

No. 21-7602

IN THE SUPREME COURT OF THE UNITED STATES

KARYN M. KELLEY,

Petitioner,

v.

MARY E. FEENEY,

Respondent,

Petition For Rehearing a Writ of Certiorari
To The United States Court Of Appeals
For The First Circuit Pursuant To Rule 44

PETITION FOR REHEARING

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July 8, 2022

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**PETITION FOR REHEARING UNDER RULE 44
ON DENIED WRIT OF CERTIORARI**

Petitioner, Karyn M. Kelley, respectfully Petitions for a Rehearing on denied Writ of Certiorari dated June 13, 2022. Petitioner originally requested this Court review the State of New Hampshire Supreme Court Order that erred in affirming the tribunal court's judgment that violated the requirement for due process under the Fifth or Fourteenth Amendment of the United States Constitution.

JURISDICTION

This Honorable Court denied a Petition for Writ of Certiorari on June 13, 2022. A timely petition for rehearing is due on or before July 8, 2022.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Const., Amend V provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law [.]"

U. S. Const., Amend XIV section 1 provides in relevant part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws[.]"

NH RSA 547-C:1 Parties (2001), providing, in relevant part, that "[a]ny person owning a present undivided legal or equitable interest or estate in real . . . property . . . shall be entitled to have partition or division in the manner hereinafter provided".

NH RSA 547-C:11 Judgment for Partition (2001), providing, in relevant part, that "The court shall make such partition as it decrees by metes and bounds or other distinct description. The partition shall be recorded at the registry of deeds for the county where the real estate lies."

INTRODUCTION

Petitioner, Karyn M. Kelley (hereafter Kelley) was the victim of Respondent, Mary E. Feeney's (hereafter Feeney) conspiracy to steal Kelley's home, which Feeney contributed (0) towards Kelley's primary residence. Feeney failed to qualify for a lower rate mortgage note on her primary residence which Feeney demanded Kelley assist her to increase her asset therefore Feeney would meet the bank ratio, be approved for the lower interest rate on her residence at 1914 Lake Shore Road, Manchester New Hampshire. Feeney had to show her bank increased assets, which she did when Kelley placed Feeney's name on Kelley's Deed to Kelley's primary residence subsequently Feeney met the bank ratio for a lower rate mortgage note on her property in Manchester NH. The aforementioned was the sole reason Kelley had Feeney on Kelley's primary residence. To protect Kelley's primary residence she had Feeney sign disclosure(s) that Feeney waived any and all interest in Kelley's primary residence, which there were (5) documents essentially stating the same, Feeney had no interest in Kelley's property. Over time (4) of the no interest documents had been recorded at the Official Registry of Deeds.

Feeney by her own proposed order waived all interest in Kelley's primary residency whereby made this the (6th) document which Feeney claimed no interest in Kelley's home. Judge Abramson, sitting on the tribunal bench, granted Feeney's 2010 proposed order, which Feeney was ordered to transfer all her interest in Kelley's primary residence to Kelley. Feeney was ordered to recording the order at the Registry of Deeds. Kelley by granted order of 2010 owned 100% of her primary residence in Merrimack, recorded at the Official Registry of Deeds under book 8807 page 2606. *See NH RSA 547-C:11, Writ pages 2,3,27, 28, Appendix A.*

Then (4) years later in 2014, Judge Abramson at a bench trial ordered a 50/50 division of Kelley's primary residence in Merrimack, which completely contradicted her granted order of 2010 that Kelley owned her home 100%. Judge Abramson had never vacated the 2010 order, therefore had competing orders, which the law of the case was the 2010 order appropriately recorded at the Registry of Deeds under New Hampshire Partition Law. *See NH RSA-C:11, Writ Appendix A, B.*

Then (4) years later in 2018, Kelley filed motion(s) for clarification, contempt and sanctions that had been granted by Judge Abramson. *See Writ page 4.* Kelley tried for years to obtain an evidentiary hearing on the aforementioned granted motion(s). It took (2) years to grant an evidentiary hearing based upon those motion(s), which clearly Judge Abramson realized the errs which "opened the door" for Kelley to produce the evidence necessary to vacate the competing order of 2014. *See Writ pages 11-13.*

Judge Abramson retired (7) months after she granted the Kelley's May 2018 motion(s) but failed to schedule an evidentiary hearing as requested by Kelley. In February 2019, Judge Anderson was the sitting Judge of the tribunal court that unjustly ordered Kelley to vacate her primary residence that violated Kelley's Constitution right to shelter. Judge Anderson also failed to schedule an evidentiary hearing as requested by Kelley at the February 2019 hearing. Judge Anderson later sold Kelley's home and untimely granted Kelley her evidentiary Hearing in 2020.

At Trial 2020, Kelley was denied Counsel, denied her granted evidentiary hearing, denied her right to produce evidence, denied her right to cross-examine a witness, denied her right to have a subpoenaed witness testify against Feeney which violated Kelley's Constitution Right to Due Process under the XIV Amendment. Then tribunal court

granted an unequal division of the proceeds of Kelley's primary residence that favored Feeney whom contributed (0) dollars. *See Writ pages 13,14, Writ Appendix C, D.*

The New Hampshire Supreme Court erred when it affirmed the tribunal court's order. *See Writ Appendix E,F.*

GROUNDS FOR PETITION FOR REHEARING

This court by Notice of June 13, 2022 denied petitioner her Writ of Certiorari to review the lower courts decision that deprived Petitioner of life, liberty, and property without Due Process under the XIV Amendment of the United States Constitution.

Petitioner seeks a new determination based on errors of fact or law so justice may finally be done. The merits of Kelley's case supports the lower courts order should be vacated with Kelley's relief request of an award of her primary residence.

Petitioner requested in the Writ of Certiorari that this Court review a lower courts order that violated Kelley's XIV Amendment, 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 where in 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 and should have been reversed and vacated.

A judgment is void *ab initio* if it is entered in a manner inconsistent with due process. See Glebe v. Frost, 574 U.S. 21, (2014), Wendt v. Leonard, 431 F.3d 410, 413 (4th Cir. 2005). The Bill of Rights with the "Incorporation Doctrine" of the XIV Amendment provides that any state or court that denies one his rights is violating its duty to provide

“equal protections of the laws”. The doctrine is the recognition that no procedure can be just if it deprives a person of his or her human liberties. One of these guaranteed rights is to redress of grievances. Article III, Section 2, Clause 1 states, “The Judicial Power shall extend to all cases in the Law and Equity, arising under the Constitution (and) Laws of the United States. . .” In this case Kelley was deprived her due process rights secured by the United States Constitution. *See Writ pages 2,5,6,11,26,28.* Kelley was granted an evidentiary hearing that was abruptly denied at trial of 2020, which would have produced different results, had Kelley been able to produce evidence and question a witness, Feeney, on her granted motion(s). *See Writ 16-25.* Feeney would not have been able to deny she had no interest in Kelley’s primary residence when Kelley produced the signed and recorded documents of Feeney that waived ownership and all interest in Kelley’s home. Kelley was denied to produce as evidence the 2010 order that was the law of the case, which Feeney by proposed order requested the tribunal court grant Kelley all her interest in her primary residence, which the tribunal court granted moreover was recorded at the Registry of Deeds. *See NH RSA 547-C:11, Writ Appendix A*

REASONS FOR GRANTING REHEARING

Petitioner had “sufficient factual matter, accepted as true, to ‘state a claim to relief’” See Ashcroft v. Iqbal, 556 U. S. 662, 678 (2009). The court treats as true all well-pleaded factual allegations and, after disregarding conclusory allegations, construes all reasonable inferences in plaintiff’s favor. See Ocasio-Hernandez v. Fortuno-Burset, 640 F.3d 1, 12 (1st Cir. 2011). In doing so, the court may consider “documents incorporated by referenced in, matters of public record, and other matters susceptible to judicial notice,

“including publicly recorded documents from state court judicial proceedings. See

Giragosian v. Ryan, 547 F.3d 59, 65 (1st Cir. 2008).

In this case Kelley was denied her Due Process to produce evidence and question a witness on her granted evidentiary hearing that would have had a different result. Kelley would have produced, public records, the Official Records of the Registry of Deeds that had the 2010 recorded order that Feeney was ordered to transfer all her interest in Kelley’s home to Kelley. Kelley would have produced (4) recorded documents that Feeney waived ownership rights in Kelley’s property moreover claimed no interest in Kelley’s primary residence, which directly contradicts Feeney’s new claim of interest in Kelley’s primary residence. Feeney had taken a completely different argument that contradicted her previous argument whereby Feeney waived all interest in Kelley’s primary residence, which is fraud on the court. *See Writ page 25, Writ Appendix A.B.*

The XIV Amendments Due Process Clause provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” “Due process is flexible and calls for such procedural protections as the particular situations demands.” See Mathews v. Eldridge, 424 U.S. 319, 334 (1976). To prevail on a procedural due process claim, a plaintiff must show that he or she “has a protected interest in life, liberty, or property, and that the defendants deprived him or her of that protected interest without constitutionally adequate process.” See Foley v. Town of Lee, 871 F. Supp. 2d 39, 47 (D.N.H. 2012) (citing Garcia-Rubiera v. Fortuno, 665 F.3d 261, 270 (1st Cir. 2011); Air Sunshine, Inc. v. Carl, 663 F.3d 27, 34 (1st Cir 2011)). “To determine what process is constitutionally due, “courts generally balance three factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such

interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substituted procedural requirement would entail. See Haidak v. Univ. of Mass.-Amherst, 933 F.3d 56, 66, (1st Cir. 2019)(quoting Mathews, 424 U.S. at 335).

In this case Kelley sufficiently alleged an interest in real and personal property. The fundamental requirement of constitutionally adequate due process is the opportunity to be heard “at a meaningful time and in a meaningful manner. “ Mathews, 424 U. S. at 333. Kelley was denied that opportunity after she received a granted evidentiary hearing. *See Writ pages 19-20,25.*

This Honorable Court reversed and remanded No. 20-637 Darrell Hemphill, Petitioner v. New York on Writ of Certiorari to the Court of Appeals of New York [January 20, 2022]. That case was criminal that violated the VI and XIV Amendments, the right to confront a witness, the right to a fair trial and “opening the door” doctrine, which this Court upheld the Constitutional Rights, this recent decision should be a reason to grant Kelley her Petition for Rehearing as this Courts recent decision to overturn Hemphill conflicts with Kelley’s denied Writ of Certiorari that argued the same Constitutional Rights.

Before proceeding on the merits, the Court must address the State’s threshold argument that Hemphill failed to present his claim adequately to the state courts. This Court “has almost unfailingly refused to consider any federal-law challenge to a state-court decision unless the federal claim ‘was either addressed by or properly presented to the state court that rendered the decision we have been asked to review.’” Howell v.

Mississippi, 543 U. S. 440, 443 (2005)(per curiam)(quoting Adams v. Roberson, 520 U.S. 83,86 (1997)(per curiam)). “No particular form Cite as : 595 U.S. ____ (2022) 7 Opinion of the Court of words or phrases is essential”” for satisfying the presentation requirement, so long as the claim is ““brought to the attention of the state court with fair precision and in due time.”” Street v. New York, 394 U. S. 576, 584 (1969)(quoting New York ex rel. Bryand v. Zimmerman, 278 U.S. 63,67 (1928)). Hemphill has satisfied this requirement. See No. 20-637, Hemphill v. New York Opinion October Term 2021 decided January 20, 2022, 595 U.S. ____ (2022).

The same rights applied in Kelley’s civil case, which Kelley was denied her right to a fair trial, denied her right to confront a witness, moreover Feeney “opened the door” many times throughout her testimony which the tribunal court erred when Kelley was denied the aforementioned rights at trial of 2020. *See Writ 11-23, 25,26*

Kelley presented her claim adequately to the state courts, was granted an evidentiary hearing that was abruptly denied at trial. Feeney “opened the door” in her testimony, which Kelley was unjustly denied her opportunity to present evidence or cross-examine Feeney.

In Hemphill the trial court allowed the State to introduce parts of the transcript of Morris’ plea allocution as evidence to rebut Hemphill’s theory that Morris committed the murder. The court reasoned that Hemphill’s argument and evidence had “open[ed] the door” to the introduction of these testimonial out-of-court statements, not subject to cross-examination, because they were “reasonably necessary” to ‘correct’ the ““misleading impression”” Hemphill created. 2 Hemphill v New York Opinion of the Court People v. Reid, 19 N.Y.3.d 382, 388 (2012).

Feeney impeached herself at trial 2020, she testified her primary residences was New Hampshire. Feeney testified she was temporarily living in Florida as she was the caretaker for her parents, when her Father passed (3) years prior and her Mother had been in a Nursing Home in Maine for over (1) year. This went directly to her character which the state courts overlook. Feeney had not resided in Manchester New Hampshire since 2012. *See Writ 13,-15.*

Feeney impeached herself at trial 2020 when she testified she had no history of ever paying taxes or condominium fees on Kelley's primary residence which she directly contradicted her previous testimony in 2014. Feeney by offers of proof testified at trial in 2014 the she paid taxes on Kelley's primary residence. Feeney with the conflicting testimony "opened the door", which Kelley was denied by the tribunal court to question the witness or right to correct the misleading impression. *See Writ pages 13,14.*

Feeney impeached herself and "opened the door" when she testified at trial 2020 that she never received any portion of rental income from Kelley's Mother, "No, not a single dime -- never" *See Writ page 13.* Kelley was denied questioning the witness when Feeney's testimony directly conflicted Discovery in this case. Feeney in 2008 unlawfully filed a Federal tax return for rental income. *See Writ page 15,16.* Kelley was denied her right to correct the misleading impression.

Feeney "opened the door" when she testified at trial 2020 that she had a court order to go throughout Kelley's primary residence to enter the basement that directly contradicted the court order that stated she had to have police escort to enter Kelley's garage only. *See Writ pages 20, 21, Writ Appendix A-2 paragraph 8.* Kelley was denied her right to proceed with questioning of Feeney to correct the misleading impression.

Feeney at trial 2020 “opened the door” many times in her testimony which Kelley was denied questioning Feeney which it was reasonable necessary to correct the misleading impression as it was in Hemphill. Feeney criminally violated a court order, which “opened the door” for questioning which the outcome of the trial would have produced different results that the courts overlooked. Kelley would have called her subpoenaed witness, a Lieutenant of the Merrimack police department. Kelley would have introduced her evidence to refute Feeney’s claim of interest in Kelley’s home, moreover the results would have awarded Kelley her primary residence that was unlawfully stolen for which Feeney failed to have a present undivided legal or equitable interest in Kelley’s real property. *See NH RSA 547-C:1, Writ 20,21,24,25.*

Even a years-old judgment could, in unusual circumstances, be reopened, a litigant can file a petition for rehearing of a denial of certiorari Sup. Ct. R. 44.2 A litigant can also see rehearing of a decision on the merits, Sup Ct. R. 44.1.

Relief under XIV Amendment of due process that an impartial Judge, a fair evidentiary hearing would have allowed Kelley to continue with her granted evidentiary hearing to produce Official Records from the Registry of Deeds, produce the original order in the case, that Feeney transferred all her interest in Kelley’s home to Kelley. Kelley was granted 100% her primary residence by the tribunal court. Moreover Feeney waived all interest in Kelley’s home, which contradicts her claim that she is entitled to sell Kelley’s home and be awarded 50 percent or more of Kelley’s home. That would be the definition of fraud on the court, which would have changed the results of the trial had Kelley not be denied her Due Process under the XIV Amendment, Kelley should be

living in her primary residence and not on the street. *See XIV Amendment, NH RSA 547C:11, Writ page 19-20, 25.*

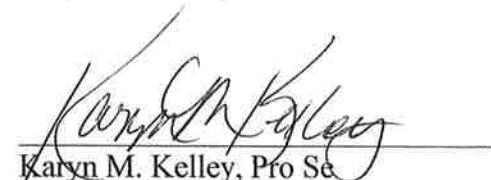
CONCLUSION

The Supreme Court of the United States is the “last resort” to defend its Citizens Constitutional Rights when lower courts violated those rights, whereby rehearing would be essential in this matter so that justice may finally be done.

For the foregoing reasons, petitioner respectfully requests this Court grant her petition for rehearing on denied writ of certiorari dated June 13, 2022.

July 8, 2022

Respectfully Submitted by Petitioner,
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PETITIONER'S CERTIFICATION PURSUANT TO RULE 44

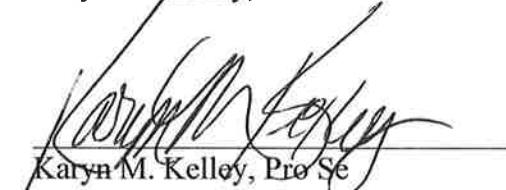
Petitioner hereby certifies that this petition for rehearing grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

Petitioner believes that this petition for rehearing is very likely to prevail on the merits of the case, which this Court has the discretion to grant for compelling reasons. Moreover, this Court reversed and remanded NO. 20-637, Hemphill on January 20, 2022 that had the same Constitutional violations, the right to confront a witness, the right to a fair trial and “opening the door” doctrine.

Petitioner hereby certifies that this petition for rehearing is presented in good faith and not for delay.

July 16, 2022

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IN THE SUPREME COURT OF THE UNITED STATES

KARYN M. KELLEY,

Petitioner,

v.

MARY E. FEENEY,

Respondent,

PROOF OF SERVICE

I, Karyn M. Kelley, do swear or declare that on this date, July 8, 2022, as required by Supreme Court Rule 29 I have served the enclosed Motion For Leave To Proceed In Forma Pauperis and Petition For Rehearing on Respondent's counsel, Attorney Daniel C. Proctor, P.O. Box 3544, Concord, NH 03302. I declare under penalty of perjury that the foregoing is true and correct.

July 8, 2022



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