

No. _____

In The
Supreme Court of the United States

WILLIAM R. SATTERFIELD and JULIA KWOK,

Petitioners,

v.

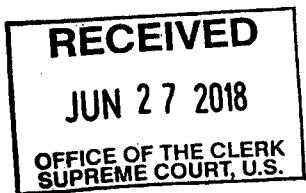
MINGO ENERGY, LLC,

Respondent.

On Petition For Writ Of Certiorari
To The Court Of Civil Appeals Of The
State Of Oklahoma, Division IV

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The question presented for review is whether failure to give proper notice and adhere to the dictates of the Oklahoma Power of Sale Mortgage Foreclosure Act (OPSMFA), particularly, OKLA. STAT. tit. 46, § 43(A)(2)(b) and (c), which resulted in denial of the right to elect and pursue a judicial foreclosure of homestead property, violates the due process protections of the Fourteenth Amendment to the United States Constitution.

LIST OF PARTIES

1. William R. Satterfield, Petitioner (Defendant/Appellant below)
2. Julia Kwok, Petitioner (Defendant/Appellant below)
3. Mingo Energy, LLC, Respondent (Intervenor/Appellee below)

(An original party and plaintiff in the Tulsa County District Court, QNB Bank and Trust Company, who did not withdraw from the case, was not a party at the trial of this matter; therefore, the final judgment entered did not adjudicate any interest of ONB Bank and Trust Company. ONB Bank and Trust Company also did not enter an appearance, or participate, in the appeal that preceded this Petition for a Writ of Certiorari. Consequently, ONB Bank and Trust Company has not been included as a party to the proceedings in this Court.)

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**PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS OF
THE STATE OF OKLAHOMA, DIVISION IV**

William R. Satterfield and Julia Kwok respectfully petition this Honorable Court for a Writ of Certiorari to the Court of Civil Appeals of the State of Oklahoma, Division IV.

OPINIONS BELOW

The Opinion of the Court of Civil Appeals, Division IV is published at 2018 OK CIV APP 33. The case has been released for inclusion in the Pacific Reporter Third. (App. 1) The Opinion of the Court of Civil Appeals of the State of Oklahoma, Division III, and the final orders of the Tulsa County District Court were not released for publication, and are not reported. (App. 42; App. 24 and 52)

JURISDICTION

The Opinion of the Court of Civil Appeals, Division IV affirming the trial court was entered and filed on October 16, 2017. The Oklahoma Supreme Court denied a Petition for Certiorari on March 26, 2018. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

OKLA. STAT. tit. 46, § 43(A)(2)(b) and (c) provides, as follows:

(b) [I]n a mortgage transaction involving the mortgagor's homestead, if the mortgagor, at least ten (10) days before the property is to be sold under the power of sale, sends written notice by certified mail to the mortgagee stating that the property involved is the mortgagor's homestead and that judicial foreclosure is elected, and files of record a copy of such notice which contains the legal description of the property in the office of the county clerk of the county where the property is located, the mortgagee must pursue any foreclosure by judicial proceeding in a court of competent jurisdiction; provided, however, the mortgagee may contest the mortgagor's claim of homestead in the judicial foreclosure action or in another action such as by declaratory judgment,

(c) [I]n a mortgage transaction that remains subject to this act involving the mortgagor's homestead, if the mortgagor at least ten (10) days before the property is to be sold under the power of sale, sends written notice by certified mail to the mortgagee stating that the property involved is the mortgagor's homestead and that the mortgagor elects against a deficiency judgment, and establishes the property as homestead if contested, no in personam action for a deficiency judgment may be maintained by the mortgagee exercising

the power of sale; provided, that mortgagee may enforce any agreed lien against collateral other than the real estate sold; and other mortgagees or holders of liens inferior to that of the mortgagee exercising the power of sale and who are foreclosed may recover the unpaid amount of their indebtedness in an in personam action for a judgment enforceable against other property of the mortgagor as prescribed by the rules of civil procedure; provided, however, the mortgagee may contest the mortgagor's claim of homestead or seek a deficiency judgment and a judicial determination of homestead by initiating an action therefor within ninety (90) days after the mortgagee's deed is recorded. The prevailing party in such action may recover attorney's fees and costs of the action. . . .

OKLA. STAT. tit. 46, § 41(7) provides, as follows:

The Oklahoma Power of Sale Mortgage Foreclosure Act shall not apply to:

A mortgage on the mortgagor's homestead if, after the notice of sale is given to the mortgagor pursuant to subsection B of Section 6 of this act, the mortgagor elects judicial foreclosure in compliance with the provisions of subparagraphs b and c of paragraph 2 of subsection A of Section 4 of this act.

OKLA. STAT. tit. 46, § 49 provides, as follows:

Notwithstanding anything herein to the contrary, the mortgagee may at any time prior to the conduct of any sale under this act, terminate any power of sale proceeding and pursue judicial foreclosure in accordance with the procedures provided for the foreclosure of mortgages.

STATEMENT OF THE CASE

William R. Satterfield, Petitioner [hereinafter Satterfield], was the record title holder to twenty (20) acres in Tulsa County, Oklahoma when he filed for bankruptcy in August 2004, and the mortgagee, Bank of America, N.A., began foreclosure proceedings in 2006. (Satterfield claimed a homestead interest, and homestead property is not included in the bankruptcy estate, nor does title pass to the bankruptcy trustee. *Lehman v. Tucker*, 1936 OK 169, 55 P.2d 62.) Bank of America, N.A. transferred the property to 75 Enterprises, LLC in 2008 following a non-judicial sale.

75 Enterprises, LLC never took possession of the property, and defaulted on its note with ONB Bank and Trust Company. Following a sheriff's sale, in which ONB Bank and Trust Company reclaimed the twenty (20) acres, ONB conveyed the property to Mingo Industries, LLC. Prior to the sale of the property to Mingo Industries, LLC in October 2011, Satterfield

transferred the property to Petitioner, Julia Kwok [hereinafter Kwok], in August 2011.

On May 9, 2012, ONB Bank and Trust Company on behalf of its grantee, Mingo Industries, LLC, and against Defendants, Julia Kwok and William R. Satterfield, filed a quiet title suit in Tulsa County. Kwok filed a counterclaim, asking the court to quiet title in her favor. The trial court's entry of summary judgment in ONB's favor was reversed by the Oklahoma Court of Civil Appeals, Division III on December 5, 2013 because the appellate court found that the record established issues of material fact. (App. 42)

During the litigation, Mingo Industries, LLC transferred the property to Mingo Energy, LLC, and Mingo Energy, LLC intervened in the quiet title lawsuit in July 2014. Mingo Industries, LLC has never been a party to this litigation. ONB Bank and Trust Company's participation ended after Mingo Energy, LLC intervened. A non-jury trial was held following remand, and the issues were decided between Petitioner, Julia Kwok, and Respondent, Mingo Energy, LLC.

In August 2006, Bank of America, N.A. had assigned the note on the property to Nationwide Capital Group, Inc. Despite this assignment, Bank of America, N.A. filed a Notice of Sale pursuant to the Oklahoma Power of Sale Mortgage Foreclosure Act (OPSMFA) on January 5, 2007, and an Amended Notice of Sale on January 23, 2007 in Tulsa County. The notice included two parcels of property, the 20 acres and an adjoining

9.76 acres, on which Satterfield was also the mortgagor.

The evidence at trial established that the notices of sale created by Bank of America, N.A. were null and void because of the assignment to Nationwide Capital Group, Inc. Under Oklahoma law, the mortgagee must actually be in possession of an interest in the note, and be entitled to enforce its interest at the time of foreclosure. *U.S. Bank, N.A. v. Alexander*, 2012 OK 43, 280 P.3d 936. (*Defendants' Proposed Findings of Fact & Conclusions of Law* filed in Tulsa County District Court February 8, 2016) "To commence a foreclosure action in Oklahoma, a plaintiff must demonstrate it has a *right to enforce the note* and, absent a showing of ownership, the plaintiff lacks standing. (Emphasis added.) *Bank of America, N.A. v. Kabba*, 2012 OK 23, ¶ 5, 276 P.3d 1006." *Bank of America, N.A. v. Murzello*, 2014 OK CIV APP 52, 326 P.3d 1146.

On May 9, 2007, Nationwide Capital Group, Inc. issued a Notice of Postponed Sale to be held on May 31, 2007. Satterfield received the notice which informed him that the property would be sold pursuant to the power of sale without judicial foreclosure unless, at least ten (10) days prior to the sale, the mortgagor sends written notice by certified mail to the mortgagee that such property is the mortgagor's homestead, and the mortgagor elects judicial foreclosure. The notice advised Satterfield to file his election with the county clerk in Oklahoma County, which was erroneous because the property is located in Tulsa County.

Satterfield timely elected judicial foreclosure and responded as instructed, but Oklahoma County returned the notice of election of judicial foreclosure, with instructions to file it in Tulsa County, which Satterfield did. Although the attorney for Bank of America, N.A., and subsequently Nationwide Capital Group, Inc., testified that he received Satterfield's election of judicial foreclosure prior to the date of sale, a non-judicial sale was conducted. The attorney subjectively decided that the property was not homestead property in violation of OKLA. STAT. tit. 46, § 43(A)(2)(b) and (c). The Act does not allow the mortgagee discretion to make that decision. The mortgagee must challenge the homestead claim judicially. OKLA. STAT. tit. 46, § 43(A)(2)(b).

A non-judicial sale was conducted by the attorney for Bank of America/Nationwide, who had no legal authority to conduct a non-judicial sale because Satterfield had timely filed his election of judicial foreclosure. Furthermore, once judicial foreclosure had been elected, the Oklahoma Power of Sale Mortgage Foreclosure Act (OPSMFA) did not apply. OKLA. STAT. tit. 46, § 41(7). An election of judicial foreclosure should have terminated the non-judicial sale:

[T]he mortgagee must pursue any foreclosure by judicial proceeding in a court of competent jurisdiction; provided, however, the mortgagee may contest the mortgagor's claim of homestead in the judicial foreclosure action or in another action such as by declaratory judgment . . .

OKLA. STAT. tit. 46, § 43(A)(2)(b).

The mortgagee's failure to follow the directives of OKLA. STAT. tit. 46, § 43(A)(2)(b) was a denial of Petitioners' rights under the due process clause.

The mortgagee did not contest mortgagor's claim of homestead in a legal proceeding as required by law. Satterfield and Kwok argued in the trial court and on appeal that denial of judicial foreclosure resulted in a fatally flawed and void sale, and deprived Satterfield, and then Kwok, of the property without due process of law. As pointed out by the Oklahoma Court of Civil Appeals, Division III, if the Oklahoma Power of Sale Mortgage Foreclosure Act did not apply because Satterfield timely elected judicial foreclosure, then other provisions in the Act could not save the sale that took place after the election. (App. 42, *Opinion* at ¶ 11) Without notice and an opportunity to be heard, an order of foreclosure is void. *Holshouser v. Lee*, 1961 OK 273, 369 P.2d 616. Notwithstanding the law and the appellate Opinion, the trial court rejected Petitioners' due process arguments. (*Finding of Facts [sic] and Conclusions of Law*, App. 24)

"The failure to allow Satterfield's decision of judicial foreclosure violates Satterfield's due process rights of notice under the Article II, Section 7 of the Oklahoma Constitution and the Fourteenth Amendment of the United States Constitution. *See also Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950)." (*Petition for Writ of Certiorari to the Supreme Court of the State of Oklahoma*)

Satterfield had no knowledge of the proceedings subsequent to his election of judicial foreclosure; therefore, he was not aware of the non-judicial sale, and not aware that the property had been transferred. He continued to pay the taxes on the property, maintain the property, and use the property because no one had taken physical possession of it. Satterfield transferred the property to Kwok in August 2011, who was a bona fide purchaser for value. Satterfield's transfer provoked the quiet title suit in May 2012.

The following, and similar, arguments were made to the Court of Civil Appeals, Division IV upon Petitions for Rehearing, and the Oklahoma Supreme Court, which both courts declined to hear the case:

'Notice is a *sine qua non* element of personal jurisdiction, without which the court wields no authority over the persons sought to be haled before it.' *Booth v. McKnight*, 70 P.3d [855] at ¶ 20 (Okla. 2003) (citations omitted). '*At the bare minimum, a constitutionally adequate notice must apprise one of the antagonist's pressed demands and of the result consequent upon default.*' *Id.* at 863 (emphasis in original), citing *Shamblin v. Beasley*, 1998 OK 88, ¶ 12 n. 34, 967 P.2d 1200, 1209 (Okla. 1998) (citations omitted).

You have to have actual notice to have due process. *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 108 S. Ct. 1340, 99 L. Ed. 2d 565 (1988), relying upon *Mullane*, 339 U.S. [306] at 306, and *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S. Ct.

2706, 77 L. Ed. 2d 180 (1983). *See also In re Estate of Pope*, 1990 OK 125, 808 P.2d 640 (Okla. 1990).

(Petition for Writ of Certiorari to the Supreme Court of the State of Oklahoma)

REASONS FOR GRANTING THE PETITION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. AMEND. XIV, §1.

Due process of law and equal protection of the laws is the right of every person when an action is taken to deprive the person of his or her property. "The constitutional guarantee of procedural due process applies to governmental deprivation of a legitimate 'property' or 'liberty' interest within the meaning of the Fifth or Fourteenth Amendment. It requires that any such deprivation be accompanied by minimum procedural safeguards, including some form of notice and a hearing." *Mitchell v. Grant Co.*, 416 U.S. 600, 94 S. Ct. 1895, 40 L. Ed. 2d 406 (1974). These minimum

procedural safeguards were detailed in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950). The individual must be given a meaningful opportunity to object to the deprivation. *In re C.W. Mining Co.*, 625 F.3d 1240 (10th Cir. 2010).

The State may act through different agencies, either by its legislative, executive, or judicial authorities, and the prohibitions of the Fourteenth Amendment extend to all actions of the State which, in exercise thereof, infringe rights protected thereby. *Flagg Brothers v. Brooks*, 436 U.S. 149, 98 S. Ct. 1729, 56 L. Ed. 2d 185 (1978); *Virginia v. Rives*, 100 U.S. 313, 318, 25 L. Ed. 667 (1880). All levels of American government must operate within the law, and provide fair and just procedures. The Oklahoma courts have sanctioned a disregard of statutory procedure under the Oklahoma Power of Sale Mortgage Foreclosure Act, which includes important due process safeguards, and by so doing, have infringed the rights of Petitioners, and run afoul of the Fourteenth Amendment. If the rule of law is not respected, due process and justice are denied.

This case is important in the context of both due process rights and homestead rights, and the limits of power placed on the State in each. The United States Constitution protects basic, individual rights. *Ziglar v. Abbasi*, 582 U.S. ___, 137 S. Ct. 1843, 198 L. Ed. 2d 290 (2017). “State courts are ‘equally bound to guard and protect rights secured by the Constitution.’” *Duckworth v. Serrano*, 454 U.S. 1, 102 S. Ct. 18, 70 L. Ed. 2d 1 (1981); quoting *Ex Parte Royall*, 117 U.S. 241, 251

(1886). In this case, those rights were not guarded or protected.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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