No. 18-7011 ORIGINAL

Supreme Court, U.S.
FILED
DEC 11 2018
OFFICE OF THE CLERK

In the
Supreme Court of the United States

John S. Myzer, being an assumed name,
Petitioner

v.

George W. Bush, et al.,
Being fictitious persons,
Respondents

On a Petition for Writ of Certiorari to

10th Circuit Court of Appeals

Petition for Writ of Certiorari

John S. Myzer

400 W. Central #807

Wichita, KS 67203

816-206-3684

Questions Presented

1. May a district court dismiss a case with prejudice that has not begun?
2. Should a delay of many years between the dismissal of a case and a Fed.R.Civ.P. 60(b)(4) Motion to set aside the dismissal effect its review?
3. Does a party consent to a court's exercising personal jurisdiction over a case with parties that are not later served?
4. Can a court lack personal jurisdiction over all defendants in a case and still exercise jurisdiction over the case?
5. May a court deny a plaintiff access to service of process through law enforcement because he paid the filing fee in a case alleging fraud as to the name and address of the defendants?
6. Was the District Court's dismissal with prejudice on the pleadings, pursuant to Fed.R.Civ.P. 8, 12(b)(6), and 41(b), a denial of due process under the facts?
7. May a court dismiss a case with prejudice for lack of subject matter jurisdiction?
8. May a court decide other issues if it lacked subject matter jurisdiction?
9. Did the Court improperly dismiss for lack of subject matter jurisdiction?
10. Was the District Court's dismissal a final, appealable order?
11. Did the lower courts deny the plaintiff due process when they failed to order a hearing to determine the Plaintiff's mental capacity, pursuant to Fed.R.Civ.P. 60(b)(6)?

List of Parties

All parties do not appear in the caption of the case on the cover page. There are one or fewer parties to this case. The plaintiff named 64 John Doe defendants in the Complaint, describing them by their conduct, but none appeared or was served with process. The fictitious names of anticipated defendants are listed in the Complaint (see appendix), but they are not listed here because with no service they are not yet parties to the case. The plaintiff filed this action under an assumed name, John Myzer, because he does not know his name, so he may not qualify as a party, pursuant to Fed.R.Civ.P. 4(a)(1) The plaintiff intended to amend the Complaint after jurisdictional discovery to include his own name as well as the real names of the anticipated defendants, but that discovery was denied.

Table of Contents

Questions presented	2
List of parties	3
Table of Authorities	4
Opinions below	7
Jurisdiction	7
Constitutional and Statutory provisions involved	8

Statement of the case 8

Argument 12

Appendix (A-6/14/04 Order), (B-8/304 Order), (C-8/17/04 Report, (D-10/25/04 Order), (E-3/19/18 Order), (F-9/13/18 Order), (G-laws), (H-Complaint), (I-Memo)

Table of Cited Authorities

Cases page

First Management v. Topeka Investment Group 47 Kan.App.2d 233 (Kan.App.12 2012)

Medina v. American Family Mut.Ins.Co. 29 Kan.App.2d 805 (Kan.App. 2001) 12

Bell Helicopter Textron v. Islamic Republic 734 F.3d (D.C. Cir. 2000) 13

U.S. v. Bigford 365 F.3d 859 (10th Cir. 2004) 13

Continental Coal, Inc. v. Cunningham 511 F.Supp. 2d 1065 (D. Kan. 2007) 13

Garcia v. Ball 303 Kan. 560 (Kan. 2015) 13

White v. NFL Players Ass'n 756 F.3d 585 (8th Cir. 2014) 13

Marcus Food Co. v. DiPanfilo 671 F.3d 1159 (10th Cir. 2011) 13

Busey v. Bd. Of County Com'rs, County, Shawnee, KS 277 F.Supp.2d 1095 (D. 13 Kan. 2003)

Grubb v. Public Utilities Commn. 50 S.Ct. 374 (1930) 14

Rollins v. Ingersoll-Rand 240 Fed.App'x 800 (10th Cir. 2007) 14

Baldwin v. Iowa State Travelling Men's Association 283 U.S. 522 (1931) 14

Durfee v. Duke 84 S. Ct. 242 (1963) 15

Insurance Corp. of Ireland v. Compagnie des Bauxites 456 U.S. 694 (1982) 15

Worldwide Volkswagen Corp. v. Woodson 100 S.Ct. 559 (1973) 15

Mann v. Castiel 681 F.3d 368 (D.C. Cir. 2012) 15

Sinoying Logistics PTE v. YI DA XIN Trading Corp. 619 F.3d 207 (2nd Cir. 2010) 15

Moore v. Luther 29 Kan.App.2d 1004 (Kan. App. 2001) 15

Cambridge Holdings, Inc. v. Federal Ins. Co. 489 F.3d 1356 (D.C. Cir. 2007) 16

Crowley v. Bannister 734 F.3d 967 (9th Cir. 2013) 17

Burger King v. Rudzewicz 105 S.Ct. 2174 (1985) 17

Cessna Finance Corp. v. VYWB, LLC 982 F.Supp.2d 1226 (D. Kan. 2012) 18

Constien v. U.S. 628 F. 3d 1207 (10th Cir. 2010) 18

Parissi v. Telechron, Inc. 75 S.Ct. 577 (1955) 19

Nietzke v. Williams 109 S.Ct. 1827 (2nd Cir. 1953) 19

Meilleur v. Strong 682 F.3d 56 (2nd Cir. 2012) 19

Conley v. Gibson 78 S.Ct. 99 (Kan.App. 2013) 20

Anderson v. City of Bessemer City, N.C. 105 S. Ct. 1504 (1985) 21

Barrett v. Tallon 30 F.3d 1296 (10th Cir. 1994) 22

Mavrovich v. Vanderpool 427 F.Supp.2d 1084 (D. Kan. 2006) 22

Societe Internationale pour Participation Industrielles et Commerciales S.A. v. Rogers 78 S. Ct. 1087 (1958) 23

Salata v. Weyerhauser Co. 757 F.3d 695 (7th Cir. 2014) 24

Lafleur v. Teen Help 342 F.3d 1145 (10th Cir. 2003) 24

Semtek Int'l v. Lockheed Martin 149 L.Ed.2d 32 (2001) 24

Sinochem Intern. V. Malaysia Intern. Shipping 127 S. Ct. 1184 (2007) 24

Gold v. Local 7 United Food and Commercial Workers 59 F.3d 1307 (10thCir.1998)24

Gonzalez-Cancel v. Partido Nuevo Progresista 696 F. 3d 115 (1st Cir. 2012) 25

Henderson ex rel. Henderson v. Shinseki 131 S. Ct. 1197 (2011) 25

Arbaugh v. Y & H Corp. 126 S. Ct. 1235 (2006) 25

Bolden v. City of Topeka, KS 441 F.3d 1129 (10th Cir. 2006) 27

Carolina Cas. Ins. Co. v. Team Equipment, Inc. 741 F. 3d 1082 (9th Cir. 2014) 27

Alston v. Parker 363 F.3d 229 (3rd Cir. 2004) 27

Costello v. United States 365 U.S. 265 (1961) 28

Lummus Company v. Commonwealth Oil Refining Company 297 F.2d 80 (2nd Cir. 1961) 29

United Student Aid Funds, Inc. v. Espinosa 130 S. Ct. 1367 (2010) 29

Biester v. Midwest Health Services, Inc. 77 F.3d 1264 (10th Cir. 1996) 30

Statutes and Rules

Federal Rules of Civil Procedure: Rules 2, 4, 4.1, 8, 10, 12, 15, 41(b), 54, 56, and 60

Treatises

Restatement 2d. Judgments (1982)-Introduction, sections 13, 20, 66, Note

Federal Practice and Procedure, Wright, Miller, and Cooper (1998)-section 1202

Opinions Below

Order and Date	Appendix no.
Order of June 14, 2004	A
Order of August 3, 2004	B
Report and Recommendations of August 17, 2004	C
District Court Order of October 25, 2004	D
District Court Memorandum and Order of March 9, 2018	E
10th Circuit Order and Judgment of September 13, 2018 (unpublished)	F

Basis for Jurisdiction

The date on which the United States Court of Appeals (10th Circuit) decided my case was September 13, 2018. No Petition for rehearing was timely filed in my case. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

Constitutional and Statutory Provisions Cited

The statutes, rules, and constitutional provisions involved in this case are lengthy, and their entire text is set forth in the Appendix of this Petition.

Statement of Case and Jurisdiction

The facts of the case are described in the Complaint, included in the Appendix. The Plaintiff filed it in the District Court of Kansas on October 8, 2003 ("the Complaint"). It alleged, in part, that the plaintiff's name and identity had been altered and erased as part of a larger conspiracy to rob him of his inheritance, and that most of the actions had been perpetrated by a group of individuals claiming to be his family; it added that he was deceived by their actions, and that he did not name them because he did not know their true names. He named 64 such John Doe defendants in the Complaint, describing them by their conduct.

The Complaint also stated the following causes of action. Paragraphs 27-28 of the Complaint alleged that the plaintiff was not given notice or an opportunity to be heard of legal actions affecting him and his property, actions he has been unable to learn any details about. Paragraphs 29-30 alleged that actions of the anticipated defendants amounted to deceit and fraud because "the central facts of the plaintiff's

life (his identity and inheritance) were intentionally concealed" and that the fraud was "supported by false writings and documents...such as the Plaintiff's birth certificate and social security card". Paragraph 31 maintained that the defendants failed to support the Plaintiff economically in a manner suitable to his station in life by denying him every single penny of his own inheritance. Paragraph 32, quoted by the District Court with great levity in an Order, alleged that the defendants "knowingly fed the dead corpses of his children to him". Without explicitly stating so, the court appears to have found this allegation to be proof of mental incapacity; like the other counts, it was held not to have stated a claim. (Order of August 3, 2004, p. 4) Paragraph 33 alleged that the defendants poisoned the plaintiff with "a significant portion of the food furnished" him throughout his life. Paragraph 34 alleged that the plaintiff began school years later than normal, "preventing him from realizing his intellectual potential", adding that the actions "depriv[ed] the plaintiff of educational opportunities afforded every child as a matter of law". Paragraphs 36-39 alleged violations of human rights "protected by the U.S. Constitution", such as a forced vasectomy; also a lack of notice or any information about legal procedures affecting his property and his very body. Paragraphs 40-41 alleged that all actions were part of a conspiracy intended "to deceive and defraud the plaintiff by substantiating and lending credibility" to one anothers' stories. It added that "one effect of this conspiracy, which was intended, was to injure and oppress the plaintiff in the free exercise or enjoyment of rights and privileges secured to him by the U.S. Constitution".

After filing the Complaint, the Plaintiff filed 29 separate motions, which typically sought to join additional defendants; they were granted by the court on condition that the plaintiff amend the Complaint to reflect information therein. The Plaintiff did not amend the Complaint because he could only amend once as a matter of right, and he did not wish to do so before obtaining jurisdictional information such as his own name and the true names of the defendants. (The Complaint had pled that the plaintiff did not know the name, identity, or residence of the defendants.) In an effort to effect service and obtain jurisdictional information, the Plaintiff moved the court to serve process by the U.S. Marshals service. The court denied this motion on grounds that the plaintiff had paid the filing fee (Order of June 14, 2004), so process was never served. The court held a status conference on July 27, 2004, and the reviewing Magistrate issued an Order on August 3, 2004 and then a Report on August 17, 2004, which were later adopted by the full court. They found, among other things, that the Complaint failed to state a claim in compliance with Rules 8 and 12(b)(6), and the court ordered the plaintiff to amend it. The plaintiff did not do so for many reasons, chiefly lack of information. The case was dismissed with prejudice on October 25, 2004. The plaintiff immediately appealed but withdrew it several weeks later because he was suffering from delusions. During the ensuing 14 years, the plaintiff resumed belief in a false, albeit well-corroborated identity. The Plaintiff filed a Motion to set aside the dismissal of 2004 on February 5, 2018 ("the Motion"), which was denied on March 9, 2018 for several reasons, chiefly that it had not been filed in a reasonable

time, in compliance with Rule 60(c). The Plaintiff appealed that denial to the 10th Circuit Court of Appeals, and the appeal was denied in an Order dated September 13, 2018. This Petition is filed in response to that action.

The entire Complaint is submitted in the appendix because its legal sufficiency, factual statements, and very language were rejected by both lower courts as failing to state a claim; rejected in their entirety and rejected as to each individual count. The case was likewise dismissed for lack of subject matter jurisdiction on failure of diversity. No anticipated defendant was ever served with process or ever appeared. The court held that it possessed personal jurisdiction over the case on grounds that the plaintiff by filing suit consented to that.

Federal jurisdiction based on diversity of citizenship was pled in the Complaint (p. 1) and litigated on appeal. The District Court rejected diversity in 2004 on grounds that it was incomplete; the plaintiff maintained that jurisdictional discovery following service through law enforcement could furnish complete diversity. His plan was to use law enforcement to serve anticipated defendants at their fictitious residences to gain information for later service at their true residence. The court refused to order law enforcement service, which the plaintiff considered to be the sole method of effective service given the allegations of fraud in the case.

The Complaint also pled many federal questions and issues, chiefly those associated with the plaintiff's name and identity. It pled that his false identity had been corroborated by government acts such as a public school education, and false

writings, such as his federal social security card. It also alleged that he began school years later than normal, that he had not been given legal notice of proceedings affecting his property and body. Both lower courts refused to acknowledge the existence of federal question jurisdiction. The District Court confined its review of the issue to one sentence: "the plaintiff does not detail which of his claims implicate constitutional issues", failing to mention other federal laws. (Order of August 3, 2004, p. 7)

Argument

Question 1-Involuntary dismissal with prejudice is disfavored; it can neither be used to address a deficiency of parties, nor to deny a party his day in court. Rest.2d Judgments, Sec. 20 For most purposes, a case without service has not yet begun, and may not be dismissed with prejudice. Rule 4(m); First Management v. Topeka Investment Group 47 Kan.App.2d 233 (Kan.App. 2012); Medina v. American Family Mut. Ins. Co. 29 Kan.App.2d 805 (Kan. App. 2001) The word once used to describe many such cases was "nonsuit", which allowed re-litigation of matters that were never litigated in the first place. This issue is common to most questions in this case because nothing was litigated beyond procedure. The court failed to explain the binding or preclusive effect of its dismissal over John Doe defendants that were never served or even named, and over an unstated case that it held outside its subject matter jurisdiction.

Question 2-The lower courts erroneously held that Fed.R.Civ.P. 60(b)(4) is sufficiently linked to timing as to overbear issues of due process, citing Fed.R.Civ.P.

60(c). There is no time limit to setting aside a void Order pursuant to Fed.R.Civ.P. 60(b)(4) because it is a legal nullity. Bell Helicopter Textron v. Islamic Republic 734 F.3d 1175 (D.C. Cir. 2013); U.S. v. Bigford 365 F.3d 854 (10th Cir. 2004); Continental Coal, Inc. v. Cunningham 511 F.Supp.2d 1065 (D. Kan. 2007); Rest.2d Judgments, sec. 66 ("passage of time" not a factor)

The lower courts approach Fed.R.Civ.P. 60 as though it were a legal remedy available for a certain length of time, but it lies in equity. Garcia v. Ball 303 Kan. 560 (Kan. 2015); White v. NFL Players Ass'n 756 F.3d 585 (8th Cir. 2014)("the rule is designed to prevent injustice" at 596) The district court refused to exercise discretion in an area where it actually possessed such power, and it certainly possessed no discretion to deny relief from a void judgment. Bell Helicopter, supra; Marcus Food Co. v. DiPanfilo 671 F.3d 1159 (10th Cir. 2011) Their only equitable consideration, the "reasonableness" of delay in filing, was therefore improper because it failed to consider any equitable factors. The judicial system has important interests in finality and the timely resolution of cases, but a court cannot refuse to hear cases or deny their review to advance those interests.

Question 3-"Jurisdiction cannot be conferred upon a federal court by consent" because it is statutory. Busey v. Bd. Of County Com'rs, County, Shawnee, KS 277 F.Supp.2d 1095, 1113 (D. Kan. 2003); 28 U.S.C. 1332; Grubb v. Public Utilities Commn. 50 S.Ct. 374 (1930) A plaintiff does not waive his right to due process by filing suit, nor does a Plaintiff know at the time of filing whether he will obtain service. The lower courts create a blanket consent to all judicial action granted by

the act of filing suit based partly on the authority of Rollins v. Ingersoll-Rand 240 Fed.App'x 800 (10th Cir. 2007), an unpublished case with a defendant in which the plaintiff had argued the court lacked jurisdiction over him because of his status as a "sovereign citizen". Rollins is not on point because the plaintiff in this case did not deny the court's jurisdiction; he sought the court's assertion of jurisdiction, or, failing that, he denied the court's jurisdiction over a case with no defendant yet.

This court interpreted consent differently in Baldwin v. Iowa State Travelling Men's Association 283 U.S. 522 (1931). In Baldwin, a defendant filed an entry of appearance in a lower court to contest jurisdiction, and this court later held that the defendant consented to the lower court's exercise of jurisdiction over it because it had been "fully heard...in the absence of fraud" once. 283 U.S. 522, 526 Baldwin noted that "those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be forever settled as between the parties". 283 U.S. 522, 525 There must, of course, be parties (those who have contested an issue) and a hearing (matters once tried). The lower courts in this case held that the plaintiff consented to its actions in a case that was "tried" and "fully heard" without a hearing on the substance of the claim or even a defendant; the only hearings were ones in which the court found it lacked power to proceed. Likewise, Durfee v. Duke " 84 S. Ct. 242 (1963) held the test was whether a matter was "fully and fairly litigated", a test that should be extended to all questions in this case.

Ins. Corp. of Ireland v. Compagnie des Bauxites 102 S. Ct. 2099 (1982) considered the boundaries of consent to personal jurisdiction. This court described the test as

one of due process, requiring that a court's action "not offend 'traditional notions of fair play and substantial justice'". 102 S. Ct. 2099, 2104 In this case the District Court refused to assert personal jurisdiction over the anticipated defendants by allowing law enforcement service, and its chief objection to its own subject matter jurisdiction could have been overcome had it done so. The plaintiff did not consent to the refusal.

Question 4.-Personal jurisdiction is acquired by service or entry of appearance, and the lower courts cite no relevant authority to support the proposition that lack of personal jurisdiction over a potential defendant may be waived by the action of a plaintiff. This court has stated that "due process requires that the defendant be given adequate notice of the suit...and be subject to the personal jurisdiction of the court." Worldwide Volkswagen Corp. v. Woodson 100 S. Ct. 559, 564 (1979)(emphasis added) A case with no defendant is an entire case over which a court lacks jurisdiction rather than a case over which a court may act with the exception of one or more party(s). Fed.R.Civ.P. 54; Mann v. Castiel 681 F.3d 368 (D.C. Cir. 2012); Sinoying Logistics PTE v. YI DA XIN Trading Corp. 619 F.3d 207 (2nd Cir. 2010); Moore v. Luther 29 Kan. App.2d 1004 (Kan. App. 2001) The District Court made conflicting remarks on this point, nowhere explicitly finding that it possessed personal jurisdiction, stating at one point that "this case cannot move forward until at least one defendant is served." (Order of August 3, 2004, p. 3) It circumvented the issue by holding that the Plaintiff consented to its exercise of personal jurisdiction. The law, by contrast, was best stated in Moore, supra: "with

no defendant in the lawsuit, the trial court lacked jurisdiction to make a ruling". 29 Kan.App.2d 1004, 1007

A judgment is not between the plaintiff and a court, it is between parties or those in privity with parties. What parties could be bound by this decision? According to the court, even the plaintiff may not qualify as a party, and an unserved anticipated defendant is not a "party" for purposes of Rule 54 or any other purpose. Cambridge Holdings, Inc. v. Federal Ins. Co. 489 F.3d 1356 (D.C. Cir. 2007) A nonparty is not bound by a judgment, so the court's order is either in rem for want of a defendant, or interlocutory. The District Court did not indicate it was asserting in rem jurisdiction, though it found that the case was "about an estate". (Order of August 3, 2004, p. 1) The Complaint indicated that the plaintiff sought a personal judgment, and with no defendant, the judgment cannot be personal, nor can a personal judgment affecting fewer than all parties be final per Fed.R.Civ.P. 54(b), nor may a personal judgment be obtained without personal service. The District Court nowhere found that any of the defendants lacked minimum contacts with the state, nor could it have so found. What defendants?

Question 5-Actual notice is insufficient, and a court may not obtain personal jurisdiction over a defendant unless a summons and complaint are delivered personally in compliance with Rule 4. Crowley v. Bannister 734 F.3d 967 (9th Cir. 2013) Failure of service as to any defendant requires dismissal against that defendant without prejudice. Rule 4(m); Crowley, supra These are onerous requirements for a plaintiff alleging fraud as to the identity and residence of

defendants. The anticipated defendants greatly benefitted from these rules, and the District Court further protected them by holding that a case without service was begun, fully litigated, and could be dismissed with prejudice.

The method of service selected by the court, self-service pursuant to Fed.R.Civ.P. 4(e)(2), is a matter of economy and convenience rather than due process, and it has not been part of the judicial system for long. Law enforcement service pursuant to Fed.R.Civ.P. 4(e)(1) is a more rigorous standard but not in conflict. The Kansas rule requires law enforcement service, stating that a sheriff "must" serve process "unless a party...notifies the clerk that the party elects to undertake responsibility for service". K.S.A. 60-303 Service may be made by state law methods under Rule 4. Note that federal service of process other than a civil summons or subpoena must be made by law enforcement alone. Fed.R.Civ.P. 4.1(a) The Court's denial of access to law enforcement denied the Plaintiff access to the Court itself because law enforcement will only serve process if ordered to do so by a court.

It was necessary to satisfy the stricter standard of Rule 4(e)(1) for the judgment to be firm enough to resolve the case. Burger King v. Rudzewicz 105 S. Ct. 2174 (1985) Law enforcement service alone was capable of this because the anticipated defendants possessed a remedy pursuant to Rule 12(b)(5) to insulate them from anything short of compliance with the technical requirements of Rule 4. Service must be delivered to the right (and correctly named) person at the right place. Cessna Finance Corp. v. VYWB, LLC 982 F. Supp.2d 1226 (D. Kan. 2012) The plaintiff possessed none of this information, this was pled in the Complaint, and

later discussed in open court. A court lacks discretion to require a method of service certain to fail or yield a void judgment, especially when a better method is available.

Its refusal to order law enforcement service in order to attempt to obtain personal jurisdiction was a choice made as part of its supposed discretion, not something dictated by an inflexible authority. In a fair world, the District Court's orders would have been more than reasonable because self service would have afforded the anticipated defendants formal notice of the case. American law, by contrast, demands compliance with Rule 4. The casebooks are full of examples in which defendants game the system created by Rule 4, and even the United States government (when a litigant) demands nothing less than exact compliance with Rule 4. Constien v. U.S. 628 F.3d 1207 (10th Cir. 2010) The court knew the law as well as the jurisdictional facts pled; it likewise knew of a possible remedy, law enforcement service. The same court later denied jurisdictional discovery as to diversity: it could not have made a clearer finding that the names and addresses of the anticipated defendants were unknown, that self-service was pointless, and that even the gold-standard of law enforcement service may have presented challenges in meeting the requirements of Rule 4.

Law enforcement service is required in cases filed in forma pauperis, and the court concluded from this that it is never otherwise required. That is not the law, and it is a massive departure from the standards of due process. This court disapproves of making payment of a filing fee a prerequisite of due process. Parissi v. Telechron, Inc. 75 S.Ct. 577 (1955); Nietzke v. Williams 109 S.Ct. 1827

(1989)("goal of putting indigent defendants on a similar footing with paying plaintiffs") Even in the absence of allegations of fraud, most courts make law enforcement available to non-IFP plaintiffs upon request, especially pro se ones. Meilleur v. Strong 682 F.3d 56 (2nd Cir. 2012)

Cases allowing discrimination based on indigence normally concern pro se IFP parties who face the same difficulty as the plaintiff, that Fed.R.Civ.P. 4(c)(2) prevents a party from serving process himself. Courts relax some procedural rules to accommodate pro se litigants, but that approach is not reversed, as here, to discriminate against non-IFP parties. The lower courts cited no relevant authority to support this discrimination, and the plaintiff maintains that it is or should be law that once a case has been filed, the issue of the filing fee should play no further role. Parissi, supra "There is one form of action", not two. Fed.R.Civ.P. 2 It is one matter to waive a court's normal filing fee, quite another to deny a party access to available and necessary legal services because the party is perceived as falling in a solvent tax bracket.

The District Court found that "plaintiff has failed to establish that he is unable to serve process upon defendants, especially in light of the extended deadline". (Order of June 14, 2004) The allegations of fraud as to name and address are more than sufficient to establish an inability to serve process in a way that would have satisfied Rule 4 and thus secured a valid judgment. The court correctly noted that its deadlines had been adequate, but time could not address that problem. Further, Rule 4(m) required dismissal without prejudice for lack of timely service given the

court's holding that the plaintiff lacked good cause for his failure to serve within 120 days.

Question 6.-The District Court's dismissal with prejudice on the pleadings nonsuited the case, denying the plaintiff due process of law by subsuming its ruling on Rules 8 and 12 into that of Rule 41(b). It first erred in its application of Rule 8, which does not require detailed factual allegations. "Pleadings under the rules simply may be a general summary of the party's position that is sufficient to advise the other party of the event being sued upon." Federal Practice and Procedure, Wright, Miller, and Cooper, sec. 1202, p. 89 A complaint need merely furnish "fair notice of what the claim is". Conley v. Gibson 78 S. Ct. 99, 103 (1957) The District Court faulted the Complaint for failing to specify which count corresponded to which named defendant, when the terms of most counts were that the defendants were acting in a conspiracy, and that all counts implicated all anticipated defendants. The court itself held that the defendants were not even named yet, and likewise treated all defendants and all counts of the Complaint collectively without itemizing deficiencies. (Report of August 17, 2004, p. 6) The Complaint did not furnish dates and exact places because most of its events took place long ago, and much of that information could have been learned through discovery. The code view of pleading is that a complaint, even a verified complaint, does not by itself prove anything, and that facts are best determined through discovery.

The District Court confined its findings to conclusions and generalizations unsupported by citations to the record, as required by Anderson v. City of Bessemer

City, N.C. 105 S.Ct. 1504 (1985) It stated, for example, that "most of the plaintiff's claims make little sense to the court" (Order of August 3, 2004, p. 3); and that the Complaint was a "rambling narrative of charges and conclusions" (Report of August 17, 2004, p. 6). Its few detailed findings concern the claims' oddity and their likelihood of being true, not whether they were capable of proof or failed to state facts. A court is required to accept all allegations as true in determining if any facts could support them, and it may not reject them as preposterous in lieu of fulfilling that duty. It likewise failed to grant any discovery before testing the Complaint's factual sufficiency or nomenclature. Its chief finding was a summary of the record intended solely to corroborate its conclusion that the Complaint was "fantastic" and "delusional" rather than its holding that allegations were not properly stated. (Order of August 3, 2004, p. 1, et seq.) The plaintiff maintains that the Complaint is adequate to give fair notice what its claims are, and submits the Complaint itself as proof of the adequacy of one or more of its counts.

Though "on the merits", a dismissal on the pleadings is limited to what is decided, which is almost nothing because there can be no set of facts to support the theory of recovery; further, there can be no set of facts to support any theory of recovery, not just that pled. Barrett v. Tallon 30 F.3d 1296 (10th Cir. 1994) The District Court did not consider and reject the facts of this case: it held there were none, rejecting more than 100 pages of material as not simply delusional, but nonfactual; it likewise held that no facts could be proven in support of the Complaint.

The record also indicates the District Court considered matters well beyond the Complaint in reaching its decision without converting its ruling to a summary judgment, pursuant to Fed.R.Civ.P. 56. Mavrovich v. Vanderpool 427 F.Supp.2d 1084 (D. Kan. 2006) By considering the entire record, its factual sufficiency is undebatable. The plaintiff filed 29 motions over the course of 2004, typically to join additional defendants. A few may not have been clear-headed, but they detailed portions of the plaintiff's life far beyond the information set forth in the Complaint, much enlarging the facts available to the court; the court cited many of them in its Orders. (see Order of August 3, 2004, p. 2) The factual material pled in the Motions was sufficient to place all claims within the realm of plausibility, as well as to plead numerous federal laws and questions. Like so many of its rulings, dismissal on the pleadings calls into question whether the plaintiff received a fair and impartial hearing. Had the District Court been a party, a judge would have ordered it to elect a remedy, explaining that it could not proceed under all theories at once. Its rulings on the pleadings sought the benefits of Rule 56 (a dismissal on the entire record) while confining themselves to the limited requirements of Rule 12(b)(6) (dismissal on the Complaint alone) and Rule 8 (nothing was stated to begin with).

Having concluded from the entire record that the Complaint alone was insufficient, the District Court ordered the plaintiff to amend it, and the plaintiff's failure to do so was the basis for its penalty dismissal pursuant to Fed.R.Civ.P. 41(b). (Order of August 3, 2004, p. 8) The plaintiff did not amend because he

believed premature amendment could have prevented him from making later, necessary amendments, especially when the court's order largely concerned draftsmanship, not substance. A plaintiff may only amend a Complaint once by right. Fed.R.Civ.P. 15 The plaintiff did not want to place himself at the court's mercy because too many of its rulings had already displayed a lack of impartiality.

This court has characterized Fed.R.Civ.P. 41(b) as a defendant's remedy because of its harsh sanctions; it is not intended to afford a court expansive, sua sponte powers. Societe Internationale pour Participation Industrielles et Commerciales S.A. v. Rogers 78 S.Ct. 1087 (1958) Rule 41(b) is a penalty dismissal for such things as "failure to comply with these rules", but the District Court combines it with Rules 8 and 12 as an extension of its ruling on the pleadings. In Societe, this court noted that "there are constitutional limits upon the power of courts, even in the aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause." 78 S.Ct. 1087, 1094 The chief justification for Rule 41(b), mentioned nowhere in either courts' order, is a court's need to manage its own docket, a need which cannot deny a party his day in court.

Question 7. The District Court's dismissal for lack of subject matter jurisdiction should not have been with prejudice. The District Court likewise failed to consider a lesser sanction than dismissal with prejudice, though required to do so. Salata v. Weyerhauser Co. 757 F.3d 695 (7th Cir. 2014); Lafleur v. Teen Help 342 F.3d 1145 (10th Cir. 2003) Dismissals for lack of jurisdiction are in abatement, they are not on

the merits, and not intended to prevent pursuit of a case in a court with jurisdiction. Semtek Intern. Inc. v. Lockheed Martin Corp. 121 S.Ct. 1021 (2001)

Question 8.-The court's holding is overbroad because a court may not decide issues such as the pleadings in a case over which it lacks jurisdiction. Sinochem Intern. v. Malaysia Intern. Shipping 127 S. Ct. 1184 (2007); Gold v. Local 7 United Food and Commercial Workers 159 F.3d 1307 (10th Cir. 1998) The court itself held that it lacked subject matter jurisdiction, and the plaintiff maintains it also lacked personal jurisdiction. Judgments issued without jurisdiction are void, not merely voidable. Bell Helicopter, supra By issuing a decision under so many different theories, the court deliberately forestalled litigation of issues unnecessary to a jurisdictional dismissal. Piling on Rules 8, 12(b)(6), and 41(b) allowed the court to dismiss with prejudice while at the same time never considering the facts of a case, which it held had never been stated.

Question 9.- The Circuit Court stated that, according to the plaintiff, "the district court erroneously ruled that it lacked subject matter jurisdiction", noting that mere error is insufficient for reversal. (App. Order, p. 9) In fact, jurisdictional rulings may be reversed for error. United Student, infra The court then states that "Mr. Myzer contends that the district court failed to exercise subject matter jurisdiction that it possessed, not that it exercised subject matter jurisdiction that it lacked." (App. Order, p. 10) The first clause is correct; as for the second, the district court itself held that it lacked subject matter jurisdiction, a holding affirmed on appeal. A court must review and assert subject matter jurisdiction if a single proper basis for

doing so has been pled, and federal question jurisdiction has been held to exist if there is even a colorable federal claim. Gonzalez-Cancel v. Partido Nuevo Progresista 696 F.3d 115 (1st Cir. 2012)

This court therefore maintains that jurisdictional issues may be raised at any point, even after judgment, even on appeal, even sua sponte, even by a party that previously acknowledged jurisdiction. Henderson ex rel. Henderson v. Shinseki 131 S. Ct. 1197 (2011); Arbaugh v. Y & H Corp. 126 S.Ct. 1235 (2006) The lower courts confuse their refusal to discuss portions of the case with the case itself. The Court of Appeals addresses only a portion of this issue, and that with reluctance, describing it as new before rejecting it. The record suggests otherwise. Jurisdiction generally, and federal questions in particular, were certainly pled in the Complaint, which states on page 1 that "a number of claims in this matter arise under the constitution." (Complaint, p. 1; see also paragraphs 34, 36, 40, 41, 44) The Motion "submits" and "incorporates" the Complaint. (Memorandum to Motion of 2018, p. 1)

A person's name and identity are rights secured by federal law, and the plaintiff's lack of either has limited his ability to bring this case, for example, he has been compelled to proceed under an assumed name and in an American court, though his name and citizenship are unknown. These issues were central to the Complaint, such as the count alleging deceit and fraud. (Complaint, para. 29-30) Fed.R.Civ.P. 4(a)(1)(a) states that "a summons must name the court and the parties", and Fed.R.Civ.P. 10(a) states "the title of the Complaint must name the parties". These are federal laws that the District Court should have recognized

given its statements that "federal courts lack jurisdiction over unnamed parties" and "persons and entities not listed in the caption of the complaint are not parties to the lawsuit". (Order of August 3, 2004, p. 6). It is not a federal question when a court applies federal rules of civil procedure, but it becomes one when they go to the very substance of a claim.

Countless federal rights such as education, social security, and voting are linked to issues of name, age, and identity. The Complaint pled that the plaintiff's false identity had been corroborated by government activity, such as a public school education, and government documents "such as the plaintiff's birth certificate and social security card". (Complaint, para. 30) Social security is a federal right, and like most federal rights and privileges it may not be obtained without furnishing a name. That is the first question in most federal applications: what is your name? A party must state his name to file a case, and "the plaintiff does not even know his own name" (Memorandum to 2018 Motion, p. 4) In response to the lower courts' concerns, these are factual issues and not new ones either. They were pled in the Complaint, in later-filed Motions, in the Motion, on Appeal, and now with this court. They are also federal issues, issues not properly addressed in a county courthouse. Finally, the motions the District Court cited in its Order of August 3, 2004 refer to many claims against government entities and state actors. 42 U.S.C. 1983 provides the exclusive remedies for such claims. Bolden v. City of Topeka, Kan. 441 F.3d 1129 (10th Cir. 2006)

There was no finding by either court that any federal claim was insubstantial or made solely for the purpose of alleging federal jurisdiction. In fact, there was no finding by the Court of Appeals that the issue of federal question jurisdiction existed, though it was addressed in the Brief and pled in the Complaint. The District Court confined its discussion of the matter to one sentence: "The plaintiff does not detail which of his claims implicate constitutional issues". (Order of August 3, 2004, p. 7) Never mind other federal laws.

As for diversity jurisdiction, the reason the plaintiff opposed premature amendment of the Complaint was that he intended to submit the names and addresses of the defendants once he learned them. The planned jurisdictional discovery was service at a best-information address in order to gain information for service at an accurate one. Many circuits require jurisdictional discovery, as may Rule 15(c)(1)(C), with an initial plea of diversity on information and belief. See, e.g., Carolina Cas. Ins. Co. v. Team Equipment, Inc. 741 F. 3d 1082 (9th Cir. 2014) (noting that information about the defendants' names and residences was in their control); Alston v. Parker 363 F.3d 229 (3rd Cir. 2004)(allowing jurisdictional discovery because "plaintiff may be unaware of the identities and roles of relevant actors" 363 F.3d 229, 234); Crowley, supra In this case, the court made no finding that amendment of the Complaint was prohibited, but it demanded amendment prior to jurisdictional discovery, rendering it impossible and pointless. The court's holding was moot as well as without basis because the Complaint also pled federal

questions. There was enough pled for the court to assert jurisdiction, all the more reason to permit diversity discovery.

The concept of jurisdiction enjoyed a peekaboo role in this case, popping in and out of both courts' orders at surprising moments. This court in Arbaugh, supra, noted that jurisdiction is "a word of many, too many, meanings" 126 S.Ct. 1235, 1242 Perhaps this best describes the District Court's sloppy use of the word, which allowed it to blend concepts of jurisdiction, pleading, and discretion, always selecting the word supporting a decision "on the merits", then dodging merits-based or even discretionary standards because the case was not properly stated. It collapsed its review of the pleadings into jurisdictional decisions, failing to distinguish which was which, then it invoked Rule 41(b), which affords it considerable disciplinary power but does not apply to many decisions, including lack of jurisdiction or "failure to join a party". A case without any parties should qualify as to the latter.

Question 10.-Finality is a threshold question with Rule 60(b), but a court lacks jurisdiction to treat interlocutory orders as though they were final. To issue a final order, a court must at some point grant one full and fair hearing on the substance of a claim. Costello v. United States 365 U.S. 265 (1961) In Costello, a case was involuntarily dismissed because the government failed to file a necessary affidavit. This court allowed the case to be re-filed because the substance of the claim had never been reached. The orders below fail to determine any issues, rights, or parties except to maintain the status quo by refusing to hear the case. The leading

case of Lummus Company v. Commonwealth Oil Refining Company 297 F. 2d 80 (2nd Cir. 1961) holds that finality depends on whether an order was intended to be final, the adequacy of the hearing granted, and opportunity for review. Other authorities consider whether a decision was "adequately deliberated and firm", whether it followed a full and fair hearing, and whether it was appealable. Rest.2d Judgments, sec. 13 Rule 54 requires a judgment to resolve all claims and address all parties in order to be final. The District Court considers its interlocutory orders final without any parties, claims, service, hearing, appealability, or jurisdiction. Yes, the dismissal was intended to be final, but that was the sole criterion of finality satisfied. The single, brief hearing was not a "full and fair" opportunity to try any issue: no defendant was present and no substantive issue was addressed; according to the court, no claims could have been addressed because none had been stated. The jurisdictional dismissal with prejudice denied the opportunity to relitigate unlitigated claims, even in a court with jurisdiction. The plaintiff's ensuing incapacity stifled appeal of a decision that was not appealable anyway. And there was no review of the decision in response to the 2018 Motion because it was held untimely.

This court holds that "Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard" United Student Aid Funds, Inc. v. Espinosa 130 S. Ct. 1367, 1377 (2010), adding that Rule 60(b)(4) is proper for cases "in which the court that rendered judgment lacked even

an arguable basis for jurisdiction". 130 S.Ct. 1367, 1377. The Restatement notes that Rule 60 decisions "attach much greater significance to actual opportunity to have a day in court" (Rest.2d Jugments, Note, p. 138), and that the concept of finality is flexible if "the rules of original procedure constrain the first opportunity to litigate" Rest.2d Judgments, Intro., p. 10

The lower courts now protect the dismissal without having satisfied the minimum requirements of due process. This case certainly qualifies as one involving a lack of opportunity to be heard as well as a total want of jurisdiction. United Student, supra The dismissal steamrolled the plaintiff's due process rights, including the right to a personal judgment, the right to a full hearing, and the right to an appeal. Nonsuit and unappealability froze the case in a limbo of incompletion rather than finality, never mind a complete lack of claim or issue preclusion (which would require, among other things, an identity of parties). The Court of Appeals concluded that the plaintiff "presents no authority indicating that a full hearing was required prior to the dismissal" (App. Order, p. 9) This succinctly states both courts' position, but courts are required to hear cases, and the hearing should be full and fair. Costello, supra

Question 11-The lower courts failed to adhere to Biester v. Midwest Health Services, Inc. 77 F.3d 1264 (10th Cir. 1996), which required a hearing to determine whether the plaintiff was so incapacitated that he was unable to pursue his case, holding instead that the passage of a certain length of time made the claim unreasonable and unexceptional as a matter of law. A claim of incapacity raises

factual questions, such as whether the passage of a certain length of time is reasonable under the circumstances. Guardianship and other mental health proceedings hold many individuals to be legally incompetent every day. The passage of time can be irrelevant in such cases, and a finding of incompetence often remains a legal order for a lifetime, often well in excess of 14 years. By failing to gather evidence on such questions, the courts' method and approach were legal, not equitable; they were also erroneous.

Then begins a role reversal inevitable given the arbitrary procedures employed. The Court of Appeals held that the Plaintiff "points to no evidence to validate his ostensible incapacity". (App. Order, p. 7) That court does not find facts, and its role was to ensure that the lower court gathered and reviewed evidence. The District Court, on the other hand, was a fact-finding tribunal but it never bothered with evidence on grounds that the claim was not made in a reasonable time.

The District Court in 2004, on the other hand, found that the plaintiff lacked capacity based on "evidence" it gathered from the pleadings. The Report serving as the basis for its dismissal includes a droll summary of the record, stating in part that "various conspirators, potentially numbering in the hundreds of thousands, have engaged in an elaborate scheme to conceal plaintiff's true identity...that the estate of his unknown parents has been divided between the conspirators through some unknown litigation in an undisclosed jurisdiction....plaintiff believes he does not have access to a law library (he alleges that all of the materials in the...library have been altered as a part of the scheme to prevent him from bringing this suit",

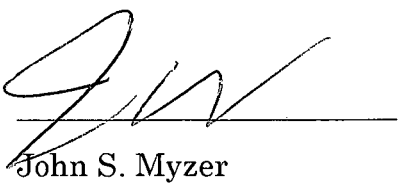
etc. (Order of August 3, 2004, p. 1 et seq) These passages are followed by adjectives such as "bizarre", "fantastic", and "delusional", words not directed at clear-headed litigants, words reserved for unusual situations. (Order of August 3, 2004, p. 4 and Report of August 17, 2004, p. 5) The court plainly considered the plaintiff fit for confinement in 2004, based on which it invoked its authority to dismiss a complaint relating "fantastic or delusional scenarios", citing Nietzke, supra. This was more than evidence: it was an explicit, judicial finding of incapacity. As for the years that elapsed between the 2004 Order and the 2018 Motion, the court did not gather evidence to reverse its 2004 finding of incapacity.

Conclusion

No service, no parties, shabby procedures, improper rulings, lack of finality, a legally incompetent plaintiff, and a total want of jurisdiction: the District Courts' orders abounded in these, and rose well above the level of plain error. Worse, the courts' decisions were reached without hearing the case a single time, constituting a massive departure from the accepted and usual course of judicial proceedings. They are void, not merely voidable, and a clear usurpation of judicial power. They also ignored many federal questions. The decisions of both courts should be reversed and vacated with instructions to hear the case for the first time.

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,



John S. Myzer

December 7, 2018

Certificate of Service

I hereby certify on December 10, 2018 that as of this date no Defendant was served in this case; no anticipated parties in this case were ever served or ever appeared in the District Court or Circuit courts below. To date, the plaintiff is the only party in this case.

John S. Myzer, plaintiff-appellant
400 W. Central #807
Wichita, KS 67203
(816)206-3684
johnmyzer@outlook.com