

No. 17-7132

IN THE
Supreme Court of the United States

ROSE T. JAMES

Petitioner,

v.

DOREEN CORINO, ESQ., AND
MARIE BRITTON,

Respondents.

On Petition for a Writ of Certiorari to the United
States Supreme Court

**BRIEF IN OPPOSITION TO PETITION FOR A
WRIT OF CERTIORARI**

ON THE BRIEF:

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PRELIMINARY STATEMENT

Petitioner Rose T. James (Petitioner) seeks a writ of certiorari from this Court to review her state-court claims against Respondent Doreen Corino, Esq. (Respondent Corino). She brought an action sounding in fraud in the Superior Court of New Jersey, Cape May County, based on her alleged disinheritance from two wills. The trial court dismissed her complaint with prejudice, New Jersey's Appellate Division affirmed that dismissal, and New Jersey's Supreme Court denied her petition for certification and then her motion to reconsider that denial. This Honorable Court should similarly deny her petition for a writ of certiorari.

Petitioner has shown no compelling reason for certiorari under *Sup. Ct. Rule 10*. She seeks this Court's review of a state-court decision based on state law, and she raises constitutional arguments for the first time in her petition. The dismissal of her case did not violate her due-process right to a jury trial; rather, it was well-reasoned and based on established New Jersey law. In short, under *N.J. Ct. Rule 4:85-1*, she failed to pursue her adequate remedy in probate proceedings within a reasonable time of learning of those proceedings and acquiring the wills. As a result, the trial court was correct in dismissing her complaint with prejudice.

Petitioner knew her mother and aunt had wills before they died, learned of their deaths in June 2011 and September 2012, knew their wills would be probated, and retained an attorney in October 2012 who told her she was disinherited. She secured a copy of her mother's and aunt's wills in January 2014, met with forensic

handwriting experts in June 2014, and received their reports in September 2014. But she failed to file an action challenging the probate of the wills until March 2015: more than six months after having the experts' reports in hand, and almost a year after having a reasonable belief she had a claim.

This Court should deny her petition for a writ as New Jersey's Supreme Court denied her petition to it, because New Jersey's Appellate Division was correct in affirming the trial court's dismissal of her complaint with prejudice.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On December 17, 1997, Respondent Corino prepared the Last Will and Testament of Teresa A. Dafler, Petitioner's aunt. (Petitioner's Appendix, at 69a). Ms. Dafler appointed Respondent Marie Britton (Respondent Britton), her niece, as executrix of her estate. (Petitioner's Appendix, at 74a). On March 2, 2000, Respondent Corino prepared the Last Will & Testament of Mary Di Pasquale, Petitioner's mother. (Petitioner's Appendix, at 69a). Ms. Di Pasquale also appointed Respondent Britton as executrix of her estate. (Petitioner's Appendix, at 78a).

Ms. Dafler died on June 8, 2011, and Ms. Di Pasquale died on September 10, 2012. (Petitioner's Appendix, at Pa70a). Petitioner alleged that Respondent Britton probated Ms. Dafler's will on April 3, 2013, and Ms. Di Pasquale's will on September 17, 2013. (Petitioner's Appendix, at 18a-019a). Respondent Corino had no involvement with either probate. In October 2012, Petitioner inquired about Ms.

Di Pasquale's will. She consulted with an attorney who said she was disinherited: that her "sister got all the marbles." (Petitioner's Appendix, at 22a).

Petitioner then secured copies of the wills of Ms. Dafler and Ms. Di Pasquale in January 2014, fourteen months before filing her complaint against Respondents. (Petitioner's Appendix, at 06a). She also had forensic experts review the wills in June 2014, six months after acquiring them. She claimed she received those experts' reports in September 2014, but she also admitted she did not file her complaint against Respondents until March 19, 2015. (Petitioner's Appendix, at 06a).

On May 7, 2015, Respondent Corino moved to dismiss Petitioner's complaint for failure to state a claim. (Petitioner's Appendix, at 09a). Respondent Britton also moved to dismiss for the same reason. (Petitioner's Appendix, at 09a). The trial court heard oral argument of those motions on May 29, 2015, and reserved decision. On June 8, 2015, the trial court issued a decision and order dismissing Petitioner's complaint with prejudice. (Petitioner's Appendix, at 09a-024a).

The court ruled that Petitioner's "claims [were] not timely brought pursuant to R. 4:85-1 and are therefore barred." It noted that "Plaintiffs failed to timely bring their complaint and failed to raise the within issues during the pendency of the probate of the respective wills of decedents." (Petitioner's Appendix, at 24a).

Petitioner appealed the trial court's order, and the Appellate Division heard oral argument on August 16, 2016. (Petitioner's Appendix, at 03a). On December 12, 2016, that Court affirmed that Petitioner failed to pursue her adequate remedy in

probate proceedings within a reasonable time of being notified of those proceedings and acquiring copies of the wills. (Petitioner's Appendix, at 06a). The Court also agreed that she was barred from maintaining a tort action against Respondents, alleging interference with her inheritance. (Petitioner's Appendix, at 06a).

On May 5, 2017, New Jersey' Supreme Court denied Petitioner's request for certification. (Petitioner's Appendix, at 02a). And on July 5, 2017, the Court denied her motion to reconsider that denial. (Petitioner's Appendix, at 01a).

ARGUMENT

POINT I

PETITIONER ASSERTS NO COMPELLING REASON FOR A WRIT OF CERTIORARI, UNDER SUP. CT. RULE 10.

This Honorable Court has no basis to review this case. Under *Sup. Ct. Rule 10*, certiorari will be granted only for "compelling reasons." At its discretion, this Court will hear the following types of cases:

(a) A United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) A state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals; or

(c) A state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Petitioner provides no support for her request for certiorari to this Court. Her petition does not involve a United States court of appeals decision, does not concern a judicial conflict between two courts, and does not address a state-court decision on an “important question of federal law” that has “not been settled by this Court.” The underlying matter involves the New Jersey Appellate Division’s interpretation of *state* law, namely *Garruto v. Cannici*, 397 N.J. Super. 231, 240 (App. Div. 2007). Neither the trial court nor the Appellate Division entertained *any* discussion of federal law or statute at any point in the litigation. And Petitioner never raised any of those issues in her request for certification to New Jersey’s Supreme Court.

This Court has advised that it has no jurisdiction to review a state-court decision that rests on state-law grounds, as long as the grounds are adequate to resolve the case without resort to federal law or principles of federal law. See *Michigan v. Long*, 463 U.S. 1032 (1983). As Justice O’Connor explained, “Respect for the independence of state courts, as well as avoidance of rendering advisory opinions, have been the cornerstones of this Court’s refusal to decide cases where there is an adequate and independent state ground.” *Id.* at 1040. The underlying case involves *no* question of federal law, and this Court need not consider whether the state court based its decision on grounds independent of federal law.

Petitioner tries to avoid this inconvenient fact by couching her petition as a question of due process under the 14th Amendment. Yet, that argument, however specious, was not raised previously. Neither the Appellate Division nor the trial court heard arguments on whether Petitioner's cause of action constituted a "property interest" under the Due Process Clause, or whether the deprivation of that right was due to any "arbitrary or irrational" decision. Those arguments are raised for the first time in this petition; this Court should not consider them now.

Barring exceptional circumstances that are inapplicable here, this Court does not decide issues unraised or undecided below. See *Cooper Indus. v. Aviall Servs.*, 543 U.S. 157, 168, (2004); *Clingman v. Beaver*, 544 U.S. 581, 597 (2005). Petitioner admits the lower courts never reached a due-process analysis: "[T]he trial court never addressed whether James had a protected property right to recover \$2.7 million in damages on her cause of action for fraud, and . . . for purposes of constitutional analysis, never addressed whether James had a state-created right to a jury trial to vindicate that protected property right." (Petition, at Pg. 17).

Neither the trial court nor the Appellate Division considered such analysis because it is manifestly irrelevant to Petitioner's underlying fraud action. This Court should deny her petition to it because she has not satisfied the requirements for certiorari under *Sup. Ct. Rule 10*, she seeks an advisory opinion on state law, and she presents novel claims neither raised nor decided in the proceedings below.

POINT II
THE DISMISSAL OF PETITIONER’S CAUSE OF ACTION DOES NOT
CONSTITUTE A DEPRIVATION OF DUE PROCESS.

Petitioner argues that the dismissal of her fraud case was a deprivation of a “property interest” protected by the Due Process Clause of the 14th Amendment, because she was denied an adjudication “appropriate to the nature of the case.” (Petition, at Pg. 14). To “plead a violation of procedural due process, . . . a plaintiff must first identify a property right, second show that the government has deprived him [of her] of that right, and third show that the deprivation was effected without due process.” *J.S. v. T’Kach*, 714 F.3d 99, 105 (2d Cir. 2013). Put another way, if protected interests are implicated, “the court then must decide what procedures constitute due process of law.” *Ingraham v. Wright*, 430 U.S. 651 (1997).

Access to the courts is protected by the Due Process Clause of the 14th Amendment. See *Tennessee v. Lane*, 541 U.S. 509, 523 (2004). But Petitioner fails to show a deprivation of that property interest, or that such deprivation was without the appropriate process due. The dismissal of her case is not a deprivation of due process. In fact, she has made abundant use of the trial and the appellate courts of the State of New Jersey. She is merely dissatisfied with the results of her case. And she is apparently letting every available court know that.

If every litigant unhappy with a dismissal could assert deprivation of due process, the courts would be awash with such claims. This Court recognized that in *Goeke v. Branch*, 514 U.S. 115, 120 (1995): “[I]f the state court has acted in

consonance with the constitutional laws of the state and its own procedure, then it can be in only very exceptional circumstances that the United States Supreme Court will feel justified in saying that there has been a failure of due legal process.”

Again, Petitioner had ample access to the courts. Upon the filing of Respondents’ motions to dismiss, the trial court heard oral argument and issued a decision. (Petitioner’s Appendix, at 09a-024a). Petitioner then sought relief in the Appellate Division, which also heard oral argument and issued a decision. (Petitioner’s Appendix, at 03a). She next requested certification to New Jersey’s Supreme Court, which denied her request and then denied her motion to reconsider that denial. She now seeks a writ to this Court, the nation’s highest.

Petitioner’s access to the judicial system has open and liberal. But this is the end of the line: Her writ should be denied and her case remain dismissed.

POINT III

THE DISMISSAL OF PETITIONER’S CAUSE OF ACTION WAS NOT ARBITRARY, CAPRICIOUS, OR IRRATIONAL.

Petitioner suggests the lower courts’ decisions were “arbitrary and irrational,” in violation of substantive due process. To the contrary, those decisions were legally and factually sound. As the Appellate Division noted, Petitioner’s cause of action was “squarely controlled by New Jersey Rule 4:85-1 and Garruto.” (Petitioner’s Appendix, at 06a). She, quite simply, “failed to pursue her adequate remedy in probate proceedings within a reasonable time of being notified of those proceedings and acquiring copies of the wills.” (Petitioner’s Appendix, at 06a).

Petitioner learned of her disinheritance in October 2012: before her mother's and aunt's wills were probated and two-and-a-half years before filing suit. She acquired copies of the wills in January 2014, fourteen months before filing suit. She had the wills reviewed by forensic experts six months later, in June 2014. And she received the experts' reports three months later, in September 2014. She then waited another six months, until March 19, 2015, before suing Respondents.

The Appellate Division correctly applied *Garruto v. Cannici*, 397 N.J. Super. 231, 240 (App. Div. 2007): “[A]n independent cause of action for tortious interference with an expected inheritance . . . is barred when . . . plaintiffs have failed to pursue their adequate remedy in probate proceedings of which they received timely notice.” (Petitioner's Appendix, at 05a). The New Jersey Supreme Court then correctly denied her petition for certification to it and her motion to reconsider that denial. (Petitioner's Appendix, at 01a and 02a).

Petitioner claims that timely notice of probate was an indispensable predicate to the Court's holding in *Garruto* and that she did not receive written notice of the probate of the wills. She ignores that she had actual notice of the probate of the wills: She spoke with counsel in October 2012, before they were probated, and he told her she was disinherited. As the Appellate Division noted, she was “‘aware, to some degree, of the wills [sic] dispositions’ and was thus on notice of a potential forgery.” (Petitioner's Appendix, at 022a). She then failed to act timely.

Petitioner claims the Appellate Division and the trial court did not analyze certain legal factors or consider the causes of her delay. She ignores the timeline and facts the Appellate Division and trial court referenced and relied on in their decisions. The Appellate Division was correct in ruling that Petitioner’s “arguments to the contrary [that she could somehow save her case against Respondents by avoiding the requirements of *R. 4:85-1* and the *Garruto* case] are without sufficient merit to warrant discussion in a written opinion.” (Petitioner’s Appendix, at 006a).

Even if this Court disagreed with the legal conclusions of the lower courts, there would still be no violation of substantive due process: “Substantive due process protects against government action that is arbitrary, conscience shocking, or oppressive in a constitutional sense, but not against government action that is incorrect or ill advised.” *Cunney v. Bd. of Trustees*, 660 F.3d 612, 626 (2d Cir. 2011).

The state courts’ decisions were correct and well-advised, and their conduct towards Petitioner professional and tolerant—not egregious, shocking or oppressive. This Court should deny her petition because she has shown no basis for it.

CONCLUSION

Petitioner fails to articulate a compelling reason for certification under *Sup. Ct. Rule 10*. She seeks a review of state-courts’ decisions based on state law. Also, her constitutional arguments are raised for the first time in this petition and fail to show a deprivation of due process or an arbitrary or capricious decision by the lower courts. She failed to pursue her adequate remedy in probate proceedings

appropriately or timely. And she is now time-barred from maintaining an action against Respondent Corino. This Court, similar to New Jersey's Supreme Court, should deny her petition for a writ of certiorari, as there is no basis for it.

Dated: Parsippany, New Jersey
January 16, 2018

Respectfully submitted,

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