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Supreme Court, U.S.
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No. 07-897

IN THE
Supreme Court of the United States

LYNN HUST,

Petitioner,

v.

FRANK MARVIN PHILLIPS, JR.,

Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

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

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REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

In this case, both the district court and Ninth Circuit concluded that petitioner Hust—a prison librarian—violated respondent Phillips’ right to access the courts, by refusing to let him use the prison comb binder to bind a petition he wished to file in this Court. The district court and Ninth Circuit also concluded that Hust is not entitled to qualified immunity. The Ninth Circuit explained that Hust is liable because, after she denied Phillips’ request to use the comb binder, Phillips failed to submit his petition to this Court until the pertinent deadline had passed. In the Ninth Circuit’s view, Hust is liable because that result was “foreseeable,” even if this Court’s rules did not require Phillips’ petition to be bound. The Ninth Circuit erred by holding that mere “foreseeability” creates liability, and by requiring no showing that Hust’s conduct *caused* Phillips’ inability to obtain relief in this Court. In holding that foreseeability alone sufficed, the Ninth Circuit parted ways with other circuits’ access-to-courts jurisprudence, it ignored this Court’s qualified-immunity jurisprudence, and it significantly expanded prison officials’ potential liability in a variety of contexts. Accordingly, this court should grant Hust’s petition for the purpose of summarily reversing (or, alternatively, should set the case for briefing and argument).

In response, Phillips asserts that “[t]his case has unnecessarily proceeded all the way to the United States Supreme Court on a false premise.” (Response

3, 6). According to Phillips, petitioner Hust has attempted to “deceiv[e]” both this Court and the Ninth Circuit by asserting that the district court concluded that Supreme Court rules *required* comb binding. (Response 3, 6). As Phillips points out, the district court ultimately explained—in denying Hust’s motion to reconsider the order deeming her liable—that, in its view, “the applicable United States Supreme Court rule requires *some* form of binding,” and it declined to hold “that Rule 33.2 *requires* the comb binding of pro se petitions in general.” (Response App. 8; emphasis added).

Yet nothing in Hust’s certiorari petition is based on the “false premise” that Phillips refers to. Nothing in Hust’s petition suggests that the district court concluded that Supreme Court rules require comb binding. Further, nothing in the Ninth Circuit decision that Hust asks this Court to review suggests that the Ninth Circuit misunderstood the nature of the district court ruling. Indeed, Hust made no effort to mislead the Ninth Circuit about the district court ruling. Finally, and despite Phillips’ contentions to the contrary, nothing in the district court order denying Hust’s motion to reconsider provides any basis for denying Hust’s certiorari petition.

A. Nothing in Hust’s certiorari petition suggests that the district court concluded that comb-binding was required.

Hust’s certiorari petition notes that the district court ultimately “denied Hust’s motion for summary judgment, granted Phillips’s motion for summary judgment as to liability on the denial-of-access [to

courts] claim, and denied it as to his other claims.” (Petition 5). The petition does not describe the district court’s reasoning in making those rulings. It does not purport to identify the manner in which the district court construed this Court’s rules. Although the petition argues that the district court should have granted Hust’s summary judgment motion, it nowhere suggests that the district court construed the Court’s rules as requiring comb-binding.

In short, although Phillips suggests that Hust’s petition “endlessly hammers on the legal falsity that comb binding was held to be mandatory” by the district court, nothing in the petition suggests that the district court deemed comb binding “to be mandatory.” As a result, Phillips’ “false premise” argument is itself based on a false factual premise.

B. Nothing suggests that the Ninth Circuit was “deceived” or “duped” into believing that the district court ruled that comb binding was required.

Although Phillips accuses Hust of “deceiving the courts,” and of having “duped” the dissenters in the Ninth Circuit “into believing that [the] District Court . . . had held that comb binding was both mandatory and necessary,” nothing supports those assertions. First, nothing in the Ninth Circuit’s written decision, or in its order denying Hust’s petition for rehearing, suggested that the district court believed that Supreme Court rules require comb binding. (Petition, App. 2-26). Second, neither Judge O’Scannlain’s dissent (to the decision affirming the district court judgment) nor Judge Kozinski’s dissent (to the order

denying the petition for rehearing) reflects a belief that the district court had deemed comb binding “mandatory.” (Petition, App. 3, 26-40). Nothing suggests that either the majority or the dissenters had been “duped” about the nature of the district court ruling.

C. In urging the Ninth Circuit to reverse, Hust accurately described the judgment that the district court entered, and she accurately explained why the order denying her motion to reconsider was immaterial.

Phillips does accurately describe one aspect of Hust’s Ninth Circuit briefing: In Hust’s appellant’s brief in the Ninth Circuit, she did state that “the premise for the district court’s ruling” was its conclusion “that the Supreme Court’s rules require comb binding.” (Supp. App. 5, Appellant’s Brief 17). Hust made no reference—in that particular brief—to the district court order denying her motion to reconsider, or to the district court’s clarification that, in its view, Supreme Court rules merely required “some” form of binding. Yet Hust’s brief accurately described the judgment that the district court ultimately had entered, and it did not attempt to somehow deceive the Ninth Circuit.

Hust’s appellant’s brief asked the Ninth Circuit to reverse the district court judgment. That judgment did appear to reflect a belief by the district court that Supreme Court rules required Phillips’ petition to be comb bound. The district court judgment—dated September 29, 2004—stated that it was “[b]ased on the Opinion and Order (#49) dated March 31, 2003.”

(Petition, App. 82). In turn, the March 31, 2003 Opinion and Order suggested that Supreme Court Rule 33 required Phillips to comb bind his petition. (See Petition, App. 74, March 2003 Opinion and Order, referring to Hust's "refusal to comb bind [Phillips'] materials in accordance with the Supreme Court's Rule 33"). As a result, Hust's appellant's brief in the Ninth Circuit accurately described the premise of the district court judgment as its belief that "the Supreme Court's rules require comb binding."

And while the district court had retreated from that premise in the February 9, 2004 order that denied Hust's motion to reconsider, the judgment that it entered in September 2004 made no reference to that order.¹ As a result, Hust's appellant's brief in the Ninth Circuit appropriately addressed the reasoning that the district court articulated in its March 2003 Opinion and Order, and it appropriately made no ref-

¹ The judgment stated that it also was "[b]ased on" the district court's Findings of Fact and Conclusions of Law dated September 29, 2004. (Petition, App. 82). But the September 29, 2004 Findings of Fact and Conclusions of Law themselves incorporated the March 31, 2003 order, and made no reference to the order denying Hust's motion to reconsider. (See Petition, App. 78, September 29, 2004 Findings and Conclusions, stating that "[t]he court's factual findings are set out in detail in the court's Opinion and Order (#49)" dated March 31, 2003).

erence to the order denying Hust's motion to reconsider.

In Phillips' appellee's brief, he urged the Ninth Circuit to examine the district court order denying Hust's motion to reconsider. He argued that the order—by clarifying that Supreme Court rules required “some form of binding,” and by declining to conclude that they required comb binding—somehow undermined Hust's appeal. But as Hust's reply brief in the Ninth Circuit accurately explained, whether the district court had concluded that Supreme Court rules required comb binding simply could not affect the basis for her appeal: “Defendant does not view the order on reconsideration as containing any material change.” (Supp. App. 11, Reply Brief 5 n. 2). Although the district court “purported to abandon its earlier clear ruling that the Supreme Court's rules require comb binding, the district court ultimately stated that comb binding was the ‘necessary alternative to stapling [Phillips'] petition,” and it thus

adhered to its [earlier] ruling that, under the circumstances of this case, [Hust]'s temporary refusal to comb-bind plaintiff's petition prevented plaintiff from filing a timely petition in compliance with the Supreme Court's rules. [Hust] fully addressed and refuted that notion in her opening brief.

(Supp. App. 12-13, Reply Brief 5 n. 2).

In Hust's view, Supreme Court rules permitted Phillips to submit an unbound petition, and refusal to let him use the prison comb binder could not have

prevented him from filing a timely certiorari petition or from otherwise exercising his right to access the courts. Whether the district court had concluded that comb binding was required, or whether it concluded only that *some* binding was required, Hust's legal position would remain the same: Under the circumstances presented, Hust could not have committed a constitutional violation by refusing to let Phillips use the prison comb binder.

In the end, both parties—while in the Ninth Circuit—expressly addressed the significance of the district court order denying Hust's motion to reconsider. More particularly, Hust's briefing in the Ninth Court accurately informed the court that the legal issues presented by the district court judgment were not somehow altered by the order denying her motion to reconsider. Any suggestion that Hust attempted to "deceive" or "dupe" the Ninth Circuit is at odds with the record.

D. The district court order denying Hust's motion to reconsider did not "destroy[] her case."

Phillips asserts that the district court's clarification on reconsideration "destroys [Hust's] case," and that Hust's "concerns raised in this Court as well as those raised in the 9th Circuit . . . were asked, answered, and disposed of" by the order denying the motion to reconsider. (Response 9, 1). For essentially the same reasons discussed already, Phillips is mistaken.

Whether the district court based its judgment on a conclusion that comb binding was required or, alter-

natively, on a conclusion that *some* form of binding was required, is immaterial. That is, regardless of the conclusion that the district court reached on that particular issue, the Ninth Circuit decision that Hust asks this court to review remains unchanged. The Ninth Circuit held that, although this Court's rules are "less than clear as to whether some form of binding [was] required in the circumstances presented in this case," Hust nonetheless violated Phillips' access-to-court rights by refusing to let him use the prison comb binder. (Petition, App. 16-17). The manner in which the district court resolved Hust's motion to reconsider does not somehow diminish the significance of the Ninth Circuit's holding, or somehow undermine Hust's argument that the Ninth Circuit committed legal error. Nothing about the order denying the motion to reconsider suggests a basis for denying Hust's certiorari petition, or for affirming the Ninth Circuit.

Phillips has identified no other basis—aside from the arguments discussed above—for denying Hust's certiorari petition, or for affirming the Ninth Circuit's decision. For the reasons that Hust recounted in her petition, the Ninth Circuit's decision warrants review and reversal.

CONCLUSION

This Court should grant the petition for certiorari and summarily reverse. Alternatively, the Court should grant the petition and set the case for briefing and argument.

Respectfully submitted,
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