

No.

IN THE
Supreme Court of the United States

LEED HR, LLC, AND MICHAEL SCHROERING,
PETITIONERS

v.

JEFF RAY MITCHELL

*PETITION FOR A WRIT OF CERTIORARI
TO THE COMMONWEALTH OF KENTUCKY
COURT OF APPEALS*

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. Must a court follow the law of another state that deprives a person of due process concerning personal jurisdiction when deciding whether to give full faith and credit to a default judgment of the other state or must the court conduct its own due process analysis under federal constitutional standards?
2. Does Idaho Rule of Civil Procedure 4.1(a) violate Petitioners' due process rights under the 14th Amendment to the United States Constitution and the Supremacy Clause by subjecting citizens of other states to its jurisdiction without minimum contacts with Idaho and without any meaningful waiver of jurisdiction?

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OPINIONS BELOW

The opinion of the Court of Appeals of Kentucky that Petitioners ask this Court to review is unpublished. (App. at 1-5) (“Opinion”). Petitioners’ petition for rehearing was denied and is unpublished. (App. at 6). Petitioners’ motion for discretionary review with the Kentucky Supreme Court was denied and is unpublished. (App. at 7). The opinion of the Jefferson County Circuit Court, Kentucky that vacated the Idaho default judgment is unpublished. (App. at 8-12).

JURISDICTION

The Opinion (dated January 13, 2017, rehearing denied March 20, 2017) is a final decree rendered by the highest court of Kentucky in which a decision could be had, and the validity of an Idaho statute is drawn into question on the ground of it “being repugnant to the Constitution, treaties, or laws of the United States,” and Petitioners’ rights under the 14th Amendment to the United States Constitution are at issue. 28 U.S.C. § 1257. The Kentucky Supreme Court denied discretionary review on February 7, 2018. (App. at 7).

RELEVANT PROVISIONS INVOLVED**U.S. Constitution, Article VI, Clause 2**

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges

in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Constitution, Article XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Article IV, Section 1

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Idaho Rule of Civil Procedure 4.1

(a) General Appearance. The voluntary appearance of a party or service of any pleading by the party, except as provided in subsection (b) of this Rule, constitutes voluntary submission to the personal jurisdiction of the court.

STATEMENT

On November 27, 2013, Respondent (an Idaho resident) sued Petitioners, Michael Schroering (a Kentucky resident) and Leed HR, LLC (a Kentucky company), in Idaho state court for allegedly breaching a consulting agreement, despite Movants having virtually no connection to the state of Idaho. (App. at 12). The consulting agreement provided that Respondent would be paid \$7,500 per month for consulting services regarding an Illinois company, but it was undisputedly terminated within the first month. (Id.).

On January 17, 2014, Petitioners' Idaho counsel filed a one-sentence notice identifying counsel for service of pleadings, removed the lawsuit to federal court four days later, and then timely moved to dismiss the action for lack of personal jurisdiction in Idaho federal court as Petitioners' first responsive pleading. (App. at 14; App. at 21-22).

The U.S. District Court for the District of Idaho denied Petitioners' motion to dismiss for lack of personal jurisdiction without even considering the merits of their constitutional due process defense. (App. 16). The Idaho federal court held that Petitioners consented to the jurisdiction of the Idaho state court under Idaho Rule of Civil Procedure 4.1(a) and waived their personal jurisdiction defense and constitutional due process rights merely because their counsel filed a one-sentence notice identifying itself for purposes of service, despite Petitioners' first responsive pleading being a motion to dismiss for lack of jurisdiction. (Id.).

Because Petitioners did not have the resources to litigate in Idaho and because there was no personal jurisdiction over them, Respondent thereafter obtained a default judgment against Petitioners, Michael

Schroering and Leed HR, LLC, jointly and severally, in the principal amount of \$252,760 (plus additional interest and fees), despite Respondent performing less than one month's work and being paid for that month. (App. 18-20).

Respondent then brought suit in Jefferson County Circuit Court, Commonwealth of Kentucky, to enforce the default judgment, and Petitioners moved to vacate the judgment on the basis that the Idaho court had no personal jurisdiction over them under the due process protections of the 14th Amendment to the United States Constitution. After full briefing and oral argument, the Jefferson Circuit Court refused to enforce the Idaho judgment, holding that Petitioners lacked sufficient contacts with Idaho to satisfy constitutional due process. (App. at 8-12). Likewise, the Jefferson Circuit Court found that Petitioners performed no acts in Idaho, transacted no business in Idaho, and never visited the state. (App. at 12).

Respondent conceded that Petitioners never had the minimum contacts required by due process in order to confer personal jurisdiction over Petitioners in Idaho court, as Respondent did not argue otherwise with the trial court or on appeal.

Despite Idaho's undisputed lack of personal jurisdiction over Petitioners, the Kentucky Court of Appeals reversed the Jefferson Circuit Court's ruling and upheld the Idaho default judgment by determining that Petitioners waived personal jurisdiction defenses, relying solely on Idaho law and the Idaho court's ruling. (App. at 1-5).

Petitioners petitioned the Kentucky Court of Appeals for rehearing, but the Court of Appeals denied the petition without any additional opinion or comment. (App. 6). Petitioners' motion for discretionary review

with the Kentucky Supreme Court was likewise denied. (App. 7).

REASONS FOR GRANTING THE PETITION

I. **Idaho Rule of Civil Procedure 4.1(a) violates due process and the Kentucky Court of Appeals should have applied federal law and constitutional standards when determining that issue.**

The United States Constitution is the supreme law of the land – all state laws must yield to it, including the Idaho Rules of Civil Procedure:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Constitution, Article VI, Clause 2.

It is fundamental that state laws and procedural rules cannot infringe upon federal constitution rights – by waiver or otherwise – and that the federal courts create the precedent governing such rights (not Idaho courts). *See Fuentes v. Shevin*, 407 U.S. 67, 82 (1972)(holding that Florida and Pennsylvania pre-judgment replevin statutes violated due process because they permitted property to be seized prior to a hearing); *see also Shaffer v. Heitner*, 433 U.S. 186

(1977)(holding Delaware statute conferring personal jurisdiction over defendant merely by defendant owning stock located in Delaware and statutorily sequestering the stock violated due process); *see also Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014)(“The Due Process Clause of the Fourteenth Amendment constrains a State’s authority to bind a nonresident defendant to a judgment of its courts.”) .

“**All** assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny.” *Shaffer*, 433 U.S. at 212 (emphasis added).

If Idaho were free to create unlimited waivers of constitutional rights of Kentucky citizens through Idaho law, including due process rights regarding personal jurisdiction, the U.S. Constitution would be rendered meaningless. For example, Idaho (or any other state) could make an end run around the U.S. Constitution by passing court rules or statutes providing that a person “consents” to the jurisdiction of Idaho upon any number of actions: (1) by being served by process in the state of Idaho, even if the person’s presence in Idaho is unrelated to the cause of action; (2) by merely owning property in Idaho; or (3) by entering a one sentence appearance of counsel in Idaho Court.

The U.S. Supreme Court has already held that the first two scenarios identified above violate constitutional due process, and the third example is the subject of this petition. *See Shaffer*, 433 U.S. at 216; *see International Shoe Co. v. Wash.*, 326 U.S. 310, 318 (1945).

Thus, when Idaho Rule of Civil Procedure 4.1(a) expresses that a “voluntary appearance” in its courts confers personal jurisdiction upon an out-of-state defendant, the rule must be “evaluated according to the

standards set forth in *International Shoe* and its progeny,” and if the rule cannot be squared with due process, then the rule cannot confer jurisdiction. *Schaffer*, 433 U.S. at 212.

Well-reasoned federal precedent requires a “meaningful” waiver of due process and personal jurisdiction, as opposed to a mere technical waiver.

To waive or forfeit a personal jurisdiction defense, a defendant must give a plaintiff a reasonable expectation that it will defend the suit on the merits or must cause the court to go to some effort that would be wasted if personal jurisdiction is later found lacking.

Mobile Anesthesiologists Chicago, LLC v. Anesthesia Associates of Houston, 623 F.3d 440, 443 (7th Cir. 2010).

Likewise, federal courts no longer require entry of a special appearance to contest jurisdiction and have:

“abolished [] the age-old distinction between general and special appearances. A defendant need no longer appear specially to attack the court's jurisdiction over him. He is no longer required at the door of the federal courthouse to intone that ancient abracadabra of the law, *de bene esse*, in order by its magic power to enable himself to remain outside even while he steps within.”

Orange Theatre Corp. v. RayHerstz Amusement Corp., 139 F.2d 871, 874 (3d Cir. 1944).

In *Mobile*, *supra*, the defendant first filed a motion to continue plaintiff's motion for preliminary injunction (along with a motion for expedited discovery)

and shortly thereafter filed a motion to dismiss for lack of jurisdiction. 623 F.3d at 443. The Seventh Circuit held that:

These preliminary actions do not come close to what is required for waiver or forfeiture [of one's constitutional due process rights].

Id.

Likewise, the Florida Supreme Court stressed that counsel identifying himself to the Court in writing (historically called a “general appearance”) does not demonstrate that his/her client consents to the jurisdiction of the Court – it is simply a backstop so that adverse action is not taken against the client without counsel’s knowledge:

[A]n entirely neutral and innocuous piece of paper, which indicates no acknowledgment of the court's authority, contains no request for the assistance of its process, and, most important, reflects no submission to its jurisdiction should nevertheless be given just that effect. Such a conclusion represents, we think, no less than the apotheosis of a meaningless technicality.

Public Gas Co. v. Weatherhead Co., 409 So. 2d 1026 (Fla. 1982).

Here, Petitioners’ counsel merely filed a one-sentence document identifying him as counsel in the Idaho state court for service of court papers (except process), removed the lawsuit to federal court four days later, and then timely filed a motion to dismiss for lack of personal jurisdiction as the first responsive pleading. Such conduct does not “come close” to demonstrating

that Petitioners knowingly and voluntarily consented to the jurisdiction of Idaho and did not give Respondent a “reasonable expectation” that Petitioners would defend the case on the merits. *Mobile*, 623 F.3d at 443.

Creating a waiver of jurisdiction under these circumstances would also offend the standards of *International Shoe* and its progeny, which require that exercising personal jurisdiction must not “offend traditional notions of fair play and substantial justice.” *International Shoe Co.*, 326 U.S. at 316.

An independent analysis by a citizen’s home state under federal constitutional standards (not the law of the foreign forum) is the backbone of assuring that out-of-state defendants are afforded due process. The Kentucky Court of Appeals should not have merely applied Idaho law in stripping Petitioners’ fundamental right to due process.

It is important that this Supreme Court make clear that state and federal courts must follow federal constitutional standards when confronted with offending state laws and that any waiver of due process must be meaningful. Otherwise, courts will continue to merely apply laws of foreign states in order to deny citizens their constitutional rights without conducting the proper constitutional analysis.

CONCLUSION

For the above reasons, this Court should grant the petition.

Respectfully submitted,

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