SUPREME COURT OF THE UNITED STATES

No. 01–417

ROBERT J. DEVLIN, PETITIONER *v.* ROBERT A. SCARDELLETTI ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[June 10, 2002]

JUSTICE SCALIA, with whom JUSTICE KENNEDY and JUSTICE THOMAS join, dissenting.

"The rule that only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment, is well settled." *Marino* v. *Ortiz*, 484 U. S. 301, 304 (1988) *(per curiam);* Fed. Rule App. Proc. 3(c)(1) ("The notice of appeal must . . . specify the party or parties taking the appeal"). This is one well-settled rule that, thankfully, the Court leaves intact. Other chapters in the hornbooks are not so lucky.

I

The Court holds that petitioner, a nonnamed member of the class in a class action litigated by a representative member of the class, is a "party" to the judgment approving the class settlement. This is contrary to well-established law. The "parties" to a judgment are those named as such—whether as the original plaintiff or defendant in the complaint giving rise to the judgment, or as "[o]ne who [though] not an original party . . . become[s] a party by intervention, substitution, or third-party practice," *Karcher* v. *May,* 484 U. S. 72, 77 (1987). As the Restatement puts it, "[a] person who is named as a party to an action and subjected to the jurisdiction of the court is a party to the action," Restatement (Second) of Judgments

§34(1), p. 345 (1980) (hereinafter Restatement); "[t]he designation of persons as parties is usually made in the caption of the summons or complaint but additional parties may be named in such pleadings as a counterclaim, a complaint against a third party filed by a defendant, or a complaint in intervention," *id.*, §34, Comment *a*, Reporter's Note, at 347. As was the case here, the only members of a class who are typically named in the complaint are the class representatives; thus, it is only these members of the class, and those who intervene or otherwise enter through third-party practice, who are parties to the class judgment. This is confirmed by the application of those Federal Rules of Civil Procedure that confer upon "parties" to the litigation the rights to take such actions as conducting discovery and moving for summary judgment, *e.g.*, Fed. Rules Civ. Proc. 30(a)(1), 31(a)(1), 33(a), 34(a), 36(a), 45(a)(3), 56(a), 56(b), 56(e). It is undisputed that the class representatives are the only members of the class who have such rights.

Petitioner was offered the opportunity to be named the class representative, but he declined; nor did he successfully intervene. *Ante*, at 2, 3. Accordingly, he is not a party to the class judgment.

A

The Court does not deny that, at least as a general matter, only those persons named as such are the "parties." Rather, it contends that persons "may be parties for some purposes and not for others," *ante*, at 7, and that petitioner is a party to the class judgment at least for the "purposes of appealing," *ante*, at 5.[1] The Court bases these

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[1] The Court provides only one other example of a purpose for which a nonnamed class member is purportedly a "party": we have, it says, tolled the statute of limitations for such a person between the time the class action is filed and the time class certification is denied. *Ante*, at 8

contentions on three of our precedents, which it says stand for the proposition that "[w]e have never . . . restricted the right to appeal to named parties to the litigation." *Ante,* at 5–6. These precedents stand for nothing of the sort.

All of these precedents are perfectly consistent with the rule that only named parties to a judgment can appeal the judgment because they involved appeals not from judgments but from collateral orders. The appellants were allowed to appeal from the collateral orders to which they *were* parties, even though they were *not* named parties to (and hence would not have been able to appeal from) the underlying judgments. We made this distinction between appealing the judgment and appealing a collateral order quite explicit in *Blossom* v. *Milwaukee & Chicago R. Co.,* 1 Wall. 655 (1864). In that case, the appellant was not a named party to the underlying foreclosure decree, from which it was therefore "certainly true that he [could not] appeal," yet he was a party (obviously, as the movant) to the motion he filed asking the court to complete the foreclosure sale, and therefore could appeal from *the order denying that motion*. *Ibid.* Our decisions in *Hinckley* v. *Gilman, C., & S. R. Co.,* 94 U. S. 467 (1877), and *United States Catholic Conference* v. *Abortion Rights Mobilization, Inc.,* 487 U. S. 72 (1988), are to the same effect. In the former, the appellant was not a named party to the underlying foreclosure decree, from which we said he "cannot and does not attempt to appeal," but he was obviously a party to the collateral order directing him by name to transfer funds to the court, from which we said he could

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(citing *American Pipe & Constr. Co.* v. *Utah,* 414 U. S. 538 (1974)). Not even petitioner, however, is willing to advance the novel and surely erroneous argument that a nonnamed class member is a party to the class-action litigation *before the class is certified*. Brief for Petitioner 24–26. This lonesome example is, in other words, entirely irrelevant to the question of party status.

appeal. 94 U. S., at 469. In the latter, witnesses who had been dismissed as named parties to the underlying litigation, 487 U. S., at 75, were allowed to appeal from a collateral order holding them in contempt for their failure to comply with a subpoena addressed to them (and to which they were therefore obviously parties), *id.,* at 76. These cases demonstrate why, even though petitioner should not be able to appeal the District Court's judgment approving the class settlement, there is no dispute that petitioner could (and did) appeal the District Court's collateral order denying his motion to intervene; as the movant, he was a party to the latter. See *Marino,* 484 U. S., at 304 ("[S]uch motions are, of course, appealable").[2]

B

The Court's other grounds for holding that petitioner is a party to the class judgment are equally weak. First, it contends that petitioner should be considered a party to the judgment because, as a member of the class, he is bound by it. *Ante*, at 8 ("What is most important to this case is that nonnamed class members are parties to the proceedings in the sense of being bound by the settlement"). This will come as news to law students everywhere. There are any number of persons who are not parties to a judgment yet are nonetheless bound by it. See Restatement §41(1), at 393 (listing examples); *id.,* §75, Comment *a,* at 210 ("A person is bound by a judgment in

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[2] The Court finds it "difficult" to understand how the appellants in these cases can be considered parties in the traditional sense because they were not named in the "summons or complaint." *Ante*, at 6 (internal quotation marks omitted). Quite so. Our whole point *is* that, in order to appeal a collateral order, one need not be a party to the underlying litigation (and therefore need not be named in the complaint giving rise to that litigation), but need only be a party to the *collateral proceedings* (and therefore need only be named in the filings giving rise to those proceedings).

an action to which he is not a party if he is in 'privity' with a party"). Perhaps the most prominent example is precisely the one we have here. Nonnamed members of a class are bound by the class judgment, even though they are not parties to the judgment, because they are represented by class members who are parties:

> "A person who is not a party to an action but who is represented by a party is bound by and entitled to the benefits of a judgment as though he were a party. A person is represented by a party who is . . . [t]he representative of a class of persons similarly situated, designated as such with the approval of the court, of which the person is a member." *Id.,* §41(1)(e), at 393.

Accord, *id*., §75, Comment *a*, at 210 ("Persons bound through representation by virtue of a relationship with a party are to be contrasted with persons bound by a judgment because they are parties . . ."). Petitioner here, in the words of the Restatement, "is not a party" but "is bound by [the] judgment as though he were a party." Because our "well-settled" rule allows only "parties" to appeal from a judgment, petitioner may not appeal the class settlement.[3]

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[3] The Court contends that those in privity with the parties to a judgment are "often allowed by other courts" to appeal by mere virtue of the fact that they are bound by the judgment. *Ante*, at 9 (citing 5 Am. Jur. 2d §265 (1995)). I should think that the significant datum on this point is not that such appeals have been "often allowed by other courts," but that they have *never* been allowed by this Court. Indeed, the "other courts" whose opinions are cited by the authority on which the Court relies consist *entirely* of state courts, with the exception of one federal case decided before our decision in *Marino* v. *Ortiz,* 484 U. S. 301 (1988) *(per curiam)*, which affirmed the "well-settled" rule that in federal court "only parties to a lawsuit . . . may appeal an adverse judgment." *Id.,* at 304. While this difference between the procedures of federal and state courts seemingly escapes the Court's attention, it was well enough recognized (and the clear federal rule acknowledged) in the very next

Second, the Court contends that petitioner should be considered a party to the judgment because he filed an objection to the class settlement. We have already held, however, that filing an objection does *not* make one a party if he does not also intervene. *Marino, supra,* at 304.

II

The most pernicious aspect of today's decision, however, is not its result, but its reasoning. I mentioned in a recent dissent the Court's "penchant for eschewing clear rules that might avoid litigation," *US Airways, Inc.* v. *Barnett,* 535 U. S. ___, ___ (2002) (dissenting opinion) (slip op., at 1). Today's opinion not only eschews such a rule; it destroys one that previously existed. It abandons the bright-line rule that only those persons named as such are parties to a judgment, in favor of a vague inquiry "based on context." *Ante*, at 7 ("The label 'party' does not indicate an absolute characteristic, but rather a conclusion about the applicability of various procedural rules that may differ based on context"). Although the Court does not say how one goes about selecting the result-determinative "context" for its oh-so-sophisticated new inquiry, I gather from its repeated invocation of this phrase that the relevant context in the present case is the "goals of class action litigation," *ante*, at 8, 9. This means, I suppose, that, in a labor case, who are the parties to a judgment will depend on the

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paragraph of the American Jurisprudence annotation on which the Court relies:

"■■■■*Caution:* Applicable rules of procedure may bar a nonparty from taking an appeal notwithstanding his or her interest in the subject matter of the case. Thus, the United States Supreme Court has, under the Federal Rules of Appellate Procedure, rejected the principle of permitting appeal by a nonparty who has an interest affected by the trial court's judgment, stating that the better practice is for such nonparty to seek intervention for the purposes of appeal." 5 Am. Jur. 2d §265, at 40 (citing *Marino*, *supra*).

goals of the labor laws, and, in a First Amendment case, who are the parties to a judgment will depend on the goals of the First Amendment. Or perhaps not.

What makes this exponential increase in indeterminacy especially unfortunate is the fact that it is utterly unnecessary. Despite the Court's assertion in one breath that treating nonnamed class members as parties is the "only means" by which they would not be "deprive[d] . . . of the power to preserve their . . . interests," *ante*, at 8, the Court in the next breath concedes that there is another—and very easy—means for nonnamed class members to do just that: becoming parties to the judgment by moving to intervene. *Ante*, at 10 (noting "the ease with which nonnamed class members who have objected at the fairness hearing could intervene for purposes of appeal"). The Court does not dispute that nonnamed class members will typically meet the requirements for intervention as of right under Federal Rule of Civil Procedure 24, including intervention only for the purpose of appeal, and even after the class judgment has been entered.[4] *Ante*, at 9–10.

The Court *does* dispute whether there is any "value" in requiring nonnamed class members who object to the settlement to intervene in order to take an appeal. *Ante*, at 10. In my view, avoiding the reduction to indeterminacy of the hitherto clear rule regarding who is a party is "value" enough. But beyond that, it makes sense to require objectors to intervene before appealing, for the rea-

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[4] It is true that petitioner's motion to intervene was denied as untimely by the District Court. Even if this decision was correct, a question on which petitioner did not seek certiorari, it does not cast doubt on the ability of the ordinary nonnamed class member to intervene for purposes of appeal. Petitioner was *not* the ordinary nonnamed class member seeking intervention for purposes of appeal. He moved to intervene *generally*, Brief for Petitioner 6, despite having rejected invitations to participate in the litigation until after the settlement was preliminarily approved.

son advanced by the Government: to enable district courts "to perform an important screening function." Brief for United States et al. as *Amici Curiae* 23. For example, when considering whether to allow an objector to intervene, a district court can verify that the objector does not fall outside the definition of the settlement class and is otherwise entitled to relief in the class action, that the objection has not already been resolved in favor of the objector in the approved settlement, and that the objection was presented in a timely manner. *Id.*, at 23–24. The Court asserts that there is no "value" to these screening functions because a court of appeals can pass on those matters just as easily, and in any event an objector who is unable to obtain relief from the class settlement will not seek to appeal "with any frequency," as he "stands to gain nothing by appeal." *Ante*, at 11–12.

As to the last point: The person who has nothing to gain from an appeal also had nothing to gain from filing his objection in the first place, but was undeterred (as many are), see, *e.g.*, *Shaw* v. *Toshiba American Information Systems, Inc.*, 91 F. Supp. 2d 942, 973–974, and nn. 17–18 (ED Tex. 2000). The belief that meritless objections, undeterred the first time, will be deterred the second, surely suggests the triumph of hope over experience.[5] And as for the suggestion that the court of appeals can pass on these questions just as easily: Since when has it become a principle of our judicial administration that what *can* be

[5] The Court assures us that these appeals will be "few" because, like the objections on which they are based, they are "irrational." *Ante*, at 11. To say that the substance of an objection (and of the corresponding appeal) is irrational is not to say that it is irrational to make the objection and file the appeal. See *Shaw*, 91 F. Supp. 2d, at 973–974, and n. 18 (noting "'canned' objections filed by professional objectors who seek out class actions to simply extract a fee by lodging generic, unhelpful protests"). The Court cites nothing to support its sunny surmise that the appeals will be few.

left to the appellate level *should* be left to the appellate level? Quite the opposite is true. District judges, who issue their decrees in splendid isolation, can be multiplied *ad infinitum*. Courts of appeals cannot be staffed with too many judges without destroying their ability to maintain, through en banc rehearings, a predictable law of the circuit. In any event, the district court, being intimately familiar with the facts, *is* in a better position to rule initially upon such questions as whether the objections to the settlement were procedurally deficient, late filed, or simply inapposite to the case. If it denies interventions on such grounds, and if the denials are not appealed, the court of appeals will be spared the trouble of considering those objections altogether. And even when the denials are appealed, the court of appeals will have the benefit of the district court's opinion on these often fact-bound questions. (Typically, the only occasion the district court would have had to pass on these questions is in the course of considering the motion to intervene; when considering whether to approve the class settlement, district courts typically do not treat objections individually even on substance, let alone form. *E.g.*, *id.,* at 973–974.) Finally, it is worth observing that the Court's assertions regarding the merits of allowing objectors to appeal a class settlement without intervening apply with equal force to the objectors who sought to appeal the class judgment in *Marino*. Yet there we concluded (no doubt for the reasons discussed above) that "the better practice" is to require objectors "to seek intervention for purposes of appeal." 484 U. S., at 304.

For these reasons, I would affirm the Court of Appeals.