921)*] solely on the concern that "[I]n *Berger*... the [recusal] affidavit "must be based upon **facts antedating the trial**." *Liteky v. United States, 510 US 540 Supreme Court (1994)*. Trials do not occur in the Appellate courts. Thus, whether the framework of *Berger* and *American Steel Barrel* even apply to a circuit judge acting on *appellate* review of "trial court orders" has never been decided.

(i) *Liteky* authorizes disqualification of a federal judicial officers for adverse judicial rulings evidencing a degree of favoritism or antagonism as to make any fair judgment impossible.

Arnold argues that there must be a line between good faith judicial error and bad faith judicial rulings and conduct entered with an intent to reach a decision adverse to any litigant. Petitioner contends this dividing line has been already drawn by this court in *Liteky*. In *Liteky*, this court stated "[A] prospective juror in an insurance-claim case may be stricken as partial if he always voters for insurance companies; but not if he always votes for the party whom the terms of the contract support." *Liteky v United States, 510 US 540 - Supreme Court (1994)*. Arnold contends that following *Liteky,* this dividing line can be especially identified by placing judicial rulings having an arguable basis in law or fact on one side and by placing those judicial rulings that "affirmatively" do not on the other but right along with any judicial officer's presumption and experience to know what the law clearly demands, the law itself and any reasonable claims supported by facts as to why a judge would depart from the law and their experience. Arnold alleges that the facts of this case easily identifies that judge Luck's adverse ruling *affirmatively* resides on the latter of this dividing line. Arnold argued in his motion to disqualify that if a belief

exists that antagonism and partiality evidenced by an adverse judicial ruling is not a sufficient for disqualification of a judge solely because it is a judicial ruling, that belief must assert how an order rendered with the intent to obstruct Justice does not evidence the degree of favoritism or antagonism required even when no extrajudicial source is involved. [USCA11 24-10634, Arnold v Chronister, Doc. 15, p. 14]. Circuit judge Robert Luck provided no reasons for his denial.

(ii) Judge Luck's refusal to disqualify is in conflict with this Court's Opinion in *Likety*.

As to all three purported doctrines above, Circuit Judge Robert Luck was presumed to know that none of those doctrines applied to Arnold's case as he is "[P]resumed to know the law and to apply it in making [his] decisions." *Provenzano v. Singletary, 3 F. Supp. 2d 1353 (M.D. Fla. 1997)*. This presumption is what prompted Arnold to file a motion to disqualify judge Luck contenting that facts showed the actual or reasonable appearances that judge Luck's denial of his IFP motion was done to deliberately obstruct and impede Justice when weighed against judge Luck's experience and presumptions to know the law & what the law required on the one hand, against his acts contrary to the law and how it operated to obstruct Justice or further a scheme on the other – to weaponize Arnold's poverty by conditioning his right to proceed on appeal on his payment of a filing fee that judge Luck knew or had reason to know Arnold could not afford evidenced by his paupers affidavit. [USCA11 Arnold v Patterson, 24-11420, Doc. 15, pg. 12-16] Arnold contends that one may infer that judge Luck's order evidences that degree of favoritism or antagonism because the facts show that judge Luck's decision was so far departed from this court's dominant instruction in *Neitzke* that it evidences an intent to do wrong – an evil mind. An "[E]vil mind can be proven either by direct evidence or by evidence that his conduct was so oppressive, outrageous, or intolerable such that an evil mind can be inferred." *Walter v Simmons,*

169 Ariz. 229 (Ariz. Ct. App. 1991). One may further infer that the fact that no reasons were for the denial were given was because judge Luck knew they were no legitimate reasons for a denial.

(iii) Facts Reasonably support motives that Judge Luck departed from the law, his experience and this court's dominant instruction.

Arnold further asserts cognizance of Luck's intent to deny his IFP motion may also be inferred based on what the denial operated to do. The denial of Arnold's IFP motion *has* caused a delay a review of the merits of the district court order dismissing his complaint because, "[A]n action must be reviewed to determine frivolity before addressing the merits of the claim." *Brown v. Dept of Corrs, No 1155 C.D. 2016 (Pa. Commw. Ct Aug 8 2017)*. "[B]ecause there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer from the [facts and] circumstances surrounding." *United States v Kozminki, 487 U.S. 931 (1988)*. Arnold argues the only plausible reason a judge would depart from their experience and the law *is* to gain some sort of an advantage. The facts reasonably support that these advantages were to delay a review of the merits of the district court order dismissing Arnold's complaint for the lack of jurisdiction because denying Arnold's IFP motion would precisely delay such review. There is absolutely no legal premise in which Arnold's civil complaint could be considered not cognizable in the Federal court let alone frivolous if not but for an evil mind. Because Lucks's judicial order evidences partiality, bias, prejudice and a degree of favoritism or antagonism making fair judgment impossible, he should have disqualified.

CONCLUSION

For all the reasons stated above, the Petitioner respectfully requests that this Honorable Court to GRANT the Petitioner's Writ of Certiorari.

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