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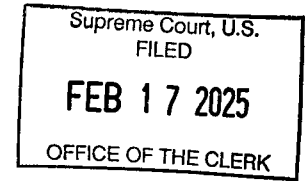
ORIGINAL

IN THE UNITED STATES SUPREME COURT

SAMUEL LEE SMITH, JR.
Petitioner,

v.

ANDREA LIPPMAN LOEB and
FLORIDA DEPARTMENT OF HEALTH
Respondent.



PETITION FOR WRIT OF CERTIORARI
Appeal from the United States Court of Appeal, 11th Circuit
Case No. 24-12758

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QUESTION PRESENTED

Did the lower court deny the Petitioner his due process right to notice and opportunity to be heard when the case was dismissed and closed without Petitioner being granted the right to argue why the complaint stated a cause of action, and alternatively, was deprived of an opportunity to amend the complaint because the judge closed the case ?

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The lower court denied the Petitioner his due process right to notice and opportunity to be heard when it dismissed the case and closed the file without Petitioner being granted the right to argue why the complaint should not be dismissed and because the court dismissed the case without granting Petitioner an opportunity to amend the complaint because the judge closed the case9

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PETITION FOR WRIT OF CERTIORARI

1. Decision Below

Petitioner petitions to this Honorable Court to review the United States Court of Appeal For the 11th Circuit denial of appeal from the United States District, Southern District of Florida's August 21, 2024 Order Dismissing Case.

2. Jurisdiction

The Supreme Court's appellate jurisdiction includes the authority to review decisions of state courts. *28 U.S.C. § 1257(a)*. The current statute authorizing Supreme Court review of state court decisions allows the Court to review the judgments of "the highest court of a State in which a decision could be had." *Koon v. Aiken*, 480 U.S. 943 (1987). Here, the judgment for which review is sought, is not to further any further review in the State of Florida and is an effective determination of the litigation. *Flynt v. Ohio*, 451 U.S. 619 (1981); *Florida v. Thomas*, 532 U.S. 774 (2001). *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 304 (1989).

3. Federal Rule/Question Involved

The Federal Rule or Federal Question involved concerns the 5th and 14th Amendments of the United States Constitution and the right to due process and to be free from arbitrary and capricious rulings by the lower court.

4. Statement of the Case

Pursuant to a Florida State Court Order, the undersigned was required to go for counseling. The Court appointed the Respondent, a psychologist to render counseling and psychological services.

As part of the services that she provided, she provided the family court with fraudulent and false information and false motions that resulted in the undersigned losing overnight and unsupervised timesharing with his son. The timesharing was removed from the undersigned without him having notice or an opportunity to be heard. Moreover, when she was called to testify at trial concerning the timesharing issues with the undersigned's son, she refused to appear and support her fraudulent conclusions, despite being subpoenaed.

As a result, the undersigned filed a complaint in the United States District Court for the Southern District of Florida on August 2, 2024.

Paragraph 2 of the complaint lists Respondent as an individual defendant.

Part III of the form significantly directed the Appellant to do the following:

Do not make legal arguments. ***State as briefly as possible*** the facts showing that each plaintiff is entitled to the damages or other relief sought, State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places that involvement or conduct...

So, as directed by the form, Petitioner pro se, *stated as briefly as possible*, the facts showing Respondent's misconduct as the basis for his claim that his rights were violated. Specifically, the complaint stated the following:

Fraudulent motions that violated Mr. Smith's right and Father's rights, which is unconstitutional. Mr. Smith was discriminated against by this psychologist. She is part of a criminal organization that used the judicial system for fraudulent activity and to violate Mr. Smith's rights. The reference which was referred by Angelica Zayas disconnected Mr. Smith from his son. She was also subpoena to testify and she denied because she was to get paid. Malicious Prosecution and Defamation of Character and Libel in her records.

Additionally, on the same day, the undersigned requested to be declared indigent by filing an in forma pauperis motion.

Notably, when the Petitioner filed the complaint, the Clerk of Court for the Southern District of Florida, located at the Wilkie D. Ferguson Courthouse, made an error by not spelling Respondent's name correctly. In doing so, the clerk has intentionally interfered with the Petitioner's filings and created a hardship on numerous of the Petitioner's filings. They were notified of the error and never corrected it.

On August 21, 2024, without any motion filed by Respondent, the district court entered a final order of dismissal of the undersigned's complaint. The basis for the dismissal was that the complaint failed to state a cause of action upon which relief can be granted.

Therefore, it is ORDERED AND ADJUDGED that this action is DISMISSED without prejudice and CLOSED for administrative purposes. All pending motions are DENIED as MOOT.

Notably, Darrin P Gayle's dismissed the case and recused himself from hearing other cases involving the undersigned because he could not be fair and impartial.

On August 23, 2024 , the Petitioner timely filed a notice of appeal of the district court's August 21, 2024 Order. The United States Circuit

Court of Appeal for the 11th Judicial Circuit dismissed the appeal on February 14, 2025.

This petition now follows.

5. Reasons for Granting The Writ

THE DISTRICT COURT COMMITTED REVERSIBLE ERROR WHEN IT DISMISSED THE COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION UPON WHICH RELIEF COULD BE GRANTED.

Liberally construed, and taking the facts as alleged as being true, it stated a cognizable claim for malicious prosecution and defamation of character and as such, at the very least, the complaint should not have been dismissed.

A dismissal for failure to state a cause of action upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6) is reviewed *de novo*. *Leib v. Hillsborough County Pub. Transp. Comm'n*, 558 F.3d 1301, 1305 (11th Cir.2009); *Hopper v. Solvay Pharms., Inc.*, 588 F.3d 1318, 1324 (11th Cir. 2009).

Federal Rule of Civil Procedure 8(a)(2) mandates that a complaint contain “a short and plain statement of the claim showing that the CV-757-JLB-KCD, 2024 WL 3673567, at *1 (M.D. Fla. Aug. 6, 2024).

To state a claim for relief, a pleading must contain “(1) a short and plain statement of the grounds for the court’s jurisdiction . . . ; (2) a

short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought.” *Fed.R.Civ.P.*8. To survive a motion to dismiss, a claim “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “[T]he pleadings are construed broadly,” *Levine v. World Fin. Network Nat’l Bank*, 437 F.3d 1118, 1120 (11th Cir. 2006), and the allegations in the complaint are viewed in the light most favorable to the plaintiff, *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367, 1370 (11th Cir. 1998). Because of the liberal pleading requirements of the Federal Rules, rarely will a motion to dismiss for failure to state a claim be granted. Indeed, such a motion should not be granted “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Quality Foods de Centro Am., S.A. v. Latin Am. Agribusiness Dev. Corp., S.A.*, 711 F.2d 989, 995 (11th Cir. 1983). Here, the Appellant has pleaded sufficient facts, and has certainly raised a claim for malicious prosecution and defamation of character. The complaint alleges specific acts of misconduct committed by Respondent, namely that she provided false information in reports that

she submitted to the judge.

The complaint's statement of the facts (as briefly as possible as directed in the form) clearly places Respondent on fair notice of the claims against her and the grounds upon which it rests. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). Petitioner is only obligated to provide the grounds of his entitlement to relief which he has done. *Id.* Petitioner has not used mere labels, conclusions, and a formulaic recitation of the elements, and instead explained through factual allegations the alleged conduct that is the basis for the complaint.

Moreover, the trial judge dismissed the complaint without ever affording Petitioner an opportunity to be heard in violation of this due process right to notice and opportunity to be heard as guaranteed by the 5th and 14th Amendment of the United States Constitution. As such the petition should be granted.

THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DISMISSED THE COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION UPON RELIEF CAN BE GRANTED WITHOUT PERMITTING PETITIONER TO AMEND THE COMPLAINT BECAUSE THE DEFICIENCIES COULD HAVE BEEN CURED AND THERE WAS NO SUBSTANTIAL REASON TO DENY LEAVE TO AMEND

Even if the entire complaint failed to state a cause of action

at the very least, the district court should have permitted the Petitioner to amend the complaint, since the Petitioner could have cured the deficiencies cited in the Order of dismissal and there was no substantial reason to deny leave to amend..

The granting of leave to amend is within the trial court's discretion and denial is reviewed for abuse of discretion. *Smith v. Duff and Phelps, Inc.*, 5 F.3d 488, 493 (11th Cir.1993). Although leave to amend should be liberally granted, a trial court is not required to grant leave to amend prior to making its decision. See *Glenn v. First Nat'l Bank in Grand Junction*, 868 F.2d 368, 370 (10th Cir.1989); *Bankers Ins. Co. v. Florida Residential Prop. & Cas. Joint Underwriting Ass'n*, 137 F.3d 1293, 1295 n. 3 (11th Cir.1998). Notwithstanding the discretion to not permit leave to amend, because of the liberal pleading requirements of the Federal Rules, rarely will a motion to dismiss for failure to state a claim be granted. Indeed, such a motion should not be granted “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Quality Foods de Centro Am., S.A. v. Latin Am. Agribusiness Dev. Corp., S.A.*, 711 F.2d 989, 995 (11th Cir. 1983). At no time did the district court reach a conclusion that stated or even insinuated that it was beyond doubt that

the undersigned cannot prove a set of facts in support of his claim which would entitle him to relief.

Instead, the district court focused on missing details which surely could have been provided if the Petitioner was provided the opportunity to do so. There was nothing contained in the district court's opinion that suggested that any amendment would be futile. In *Fuller v. Rich*, 925 F. Supp. 459, 461 (N.D. Tex. 1995) the court held that when considering a motion to dismiss, if the motion appears meritorious and a more carefully drafted complaint might cure any deficiencies, the district court must first "give the plaintiff an opportunity to amend his complaint, rather than dismiss it. In *Rolf v. City of San Antonio*, 77 F.3d 823, 828 (5th Cir. 1996), the court held that a decision to grant leave is within the discretion of the court, although if the court lacks a substantial reason to deny leave, its discretion is not broad enough to permit denial.

Here, there was no reason provided by the lower court that would give reason to believe that there was a substantial reason for a denial of leave to amend. The case was still brand new, no discovery had been conducted or requested, no trial date was set, and the only thing missing from the complaint was alleged details, which could

have easily been included in an amended complaint that would cause it to survive any future motion to dismiss. Moreover, the Defendants would not be prejudiced if the leave was granted. Therefore, at the very least, even if the case was dismissed, Petitioner should have been afforded the opportunity to amend. The lower court's failure to afford Petitioner that opportunity was an abuse of discretion, and requires the lower court's order be reversed, and that the case be remanded with Petitioner being given the opportunity to amend the complaint and to grant the motion for in forma pauperis.

Conclusion

This Honorable Court should grant the petition and reverse the lower court's order dismissing the case and remand the case to the lower court so that case can proceed or in the alternative grant Petitioner permission to amend the complaint and proceed in forma pauperis, and reverse Judge Ruiz' Order restricting Petitioner's ability to file pleadings and motions, and for such other further relief as this Honorable Court deems just and proper.

Respectfully submitted,

/s/ Samuel Lee Smith, Jr.

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