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North Carolina Court of Appeals

Fax: (919) 831-3615
Web: <https://www.nccourts.gov>

EUGENE H. SOAR, Clerk
Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

From Wake
(18CVS13119)

Exhibit1-Order Grant Appellees MTD-05-04-2023.pdf

No. 22-601

KATHY R. ALLEN,
Plaintiff,

v.

ARTHUR L. ALLEN et al.,
Defendants.

ORDER

The following order was entered:

The motion filed in this cause on the 11th of January 2023 and designated 'Defendant-Appellees' Joint Motion to Dismiss Plaintiff-Appellant's Appeal' is allowed. Appeal dismissed. Appellant to pay costs.

And it is considered and adjudged further, that Kathy R. Allen, do pay the costs of the appeal in this Court incurred, to wit, the sum of Thirty Seven and 00/100 Dollars (\$37.00), and execution issue therefor.

By order of the Court this the 4th of May 2023.

WITNESS my hand and official seal this the 4th day of May 2023.

Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, For Allen, Kathy R. - (By Email)
Mr. M. Duane Jones, Attorney at Law, For State Employees' Credit Union - (By Email)
Mr. Anthony A. Klish, Attorney at Law, For Allen, Arthur L., et al - (By Email)
Mr. William D. Harazin, Attorney at Law, For Wake County Superior Court Guardian ad Litem - (By Email)
The Honorable Clerk of Superior Court, Wake County



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Raleigh, NC 27602

Exhibit2 Order Denied Appellant Motion To Hold Oral Arguments

No. 22-601

KATHY R. ALLEN,
Plaintiff,

v.

ARTHUR L. ALLEN et al.,
Defendants.

ORDER

The following order was entered:

The motion filed in this cause on the 24th of March 2023 and designated 'Appellant's [Partially/No Position and Unconsented] Motion for Judge Panel to Schedule and Hold N.C. APP.R.29 (b) Oral Arguments for This Case on April 11, 2023' is denied.

By order of the Court this the 27th of March 2023.

WITNESS my hand and official seal this the 27th day of March 2023.

Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, For Allen, Kathy R. - (By Email)
Mr. M. Duane Jones, Attorney at Law, For State Employees' Credit Union - (By Email)
Mr. Anthony A. Klish, Attorney at Law, For Allen, Arthur L., et al - (By Email)
Mr. William D. Harazin, Attorney at Law, For Wake County Superior Court Guardian ad Litem - (By Email)
Hon. Frank Blair Williams, Clerk of Superior Court



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Raleigh, NC 27602

Exhibit3-Order Denied Appellant Mot Stay Mandate Was Without Opinion
No. 22-601

KATHY R. ALLEN,
Plaintiff,

v.

ARTHUR L. ALLEN et al.,
Defendants.

ORDER

The following order was entered:

The motion filed in this cause on the 9th of May 2023 and designated 'Appellant's [Unconsented] Motion to Stay Mandate of the NC-COA May 4, 2023 Order That Granted Appellees' Motion to Dismiss (MTD) and Was Without an Opinion' is denied.

By order of the Court this the 22nd of May 2023.

WITNESS my hand and official seal this the 22nd day of May 2023.

Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:
Ms. Kathy R. Allen, For Allen, Kathy R. - (By Email)
Mr. M. Duane Jones, Attorney at Law, For State Employees' Credit Union - (By Email)
Mr. Anthony A. Klish, Attorney at Law, For Allen, Arthur L., et al - (By Email)
Mr. William D. Harazin, Attorney at Law, For Wake County Superior Court Guardian ad Litem - (By Email)
The Honorable Clerk of Superior Court, Wake County



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From Wake County
(18 CVS 13119)

Exhibit4-Order Denied Appellant Mot EnBanc Rehearing

No. 22-601

KATHY R. ALLEN,
Plaintiff,

v.

ARTHUR L. ALLEN, et al.,
Defendants.

ORDER

The following order was entered:

The motion filed in this cause on 19 May 2023 and designated "Appellant's Motion for En Banc Rehearing" is denied. Judge Murphy did not take part in consideration of this motion.

By order of the Court this the 6th day of June 2023.

WITNESS my hand and the official seal of the North Carolina Court of Appeals, this the 6th day of June 2023.

Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, For Allen, Kathy R.

Mr. M. Duane Jones, Hedrick Gardner Kincheloe & Garofalo, LLP, For State Employees' Credit Union

Mr. Anthony A. Klish, Maginnis Howard, For Allen, Arthur L., et al

Mr. William D. Harazin, William D. Harazin, PLLC, For Wake County Superior Court Guardian ad Litem
Clerk of Wake County Superior Court



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Exhibit4A-Order Denied Appellant MFR Of Mot Stay Mandate For Opinion

No. 22-601

KATHY R. ALLEN,
Plaintiff,

v.

ARTHUR L. ALLEN et al.,
Defendants.

ORDER

The following order was entered:

The motion filed in this cause on the 5th of June 2023 and designated 'Appellant's Motion for Reconsideration (MFR) of NC-COA's 5/22/23 Order Denying Motion to Stay Mandate for Opinion' is denied.

By order of the Court this the 6th of June 2023.

WITNESS my hand and official seal this the 6th day of June 2023.

Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, For Allen, Kathy R. - (By Email)
Mr. M. Duane Jones, Attorney at Law, For State Employees' Credit Union - (By Email)
Mr. Anthony A. Klish, Attorney at Law, For Allen, Arthur L., et al - (By Email)
Mr. William D. Harazin, Attorney at Law, For Wake County Superior Court Guardian ad Litem - (By Email)
The Honorable Clerk of Superior Court, Wake County



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Raleigh, NC 27602

No. 22-601

Exhibit 7 - Order Assigned To Panel Case 601-02-14-2023

KATHY R. ALLEN,
Plaintiff,

v.

ARTHUR L. ALLEN et al.,
Defendants.

The following order was entered:

The motion filed in this cause on the 11th of January 2023 and designated 'Defendant-Appellees' Joint Motion to Dismiss Plaintiff-Appellant's Appeal' is referred to the panel that will be assigned to hear the appeal.

By order of the Court this the 14th of February 2023.

WITNESS my hand and official seal this the 14th day of February 2023.

Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, For Allen, Kathy R. - (By Email)
Mr. M. Duane Jones, Attorney at Law, For State Employees' Credit Union - (By Email)
Mr. Anthony A. Klish, Attorney at Law, For Allen, Arthur L., et al - (By Email)
Mr. William D. Harazin, Attorney at Law, For Wake County Superior Court Guardian ad Litem - (By Email)
Hon. Frank Blair Williams, Clerk of Superior Court



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Raleigh, NC 27602

No. 22-601

Exhibit 8-Order Reassigned To New Panel Case 601-03-20-2023

KATHY R. ALLEN,
Plaintiff,

v.

ARTHUR L. ALLEN et al.,
Defendants.

ORDER

The following order was entered:

This case was originally calendared to be heard without oral argument on Tuesday, 11 April 2023 before a panel consisting of Judge Valerie Zachary, Judge Hunter Murphy, and Judge Jeff Carpenter.

IT IS NOW ORDERED that this case shall be heard without oral argument before a panel consisting of Judge Valerie Zachary, Judge Jeff Carpenter, and Judge Julee Flood.

By order of the Court this the 20th of March 2023.

WITNESS my hand and the seal of the North Carolina Court of Appeals, this the 20th day of March 2023.

Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, For Allen, Kathy R. - (By Email)
Mr. M. Duane Jones, Attorney at Law, For State Employees' Credit Union - (By Email)
Mr. Anthony A. Klish, Attorney at Law, For Allen, Arthur L., et al - (By Email)
Mr. William D. Harazin, Attorney at Law, For Wake County Superior Court Guardian ad Litem - (By Email)
Hon. Frank Blair Williams, Clerk of Superior Court

North Carolina Court of Appeals

Docket Sheet

Allen v. Allen

Case Number: 22-601

Exhibit 9-NCCOA Docketsheet as of 06-14-2023

As of: 06/14/2023

Case Closed: No

Close Date:

Case Type: Civil (Tort, Contract, Real Property)

Mediation: No

KATHY R. ALLEN,
Plaintiff,

v.

ARTHUR L. ALLEN et al.,
Defendants.

Docket Date: 08-01-2022

File Date: 07-25-2022

File Time: 01:04

Acquired Date: 07-25-2022

Bond Collected: No

Docket Fee: Yes

Pauper: No

Print Deposit: No

State Appeals:

History

Venue: Wake (10)

Heard In: Superior Courts

To SC:

From SC:

Lower Court Number(s)

Location: Wake (10)

Judge: Paul C. Ridgeway

Case #: 18CVS13119

Tracking/Argue

Argue Date: 04-11-2023 (No oral argument by Rule 30(e)) colspan=5

Opinion

Documents

Document	Date Recvd	Cert of Service	Rec/Brt Due	Resp. Due	Resp. Recvd	Mailed Out	Ruling	Ruling Date
(1) RECORD	07-25-2022					08-02-2022		
(2) NOTICE OF APPEARANCE	08-10-2022	08-10-2022						
(3) M-EXT-BR	08-12-2022	08-12-2022					Allowed	08-15-2022
(4) M-GEN	08-15-2022	08-15-2022		08-28-2022			Other	08-29-2022
(5) M-EXT-BR	10-04-2022	10-04-2022					Allowed	10-05-2022
(6) APPELLANT BRIEF	11-10-2022	11-10-2022				11-14-2022		
(7) M-GEN	11-21-2022	11-21-2022		12-04-2022			Allowed	12-07-2022
(8) M-GEN	12-05-2022	12-05-2022					Dismissed as moot	12-07-2022
(9) M-EXT-BR	12-07-2022	12-07-2022					Allowed	12-08-2022

(10) M-GEN	12-08-2022	12-08-2022		12-21-2022			Denied	12-22-2022
(11) M-GEN	12-09-2022						Denied	12-13-2022
(12) AMENDED	12-12-2022	12-09-2022				12-13-2022		
(13) M-GEN	12-22-2022	12-22-2022		01-06-2023			Denied	01-11-2023
(14) M-DSSAPP	01-11-2023	01-11-2023		02-13-2023			Allowed	05-04-2023
(15) APPELLEE BRIEF	01-12-2023	01-12-2023				01-13-2023		
(16) M-EXT-RS	01-19-2023	01-19-2023					Allowed	01-20-2023
(17) M-EXT-RS	01-19-2023	01-19-2023					Allowed	01-20-2023
(18) REPLY	02-24-2023	02-24-2023				02-27-2023		
(19) M-CONTIN	03-17-2023	03-17-2023					Denied	03-24-2023
(20) COURT ORDER	03-20-2023						Special Order	03-20-2023
(21) M-GEN	03-24-2023	03-24-2023					Denied	03-27-2023
(22) M-GEN	05-09-2023	05-09-2023					Denied	05-22-2023
(23) M-EN-BANC-REHEARING	05-19-2023	05-19-2023					Denied	06-06-2023
(24) M-GEN	06-05-2023	06-05-2023					Denied	06-06-2023

1 - RECORD

Filed: 07-25-2022 @ 13:04:36

FOR: Plaintiff-Appellant Allen, Kathy R.

BY : Ms. Kathy R. Allen

2 - NOTICE OF APPEARANCE

Filed: 08-10-2022 @ 19:10:40

FOR: Plaintiff-Appellant Allen, Kathy R.

BY : Ms. Kathy R. Allen

3 - M-EXT-BR (Allowed) - 08-15-2022

Filed: 08-12-2022 @ 16:23:30

FOR: Plaintiff-Appellant Allen, Kathy R.

BY : Ms. Kathy R. Allen

The following order was entered:

The motion filed in this cause on the 12th of August 2022 and designated 'Motion to 60-day Extension' is decided as follows: Plaintiff-Appellant's brief shall be filed on or before 10 October 2022.

By order of the Court this the 15th of August 2022.

4 - MOTION APPELLANT'S MOTION TO SUPPLEMENT THE RECORD ABOUT APPELLEES' REPRESENTATION AND THE E-FILING FOR THIS CASE (Other) - 08-29-2022

Filed: 08-15-2022 @ 14:43:13

FOR: Plaintiff-Appellant Allen, Kathy R.

BY : Ms. Kathy R. Allen

The following order was entered:

The motion filed in this cause on the 15th of August 2022 and designated 'Appellant's Motion to Supplement the Record About Appellees' Representation and the E-Filing for This Case' is decided as follows: Motion for extension of time to file Appellant's brief is dismissed as moot. The remainder of the motion is denied.

By order of the Court this the 29th of August 2022.

5 - M-EXT-BR (Allowed) - 10-05-2022
Filed: 10-04-2022 @ 16:08:02
FOR: Plaintiff-Appellant Allen, Kathy R.
BY : Ms. Kathy R. Allen

The following order was entered:

The motion filed in this cause on the 4th of October 2022 and designated 'Appellant's [Consented] 2nd Motion to 30-Day Extension to November 10, 2022 for Brief Due Date' is allowed. Plaintiff-Appellant's brief shall be filed on or before 10 November 2022.

By order of the Court this the 5th of October 2022.

6 - APPELLANT BRIEF
Filed: 11-10-2022 @ 16:49:21
FOR: Plaintiff-Appellant Allen, Kathy R.
BY : Ms. Kathy R. Allen

7 - MOTION APPELLANT'S [UNCONSENTED] MOTION TO ADD PAGE NUMBERS TO THE APPELLANT'S BRIEF WITHOUT AMENDING IT (Allowed) - 12-07-2022
Filed: 11-21-2022 @ 16:58:35
FOR: Plaintiff-Appellant Allen, Kathy R.
BY : Ms. Kathy R. Allen

The following order was entered:

The motion filed in this cause on the 21st of November 2022 and designated 'Appellant's [Unconsented] Motion to Add Page Numbers to the Appellant's Brief Without Amending it' is allowed. Plaintiff-Appellant shall file a substitute brief consisting of her 10 November 2022 brief with the addition of page numbering on or before 9 December 2022. No other additions or modifications to the brief shall be made.

By order of the Court this the 7th of December 2022.

RESPONSE TO MOTION APPELLANT'S [UNCONSENTED] MOTION TO ADD PAGE NUMBERS TO THE APPELLANT'S BRIEF WITHOUT AMENDING IT
Filed: 12-05-2022
BY : Mr. M. Duane Jones
HEDRICK GARDNER KINCHELOE & GAROFALO, PLLC

8 - MOTION APPELLANT'S [UNCONSENTED] MOTION TO AMEND APPELLANT BRIEF FILED 11/10/2022 TO ADD PAGE NUMBERING (Dismissed as moot) - 12-07-2022
Filed: 12-05-2022 @ 14:46:12
FOR: Plaintiff-Appellant Allen, Kathy R.
BY : Ms. Kathy R. Allen

The following order was entered:

The motion filed in this cause on the 5th of December 2022 and designated 'Appellant's [Unconsented] Motion to Amend Appellant Brief filed 11/10/2022 to Add Page Numbering' is dismissed as moot.

By order of the Court this the 7th of December 2022.

9 - M-EXT-BR (Allowed) - 12-08-2022
Filed: 12-07-2022 @ 14:31:30
FOR: Defendant-Appellee State Employees' Credit Union
BY : Mr. M. Duane Jones
HEDRICK GARDNER KINCHELOE & GAROFALO, PLLC

The following order was entered:

The motion filed in this cause on the 7th of December 2022 and designated 'Defendant-Appellees' Joint Motion for an Extension of Time to File Brief' is allowed. Defendant-Appellees' brief shall be filed on or before 13 January 2023.

By order of the Court this the 8th of December 2022.

RESPONSE TO M-EXT-BR
Filed: 12-08-2022
BY : Ms. Kathy R. Allen

10 - MOTION APPELLANT'S MOTION TO SUPPLEMENT THE RECORD TO E-FILING MARKINGS (Denied) - 12-22-2022
Filed: 12-08-2022 @ 17:11:07
FOR: Plaintiff-Appellant Allen, Kathy R.
BY : Ms. Kathy R. Allen

The following order was entered:

The motion filed in this cause on the 8th of December 2022 and designated 'Appellant's Motion to Supplement the Record to e-filing Markings' is denied.

By order of the Court this the 22nd of December 2022.

11 - MOTION [MOTION TO RESCIND ORDER] (Denied) - 12-13-2022
Filed: 12-09-2022 @ 12:45:54
FOR: Plaintiff-Appellant Allen, Kathy R.
BY : Ms. Kathy R. Allen

The following order was entered:

The motion filed in this cause on the 9th of December 2022 and designated '[Motion to Rescind Order]' is denied.

By order of the Court this the 13th of December 2022.

12 - APPELLANT BRIEF AMENDED
Filed: 12-12-2022 @ 14:39:08
FOR: Plaintiff-Appellant Allen, Kathy R.
BY : Ms. Kathy R. Allen

13 - MOTION MOTION FOR TEMPORARY STAY/MOTION FOR RECONSIDERATION (Denied) - 01-11-2023
Filed: 12-22-2022 @ 14:59:19
FOR: Plaintiff-Appellant Allen, Kathy R.
BY : Ms. Kathy R. Allen

The following order was entered:

The motion filed in this cause on the 22nd of December 2022 and designated 'Motion for Temporary Stay/Motion for Reconsideration' is denied.

By order of the Court this the 11th of January 2023.

14 - M-DSSAPP (Allowed) - 05-04-2023
Filed: 01-11-2023 @ 13:18:03
FOR: Defendant-Appellee State Employees' Credit Union
BY : Mr. M. Duane Jones
HEDRICK GARDNER KINCHELOE & GAROFALO LLP

The following order was entered:

The motion filed in this cause on the 11th of January 2023 and designated 'Defendant-Appellees' Joint Motion to Dismiss Plaintiff-Appellant's Appeal' is allowed. Appeal dismissed. Appellant to pay costs.

And it is considered and adjudged further, that Kathy R. Allen, do pay the costs of the appeal in this Court incurred, to wit, the sum of Thirty Seven and 00/100 Dollars (\$37.00), and execution issue therefor.

By order of the Court this the 4th of May 2023.

RESPONSE TO M-DSSAPP
Filed: 02-13-2023
BY : Ms. Kathy R. Allen

15 - APPELLEE BRIEF
Filed: 01-12-2023 @ 11:09:43
FOR: Defendant-Appellee State Employees' Credit Union
BY : Mr. M. Duane Jones
HEDRICK GARDNER KINCHELOE & GAROFALO LLP

16 - M-EXT-RS (Allowed) - 01-20-2023
Filed: 01-19-2023 @ 14:47:13
FOR: Plaintiff-Appellant Allen, Kathy R.
BY : Ms. Kathy R. Allen

The following order was entered:

The motion filed in this cause on the 19th of January 2023 and designated 'Appellant's [Consented] Motion to an Extension Until 2-11-2023 to Reply to Defendant-Appellees' Joint Motion to Dismiss Filed 1-11-2023' is allowed. Appellant's response to Joint Motion to Dismiss shall be filed on or before 13 February 2023.

By order of the Court this the 20th of January 2023.

17 - M-EXT-RS (Allowed) - 01-20-2023
Filed: 01-19-2023 @ 14:57:12
FOR: Plaintiff-Appellant Allen, Kathy R.
BY : Ms. Kathy R. Allen

The following order was entered:

The motion filed in this cause on the 19th of January 2023 and designated 'Appellant's [Consented] Motion to an Extension Until 2-24-2023 to Reply to Defendant-Appellees' Joint Brief Filed 1-12-2023' is allowed. Appellant's reply brief shall be filed on or before 24 February 2023.

By order of the Court this the 20th of January 2023.

18 - APPELLANT BRIEF REPLY
Filed: 02-24-2023 @ 14:11:41
FOR: Plaintiff-Appellant Allen, Kathy R.
BY : Ms. Kathy R. Allen

19 - M-CONTIN (Denied) - 03-24-2023
Filed: 03-17-2023 @ 13:47:10
FOR: Plaintiff-Appellant Allen, Kathy R.
BY : Ms. Kathy R. Allen

The following order was entered:

The motion filed in this cause on the 17th of March 2023 and designated 'Appellant's [Unconsented] Motion for Extension to Uncalendar Case Scheduled for April 11, 2023 for at Least 30-45 Days and After May 30, 2023' is denied.

By order of the Court this the 24th of March 2023.

20 - CT_ORDER COURT ORDER (Special Order) - 03-20-2023
Filed: 03-20-2023 @ 14:01:49
FOR:
BY : N.C. Court of Appeals

The following order was entered:

This case was originally calendared to be heard without oral argument on Tuesday, 11 April 2023 before a panel consisting of Judge Valerie Zachary, Judge Hunter Murphy, and Judge Jeff Carpenter.

IT IS NOW ORDERED that this case shall be heard without oral argument before a panel consisting of Judge Valerie Zachary, Judge Jeff Carpenter, and Judge Julee Flood.

By order of the Court this the 20th of March 2023.

21 - MOTION APPELLANT'S [PARTIALLY/NO POSITION AND UNCONSENTED] MOTION FOR JUDGE PANEL TO SCHEDULE AND HOLD N.C. APP.R.29 (B) ORAL ARGUMENTS FOR THIS CASE ON APRIL 11, 2023 (Denied) - 03-27-2023
 Filed: 03-24-2023 @ 16:29:44
 FOR: Plaintiff-Appellant Allen, Kathy R.
 BY : Ms. Kathy R. Allen

The following order was entered:

The motion filed in this cause on the 24th of March 2023 and designated 'Appellant's [Partially/No Position and Unconsented] Motion for Judge Panel to Schedule and Hold N.C. APP.R.29 (b) Oral Arguments for This Case on April 11, 2023' is denied.

By order of the Court this the 27th of March 2023.

22 - MOTION APPELLANT'S [UNCONSENTED] MOTION TO STAY MANDATE OF THE NC-COA MAY 4, 2023 ORDER THAT GRANTED APPELLEES' MOTION TO DISMISS (MTD) AND WAS WITHOUT AN OPINION (Denied) - 05-22-2023
 Filed: 05-09-2023 @ 13:27:13
 FOR: Plaintiff-Appellant Allen, Kathy R.
 BY : Ms. Kathy R. Allen

The following order was entered:

The motion filed in this cause on the 9th of May 2023 and designated 'Appellant's [Unconsented] Motion to Stay Mandate of the NC-COA May 4, 2023 Order That Granted Appellees' Motion to Dismiss (MTD) and Was Without an Opinion' is denied.

By order of the Court this the 22nd of May 2023.

23 - M-EN-BANC-REHEARING (Denied) - 06-06-2023
 Filed: 05-19-2023 @ 14:25:18
 FOR: Plaintiff-Appellant Allen, Kathy R.
 BY : Ms. Kathy R. Allen

The following order was entered:

The motion filed in this cause on 19 May 2023 and designated "Appellant's Motion for En Banc Rehearing" is denied. Judge Murphy did not take part in consideration of this motion.

By order of the Court this the 6th of June 2023.

24 - MOTION APPELLANT'S MOTION FOR RECONSIDERATION (MFR) OF NC-COA'S 5/22/23 ORDER DENYING MOTION TO STAY MANDATE FOR OPINION (Denied) - 06-06-2023
 Filed: 06-05-2023 @ 13:25:07
 FOR: Plaintiff-Appellant Allen, Kathy R.
 BY : Ms. Kathy R. Allen

The following order was entered:

The motion filed in this cause on the 5th of June 2023 and designated 'Appellant's Motion for Reconsideration (MFR) of NC-COA's 5/22/23 Order Denying Motion to Stay Mandate for Opinion' is denied.

By order of the Court this the 6th of June 2023.

Financial Information

Receipts

Date Charged	Charge Type	Amount Charged	Amount Paid	Document	Pages	Receipt #	Date Paid
01-13-2023	Printing	28.00	28.00	APPELLEE BRIEF	16	R012022123	01-23-2023
08-01-2022	Docket Fee	10.00	10.00			R082000322	08-01-2022
08-01-2022	Bond	250.00	250.00			R082000322	08-01-2022
08-02-2022	Printing	308.00	308.00	RECORD	176	R082008822	08-12-2022

11-14-2022	Printing	52.50	52.50	APPELLANT BRIEF	30	R112021422	11-28-2022
12-13-2022	Printing	54.25	54.25	APPELLANT BRIEF	31	R122024622	12-28-2022
02-27-2023	Printing	42.00	42.00	APPELLANT BRIEF	24	R032026523	03-14-2023
	Assess	37.00	37.00			R062004623	06-06-2023

Payments

Payment Date	Payment Type	Amount	Check Number
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Exhibits**Transcript(s) Electronically Filed**

allen-v-allen-et-al.-18-cvs-0101-29-3119-2020.pdf
 allen-v-allen-et-al.-18-cvs-0101-29-3119-2020.pdf

Parties**Party Name****Role**

Allen, Kathy R.	Plaintiff-Appellant
Allen, Arthur L.	Defendant-Appellee
Klish, Anthony A.	Defendant-Appellee
State Employees' Credit Union	Defendant-Appellee
Wake County Superior Court Guardian ad Litem	Defendant-Appellee

Attorneys**Attorney for Plaintiff-Appellant - Allen, Kathy R.**

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Pro Se

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(202) 399-6225

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North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

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One West Morgan Street
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(919) 831-3600

From Wake
(18CVS13119)

315
nccourts.gov

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

No. 22-601

Exhibit 10-Order Grant Without Prejudice Appellant Mot to Transmit Record

KATHY R. ALLEN,
Plaintiff,

v.

ARTHUR L. ALLEN et al.,
Defendants.

ORDER

The following order was entered:

The motion filed in this cause on the 5th of July 2023 and designated 'Appellant's Motion to Request NC-COA Transmit the Record for Case #22-601 to the NC-Supreme Court (NCSC) for Case #161P23' is denied without prejudice.

By order of the Court this the 5th of July 2023.

WITNESS my hand and official seal this the 5th day of July 2023.

Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, For Allen, Kathy R. - (By Email)

Mr. M. Duane Jones, Attorney at Law, For State Employees' Credit Union - (By Email)

Mr. Anthony A. Klish, Attorney at Law, For Allen, Arthur L., et al - (By Email)

Mr. William D. Harazin, Attorney at Law, For Wake County Superior Court Guardian ad Litem - (By Email)

The Honorable Clerk of Superior Court, Wake County

N.C. APPELLATE COURT
10TH DISTRICT

No. COA22-601

On appeal from Wake County Superior Court
Case #18-CV-013119 (additional special hearings and
estate filings #18 SP1746 (foreclosure),
#17-SP-1397 (petition for administrator),
and 16-E-001390 (caveat for estate))

Appellant

Kathy R. Allen ("KRA"/"Plt") *see infra*

v.

Defendant 1: Arthur L. Allen ("ALA"/"Def1") *see infra* [sic deceased]

Defendant 2: Anthony A. Klish ("AAK"/"Def2") *see infra*

Defendant 3: State Employees Credit Union ("SECU"/"Def3") *see infra*
C/O Cathleen M. Plaut

Defendant 4: Wake County Super. Ct. Guardian Ad Litem
("WDH"/"Def4") *see infra* C/O William D. Harazin, PLLC
Collectively ("Defts", "Def1-4") Appellees

APPELLANT'S [Partially/No position and Unconsented] Motion For Judge Panel to
Schedule and Hold
N.C. App. R. 29(b) Oral Arguments for this Case on April 11, 2023

Why this motion

1. Appellant, Kathy R. Allen, who is having to proceed *pro se* hereby provides this motion by N.C. App. R. 37 or a more appropriate rule for cases on the calendar. On March 14, 2023 the Appellant received an e-Filings this case is scheduled with Panel #2 the Honorable Valerie J. Zachary honorable Hunter Murphy Hon. Jeff Carpenter [for April 11, 2023] On March 17, 2023 the Appellant filed a motion for 'Extension/Continuance' to allow the attorney's office retained to review this case.

2. Today on March 24, 2023 the Appellant received an Order denying the 30-45 day extension. Also on March 20, 2023 that the judge panel for the case was instead Judge Valerie Zachary, Judge Jeff Carpenter, and Judge Julee Flood. The Appellant thinks it is also

appropriate for the court judge-panel to hold Oral Arguments for this case not do s they have deny them, and to review NC-COA's procedures for them and in this ambiguous Order for them. Contrary to Appellees' suggesting 'a continuance for retained lawyer's review' was delay it and this motion is not to delay but maintain and present the Appellant's brief merits before a 'live' judge-panel to her loss and conduct of the Appellees.

3. See *FRAP Rule 34. Oral Argument... (2) Standards*. Oral argument must be allowed in every case.... (f) SUBMISSION ON BRIEFS. The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued." Thus denying Oral Argument motion would deprive the Appellant of an opportunity to resent this case to the court.

4. That being so, with the timeline also being a factor and with the March 24, 2023 Order that denied the 'Motion for Extension/Continuance' for the legal office retained to review this case and the Appellant's timeline to her recourse for the case requests by at least N.C. App. R. 29(b) or more pertinent rule that Oral Arguments be held, so the Appellant can present her arguments to the case merits and as in the briefs and replies filed.

Deny Appellees Any Costs and Lawyer Fees and Purported Sanctions for Having to and to Reply to This N.C. Supreme Court Notice of Appeal or Appeal

5. It is clear Appellees misrepresented the status of this case to the Appellant's mother's 'Will' and the Appellant's efforts to get this case on-track, for estate administration to the foreclosure action and had several opportunities to correct their wrong and misrepresentations about it but continued to do so. They also 'without a word' to correct the deficiency or requirement to the N.C. App. R. 7 (transcription contract) and R. 11 proposed record) and is their conduct not the Appellant's that caused the filing of the case in Wake County Superior Court and this NC-COA appeal.

Consent for this motion

6. On today 03-24-2023 approx. 1:30pm EST the Appellant sent an E-mail with a copy of this motion to the Defendants and/or their attorneys saying "Duane/WHarazin/Anthony Klish (ALA): **This E-mail is to request your consent of the attached** Appellant's Motion that Oral Arguments be Scheduled for this case. Please reply by 4:00pm EST today. **If I do not receive you reply by then I will file** it [Unconsented], but if you plan to provide a reply I would ask that you do your rely ASAP tomorrow or by Monday 03-27-2023 after receiving the eFiling, so the court does not put it on hold for the usual 10 days for your reply--and motion to schedule Oral Arguments is preferred."

7. On 03-24-2023 1:47pm EST Duane (SECU/Defendant 3's) attorney replied: "You may respond that I take no position on the motion. I will leave that up to the Court of Appeals panel. Thank you, Duane."

8. By 4:00pm none of the other Defendants (Appellees1/2 and Defendant4) had replied, so it is being filed [Partially Consented] and the motion should be granted and the April 11, 2023 session for this case scheduled to include Oral Arguments or rescheduled to allow for them.

9. Granting this motion does not prejudice either party except for the Appellant who should be provided opportunity to hold R. 29(b) Oral Arguments so as to properly present her case by R. 30(a). As *supra* it does not prejudice the parties except the Appellant who has a substantial loss at the hands of these Appellees and should be allowed to present her case.

Respectfully submitted this the 24th day of March, 2023.

/s/ Kathy R. Allen (Pro Se)
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Alternate Certificate of service address:
2526 Poole Road
Raleigh, NC 27610-2820

10th DISTRICT
NORTH CAROLINA APPELLATE COURT

No. COA22-276

Appellant/Caveator2 Kathy R. Allen

v.

Appellees Respondent 1: Propounder 1

Arthur L. Allen (Deceased)

Respondent 2: Propounder 2 [sic] Steve R. Allen

Respondent 3: Propounder 3 Anthony A. Klish

Arthur L. Allen et. al.[sic]

AMENDED MOTION FOR *EN BANC* REHEARING

From: Wake County Case: #16-E-1390

IN THE MATTER OF THE ESTATE OF:

REBECCA BOWDEN ALLEN JOHNSON

Deceased Case #16-E-001390 (caveat for estate)

(additional Wake County filings pending #18-CVS-013119,

special hearings and estate filings #18 SP1746 (foreclosure),

#17-SP-1397 (petition for administrator)),

Petition #17SP000769 File No.

From 06-E-1397 (this 'E' number was provided

with Petition and might be incorrect)'

APPELLANT'S AMENDED MOTION FOR *EN BANC* REHEARING

To The February 23, 2023 Order Indicating

No Opinion Was Filed for Appeal

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1. Appellant/Caveator2, Kathy R. Allen, who is having to proceed *pro se* is filing this as an amended N.C.G.S. 31.1(d) *en banc* motion for rehearing . On February 23, 2023 the Appellant filed a motion *Doc.#39* to maintain the 15 days to filing it. After viewing the N.C. App. rules for it the more appropriate filing would be to file the motion as ‘an as complete’ as possible and motion later to amend this *en banc* hearing motion by the appropriate N.C. App. R. 14-16 (N.C.G.S. 7A-30 to N.C.G.S. 32) after the February 23, 2023 motion is ruled or denied as the final *en banc* motion.

2. The Appellant is also in a ‘time-crunch’ for her own personal schedule to properly cite cases for this ‘*amended en-banc re-hearing*’ motion and does not waiver to a 2nd amendment of it to t timeline for ruling on it. But it provides f or the questions for an opinion not filed with the dismissal and the Orders *Doc. #40* for it, and should be rescinded on that alone to the dismissal to provide an opinion to allow the Appellate to properly provide a response to the dismissal as a N.C.G.S. 7A-27 to N.C.G.S. 30-32 response—not providing the opinion or not doing so by this motion disadvantages the Appellant for her relief and post-appeal.

INTRODUCTION NC-COA APPEAL RULING DISADVANTAGES THE APPELLANT TO N.C. SUPREME COURT REVIEW OF THE NC-COA RULING

3. Appeals are difficult enough without complicating them with a court’s non-adherence to the procedurals for its ruling. That being so it is clear the NC-COA Orders filed February 7, 2023 (*Doc.#18*) and February 23, 2023 (*Doc #39*) violated the Appellant’s substantial rights and due process to the appeal case for a review of the appeal by the N.C. Supreme Court rules. This appeal was filed April 1, 2022 and progressed with filings and to the Order (February 7, 2023 *Doc.#18*) granting the Appellees *Doc.#18* motion to dismiss (MTD). But it is clear that Order disadvantages the Appellant and has been so throughout the filings for the appeal.

THE DISPOSITION OF THE APPELLANT'S R. 33 AN R. 38 MOTIONS FILED IN NC-COA
FOR THE APPEAL ARE QUESTIONABLE

4. There were approx.. 49 documents filed in this appeal including the notice of appeal and Appellant's notice of representation. Of those 33 were the Appellant's. Of the Appellant's all except motions for extensions were 'denied' by the NC-COA (being signed as 'Eugene Soares—Clerk of the court' instead of with the judge-panel Judges Chris Dillon, Tobias Hampson, and Jefferson Griffin signatures of sort by them or a judge's signature indicating it had been view properly (which clearly they did not cite anything to the Appellant's December 9, 2022 brief or November 23, 2022 *Doc*, #33 reply to the Appellees' (MTD) *Doc*.#18 or the Appellees' brief *Doc*.#19—which has no Order of its own.

5. Those supplement and other non-extension motions were filed to notify the NC-COA of and to supplement the record that the N.C. App. R. 33 notice of representation was required for Defendant1 (the Appellant's oldest brother who the Appellant was told passed in late 2020) —and no notice of representation had not been filed by his own estate, his tribunal court attorney (Appellee3) or any such estate for Appellee1. As the record of appeal filings indicate 'each was denied'. Indeed a 'necessary party' should be represented and without doing so Defendant1 should rightfully 'lose by default' with judgment for the Appellant. So are the other motions filed requesting the N.C. App. R. 38 for the same Appellant1 and for a substitution for him--but all of those were denied—seemingly just robo-signing of the Orders denying the motion with no analysis, Federal Civil Rules of Procedures (FCRP) Rule 52 findings of fact or similar included—Rightfully the MTD should entertain this and award the Appellant not just ignore as it does Appellees1 was unrepresented.

THE NC-COA ORDERS FOR DISPOSITION OF THIS APPEAL ARE QUESTIONABLE BY
N.C. APP. 32 AND OTHER PERTINENT N.C. APP. RULES FOR ORDERS, MANDATES
AN OPINIONS

6. As *supra* the February 7, 2023 Order (*Doc. #18*) also did not include any analysis just indicating the Appellees' motion to dismiss was granted. This prompted the Appellant to file the motion for an extension (*Doc. #39*) to file the Rule 31.1(d) *en banc* rehearing motion to request of when an opinion (published or unpublished) it would be filed and would then file the R. 31.1(d) motion. NC-COA then sent the February 23, 2023 (*Doc. #39*) Order that no opinion would be filed—thus to toll the *en banc* hearing' due date. But this complicates bot procedurally (if it is correct) and whether to file this motion as an '*amended en banc rehearing*' motion of the February 23, 2023 motion or allow NC-COA to rule on it and reserve to amend it as a violation of the rules for N.C. App. R. 32 or similar opinions and mandates. After a notice of appeal of NC-COA's February 23, 2023 Order is on review in the N.C. Supreme Court and by that allowed due date.

7. That being so this '*amended en banc rehearing*' is being filed.

WHY THE NC-COA SHOULD ALLOW EN BANC RE-HEARING

8. The NC-COA should allow an *en banc rehearing* because it is clear:

- (1) NC-COA has not provided the proper attention to the appeal requirements for necessary parties to be represented,
- (2) The NC-COA did not provide an opinion for their February 7, 2023 and February 21, 2023 Orders ruling,
- (3) The Appellees did not provide a sufficient MTD to dismiss the appeal, and
- (4) The case is for an estate matter for a Caveat filed for the Appellant's mother's estate and on appeal because the Wake Superior County Court ruling for it did not provide the proper ruling for N.C.G.S. 31-37 et. seq., the proper proceedings for estate and 'Will' administration and violated at least N.C.G.S. 28A for both an in doing so caused the Appellant between \$15m000 to a foreclosure on the homestead property, and
- (5) The rulings in both courts have denied to the Appellant's rights as an 'heir' to her mother's estate to be determined

JUDGE PANELS' NON-OPININON AND NON-ANAUYLSIS PROCEDURALLY FAILS

9. Court mandates with opinions by N.C. App. Rule 32 are required to be sent to the tribunal court within 20 days of the order. By that alone the MTD Orders fails and should be rescinded to provide it. By that same rule opinions are due.

BACKGROUND/HISTORY ON THE WAKE COUNTY SUPERIOR COURT AND NC-COA
CASE

10. Appellant file the Caveat² in Wake County Superior Court February 13, 2020. After Coronavirus delays an align the parties motion was filed an calendared for November 16, 2021. Judge Rozier dismissed the Caveat² on Order November 18, 2021 (R. p. xxx) on the Defendants' MTD (at hearing) suggesting the statute of limitations (SOL) was up when the Appellant file the N.C.G.S. 31-37 Caveat. But a through review of the filings and court record will indicate that is not correct—and if it were there are questionable compliance with the N.C.G.S. 28A an 29 for estates and 'Will's—thus violating the Appellant's relief by it and by N.C.G.S. §1-52 and § 1-15 for statute of limitations (R. xxx) .

11. At the same time it is the Appellees including Appellee³ (Appellant's brother's attorney) whom the Appellant sued in 2018 for his conduct or lack thereof for the estate matters—and his failures to admit his wrong—thus he continued into this appeal without a word or effort to correct it or his own conduct)—and a ruling on the merits was and has been denied in this Caveat² and denies the Appellant a substantial right and due process to have the estate matter an 'Will' determined and provided to the Appellant as an heir to and of her mother's estate.

12. The Appellant filed her R. pp.1-176) on July 25, 2022) and the successive filings followed in the NC-COA—thus we know the Wake County Superior Court Orders fail to both declaratory, equitable or N.C.G.S. 28A/29 relief to have granted the Appellees' MTD without a Rule 52 findings of fact for it. This *en banc rehearing* motion followed and was filed February 23, 2023 and 'amended' by this motion on February 27, 2023 (see NC-COA docket sheet for all the filings) <https://appellate.nccourts.org/dockets.php?court=2&docket=2-2022-0276-001&pdf=1&a=0&dev=1>".

13. Indeed how can any ruling be a matter of success on their merits or by Rule 12(b)(6) dismissal when the evidence is not heard. (R. pp.)

STATEMENT OF THE FACTS

14. The NC-COA and these Orders have turned the appeal from the Defendants' conduct into a question of their conduct. Being so those facts are to non-compliance with N.C. App. R. 32 for opinions and analyses for appeal dismissals. It also is conduct for see U.S. Code 1983 violations, which the Appellant does not waive by this filing for relief.

NC-COA AND OPINIONS AND MANDATES ARE REQUIRED BY N.C. APP. R. 32

15. Absent the NC-COA's opinion or analysis the Appellant is denied relief to provide a proper *en banc rehearing* motion—and forced to discuss the NC-COA's judge-panel's conduct instead of the Defendants whose conduct require t filing of the Caveat in the tribunal court—that alone requires rescinding the Order. But more than that if the NC-COA is suggesting the MTD (*Doc#14*) does not require an opinion because it is not a dismissal using the Appellees' brief (*Doc. #15*)—that also fails, because that corrective action would be to rule on the Appellees' brief—then file the judge-panel's opinion—but dismissal by N.C. App. R. 32 the MTD with no opinion still fails and so does doing for by the brief, e.g. if the Appellees had not also filed a brief—and is now the NC-COA's procedural by N.C. App. R. 32 violations.

16. It is clear by the February 7, 2023 and February 23, 2023 Orders ignored the Appellant's brief (*Doc#14*) and replies (*Doc.#33*) to the Appellees' MTD and brief (*Doc.#28*)

ARGUMENTS TO THE NC-COA'S CONDUCT FOR THESE ORDERS

17. Judges and this judge panel should follow the N.C. App. Rules and failed to do so.

JUDGE PANEL DID NOT PROVIDE THE PROPER RULING OR PROCEDURALLY TO FILE AN OPINION

18. When considering the MTD the judge panel and judge-panel Judges Chris Dillon, Tobias Hampson, and Jefferson Griffin should have included an analysis that included the Appellant's

brief and rely in an analysis-format and discussion to the Order and in it why the February 7, 2023 Order imposed costs and how these were determined—and should be provided.

JUDGE PANEL IS PREJUDICIAL TO THE APPELLANT AND TO PRO SE APPELLANTS

19. Whether the Appellant is *pro se* are not should not have affected the judge panel to not file an opinion (published or unpublished)—thus ignoring a substantial right and due process for appeals by among other N.C. App. Rules to U.S. Code 1983.

NC-COA JUDGE PANEL AND WAKE COUNTY SUPERIOR COURT BOTH ERRORED AND IS A PUBLIC CONFLICT AND OF CONCERN FOR ESTATE ADMINISTRATION

20. Considering the appeal was for n state an heir matter contesting a ‘Will’ is ultimately a concern for the public and as denying proper estate administration and erred to have done or allowed any of the above in ¶¶18-20. If there is a dismissal should ensure both declaratory and/or injunctive relief for the Appellant as an heir of the estate matter.—but did not. Being so it is an abuse of power and an abuse of discretion for e NC-COA judge-panel Judges Chris Dillon, Tobias Hampson, and Jefferson Griffin to not provide opportunity for requesting and providing at least a N.C. App. Rule 30(e)4) opinion.

DENY APPELLEES ANY COSTS AND LAWYER FEES AND PURPORTED SANCTIONS FOR HAVING TO AND TO REPLY TO THIS MOTION OR APPEAL

21. It is clear Appellees misrepresented the status of this case to the Appellant’s mother’s ‘Will’ and the Appellant’s efforts to get this case on-track, for estate administration. Appellees had several opportunities to correct their wrong but continued their misrepresentations. Appellees also ‘without a word’ to correct the deficiency of the requirement for opinions they continued their wonton conduct to not allow due process for this appeal. Appellees must be held accountable, and this case and appeal view for its merits and be denied any costs for this appeal, because it is their conduct not the Appellant’s that cause the filing of the case in Wake County Superior Court and this appeal.

IN SUMMARY THIS AS AN AMENDED NC-COA *EN BANC* RE-HEARING MOTION
REQUIRES THE NC-COA'S OPINION

22. The Appellant files this as an amended *en banc* rehearing motion requesting the analysis and opinion so the *en banc* rehearing motion can be properly argued and reserves to amend it when it is received by App. R. 32. That being so without an opinion how is the Appellant to provide the *en banc* rehearing arguments to discuss it until it is filed—and this *en banc* rehearing motion would be timely by it.

Respectfully submitted this the 27th day of February, 2023.

s/ Kathy R. Allen (*Pro Se*)

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10th DISTRICT
NORTH CAROLINA APPELLATE COURT

No. COA22-276

Appellant/Caveator2 Kathy R. Allen

v.

Appellees Respondent 1: Propounder 1

Arthur L. Allen (Deceased)

Respondent 2: Propounder 2 [sic] Steve R. Allen

Respondent 3: Propounder 3 Anthony A. Klish

Arthur L. Allen et. al.[sic]

MOTION TO STAY MANDATE

From: Wake County Case: #16-E-1390
IN THE MATTER OF THE ESTATE OF:
REBECCA BOWDEN ALLEN JOHNSON

Deceased Case #16-E-001390 (caveat for estate)
(additional Wake County filings pending #18-CVS-013119,
special hearings and estate filings #18 SP1746 (foreclosure),
#17-SP-1397 (petition for administrator)),
Petition #17SP000769 File No.

From 06-E-1397 (this 'E' number was provided
with Petition and might be incorrect)

APPELLANT'S MOTION TO STAY MANDATE

To The February 7, 2023 and February 23, 2023 Order (Indicating
No Opinion Was Filed for Appeal)

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IN SUMMARY THIS STAY OF THE MANDATE IS REQUESTED FOR THIS APPEAL	3

1. Appellant/Caveator2, Kathy R. Allen, who is having to proceed *pro se* is filing this as N.C. App. Rule 8 or more appropriate rule for motions to stay the mandate for this appeal until both the N.C. App. 31.1(d) February 23, 2023 '*Motion for En Banc Re-hearing*' (Doc.#39) and the '*Amended Motion for En Banc Re-hearing*' being filed February 27, 2023 (today) are ruled.

2. The February 7, 2023 (*Doc. #18*) and February 23, 2023 (*Doc. #39*) Orders by the NC-COA do not indicate who or if they were decided by the judge-panel of Judges Chris Dillon, Tobias Hampson, and Jefferson Griffin are excessively contrary to the N.C. App. rules for opinions as published or unpublished.

3. This deviates from the standard for the appellate court rules for judge panel rulings and to opinions by N.C. App. R. 32 and is contrary to both rule precedence and substantial rights and due process by the 5th and 14th amendments and at least by N.C. App. R. 30(e)(4) for requesting an opinion.

DISCREPANCIES IN THE N.C. APP. RULES AND THE NC-COA ORDERS

4. This motion to stay the mandate is requested until these *en banc* R. 31.1(d) re-hearing motions are ruled and after that until any subsequent N.C.G.S. 7A-27– N.C.G.S. 30- 32, writ of certiorari or similar motions and notice s of appeal of the NC-COA for this appeal are determined to be filed or by the appropriate N.C. App. R. 14-16 (N.C.G.S. 7A-30 to N.C.G.S. 32) after the February 23, 2023 (*Doc.#40*) and this February 27, 2023 motions is ruled or denied as the final *en banc* motion.

DENY APPELLEES ANY COSTS AND LAWYER FEES AND PURPORTED SANCTIONS FOR HAVING TO AND TO REPLY TO THIS MOTION OR APPEAL

5. It is clear Appellees misrepresented the status of this case to the Appellant's mother's 'Will' and the Appellant's efforts to get this case on-track, for estate administration. Appellees had several opportunities to correct their wrong but continued their misrepresentations. Appellees also 'without a word' to correct the deficiency of the requirement for opinions they continued their wonton conduct to not allow due process for this appeal. Appellees must be held accountable, and this case and appeal view for its merits and be denied any costs for this appeal, because it is their conduct not the Appellant's that cause the filing of the case in Wake County Superior Court and this appeal.

IN SUMMARY THIS STAY OF THE MANDATE IS REQUESTED FOR THIS APPEAL.

6. The Appellant files this motion to stay until the motions as *supra* are ruled by the judge-panel of Judges Chris Dillon, Tobias Hampson, and Jefferson Griffin.

7. It does not prejudice any of the parties except the Appellant who should maintain the timeline for the appeal and of it to the N.C. Supreme Court for review by the appropriate statute upon a ruling of the filed '*En banc rehearing*' and '*Amended En banc Re-hearing*' motions so as to properly argue the dismissal by the proper N.C. Supreme Court or similar (e.g.) U.S.D.C. in the Court of Appeals statute.

Respectfully submitted this the 27th day of February, 2023.

s/ Kathy R. Allen (*Pro Se*)

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APPENDIX B - Decisions of the State Trial Court

Extracted exhibit pages of NCCOA-R ([pp. 1-150])
online at: https://www.ncappellatecourts.org/show-file.php?document_id=309898

WCSC Judge Gwynn's February 14, 2020 Order Granted Defendants' MTD (R. Exhibit 6).....	3
WCSC Judge Ridgeway's December 13, 2021 Order Denied MFR Rule 59 (R. Exhibit7)	12
WCSC Judge Ridgeway's – Order - December 18, 2021 to exclude Judge Futrell's May/June 2019 Orders (R. Exhibit 8)	15
WCSC Judge Ridgeway's – Amended Order - December 20, 2021 for Notice of appeal to correct service and add case title (R. Exhibit 9)	18

EXHIBIT 6



WAKE COUNTY

2020 FEB 17 PM 5:12

WAKE CO., C.S.C.

SUPERIOR COURT DIVISION

18 CVS 13119

Plaintiff,

vs.

ARTHUR L. ALLEN, ANTHONY A. KLISH,
STATE EMPLOYEES' CREDIT UNION, and
WAKE COUNTY SUPERIOR CT. GUARDIAN
AD LITEM,

Defendants.

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS PLAINTIFF'S APPEAL
AND ISSUANCE OF
GATEKEEPING ORDER

1. Plaintiff filed her Notice of Appeal on October 29, 2019.

3. Plaintiff failed to serve a copy any transcript contract on Defendants, and a review of court file indicates that Plaintiff has not filed a copy of any transcript contract with the Court.

4. The parties did not settle the record on appeal by agreement pursuant to N.C. R. App. P. Rule 11(a).

5. Consequently, pursuant to N.C. R. App. P. Rule 11(b) Plaintiff was required to serve a proposed Record on Appeal on Defendants within thirty-five days of filing her Notice of Appeal. The deadline for serving the proposed Record on Appeal expired on December 3, 2019.

6. Plaintiff failed to serve a proposed Record on Appeal in a timely manner as required by N.C. R. App. P. Rule 11(b).

7. The following is a list of pleadings served by Plaintiff on Defendants **before** her claims against all Defendants were dismissed and her post-dismissal motions denied: (a) Initial Complaint filed on October 26, 2018; (b) No Hearing Required Emergency Motion to Stay Foreclosure Hearing Scheduled for November 5, 2018 filed on October 23, 2018; (c) Hearing Not Requested Unconsented Motion OTHR-ProHacVice (Pro Se) is it required? filed on November 21, 2018; (d) Plt (KRA)'s Response to SECU Motion to Dismiss filed on November 21, 2018; (e) Plt (KRA)'s Opposition to William D. Harazin (Wake County Super. Ct. Ad Litem) Amended Motion to Dismiss filed on December 14, 2018; (f) Plt (KRA)'s Opposition to Anthony A. Klish Motion to Dismiss filed on December 14, 2018; (g) Plt (KRA)'s Opposition to Arthur L. Allen Motion to Dismiss filed on December 14, 2018; (h) Motion Hearing not requested – Unconsented Emergency Motion to Stay 2-11-2019 Hearing filed on or about February 4, 2019; (i) Plt's Consented Motion for Continuance of April 1, 2019 Hearing and Leave of Court Motion to Extend Time to Respond to Defendants' 1-4 Briefs in Support of Their 2-07-2019 MTD filed on March 28, 2019; (j) Plt's UnConsented Motion for Continuance of May 20, 2019 Hearing Until Sep 24, 2019 filed on or about May 8, 2019; (k) Plt's Unconsented to Rescind All Orders of Dismissal Based on the May 20, 2019 Hearing and/or Grant Plt Leave of

Court to File Rule 15, Rule 52, Rule 54 and/or Rule 59 Motions Against Dismissal filed on June 25, 2019; (l) Plt's Reply and relief from Judgment to Arthur Allen, Anthony Klish, SECU and GAL Proposed Orders and Costs to May 2019 Hearing Dismissal filed on June 25, 2019; (m) Plt's Opposition/Reply; Opposition to SECU 2/7/19 Brief filed July 2, 2019; (n) Plt's Opposition/Reply to Harazin 2/7/19 Brief filed on July 2, 2019; and (o) Plt's Opposition to Arthur Allen Brief filed on July 8, 2019.

8. The following is a list of pleadings served by Plaintiff on Defendants **after** her claims against all Defendants were dismissed and her post-dismissal motions denied: (a) Letter Plt (KRA)'s Official Letter to Judge Collins for Ruling o/a 09-27-2019 for 09-23-2019 Hearing filed on October 23, 2019; (b) Notice of Appeal filed on October 29, 2019; and (c) a purported Lis Pendens action filed on or about December 6, 2019 raising the same claims against Defendants that have already been dismissed by this Court.

9. During the pendency of this litigation, Plaintiff has emailed each defense counsel approximately 100 times.

10. Following the dismissal of this matter and following the dismissal of a Will Caveat pursued by Plaintiff, on January 9, 2020, Plaintiff filed a lawsuit in Fulton County, Georgia against Arthur L. Allen and Anthony A. Klish alleging in substantial parts the same claims she filed in this action.

11. The above referenced pleadings filed by Plaintiff and the excessive emails to defense counsel resulted in Defendants incurring considerable costs, resulted in unnecessary delay and have been asserted without a basis in fact or law to harass Defendants and their counsel.

12. The claims contained in Plaintiff's filings with this Court are inappropriate, not well grounded, and not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

13. Plaintiff lacks a good faith basis for the pursuit of this litigation and has filed numerous motions and duplicative documents in this Court. Her actions appear to be intended to harass Defendants and increase the cost of litigation.

14. Plaintiff's actions have burdened the Court and the parties involved.

15. The Court has the inherent authority, and the obligation, to safeguard the judicial process and to: (a) protect the fairness of the process for all citizens, and (b) to prevent abuse and harassment of litigants and court officials affected by frivolous and groundless filings.

16. A Gatekeeper Order may be entered to preserve the orderly and efficient administration of justice when a lesser remedy is not available or likely to provide adequate protection for litigants and court officials affected by frivolous and groundless filings.

17. During the hearing on Defendants' Motion to Dismiss Plaintiff's Appeal and for Gatekeeping Order, Plaintiff was given a full and fair opportunity to present materials and make arguments in support of her position and consistent with her constitutional and other legal rights.

Based on the foregoing FINDINGS OF FACT, the Court CONCLUDES AS A MATTER OF LAW:

1. Plaintiff's failure to serve a proposed record on appeal in accordance with N.C. R. App. P. Rule 11 is a substantial violation of the Rules of Appellate Procedure requiring dismissal of her appeal.

2. Having considered and found no lesser remedy, the nature of Plaintiff's conduct and the extraordinary circumstances of this matter require that the Court place special limitations on Plaintiff's access to the Courts of Wake County and enter a Gatekeeper Order.

THEREFORE, IT IS ORDERED, ADJUDGED and DECREED:

1. Plaintiff's appeal is dismissed.

2. The Court grants Defendants' Motion for a Gatekeeper Order on the following terms and conditions and hereby enjoins Plaintiff from filing any further motion, pleading or document related to the Matters (defined below) in any Wake County Court or any other Court in North Carolina without the prior approval of the Court.

(a) Plaintiff may submit a proposed motion, pleading or document to a lawyer licensed to practice and in good standing in the State of North Carolina. If the lawyer certifies, in writing, (1) that the lawyer has read and is familiar with this Order, (2) that the lawyer has reviewed the document proposed for filing by Plaintiff, (3) that the lawyer certifies that there is a legitimate basis for the filing, and (4) that the filing is not frivolous, then the Clerk may accept such filing. In that circumstance, the Clerk shall file the lawyer's certification with the document filed by Plaintiff.

(b) Plaintiff may submit a proposed motion, pleading or document to the senior resident superior court judge of Wake County, or another judge delegated by the senior resident superior court judge of Wake County to handle such matter, who may then approve or disapprove of such filing. If such judge approves of the filing, the Clerk shall file the judge's confirmation along with the document filed by Plaintiff.

(c) The "Matters" shall include:

(i) Lawsuits against Arthur L. Allen, Anthony A. Klish (personally, and including his former firm of Klish & Eldreth, PLLC and his current firm of Maginnis Law, PLLC), State Employees' Credit Union, Wake County Guardian ad litem and/or William Harazin.

(ii) The actions or inactions of Arthur L. Allen in any way relating to the Estate of Rebecca Bowden Allen Johnson (hereinafter "Decedent"), including but not limited to, Arthur L. Allen's role and performance of his duties as Personal Collector, Administrator and/or Executor of Decedent's Estate, Arthur L. Allen being a beneficiary of and to Decedent's Estate, and Arthur L. Allen's ownership interest of any real property located in Wake County, North Carolina that was formerly owned by Decedent.

(iii) The actions or inactions of Anthony A. Klish, Klish & Eldreth, PLLC (of which Anthony A. Klish formerly practiced law) and Maginnis Law, PLLC (of which Anthony A. Klish currently practices law) in any way relating to their practice of law as it relates to Decedent's Estate.

(iv) The actions or inactions of State Employees' Credit Union in any way relating to its Deed of Trust on property located at 2526 Poole Road, Raleigh, North Carolina 27610, including, but not limited to any foreclosure proceeding that has occurred in the past or that may occur in the future.

(v) The actions or inactions of Wake County Guardian ad litem or William Harazin in any way relating to their obligations arising from their service as a Court-Appointed Guardian ad Litem, including, but not limited to, carrying out the Guardian ad Litem duties to represent the unknown heirs and the known heirs whose whereabouts is

unknown in any foreclosure proceeding that has occurred in the past or that may occur in the future.

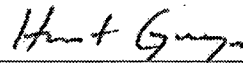
(c) A failure to comply with the Gatekeeper Order shall result in the dismissal or striking of the pleading or document and the denial of the motion or motions.

Additionally, violation of the Gatekeeper Order by Plaintiff or anyone on her behalf shall be considered in contempt and may be sanctioned accordingly.

(d) Plaintiff is to attempt no further *ex parte* communications with the Wake County Courts, except as to providing written notification to the Senior Resident Superior Court Judge, in regard to filing, in accordance with the process described above.

(e) This Gatekeeper Order shall remain in effect until vacated by the Court.

This the 14 day of February 2020.



The Honorable Nathan Hunt Gwyn, Jr.
Superior Court Judge Presiding

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission and by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

Kathy R. Allen
26 55th Street NE
Washington, DC 20019-6770
Allenk1101@comcast.net
Plaintiff

Anthony A. Klish
Maginnis Law PLLC
4801 Glenwood Ave., Suite 310
Raleigh, NC 27612
anthony@maginnislaw.com
Counsel for Defendants

Cathleen M. Plaut
NCSECU
119 N. Salisbury Street, 11th Floor
Raleigh, NC 27603
Cathy.plaut@ncsecu.org
Counsel for Defendant NCSECU

William D. Harazin
William D. Harazin PLLC
1021 Vance Street
Raleigh, NC 27608
wharazin@harazinlaw.com
Counsel for Wake County Guardian ad Litem

This the 18th day of February 2020.



Kellie Z. Myers
Trial Court Administrator – 10th Judicial District
kellie.z.myers@nccourts.org

EXHIBIT 7

FILED

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 13119

WAKE CO., C.S.C.

KATHY R. ALLEN,
Plaintiff

v.

ARTHUR L. ALLEN et al.
Defendants

ORDER

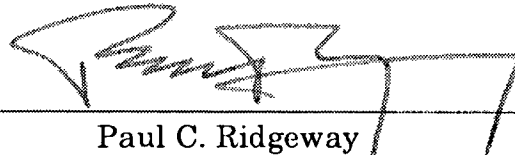
THIS MATTER came before the undersigned upon the request of the Plaintiff to file a Rule 59 motion in the above-captioned matter. By order of this court, Plaintiff is subject to a "gatekeeper" order that requires either (1) certification by a lawyer licensed in North Carolina that there is a legitimate basis for filing said motion and that it is not frivolous or (2) approval of the filing by the senior resident superior court judge of Wake County.

On or about March 16, 2020, by e-mail, the plaintiff submitted a proposed "Rule 59 Motion" challenging various portions of an order entered February 17, 2020 by the Honorable Nathan Hunt Gwyn, Jr. The undersigned, as senior resident superior court judge of Wake County, has reviewed the pleadings submitted by the plaintiff.

The Court concludes the "Rule 59 Motion" proposed by the plaintiff is frivolous. In addition to failing to raise meritorious issues, a Rule 59 motion is not a substitute for an appeal, and cannot be used to reargue matters already presented or to set forth arguments that were not made but could have been asserted at the trial court level. 2 North Carolina Civil Procedure § 59-1 (2021); *Sellers v. Ochs*, 180 N.C. App. 332, 638 S.E.2d 1 (2006); *Smith v. Johnson*, 125 N.C. App. 603, 481 S.E.2d 415, *cert. denied*, 346 N.C. 283, 487 S.E.2d 554 (1997).

For the foregoing reasons, the request of the plaintiff to file the "Rule 59 Motion" is DENIED. The Plaintiff is reminded that the gatekeeper provisions of the Order of February 17, 2020 remain in full force and effect.

This the 13th day of December, 2021.



Paul C. Ridgeway
Senior Resident Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below by via e-mail transmission and by depositing a copy thereof in the United States Mail addressed as follows:

Kathy R. Allen
26 55th Street NE
Washington, DC 20019-6770
Allenk1101@comcast.net
Plaintiff

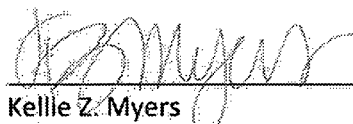
Anthony A. Klish
MAGINNIS HOWARD
7706 Six Forks Rd., Ste. 101
Raleigh, NC 27615
anthony@maginnishoward.com
Counsel for Defendants

Cathleen Plaut
NCSECU
119 N. Salisbury St., 11th Floor
Raleigh, NC 27603
Cathy.plaut@ncsecu.org
Counsel for Defendant NCSECU

William D. Harazin
WILLIAM D. HARAZIN PLLC
1021 Vance Street
Raleigh, NC 27608
wharazin@harazinlaw.com
Counsel for Wake County Guardian ad Litem

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 14th day of December 2021.



Kellie Z. Myers
Trial Court Administrator – 10th Judicial District
kellie.z.myers@nccourts.org

EXHIBIT 8

FILED

STATE OF NORTH CAROLINA 18 JAN 17 2022 PM 12:56
WAKE COUNTY SUPERIOR COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE CO., C.S.C.

16 E 001390

IN RE:

BY _____

The Estate of REBECCA BOWDEN)

ALLEN JOHNSON)

KATHY R. ALLEN, Caveator)

v.)

ARTHUR L. ALLEN, et al.)

Propounders)

ORDER

THIS MATTER comes before the undersigned upon KATHY R. ALLEN's request to file a motion, document or pleading in the above-captioned matters. Ms. Allen is subject to a "gatekeeping order" in this matter entered on February 17, 2020 by the Honorable Nathan Hunt Gwyn, Jr., Superior Court Judge presiding, that enjoins Ms. Allen from filing any further motion, pleading or document in various matters (as defined in said order) unless a lawyer licensed to practice and in good standing in the State of North Carolina certifies, in writing, (a) that the lawyer has read and is familiar with the gatekeeping order, (b) that the lawyer has reviewed the document proposed for filing by Ms. Allen, (c) that the lawyer certifies that there is a legitimate basis for the filing, and (d) that the filing is not frivolous. Alternatively, the gatekeeping order permits Ms. Allen to submit a proposed motion, pleading or other document to the senior resident superior court judge of Wake County, or his or her designee, who may then approve or disapprove of such filing.

Ms. Allen has submitted to the senior resident superior court judge of Wake County "Plaintiff's Notice of Appeal" by email dated January 11, 2022, a copy of

which is attached hereto as Attachment 1. The undersigned DISALLOWS the filing of this document pursuant to the terms of the February 17, 2020, Gatekeeping Order. In reviewing the document, the Court concludes that while a notice of appeal might appropriately be given by Ms. Allen in 18 CVS 13119 to the Order of the undersigned dated December 13, 2021 and to the order of Judge Gwyn of February 17, 2020, Ms. Allen has included in her proffered "notice of appeal" notices pertaining to orders dated September 27, 2019, May 20, 2019, June 5, 2019, and three orders dated June 12, 2021. As such, a substantial portion of the proffered pleading has no basis in law, is frivolous and would continue to perpetuate the pattern of misconduct barred by the February 17, 2020, Gatekeeping Order. The Clerk of Superior Court is directed to reject this filing if an attempt is made to file it, and to inform the undersigned of any attempt to do so.

This Order shall be made a part of the court file, but does not constitute the "filing" of the documents attached hereto.

This the 18 January, 2022.



Paul C. Ridgeway,
Senior Resident Superior Court Judge

EXHIBIT 9

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

18 CVS 13119

18 SP 1746

17 SP 1397

16 E 1390

KATHY R. ALLEN,
Plaintiff

v.

ARTHUR L. ALLEN, et al,

ORDER (amended to
include additional file numbers)

2022 JAN 19 PM 2:24

FILED


THIS MATTER comes before the undersigned upon KATHY R. ALLEN's request to file a motion, document or pleading in the above-captioned matters. Ms. Allen is subject to a "gatekeeping order" in this matter entered on February 17, 2020 by the Honorable Nathan Hunt Gwyn, Jr., Superior Court Judge presiding, that enjoins Ms. Allen from filing any further motion, pleading or document in various matters (as defined in said order) unless a lawyer licensed to practice and in good standing in the State of North Carolina certifies, in writing, (a) that the lawyer has read and is familiar with the gatekeeping order, (b) that the lawyer has reviewed the document proposed for filing by Ms. Allen, (c) that the lawyer certifies that there is a legitimate basis for the filing, and (d) that the filing is not frivolous. Alternatively, the gatekeeping order permits Ms. Allen to submit a proposed motion, pleading or other document to the senior resident superior court judge of Wake County, or his or her designee, who may then approve or disapprove of such filing.

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which is attached hereto as Attachment 1. The undersigned DISALLOWS the filing of this document pursuant to the terms of the February 17, 2020, Gatekeeping Order. In reviewing the document, the Court concludes that while a notice of appeal might appropriately be given by Ms. Allen in 18 CVS 13119 to the Order of the undersigned dated December 13, 2021 and to the order of Judge Gwyn of February 17, 2020, Ms. Allen has included in her proffered "notice of appeal" notices pertaining to orders dated September 27, 2019, May 20, 2019, June 5, 2019, and three orders dated June 12, 2021. As such, a substantial portion of the proffered pleading has no basis in law, is frivolous and would continue to perpetuate the pattern of misconduct barred by the February 17, 2020, Gatekeeping Order. The Clerk of Superior Court is directed to reject this filing if an attempt is made to file it, and to inform the undersigned of any attempt to do so.

This Order shall be made a part of the court file, but does not constitute the "filing" of the documents attached hereto.

This the 18 January, 2022.


Paul C. Ridgeway,
Senior Resident Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission and by depositing a copy thereof in the United States Mail addressed as follows:

Kathy R. Allen
26 55th Street NE
Washington, DC 20019
Allenk1101@comcast.net
Plaintiff

Jay K. Allen
2526 Poole Road
Raleigh, NC 27610-2820

Anthony A. Klish
MAGINNIS HOWARD
anthony@maginnishoward.com
Counsel for Defendants

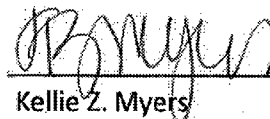
Steve R. Allen
778 Duffield Drive NW
Atlanta, GA 30318

Cathleen Plaut
NCSECU
Cathy.plaut@ncsecu.org
Counsel for Defendant NCSECU

William D. Harazin
WILLIAM D. HARAZIN PLLC
wharazin@harazinlaw.com
Counsel for Wake County Guardian ad Litem

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 20th day of January 2022.



Kellie Z. Myers
Trial Court Administrator – 10th Judicial District
Kellie.Z.Myers@nccourts.org

APPENDIX C - Decisions of the State Supreme Court Denying Review

NCSC #161P23 Exhibit 5 - Order August 30, 2023 Denied Appellant's § 7A-30 notice of appeal—granting Appellees' MTD but with no supporting documents.....2

NCSC #161P23 Exhibit 6 - Order October 30, 2023 Denied Appellant's § 7A-31 discretionary review.....4

Appellant's Motions

NCSC #161P23 Appellant's Motion In Support and for Entry of Default Against Appellee1 Arthur L. Allen and His Own Estate for This Case #161-P23.....5

Supreme Court of North Carolina

Exhibit5-Granted Appellees' MTD/Mooted Other Filings

KATHY R. ALLEN

V

**ARTHUR L. ALLEN, ANTHONY A. KLISH, STATE EMPLOYEES' CREDIT UNION, WAKE COUNTY
SUPERIOR COURT GUARDIAN AD LITEM**

From N.C. Court of Appeals
(22-601)
From Wake
(18CVS13119)

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by the Plaintiff on the 20th of June 2023 in this matter pursuant to G.S. 7A-30, and the motion to dismiss the appeal for lack of substantial constitutional question filed by the Defendant, the following order was entered and is hereby certified to the North Carolina Court of Appeals: the motion to dismiss the appeal is

"Allowed by order of the Court in conference, this the 30th of August 2023."

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

Upon consideration of the petition filed on the 20th of June 2023 by Plaintiff 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 30th of August 2023."

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

The following order has been entered on the Motion for Extension of Time to File Brief filed on the 12th of July 2023 by Plaintiff:

"Motion Dismissed as moot by order of the Court in conference, this the 30th of August 2023."

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

The following order has been entered on the motion filed on the 12th of July 2023 by Plaintiff for Immediate Arbitration:

"Motion Dismissed by order of the Court in conference, this the 30th of August 2023."

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

The following order has been entered on the motion filed on the 17th of July 2023 by Plaintiff for Entry of Default:

"Motion Dismissed by order of the Court in conference, this the 30th of August 2023."

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

The following order has been entered on the Motion for Extension of Time to File Brief filed on the 17th of July 2023 by Plaintiff:

"Motion Dismissed as moot by order of the Court in conference, this the 30th of August 2023."

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

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 5th of September 2023.



Grant E. Buckner
Clerk, Supreme Court of North Carolina

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

Copy to:

North Carolina Court of Appeals

Ms. Kathy R. Allen, For Allen, Kathy R. - (By Email)

Mr. M. Duane Jones, Attorney at Law, For State Employees' Credit Union - (By Email)

Mr. Anthony A. Klish, Attorney at Law, For Allen, Arthur L., et al - (By Email)

Mr. William D. Harazin, Attorney at Law, For Wake County Superior Court Guardian ad Litem - (By Email)

N.C. Court of Appeals

West Publishing - (By Email)

Lexis-Nexis - (By Email)



North Carolina Court of Appeals

Fax: (919) 831-3615
Web: <https://www.nccourts.gov>

EUGENE H. SOAR, Clerk
Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

No. COA22-601-1

Exhibit6-Denied Discretionary Review

KATHY R. ALLEN,
Plaintiff,

v.

ARTHUR L. ALLEN et al.,
Defendants.

From Wake
18CVS13119

ORDER

PETITION FOR DISCRETIONARY REVIEW to review the decision of the North Carolina Court of Appeals filed on the 20th of June 2023 was Denied by order of the North Carolina Supreme Court on the 5th day of September 2023, and same has been certified to the North Carolina Court of Appeals.

IT IS THEREFORE CERTIFIED to the Clerk of Superior Court, Wake County, North Carolina that the North Carolina Supreme Court has Denied the PETITION FOR DISCRETIONARY REVIEW filed by the Plaintiff in this cause.

WITNESS my hand and official seal this the 30th day of October 2023.

Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, Pro Se, For Allen, Kathy R.
Mr. M. Duane Jones, Attorney at Law, For State Employees' Credit Union
Mr. Anthony A. Klish, Attorney at Law, For Allen, Arthur L., et al
Mr. William D. Harazin, Attorney at Law, For Wake County Superior Court Guardian ad Litem

IN THE SUPREME COURT OF NORTH CAROLINA

10th DISTRICT

No. 161-P23

On appeal from NC-COA Case # No. COA22-601
and Wake County Superior Court Case #18-CV-013119
(additional special hearings and
estate filings #18 SP1746 (foreclosure),
#17-SP-1397 (petition for administrator),
and 16-E-001390 (caveat for estate))

Appellant

Kathy R. Allen ("KRA"/"Plt") *see infra*

v.

Defendant 1: Arthur L. Allen ("ALA"/"Def1") *see infra* [sic deceased]Defendant 2: Anthony A. Klish ("AAK"/"Def2") *see infra*Defendant 3: State Employees Credit Union ("SECU"/"Def3") *see infra*

C/O Cathleen M. Plaut

Defendant 4: Wake County Super. Ct. Guardian Ad Litem

("WDH"/"Def4") *see infra* C/O William D. Harazin, PLLC

Collectively ("Defts", "Def1-4") Appellees

APPELLANT'S MOTION IN SUPPORT AND FOR ENTRY OF DEFAULT
AGAINST APPELLEE1 ARTHUR L. ALLEN AND HIS OWN ESTATE FOR
THIS CASE #161-P23

To the honorable North Carolina Supreme Court:

WHY ENTRY OF DEFAULT IS REQUESTED

1. Appellant, Kathy R. Allen, who is having to proceed *pro se* provides this motion and is not being filed for any frivolous reasons and requests by R. 37, N.C. App. R. 2, N.C. G.S., FRCP Rule 55, by R. 36 to the Wake County Superior Court judge or *sua sponte* by this court or by a more pertinent rule or the court's inherit power to grant it based on the estate and foreclosure actions which the #22-601 case was for and now in this court as #161-P23 as an appeal of NC-COA's May 4, 2023 (Doc. #14), March 27, 2023 Doc.#21 Motion to Hold Oral arguments, May 22, 2023 Motion for Opinion (Doc.#22, and June 6, 2023 Orders (Docs.#23-24) for Motions for En Banc Rehearing and Stay Mandate for an Opinion. The Appellant (Plaintiff) filed and properly served October 26,

2018 (see WCSC record pp. 276-319) and summons on November 6, 2018 see WCSC record pp. 256-263) in the Wake County Superior Court for case #18-CV-3119 for her mother's (who passed in 2016) estate, which the lawsuit was for, and subsequent eFilings and efforts to Appellee1's (Defendant1) wife and Appellee2 (Defendant2) for who is representing or defending Appellee1.

2. Appellee1 (Appellant's sibling was personal collector for their mother's estate, who seemingly hired Appellee2, Anthony A. Klish sometime o/a 2017 as his attorney for it. Appellee2 it seems served and submitted filings to the Wake County Superior Court for Arthur L. Allen (Appellee1) until o/a late 2020 when the Appellant was told he (Appellee1 her sibling) had passed o/a late 2020. And was not being or represented in Judge Ridgway's o/a December 14, 2021 Order that dismissed her lawsuit and for the R. 59 purported by Appellee2 (his attorney) in the Wake County Superior Court hearing's on January 27, 2020 hearing. This after delays of Coronavirus was then on appeal as case #22-601 and in the NC-COA eFilings indicates Appellee1 had passed and R. 33/R.38 were required.

3. It is clear Appellee2/Defendant2 and Duane Jones of hedrickgardner.com is purporting after Appellee1 passed to be representing now just Appellee2, but knows but ignores there is a local rule R. 25 and/or R. 33/R. 38 deficiencies, and the NC-COA record affirms the Appellant is correct on the R. 33/R. 38 and Appellee2 and Duane Jones of hedrickgardner.com's ignoring the necessary party and misleading and doing so later in the NC-COA filings on who was to be defending and the requirement for someone to defend Appellee1 in the NC-COA case and now this N.C. Supreme Court #161-P23 case—and none as of this filing.

4. Indeed Appellee2 (her other sibling) ignored and has had no such communications with or for the estate among the siblings (for the 'Will') after Appellee1 passed—and for some reason, but Appellee1 was and is still unrepresented not defending or appearing in the case, and Appellees2

provides no authority to, for or about Appellee1 not defending or who is to be defending him (but again he and Duane Jones of hedrickgardner.com adding Mary Flager Allen (Appellee1's wife) to the NC-COA eFilings suggesting it is service and by mail. But in doing so concedes his and the Appellees' misrepresentations to the court about the case merits and requirement for a necessary party about the R. 33/R. 38 NC-COA motions (see among them the NC-COA record Doc.#4).

5. The Appellant in the June 30, 2023 NC-COA notice of appeal questions the Wake County Superior Court's (Judge Ridgeway's) December 14, 2021 Order for the Rule 59 for Judge Gwynn's February 14, 2020 Order as incorrect for various reasons, and in the June 20, 2023 notice of appeal and the successive N.C.G.S. § 7A-30 and § 7A-31.1 filings for this case #161-P23. But more than that the NC-COA filings (record) indicates the Appellant's efforts for Appellee1 (as an unrepresented party) for the N.C. App. R. 33 and R. 38 deficiency and asking to and for who was defending Appellee1. Indeed Appellee2's (his tribunal attorney Anthony A. Klish) should be denied anything except what the Appellant's lawsuit asks for as relief and is because of his silence about Appellee1's (deceased) representation in the #22-601 case and now this #161-P23 appeal.

Appellant's NC-COA eFilings to Appellee1 Not Answered

6. That being so it seems Appellee2 (who was Appellee1's tribunal lawyer) and later Duane Jones of hedrickgardner.com added Appellee1's wife's (Mary Flager Allen) name as a party to the NC-COA docket and indicated they were properly serving copies of their court filings to his wife (purportedly as Appellee1's own estate representative). Being so the Appellant also began adding his wife to the NC-COA court filings. But before that in her efforts to the 2018 lawsuit and the December 14, 2021 Order and efforts to Appellee2 (his attorney) about Appellee1's death had also in 2020 and in 2021 tried to call Appellee1's wife whose voice message came on, so the Appellant left her a message to call, but Appellee1's wife did and has not called back. The Appellant also

called Appellee1's wife again after that at least two other times and the phone voice mail did not come on or disconnected as an invalid phone. The Appellant can provide the approx. dates of these 2020-2021 calls to the court if needed—but Appellee2 (and Duane Jones of hedrickgardner.com) is well-aware of the N.C. App. R. 33 and R. 38 deficiency—but ignored it and misrepresented this as a necessary party to the court or to somehow correct it—again they continued doing so 'without a word' to or that it should be corrected or how to correct it. Appellee2 and Appelles3/4 did not correct or so indicated about the December 14, 2021 Order or since that the N.C. App. R. 33 and R. 38 substitution should be provided or do so by Wake County Superior Court local R. 25 or similar rule for it that Appellee1 had passed.

Appellant's Lawsuit's Civil Action and the 'Will'

7. Indeed Appellee1's wife was or should have been knowing of the Appellant's and Appellee1's mother's passing in 2016 and in 2016 of Appellee1 having to do things as the 'personal collector' (N.C.G.S. §28A) of her estate and into 2017 when Appellee2 o/a February 2017 filed #17-SP-1397 (petition for administrator) in Wake County Superior Court and the Appellant's other sibling filing the Caveat1 o/a July 7, 2017 and of Appellee1's attending hearings for it into 2018, but also there was Appellee3's (mortgage lender--SECU) hearing o/a November 5, 2018 for case #18 SP1746 (the foreclosure) where the Appellant paid up the foreclosure of approx. \$15,000.00, and was to the October 26, 2018 #18-CV-013119 lawsuit (WCSC record as *supra* (that this appeal is for) —thus Appellee1 and other Appellees was properly summons in October 2018 and since in the NC-COA eFilings to the Appellee1's wife by regular certified post-office mailings as recent as o/a October 27, 2022 and into 2023 to-date and as of July 5, 2023 (all return with 'refused' or 'return to sender' stamped or written on them). All of these 'returned' service documents are not included in this filing, but can be provided to the court. See

Exhibits 1-4 (Amended NOA Oct 24-2022 (a few pages of it), Filings Mar 27-2023, Filings May 19-2023, Filings May 14-2023). But Appellee2 and Duane Jones of hedrickgardner.com were served by eFiling, and they also included her in the NC-COA as being sent by post office mailings— so if the Appellant’s mail to Appellee1’s wife were ‘returned’ to her and not received so were those Appellee2 and Duane Jones of hedrickgardner.com sent. Indeed is both Appellee2 (tribunal attorney) and Duane Jones’s eluding the R.33/R.38 requirement and their continued misrepresentations to the NC-COA and later to this court who instead requested a motion to dismiss instead of correcting the R.33/R.38 substitution deficiencies for Appellee1 as a necessary party—but unrepresented--both Appellee2 and Duane Jones are well aware of his passing— Appellee1 was properly served about the 2018 lawsuit and by the Appellant’s subsequent mailing to the last address Appellant had for Appellee1 and his wife for the #22-601 and this #161-P23 appeal. Both Appellee2 and Duane Jones (for SECU or purported joint-motion to dismiss he filed) had more access to Appellee1’s wife or his estate for additional service in the NC-COA case as they so suggested Appellee2 was no longer representing him—so ow did Appellee2 end his representation of Appellee1—someone had to ‘relieve’ him. Clearly Appellee1’s wife (and/or own estate) will have to abide by this motion for entry of default against Appellee1.

8. The 2018 lawsuit (Complaint) provided the claims as separate ones against each of the Appellees/Defendants, and separately to the NC and GA properties and to Appellee1’s and Appellee2’s breach of fiduciary duty for estate administration of the ‘Will’—which the probate division has as ‘incomplete’ and for Appellee3’s and Appellee4’s negligence and the other claims in the lawsuit for violation of N.C.G.S. §28A/29 for property of the Appellant’s deceased mother’s N.C. homestead that SECU—the credit union was for the mortgage and to the foreclosure action.

See WCSC record pp. 298-309 for the separate claims against each of the Appellees/Defendants and as *infra* and against Appellee1.

Appellant Claims for Failures to Estate Administration and Property Conveyance

9. This case #161-P23 followed after NC-COA's May 4, 2023 (NC-COA Record Doc.#14) dismissal and June 6, 2023 Orders and motions for *en banc rehearing* and to the motion requesting when the NC-COA would provide the proper R. 32 opinion (Docs.#23-24 respectively) and is now this appeal with this court for them. But as of this motion for entry of default Appellee1 still remains unrepresented, not appearing by his wife or estate and into July 2023 with unanswered post-office service of the filings for this appeal for case #22-601 and #161-P23. Appellee1's tribunal attorney (Appellee2) had ample time to contact, discuss and find and discuss the R. 33 and R. 38 with Appellee1's wife or Appellee1's estate.

10. Indeed it is clear both Appellee2 and Duane Jones of hedrickgardner.com (attorney for SECU the #22-601 case) just ignored it instead (and by *Smith v. Barney* 1980 as officers of the court) and so did Appellee3SECU's tribunal attorney (Cathy Plaut) who without a word or timely to the court and their knowing Appellee1 was not being represented and that on the merits SECU/Appellee3 had not properly conveyed the estate n\homestead and had ample time to do so before the 2018 lawsuit hearings and after before either the #22601 or this #161-P23 appeals were filed—but did not.

11. Being so courts and the N.C. courts favor settlement of cases. This motion for entry of default is filed against Appellee1 (Arthur L. Allen) and to provide:

(1) Granting this as the default of Appellant1 the 2018 lawsuit filed October 26, 2018 is granted and the o/a Wake County Superior Court (WCSC) o/a June 5, 2020 Orders (Judge Futrell), September/August 2020 (Judge Collins), *February 14, 2020 (Judge Gwynn's) and *December 14, 2021 (Judge Ridgeways Orders are remanded, reversed and rescinded

and the Appellant granted the relief sought in the lawsuit Complaint against Appellee1. (* denotes Orders likely for the 22-601 and #161-P23 appeals, but the others might be pertinent and required upon further review.

- (2) The lawsuit's relief was that Appellee1 provide their mother's N.C. estate property equally among the siblings (Arthur L. Steve R., Kathy R, and Jay K. Allen).
- (3) Granting this as the default of Appellant1 the lawsuit's relief was that Appellee1 provide their mother's GA estate property equally among the siblings (Arthur L. Steve R., Kathy R, and Jay K. Allen).
- (4) Granting this as the default of Appellant1 the lawsuit's relief was see WCSC record p. 310 ¶54 that Appellee1 and Appellee2 provide the Appellant at least \$25,000 as compensation for her loss to the foreclosure. Granting this as the default of Appellant1 Appellees1-2 both would be responsible for \$12,500.
- (5) Granting this as the default of Appellant1 the lawsuit's relief was see WCSC record p. 312 ¶55 that Appellee1 and Appellees3-4 provide the Appellant at least \$25,000 as compensation for her loss to the foreclosure and among them negligence, legal malpractice and N.C.G.S. 75-1.1 (and as Unfair and Deceptive Trade Act violations) and § 28A/29 claims. Granting this as the default of Appellant1 both Appellees/Defendants3-4 would be responsible for \$12,500 each. The Appellant is willing to accept a reasonable counter-offer to the \$12,500 from Appellees3-4, and conveyance of the estate N.C. property is the sole concern.
- (6) Granting this as the default of Appellant1 the lawsuit's relief was see WCSC record p. 312 ¶56 that Appellee3 (SECU and mortgage lender) provide the Appellant and her sibling Jay K[evin] Allen who filed the 2017 Caveat1 (and the other siblings) a way to change their name on the deed. Being so this now means the Appellant's name would be put on the deed as ownership of the N.C. homestead for the payments paid in 2019 and until the N.C. homestead can be equally divided among the siblings (Arthur L. Steve R., Kathy R, and Jay K. Allen) as 'equal stripes' and to compensate the Appellant as reimbursement for all of the payments and costs for the N.C. homestead paid in 2018 to 2019—but reserves to also have any 2020-2022 payments and costs separately compensated to the Appellant as ownership of the N.C. homestead deed and property.
- (7) Granting this as the default of Appellant1 the lawsuit's relief was see WCSC record p. 310 ¶60 a Trial by jury and Compensation be provided should this entry of default require it now or later.
- (8) The above being so Appellee1 and/or his estate, and Appellant can/will be provided 60 days to discuss, complete and accommodate dividing the N.C. property as equal stripes among the siblings. If Appellee1 and/or his estate is not represented or agrees within this time the 'equal stripes' distribution will still be effective by the courts default judgment Order as settlement of the estate property.

(9) Being so Appellee1 and/or his estate and Appellant can/will be provided 60 days to discuss, complete and accommodate dividing the GA property as equal stripes among the siblings. If Appellee1 and/or his estate is not represented or agrees within this time the 'equal stripes' distribution will still be effective by the courts default judgment Order as settlement of the estate property.

DENY APPELLEES ANY COSTS AND LAWYER FEES AND PURPORTED SANCTIONS FOR HAVING TO AND TO REPLY TO THIS MOTION OR APPEAL

12. It is clear Appellees misrepresented the status of this case to the Appellant's mother's 'Will' and the Appellant's efforts to get this case on-track, for estate administration and mortgage payments. The Appellees had several opportunities to correct their wrong but continued their conduct and misrepresentations. Appellees also 'without a word' to correct the deficiency of the R.33/R.38 deficiency and requirement for the record they continued their wonton conduct to not allow due process for this appeal. Appellees must be held accountable, and this case and appeal viewed for its merits and be denied any costs for this motion or appeal, because it is their conduct to the foreclosure on the Appellant's mother's N.C. homestead and estate not the Appellant's that cause the filing of the case #18-CV-3119 case in Wake County Superior Court and the #22-601 appeal. This default entry and a default judgment Order against Appellant1 will close the suggested question of the Appellee1's sole entitlement to their mother's N.C. homestead and GA property and that it be settled among the sibling instead by the 'Will' as equal stripes among the siblings.

APPELLANT RESERVES AND DOES NOT WAIVER FILING FOR EQUITABLE RELIEF IN THIS COURT, U.S. DISTRICT COURT, U.S. DISTRICT COURT OF APPEALS OR SIMLIAR IF THIS DEFAULT MOTION IS NOT GRANTED

13. By this motion for entry of default if the default judgment is not granted the Appellant wishes and reserves to file for equitable relief and protection of her rights to her mother's 'Will' and Appellees' interference with the inheritance of it (as in the lawsuit and Complaint) and to her large monetary loss at the hands of the Appellees and to Appellee2's role in it (being so the Appellees' conduct is not excusable), and to Appllees3-4 (SECU and the

APPENDIX D

N/A

Appellant Did not File for a
North Carolina Supreme Court *En banc Rehearing* for Case #161P23