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23-1129

NO. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RICHARD ROCHE,

Petitioner,

v.

LARC, INC. (A/K/A LEE ASSOCIATION OF
REMARKABLE CITIZENS, INC., AND A/K/A
LEE ASSOCIATION OF RETARDED CITIZENS. INC.),
KEVIN LEWIS, VICKIE CHAPMAN, JANE MARSHALL,
DANIELLE JACOBS, PHYSICIANS' PRIMARY CARE OF
SOUTHWEST FLORIDA, P/L. (D/B/A PHYSICIANS'
PRIMARY CARE), JEANNE A. ABDOU, APRN, ROGER
O'HALLORAN, ESQ., GULF COAST MEDICAL CENTER,
LEE MEMORIAL HEALTH SYSTEM, AND CARLY
HALLER, R.N.

Respondents.

On Petition for Writ of Certiorari to the
Supreme Court Of New Jersey

PETITION FOR WRIT OF CERTIORARI

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April 12, 2024

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QUESTIONS PRESENTED

- (1) Did the courts of the State of New Jersey violate the plaintiff-appellant's due process rights pursuant to the 14th Amendment of the United States Constitution and the Constitution of the State of New Jersey when they did not allow him access to their courts for lack of personal jurisdiction over defendants in that the courts of the State of New Jersey failed to consider and otherwise ignored the holdings Hanson v. Denckla, 357 US 235, 253 (1958) and Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 to 475 (1985), which provide for special personal jurisdiction when out-of-state defendants commit and otherwise engage in intentionally tortious acts.

- (2) Did the courts of the State of New Jersey violate the plaintiff-appellant's due process rights pursuant to the 14th Amendment of

the United States Constitution and the Constitution of the State of New Jersey when they did not allow him access to their courts for lack of personal jurisdiction over defendants when, through judicial artifice, they deemed that these intentional tortfeasors who targeted a citizen and resident of New Jersey – “would ‘have been surprised’ by jurisdiction in New Jersey” – notwithstanding that their home state of Florida would have found jurisdiction over similarly situated defendant intentional tortfeasors under comparable circumstances.

PARTIES TO THE PROCEEDINGS
BELOW

Petitioner here, and plaintiff-appellant below, is Richard A. Roche, an individual residing in Morris County, New Jersey.

Respondents here, and defendant-respondents below are, (a) LARC, INC. (a/k/a Lee Association of Remarkable Citizens, Inc. and a/k/a Lee Association of Retarded Citizens, Inc.) a Florida Domestic NonProfit Corporation doing business in Lee County, Florida, (b) Kevin Lewis, an individual residing in St. Johns County, Florida, (c) Vickie Chapman, an individual residing in Lee County, Florida, (d) Jane Marshall, an individual residing in Lee County Florida, (e) Danielle Jacobs, an individual residing in Lee County, Florida, (f) Physicians' Primary Care of Southwest Florida, P.L. (d/b/a Physicians' Primary Care), a Florida Professional Limited Liability Company doing business in Lee County, Florida, (g) Jeanne

A.Abdou, APRN, an individual residing in Lee County, Florida, (h) Roger O'Halloran, Esq., an individual residing in Lee County Florida, (i) Gulf Coast Medical Center, is a for profit general acute care hospital operated by Lee Memorial Health System and doing business in Lee County, Florida, (j) Lee Memorial Health System, is a public health care system created by special act of the Florida Legislature, Ch. 2000-439, Laws of Florida, Special Acts, 2000. doing business in Lee County, Florida, and (k) Carly Haller, R.N., an individual residing in Lee County, Florida.

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SEY MONITOR, December 11, 2023, 5:02
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**PETITION FOR A WRIT OF
CERTIORARI**

Richard A. Roche, Esq., pro se, petitions for a writ of certiorari to review the judgment of the Supreme Court of New Jersey and various divisions of the Superior Court of New Jersey denying his application for special personal jurisdiction over Florida respondent-defendants whom he alleges, and substantiated by over 20 documents annexed to his Complaint as exhibits, committed various intentional torts hindering his ability to manage the care of his late sister, a profoundly disabled person. As a result of these intentionally tortious acts, plaintiff-respondent was precluded and otherwise prevented from effectively managing his profoundly disabled sister's care, in violation of the ADA, NJAD and other common law fiduciary standards, which resulted in her untimely and otherwise preventable demise.

DECISION BELOW

The January 21, 2022 oral argument (App. 1 to 88) and orders dismissing the instant matter in the Law Division of the Superior Court of New Jersey are annexed hereto (App. 89 to 115).

The March 31, 2023 unpublished opinion of the Appellate Division of the Superior Court of New New Jersey affirming dismissal for lack of special personal jurisdiction is annexed here to (App. 116 to 156).

On November 17, 2023 the Supreme Court of New Jersey filed an Order signed on November 14th denying plaintiff-petitioner petition for certification (App. 159 to 161).

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

NEW JERSEY STATE CONSTITUTION PROVISIONS INVOLVED

N.J. Const. Art. I, § 1

All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

N.J. Const. Art. I, § 2(a)

All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

N.J. Const. Art. VI, § 3(2)

The Superior Court shall have original general jurisdiction throughout the State in all causes.

FLORIDA STATUTE INVOLVED**48.193 *Acts subjecting person to jurisdiction of courts of state.—***

(1)(a) A person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from any of the following acts:

...

2. Committing a tortious act within this state.

...

6. Causing injury to persons or property within this state

arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:

- a. The defendant was engaged in solicitation or service activities within this state; or
 - b. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.
7. Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.

NEW JERSEY STATUTE INVOLVED**N.J.S.A. 2A:4-30.68:**

4. In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this State may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

g. there is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction.

(Emphasis added.)

**NEW JERSEY RULE OF COURT
INVOLVED**

Rule 1:4-7. *Verification of Pleadings.* Pleadings need not be verified unless ex parte relief is sought thereon or a rule or statute otherwise provides. The verification shall not repeat the allegations of the pleadings but may incorporate them by reference if made on personal knowledge and so stated, and the allegations are of facts admissible in evidence to which the affiant is competent to testify.

STATEMENT OF THE CASE

Richard A. Roche, Esq., pro se, petitions for a writ of certiorari to review the judgment of the Supreme Court of New Jersey and various divisions of the Superior Court of New Jersey denying his application for special personal jurisdiction over Florida respondent-defendants whom he alleges committed intentional torts. Petitioner-plaintiff alleges, and has substantiated by over 20 documents annexed to his Complaint as exhibits, that respondent-defendants committed various intentional torts which hindered his ability to manage the care of his late sister, a profoundly disabled person. This resulted in her death as a result of unnecessarily having a urinary catheter inserted long term, which resulted in her death by an otherwise avoidable infection (App. 42 to 48). The alleged tortfeasors Jane Marshall and her daughter Danielle Jacobs are accused of committing fraud and other intentional torts so that they could earn

otherwise unwarranted overtime wages from respondent-defendant LARC. Jane Marshall justified this "care" for petitioner-plaintiff's sister through "Munchausen's Syndrome by Proxy like exaggeration" of her condition. This course of conduct resulted in the transmittal of false information to plaintiff-petitioner and others involved in the care of his late sister. As a result of these fraudulent acts, which included the creation of bogus health records, she was given incorrect medical treatment which resulted in her death. The other respondent-defendants -- legal and medical professionals -- are alleged to have participated or added and abetted in these intentionally tortious acts by, at a minimum, (a) violating statutes and regulations regarding the care and treatment of the disabled, and/or (b) recklessly and wantonly committing malpractice by not upholding the canons of their respective professions.

Various respondent-defendants from Florida engaged in telephone calls and unsolicited text messages to petitioner-plaintiff in New Jersey were incorrect

information about his sister's condition was wantonly and recklessly transmitted to petitioner-plaintiff intentionally. These acts were conducted notwithstanding their fiduciary duty as health professionals and healthcare workers, let alone their common law and statutory duties pertaining to the care and treatment of the disabled and the duty owed to their caretaker family members. *See generally* the Americans With Disabilities Act ("ADA"), 42 US Code Sec. 12182 and the New Jersey Law Against Discrimination ("NJLAD"), N.J.S.A. Sec. 10:5-1 et seq. (Among the intentionally tortious acts conducted by respondent-defendants that denied access to effective medical treatment were (a) the fabrication and transmittal of false medical records, (b) numerous verbal fraudulent misrepresentations, (c) the compelling of petitioner-plaintiff's late sister to execute a last will and testament naming respondent-defendant Jane Marshall, an employee of LARC (f/k/a the Lee Association of Retarded Citizens), executrix, and (d) the failure to perform the requisite professional due diligence that would have readily revealed this

maltreatment of a disabled person such that plaintiff-petitioner, a learned individual, could have timely intervened on behalf of his profoundly mentally and physically disabled sister so as to preserve her life. Petition-plaintiff submits that this is common knowledge such that even a lay person knows of the risk of opportunistic infection from having a urinary catheter put in place on a long term basis. One does not have to be a healthcare worker to know that removal of a urinary catheter is a preferred course of treatment.

The trial judge did not consider plaintiff-petitioner's argument in chief that special personal jurisdiction in the instant matter was proper per Hanson v. Denckla, 357 U.S. 235, 253 (1958) as the matter involved intentional torts. Instead, the trial court made an oblique reference to a hypothetical company from France being unfairly surprised if a commercial matter would subject them to jurisdiction in New Jersey, presumably an oblique reference to J. McIntyre Machinery, LTD. V. NiCastro, 564 U.S. 873 (2011), a products liability

case. (App. 57 to 59a.) On February 18, 2022 the Law Division denied petitioner-plaintiff's motion to amend his pleadings (App. 60, App. 112 to 115).

Pursuant to the Well Plead Complaint Doctrine and other such standards, pleadings are evaluated based upon the allegations asserted. Also curious is the Superior Court of New Jersey's reasoning as it denied petitioner-plaintiff's motions to amend his complaint and for jurisdictional discovery of his late sister' medical records and supporting testamentary documents – all of which he is entitled to her personal representative of her estate (App. 38 to 41, 103 to 107, 112 to 115, 133, and 153 to 156).

In their unpublished opinion sustaining the dismissal, the Appellate Division cited Baanyan Software Servs., Inc. v. Kuncha, 433 N.J.Super. 466, 475 (App. Div. 2013), (App. 149 to 150), an employment contract case. Provocatively, the Appellate Division by way of a footnote (App. 144 to 146))

stated that it did not have to consider the text messages from respondent-defendants to petitioner-plaintiff as they did not rise to the level of evidence as he did not submit a Verified Complaint (App. 144 to 146). This is most curious as petitioner-plaintiff has never sought an injunction or other interim relief. N.J. Ct. R. 1:4-7.

**REASONS FOR GRANTING THE
WRIT**

**I. THE COURTS OF NEW JERSEY
ERRED IN THEIR REASONING BY (A)
FAILING TO CONSIDER HANSON V.
DENCKLA, 357 US 235, 253 (1958), (B)
BY NOT CONSIDERING DEFENDANT-
RESPONDENT'S ELECTRONIC
COMMUNICATIONS, AND (C)
RELYING UPON PRECEDENT FROM
COMMERCIAL MATTERS WHILE
RECOGNIZING THAT THIS MATTER
INVOLVES INTENTIONAL TORTS**

At oral argument, in his trial level briefs, in his appellate briefs, and in his briefs to the Supreme Court of New Jersey, petitioner-plaintiff has repeatedly asserted that jurisdiction over respondent-defendants is proper per Hanson v. Denckla, 357 US 235, 253 (1958). Although the Appellate Division acknowledge that the Complaint in this matter alleged

intentional tort, no New Jersey court addressed this argument. Instead, the New Jersey courts referred to minimum contact arguments based upon commercial cases such as J. McIntyre Machinery, LTD. V. NiCastro, 564 U.S. 873 (2011) and Baanyan Software Servs., Inc. v. Kuncha, 433 N.J.Super. 466, 475 (App. Div. 2013). By engaging in intentionally tortious acts targeting a New Jersey citizen and resident, these Florida respondent-defendants have subjected themselves to jurisdiction. Hanson v. Denckla, 357 U.S. 235, 253 (1958), Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 to 475 (1985), and Lebel v. Everglades Marina, Inc., 115 N.J. 317 (1989).

Respondent-defendants electronic communications are sufficient. South Dakota v. Wayfair, Inc., 585 U.S. ____, 138 S. Ct. 2080 (2018), Sales Tax Information for Remote Sellers (P.L. 2018, c. 132). This was foreshadowed Hanson v. Denckla, 357 U.S. 235, 253 (1958). New Jersey even has found it to be a valid basis for finding criminal liability. State v. Tringali, 451 N.J. Super. 18 (App. Div. 2017). As

healthcare professionals, respondent-defendants tortious conduct with these electronic communications is all the more egregious as they owed petitioner-plaintiff a fiduciary duty and a statutory duty with regard to the management of his disabled sister's welfare. (ADA, 42 US Code Sec. 12182. The communications clearly were not casual and go beyond that between commercial parties transacting interstate business. As stated by Justice Kennedy in South Dakota v. Wayfair, Inc., 585 U.S. ____, 138 S. Ct. 2080 (2018): "... the real world implementation of Commerce Clause doctrines now makes it manifest that the physical presence rule ... give way to the 'far-reaching systematic and structural changes in the economy' and 'many other societal dimensions' caused by the Cyber Age." (page 23)

**II. THE COURTS OF NEW JERSEY
HAVE PROVIDED NO COGENT BASIS
FOR DENYING JURISDICTION AS
DEMONSTRATED BY ITS RULING
THAT THE COMPLAINT NEEDED TO
BE VERIFIED WHEN NO INTERIM
RELIEF WAS SOUGHT.**

The Appellate Division by way of a footnote (App 144 to 146) stated that it did not have to consider the text messages from respondent-defendants to petitioner-plaintiff as they did not rise to the level of evidence as he did not submit a Verified Complaint (App 144 to 146). This is most curious as petitioner-plaintiff has never sought an injunction or other interim relief. N.J. Ct. R. 1:4-7. Pursuant to the Well Plead Complaint Doctrine and other such standards, pleadings are evaluated based upon the allegations asserted. *See generally Caterpillar v. Williams*, 482 U.S. 386, 392 (1987). Additionally, there is a strong presumption in favor of retaining jurisdiction where the plaintiff is a resident

who has chosen his ... home forum.”

Kurzke v. Nissan Motor Corp., 164 N.J. 159, 171 (2000) (citing D’Agostino v. Johnson & Johnson, Inc., 225 N.J. Super. 250, 262 (App.Div. 1988), *aff’d*, 115 N.J. 491 (1989)).

Also curious is the Superior Court of New Jersey’s reasoning in that it denied petitioner-plaintiff’s motions to amend his complaint and for jurisdictional discovery of his late sister’ medical records and supporting testamentary documents – all of which he is entitled to her personal representative of her estate (App. 38 to 41, 103 to 107, 112 to 115, 133, and 152 to 156). In addition, as discussed above, the courts of New Jersey failed to consider petitioner-plaintiff’s arguments based upon Hanson v. Denckla, 357 US 235, 253 (1958).

In the instant matter, relying upon caselaw from unrelated commercial matters, the courts of New Jersey chose to not find special personal jurisdiction over the alleged Florida intentional tortfeasors as a

result of their elective conduct, which included unsolicited electronic communications by the respondent-defendants to plaintiff-respondent in New Jersey in furtherance of their illegal and unlawful conduct. To date, the courts have only considered the due process rights of out-of-state defendants in commercial matters when applying special personal jurisdiction.

In this regard, the New Jersey trial court, again relying on case law dealing with commercial matters involving defendants from foreign countries, (App. 56 to 59) illogically stated that the respondent-defendants would be “unfairly surprised” by being hailed into a New Jersey court as a result of their elective, intentional conduct that involved the exercise of scienter. Interestingly, under Florida statutory and case law, in contrast long-arm jurisdiction would be exercised by that state. Fla. Stat. Sec. 48.193 and Wendt v. Horowitz, 822 So. 2d 1252, 1260 (Fla. 2002). Clearly, these Florida respondent-defendants were on notice that they could have been hailed into court ... even one in New Jersey. Clearly, this matter also

presents the question of whether a plaintiff is denied due process by his home state when, through judicial artifice, it provides greater due process and procedural protections to an out-of-state defendant than their own foreign state would?

Is it not illogical, let alone a failure to not perform the requisite balancing of competing Constitutional rights, when one state grants out-of-state defendants, by fiat, greater due process rights and protections than to their own citizens and residents? Such judicial inaction provides out-of-staters with immunity to commit intentional torts, electronically and otherwise, upon their citizens and residents. Clearly, this is a failure of the 14th Amendments guarantees of equal protection and due process.

The question of the due process rights of a victim of intentional torts seeking the protection of his home state's judicial system, pursuant to that state's jurisdiction statute, from out-of-state defendants who possessed scienter in

conducting their wrongful acts has yet to be considered. *See generally* Scott. Dodson, *Plaintiff Personal Jurisdiction and Venue Transfer*, 117 Mich. L. Rev. 1463 (2019). Available at: https://repository.uchastings.edu/faculty_scholarship/1726 and R.D. Rees. *Plaintiff Due Process Rights in Assertions of Personal Jurisdiction*, volume 78 N.Y.U. L. Rev. 1 (April 2003). Available at: <https://www.nyulawreview.org/issues/volume-78-number-1/plaintiff-due-process-rights-in-assertions-of-personal-jurisdiction/>

By failing to consider the 14th Amendment due process rights of a plaintiff, particularly regarding intentionally tortious acts, the courts of a given state, by not allowing a citizen to seek redress in their forums. This is besmirching and otherwise failing in their mandated governmental role to protect their residents. *By abrogating the mandate to provide their citizens with protection through access to its courts, such a state allows intentional tortfeasors from other jurisdiction to arbitrage the differences in legal protections between to the two*

sovereigns to ill advantage, and allowing those persons from other jurisdictions to victimize their residents with impunity.

Such an abrogation by a state's judiciary is all the more violative of the 14th

Amendment to the Constitution of the United States when (a) that state's constitution also provides such guarantees to its citizens and residents, and (b) when the "failure" – or is it "inability" – to act by those courts most likely stems from the failure of that state's legislature to fund and fill over fifty (50) judicial vacancies.

Sophie Nieto-Munoz, *N.J. Senate Confirms 11 New Superior Court Judges, Chipping Away At Vacancies*, NEW JERSEY MONITOR, December 11, 2023, 5:02 pm, <https://newjerseymonitor.com/briefs/n-j-senate-confirms-11-new-superior-court-judges-chipping-away-at-vacancies/> (App. 162 to 164). The failure of the courts of the State of New Jersey to find jurisdiction in the instant matter is also all the more puzzling considering that the state constitution's jurisdictional mandate is considered expansive, N.J. Const. art. III, § 2, *also see* N.J.Ct.R. 4:4-4(b)(1), and *see generally* N.J.S.A. 2A:4-30.68(g)(4), and

the plethora of case law from that state generously exercising that law. Christie v. Nat'l Inst. for Newman Studies, 258 F.Supp. 3d 494 (D.N.J. 2017), Avdel Corp. v. Mecure, 58 N.J. 264, 268 (1971), and Lebel v. Everglades Marina, Inc., 115 N.J. 317, 323 (1989). Since the decision in South Dakota v. Wayfair, Inc., 585 U.S. ____, 138 S. Ct. 2080 (2018), like other states, New Jersey imposes sales tax as a result of even casual electronic communications. Sales Tax Information for Remote Sellers (P.L. 2018, c. 132). If nexus for taxation can be found in such electronic communications, why then is a basis for jurisdiction not had in the case of an intentional tort targeting a New Jersey citizen or resident? In State v. Tringali, 451 N.J. Super. 18 (App. Div. 2017), New Jersey has found jurisdiction regarding an out-of-state criminal act transacted electronically over one of its citizens and residents.

III. THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, AND THE CONSTITUTION OF THE STATE OF NEW JERSEY, BOTH PROVIDE PLAINTIFF-PETITIONER WITH ACCESS TO THE COURTS OF NEW JERSEY, HIS HOME STATE .

The 14th Amendment states that no state may abridge the rights of any citizen. Article I, Section 1 and Section II of New Jersey's Constitution provide its residents and citizens with due process, including the right to protect their interests. Article VI, Section 3, Paragraph of the New Jersey State Constitution provides that its Superior Court is one of general jurisdiction in all causes. New Jersey's courts regularly exercise that jurisdiction to the fullest extent allowable. Christie v. Nat'l Inst. for Newman Studies, 258 F.Supp. 3d 494 (D.N.J. 2017), and *see generally* N.J.S.A. 2A:4-30.68(4). By denying petitioner-plaintiff jurisdiction in

this matter, at a minimum, by not considering his arguments based upon Hanson v. Denckla, 357 U.S. 235, 253 (1958), when it extends jurisdiction to out-of-staters in criminal matters State v. Tringali, 451 N.J. Super. 18 (App. Div. 2017), and when other states regularly do. Wendt v. Horowitz, 822 So. 2d 1252, 1260 (Fla. 2002), and Good World Deals, LLC. v. Gallagher , 554 S.W.3d 905 (Mo. Ct. App. 2018), the State of New Jersey has denied petitioner-plaintiff due process.

**IV. IN LIGHT OF FLORIDA
STATUTORY AND CASE LAW,
RESPONDENT-DEFENDANTS
SHOULD NOT BE HEARD TO CLAIM
THAT THEIR INTENTIONALLY
TORTIOUS WOULD HAIL THEM TO A
NEW JERSEY COURT.**

Florida Statute 48.193 extends its long arm jurisdiction to out-of-state tortfeasors.

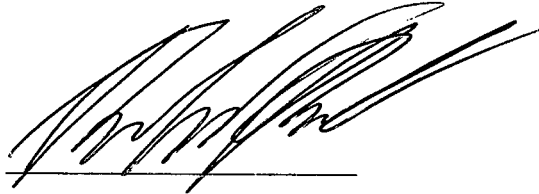
Wendt v. Horowitz, 822 So. 2d 1252, 1260 (Fla. 2002). In light of their home state's practices, these Florida respondent-defendants should not be heard to claim surprise at petitioner-plaintiff's application to pursue claims against them in New Jersey as they intentionally targeted him. New Jersey's failure to grant jurisdiction in this matter is both unjust and inequitable.

CONCLUSION

Petitioner-plaintiff Richard A. Roche respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted,

RICHARD A. ROCHE,
ESQ. pro se

A handwritten signature in black ink, appearing to read 'Richard A. Roche', is written over a horizontal line.

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