

No. 20-1450

Supreme Court, U.S.
FILED
APR 13 2021
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL C. MURPHY

— PETITIONER

(Your Name)

vs.

ESTATE OF GLORIA KAY

— RESPONDENT(S)

MURPHY-WALLACE

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS OF TENNESSEE

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael C. Murphy

(Your Name)

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(City, State, Zip Code)

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QUESTION(S) PRESENTED

Whether the Tennessee state trial and appellate courts are using a constitutionally vague procedural rule, Tenn.R.Civ. P. 59.04, to deny citizens an opportunity to be heard and thereby to block access to justice?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

None.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A Decision of Court of Appeals of Tennessee

APPENDIX B Decision of State Trial Court of Tennessee

APPENDIX C Decision of Supreme Court of Tennessee

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Albert v. Frye</u> 145 S.W.3d 526(Tenn. 2004)	5
<u>Gassaway v. Patty</u> Tenn. App. 604 S.W.2d 60	5
<u>Legens v. Lecornu</u> W2013-018-COA-R3-CV, 2014 WL 2922358(Ct. App. June 26, 2014)	5
<u>Parks v. MidAtlantic Finance Co. Inc.</u> 343 S.W.3d 792 (Tenn. Ct. App. 2011)	5

STATUTES AND RULES

Tennessee Rule of Civil Procedure 59.04	4,5
Tennessee Rule of Civil Procedure 59.01	4,5
Tennessee Rule of Appellate Procedure 4(b)	4,5

OTHER

None.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 11-16-20.
A copy of that decision appears at Appendix C. (See March 19, 2020 Order, 589 U.S.)

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Tennessee Rule of Civil Procedure 59.04	4, 5
Tennessee Rule of Civil Procedure 59.01	4, 5
Tennessee Rule of Appellate Procedure 4(b)	4, 5

STATEMENT OF THE CASE

A jury trial concerning an estate will contest resulted in Defendant prevailing. Plaintiff Michael C. Murphy filed a Motion for a New Trial on September 13, 2019, alleging among other errors that the state trial court allowed an unexcused Alternate Juror to deliberate in the jury room with the impaneled jury, as well as upholding the validity of a marriage in Tennessee which occurred prior to the Virginia divorce decree of one party becoming final. The trial court denied the motion on December 19, 2019.

A Motion to Alter or Amend was filed by Plaintiff on January 21, 2020, based also upon Tenn.R.Civ.P.59.04 and 59.01, and Tenn.R. App. 4(a), which was denied on February 18, 2020. An appeal was taken to the state court of appeals, and on August 11, 2020, it decided that it lacked jurisdiction by finding that the Tenn.R. Civ.P.59.04 was supposedly a "motion to reconsider" and therefore did not toll the appeal period. The state Supreme Court declined to grant an appeal on November 16, 2020.

This matter is now before this Honorable United States Supreme Court.

REASONS FOR GRANTING THE PETITION

The Tennessee state courts of appeal and the trial courts use Tenn.R.Civ.P. 59.04 as a systemic subjective means to deny citizens access before the courts by declaring willy-nilly that these motions are "Motions for Reconsideration" and therefore do not qualify as Motions to Alter or Amend and subsequently do not toll the appeal period under Tenn.R.Civ.P. 59.01 and Tenn.R.App. 4(b) leaving participants without any recourse to be heard, it is respectfully submitted.

Allowing state courts to act in this manner goes beyond the particular facts and parties involved herein, and is an issue of national importance to the public and effects others similarly situated.

There is no logic or justice in state decisions such as Legens v. Lecornu W2013-01800-COA-R3-CV, 2014 WL 2922358 (Ct. App. June 26, 2014) and Albert v. Frye 145 S.W.3 d 526 (Tenn. 2004) that seek to deny the opportunity to be heard and considered on appeal. At the same time, state decisions run counter and declare that a court should exercise its discretion in favor of allowing a case to be heard on its merits in Parks v. MidAtlantic Finance Co. Inc. 343 S.W.3 d 792 (Tenn. Ct. App. 2011), and alludes to the fact of the state Supreme Court's policy of liberality in resolving doubt as to the proper construction of statutes and rules regulating appeals in favor of the right of appeal in Gassaway v. Patty Tenn. App. 604 S.W.2 d 60

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael C. Murphy

Date: April 13, 2021