No. 19-1337

In The Supreme Court of the United States

TODD PHILLIPPI,

Petitioner,

v.

HUMBLE DESIGN, L.L.C.
AND WARREN DAVID HUMBLE,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

On 8/5/16 a civil case in the Northern District Dallas Division was dismissed by way of a FRCP41(a)(1)(A)(ii) agreed dismissal without a court order. After the FRCP41(a)(1)(A)(ii) the Magistrate allowed the Defendants to seek awards of attorney fees as "Prevailing Parties" despite there being no "Judicial Imprimatur". In 2018, Petitioner appeared in the suit under FRCP 60b as a "legal representative". The Original parties had been dismissed from the suit. Petitioner did not sign or file a consent to the Magistrate under 28 USC 636 (c). The Magistrate, sua sponte, denied Petitioners 60b motion without any opposition having been filed. Petitioner timely filed Rule 72 objections. The Chief District Judge held that the consents of the original dismissed parties was the consent of petitioner, who appeared in the matter 2 (two) years after the FRCP 41(a)(1)(A)(ii) agreed dismissal of the original parties.

1.) Whether the District Court and Fifth Circuit Court of Appeals have created an exception to 28 USC 636 (c) by holding that a FRCP 60(b) "Legal Representative" is bound by the consent of the dismissed parties after a FRCP 41(a)(1)(A)(ii) agreed dismissal

2.) Whether the District Court and Fifth Circuit Court of Appeals have created an exception to Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res., 532 U.S. 598, 601, 121

S.Ct. 1835, 149 L.Ed.2d 855 (2001) by holding that when a FRCP 41(a)(1)(A)(ii) is "With Prejudice" it confers "Prevailing Party" status despite there being no "Judicial imprimatur".

3.) Whether the Fifth Circuit Court of Appeals is in conflict with all other Federal Court of Appeals (including its own precedent) regarding the loss of jurisdiction of the District Court immediately upon the filing of a FRCP41(a)(1)(A)(ii) dismissal without a Court Order

LIST OF PARTIES

The Petitioner is the TODD PHILLIPPI

The Respondents are HUMBLE DESIGN, L.L.C.; WARREN DAVID HUMBLE

LIST OF RELATED CASES

1.) Automation Support, Inc. v. Humble Design, L.L.C., No. 3:14-cv-04455-BK (Dallas Division Northern District of Texas Dismissed Aug 5, 2016)

2.) Automation Support, Inc. v. Humble Design, L.L.C., No. 17-10433 (5th Cir. Judgement entered Mar. 26, 2018)

3.) Automation Support, Inc. v. Humble Design, L.L.C., No. 17-10433 (5th Cir. Judgement entered May 9, 2018)

4.) In Re Todd Phillippi, Petition for Writ of Mandamus, No. 19-10141 (5th Cir. Judgement entered Apr. 24, 2019)

5.) Automation Support, Inc. v. Humble Design, L.L.C., No. 19-10769 (5th Cir. Judgement entered Mar. 3, 2020)

6.) Humble Design, L.L.C v. Automation Support, Inc. No. DC-17-07479, 101st District Court, Dallas County, Texas, filed 06/26/2017

7.) Humble Design, L.L.C v. Automation Support, Inc. No. DC- DC-17-08142, 101st District Court, Dallas County, Texas, filed 07/06/2017

8.) Humble Design, L.L.C v. Automation Support, Inc. No. DC- DC-19-00622, 101st District Court, Dallas County, Texas, filed 01/14/2019

9.) Humble Design, L.L.C v. Automation Support, Inc. No. DC- DC-20-05185, 101st District Court, Dallas County, Texas, filed 04/02/2020

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

INTRODUCTION

"Rudimentary justice requires that those subject to the law must have the means of knowing what it prescribes." Antonin Scalia, The Rule of Law as a Law of Rules, 56 U. Chi. L. Rev. 1175, 1179 (1989). Legal standards too unclear to provide such notice call to mind "the practice of Caligula, who reportedly 'wrote his laws in a very small character, and hung them up upon high pillars,'" making them harder to read and thus harder to follow. Flores-Figueroa v. United States, 556 U.S. 646, 658 (2009) (Scalia, J., concurring in the judgment) (quoting 1 W. Blackstone, Commentaries on the Laws of England 46 (1765).1

OPINIONS BELOW

The opinions below are attached To Petitioner's Appendix. Opinion of the U.S. Court of Appeals for the Fifth Circuit, filed March 3, 2020 (Pet. App. A1)

Order of the U.S. District Court for the Northern District of Texas, Dallas Division, filed June 12, 2019 (Pet. App. A6)

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[1] Dave Yost, Ohio Attorney General; State of Ohio v. Shawn Ford

Docket Entries 99 and 113 from the U.S. District Court for the Northern District of Texas, Dallas Division (Pet. App. A8) None of the opinions are published

JURISDICTIONAL STATEMENT

The Fifth Circuit Court of Appeals issued its opinion and Judgment on March 3, 2020. Petitioner has Ninety days (90) to file a petition for certiorari. The Petitioner has timely filed on or before June 1, 2020. The Fifth Circuits decision is sufficiently final. Jurisdiction is proper under 28 U.S. Code § 1254 (1)

CONSTITUTIONAL PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

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.

STATEMENT OF THE CASE

A lawsuit was filed on 12/18/2014, Cause# 3:14-CV-04455 in the Northern District Dallas division for various causes of action. The facts of that lawsuit are not relevant to this petition.

It is not relevant because the lawsuit was dismissed under FRCP 41(a)(1)(A)(ii) on August 5, 2016. (Pet. App. 6) A dismissal without a court order.

As the Fifth Circuit has held a FRCP 41(a)(1)(A)(ii) dismissal puts the parties into a position as if the lawsuit had never been filed.

After the FRCP 41(a)(1)(A)(ii) dismissal without a court order the defendants moved ahead with a FRCP Rule 54 motion to seek attorneys fees from a lawsuit that had never been filed, (infra Bechuck v. Home Depot U.S.A., Inc., 814 F.3d 287 (Fifth Cir. 2016)).

The Magistrate, ignoring the Fifth Circuits holdings that an order of attorney fees after a FRCP 41(a)(1)(A)(ii) dismissal "are a nullity", (infra Williams v. Ezell 531 F.2d 1261, (Fifth Cir., 1976), ordered attorney fees to be paid to the dismissed Defendants by the dismissed Plaintiffs on two occasions, totaling over $100,000.00.

The dismissed Defendants then sought to execute on the judgement(s) by filing Garnishment actions in the Dallas County District Court for the State of Texas. (See Related Cases)

This point is when Petitioner became involved. Petitioner put up cash surety for the Replevy Bond in the State Court actions.

Part of the consideration for securing the Replevy Bond in the State Court action was an assignment of any and all rights to seek and to recover the cash security by any and all means without limitation.

Petitioner reviewed the law and precedent on a FRCP 41(a)(1)(A)(ii) dismissal without a court order, including this court's ruling in Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res., 532 U.S. 598, 601, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001) that a party is not a prevailing party if the court has not placed its "Judicial imprimatur" on the final order. All of the federal Court of Appeals, who have ruled on this issue, agree with Buckhannon.(except as noted the Fifth Circuit Court of Appeals in the underlying matter)

Petitioner filed a FRCP 60(b) motion fully setting forth the issues and law that show that the Magistrate lacked jurisdiction after the FRCP 41(a)(1)(A)(ii) dismissal without a Court Order. The Magistrate having been informed of the lack of jurisdiction and error in law has taken extraordinary actions to avoid acknowledging her errors (by striking motions, "terminating actions", threatening sanctions (for bringing the correct law to her attention), mocking Petitioner, refusing to have the dismissed Defendants provide any justification(s). The Magistrate Denied the Petitioners Motion without comment "DENIED". (Pet. App. 8) The

Chief District Judge held the original Parties had consented and the Magistrates order was appealable. (Pet. App. 4, 8) The Fifth Circuit held it lacked jurisdiction due to the consent of the original dismissed Parties. (Pet. App. 1)

REASONS FOR GRANTING THE PETITION

1.) The District Court and Fifth Circuit Court of Appeals have created an exception to 28 USC 636 (c) by holding that a FRCP 60(b) "Legal Representative" is bound by the consent of the dismissed parties after a FRCP 41(a)(1)(A)(ii) agreed dismissal.

At this time there is no federal case law on a FRCP 60(b) "Legal Representative" being bound by the consent of the original dismissed parties after a FRCP 41(a)(1)(A)(ii) agreed dismissal. The Petitioner's FRCP 60(b) motion is a post dismissal action for issues not having to do with the original parties' claims in the dismissed litigation. In this matter the Court, after the District Court's jurisdiction ended, entered orders that affected Petitioner. Petitioner, knowing that he had not consented, knowing that there was no federal precedent, acted as a non-consenting "legal representative" under FRCP 60(b) and 28 U.S.C. § 636(c)(1).

The Federal Magistrate Act provides that "[u]pon the consent of the parties, a full-time United States magistrate judge . . . may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when

specially designated to exercise such jurisdiction by the district court." Roell v. Withrow, 538 U.S. 580, 585, 123 S.Ct. 1696, 155 L.Ed.2d 775 (2003) (quoting 28 U.S.C. § 636(c)(1))

Petitioner did not consent. The consenting Parties had been dismissed prior to Petitioner bringing his post dismissal FRCP 60(b) motion. Petitioner was not involved in the litigation that the FRCP 41(a)(1)(A)(ii) agreed dismissal dismissed. (Pet. App. 6)

Petitioner stated "I am a non-consenting Party" in every pleading he filed. The Magistrate never indicated that she believed Petitioner was covered by the consent of the original dismissed parties. (Pet. App. 8) The Chief District Judge referenced the consent of the original dismissed parties as the basis for finding consent. The Chief District Judge did not analyze Petitioner's status as a FRCP 60b "legal representative" (Pet. App.4) The Fifth Circuit referenced that same consent of the original dismissed parties without referencing the Petitioner's status as a FRCP 60b "legal representative" appearing after a FRCP 41(a)(1)(A)(ii) agreed dismissal. (Pet. App. 1) At no time has there been any legal rationale or precedent given for how or why a FRCP 60b "legal representative" is bound by the consent of the original dismissed parties after a FRCP 41(a)(1)(A)(ii) agreed dismissal

The situation is a "catch 22" There is no precedent in any Court regarding the 28 U.S.C. § 636(c)(1)

consent status of a FRCP 60b "legal representative" appearing after a FRCP 41(a)(1)(A)(ii) agreed dismissal. Thus, if Petitioner took a direct appeal from the Magistrate, he risked the Appellate Court looking at his pleadings "I am a non-consenting Party" and the Appellate Court holding that it lacked jurisdiction and dismissing the appeal, based upon his failure to file FRCP 72 objections. Conversely, as happened here, the Magistrate "Denied" Petitioner's 60(b) motion without comment. The District Court Chief Judge then held that the dismissed parties had consented, without any legal rationale regarding how that consent is imputed to a FRCP 60b "legal representative" appearing after a FRCP 41(a)(1)(A)(ii) agreed dismissal.[2] That ruling came months after the deadline for a direct appeal from the Magistrate's order had expired. Then the Appellate Court determined it didn't have jurisdiction and dismissed the appeal without any legal rationale regarding the consent of a FRCP 60b "legal representative" appearing after a FRCP 41(a)(1)(A)(ii) agreed dismissal.

There is no guidance from case law as this specific issue has never been heard in any Appellate Court or in the United States Supreme Court. In analyzing this it is important to focus on the status of the case at the time Petitioner makes his "appearance" in the matter. Petitioner is appearing after a FRCP 41(a)(1)(A)(ii) agreed dismissal.

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[2] The Chief District only took the matter up after Petitioner filed a Petition for writ of Mandamus and cajoled the Clerk's Office to present it to her.

""[T]he effect of a Rule 41(a)(1) dismissal is to put the plaintiff in a legal position as if he had never brought the ... suit." Yesh Music v. Lakewood Church, 727 F.3d 356, 359 (5th Cir.2013) (alteration in original) (quoting Harvey Specialty & Supply, Inc., 434 F.3d at 324).

Under Rule 41(a)(1)(A)(ii) once the parties agreed to a voluntary dismissal, the court is deprived of jurisdiction. Bechuck v. Home Depot U.S.A., Inc., 814 F.3d 287 (Fifth Cir. 2016) It is Petitioner, as the only "party", who is attacking a Judgment for attorney fees entered after the Rule 41(a)(1)(A)(ii) agreed dismissal. A Judgment that the Magistrate and the District Court both lacked the jurisdiction to enter.

Petitioner is not intervening into the action. The original suit is "as if it had never been filed" Bechuck id. Petitioner is, effectively, creating the action. To warrant intervention under Fed. R. Civ. P. 24, the Movants must show that they claim "an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24. Ford v. City of Huntsville, 242 F.3d 235, 239 (5th Cir. 2001). Petitioner had/has no interest in the underlying contract/confidential information lawsuit. Petitioner's interest arises from several Texas State Court filings for domestication of a foreign Judgment (The Judgments for attorney fees awarded by the

Magistrate after the FRCP Rule 41(a)(1)(A)(ii) agreed dismissal) Those cases were filed for the purpose(s) of obtaining a garnishment based on those Judgments. Petitioner has an interest in the cash surety used to Replevy the Garnishment. Out of an abundance of caution Petitioner obtained an assignment of the right to take any action to recover the cash surety.

Petitioner is more in line with the addition of a new Defendant or Plaintiff after the original Parties had consented. Archie v. *Murret v. City of Kenner*, 894 F.2d 693, 695 (5th Cir. 1990) The newly added Parties must have the opportunity to consent and are not bound by the consent of the original parties. The Magistrate can continue to handle matters only if the new parties do not ask for the referral to be vacated and only as a "non-consented" to Magistrate with initial appeal going to the District Court. "28 U.S.C. § 636(c)(1). "Unlike" *Bradley ex rel. AJW v. Ackal*, No. 18-31052, at *6 (5th Cir. Mar. 23, 2020) Here the Magistrate knew Petitioner had not consented, as Petitioner started every pleading with "I Do not consent to the Magistrate" and the Magistrate failed to correct that "error" by either stating the legal basis for the imputed consent or asking if Petitioner would consent. At the time of Petitioner's entrance into the cause there were no other Parties in the matter as all had been dismissed "with prejudice" Petitioner effectively started this litigation and brought in other parties. Petitioner had/has no interest in the underlying causes brought by the original parties and those causes were

dismissed. Finally it is important to note that failure to obtain the consent of all parties is considered an "extraordinary circumstance" id

If the Court is going to have rules for the consent status of a FRCP 60(b) "Legal Representative" under 28 U.S.C. § 636, it "owes" Petitioner a "judicially discoverable and manageable "standard "for determining that status, Rucho v. Common Cause, 139 S. Ct. 2484, 2496 (2019).

The Court should grant certiorari and provide such a standard.

2.) The District Court and Fifth Circuit Court of Appeals have created an exception to Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res., 532 U.S. 598, 601, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001) by holding that when a FRCP 41(a)(1)(A)(ii) is "With Prejudice" it confers "Prevailing Party" status despite there being no "Judicial imprimatur"

The District and Fifth Circuit Court of Appeals have made a determination that after a Federal Rule of Civil Procedure 41(a)(1)(A)(ii) Dismissal, "With Prejudice" a party obtains "Prevailing Party" status for the purposes of receiving an award of Attorney Fees.

This determination is in conflict with every other District Courts, Courts of Appeal and the United States Supreme Court as to the determination of "Prevailing Party" Status

Malibu Media, LLC v. Baiazid, 152 F.Supp.3d 496,499-500 (2015) provides:

"The first step of the "prevailing party" analysis is to ascertain the definition of the term as used in § 505. As it happens, the Supreme Court has addressed the meaning of "prevailing party" as used in the fee shifting.... See Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res., 532 U.S. 598, 601, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001). Importantly, the Supreme Court in Buckhannon noted that "prevailing party" is a legal term of art that appears in "[n]umerous federal statutes" that shift fees. Id. at 600, 603, 121 S.Ct. 1835. ..., a "cardinal rule of statutory construction" is that when Congress employs a term of art, it presumably knows and adopts the established meaning of the term. See FAA v. Cooper, ——U.S. ——, 132 S.Ct. 1441, 1449, 182 L.Ed.2d 497 (2012). Thus, the meaning of the term "prevailing party" as explained in Buckhannon is broadly applicable ... Doe v. Boston Pub. Schs., 358 F.3d 20, 25 (1st Cir.2004) (noting that Buckhannon's definition of "prevailing party" is "not statute-specific").

In short, Buckhannon is authoritative with respect to Rule 54 ..." In defining the phrase "prevailing party" the Supreme Court looked to Black's Law Dictionary which defines a "prevailing party" as "[a] party in whose favor a judgment is rendered." Buckhannon, 532 U.S. at 603, 121 S.Ct. 1835 (emphasis added). A "judicially sanctioned change in the legal relationship of the parties"—such as a judgment on the merits or a consent decree—is

necessary for "prevailing party" status. See id. at 605, 121 S.Ct. 1835. Indeed, even a party's "voluntary change in conduct, although perhaps accomplishing what the [opposing party] sought to achieve ... lacks the necessary judicial imprimatur" to afford "prevailing party" status on the benefited party. Id. (emphasis in original)." at 499-500

The Buckhannon definition of "Prevailing Party" noted the necessity of a "judicial imprimatur" to gain "Prevailing Party" status.

Here, as is undisputed, the FRCP 41(a)(1)(A)(ii) dismissal did not have and did not require any "judicial imprimatur" or judicial act. Moreover, The United States Supreme Court gave no effect to the nature of the statute or Rule under which Attorney fees may have been sought ("not statute-specific").

The Court in Malibu then went further and took the Buckhannon definition of a "Prevailing Party" and applied it, specifically, to a FRCP 41(a)(1)(A)(ii) dismissal as follows:

"Buckhannon's teaching as to "prevailing party," applied here, points convincingly to the conclusion that defendant is not a "prevailing party." In this case, there was no judgment or "judicially sanctioned change in the legal relationship of the parties." Id.

The filing that effectuated the dismissal of this suit was the Rule 41(a)(1)(A)(ii) joint stipulation of dismissal filed on August 27, which required no judicial involvement to effect the dismissal of the case; it was effective when filed. This is confirmed by

the plain language of Rule 41(a)(1)(A), which states that a stipulated dismissal operates "without a court order." Moreover, the great weight of judicial authority holds that once a stipulation of dismissal under Rule 41(a)(1)(A)(ii) is filed, the matter ends. Nor is this result altered where, as here, a further order issues acknowledging the stipulation and reiterating the dismissal. Marino, 349 F.3d at 752 n. 1." (Internal citations omitted) (Emphasis added) In sum, a stipulation of dismissal is effectuated by the parties themselves, without judicial involvement, even when a ministerial order follows, as occurred here. Because a stipulation of dismissal does not result in a judgment or judicially sanctioned relief, on which Buckhannon premises "prevailing party" status, it follows that a defendant dismissed pursuant to a stipulation of dismissal is not a "prevailing party." " Malibu Media, LLC v. Baiazid, 152 F.Supp.3d 496,500-501 (Emphasis added)

The particular facts underlying the lawsuit, the statute that may allow recovery of fees or the FRCP 54 motion are not relevant to the determination of "Prevailing Party" status. Malibu involved the exact same FRCP 41(a)(1)(A)(ii) dismissal fact pattern as this matter, Malibu even included a reservation of the ability to seek attorney fees. However, Malibu held: "a defendant dismissed pursuant to a stipulation of dismissal is not a "prevailing party" id., 501

This analysis has been consistently followed by other Courts of Appeals. Indeed, the Fifth Circuit

Court of Appeals has considered the issue of the effect of a FRCP 41(a)(1)(A)(ii).

In Williams v. Ezell 531 F.2d 1261, (Fifth Cir., 1976) while considering a dismissal under FRCP 41 (A)(1) it held that:

"At the time plaintiffs filed their motion to dismiss the case was effectively terminated. The court had no power or discretion to deny plaintiffs' right to dismiss or to attach any condition or burden to that right. That was the end of the case and the attempt to deny relief on the merits and dismiss with prejudice was void. Likewise, except for determining appeal ability, the subsequent orders granting attorney's fees were a **nullity.**" id at 1265 (emphasis added)

Williams sets the standard that there is nothing regarding attorney fees that remains to be determined after a FRCP 41(a)(1) dismissal.

The Fifth Circuit Court of Appeals has now issued a contradictory opinion of the current stare decisis for Fifth Circuit Court of Appeals. It's as if Caligula has posted the law again.

The Court should grant certiorari and resolve this conflict.

3.) The Fifth Circuit has created an exception to the finality of a FRCP 41(a)(1)(A)(ii) dismissal which conflicts with all other courts including the Fifth Circuit

The Fifth Circuit is correct as to its conclusion that it does not have jurisdiction, but not for the reason cited by the Fifth. Under Rule 60(b)(4), the court will generally look toward two factors to determine voidness. "[a] judgment "is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, ..." ' (quoting Williams v. New Orleans Public Serv., Inc., 728 F.2d 730, 735 (5th Cir.1984) citing 11 Wright & Miller, Federal Practice and Procedure § 2862 (1973 ed.); see also Marshall v. Board of Education, 575 F.2d 417, 422 (3d Cir.1978)). Some circuits have noted that a judgment is void if the rendering court was powerless to enter it. VTA, Inc. v. Airco, 597 F.2d 220, 224 (10th Cir.1979). The Seventh Circuit declared that "[a] void judgment is one which, from its inception, was a complete nullity and without legal effect." United States v. Zima, 766 F.2d 1153, 1159 (7th Cir.1985).

On August 5, 2016, The original Parties Technical Support and Humble entered into a "Joint Stipulation of Voluntary Dismissal with Prejudice of Plaintiffs' Claims Against Defendants" pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) (hereinafter JSVD") (Doc. 50, App.Ex. 1). Federal Rule of Civil Procedure 41(a)(1)(A)(ii) provides:

"a) Voluntary Dismissal.

(1) By the Plaintiff.

(A) **Without a Court Order**. Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared. ..." (emphasis added)

A Federal Rule of Civil Procedure 41(a)(1)(A)(ii) is effective on its filing. The Court Clerk makes an administrative notation on the file "CASE CLOSED". There is no Court action i.e. "WITHOUT A COURT ORDER" id.

The Fifth Circuit Court in Williams v. Ezell 531 F.2d 1261, (Fifth Cir., 1976) while considering a dismissal under FRCP 41 (A)(1) held that: "At the time plaintiffs filed their motion to dismiss the case was effectively terminated. The court had no power or discretion to deny plaintiffs' right to dismiss or to attach any condition or burden to that right. That was the end of the case and the attempt to deny relief on the merits and dismiss with prejudice was void. Likewise, the subsequent orders granting attorneys fees were a nullity." id at 1265 (emphasis added)

Williams, id sets the standard that there is nothing regarding attorney fees that remains to be

determined after a FRCP 41(a)(1) dismissal. That is the type of dismissal herein.

All of the Appellate Courts that have addressed the effect of a FRCP 41(a)(1) dismissal are in agreement. As summarized in Malibu Media, LLC v. Baiazid, 152 F.Supp.3d 496,499-500 (2015).

Even the Fifth Circuit considered this matter recently. In Bechuck v. Home Depot U.S.A., Inc., 814 F.3d 287 (2016) Bechuck filed a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A). The Fifth held:

"Rule 41(a)(1) is the shortest and surest route to abort a complaint when it is applicable. ...That document itself closes the file. There is nothing the defendant can do to fan the ashes of that action into life and the court has no role to play. This is a matter of right running to the plaintiff and may not be extinguished or circumscribed by adversary or court. There is not even a perfunctory order of court closing the file. Its alpha and omega was the doing of the plaintiff alone. He suffers no impairment beyond his fee for filing" (emphasis added) Am. Cyanamid Co. v. McGhee, 317 F.2d 295, 297 (5th Cir.1963); see also Amerijet, 785 F.3d at 973

And further "Thus, once a plaintiff has moved to dismiss under Rule 41(a)(1)(A)(i), "the case [i]s effectively terminated." Williams v. Ezell, 531 F.2d 1261, 1263–64 (5th Cir.1976). "The court ha[s] no power or discretion to deny plaintiffs' right to dismiss or to attach any condition or burden to that right." Id. "Accordingly, the district court may not

attach any conditions to the dismissal." Amerijet, 785 F.3d at 973. ...the court loses jurisdiction over the litigation..." id (Emphasis added)

The Fifth even went further holding that:

""[T]he effect of a Rule 41(a)(1) dismissal is to put the plaintiff in a legal position as if he had never brought the ... suit." Yesh Music v. Lakewood Church, 727 F.3d 356, 359 (5th Cir.2013) (alteration in original) (quoting Harvey Specialty & Supply, Inc., 434 F.3d at 324).

Then the Fifth Circuit then applied its analysis directly to a FRCP 41(a)(1)(A)(ii) Dismissal finding:

(a dismissal) "under Rule 41(a)(1)(A)(ii), would be the same as the analysis ...outlined in Part II above. Once the parties agreed to a voluntary dismissal, the court was deprived of jurisdiction..." Bechuck id.

The Fifth Circuit has been very clear that after a FRCP 41(a)(1)(A)(ii) dismissal the Court loses its jurisdiction over the case and cannot add attorney fees or restrictions because the Court's jurisdiction ceased immediately upon the filing of the a 41(a)(1)(A)(ii) dismissal. It is important to note that as recently as March of 2020 the Fifth Circuit reaffirmed its holdings in Bechuck and Williams, id, in Bradley ex rel. AJW v. Ackal, No. 18-31052 (5th Cir. Mar. 23, 2020).

But now the Fifth Circuit is in conflict with itself by allowing the imposition of attorney fees by a Magistrate after a FRCP 41(a)(1)(A)(ii) dismissal. It

now without justification or basis rejects that which it had so recently reaffirmed.

The Court should grant certiorari and resolve this conflict.

CONCLUSION

Petitioner acknowledges this is not a gun rights or pro life/pro choice case. However, it is an important 14th amendment due process case.

Petitioner has not been afforded due process of law.

It is important that Petitioners know what their legal status is when entertaining a FRCP 60(b) action regarding consent.

It is important for Petitioners to know that this Court's ruling in Buckhannon, infra will be followed in requiring a judicial imprimatur to bestow "Prevailing Party" status for attorney fees.

It is important for Petitioners to know that the Courts will follow the opinions of the Federal Appellate Courts as summarized in Malibu, infra wherein a FRCP 41(a)(1)(A)(ii) ends the case and the court cannot take any actions thereafter.

It is important for Petitioners to know that the Fifth Circuit Court of Appeals will follow it's rulings as set out in Bechuck and Williams, infra (and reaffirmed in March of this year), that the Courts lose jurisdiction and awards of attorney fees are a nullity. "It's as if the case had never been filed" Bechuck, infra.

These are important constitutional principles and legal issues for our court system. This is an opportunity to resolve unresolved areas of law, to correct conflicts with the United States Supreme Court, to correct conflicts between Appellate Courts, to correct conflicts within the Fifth Circuit Court of Appeals and to mete out justice after an injustice.

For these reasons the Court should grant this petition for Certiorari.

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