



FLECHA, *Plaintiff-Appellee*

v.

MEDICREDIT, INC., *Defendants-Appellants*.

No. 18-50551, Decided January 8, 2020

U.S. Court of Appeals for the Fifth Circuit

Introduction:

In *Flecha v. Medcredit Inc.*, 2020 WL 91267 (Jan. 8, 2020), the Fifth Circuit, per Judge Ho, reversed a class certification order. After the plaintiff failed to pay a medical bill, the medical center contracted Medcredit, which sent her a debt-collection letter. On behalf of herself and other recipients of similar letters, Flecha alleged that because Medcredit knew that the medical center would not sue over unpaid bills, the debt-collector made a false threat in violation of the Fair Debt Collection Practice Act when it warned recipients that failure to pay could result in a legal action. Flecha’s lack of any evidence of the medical center’s actual intent not to sue her or other class members deprived the class of a common issue, Judge Ho reasoned. For the same reason, the plaintiff could not prove typicality or predominance under FRCP 23.

Judge Oldham agreed that the district court erred in certifying the class. But because numerous unnamed class members would be unable to prove an injury in fact, he would have reversed the district court on jurisdictional grounds. His concurrence cogently reasons that courts should not except class actions from the “venerable principle” that plaintiffs must show Article III standing at every stage of litigation. The enormous power that judicial certification of a class bestows on a single plaintiff, Judge Oldham explains, compels courts first to be sure they have jurisdiction over the claim.

Opinion Digest:

ANDREW S. OLDHAM, Circuit Judge, concurring:

I agree with the Court’s conclusion that “[c]ountless unnamed class members lack standing.” *Ante*, at ——. In my view, that lack of standing is sufficient to decide the case.

I.

Standing is “an essential and unchanging part of the case-or-controversy requirement of Article III.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). With it, the Constitution empowers us to hear a case before us and decide the relevant issues of law. Without it, we can do nothing but announce the fact and dismiss the case. See *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514, 19 L.Ed. 264 (1868). After all, “[h]ypothetical jurisdiction produces nothing more than a hypothetical judgment.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 101, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998).

The **Honorable Andrew S. Oldham** was nominated to the Fifth Circuit on February 12, 2018 by President Donald J. Trump and confirmed on July 18, 2018. *Judge Oldham had no role in WLF’s selecting or editing this opinion for our CIRCULATING OPINION feature.*

It's unclear to me why these venerable principles would not apply with equal force at the class-certification stage. A plaintiff must show standing at each "successive stage [] of the litigation." *Lujan*, 504 U.S. at 561, 112 S.Ct. 2130; *see also Arizonans for Official English v. Arizona*, 520 U.S. 43, 64–65, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997). Nothing in Rule 23 could exempt the class-certification stage from this requirement. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997) ("Rule 23's requirements must be interpreted in keeping with Article III constraints ..."); FED. R. CIV. P. 82 ("These rules do not extend ... the jurisdiction of the district courts."); *accord Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 831, 119 S.Ct. 2295, 144 L.Ed.2d 715 (1999). If anything, I'd think our standing analysis would be particularly rigorous at this stage, given the transformative nature of the class-certification decision. *Cf. Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351, 131 S.Ct. 2541, 180 L.Ed.2d 374 (2011) (noting certification stage requires "rigorous analysis").

Not only can certification change the number of plaintiffs from one to one million, but it also can dramatically change the rights and obligations of the plaintiffs. Class certification is the thing that gives an Article III court the power to "render dispositive judgments" affecting unnamed class members. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 219, 115 S.Ct. 1447, 131 L.Ed.2d 328 (1995) (quotation omitted); *see also Cooper v. Fed. Reserve Bank of Richmond*, 467 U.S. 867, 874, 104 S.Ct. 2794, 81 L.Ed.2d 718 (1984) ("There is of course no dispute that under elementary principles of prior adjudication a judgment in a properly entertained class action is binding on class members in any subsequent litigation."). That means, for example, that a post-certification judgment can prevent unnamed class members from bringing their claims again. *See Taylor v. Sturgell*, 553 U.S. 880, 894, 128 S.Ct. 2161, 171 L.Ed.2d 155 (2008); *Cooper*, 467 U.S. at 874, 104 S.Ct. 2794. It also means we must consider unnamed class members' standing before adjudicating the merits of their claims: "The exercise of judicial power, which can so profoundly affect the lives, liberty, and property of those to whom it extends, is therefore restricted to litigants who can show 'injury in fact' resulting from the action which they seek to have the court adjudicate." *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 473, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982).

II.

It's true that the Supreme Court in both *Amchem* and *Ortiz* avoided the Article III standing question. The Court did so, in part, by stating that certification "pertain[s] to statutory standing." *Ortiz*, 527 U.S. at 831, 119 S.Ct. 2295. And at the time, the Court held statutory standing "may properly be treated before Article III standing." *Ibid.* That makes sense where both questions—whether the plaintiffs can sue under Rule 23 and whether the plaintiffs have Article III standing—are jurisdictional.

But the Supreme Court subsequently told us they're not. In *Lexmark Intern., Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 S.Ct. 1377, 188 L.Ed.2d 392 (2014), the Court emphasized that the label "statutory standing" is "misleading" because the inquiry "does not implicate subject-matter jurisdiction, *i.e.*, the court's statutory or constitutional power to adjudicate the case." *Id.* at 128 n.4, 134 S.Ct. 1377 (quotation omitted). That suggests it's a *merits* question whether the unnamed class members can sue under Rule 23—not a jurisdictional one. *See id.* at 128, 134 S.Ct. 1377; *Steel Co.*, 523 U.S. at 89, 118 S.Ct. 1003. And if *Steel Co.* teaches us anything, it's that we must do jurisdiction before the merits. That's why our precedent holds that "though the certification inquiry is more straightforward, we must decide standing first, because it determines the court's fundamental power even to hear the suit." *Rivera v. Wyeth-Ayerst Labs*, 283 F.3d 315, 319 & n.6 (5th Cir. 2002).

Article III is just as important in class actions as it is in individual ones. *See Tyson Foods, Inc. v. Bouaphakeo*, — U.S. —, 136 S. Ct. 1036, 1053, 194 L.Ed.2d 124 (2016) (Roberts, C.J., concurring) ("Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not."). It's why the Court has reminded us that "[i]n an era of frequent litigation, class actions, sweeping injunctions with prospective effect, and continuing jurisdiction to enforce judicial remedies, courts must be more careful to insist on the formal rules of standing, not less so." *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 146, 131 S.Ct. 1436, 179 L.Ed.2d 523 (2011). I'd do so here.