

In The
Supreme Court of the United States

Kim L. Harper

Petitioner,

v.

JAMES M. ELLIS, Administrator of the Estate, PAT DOE1,
ROCHELLE GREENIDGE, PAT DOE2, BETH RODRIGUEZ, PAT
DOE3, SONYA THOMAS, PAT DOE4, RED WOLF
CONTRACTING SERVICE LLC and MICHAEL SVENCICKI,
LIEN CLAIMANTS, AND
RED WOLF CONTRACTING SERVICE LLC
and MICHAEL SVENCICKI

Respondents,

On Petition For A Writ of Certiorari To
The North Carolina Supreme Court
(Opinion by North Carolina Court of Appeals)

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QUESTION[S] PRESENTED

Pursuant to Rule 14.1(a)

#1: In the absence of just debts against the decedent, when the appellate court finds the taking of intestate real property for sale to make assets to be an “appropriate” remedy to satisfy a creditor’s claim against an heir of the decedent, and to honor a time-barred claim for funeral expenses specifically disallowed by the Administrator, should the order of the appellate court be vacated and dismissed for want of subject matter jurisdiction?

#2: Prior to the commencement of State appeals, in the absence of authorization under state law, when the Office of the Clerk of Court, ex offico Judge of Probate in North Carolina, takes possession, custody and control of intestate real property to make assets under protest of an heir who claims breach of fiduciary duty against the estate secondary to violations of the Petitioners’ 5th amendment, 8th amendment and 14th amendment rights, should this Court clarify the “Probate Exception” to allow for removal of the issue to Federal Court to resolve, de novo, the controversy in an independent action?

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 14.1(b)(i):

Pursuant to Rule 12(4), as to COA 20-730, COA 20-746, NCSC 319P21, NCSC 370P21, COAP21-357, all parties are referenced in the caption.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 14.1(b)(ii)

: This petition is not being filed by or on behalf of a nongovernmental corporation.

RELATED PROCEEDINGS

Pursuant to Rule 14.1(b)(iii) and Pursuant to Rule 14.1(c)(d): This case arises from the following proceedings and Orders: Please See Appendix 4.

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1) The opinion of the North Carolina Court of Appeals is unpublished and is reported at *Ellis v. Harper*, 2021 NCCOA 362 (N.C. Ct. App. 2021)

2) The North Carolina Supreme Court orders are attached in Appendix 6.

JURISDICTION

Pursuant to Rule 14.1(e) the following is a concise statement of the basis for jurisdiction in this Court, showing;

The Supreme Court of North Carolina entered its order(s) in this case on 20 June 2022. The Petitioner did not seek a motion for reconsideration. Pursuant to Rule 30(1), the Petitioner's filing is timely and due on 19 September 2022. The Petitioner invokes the Court's jurisdiction under 28 U.S.C. §1257(a) . The Supreme Court of North Carolina's decision qualifies as a final decree.

**.CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

The Fifth Amendment to the United States Constitution provides: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any

person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Eighth Amendment to the United States Constitution provides: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Const. amend. XIV, § 2 provides: 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.

N.C. Const. Art. I, §18 provides: Court shall be open. All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

... . **STATEMENT**

Pursuant to Rule 10(a)(b)(c) the petitioner comes and attests that the matter that is before this court is of urgent importance to homeowners of intestate real property in the

state of North Carolina, as well as throughout the nation, as it concerns their appearances before the court, pro se. At this time of great economic instability, political polarization and climatic challenge, it is more important now than at any other time in our history that the taking of intestate real property should be a last resort option, under the law, and not be construed as a matter of opportunistic advantage for those who are granted the power of judicial authority to take advantage of the financially challenged and otherwise vulnerable intestate real property homeowners.

In the unchallenged, 1865 Supreme Court opinion, in *re: Comstock v. Crawford*, 70 U.S. 396 (1865), the court elegantly describes the conditions that must be met before intestate real property can be sold to settle decedent's debts, as well as the reasons why the safeguards in the system, e.g., resort to personalty of the decedent as a first recourse to pay legitimate debts and costs of the estate before selling real property to make assets, and the right of appeal is sufficient to manage any corrections of law that were made in error at the trial court level. The issues raised in this opinion are central to the petitioner's case.

The petitioner is not requesting that this court settle factual disputes, or decide on issues that arise from the misapplication of a properly stated rule of law. The petitioner is asking that this court favor the petitioner's cause to vacate the opinion and order of the NCOOA and the NCSC due to the complete failure of the trial court to abide by clearly defined statutory law.

The problem faced by the petitioner in bringing this case for review is threefold. First, it is entirely likely and

true in other respects, that the petitioner did not properly cite to the record, and/or adhere properly to the rules of the court when she made her presentation(s) to the NCCOA. The petitioner is not an attorney.

The petitioner was also very ill, and under the influence of pain medication and steroids throughout these proceedings, which were medically necessary. The petitioner was also under intense pressure from the non-stop bombardment of what the petitioner alleges to be an insidious form of emotional and mental abuse from the OCCBC that the petitioner has come to refer to as “gaslighting”, better known as “coercive control”. Is Gaslighting an Offence, Legalprox.com:
<https://legalprox.com/is-gaslighting-an-offence/#:~:text=Is%20gaslighting%20someone%20a%20crime%3F%20In%20the%20US%2C,be%20at%20risk%20of%20physical%20violence%20later%20on.>

Although the petitioner is feeling much better, addressing this legal matter remains a grueling task, as well as deeply distressing because of all of the lying and other forms of omissions or ignoring of material fact that would be required by the trial and appellate courts to consider in order for them to make a fair and just decision.

In their complete affirmation of the trial court, the NCOOA relied on facts testified to by Admin. Ellis before the Honorable Steve R. Warren, Buncombe County Superior Court Judge that both misrepresented and omitted material facts that were absolutely necessary for the court to know. Admin. Ellis was well aware of the falseness of his statements, as the evidence in the record fails to support

Admin. Ellis' testimony before the courts. Some of these material facts include, but are not limited to the following. These misrepresentations were central as far as North Carolina law is concerned, as if Admin. Ellis was telling the truth, selling the intestate real property to make assets would have been appropriate. If Admin. Ellis was telling the truth, the petitioner would not have argued. As the petitioner has previously stated in her filings, the petitioner would have begged the court for mercy, as there are many things that a person can be accused of doing throughout their lives. However, in the petitioner's estimation, sacking your dead Father's estate, in the first place, is a particularly deep low that she has not yet sunk.

1) Regarding the petitioners' responsibility to file an initial inventory, submit annual accounts and/or a final account, this requirement is not just some minor matter, the failure to do so speaks to baseline issues regarding the assets of the decedent at the time of death, and how those assets were distributed throughout the course of the petitioner's administration.

The petitioner's filings are in the record as follows:

The petitioner's initial inventory: COA19 730 ROA pp 101-103.

The petitioner's first annual account COA19 730 ROA pp 87-88

The petitioner's final account - COA19 730 ROA pp 97-98.-

Despite the availability of these files in the record, the NCCOA, states:

"Harper failed to timely file an account for the estate,

leading to successive orders directing her to do so or be held in contempt or removed as fiduciary" *Ellis v. Harper*, 2021 NCCOA 362, 1 (N.C. Ct. App. 2021) at 3

The petitioner's annual report for 2018 was due on 28 June 2018, and deemed late on 28 July 2018. Due to medical reasons and the decision of the co-heirs' to not appear with the petitioner to close out probate, the petitioner appeared on 05 September 2018. The petitioner was in touch with probate on a regular basis regarding her tardiness.

The petitioner was 39-days late for good cause. In fact, the petitioner was very concerned that the co-heirs' refused to give the petitioner an account regarding the items that were removed from my Dad's house once she arrived in Asheville in September, 2015, due to the sheer amount of property that was missing. In fact, there wasn't even a piece of mail belonging to my Dad that remained

Most importantly, this issue concerning reporting of the personality of the decedent was central to the taking of the intestate real property in the first place, and although Admin. Ellis made misrepresentations to the Superior and appellate courts, Admin. Ellis was only prosecuting a case as given to him by the OCCBC.

Since there are so many material representations that have been made by the OCCBC by and through their counsel, Admin. Ellis, the petitioner has to begin by making an opening statement that speaks to the heart of what is most critical as it concerns the taking of intestate real property; the assets and debts of the estate. Improper reliance on either of these factors results in injustice, which

has been true in this case.

I. Factual Background

The OCCBC devised an order, entered by Johanna Finkelstein, Assistant Clerk, Buncombe County, Division of Probate on 04 October 2018 (“Assistant Clerk Finkelstein”), please see COA326 ROA pp 71-73, which was extreme, unusual, and as to the legal insufficiency of the claim that the petitioner had breached her fiduciary duty to the detriment of the estate and the heirs’, was simply false. The petitioner did use estate funds totaling \$3,3660.18 to get through a difficult illness, but the petitioner replaced those funds and no harm was caused to anyone. My Father’s estate was only valued at \$13,xxxxx; \$3,660.81 which was in cash (please see the petitioner’s initial inventory to Probate dated June, 2017: COA730 ROA pp 87-88). Thus began the commencement of a “witch hunt” against the petitioner for a variety of “crimes and misdemeanors”, both real and imagined, to justify the taking of the intestate real property.

What was absent then, and that which remains missing to-date, is one legitimate debt against the decedent’s estate, which is what the OCCBC must have in order to take possession, custody and control of the intestate real property. Unless the petitioner had truly “dissipated” the estate, nothing about the petitioner’s human essence, nor anyone’s opinion about that, nor any other personal attribute or motive concerning any other individual involved in this case, qualifies as a legal reason to sell the intestate real property, yet this is precisely what happened, in what the petitioner characterizes as a cascading snowball of

compound lying. This is actually a terrifying experience when dealing with individuals who have the authority to cause major and irreparable harm to your being at every level.

Essentially, because the OCCBC lacked statutory authority to take the intestate real property, this case became about the petitioner, rather than the debts of the decedent, and although this court can not assist with any of these issues, it is regrettably necessary to comment on this to the minimal extent possible at this stage..Otherwise, there will be no ability for the petitioner to get to the point of why this Court should grant certiorari. So much that was irregular, illegal and unjust happened to the estate and to the petitioner.

Second, the proceedings were conducted in a manner that left the petitioner with no voice, and very little understanding of how the appellate court(s) arrived at their decisions. As time unfolded, the vague murmurings were substantiated with evidence that has helped the petitioner piece together a better understanding of how misrepresentations of material facts in this case formed the basis for the taking of the intestate real property as a substitute for legitimate debts against the decedent's estate.

From the beginning of the proceedings in the trial court to its end on 12 September 2022, when the OCCBC, ostensibly closed and distributed the assets of the estate of Johnnie E. Harper, (please see Appendix 6), coercive control was employed to force the petitioner to simply accept the illegal and irregular behavior of the OCCBC without the benefit of meaningful appeal. When the petitioner failed to

comply, this behavior included acts of violence in the commission of orders that were devoid of statutory authority, e.g., evicting the petitioner from her home, to repeatedly refusing to rule on or even address the petitioner's claim that the taking of the intestate real property for sale to make assets was illegal in this case.

II. Procedural Background

This petition for certiorari arises from two (2) separate proceedings in the Buncombe County Court Complex, District 28 ("Bunc28"). The first proceeding arose from the Buncombe District Court, on 07 April 2017, in a civil breach of contract matter involving Redwolf Contracting Svc., LLC and Michael Svencicki ("Redwolf"), v. the Petitioner, and Co-Heirs', Rochelle Harper Greenidge ("Co-Heir Greenidge"), Sonya Thomas ("Co-Heir Thomas"), and Beth Harper Rodriguez ("Co-Heir Rodriguez"); collectively, ("the Co-Heirs").

The second proceeding, arose from the OCCBC on 07 August 2018, which began the process of removing the Petitioner as administrator of the estate of her Father, Johnnie E. Harper, and replacing her with James M. Ellis ("Admin. Ellis") Buncombe County Public Administrator on 26 October 2018.

On 19 November 2018, Admin. Ellis issued a bundle of petitions to the Petitioner, which consisted of 1) a request for an order to take possession, custody and control of the intestate real property to make assets, 2) a request for an order to reimburse for funeral expenses, and 3) a request to

recover personal property belonging to the decedent from the petitioner, solely. A hearing was granted approximately two (2) weeks later on 06 December 2018, wherein Admin. Ellis' petitions were granted concerning 1) and 2). As for #3, the petitioner alleges that this was retribution due to the petitioner because she had the audacity to request, on multiple occasions since 2015, that the heirs' account for what they took from my Dad's house.

In fact, both the 04 October 2018 from Asst. Clerk Finkelstein and the 19 November 2018 bundle of petitions filed by Admin. Ellis (please see COA19-327 ROA p 10 at 10) includes very important misrepresentations, intention to violate existing law concerning claims against the estate, as well as indirect references to possible criminality of the part of the petitioner. On its face, Admin. Ellis' statements of fact seems to point to good cause to take possession, custody and control of the real property for sale to make assets. None of his statements are true, and the proof of this is in the record. Unfortunately for the petitioner, the evidence to the contrary in the record made no difference to the OCCBC, was meaningless to the Superior Court, as well as of no account to either of the appellate courts. However, Admin. Ellis' statements are supposed to represent the existence of material evidence, and if they were true, they would justify the sale of the intestate real property. For example:

1) By stating that the petitioner, who was not only the administrator of the estate, but also an heir, had no legal standing to ask for an accounting from the co-heirs' as it concerns the petitioners right to compel a complete

inventory of the personality of the estate. For whatever reasons, out of the blue, Admin. Ellis informed the petitioner that they decided to not act on that petition. Admin. Ellis amended his petition to include Redwolf on 05 December 2018.

Both the OCCBC and District court cases are inextricably intertwined.

The Honorable Steven D. Cogburn, ex offico Judge of Probate for Buncombe County (“Judge Steven Cogburn”) shares legal jurisdiction in this area with his brother, The Honorable Max O. Cogburn, U.S. District Court Judge, Western District, North Carolina (“Judge Max Cogburn”) who is located down the street. Despite their relationship, the petitioner filed an emergency motion with that court on 27 November 2018, *Harper v. Greenidge*, CIVIL No. 1:18-cv-00283-MR-WCM (W.D.N.C. Dec. 4, 2018) in conjunction with the same matter concerning the petitioner’s complaint that she filed against the co-heirs’ on 04 October 2018, *Harper v. Greenidge*, CIVIL No. 1:18-cv-00283-MR-WCM (W.D.N.C. Jan. 22, 2019) regarding the violations of the petitioner’s constitutional rights in the OCCBC.

Assistance from the U.S. District Court, Western District Court of North Carolina was not forthcoming. The Honorable Martin R. Reidinger, Chief U.S. District Court Judge, Western District Court (“Judge Reidinger”) denied the petitioners request for a temporary restraining order against Steven D. Cogburn, et al. However it was Judge Reidinger’s order dismissing the petitioner’s 04 October 2018 complaint against the co-heirs’ without prejudice invoking jurisdictional bars secondary to Rooker-Feldman

and the Probate Exception that the petitioner pondered upon as time unfolded. The petitioner knew nothing about either doctrines at the time, and when the petitioner motioned for reconsideration, it was not on the basis of these jurisdictional bars.

The petitioner's complaint against the co-heirs' in the U.S. District Court had nothing to do with any act that Probate has taken in this case, and although the petitioner's complaint against the co-heirs' is subject to slight modifications from the amended December, 2018 complaint secondary to the petitioner's allegations that to a limited degree, but substantially significant, the co-heirs' actions fit as being under the color of law, there is no indication that Clerk Finkelstein, Admin. Ellis or Judge Cogburn forced the co-heirs' to withdraw their informal petition to partition, which would have provided not only counsel for the petitioner, but also a quick end to this joint ownership of the intestate real property. An attorney who represented the petitioner in this action would have simply deemed the funeral expense issue to be a civil matter between the petitioner and the co-heirs', and the petitioner would have agreed to the sale, because that is the law. As far as the actions taken against the petitioner by the OCCBC, the petitioner is not of the belief that the co-heirs' can force the court to take the actions they did against the petitioner. The petitioner believes that the motivations and goals are different for the co-heirs' and the OCCBC.

However, it is important to note that the co-heirs' were also co-defendants' in the Redwolf matter. For some reason, unknown to the petitioner, the co-heirs' indicated to

the petitioner that the Redwolf matter was a “mechanics lien lawsuit”, that had to be extinguished at all cost, and despite knowing full well in June, 2017 pursuant to the petitioners’ answer in the Redwolf matter that Redwolf never finished the roofing job per their own stated contractual terms, the co-heirs’, by and through their counsel, Edward Bleynat, Ferikes & Bleynat (“Bleynat”) persisted up to the date of trial in this matter on 05 February 2019 to invalidate the lien on the property that they no longer even owned as it was seized by the OCCBC on 06 December 2018. Redwolf agreed to release the co-heirs’ from the lawsuit against them; with prejudice, on the day of the commencement of trial proceedings, as the Plaintiff had previously rested its case against all Defendants through its Motion for Summary Judgment shortly after the petitioner had been removed as the administrator.

Please note that the Plaintiffs’ had previously been invited by Admin. Ellis to be a party to the estate of Johnnie E. Harper, my Father, on 05 December 2018, 2-months before the Redwolf trial commenced. The 06 December 2018 order of Asst. Clerk Finkelstein already assured them that the petitioner’s share of her inheritance would be distributed to them, or put another way, their claim against the petitioner solely would be the target of a lien against funds, which has no time limits in North Carolina, rather than the lien against the property where the original lien filed was deemed insufficient on the day of trial. The only deficiency that the petitioner could see is that the co-heirs’ claimed that they were not proper parties to the lien,

although as owners', and per their pre-existing agreement with the petitioner, they most certainly were, .

Even if the petitioner was going to be inevitably found guilty regardless of the truth regarding the contract in order to fulfill the orders of the OCCBC, the Plaintiffs' were guaranteed payment whether they finished the job or they did not per the order of Asst. Clerk Finkelstein; hence their representations at trial was not reflected at all on the contract, despite clear exclusions of 2-structures next to the property that were not to be re-roofed. The petitioner was found guilty, ostensibly, because she did not know that the roofing materials that Redwolf brought were insufficient to re-roof the main house, which is what she contracted with them to do.

Both the claim of Redwolf, and the funeral expenses that the petitioner had disallowed were outside the jurisdiction of Probate. In the case of Redwolf, neither the property nor the parties to the lawsuit as defendants included my Father, Johnnie E. Harper. Redwolf had nothing to do with my Father or his property. The OCCBC persistently refused to acknowledge this fact, a fact to which the OCCBC and their counsel in prosecuting this matter against the petitioner, Admin. Ellis, owed their sole duty and attention. In the case of the funeral expenses, the petitioner timely disallowed them, and this removed jurisdiction from the Probate court.

The petitioner was evicted from her home on 11 January 2019 absent statutory authority. The petitioner was neither a tenant nor a lessee. The petitioner was an

owner, and when the Police arrived, (4-deputies showed up to evict the petitioner), the knowledge that the petitioner was the owner caused them pause, and a conversation ensued between the lead deputy and Admin. Ellis who arrived with a realtor to observe the eviction. This conversation was reported to the petitioner by a neighbor. The petitioner was not privy to the conversation. The petitioner had taken prednisone and adequate pain medication to attempt to pack up and clean as much as possible, but the petitioner's mobility was limited, and it was clear to the petitioner and to the Police, that the petitioner would need to return. The head officer informed the petitioner that he instructed Admin. Ellis to allow me to return to collect important things. The petitioner was very happy that the Police were present.

The petitioner was able to convince Admin. Ellis not to throw my Father's things outside. My Dad was born here in Asheville in 1932; his mother, my Grandmother left him this property that is over 100-years old. Among many things, this house saw the return of soldiers who fought in WWI, the great depression, WWII, and my Dad, my grandmother's youngest child, who went off to Korea. Losing a home would have brought great shame to my family. They strove to retain their meager assets through very terrible times. To see this day of eviction, purportedly caused solely by the petitioner, his oldest child, a charge which is entirely unmerited, is a crime that reaches to heaven. It is not possible to explain how important this little, less than 1000 sq. foot home meant to my Dad. At the end of all of this, Admin. Ellis became \$80,000+ richer (the

petitioner was prohibited from appealing the last 2-fee awards to Admin. Ellis, so it is not clear to me how much he was actually awarded from the sale of this intestate real property --- this is something that will require further investigation once the petitioner has assurances that she is allowed in the Bunc28 to review the record). What the petitioner can tell you is that not one dime was allocated to the satisfying of legitimate claims against the decedent's estate, although an alleged creditor of the petitioner was paid.

Once the petitioner's appeals were in the process of being docketed, COA19-326 and 327, on my Father's birthday, 30 April 2019, Admin. Ellis set for hearing a motion to impose a Gatekeeper Order against the petitioner. The Honorable Carla N. Archie presiding, ("Judge Archie") did inquire of Admin. Ellis why he was seeking a gatekeeper order against the petitioner at this late stage, especially now that the appeals were with NCCOA. Admin. Ellis stated that the petitioner simply would not cease filing motions. Judge Archie asked the petitioner if she planned on filing any more motions. The petitioner responded that she certainly would in response to any motions or requests initiated by Admin. Ellis that she felt were illegal or otherwise improper. With that, the petitioner's rights to defend herself were curtailed and her motions were subject to review by the Honorable Alan Z. Thornburg, Chief Resident Superior Court Judge, Buncombe County because the petitioner was now identified as a filer of frivolous documents with the courts.

Although the petitioner has made many mistakes in

regard to her filings, the petitioner can honestly say that to the best of her knowledge and understanding, she has never proceeded with a defense against OCCBC allegations that had zero or even questionable legal standing. Not so in the case of the OCCBC and Admin. Ellis who was simply carrying through with orders decreed by Asst. Clerk Finkelstein.

SUMMARY OF ARGUMENT

Presently in the city of Asheville, there is legal controversy occurring as it concerns the taking of intestate real property by less than lawful reasons per order of the Buncombe County Superior Court. The case involves an attorney, a notary and others implicated in terrorizing people into accepting pennies on the dollar for their property. This entire scandal came to light through the efforts of a journalistic "watch dog" group in this community. The petitioner reviewed the comments made to the press by the Judges' responsible in this district, Judge Thornburg, Judge Steven D. Cogburn and Johanna Finkelstein, Assistant Clerk. They acted like they had nothing to do with such a thing. The petitioner's case stands in direct contradiction to these disavowals of responsibility. In addition to the facts and law as it concerns the petitioner's case as a standalone matter, the petitioner can confidently state that she can not conceive of any attorney who would dare to deceive the Judges in this case in the first instance.

Equity erased: Real estate deals take away the homes and land of the elderly and poor *Local investor accused of fraud* **Sally Kestin** Asheville Watchdog Published View Comment <https://www.citizen-times.com/story/news/local/2021/11/08/real-estate-investor-erases-years-home-equity-poor-black-more-land-ownership-asheville-buncombe/6303159001/>

Equity erased: Forced sales hurt heirs, poorer homeowners in imperfectly legal system *Investors exploit Reconstruction-era law* **Sally Kestin** Asheville Watchdog <https://www.citizen-times.com/story/news/local/2021/11/10/asheville-nc-real-estate-investor-forced-property-sales-poorer-homeowners/6330763001/>

Admin. Ellis also serves as the tax and auction commissioner for Buncombe County. His comments are reported below.

Equity erased: Partition law exploitation, a box full of cash and an empty promise “*If this is legal, it shouldn’t be,*” local lawmaker says **Sally Kestin** Asheville Watchdog <https://www.citizen-times.com/story/news/local/2021/12/24/equity-erased-attorneys-tell-court-property-owners-cant-found/9005906002/>

There is no mystery here. There is an attitude present in the OCCBC that fully reflects what I refer to as “pre-civil war America mentality”, and the attorneys’ who litigate before her do so to the degree that they can to promote the interests of their clients’, as well as the interests of the court. In this court, some people are worthy of full due process, other’s, not so much. The petitioner’s case covers the whole of the problem.

In June, 2020, the city of Asheville voted to confer reparations to african american citizens who were indiscriminately robbed, plundered, denied access to the basics of human necessity, etc. etc. In fact, from the time that I could understand anything that was going on around me (I was very young at the time), I can recall, commencing in the 1960's, my uncle and aunt, who owned a diner on Eagle Street in Asheville. On my last visit to the diner sometime in the early 70's, I heard some talk about the end of an era, but nothing that I could recount to this court in a clear manner. The petitioner believes that this is when gentrification began in earnest in Asheville. The process is nearly complete --- we have Vietnam Vets remaining who own homes, many of whom will pass away intestate. I recall going to the diner and the mood was somber and there were concerned conversations at hand; this was a sharp departure from my earlier visits which were always joyful and warm. Good food, and the soft stomach of my Aunt Katie who I loved to hug because she could melt my entire body with just the force of her warmth.

Change was brewing, and the petitioner can attest that she no longer recognizes Asheville. What happened to all of the people? They can't afford to live here anymore, and purportedly, many of them lost their property illegally. The petitioner wishes to exercise caution in making this statement regarding illegality because although the petitioner has interviewed many people who claim that their property was improperly seized by Probate in North Carolina, no one has provided the legal documentation that proves this to my satisfaction. All of the individuals thus

affected were people the petitioner met casually, and all of them were Caucasian. Without exception, they all said that they were afraid of the court; they said that they were afraid to fight them. The petitioner can say that this is probably the truth based on her experience. Actually, it has been terrifying; this case has been the most horrifying experience the petitioner has ever faced. What has made it so bad is that this happened to me in a Court of Law --- the petitioner never saw it coming, and had no expectations that something like this could happen in a Court.

Determining the scope of the problem is going to take awhile; doing what is necessary to minimize the problem would be quicker. The petitioner mentions it to the court to impress the seriousness of the situation and the need for this court to state in no uncertain terms that the taking of intestate real property requires a need to satisfy just debts of the decedent and nothing more.

I do not care what the basis is for prejudice, or thinking that other people do not have the exact same needs throughout the dimensions of our human experience. However, in the ideology of "pre-civil war america" people challenged by poverty, mental or physical illness, as well as other indicators of "low status" are routinely denied due process in the court. Our homes are taken, whatever valuable assets we have are dissipated by attorneys under court supervision. Our thoughts are ignored; in fact, we are treated as if our thoughts are of no consequence whatsoever. We become less than citizens, less than humans. The petitioner hopes that this court will grant certiorari in this case and remand sending a message to the courts' in North

Carolina that the courts' must give as much consideration to the petitioner's cause as they have done in consideration for a statue of a confederate war criminal which was reported on the 30th day of August 2022; that is, to give respectful consideration to the feelings and rights of living, breathing people as they have done in response to the feelings and rights of the appellants before them that day who venerate those individuals memorialized in stone who the appellants' see as hero's, but who for me, are just criminals of the U.S.A..

The bottom line is that the sympathy of the North Carolina Courts is clearly noted as far as the petitioner is concerned, despite statutory law that is clear and simple as it concerns the sale of intestate real property who also have a claim to rightful place and care.

The issues regarding the petitioner's case encompass issues regarding poverty, illness --- there was even the allegation of Harper's engagement with criminality dangling over her head with no proof. At one point, the petitioner was certain that the co-heirs' were attempting to go so far as to introduce the possibility that I wasn't even a rightful heir. As I said, my case covers all of the bases, and the petitioner possesses and has filed with the court all of the evidence needed to substantiate her defense; to no avail. The evidence has simply been ignored, because that is how people in the petitioner's position are treated in "pre-civil war america".

I want to make it clear that in my mind, "pre-civil war america" has adherents and disciples of every race, of every religion, of every political party, of every socioeconomic

class. If a person becomes disabled or is accused of being disabled, probate courts throughout this country have the full authority to relieve them of all of their due process rights, along with everything else they hold as a valuable, post haste. All it takes is an accusation. Harper's case began this way.

In considering her questions to this court, Harper ran across a case out of Alabama that has stuck with me. In my prayers, I said that I would make mention of this case before this court, in memory, should I make it there. There are so many people who have been harmed by probate courts, and Asheville NC has more than its fair share, but this case exemplifies the truth regarding the hatred/indifference toward the poor, the sick, the vulnerable. This case exemplifies the truth regarding the lengths that courts will go to assist attorneys and other "interested parties" to divest a person of their possessions, if not their minds, should they find themselves before the court under such unfavorable personal circumstances.

In re Estate of Bashinsky, 319 So. 3d 1240 (Ala. 2020). This is a case regarding a very "White", wealthy american philanthropist, who suffered enormously under the court process of probate. The court process of probate is first and foremost concerned with things and the money derived therefrom....objects that can not speak, can not hear, have no intelligence whatsoever. Mrs. Bashinksy dared to refuse the demands of people close to her affairs, who, as a first priority, were deeply interested in her things and the money derived therefrom, and in their malice, they sought vengeance from the court, who gave these individuals control of her

being through court supervision over her and her things and the money derived thereof. Although rectified by the Alabama Supreme Court later on, these individuals were able to move a Judge to completely violate her procedural due process rights based on nothing more than accusations. May Mrs. Bashinksy bask in the loving arms of Jesus Christ forever.

Joann Bashinksy, The Golden Flake Heiress. Her Legacy: Stop Guardianship Abuse, By Terri LaPoint, *Real News Spark* February 16, 2021

<https://realnewsspark.com/2021/02/11/joann-bashinsky-golden-flake-heiress-her-legacy-stop-guardianship-abuse/>

The punishment inflicted by the OCCBC against the petitioner was both cruel and unusual, and was a direct reaction to the petitioner's intent to appeal. Further, the order of Clerk Finkelstein referred to the petitioner's breach of fiduciary duty to the estate to the detriment of the estate and the estate's other heirs'. The North Carolina Court of Appeals ("NCCOA") completely ignored this charge, and claimed that the OCCBC removal of the petitioner as administrator was pursuant to N.C.G.S. section 28A-21-4 rather than pursuant to N.C.G.S. section 28A-9-1, which it was in fact. *In re Estate of Harper*, 269 N.C. App. 213, 216-17 (N.C. Ct. App. 2020) COA19-326. This opinion stands in stark contrast to the conclusions reached by the NCCOA in its unpublished opinion on 20 July 2020, *Ellis v. Harper*, 2021 NCCOA 362 (N.C. Ct. App. 2021) p 29. In that opinion, the NCCOA deemed that there was "ample" evidence in the record to support findings 16, 18, 20, 22.

For example, finding of trial court fact #22. The taxes

purportedly due on the property. First, the taxes had been paid, and Admin. Ellis was fully aware of that. Second, the taxes had nothing to do with my Father or his estate. The taxes Admin. Ellis was referring to were not late when he mentioned them in his petition to take possession, custody and control of the intestate real property, and they accrued for taxes due in 2018. My Father passed away on 01 June 2015. The petitioner provided this information to the NCCOA in her appeal (See COA20-730 R. p. 77).

Not only is there not one scintilla of evidence to support these findings, the petitioner's evidence to the contrary was ignored by the NCCOA.

The petitioner takes strong exception to how she has been treated as a pro se defendant. In the petitioner's case, there was no attorney who was willing to defend her against the Cogburn and Thornburg families, who purportedly represent a legal "dynasty" of a kind, and who have reportedly been in the area for many decades; in the case of the Cogburn's, they have been around since the inception of this U.S. Supreme Court, circa 1790. Even I have heard of Lacy Thornburg, although I know nothing about him.

Under circumstances such as this, it is impossible to find counsel, and this should not be the case, although it is very difficult to understand how it could be otherwise

Regardless, the petitioner's removal under N.C.G.S. section 28A-21-4 was extreme and unusual, especially in light of the fact that the petitioner had requested an hour or so to provide the back side of the inventory form, which she had forgotten to copy, and to allow the correction of her account, which was off by \$1.00. In the interest of justice,

the petitioner's request was reasonable.

Asst. Clerk Finkelstein refused to review documentation that proved that any indebtedness to the estate owed by the petitioner had been paid in full. The entire estate was valued at \$13,801.00, \$3,660.51 was in cash

Clerk Finkelstein's order is replete with bias, and unreasonable assertions against the petitioner regarding her account. For example, there were no disbursements; no checks were written by the petitioner on the account of the estate. The "oath" was taken in session, as the petitioner was told was customary after arriving several hours before the hearing to have her documents verified by the court, which was well within their power to effect. Otherwise, the comments regarding the petitioner's attempts to establish the extent of the personality of her Father was repeatedly and unreasonably rebuffed, which was of the utmost importance as it concerns the costs and fees of estate administration.

By and through the counsel for the OCCBC, Admin. Ellis, failed to afford the Petitioner both adequate procedural and substantive due process, as well as by the OCCBC entering orders in light of a clear lack of subject matter jurisdiction regarding the intestate real property.

Assistant Clerk Finkelstein, by and through Admin. Ellis, violated the petitioners rights under the Due Process Clause guaranteed under both the Fifth and 14th amendments in a manner that was cruel and unusual.

The heirs' agreed to re-roof the inherited property as a matter of urgency. The roofing job commenced and ended

on 24 October 2017, although the Petitioner did not learn that the roof had not been fully installed until the petitioner received notice from the insurance company in May, 2017 that her insurance was being canceled because the roof had not be completely installed.. Redwolf Contracting Svc., and Michael Svencicki (“Redwolf”) initiated a lawsuit for breach of contract on 17 April 2017, and proceeded to obtain, without standing, a judgment for breach of contract against the petitioner, solely. Redwolf never completed the roof, and per their own contractual terms and conditions, they were not entitled to payment.

The OCCBC, by and through their counsel, Admin. Ellis, used the Redwolf matter and funeral expenses to gain possession, custody and control of the intestate real property. Neither of these claims were legitimate debts of the decedent. Regarding Redwolf, the property belonged to the heirs' for close to 18-months before Redwolf did any work on the roof; their claim did not represent a debt against the decedent's estate. Regarding the funeral expenses, the petitioner disallowed their claim. The OCCBC, by and through Admin. Ellis, had no jurisdiction over either matter, yet they used both to gain possession, custody and control of the intestate real property.

The Petitioner immediately appealed the actions of the OCCBC. The Petitioner sought a stay of the Probate order on multiple occasions (See App. 4, pp 51-55) ; first with Probate, and then with the Superior Court. The Superior court denied the petitioner's request. The petitioner next appealed to the NCCOA's for a stay, and that, too, was denied. Within less than 1-month, the first

act of outrage and vengeance inflicted upon the Petitioner by the OCCBC for daring to appeal, by and through their counsel, Admin. Ellis, was to evict the Petitioner from her home, which is against the law in N.C. This happened very swiftly, in a cruel and inhumane manner.

The second act of outrage and vengeance at the Petitioner's determination to appeal came after the Petitioner had docketed her appeals with the NCCOA. The OCCBC, by and through their counsel, Admin. Ellis, filed a gatekeeper order to prevent the Petitioner from filing any documents without the review of the Chief Resident Superior Court Judge, the Honorable Alan Z. Thornburg ("Chief Judge Thornburg"). This gatekeeper order was primarily used both as a shield to prevent the Petitioner from objecting to the fees charged by Admin. Ellis, and as a form of sanction against the Petitioner, which left the estate with less than half of what the OCCBC, by and through their counsel, Admin. Ellis, received from the sale of the property.

The latest act of outrage and vengeance has occurred while the Petitioner is, once again, seeking review of the orders of the OCCBC. The Petitioner's Petition for Certiorari is due no later than 19 September 2022. On 23 August 2022, Admin. Ellis scheduled a hearing to be awarded his motion for costs. The Petitioner sent word to the OCCBC and Admin. Ellis that she would be unable to attend, and she asked that the order be sent to her as soon as possible. At this time, the Petitioner is unable to file any documents to oppose the award of his fees, not only because Chief Judge Thornburg, without hearing, denied the

Petitioner's timely Rule 60(b)(3) motion regarding both the OCCBC and Redwolf and extended the original gatekeeper order against the petitioner to forbid all filings without an attorney. Furthermore, the NCCOA affirmed the finding of the Superior court, granting the OCCBC, by and through their counsel, Admin. Ellis, possession, custody and control of the intestate real property, as well as disallowed funeral expenses, and the Petitioner's inheritance to Redwolf.

There is a lot of irregular behavior that has emanated from this court that occurred in between the beginning and where we are now. It took the petitioner quite some time to figure out what the actual problem is that supports this entire travesty of justice, and this leads to my primary Question to this court.

REASONS TO GRANT THE PETITION

I. This court should grant certiorari to affirm its precedent in re: *Comstock v. Crawford*, 70 U.S. 396 (1865) In the state of North Carolina, intestate real property can only be taken by Probate to settle the lawful debts of the decedent and allow for legitimate and reasonable costs of estate administration. In the absence of legitimate debts of the decedent, real property is not an asset of probate, as is the case in most other states.

... . CONCLUSION

The petitioner would prefer that this court agree to take this case rather than to grant certiorari, vacate and

remand, as this case is a microcosmic petri dish sample of much of what is plaguing our nation at this time. The petitioner has read a great deal since this happened in her life, and she has noted legal scholars and other legal professionals who are passionate about the issues raised in this case. As long as the petitioner can find an attorney who will not turn this case into something that it is not, then the petitioner will do whatever is necessary to secure that person or firms' representation before this court. This case is not about the petitioner being a Woman of color; this case is about an individual who has been financially challenged, emotionally and mentally oppressed, who happened to also be sick and vulnerable, as she stands alone and has no family, and the subsequent responses of the trial court to that condition. This is all that this case is about, and the petitioner does not wish to lose sight of the main point.

The "core" problem, being sick and vulnerable, are the root problem, but at the end of the day, this "core" problem can only be solved one way, and after close to 50-years of trying, the petitioner can honestly say that she has finally made peace with her God on His terms. Regardless of who any one else is, and regardless of what they have done, the petitioner is left with herself, and my reactions to the truths of my existence have been in violation of a higher Law, as it is with all humans..

Can the court help with something like this, of course it can, and it already has, although the same outcome could have occurred had the situation been handled honestly and without all of the predation at the trial court level. Regardless, had none of this happened, the petitioner

shudders to think what my final spiritual condition could have been. I was very ill. At one point, a Doctor said that I was "further from death than he had ever seen me." Thanks be to God, Our Father, Who Art In Heaven (hallowed be His name), and to his Son, Our Lord Jesus Christ, who through His Holy Spirit works through people, all of us, even Steven D. Cogburn, Johanna Finkelstein and James Ellis, all of whom this court knows that I am very irritated with, but in some very important ways that are personal to me, the petitioner is deeply grateful to all of them. As long as the main point is not missed, this court can clarify the law concerning intestate real property, and do quite a bit of Good, by not only providing relief to me, but to a great many other people as well.

Thank you for your consideration of my Petition For A Writ of Certiorari.

Respectfully submitted this 4th day of October 2022



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Pro Se

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828.273.7200

Supreme Court of North Carolina

JAMES M. ELLIS, Administrator of the Estate of Johnnie Edward Harper

v

KIM HARPER, PAT DOE 1, ROCHELLE GREENIDGE, PAT DOE 2, BETH RODRIGUEZ, PAT DOE 3, SONYA THOMAS, PAT DOE 4, RED WOLF CONTRACTING SERVICE LLC and MICHAEL SVENCICKI, LIEN CLAIMANTS

From N.C. Court of Appeals
(P21-371 20-730 20-746)
From Buncombe
(18SP758)

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by Respondent (Kim Harper) on the 24th of August 2021 in this matter pursuant to G.S. 7A-30 (substantial constitutional question), the following order was entered and is hereby certified to the North Carolina Court of Appeals: the notice of appeal is

"Dismissed ex mero motu by order of the Court in conference, this the 15th of June 2022."

s/ Berger, J.
For the Court

Upon consideration of the petition filed on the 24th of August 2021 by Respondent (Kim Harper) in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 15th of June 2022."

s/ Berger, J.
For the Court

Upon consideration of the petition filed by Respondent (Kim Harper) on the 13th of September 2021 in this matter for a writ of certiorari to review the order of the Superior Court, Buncombe County, the following order was entered and is hereby certified to the Superior Court of that County:

"Dismissed as moot by order of the Court in conference, this the 15th of June 2022."

**s/ Berger, J.
For the Court**

The following order has been entered on the motion filed on the 13th of September 2021 by Respondent (Kim Harper) to Disregard and Replace Filing:

"Motion Allowed by order of the Court in conference, this the 15th of June 2022."

**s/ Berger, J.
For the Court**

Upon consideration of the petition filed by Respondent (Kim Harper) on the 13th of September 2021 in this matter for a writ of certiorari to review the order of the Superior Court, Buncombe County, the following order was entered and is hereby certified to the Superior Court of that County:

"Dismissed by order of the Court in conference, this the 15th of June 2022."

**s/ Berger, J.
For the Court**

Upon consideration of the petition filed by Respondent (Kim Harper) on the 16th of September 2021 in this matter for a writ of certiorari to review the order of the Superior Court, Buncombe County, the following order was entered and is hereby certified to the Superior Court of that County:

"Dismissed as moot by order of the Court in conference, this the 15th of June 2022."

**s/ Berger, J.
For the Court**

Upon consideration of the petition filed on the 14th of December 2021 by Respondent (Kim Harper) in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G. S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Dismissed as moot by order of the Court in conference, this the 15th of June 2022."

**s/ Berger, J.
For the Court**

Upon consideration of the petition filed by Respondent (Kim Harper) on the 14th of December 2021 in this matter for a writ of certiorari to review the order of the North Carolina Court of Appeals, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Dismissed as moot by order of the Court in conference, this the 15th of June 2022."

**s/ Berger, J.
For the Court**

Upon consideration of the petition filed by Respondent (Kim Harper) on the 14th of December 2021 in this matter for a writ of certiorari to review the order of the North Carolina Court of Appeals, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Dismissed by order of the Court in conference, this the 15th of June 2022."

**s/ Berger, J.
For the Court**

The following order has been entered on the motion filed on the 14th of December 2021 by Respondent (Kim Harper) to Disregard and Replace Filing:

"Motion Allowed by order of the Court in conference, this the 15th of June 2022."

**s/ Berger, J.
For the Court**

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 20th of June 2022.



Grant E. Buckner
Clerk, Supreme Court of North Carolina


M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:

North Carolina Court of Appeals

Ms. Kim L. Harper, For Harper, Kim L. - (By Email)

Mr. James M. Ellis, Attorney at Law, For Ellis, James M. (Administrator) - (By Email)

West Publishing - (By Email)

Lexis-Nexis - (By Email)

Supreme Court of North Carolina

REDWOLF CONTRACTING SVC., LLC and MICHAEL SVENCICKI

v

KIM HARPER

From N.C. Court of Appeals
(P21-357)
From Buncombe
(17CVD1822)

O R D E R

Upon consideration of the petition filed by Defendant on the 8th of October 2021 in this matter for a writ of certiorari to review the order of the North Carolina Court of Appeals, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Dismissed as moot by order of the Court in conference, this the 15th of June 2022."

s/ Berger, J.
For the Court

The following order has been entered on the motion filed on the 12th of November 2021 by Defendant for Notice of Appeal Based on a Constitutional Question:

"Motion Dismissed as moot by order of the Court in conference, this the 15th of June 2022."

s/ Berger, J.
For the Court

The following order has been entered on the motion filed on the 12th of November 2021 by Defendant for Notice of Appeal Based on a Constitutional Question:

"Motion Dismissed ex mero motu by order of the Court in conference, this the 15th of June 2022."

s/ Berger, J.
For the Court

The following order has been entered on the motion filed on the 12th of November 2021 by Defendant to Disregard and Replace Filing:

"Motion Allowed by order of the Court in conference, this the 15th of June 2022."

s/ Berger, J.
For the Court

The following order has been entered on the motion filed on the 3rd of January 2022 by Defendant to Amend

Petition for Writ of Certiorari:

"Motion Allowed by order of the Court in conference, this the 15th of June 2022."

**s/ Berger, J.
For the Court**

Upon consideration of the amended petition filed by Defendant on the 3rd of January 2022 in this matter for a writ of certiorari to review the order of the North Carolina Court of Appeals, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Dismissed by order of the Court in conference, this the 15th of June 2022."

**s/ Berger, J.
For the Court**

The following order has been entered on the motion filed on the 6th of January 2022 by Defendant to Include Exhibit(s) to the Record:

"Motion Allowed by order of the Court in conference, this the 15th of June 2022."

**s/ Berger, J.
For the Court**

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 20th day of June 2022.



Grant E. Buckner
Clerk, Supreme Court of North Carolina

M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:

North Carolina Court of Appeals

Ms. Kim L. Harper, For Harper, Kim - (By Email)

Mr. John David Noor, Attorney at Law, For Redwolf Contracting Svc., LLC - (By Email)

Mr. James M. Ellis, Attorney at Law - (By Email)

Mr. Edward Bleynat, Jr., Attorney at Law - (By Email)

West Publishing - (By Email)

Lexis-Nexis - (By Email)