

David E. Mills: Big win before High Court

It was about 1 p.m. on a Friday afternoon when Cleveland, Ohio sole practitioner David E. Mills realized he had just a few hours to keep a case alive.

A colleague told him about a client looking for a lawyer to appeal her case to the U.S. Supreme Court. Mills, who went out on his own in 2008, took a look at the 6th Circuit opinion and quickly did the math – the time period for an appeal was about to expire.

With just a few hours to spare and the help of his paralegal/mother, Mills obtained a 60-day extension to file an appeal with the Court.

That quick action ultimately paid off when Mills won a unanimous victory in *Ortiz v. Jordan*.

His client, Michelle Ortiz, was in prison on an assault charge when she was sexually assaulted by a prison guard. She reported the attack, but the same guard repeated his assault the next night.

Ortiz sued under §1983 and won a \$625,000 verdict. But the defendants appealed, arguing



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that the trial court judge should have granted their summary judgment motion.

In an unpublished opinion, the 6th Circuit agreed, vacating the verdict.

In stepped Mills.

“I knew enough about Supreme Court practice to know that I had to find a big issue – something bigger than this particular case to get [the justices’] attention,” he said.

He struck upon a circuit split over the viability of post-verdict appeals of denials of summary judgment.

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Once the Court granted certiorari on the issue, Mills began to prepare, participating in several moot court arguments.

On the day of oral argument, he got just one sentence out before Chief Justice John Roberts interrupted with a question.

During the last few seconds of rebuttal, Justice Antonin Scalia noted that at the summary judgment stage all inferences are drawn in the plaintiff’s favor, and things typically don’t get better at trial. But just as the red line came on, signaling the end of Mills’ time, he concluded: “It happened here.”

“It was a great closing moment,” Mills recalled.

It was apparently great enough to assuage Scalia’s fears, because he joined the 9-0 opinion in *Ortiz* which held that a defendant who loses a motion seeking summary judgment based on qualified immunity may not appeal that decision post-trial.

Mills, a graduate of the University of Michigan Law School who spent four years at Jones Day before hanging out his own shingle, said the *Ortiz* case validated his decision to go solo and helped him move forward in a business sense by getting his name out.

Since the opinion, he has consulted on other possible Supreme Court cases and looks forward to the chance to return to the Court.

“I have one petition sitting [before the justices] now. The odds are long, as they were before,” Mills said. “But if they grant cert, I would be the one up there arguing it.”

- Correy E. Stephenson