

No. 24-1033

**In the
Supreme Court of the United States**

—◆—
MARIA DEL ROSARIO CHICO VIETTI,

Petitioner,

v.

WELSH & MCGOUGH, PLLC, CATHERINE
WELSH, AND JAIME VOGT, LPC,

Respondents.

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

—◆—
BRIEF IN OPPOSITION
—◆—

Paige N. Shelton
Counsel of Record
Robert D. James
CONNER & WINTERS, LLP
4100 First Place Tower
15 E. 5th St.
Tulsa, OK 74120
918-586-5711
pshelton@cwlaw.com
rob.james@cwlaw.com

*Attorneys for Respondent Jaime
Vogt, LPC*

QUESTIONS PRESENTED

- 1) Pursuant to the *Iqbal-Twombly* pleading standards, does the First Amended Complaint fail to allege sufficient facts to state breach of contract, negligence, and negligence per se claims against Respondent Vogt?
- 2) Pursuant to the *Iqbal-Twombly* pleading standards, does the First Amended Complaint fail to allege sufficient facts to state a Section 1983 claim against Respondent Vogt?
- 3) Is Respondent Vogt entitled to quasi-judicial immunity pursuant to established, controlling federal and state law?

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INTRODUCTION

The Petition should be denied because it fails to present any compelling reason for this Court's review. The Petition seeks to have this Court review the decision of the United States Court of Appeals for the Tenth Circuit affirming the United States District Court for the Northern District of Oklahoma's dismissal of her First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a plausible claim for relief. Dissatisfaction with the lower courts' application of the *Iqbal-Twombly* pleading standards is not grounds for granting certiorari. Additionally, dissatisfaction with the lower courts' application of controlling law and precedent to find that Respondent Vogt is entitled to quasi-judicial immunity is not grounds for granting certiorari.

Insofar as the Petition argues that her case presents some compelling question of national importance, that is false as her arguments pertain to the particulars of her divorce/custody action. The Petitioner's lawsuit against Respondent Vogt appears to be filed for the purpose of strengthening her position in the divorce/custody action if not for punishing and discrediting Respondent Vogt because the Petitioner cannot, or at least has not yet, convinced the judge in the on-going divorce/custody action that the Petitioner should be awarded sole custody of the children.

Therefore, pursuant to Supreme Court Rule 10, the Petition should be denied.

STATEMENT OF THE CASE

The Petitioner is a party to a protracted and contested divorce and custody action in the State of Oklahoma District Court of Tulsa County that is still pending. Pet. App. 12a. Since at least 2018, the Petitioner has been engaged in an on-going effort to convince that court that her three minor children were physically and sexually abused by their father and to obtain sole custody of the children. Pet. App. 12a-14a. As recognized by the United States District Court for the Northern District of Oklahoma, “[t]he records of the Oklahoma state court proceedings support a conclusion that Plaintiff’s allegations of child abuse were raised with and investigated by the State of Oklahoma and no evidence was found to substantiate those allegations.” Pet. App. 15a.

The First Amended Complaint, in relevant part, purports to assert state law claims against Respondent Vogt for breach of contract and negligence and a federal claim under 42 U.S.C. § 1983 for violations of the “Eighth and/or Fourteenth Amendments.” Pet. App. 38a-51a. In response, Respondent Vogt filed a Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6). Pet. App. 10a. In evaluating that Motion, the lower courts accepted as true the factual allegations stated in the First Amended Complaint and, “as appropriate, taken judicial notice of the existence and content of the orders and pleadings submitted and publicly filed in the state court proceedings.” Pet. App. 10a-11a.

The United States District Court for the Northern District of Oklahoma determined that, based on the

facts as pled in the First Amended Complaint, Respondent Vogt was entitled to quasi-judicial. Pet. App. 25a, 35a, & 37a. It also found that “[e]ven assuming Vogt is not entitled to quasi-judicial immunity, [the] claims against her would still be dismissed for failure to state a claim.” *Id.* Accordingly, the claims against Respondent Vogt were dismissed. Pet. App. 35a & 37a.

Reviewing the claims *de novo*, the United States Court of Appeals for the Tenth Circuit affirmed the dismissal of the claims against Respondent Vogt for “failure to state a plausible claim for relief” for “substantially the same reasons.” Pet. App. 6a.

REASONS FOR DENYING THE PETITION

The Petition should be denied because it presents no “compelling reasons” for granting certiorari. *See* Sup. Ct. R. 10. The decisions by both the United States Court of Appeals for the Tenth Circuit and the United States District Court for the Northern District of Oklahoma to dismiss the claims against Respondent Vogt do not satisfy this Court’s traditional criteria for granting review. This case involves nothing more than a straightforward application of established precedent of the pleading standard for dismissal of factually deficient claims pursuant to Federal Rule of Civil Procedure 12(b)(6). Supreme Court Rule 10 expressly states that “[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” Additionally, the Petition’s grievance regarding quasi-judicial immunity disputes the lower courts’ application of established laws to the

“circumstances of this case.” It does not present this Court with a genuine conflict with Supreme Court precedent, or among federal courts of appeals and/or state high courts. In the absence of any compelling reasons for review, the Petition should be denied.

I. The Third Question Seeks to Revisit a Fact-Bound Dispute Unworthy of Review: The First Amended Complaint Fails to Allege Sufficient Facts that Respondent Vogt Is a State Actor

The First Amended Complaint fails to allege sufficient facts that Respondent Vogt is a state actor. The Petition is incorrect to allege or infer that either of the lower courts made a finding that Respondent Vogt is or is not a state actor. They did not. Rather, the United States District Court for the Northern District of Oklahoma found that the First Amended Complaint “failed to allege that Vogt is a state actor.” Pet. App. 34a. The actual question presented to this Court regarding the Section 1983 claim is whether the facts pled in the First Amended Complaint were sufficient to state a claim under Section 1983. Thus, the Petition’s challenge is to the application of *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and their progeny to the facts of this case. This is a fact-bound dispute that is not worthy of review by this Court.

I. The Fourth Question Seeks to Revisit a Fact-Bound Dispute Unworthy of Review: Respondent Vogt Is Entitled to Quasi-Judicial Immunity Under Established, Controlling Law

Respondent Vogt is entitled to quasi-judicial immunity based on established, controlling law. The Petition takes issue not with the law, but rather with the lower courts' application of established, controlling law to the facts alleged in the First Amended Complaint:

Petitioner Vietti does not necessarily challenge that portion of the District Court's order that rationalizes circumstances where a court-appointed therapist can qualify for quasi-judicial immunity. There is both a state and federal precedent for that finding.

Respondent Vogt may qualify for quasi-judicial immunity under the correct circumstances. Those circumstances are not present here.

Pet. App. 16. This is a fact-bound dispute that is not worthy of review by this Court.

II. The Petition Fails to Implicate Any Genuine Split of Authority Regarding Quasi-Judicial Immunity

In an effort to manufacture a basis for her Petition consistent with Rule 10, the Petition argues, in conclusory fashion, that "[t]here is a significant split of authority in the lower courts regarding whether the Respondents are immune from due process violations." Pet. App. 11. The only decision cited in the Petition to evidence this supposed "split" is a decision

from the Court of Appeals for the State of South Carolina that was issued almost twenty-five years ago in *Falk v. Sadler*, 533 S.E.2d 350 (S.C. 2000).

While the standard for immunity may be articulated differently in the State of South Carolina than it is under controlling Federal and Oklahoma state law, there is no showing that the outcome would have been different had the Petitioner's case been heard in the State of South Carolina.

Even if a conflict exists this is not a conflict between federal courts of appeal or state high courts which might serve to justify this Court's review.

III. The Petition Does Not Address an Issue of National Importance

This case is a fact-bound dispute whose resolution is of little broad importance to anyone other than the immediate parties. The Petitioner's lawsuit against Respondent Vogt appears to be filed for the purpose of strengthening her position in the divorce/custody action if not for punishing and discrediting Respondent Vogt because the Petitioner cannot, or at least has not yet, convinced the judge in the divorce/custody action that the children's father abused the children and that the Petitioner should get sole custody of the children.

IV. The On-Going Nature of This Case Makes This Particular Case a Poor Vehicle for Settling the Problem

The certiorari process is not designed to provide redress for every aggrieved party in a still-pending

divorce/child custody action. The Petitioner's ultimate grievance with Respondent Vogt is that Respondent Vogt did not have a reasonable belief, nor did Respondent Vogt suspect that the children were victims of abuse at the hands of their father. The Petitioner's apparent frustrations with Oklahoma Department of Human Services, the Oklahoma criminal justice system, and the rulings of the judge in the divorce/custody action do not translate into cognizable claims against Respondent Vogt under either Oklahoma law or federal law. There is no good reason for this Court to enter into the Petitioner's on-going custody battle.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

Paige N. Shelton
Counsel of Record
Robert D. James
CONNER & WINTERS, LLP
4100 First Place Tower
15 E. 5th St.
Tulsa, OK 74120
918-586-5711
pshelton@cwlaw.com
rob.james@cwlaw.com

*Attorneys for Respondent Jaime
Vogt, LPC*