No. 19-5174

In the Supreme Court of the United States

WILLIAM C. LEWIS, SR., *et al.*,
Petitioners,

v.

ESTATE OF ROBERT A. LEWIS, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the District of Columbia Court of Appeals

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether these Petitioners seeking changes to deeds of record in the District of Columbia Office of Recorder of Deeds were entitled to a jury trial in the Superior Court, Probate Division, pursuant to the Seventh amendment to the Constitution of the United States?

LIST OF ALL PARTIES

Petitioners

William C. Lewis, Jr.
1632 Crittenden Street NE
Washington, D.C. 20017

Esther Y. Lewis
2316 Countryside Drive
Silver Spring MD 20905

Respondents

Estate of Robert A. Lewis
Robert T. Lewis, PR
9448 Plover Falls Road
Las Vegas, NV 89149

Wanda L. Lewis
1517 Tubman Road, SE
Washington, DC 20020

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

PERCEIVED MISSTATEMENTS OF FACTS

Sup. Ct. R. 15.2

Following are several perceived misstatements of facts appearing in the Petition

A. The following sentences or phrases from the Petition for Certiorari ("Pet. Cert.") imply the Lewis siblings provided unanimous testimony before the trial court.

1. "All of Amos Lewis's children testified that he was not in Washington D. C. when the Deeds … were executed." Pet. Cert. 6
2. " According to the testimony of the Lewis siblings, Amos Lewis left Washington, D.C on or before August 25, 1987 and never returned." Pet. Cert. 6
3. "The siblings all testified that their father, A. Lewis, suffered a stroke in November 1987 which left him debilitated… " Pet. Cert. 6

4 "The sibling testified that Amos Lewis suffered a series of additional strokes… " Pet. Cert. 6

This perception of unity of the Lewis siblings is not consistent with the trial court's findings:

> "If I summarize the Plaintiffs evidence, and I am not going into every detail we have the collective memories of Naomi Williams, William Lewis and Esther Lewis, although not necessarily Gordon Lewis, that their father moved to Detroit in August 1987 and because of his health never again left the city, and could not have been in Washington, D.C. in December 1987 to sign the two deeds." Trial Tr. A.2091

And the Court of Appeals wrote:

> The record also supports the trial court's observation that Naomi and Gordon "did not necessarily say that looking at the signatures [on the deed] that there was anything odd about them." App. C to Pet. Cert. 10.

B. The following quotation is said to be true:

1. "This is true in that it was clear that Amos Lewis did not sign the deed to the Quebec property and certainly did not sign the corrective deed." Pet. Cert. 8.

This statement is neither true nor clear.

> The appellate court quoting the opinion in *Deutsche Bank,* App. C to Pet. Cert. 9 held ["T]here is a presumption that a deed is what it purports to be on its face, and one who seeks to establish the contrary [e.g. that the deed was forged] has the burden of doing so by clear and convincing evidence." App. C to Pet. Cert. 9.

C. The petitioner's write in their petition;

1. " Petitioners and their siblings all testified that they have seen their father sign his name on many occasions which is an undisputed fact." Pet. Cert. 11.

There is no record reference mentioned to support the claim to what otherwise would be a disputed fact.

2. "These three siblings all testified that the signatures on those Deeds were not their father's signature." Pet. Cert. 11.

This statement conflicts with the judgment of the Court of Appeals.

> The Court of Appeals observed: The record also supports the trial court's observation that Naomi and Gordon "did not necessarily say that looking at the signatures [on the deed] that there was anything odd about them." App. C, to Pet. Cert. 10.

3. "By witnessing the signature of A. Lewis on many occasions the Lewis siblings actually became handwriting experts who could attest to the validity of Amos's signature." Pet. Cert. 11.

There is no evidence in the record any of the siblings were "experts" in handwriting analysis.

INTRODUCTION

This case is about a family dispute involving 4 living brothers and sisters against the intestate estate of their deceased brother, Robert A. Lewis, who was survived by his wife, Wanda Lewis, and a son of a prior marriage, Robert T. Lewis. At issue in a trial court of the Probate Division of the Superior Court of the District of Columbia was ownership of two improved parcels of real estate each with houses. Brother, William C. Lewis, and sister, Esther Y. Lewis qualified as co-personal representatives of their father's estate, Amos W. Lewis, Jr. who died in December 1992 without a will. In November 2013 they filed a civil action against the estate of their deceased brother for fraudulent conveyance, wrongful withholding of estate assets and unjust enrichment in an effort to get title to both properties into probate in the Estate of Amos W. Lewis Jr. Following nearly 7 days of bench trial the court ruled the property located at 6526 North Capital Street, NW to be in the Estate of Amos W. Lewis, Jr, because of a defect in the title, whereas the property at 638 Quebec Place, NW. was in the Estate of Robert A. Lewis.

William C. Lewis, and Esther Y. Lewis appealed to the District of Columbia Court of Appeals where the decision of the trial court was affirmed. App. C to Pet. Cert. Their petition for rehearing was denied, and no judge called for vote on the petition for rehearing *en banc*. App. D to Pet. Cert.

SUMMARY OF ARGUMENT

Although stated differently Respondent, Estate of Robert A. Lewis, and the Lewis family Petitioners appear to have identified essentially the same issue namely: Whether Petitioners seeking changes to deeds of record in the District of Columbia Office of Recorder of Deeds were entitled to a jury trial in the Superior Court, Probate Division, pursuant to the Seventh amendment to the Constitution of the United States?

The trial court said the petitioners did not have such a right and on appeal the District of Columbia Court of Appeals, after deliberate consideration, agreed. App. C to Pet. Cert. The petitioners' request for rehearing and rehearing en banc were denied. App. D. to Pet. Cert.

It is interesting to see petitioners and respondents each rely upon the decision of the District of Columbia Court of Appeals *In re Estate of Johnson*, 820 A.2d 535 (D.C. 2003) as the leading case authority for their separate arguments about entitlement to a jury trial. Perhaps the fact both sides rely on the same case illustrates the point this petition is more about a difference over facts and outcomes than it is about conflicts of law. The decision in this case (App. C to Pet. Cert) is consistent with and has not departed from accepted and usual precedent of this Court.

REASONS FOR DENYING THE PETITION

A. THIS PETITION PRESENTS NO UNIQUE FEDERAL QUESTION

Supreme Court Rule 10 is a very clear statement that review on a writ of certiorari is not a matter of right and will be granted for compelling reasons. This petition does not appear to satisfy Rule 10 instructions to litigants to provide compelling reasons in a petition for the grant of certiorari. This petition arises from a complaint filed in the Probate Division of the Superior Court of the District of Columbia by these Petitioners' and involves litigation over deeds filed among the land records of the District of Columbia in 1987. The petition challenging the decision of the District of Columbia Court of Appeals does not describe this matter as being in conflict with another court of appeals in any way. The petition does not claim this decision to be in conflict with the holding of another state court on an important federal question. There is no allegation the District of Columbia Court of Appeals strayed from accepted and usual judicial precedent so as to invoke the supervisory power of the Supreme Court of the United States.

There is no mention of a 28 U.S.C. § 1331 Federal question at issue in the Petition. In this appeal the Petitioners' argue the plain language of the Seventh Amendment entitles them to a trial by jury. Pet. Cert 8. They offer no authority for this theory apparently believing that mention of the amendment makes the question a Federal issue. They close this part of their argument claiming entitlement to a jury trial with the following statement:

> Based upon the facts, the Verified Complaint and the testimonies of the Lewis siblings' evidence was provided that the trial court should

> have considered the imposition of a constructive trust to cause the deed to the property to revert back to the estate of Amos Lewis. Pet. Cert. 8, 9.

It is not clear what the quoted phrase is intended to mean. The facts mentioned are not described, the Verified Complaint is not evidence and the testimony of the Lewis siblings is not strong and disinterested. Perhaps if anything, this quote is another example these Petitioners' may not understand they had the obligation to provide compelling reasons for the United States Supreme Court to grant their petition. They have so far limited themselves to little more than one page in their petition to the central issue of entitlement to a jury trial. Pet. Cert 8, 9. This being so, their primary claim in this regard seems to be a plain language theory with no cited authority to support the proposition.

B. PETITIONERS DO NOT ESTABLISH A RIGHT TO TRIAL BY JURY

Petitioners begin their argument for a writ of certiorari by claiming the plain language of the Seventh Amendment to the U. S. Constitution entitled them to a trial by jury. Next, they propose:

> "…had the parties been able to present their issues before a jury of their peer (sic) and had Petitioners been afforded the opportunity to present their case to a jury a different result would have been reached." Pet. Cert. 8.

Their stated belief in an unfettered right to a trial by jury upon demand is not an accurate statement of the law. Further, respondent's do not believe petitioners' assumption of "a different result" before a jury to be a compelling reason to grant certiorari.

The right to jury was thoroughly reviewed on appeal by the D.C. Court of Appeals (App. C to Pet. Cert. 16-20) citing *in re Estate of Johnson*, 820 A.2d 535 (D.C. 2003). In that analysis the appellate court applied a two-step test first asking whether there is a D.C. Law authorizing a jury trial? Neither the appellate court nor the trial court found an applicable statute. App. C to Pet. Cert. 16, and n. 9.

Finding no particular D.C. Law authorizing a jury trial the appellate court next inquired whether a jury trial was mandated by the terms of the amendment as interpreted over the years. App. C to Pet. Cert. 16. One element in the Appeals Court analysis is whether the complaint seeks money damages?

> The fact that plaintiff/appellants did not seek money damages weighs in favor of a conclusion that this is an action in equity for which no jury trial was required. App. C to Pet. Cert., 18.

The guide star in the *Johnson* case, supra, is to look at the remedy sought in order to determine whether the matter is legal or equitable. In this case the words of Petitioner Esther Lewis before the trial court are significant. In open court she said:

> "…we are seeking to correct a wrong. We seek to restore the deeds to the - back to the name of Amos W. Lewis, and for his property at 638 Quebec Place and his property at 6526 North Capital Street, Northwest, Your Honor (Trial Tr. A.2029).

This admission by this Petitioner confirms they were asking for equitable relief to amend deeds filed among the land records of the Washington, DC Recorder of Deeds. Consequently, this matter is essentially one in equity and is not a proper jury matter.

The primary case authority mentioned by petitioners in support of their argument for a jury trial (Pet. Cert. 8,9) is the same case cited by the appellate court upholding the trial court's decision not to have a jury trial. *In re Estate of Johnson*, 820 A2d 535 (D. C. 2003). Respondents believe the decision of the D.C. Court of Appeals, holding the *Estate of Johnson* as the controlling authority in this matter finding no right to a jury trial is consistent with settled law on this subject.

C. PETITIONERS CONTEND AN IMPROPER STANDARD OF REVIEW

Petitioners' pose as an additional argument the Court of Appeals used an "improper standard of review." Pet. Cert. 9. They do not say specifically what standard would have been proper, however, it does appear this challenge is really an attempt to reargue in this Court the findings of fact and conclusions of law of the trial court. This approach appears to be an attempt to mollify or gloss over the fact these litigants failed to meet their burden of proof before the trial court.

The Court of Appeals stated in reviewing the appeal of a bench trial the court may review facts and law, "…but the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it." Citing *In re Sato*, 878 A.2d 1247 (D.C. 2005). Similarly, this was the standard articulated in *Ross v. Blackwell*, 146 A.3d 385 (D.C. 2016), a District of Columbia, Superior Court, Probate Division matter illustrating consistent application of precedent within the Court of Appeals.

In the review of this record on appeal the Court of Appeals described the failure to have expert testimony about signatures on deeds "a particularly glaring omission" App C. to Pet. Cert. 10, recognizing they had identified a forensic

document examiner in pre-trial disclosures and their allegations included fraudulent conveyance, wrongful withholding estate assets, and unjust enrichment.

Their errors at trial were not limited to failure to produce a document examiner. They apparently did not realize or understand the obligation of one seeking to challenge a deed in the District of Columbia has a "clear and convincing" burden of proof. *Moore v. Deutsche Bank Nat'l Tr. Co.*, 124 A.3d 605, 609 n5 (D.C. 2015), and further, their failure to be aware that to overcome the presumption of validity with regard to a notary certification requires "strong and disinterested" evidence. "*Marden v. Hopkins,* 47 App. D.C. 202 (D.C. 1918). Consequently, they jumble their evidentiary obligation with this language:

> "The question here is whether the DC Court of Appeals' reliance upon the trial court's position that all of the corroborating testimony by the Lewis siblings lacked great weight when compared to the Notary's statement, or the absence of aged or destroyed medical records or the absence of a hand writing expert to affirm the lower court's decision was proper." Pet. Cert. 9.

For example, this quote appears to suggest these petitioners still do not understand it was their obligation to present strong and disinterested evidence to the court to challenge a document under notarial seal. The testimony of the Lewis siblings with a potential interest in the outcome is not likely to be strong but certainly not disinterested testimony.

Similarly, the petitioners continue to assert an argument before the court of appeals, and now in this petition (Pet. Cert.12) one of the deeds was void. The trial court ruled they did not bring the question up properly, and the appeals court rejected this claim thoroughly. App. C to Pet. Cert. 13-15, n 7,n 8.

Petitioners state a number of times that the Lewis siblings were in lock-step unanimity in their testimony over such things as:

> "All of Amos Lewis's children testified that he was not in Washington DC when the Deeds … were executed. According to the testimony of the Lewis siblings, Amos Lewis left Washington, DC on or before August25,1987 and never returned. The siblings all testified that their father, A. Lewis, suffered a stroke in November 1987 which left him debilitated… The sibling testified that Amos Lewis suffered a series of additional strokes…" " Pet. Cert. 6

The Petitioner's effort to cast suggestions of unanimity of sibling testimony as the equivalent of "strong and disinterested" evidence compelled counsel for respondent to heed the Rule 15(2) obligation to point out perceived misstatements of fact in the petition. The trial court found sibling testimony to be "not necessarily" consistent. Trial Tr. A 2091. The Court of Appeals agreed. App. C to Pet .Cert. 10

These Petitioners, as co-personal representatives of their father's estate, are fiduciaries of the Amos Lewis estate; and they and the other siblings are beneficiaries of the Amos Lewis estate. Accordingly, they are conflicted adversaries and not disinterested witnesses and the trial court's consideration of their testimony as sincere but not persuasive was sound. App. C to Pet. Cert. 7.

The trial court "…gave little weight to trial testimony recounting statements that family members purportedly made about who owned or would own the property. Rather, the court stated, the "real key to the case …[w]as the examination of the signatures" on the deed and "the question of whether plaintiffs ha[d] proven

by clear and convincing evidence that Amos Lewis was not in the District of Columbia on December 7th and 8th of 1987."

D. THE FINAL REASON

The Petitioners write: "A final reason that certiorari to the D.C. Court of Appeals should be granted is that the Appellate Court did not address the issue of a constructive trust which was raised by Petitioners." Pet. Cert. 12. Next they write: "A constructive trust may be defined as an *equitable* device to restore property to the rightful owner and to prevent unjust enrichment. (Emphasis added) Pet. Cert.12 citing *Joseph v. Channin*, 940 So.2d 483 (Fla. 4th DCA 2006).

It is unclear how that case supports their constructive trust assertions as it appears to be about entitlement to funds in a jointly held bank account and a Florida state legal remedy of conversion. However, the references to the testimony of the siblings; the trial court, and the verified complaint indicate factual concerns not federal questions.

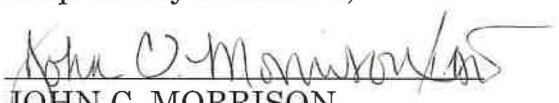
> "Based upon the facts, the Verified Complaint, and the testimonies of the Lewis siblings' evidence was provided that the trial court should have considered the imposition of a constructive trust to cause the deed to the property to revert back to the estate of Amos Lewis." Pet. Cert. 8-9

The Petition does not explain what facts or what testimony the siblings gave and to what end the trial court was to find their constructive trust.

CONCLUSION

We recognize the Supreme Court of the United States has jurisdiction of this matter as a final judgment of the District of Columbia Court of Appeals pursuant to 28 U.S.C. §§ 1257 (a) and (b); however, the initial question is whether it is necessary or appropriate to do so in this particular matter. We respectfully suggest it is not, and accordingly The Estate of Robert A. Lewis asks this Court to deny certiorari in this matter.

Respectfully submitted,



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