

No. 22-312

IN THE
Supreme Court of the United States

MICHELLE CHAPMAN, CLERK, CIRCUIT COURT
OF MISSOURI, RANDOLPH COUNTY,
Petitioner,

—v.—

JANE DOE, BY NEXT FRIEND ANTHONY E. ROTHERT,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

**RESPONSE TO PETITIONER'S
SUGGESTION OF MOOTNESS**

ANTHONY E. ROTHERT
Counsel of Record
AMERICAN CIVIL LIBERTIES
UNION OF MISSOURI
FOUNDATION
906 Olive Street, Suite 1130
St. Louis, Missouri 63101
(314) 669-3420
arothert@aclu-mo.org
Counsel for Respondent

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INTRODUCTION

The parties agree this case is moot. *See Respondent's Suggestion of Mootness; Petitioner's Suggestion of Mootness and Unopposed Motion to Vacate the Judgment of the Court of Appeals.* While Petitioner accurately advises that Respondent takes no position on her motion to vacate the judgment of the Court of Appeals, Petitioner's explanation of why she is entitled to vacatur is inaccurate as to both facts and law. This Response, filed in accordance with Rule 21.4, merely corrects the record with respect to various assertions made by Petitioner, but confirms that Respondent agrees the case is moot and does not oppose vacatur.

STATEMENT

While a seventeen-year-old, Respondent filed this civil rights suit alleging that contrary to Missouri law and in violation of the Fourteenth Amendment, Petitioner, the clerk of the Randolph County court, imposed an extra-statutory parental-notification requirement upon Respondent's request for a judicial bypass that, if granted, would allow her to consent to abortion care without her parents' consent. The statute did not require notice of her parents, but the clerk nonetheless stated that her parents would be notified if she proceeded. Respondent was unable to appear before a judge in Randolph County to seek judicial bypass because she would not acquiesce in Petitioner's insistence on telling her parents if she did. The case sought nominal damages.

On March 23, 2021, the district court, at the summary judgment stage, denied Petitioner quasi-judicial and qualified immunity for her actions. The court found that a disputed issue of material fact

precluded resolution of Petitioner’s claim to quasi-judicial immunity. The court rejected qualified immunity on the ground that a forty-year-old, on-point circuit precedent clearly established that Petitioner’s alleged imposition of an extra-statutory notice requirement was unlawful.

The Eighth Circuit affirmed and unanimously denied rehearing en banc. *Cert. Pet.* at 20a. Petitioner filed a petition for certiorari.

On December 9, 2022, the parties jointly filed a stipulation of dismissal with prejudice in the district court. The district court confirmed the dismissal with its order of dismissal on December 12.

Both parties have now filed suggestions of mootness. Petitioner seeks vacatur of the decision below, which Respondent does not oppose.

ARGUMENT

I. The Case is Moot Because the Parties Stipulated to Dismissal.

As explained in Respondent’s Suggestion of Mootness, this case is moot because the parties stipulated to its dismissal. *Resp. Sugg.* at 2-3. Moreover, as Petitioner acknowledges, “[n]o exception to mootness applies[.]” *Pet. Sugg.* at 4.

Petitioner incorrectly states that mootness was caused by “Respondent’s unilateral dismissal of her case in its entirety” and that no exception to mootness applies because “Respondent is no longer a minor.” *Pet’s Sugg.* at 4.

But Respondent did not unilaterally cause the case to be moot; the parties acted together to effectuate dismissal. A plaintiff may unilaterally

dismiss a case without a court order only “before the opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). In this case, the time for doing so passed years before the parties’ joint dismissal by stipulation.

The parties agreed to resolve the case by *stipulating* to dismissal. Doing so requires “a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii). Here, the parties submitted a “Stipulation of Dismissal with Prejudice” signed by counsel for both parties. *Pet’s Sugg.* at 1a-2a.

The fact that Respondent attained the age of eighteen did not cause this case to become moot. Respondent sought an award of nominal damages for her past injury caused by Petitioner’s unconstitutional acts. *See Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 802 (2021) (“[N]ominal damages provide the necessary redress for a completed violation of a legal right”).

Thus, while Petitioner is correct that the case is moot and no mootness exception applies, the mootness was caused by the parties’ joint action, not by Respondent unilaterally or by Respondent turning 18.

II. Respondent Does Not Oppose Vacatur.

While Respondent does not oppose Petitioner’s request for vacatur, several arguments Petitioner advances are unfounded. Petitioner theorizes that this Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022), rendered this case moot. But as set forth above, it was the joint stipulation of dismissal that rendered the case moot.

This Court should reject Petitioner’s assertion that *Dobbs* mooted Respondent’s suit for damages caused by a completed violation of her constitutional rights. Although Petitioner opines “[t]he Court’s decision in *Dobbs* conclusively resolved the case on the yet-to-be-decided merits,” *Pet’s Sugg.* at 5, that is not so. The issue in this case is whether due process allows a clerk to graft a new notice requirement onto a statute that does not require notice, a distinct issue from that decided by *Dobbs*.

In addition, Petitioner mischaracterizes the decision below. The Eighth Circuit did not hold, as Petitioner suggests, that judicial immunity does not cover mistakes in following a judge’s order; rather, the factual question that precluded summary judgment was *whether* the judge actually issued the directive Petitioner said he did (and as to which no record existed). Likewise, the court below did not find that the judge’s failure to remember issuing such an order alone was sufficient to create a genuine factual dispute about whether he issued it; the court also noted the judge’s additional testimony that he could not and would not have done so.

Finally, the Eighth Circuit applied the standard test for qualified immunity. The question here was not whether “a parental notification statute must include some sort of bypass provision to be constitutional.” *Pet. Sugg.* at 8. Missouri enacted a parental *consent* statute and included an alternative authorization process that allowed mature minors to bypass parental consent. It was this statutory bypass process that Respondent sought to utilize before Petitioner imposed a statutorily unauthorized parental notification requirement onto it, directly

conflicting with the procedures enacted by the legislature.

These differences do not alter the fact, however, that Respondent does not oppose Petitioner's request for vacatur.

CONCLUSION

The case was dismissed on the parties' joint written stipulation, and the case is therefore moot.

Respectfully submitted,

/s/ Anthony E. Rothert
Counsel of Record
ACLU OF MISSOURI
FOUNDATION
906 Olive Street
Suite 1130
St. Louis, Missouri 63101
(618) 531-4184
arothert@aclu-mo.org

Counsel for Respondent

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