

No.17- 7547

IN THE

Supreme Court of the United States

Stacia Cromartie

Petitioner,

v.

The Law offices of Peyton Faulk LLC et.al,

Respondent,

On Petition for Writ of Certiorari

To The Court (Alabama Supreme Court of Civil Appeals)

PETITION FOR REHEARING

Petitioner Brief

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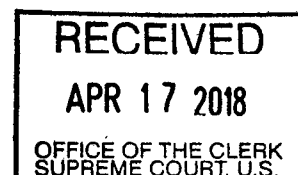


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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.1, Vernon Madison respectfully petitions for rehearing of the Court's decision issued on March 26, 2018. Cromartie v. The Law offices of Peyton Faulk LLC et.al No. 17-7547 Cromartie moves this Court to grant this petition for rehearing and consider her case with merits briefing and oral argument. Pursuant to Supreme Court Rule 44.1, this petition for rehearing is filed within 25 days of this Court's decision in this case.

REASONS FOR GRANTING THE PETITION

The Petitioner Cromartie evoke diverse citizenship under diversity jurisdiction over this case under 28 U.S.C. § 1332. "Diversity of citizenship, the basis for jurisdiction in the present case, exists only when no plaintiff and no defendant are citizens of the same state." *Jerome-Duncan, Inc.*, 176 F.3d at 907. The general rule is that diversity is determined at the time of the filing of a lawsuit. See *Smith v. Sperling*, 354 U.S. 91, 93 & n. 1, 77 S.Ct. 1112, 1 L.Ed.2d 1205 (1957).

The petitioner also evoke Federal venue statute, 28 U.S.C. § 1391 The inquiry begins with the Federal venue statute, 28 U.S.C. § 1391, which provides that in diversity cases venue may be laid in: (1) a judicial district where any defendant resides, if all defendants reside in the same State, [or] (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated... 28 U.S.C. § 1391(a). Section 1391(b) provides venue requirements for cases where jurisdiction is founded on the existence of a federal question. *Jacobsen v. Oliver*, 201 F. Supp. 2d 93,

109 (D.D.C. 2002) (finding that the location where legal services are performed to be significant to the determination of proper venue). These provisions provide for what courts have described as "residential" venue (§ 1391(a)(1)) and "transactional" venue (§ 1391(a)(2)). McCaskey v. Continental Airlines, Inc., 133 F. Supp. 2d 514, 523 (S.D. Tex. 2001). Federal Question Jurisdiction Evoking Article III section 2 of the Constitution and 28. U.S.C. 1331. Federal courts shall have original jurisdiction of all civil actions arising under the Constitution, Laws, or treaties of the United States. No amount in controversy requirement.

Diversity Jurisdiction gives this court the authority to have original jurisdiction and subject matter jurisdiction over Cromartie case.

I. WHETHER CROMARTIE SHOULD BE ALLOWED DIVERSITY JURISDICTION.

Cromartie lives with her mother whom is a resident of the State Of Alabama. Cromartie Mother has been her primary care giver since she was a child. Cromartie Suffers from a childhood illness of sickle cell anemia trait and Epilepsy Disorder. Kanter v. Warner-Lambert Co. 265 F.3d 853, 857 (9th Cir.2001)(which predates CAFA) that the state citizenship of a natural person is determined by her state of domicile, not her state of residence, because a person's domicile is her permanent home, where she resides with the intention to remain or to which she intends to return, and a person residing in a given state is not necessarily domiciled there, and thus is not necessarily a citizen of that state. During the filing of this case Cromartie was a Student at Alabama State University living on campus. See McIntosh v.

Maricopa County, 73 Ariz. 366, 241 P.2d 801, 31 A.L.R.2d 770 (1952). Consequently, a person may have his residence in one place and his domicile in another. *Missouri Pacific Ry. Co. v. Lawrence*, 215 Ark. 718, 223 S.W.2d 823, 12 A.L.R.2d 748, a person can have a "domicile" in one place and a "residence" in another, Although the appellee may have resided in Ohio at the time of his injury, we do not believe, given the facts presented, that he had established his domicile in Ohio at the time of his injury.

Complete diversity of citizenship in which the citizenship of all the plaintiffs to an action differs from that of all the defendants. Minimal Diversity of citizenship of the parties to a lawsuit in which at least one plaintiff is a resident from a state different from at least one defendant. Diversity Of Citizenship a condition in which the parties to an action are of diverse state or national citizenship. Supplemental jurisdiction granted federal courts over claims that could not be heard in a federal court on their own but that are so closely related to claims over which the court has original jurisdiction that they form part of the same case.

Although, the requirements are similar to those in diversity cases, they shall not be addressed separately here as most legal malpractice claims—which are generally governed by state tort and contract law—will get into federal court based only on diversity jurisdiction *Jacobsen v. Oliver*, 201 F. Supp. 2d 93, 109 (D.D.C. 2002) (finding that the location where legal services are performed to be significant to the determination of proper venue). These provisions provide for what courts have described as "residential" venue (§ 1391(a)(1)) and "transactional" venue (§

1391(a)(2)). McCaskey v. Continental Airlines, Inc., 133 F. Supp. 2d 514, 523 (S.D. Tex. 2001).

In most courts, a plaintiff may choose to lay venue based on either the residential or the transactional venue provision (only if, of course, all defendants reside in the same state) The Courts must determine whether they have jurisdiction to hear the petitioners case. The petitioner has not claim Alabama as place of domicile the petitioner Cromartie is a pro se litigant filling a claim in the State of Alabama. In 2015 when this claim was first filed had just been terminated as a student at Alabama State University. Going off to school does not change a person's domicile.

The petitioner does not own any real property nor pay state taxes at the time of the filing of the cause of action. The petitioner does not have State funded medical insurance. Nor, does the petitioner have a place of employment. The petition filed a motion with the courts in 2015/ 2016 asking for the courts to stay the proceeding so that the petitioner could seek employment with the military.

The petitioner request motion was not granted. The petitioner Cromartie is still considered a citizen of the State of Ohio and plans to return. This court has jurisdiction to hear the petitioners claim because the acts and omission done by the defendants occurred in Montgomery, Alabama. All defendants are citizens of the State of Alabama. This makes Venue proper. The petitioner is not a citizen of the State of Alabama. The petitioner does not own and has never owned a valid driver's license from the State of Alabama. The amount in controversy exceeds 75,000 dollars.

The petitioner has properly evoked federal question jurisdiction. Complete diversity of citizenship in which the citizenship of all the plaintiffs to an action differs from that of all the defendants.

Minimal Diversity diversity of citizenship of the parties to a lawsuit in which at least one plaintiff is a resident from a state different from at least one defendant.

Federal Courts have the power to hear State law claims when a party has diverse Jurisdiction. Federal courts hear all claims “arising under” the Constitution. Erwin chemistry, federal jurisdiction, § 5.3.2, at 274 (2d ed. 1994); see also Guaranty Trust Co. v. York, 326 U.S. 99, 111 (1945) (“Diversity jurisdiction is founded on assurance to non-resident litigants of courts free from susceptibility to potential local bias.”); Burgess v. Seligman, 107 U.S. 20, 34 (1883) (stating that diversity jurisdiction was established “to institute independent tribunals, which . . . would be unaffected by local prejudices”); Douglas Laycock, Equal Citizens of Equal and Territorial States: The Constitutional Foundations of Choice of Law, 92 COLUM. L. REV. 249, 278 (1992) (noting that diversity jurisdiction was “created because of the fear that state courts might prefer local litigants”).

Rehearing is appropriate for this Court to review Alabama’s decision to insulate an arguably unconstitutional decision about whether Cromartie case that was dismissed was a result of the inconsistent application of the law, and because it increases arbitrariness and the likelihood of error. See Jones v. Barnes, 463 U.S. 745, 756 n.1 (1983) (Brennan, J., joined by Marshall, J., dissenting) (“There are few, if any

situations in our system of justice in which a single judge is given unreviewable discretion over matters concerning a person's liberty or property . . .").

These are precisely the type of factual issues that need to be resolved in full briefing and argument and for this reason, rehearing is appropriate. See Schweiker v. Hansen, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting) (summary disposition only appropriate in cases where "law is settled and stable, the facts are not in dispute, and the decision below is clearly in error"). Snyder v. McLeod, 971 So. 2d 166 (Fla. Dist. Ct. App. 5th Dist. 2007). (a legal residence or domicile is the place where a person has a fixed abode with present intention of making it his or her permanent home. (citation omitted)

II. THIS COURT SHOULD NOT RESOLVE THE SUBSTANTIAL AND IMPORTANT FACTUAL ISSUES IN THIS CASE WITHOUT FULL BRIEFING AND/OR ARGUMENT

The Alabama Supreme Court had already ruled in favor of a plaintiff in a similar case as Cromartie. See (Valentine v. Watters, 896 So. 2d 385 – 2004) hear the plaintiff was not governed by the ALSLA in order to prove her claim. The plaintiff Valentine argued that the defendant fraudulently induced her into being represented by him. In Cromartie case she argues fraud and deception for the same reasons. A year span of text messages shows how the defendant(s) firm and the individual encouraged Cromartie that she was filing a claim that she had no intent to file "[m]issing the statute of limitations is a classic example of negligence that any layperson can understand." 82 S.W.3d at 97; see also Little v. Matthewson, 114 N.C.App. 562, 442

S.E.2d 567, 571 (1994). See Appendix. Valentine Argues Crowne Invs., Inc. v. Bryant, 638 So.2d 873, 876 (Ala.1994). She argues that in order to succeed on her claim she needs only to show the elements required to prove fraud pursuant to § 6-5-101, Ala.Code 1975:(1) There must be a misrepresentation; (2) the misrepresentation must concern a material fact; (3) the plaintiff must rely on the misrepresentation; and (4) the plaintiff must be damaged as a proximate result. Crowne Invs., Inc., 638 So.2d at 876-77. The Court applied the "common knowledge" theory to Valentine v. Watters case along with the fact that the negligence was so clear a layperson would understand it.

[2] It appears from the record that the trial court never ruled on Valentine's motion for a summary judgment. Nor, did they rule on Cromartie motion for a Summary Judgement. Valentine's complaint does not include a separate fraudulent inducement claim. However, she argues in her brief to this Court that she was fraudulently induced to retain Watters. [5] Whitley recognizes that a legal malpractice case "involves a 'case within the case.'" 265 Va. at 11, 574 S.E.2d at 252. Both the plaintiff and the defendant are entitled to present evidence that would have been presented in the underlying action. In addition, the defendant is entitled to assert defenses that would have been presented in the underlying action. Id. Section 6-5-579(b), Ala.Code 1975, contemplates this "case within the case" concept: "In defense of the underlying action, the legal services provider may assert any and all substantive and procedural defense, restriction, limitation, or immunity which the effect of limiting could have, mitigating, reducing, or avoiding liability or damages."

Faulk continually enticed Cromartie to continue submitting evidence and even went to the extent of having Cromartie to have witness sign contracts with her for a class action lawsuit against Alabama State University. After, Cromartie gave the defendant a witness. The witness began to lose retaliated by with the band. Faulk never followed up with any meeting with the witness and after terminating Cromartie as a client she failed to tell the witness of this instead she requests that

he sent her evidence through his email claiming that Cromartie okayed it. All three defendants claimed to have never met Cromartie and had no prior contact with but to terminate her as a client. Bush and Robinson were both joined under the vicarious liability law. While under Faulk representation Bush, Robinson and Faulk claimed to have declined representing Cromartie however, once evidence was given to the court Bush then represented himself and Robinson writing new affidavits. Their summary judge should not have been granted since it was written in bad faith. Evidence of defendant Faulk mocking Cromartie after the court appearance with racial comments and telling her "even if you win you won't get nothing you can have my shoes if you want it." Under ALA. R. Civ. P 56 (g).

"Affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt. "

III. WETHER THE LOWER COURTS ARE BEING RACIALLY BIAS TO CROMARTIE CLAIM.

Cromartie was given the task of having to prove that her underlying case would have prevailed and showing that an attorney client relationship existed. Even after showing that the defendant(s) committed perjury in their statements to the courts by sustainably clear evidence the lower courts still found in favor of the defendants.

Cromartie motion for a summary judgement was never ruled on. The defendant was not charged with the task of Section 6-5-579(b), Ala.Code 1975.

" 265 Va. at 11, 574 S.E.2d at 252. Both the plaintiff and the defendant are entitled to present evidence that would have been presented in the underlying action. In

addition, the defendant is entitled to assert defenses that would have been presented in the underlying action. Id. Section 6-5-579(b), Ala.Code 1975, contemplates this "case within the case" concept: "In defense of the underlying action, the legal services provider may assert any and all substantive and procedural defense, restriction, limitation, or immunity which the effect of limiting could have, mitigating, reducing, or avoiding liability or damages.

The defendant has no case and no merit on any argument against Cromartie.

Cromartie provided the courts with recording of the defendant Faulk admitting to giving back the evidence given to her by Cromartie to the University that was supposed to be sued. The lower court was aware of all evidence however racially barriers promoted the biases and malice treatment against the plaintiff Cromartie.

The evidence submitted to the courts showed how the defendants was able to commit perjury and change their statements after the fact that the petitioner filled her evidence with the court. See writ of cert. appendix.

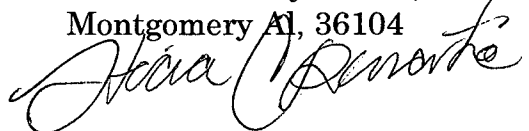
CONCLUSION

Cromartie respectfully requests that this Court grant the petition for rehearing and order full briefing and argument on the merits of this case. This case raises a Federal question(s) As to diversity jurisdiction.

Respectfully Submitted,

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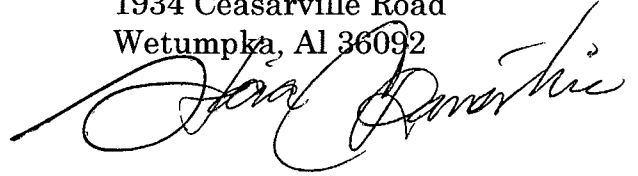
April 13,2018



CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith
and not for delay.

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A handwritten signature in black ink, appearing to read "Stacia Cromartie", written in a cursive style.