SUPREME COURT OF THE UNITED STATES
Docket No. 23-883

Petition for Rehearing

On appeal from the Louisiana Supreme Court CIVIL DOCKET NO. 2022-C-01794
And the Ninth Judicial District Court Rapides Parish (Alexandria, LA) CIVIL SUIT NUMBER: 248,025-E

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v.

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PETITION FOR REHEARING

The appellant Lawrence Kingsley moves for reconsideration of the denial of his petition for a writ of certiorari for the following reasons.

This Honorable Court never ruled on his Motion to Correct Application for Writ of Certiorari, where he explained that some of the paragraphs in one of his most important arguments, Argument 6, were printed out of order (and overlooked in the rush to comply with the filing deadline).

As corrected below, this Argument 6 raises key federal questions under the criteria of Rule 10 where the state court decided an important federal question

> (a) in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
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> (b) a state court of last resort has decided an important

> federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Since Argument 6 would not have made sense in its jumbled state, the instant petition would seem to represent "substantial grounds" for review "not previously presented" within the ambit of Rule 44.

Worth reconsideration as well is the stunning intervention in this case of an admitted non-party, Crowell & Owens, which neither had the right to intervene nor even tried to comply with the required process for intervention.

Background

This case arose from the disloyalty and imprudent investment of the appellee and former trustee of the appellant's trust. When the appellant brought suit to remove her as trustee, she misused trust

funds for her legal defense, which was not a normal or necessary function of the trust for which the trust could have indemnified her.

She and her former law firm, Crowell & Owens, refused to comply with the discovery order or to return funds illegally withdrawn from the trust, and she also refused to pay sanctions that were ordered.

Her new counsel, Rodeney Rabalais, was ordered to pay into the trial court's registry a $10,000 retainer which she also withdrew from the trust illegally after her resignation as trustee. The court twice ordered him to disgorge the remaining $3,000 of this sum, but he ignored these orders.

At a hearing on the contumaciousness of appellee and her two law firms, Att. Rabalais surprised the appellant with an Ex Parte Motion for Order of Abandonment which he filed three days earlier, but did not serve on the appellant under the morning of this hearing. Ignoring the appellant's objection and request for a stay that would allow for a written opposition, the court granted the motion for abandonment.

The court denied the appellant's subsequent attempt to rule the appellee into court to show why the Order of Abandonment should not be overturned on the basis of incontrovertible evidence of his activity in

this case as reason why he never abandoned this case. However, he was never granted the hearing which he deserved.

Appeals were unavailing as two state courts, without a hearing, rubberstamped the judgment of the trial court. Except in briefs, the appellant therefore was never allowed to present evidence of his abiding attempt to prosecute this case—i.e., reasons why the Order of Abandonment was premature and unjust.

Federal Issues.

There are two main federal issues in this case. The first is implied by the appeal in general, but specifically is the subject of the appellant's original Argument 6, revised below: the appellant's severe mistreatment by the trial court which rises to the level of a federal issue—namely, deprivation of due process and equal protection laws within the ambit of the Fourteenth Amendment.

The second federal issue, stated in Argument 1 of the appeal brief, is the implied conflict with FRCP 24(c)[1] as well as with similar state

[1] "A motion to intervene must be served on the p arties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Crowell & Owens never filed any such motion and may have considered itself above the law.

laws governing the circumstances and procedures required for intervention. Now, on the basis of this case, anyone can intervene in a case at will, without either the right to intervene or judicial approval of intervention. The appellee has been silent throughout this case; instead, on no authority and without even a hint of seeking permission to intervene, Crowell & Owens has replaced the appellee as the appellant's sole opponent in this case. Crowell & Owens is the appellee's former counsel whose representation of her ended well before this case commenced.

This case furthermore conflicts with settled law that it is too late to intervene in a case after it has been dismissed,[2] but that was exactly

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[2] For example, *Branch v. Young*, LA Court of Appeal, Fifth Circuit (2014), 136 So.3d 343, ruled: "if the suit has terminated, no intervention therein is possible." See also: See also *General Motors Acceptance Corp. v. Jordan*, App. 1 Cir.1953, 65 So.2d 627 ("An intervention could be filed only while suit between original parties was p ending, and before judgment had been rendered in main demand"); *Wenar v. Leon L. Schwartz*, Sup.1907, 120 La. 1, 44 So. 902 ("An intervention, especially if it adds new grounds, comes too late after trial"); and Wikipedia, https://en.wikipedia.org/wiki/Intervention_(law):

> In both intervention of right and permissive intervention, the applicant must make a timely application to be heard. The applicant cannot sit on its rights; it must intervene as soon as it has reason to know that its interest may be adversely affected by the outcome of the pending litigation. The applicant must serve its motion to intervene on the parties to the case and explain its reasons for intervening in the motion papers. See also *General Motors Acceptance Corp. v. Jordan*, App. 1 Cir.1953, 65 So.2d 627 ("An intervention could be filed only

what has occurred here: unauthorized intervention at the level of this appeal. Crowell never filed an appearance in the trial court (nor at any time in this appeal) and merely started to file oppositions while acknowledging that it was a non-party.[3] At best, Crowell & Owens might have tried to appeal the trial court's discovery order and ruling that "all partnerships"—i.e., law firms had to deposit in the court's registry funds illegally withdrawn from the appellant's trust.[4] Crowell & Owens waived the right to contest those rulings by never filing a timely notice of appeal nor any notice of appeal whatsoever.

As a law firm, Crowell & Owens understood civil procedure and must have foreseen that any petition to intervene would be denied, but nevertheless wanted to defeat this appeal by any means necessary. On remand, Crowell & Owens did not want to (1) disclose unpalatable facts and (2) surrender attorneys' fees which the appellee illegally withdrew

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while suit between original parties was pending, and before judgment had been rendered in the main demand.

[3] Crowell & Owens told the trial court three times that it is a non-party. (2R. 317:30, 1R. 121, ¶¶ 1 and 3). Its Memorandum in Opposition to Appellant's Amended Response to Order to Show Cause at 1 confirms this fact for a fourth time.

[4] See trial court orders dated orders dated December 4, 2014 and February 11, 2016.

from the trust. Unpalatable facts include a whole range of instances where Crowell & Owens misadvised the appellee to keep the litigation going and fees coming in. A notable instance of this misconduct came when Crowell & Owens concealed and refused to convey to the appellant a settlement agreement fully executed by both parties. This settlement agreement would have stopped the litigation soon after it started, but then Crowell & Owens' fees also would have stopped. Yet another instance of misconduct concerned at least $ 2,500 which Crowell & Owens held in escrow after the appellee's resignation as trustee, but then pocketed for itself instead of depositing this sum in the court's registry.

Crowell & Owens' counsel is mistaken in alleging that the appellant "hauled" Crowell & Owens into court. In fact, Crowell & Owens was only an uncooperative witness and never a co-defendant. It was the contumaciousness of Crowell & Owens which precipitated the appellant's motion for contempt, the very motion that was due for a hearing when the appellee sprang her Motion for Order of Abandonment. Crowell & Owens might have been permitted to defend its part of the appellant's motion for contempt, but the reason for this motion was

the violation of court orders, where the responsibility lay with the appellee and her two law firms, not the appellant.

What matters for this appeal is that the appellant's motion for contempt was never heard—it was preëmpted by the Motion for Order of Abandonment—and there never were any sanctions or actions with which Crowell & Owens was compelled to comply. Once the case was dismissed, the original trial orders became immaterial and have remained unenforceable. During this appeal Crowell & Owens therefore never had any rights that it had to defend; in fact, the purpose of Crowell & Owens' *de facto* intervention was not to defend any right, but only to take away the appellant's rights with the objective of making sure that the case was never remanded. In respect to these factors, the appellant's motion asking the trial court to enforce its own orders was not the same as bringing suit against Crowell & Owens.

Accordingly, this case conflicts with a myriad of cases which prescribe the criteria under intervention is permitted and the process under which intervention is granted or denied. For example, in earlier pleadings the appellant cited *In re New York City Policing During*

Summer 2020 Demonstrations, United States District Court, S.D. New York (2021), 537 F.Supp.3d 507:

> Burden is on the party seeking intervention as of right to demonstrate each of the four factors for intervention as of right, that is, timely filing of an application to intervene, showing of an interest in the action, demonstration that the interest may be impaired by the disposition of the action, and showing that the interest is not protected adequately by the parties to the action; failure to satisfy any one of these four requirements is a sufficient ground to deny the application.

Crowell & Owens' pretentious_intervention fails on all four of these factors. *Rotstain v. Mendez*, U.S. Court of Appeals, Fifth Circuit (2021), 986 F.3d 931 2021 WL 359989 confirms: "Would-be intervenor bears burden to prove its entitlement to intervene, and failure to prove a required element is fatal to its request."

Argument 6 revised

Corrected, Argument 6 of the cert petition should read:

Argument 6. This case is ripe for a landmark decision addressing constitutional problems with Article 561 itself.

Besides being misapplied in this case, Louisiana's Article 561, which provides for abandonment after three years of alleged inactivity, has inherent problems of its own. For one, Article 561 can deprive the

party against whom it is enacted of the constitutional right of due process and access to the courts, for under its *ex parte* and self-executing provisions, a party can be judged and shut out of court before having a proper opportunity to defend oneself. Where there were egregious discovery violations, a motion for further contempt at bar, and testimony about the facts of the case yet to be admitted, it was inherently unfair to the appellant to allow a dispositive motion to be heard without proper notice, preparation for rebuttal, and opportunity for written opposition before judgment was pronounced. As argued above, not only is there considerable doubt about the facts as argued by the appellee, but the appellant's strong defenses should not have been eclipsed in the rush to judgment. If a litigant can blindside an opponent by bringing an *ex parte* motion without a proper evidentiary hearing, judicial review is eroded to the point of being merely nominal.[5]

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[5] *Hinds v. Global Intern. Marine, Inc., supra,* underscores this point. The appellant also noted in Argument 3 of his Appeal Brief: any step that facilitates the judicial resolution of the dispute on the merits and expresses the defendant's willingness or consent to achieve judicial resolution of the dispute can be interpreted as a waiver of the right to plead abandonment. See *Compensation Specialties, L.L.C. v. New England Mut. Life Ins. Co.*, 6 So. 3d 275 (La. Ct. A pp. 1st Cir. 2009). *Hinds v. Global Intern. Marine, Inc., supra,* underscores this point. The appellant also noted in Argument 3 of his Appeal Brief: any step that facilitates the judicial resolution of the dispute on the merits and expresses the defendant's willingness or consent to

The root problem is that there is a conflict of Article 561 with Louisiana's Rule 9.8, which requires 15 days' notice of any motion. The Civil Code is silent about any exemption of *ex parte* motions from this rule.[6] According to ¶ C of Rule 9.8, the movant shall state in the motion "the reasons why an expedited hearing is necessary." No such statement was included in the appellee's motion, and there never was any reason for *ex parte* shenanigans since the parties were known to each other and corresponding with each other during the alleged abandonment. There may be reason for an *ex parte* ruling when the proponent of abandonment cannot locate the other side, but contact information for the appellant or his counsels was listed in every pleading.

The further point is that the appellee's motion was really a motion for summary judgment or motion to dismiss, but with none of the prescribed procedures for either. It has been observed that Louisiana's

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achieve judicial resolution of the dispute can be interpreted as a waiver of the right to plead abandonment. See *Compensation Specialties, L.L.C. v. New England Mut. Life Ins. Co.*, 6 So. 3d 275 (La. Ct. App. 1st Cir. 2009).

[6] Paragraph "d" of this rule excludes the need for a proposed order or for summary judgment where an *ex parte* motion, as in this case, is permitted, but does not alter the 15 day requirement.

jurisprudence about abandonment "tends to be inconsistent," and "no bright lines exist." *Young v. Laborde,* 576 So.2d 551, 552 (La.App. 4th Cir. 1991), cited by *Lee v. Commodore Holdings*, 931 So. 2d 1092 (La. Ct. App. 2006).[7]

One bright line that that a landmark ruling could establish would stop ambush motions in abandonment cases. Ambush motions are always disfavored, but are particularly onerous when they leave an opponent as the sole expositor of the case and thereby, as here, free to distort it. The court simply could rule that a movant seeking an order of abandonment must ask for a separate hearing on this issue, with proof of 15 days notice to the other side. Otherwise, by attending a hearing in the same case on a different issue, the movant will always recognize the validity of the subject case (in respect to defense-oriented waiver of abandonment),[8] and thereby reset the clock for presumption of abandonment. Arguably, but for a new ruling, that effect already has occurred.

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[7] See "The French Revision of Prescription: A Model for Louisiana?" by Benjamin West Janke and François-Xavier Licari, *Tulane Law Review* (Nov. 2010), regarding problems with Louisiana's notion of the statute of limitation.

[8] See Arguments 4-5 of the appellant's brief.

Obviously, the appellant had no need to raise these issues before the ambush motion, but the requirement that constitutional issues had to be asserted in the trial court before there was need to do so is one of the reasons why the application of Article 561 can be unconstitutional. This statute provides, as here, for deprivation of due process without a fair hearing, one for which the non-movant can prepare and oppose with written citation to prevailing law. It is doubtful that the Louisiana Legislature intended Article 561 to protect chicanery, as in the ambush motion, or to trump C.C.P. 865 ("Every pleading shall be so construed as to do substantial justice.") Where a litigant loses the right to be heard under accusation of abandonment, which may turn out be illusory, appeals are not the most productive way of determining constitutional rights.

Without means of assuring the opportunity for relief provided by Section A(4) of Article 561, the protections of Rule 9.8, liberal construction of rules (re: Articles 865 and 1551), constitutional rights of due process, equal protection of laws, and access to the courts can perish in a case like the one at bar. So, too, can the principle that, whenever

possible, cases should be decided on their merits, not by technicalities. [9]

On the other hand, this appeal is not dependent on a new landmark ruling since other arguments in this Application provide ample justify cation for reversal.

As the appellant furthermore noted, affirmation of the judgment in question impliedly has affirmed misconduct of the appellee, contumaciousness or even thievery by her two sets of counsels, and the appellant's severe mistreatment by the trial court which rises to the level of a federal issue—namely, deprivation of rights without due process. This outcome, needless to say, is unjust. Reconsideration is merited if only because courts should not be burdened with a new precedent that jettisons the tradition of how intervention should be determined and that simultaneously, on other grounds, erodes the Fourteenth Amendment.

Lancaster, PA
May 17, 2024

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[9] Edwin C. Schilling, III, "Availability of the Ex Parte Motion in Louisiana," Louisiana Law Review (June, 1968), 552-568, expands upon these problems, and 12 La. Civ. L. Treatise, Tort Law § 27:58 (2d ed.) discusses conflict of judicial and legislative rules.

Respectfully submitted,

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Certificate of Good Faith

1. The Applicant/Plaintiff/Appellant Lawrence Kingsley ("Applicant") hereby certifies that this application for a rehearing is made in good faith and not for the purpose of delay.
2. He further certifies that this application adheres to the requirements of Rule 44.
3. This material is new inasmuch as Argument 6 of his appeal brief transposed paragraphs out of order and, for this reason, made little sense; his previous Motion to Correct Application for Writ of Certiorari was never ruled; and the argument that he would have made has now been revised and placed into context.
4. These corrections will aid the court in rendering a Solomonic decision, but will not harm the appellee who has been silent throughout this appeal.
5. The only opposition to this appeal has come from an admitted nonparty, Crowell & Owens, whose unauthorized intervention conflicts with settled law that it is too late to intervene after a case has been dismissed.

Notarization

On June 12, 2024 before me, the undersigned, personally appeared Lawrence Kingsley, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, he executed the instrument.

Signed and sworn to (or affirmed) before me on 6/12/24 by Kristine Forry.

Commonwealth of Pennsylvania - Notary Seal
Kristine Forry, Notary Public
Lancaster County
My commission expires July 10, 2027
Commission number 1434431

Commonwealth of Pennsylvania
County of Lancaster