

No. 24-609

IN THE
Supreme Court of the United States

JAMES L. MARTIN,

Petitioner,

v.

DAVID H. NIXON,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF DELAWARE**

**RESPONSE TO PETITION
FOR A WRIT OF CERTIORARI**

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QUESTION PRESENTED

Can the Petitioner assert a violation of the Fifth Amendment's Taking Clause, as applied to the states under the Fourteenth Amendment, if he failed to appeal the Trial Court's Order of November 1, 2023, to the Supreme Court of Delaware, and, furthermore, suffered no taking?

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STATEMENT OF CASE

The litigation in this matter arose from a bicycle/car accident occurring in Wilmington, Delaware on October 10, 2015. The case has had a difficult track. The matter was bifurcated for purposes of trial. A separate trial was held on the issue of liability. Another trial was held on the issue of damages. After the second trial, an appeal was filed by Mr. Martin to the Delaware Supreme Court. In that appeal, Mr. Martin raised issues regarding various rulings by the trial judge limiting the scope of Mr. Martin's expert witness as well as a ruling by the trial judge denying Mr. Martin's motion to recuse himself. The date of the Order affirming the judgment of Superior Court was March 18, 2023.

After the issuance of that Order of the Delaware Supreme Court, Mr. Martin then filed motions in the Delaware Superior Court captioned Plaintiff's Supplemental Amended Rule 50(b) Renewal of Motion for Judgment as a Matter of Law After Verdict, Plaintiff's Amended Rule 59(d) Motion to Alter or Amend the Judgment, or Alternatively, Amended Motion for a New Trial, and Plaintiff's Rule 60 Motion to Reopen. The Superior Court Order denying those motions is set out at Appendix B of Mr. Martin's Petition.

While Mr. Martin's motions were pending, Mr. Nixon's attorney filed a motion in Superior Court requesting that the Court issue an Order requiring the plaintiff to satisfy the judgment in the above-captioned matter, since defendant stood ready to make full payment of the amount of the judgment in the above-captioned matter as well as interest and costs (\$66,408.11). As a result of that motion,

the trial Court issued an Order dated November 1, 2023. That Order is set out as Appendix C to the Petition for Writ of Certiorari. The Order provided for payment to the plaintiff within three (3) weeks of the Order. Furthermore, the Order also provided that if Mr. Martin did not accept the payment within three (3) weeks, the cost of presenting the motion (\$783.00) would be deducted from the amount of the payment due and that a residuum check payable to the Prothonotary (Clerk of Superior Court) would be deposited. The Order provided that if Mr. Martin further refused to claim those funds from the Prothonotary, the funds would ultimately escheat to the State of Delaware.

Eventually, Mr. Martin was able to negotiate a scanned copy of the check and satisfied the judgment. The satisfaction of the judgment occurred on November 17, 2023. A copy of the satisfied judgment was set out in Mr. Martin's Appendix to his Opening Brief in the Delaware Supreme Court at A.92 (Delaware Supreme Court Docket No. 10).

On November 29, 2023, Mr. Martin commenced an appeal in the Supreme Court of the State of Delaware by filing a Notice of Appeal (Delaware Supreme Court Docket No. 1). That Notice of Appeal indicated that the Order or judgment from which an appeal was being taken was an Order issued by the Superior Court dated October 31, 2023. A copy of the October 31, 2023 Order was attached to the Notice of Appeal. (Delaware Supreme Court Docket No. 2). That Order is set out in Petitioner's Appendix B. The Order denies the various amended post-trial motions that Mr. Martin filed as well as Mr. Martin's Rule 60 Motion to Reopen the case. However, the Notice of Appeal did not indicate that any appeal was being taken

concerning the Superior Court's Order of November 1, 2023 (dealing with satisfaction of the judgment).

Mr. Martin's Petition for a Writ of Certiorari, dated December 2, 2024 was timely filed with this Court. This is the Respondent's response to that Petition.

REASONS FOR DENYING THE WRIT

In the Petitioner's Petition for Writ of Certiorari, he indicates that he is pursuing a claim that the November 1, 2023 Order of the Delaware Superior Court constitutes a violation of the Takings Clause of the Fifth Amendment, which applies to the states by virtue of the adoption of the due process clause of the Fourteenth Amendment. The Superior Court Order of November 1, 2023 is set out in Petitioner's Appendix C. That Order required the judgment debtor, David H. Nixon (defendant below), to pay the sum of \$66,408.11 to Mr. Martin, which represented the amount of the judgment obtained by Mr. Martin against Mr. Nixon plus costs awarded by the Court as well as interest on the judgment. The Order further provided that if the plaintiff did not accept that payment within three (3) weeks, the defendant may withhold \$783.00, which represented costs of preparing a motion to require the satisfaction of the judgment. The Order further provided that if Mr. Martin did not accept full payment within three weeks, the defendant should deduct \$783 and obtain a net check payable to the Prothonotary (the Clerk for Superior Court) and that the amount would be held by the Prothonotary without interest, until such time as it may escheat to the State.

Mr. Martin's Appendix B sets out an Order issued by the Superior Court dated October 31, 2023. This Order denied various motions that Mr. Martin made post-trial. Those motions included a Supplemental Amended Rule 50(b) Renewal of Motion for Judgment as a Matter of Law after Verdict, Amended Rule 59(d) Motion to Alter or Amend a Judgment or Alternatively Amended Motion for New Trial, as well as a Rule 60 Motion to Reopen the Case. Delaware Supreme Court Rule 6 provides that an appeal to the Delaware Supreme Court is commenced by filing the Notice of Appeal. That same Rule also provides that appeals in civil cases must be commenced within 30 days after the entry upon the docket of a judgment, Order or decree from which an appeal was taken.

Delaware Supreme Court Rule 7 sets out the procedure to be followed in commencing an appeal to the Delaware Supreme Court. Rule 7 generally provides that an appeal to the Delaware Supreme Court is commenced by filing a notice of appeal with the Clerk of the Supreme Court. Rule 7(c) lists the requirements that are to be included in the notice of appeal. Rule 7(c)(3) provides that a notice of appeal must "Designate the judgment, Order, or final award, or part thereof and the date thereof" from which an appeal is taken. Mr. Martin's Notice of Appeal filed with the Delaware Supreme Court in this matter was filed on November 30, 2023. Delaware Supreme Court Docket No 1. That Notice of Appeal indicated that the Order from which an appeal was taken was an Order issued by the Superior Court dated October 31, 2023. A copy of that Order was attached to Mr. Martin's Notice of Appeal. See Delaware Supreme Court Docket No. 2.

Mr. Martin's Notice of Appeal to the Delaware Supreme Court did not designate the Superior Court Order of November 1, 2023 (dealing with the satisfaction of the judgment in this matter) as an Order from which an appeal was being taken.

In Mr. Martin's Opening Brief submitted to the Delaware Supreme Court (Delaware Supreme Court Docket No. 9), Mr. Martin did present arguments regarding the validity of the Superior Court Order of November 1, 2023 (regarding satisfaction of the judgment). However, in Mr. Nixon's Answering Brief, he argued that Mr. Martin was precluded from raising issues about the validity of the Superior Court's Order of November 1, 2023, since Mr. Martin had failed to designate that Order as an Order from which an appeal was taken. Delaware Supreme Court Docket No. 11. At pages 18 through 22 of Respondent's Answering Brief, it was argued that the two Orders were separate and apart from each other and were not dependent on each other. Therefore, Mr. Martin was precluded from advancing legal arguments concerning the validity of the Superior Court's Order of November 1, 2023. The Delaware Supreme Court Order affirming the Superior Court Order of October 31, 2023 is set out in Mr. Martin's Appendix A. That Order deals only with an affirmance of the Superior Court Order of October 31, 2023, which denied Mr. Martin's renewal for judgment as a matter of law, amended Rule 59(d) motion to alter or amend the judgment, or, alternatively, plaintiff's motion to reopen the judgment.

By implication, the Delaware Supreme Court found that Mr. Martin's arguments regarding the Superior Court Order of November 1, 2023 were not considered,

since Mr. Martin had failed to file a notice of appeal designating that Order as one from which he was taking an appeal.

This Court reviewed its requirement that it will review a petitioner's request to review a federal claim only if the petitioner can show that the federal claim was properly presented to the state court, in *Adams v. Robertson*, 520 U.S. 83 (1997). The Court made the following statement regarding this issue at page 86:

With "very rare exceptions", we have adhered to the rule in reviewing state court judgments under 28 U.S.C. §1257 that we will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review.

In the instant matter, Mr. Martin failed to properly present his argument to the Delaware Supreme Court regarding the Superior Court's Order of November 1, 2023, since he failed to file an appeal from that Order and as a result of that, the Supreme Court of Delaware did not address arguments concerning that Order. Therefore, this Court should not consider the federal argument made by the Petitioner in the instant matter.

Petitioner has argued that the Superior Court Order of November 1, 2023, concerning satisfaction of the judgment in this matter, was a violation of the Takings Clause of the Fifth Amendment, as applicable to the states under the Fourteenth Amendment.

In *Knick v. Township of Scott, Pennsylvania*, 588 U.S. 180 (2019), this Court discussed the issue of when a taking occurs. At page 189 of that opinion, the Court indicated the following:

[A] property owner has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it.

In the instant matter, Mr. Martin suffered no taking. In fact, Mr. Martin received full payment for his judgment, plus costs and interest thereon, and as a result, he satisfied the judgment against Mr. Nixon.

Mr. Martin argues that the Order of the Superior Court of November 1, 2023, in and of itself, constituted a taking because the Order required an escheatment to the State.

In fact, what the Order of November 1, 2023 directed was that in the event that satisfaction did not occur within three weeks, Mr. Nixon would obtain a new check payable to the Prothonotary (Clerk of Superior Court) for the amount of judgment less \$783.00 (the cost of presenting the Motion to Compel Satisfaction). Those funds would then be available to Mr. Martin to claim. However, if those funds remained unclaimed for a long enough time to be considered abandoned property under the Delaware Escheatment Act (12 Del.C. §1133), then the funds would go through the procedure for escheatment set out in the Delaware Escheatment Act, before the funds would escheat to the State of Delaware.

In any event, none of these procedures ever occurred, since Mr. Martin received full payment of the judgment he had obtained and that judgment was satisfied by him. Therefore, no Taking was undertaken by the State of Delaware in this matter.

CONCLUSION

This Court should deny Mr. Martin's Petition for Writ of Certiorari, and refuse any other relief requested by him under these circumstances.

Respectfully submitted,

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