

Supreme Court, U.S.
FILED

JAN 28 2023

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CASE NO. 22-790

IN THE
SUPREME COURT OF THE UNITED STATES

VANESSA WEREKO

Petitioner

v.

LORI ROSEN, *et. al.*

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTION PRESENTED

Whether Congress' intent for an interlocutory appeal as of right, under 28 U.S.C. § 1292(a)(1), can be unilaterally converted into a discretionary appeal by a reviewing court to allow a final decision in the district court, under U.S.C. § 1291, that can and does upend the appeal, in alteration and/or subversion of the *status quo* of the matter on appeal.

LIST OF PARTIES

RESPONDENTS:

| | |
|------------------------|---------------------------|
| Lori Rosen | Robert Caselli |
| David E. Haracz | Adam Boyd |
| Raul Vega | Tania Dimitrova |
| Mary S. Trew | Bradley R. Trowbridge |
| Grace G. Dickler | Safe Travels Chicago, LLC |
| Kathleen P. Lipinski | Maxine Weiss-Kunz |
| Joseph V. Salvi | Stewart J. Auslander |
| Terrence J. Lavin | Karen A. Altman |
| Mary Ellen Coghlan | Gary Schlesinger |
| Aurelia Marie Pucinski | Shawn D. Bersson |
| Sarah E. Ingersoll | Tiffany Marie Hughes |
| Theresa A. Eagleson | Russell M. Reid |
| Richard Falen | Candace L. Meyers |
| Emily Yu | Michael P. Doman |
| Peter Hannigan | Stacey E. Platt |
| Pedro Martinez | Elizabeth Ullman |
| Russell Caskey | Andrea D. Rice |

LIST OF PROCEEDINGS

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|--|---------------------------|---|--|
| US Court of Appeals, Seventh Circuit | 22-3168 | Vanessa Wereko v. Lori Rosen, <i>et. al.</i> | Jan-9-2023 Dec-9-2022 Dec-7-2022 |
| US Court of Appeals, Seventh Circuit | 22-3198 | Vanessa Wereko v. Lori Rosen, <i>et. al.</i> | Dec-12-2022 Dec-9-2022 |
| US District Court, Northern District of Illinois | 22-cv- 02177 | Wereko v. Rosen, <i>et.</i> <i>al.</i> | Jan-4-2023 Nov-30-2022 Nov-28-2022 Aug-8-2022 |
| Illinois Supreme Court | 127722 | Wereko v. Rosen | Oct-19-2021 |
| Illinois Supreme Court | 126866 | Confidential | Mar-17-2021 |
| Illinois Supreme Court | 126124 | Wereko v. Lavin | Jul-9-2020 |
| Illinois Supreme Court | 125651 | IRMO Potenza | Mar-9-2020 |
| First District Appellate Court, Illinois | 1-21- 1544 | Permissive Application/ Certified Question | Dec-23-2021 |

| Court | Docket Case No | Case Caption | Judgment/ Order Date |
|--|---------------------------|-------------------------|---|
| First District Appellate Court, Illinois | 1-19- 2454 | | Dec-31-2020 |
| First District Appellate Court, Illinois | 1-19- 1904 | Confidential | Dec-9-2019 |
| First District Appellate Court, Illinois | 1-19- 1466 | | Dec-9-2019 |
| Hillsborough County Courthouse, Florida | 19-DR- 1760 | | Feb-4-2019 |
| Cook County Circuit Court, Illinois | 16 D 9029 | IRMO Potenza | Dec-3-2019 Sep-9-2019 Jun-21-2018 |
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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully requests issuance of a writ of certiorari to review Case 22-3168 pending in the United States Court of Appeals for the Seventh Circuit.

DECISION BELOW

The interlocutory rulings of the Seventh Circuit are not published; the Seventh Circuit set the “public” case as “private”. Rulings are reproduced in Petitioner’s Appendix.

JURISDICTION

The Seventh Circuit has indefinitely suspended the immediate appeal brought under 28 U.S.C. § 1292(a)(1) and not entered a final judgment for the review of the district court’s denial of injunctive relief for the August 6, 2022 Emergency Motion for Preliminary Injunction. This Court’s jurisdiction is invoked under Sup. Ct. Rule 11.

STATUTES INVOLVED

28 U.S. Code § 1292 – Interlocutory decisions

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeal shall have jurisdiction of appeals from:

- (1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

28 U.S. Code § 1291 – Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

FEDERAL RULES INVOLVED

Federal Rule of Civil Procedure 65. Injunctions and Restraining Orders

(b) PRELIMINARY INJUNCTION

- (1) *Notice.* The court may issue a preliminary injunction only on notice to the adverse party.
- (2) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(c) TEMPORARY RESTRAINING ORDER.

- (1) *Issuing Without Notice.* The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:
 - (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
 - (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(e) CONTENTS AND SCOPE OF EVERY
INJUNCTION AND RESTRAINING ORDER

(1) *Contents.* Every order granting an injunction and every restraining order must:

- (A) state the reasons why it issued;
- (B) state its terms specifically; and
- (C) describe in reasonable detail – and not referring to the complaint or other document – the act or acts restrained or required.

(2) *Persons Bound.* The order binds only the following who receive actual notice of it by personal service or otherwise:

- (A) the parties;
- (B) the parties' officers, agents, servants, employees, and attorneys; and
- (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

Federal Rule of Appellate Procedure 8. Stay or Injunction Pending Appeal

(a) MOTION FOR STAY.

(1) *Initial Motion in the District Court.* A party must ordinarily move first in the district court for the following relief:

(C) a stay of the judgment or order of a district court pending appeal;

(D) ***

(E) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) *Motion in the Court of Appeals; Conditions on Relief.* A motion for the relief mentioned in Rule 8(a)(1) may be made to the court of appeals or to one of its judges.

(D) The motion must:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action;

STATEMENT OF THE CASE

Petitioner relocated to the state of Illinois, from the foreign state of Switzerland, in 2014. On September 9, 2019, a “criminal” conviction - an order of protection – with no end date is entered against her with no allegations or findings of abuse in a state civil case. Said order is entered after children, in her legal custody, are kidnapped while attending school. The abduction is aided/abetted by state actors solicited by a judicial officer retaliating for reports to the Judicial Inquiry Board and reported incidents to other authorities, for the substantive due process rights violations. After Petitioner’s *pro se* appeal in the state appellate court, the order of protection is reversed with a finding of statutory misuse to her harm. The state court refused to comply with the appellate mandate and the state appellate court declined to intervene; the state supreme court declined discretionary appeals or supervisory orders. After hearing ended on January 5, 2022, the state court has refused to issue an order nor has done so as of this petition.

A. Procedural History

1. Verified Complaint Filed

On April 27, 2022, in the *status quo* of civil rights violations, enforcement of invalid, expired or reversed orders for irreparable harm in perpetuity, Petitioner filed a Verified Complaint in the District Court of Northern Illinois, **Case 22-cv-02177**, against thirty-four (34) Defendants (*see* “List of Parties”) for an ongoing conspiracy of interference with civil rights, fraud, extortion, and retaliation under the color of law (Dkt. 1,7) that is pending.

2. Emergency Motion Under Fed. R. Civ. P. 65 Filed on Aug-6-2022

On August 6, 2022, after the third *suo motu* deadline extension by the district court on the Verified Complaint, Petitioner filed and noticed an Emergency Motion for a Preliminary Injunction, under Fed.R.Civ.P. 65 (Dkt. 226-227) with an affidavit on observing alterations to publicly accessible docket entries of a state case record germane to the factual basis of the Verified Complaint. She attached certified exhibits of the altered state case docket entries

(Dkt. 226-1); certified records submitted by the clerk of the state court to the state appellate court for the same case docket entries prior to initiation of the civil action (Dkt. 226-2). The district court did not enter an immediate restraining order nor set a hearing date for a preliminary injunction.

3. District Court's Briefing Schedule on Aug-8-2022

On August 8, 2022, the district court entered an order indicating it has "no knowledge of the filing systems or operations of the Clerks Offices of each of those courts.***Plaintiff has pointed to *alleged irregularities*, but given its *lack of familiarity* with the workings of docket maintenance in the state courts, the Court has no basis for evaluating those allegations without a response from Defendants. *Any* Defendants who wishes to respond to this motion is given until 8/15/2022 to file a response; any reply by Plaintiff is due by 8/22/2022. The Court will issue a ruling by mail." (emphasis added) (Dkt. 229)

4. District Court's Offer to Respondents in August 8-2022 Order

In the same August 8, 2022 Order, the district court made an offer to Respondents with its own term: “[i]f any or all Defendants agree not to take ‘any actions to tamper with, destroy or alter any records in the scope of the factual allegations of the Complaint, from calendar year 2015 to 2022, including any official public records of state actions referenced in the Complaint, from the state circuit courts to the state appellate court to the state supreme court’ [see 226], they may so indicate in a response brief, in which case no reply will be necessary, nor will the entry of the injunctive relief be necessary as all counsel and all parties who have appeared without counsel are lawyers and officers of the Court whose representations will suffice to bind themselves and their clients.” (emphasis added) (Dkt. 229)

5. Responses and Reply to Emergency Motion By Briefing Deadline

By the August 15, 2022 deadline, half of Respondents

did not respond; the state Respondents who responded (Dkt. 232, 235) do not address the “alleged irregularities” or “workings of docket maintenance in the state courts” nor addressed the presented evidence. The state Respondents’ signatory on their responsive pleading is the State Attorney General, with no affidavit nor unsworn declaration under the pains and penalties of perjury to “vehemently deny that they have tampered with, altered, or deleted any discoverable records”, request denial of the Emergency Motion and state “they will not take any actions to tamper with, destroy or alter any records in the scope of the factual allegations of the [Verified] Complaint” which presents past acts of what Petitioner sought to be enjoined. Other non-state Respondents follow suit with mimicking responses. (Dkt. 233-234, 236, 237). Those who chose not to file a response never requested an extension prior or after the briefing deadline. Petitioner filed a timely reply in opposition on August 16, 2022 (Dkt. 241)

6. Emergency Motion Denied on Nov-28-2022

On November 28, 2022, after Petitioner's request for a schedule in compliance to Fed.R.Civ.P.16 and LR 26.1, to rule on the still pending Emergency Motion is denied (Dkt. 289), the district court entered a summary judgment (Dkt. 290) denying the Emergency Motion with no standard of law applied, and in disregard of Petitioner's timely reply (Dkt. 241). For the Respondents in default, the district court *sua sponte* revised the August 8, 2022 order to change the expired August 15, 2022 deadline to December 5, 2022 for time to mimic their peers' filed responses and take advantage of the denial ruling.

7. Request to Vacate or Reconsider Denied Injunction Ruling

On November 29, 2022, Petitioner filed and noticed a motion to vacate or reconsider the November 28, 2022 denial ruling arguing it was error and prejudicial. (Dkt. 300-302). On November 30, 2022, the district court denied the request to vacate/reconsider its denial ruling. (Dkt. 305)

8. Interlocutory Appeal under 28 U.S.C. § 1292(a)(1) Initiated

On November 30, 2022, Petitioner filed a Notice of Appeal (Dkt. 309) in the district court case, that referenced and incorporated as attachments three (3) orders: the November 28, 2022 Orders (Dkt. 289, 290) and the November 30, 2022 Order (Dkt. 305). On December 1, 2022, the short record with the notice of appeal transmitted to the Seventh Circuit, acknowledged as received under **Case 22-3168**. (Dkt. 313).

On December 3, 2022, Petitioner timely filed an Amended Notice (Dkt. 315) that referenced and incorporated as attachments four (4) orders – the three (3) of the original notice and August 8, 2022 order (Dkt. 229) whose interpretation and revision led to the November 28, 2022 ruling. On December 5, 2022, the short record with the Amended Notice transmitted to the Seventh Circuit, acknowledged as received under Case 22-3168. (Dkt. 322)

9. Interlocutory Appeal Suspended under 28 U.S.C. § 1291

On December 7, 2022, the Seventh Circuit issued an order suspending the appeal for Case 22-3168, questioned its jurisdiction under 28 U.S.C. § 1291 and stated “a number of defendants have yet to respond to the [Emergency] motion. Until the district court disposes of the motion in total, it appears that this appeal is premature.” (Dkt. 5)

10. Short Record of Interlocutory Appeal Altered

On December 8, 2022, Petitioner submitted for filing, circa 7:00AM, to the Seventh Circuit Clerk of Court, a Motion for Reconsideration of the December 7, 2022 jurisdictional order, on finding the electronic filing function disabled on her account (Dkt. 6). A Seventh Circuit Clerk acknowledged receipt of the submission circa 9:30AM.

Between the 9:30AM acknowledgement and circa 11:07AM when the Motion for Reconsideration is filed into Case 22-3168, the Amended Notice it references (acknowledged as received on December 5, 2022) is

displaced from the short record and (mis)used to create a new case (Case 22-3198) with an order alerting of its imminent dismissal as a duplicate case (Dkt. 5). Petitioner's Motion for Reconsideration, under Case 22-3168, argued that per the short record, that also included the Docketing Statement, the Seventh Circuit had knowledge the appeal was properly brought under 28 U.S.C. § 1292(a)(1) (not 28 U. S. C. § 1291) and August 15, 2022 was the deadline for Respondents to respond to the Emergency Motion, which expired before the November 28, 2022 order. Petitioner requested clarification of the alleged lack of jurisdiction with citation to authority to allow for the ordered jurisdictional memorandum or vacate the December 7, 2022 order so the interlocutory appeal promptly progresses.

By December 9, 2022, the Seventh Circuit chose to do neither; Petitioner's Motion for Reconsideration is positioned as her "jurisdictional memorandum" and Respondents have till December 16, 2022 to file a response

(Dkt. 10); the state Respondents' counsel filed a joint response for all except one Respondent in default. (Dkt. 26)

11. Amended Notice of Interlocutory Appeal Withheld from Record

The record on appeal was due to the Seventh Circuit by December 14, 2022 (Fed.R.App.P.10, Circuit Rule 10). On December 16, 2022, the Seventh Circuit ordered the district court “to forward [] [the] Amended Notice of Appeal (dkt. 315) to the United Court of Appeals for the Seventh Circuit to include in her record on appeal for USCA Case No. 22-3168” (Dkt. 330) informing the Amended Notice, it acknowledged receipt of on December 5, 2022, was stripped out and no longer part of the record sometime after Petitioner’s Motion for Reconsideration is submitted to its clerk for filing. The repeat request for the Amended Notice is on December 19, 2022 (Dkt. 28), five (5) days past due.

12. Request for Leave to File Brief *Instante* Filed

On December 17, 2022, Petitioner filed an *instante* motion (Dkt. 27) with her appellant brief and short appendix attached (the appendix includes the “lost”

Amended Notice) to request instant leave to file her brief and promptly progress the obstructed appeal pointing to the improper administrative actions impeding her right to appeal and Respondents' response to the Motion for Reconsideration that Petitioner cannot show a 'serious, perhaps irreparable, consequence' would occur without an immediate appeal, when she is obstructed from being able to *show* since December 7, 2022. As of this filing the Seventh Circuit has not ruled on the *instant* motion.

13. Request for Stay Under Fed.R.App.P. 8 in District Court Denied

On January 3, 2023, the district court entered an order to progress one Respondent's default, germane to the matter on appeal, while it allegedly still withheld the Amended Notice from the Seventh Circuit. Petitioner filed a Motion to Stay the district court's order as the district court had notice of the matters on appeal, including all the orders on appeal, to not alter the *status quo* in subversion of the appeal. The district court denied stay (Dkt. 340), stating in relevant part "an appeal from an interlocutory

decision – here, the denial of a preliminary injunction – does not divest a district court of jurisdiction or prevent the court ‘from finishing its work and rendering a final decision.’[citation]” (emphasis added) (Dkt. 340). Its citation is to a case ruled by the Seventh Circuit.

14. Request for Stay Under Fed. R. App. P. 8 in Seventh Circuit Denied

On January 4, 2023, Petitioner filed a Motion for Stay in the Seventh Circuit (Dkt. 29), attached the district court’s January 4, 2023 order showcasing intent to “finish[] its work and render[] a final decision” whiles it allegedly withheld the Amended Notice from the Seventh Circuit.

On January 9, 2023, the Seventh Circuit denied the Motion to Stay, stating in relevant part “[t]he district court remains free to rule on any aspect of the case not properly brought before this court, including but not limited to any portions of appellant’s motion for a preliminary injunction still pending in the district court” (Dkt. 35) to echo its December 7, 2022 order. The Motion for Reconsideration is unaddressed; the withheld Amended Notice is unaddressed

whiles alteration of the *status quo* for matters on appeal is endorsed with a noticed brief, attached to the *instanter* motion, also unaddressed by the Seventh Circuit.

15. Request for Ruling on Plaintiff-Appellant's Pending Pleadings Filed

On January 9, 2023, Petitioner filed a Motion for Ruling on her Pending Pleadings, pointing to the improper administrative debacle on the Amended Notice with the joint (in)actions of the Seventh Circuit and district court pointing to a federal court “playing games at the expense of [Petitioner’s] appeal and due process rights” (Dkt. 36)

As of this petition, there is no ruling by the Seventh Circuit on any of Petitioner’s pending pleadings in 22-3168.

REASON FOR GRANTING THE WRIT

Case law is clear that “[a]s a general matter, the filing of a notice of appeal ‘divests the district court of control over those aspects of the case involved in the appeal.’” *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). “The district court retains jurisdiction, however to ‘preserve the *status quo* until decision by the

appellate court” *Newton v. Consol. Gas. Co. of New York*, 258 U.S. 165, 177 (1922), and otherwise act “in aid of the appeal.” *Wolfe v. Clarke*, 718 F.3d 277, 281 (4th Cir. 2013); see also *In re Maranne*, 852 F.2d 805, 806 (5th Cir. 1988) (per curiam); *Rakovich v. Wade*, 834 F.2d 673, 674 (7th Cir. 1987) (*See* Dkt. 29) This Court held that “[b]ecause rigid application of 28 U.S.C. § 1291 was found to create undue hardships...Congress created certain exceptions to it. [] One of those exceptions, 28 U.S.C. § 1292 (a)(1), permits appeals as of right from “[i]nterlocutory orders of the district courts...granting, continuing, modifying, refusing or dissolving injunctions...” *Carson v. American Brands, Inc.*, 450 U.S. 79, 84, 101 S.Ct. 993, 997, 67 L.Ed.2d 59 (1980)

The Seventh Circuit’s December 7, 2022 order suspending an appeal properly brought under 28 U.S.C. § 1292 (a)(1), pointing to 28 U.S.C. § 1291, contravenes this Court’s position in *Carson Id.* and undermines Congress’ legislative intent; and its January 9, 2023 order denying

stay for matters on appeal for the district court to alter the *status quo* on the same, and enter a “final decision”, contravenes *Griggs Id.* The district court has demonstrated no interest to aid in the appeal of its orders or preserve the *status quo* until a decision by the Seventh Circuit; the Seventh Circuit has endorsed, in its January 9, 2023 ruling, in disregard of the applicable standard of the law, as if Petitioner’s mere citation of the law renders it irrelevant.

The appearance of impropriety with administrative actions purging, diverting or withholding a filed Amended Notice from the record on appeal, past the due date mandated by federal rules and an indefinite suspension of an “immediate” appeal leads to the unfortunate inference of a federal court, which has a mandate to protect constitutional rights, participating in deprivations to subvert an appeal and basis to grant the writ to address appropriately; the foregoing debacle arguably does not decelerate ongoing erosion of public trust in the courts. In *Grable Sons Metal Prod. v. Darue Engineering Mfg.*, 545

U.S. 308, 312 (2005), this Court found the Government “has a direct interest in the availability of a federal forum to vindicate its own administrative actions”; here, the actions are of courts for which this Court has supervisory authority. The actions of the Seventh Circuit and district court point to concerted group action to bar due process; a conspiracy, which Justice Frankfurter held in *Callanan v. United States*, 364 U.S. 587, 81 S.Ct. 321, 5 L.Ed. 2d 312 (1961) as “collective criminal agreement – partnership in crime – [that] presents a greater potential threat to the public than individual deficits.”

Outside of Petitioner’s individual rights under federal statutes, public interest is implicated for open access to data: public cases, records, and records of proceedings, opinions and orders under the control of a governmental agency. 5 USC §551(1), which includes the US District Court, US Court of Appeals, and state courts.

The induced stalemate in the Seventh Circuit points to avoidance to enforce its holdings that “preliminary

injunctions are supposed to be granted or denied in accordance with a standard, and not as a matter of judicial grace.” *Roland Machinery Co., v. Dresser Industries*, 749 F.2d 380 (7th Cir. 1984) and avoidance of this Court, which in *Carson* reversed a Court of Appeals that dismissed an appeal brought under 28 U.S.C. § 1292(a)(1) arguing lack of jurisdiction. This Court held, in *Carson*, that interlocutory orders are appealable under 28 U.S.C. § 1292(a)(1) and found that the district court’s order had the practical effect of refusing an injunction even if “there was no showing of present or past []” acts, of what it was asked to enjoin. In a case with past acts in a Verified Complaint and present acts in an affidavit-supported Emergency Motion, a *showing* is avoided to deny injunctive relief as a matter of judicial grace and an interlocutory appeal under 28 U.S.C. § 1292(a)(1) is indefinitely suspended for an alleged lack of jurisdiction under 28 U.S.C. § 1291 for likely harm in the interim.

The Seventh Circuit’s (in)actions have the practical

effect of a dismissal, sans judgment, rendered 28 U.S.C. § 1292(a)(1) into a discretionary appeal in subversion of the legislative intent for an appeal as of right, in deprivation of Petitioner's equal privileges under the law, pursuant to 42 U.S.C. § 1985 and the XIV amendment of the Constitution.

CONCLUSION

Vanessa Wereko respectfully requests this Court issue a writ of certiorari to review the obstructed appeal in the United States Court of Appeals for the Seventh Circuit as the issue of statutory subversions and of tampered, altered, or deleted case records in the courts is of imperative public importance, for access to justice for all, to justify deviation from normal appellate practice and require immediate determination in this Court, particularly given the persons implicated and its import to US courts' reputation.

Dated: 27th of January, 2023

Respectfully Submitted,



/s/ Vanessa Wereko

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