

23-6682
No.

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

FILED

FEB 02 2024

KARYN M. KELLEY,

Petitioner,

V.

KEVIN M. KELLEY,

Intervenor / Respondent,

On Petition For A Writ Of Certiorari To
The United States Court Of Appeals
For The First Circuit

PETITION FOR A WRIT OF CERTIORARI

Attorney William J. Amann
Counsel of Record for Respondent
757 Chestnut Street
Manchester, NH 03104

**Karyn M. Kelley
Pro Se Petitioner
P. O. Box 1706
Merrimack NH 03054
(603) 820-2664**

February 1, 2024

I) QUESTIONS PRESENTED

I-(a) Did the highest state court err when it affirmed the trial courts orders, which Karyn M. Kelley requested a jury trial under her rights to be heard, as a matter of law, which a motion to Intervene and motion for Ex-Parte attachment was granted that deprived Karyn M. Kelley of property in the amount of \$46,000.00 without hearing, trial or the requirement for Due Process under the rights guaranteed by the United States Constitution.

I-(b) Did the highest state court err by failing to rule when the issues on Appeal where properly before the court.

II) RELATED PROCEEDINGS

State of New Hampshire Supreme Court
Mary E. Feeney (Intervenor, Kevin M. Kelley) v. Karyn M. Kelley
Consolidated Case Nos. #2022-0733 and #2023-0037
Decided November 9, 2023

Hillsborough Superior Court North
Mary E. Feeney (Intervenor, Kevin M. Kelley) v. Karyn M. Kelley
Case No. 216-2010-EQ-00193
Decided December 22, 2022

United States Bankruptcy Court District of New Hampshire
Kevin M. Kelley in his capacity as Personal Representative of the Estate of Edna V. Kelley v. Karyn M. Kelley
Case No. Adv. No. 19-1045-BAH
Decided September 4, 2020

Essex County Probate and Family Court
Estate of Edna V. Kelley
Case No. ES17P368EA
Decided October 24, 2019

United States Bankruptcy Court District of New Hampshire
In Re: Karyn M. Kelley
Case No. 19-10567-BAH
Decided August 27, 2019

Merrimack District Court
Edna V. Kelley v. Karyn M. Kelley
Case No. 457-2014-LT-00153
Decided November 18, 2014

III) TABLE OF CONTENTS

I.	Questions Presented	i
II.	Related Proceedings	ii
III.	Table of Contents	iii
IV.	Table of Authorities	v
	Petition for a Writ of Certiorari	1
V.	Opinions Below	1
VI.	Jurisdiction	1
VII.	Constitutional and Statutory Provisions Involved	1
VIII.	Statement of The Case	5
IX.	Reasons For Granting The Writ	17
X.	Conclusion	25
	Appendices	
	Appendix A: State of New Hampshire Supreme Court Denied reconsideration on order dated August 22, 2023 Dated November 9, 2023	A-1
	Appendix B: State of New Hampshire Supreme Court Affirmed trial court orders October 19, 2020, November 22, 2022 And December 22, 2022 Dated August 22, 2023	B-1
	Appendix C: Hillsborough Superior Court Northern District Denied motion to reconsider on order dated November 22, 2022 Dated December 22, 2022	C-1
	Appendix D: Hillsborough Superior Court Northern District Motion to reconsider order dated November 22, 2022 Dated December 01, 2022	D-1
	Appendix E: Hillsborough Superior Court Northern District Denied motion to reconsider on order dated October 19, 2020 Dated November 22, 2022	E-1

Appendix F: Hillsborough Superior Court Northern District Motion to reconsider order dated October 19, 2020 Dated October 29, 2020	F-1
Appendix G: Hillsborough Superior Court Northern District Final order on pending motions and Ex-Parte attachment- Granted Dated: October 19, 2020	G-1
Appendix H: Karyn Kelley's Objection's to motion to Intervene and motion for Ex- Parte attachment with request for Jury Trial Dated October 15, 2020	H-1
Appendix I: Hillsborough Superior Court Northern District Order that Karyn Kelley will have until October 15, 2020 to object to Intervenor's motions Dated October 1, 2020.	I-1
Appendix J: Essex County Probate and Family Court Bond (Estate of Edna V. Kelley) Dated January October 30, 2018	J-1

IV) TABLE OF AUTHORITIES

Bostock v. Clayton County 590 U.S. ____ (2020)21
Dionne v. Bouley 757 F.2d 1344 (1 st Cir. 1985)	16,17,20
Endicott Johnson Corp. v. Encyclopedia Press 266 U.S. 285, 45 S. Ct. 61 (1924)16,17,20
Fuentes v. Shevin 407 U.S. 67 (1970)17
Goldberg v. Kelly 397 U.S. 254 (1970)	17,18,19
In Re Estate of Edna V. Kelley Commonwealth of Massachusetts Essex County Probate #ES17P3683EA	8,9,10,11,12,13,15
In Re Estate of Laura 141 N.H. 628 (1997)	8,12
In re Manter Corporation v. Ballard et al N.H. Bk. No. 98-11772-MWV, Adv. No. 99-1030-MWV September 1999 Opinion	16,17,20
Lamarche v. McCarthy 158 N.H. 197 (2008)11
Mathews v. Eldridge 424 U.S. 319 (1976)	16,18,19,20
Miner v. A&C Tire Co. 146 N.H. 631 (2001)	8,12
Rautenberg v. Munnis 107 N.H. 446 (1966).16
Snyder v. N.H. Savings Bank 134 N.H. 32 (1991)11
State v. LaClair 121 N.H. 74 (1981)20

U. S. Constitution

U. S. Constitution, V Amendment	1,14,15,16,17,18,20,21
U. S. Constitution, XIV Amendment	2,14,15,16,17,18,20,21

Statutes

MA GL c. 190B, section 3-1201	2,8,12,21
MA GL c. 194, Sec. 2	2,22
NH RSA 480:1	3,6,23
NH RSA 480:9	3,6,23
NH RSA 510:1	3,14,15,16,17,20,23
NH RSA 511-A:1	3,14,15,16,17,20,23
NH RSA 511-A:3	4,14,15,23
NH RSA 527:6	4,8,12,24
NH RSA 547-C	4,5,14,24
NH RSA 547-C:1	4,6,11,14,24

Rules

New Hampshire Superior Court Rule 15	4,11,24
New Hampshire Superior Court Rule 47(b)	5,14,15,16,17,20,24

Other

Codicil	9,13
Doctrine of Laches	8,12
Estopel	12
Right to Intervene	4,11,24

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Karyn M. Kelley, respectfully petitions for a writ of certiorari to the United States Court of Appeals for the First Circuit to review the judgment of The Supreme Court for the State of New Hampshire.

V) OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A and B to this petition. The Supreme Court for the State of New Hampshire, published in The New Hampshire Reports, under Consolidated Case Nos. 2022-0733 and 2023-0037 issued on August 22, 2023 an Order that Affirmed, the lower court, New Hampshire Superior Court Northern District Orders, Mary E. Feeney (Intervenor Kevin M. Kelley) v. Karyn M. Kelley #216-2010-EQ-00193 The Supreme Court for the State of New Hampshire, published in The New Hampshire Reports, under Consolidated Case Nos. 2022-0733 and 2023-0037 denied rehearing or reconsideration on November 9, 2023 that affirmed the August 22, 2023 Order.

VI) JURISDICTION

The date on which the highest state court decided this matter was August 22, 2023. A copy of that decision appears at Appendix B. A timely petition for rehearing was thereafter denied on the November 9, 2023, and a copy of the order denying rehearing appears at Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

VII) Constitutional and Statutory Provisions Involved

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

U. S. Const., Amend XIV section 1 provides in relevant part: “No State shall . . . 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[.]”

MA GL c. 190B, Sec. 3-1201 (2017) Collection of personal property by affidavit, If a person domiciled in the commonwealth dies leaving an estate consisting entirely of personal property the total value of which may include a motor vehicle of which the decedent was the owner, and other personal property not exceeding \$25,00000 in value, any interested person or, in the case of a person who at the persons death, was receiving services from the department of mental health, . . . verified by oath, or affirmation containing (a) the name and residential address of the petitioner, (b) the name, residence and date of death of the deceased, (c)the relationship of petitioner to the deceased, (d) a schedule showing every asset of the estate known to the petitioner and the estimate value of each such asset, (e) a statement that the petitioner was undertaken to act as voluntary personal representative of the estate of the deceased and will administer the same according to the law, and apply the proceeds thereof in conformity with this section, . . . Upon payment of the proper fee, the register may issue a certificate of appointment tot such voluntary personal representative, with a copy of the statement annexed thereto.

MA GL c. 194, Sec. 2 (2017) Bond; form; conditions Section 2. A public administrator shall give bond for the faithful administration of each estate . . . First, to make and return to the probate court, within three months from the time of granting to him, . . . a true inventory of all the real and personal property of the deceased . . . Second, to administer according to the law all personal property of the deceased . . . Third, To render on oath a true account of his administration at lease once a year until his trust is

fulfilled . . . Fourth, to pay the balance of such estate remaining in his hands upon the settlement of his accounts . . . Fifth, Upon the appointment and qualification of an executor or administrator as his successor, to surrender into probate court said letters of administration, with an account on oath of his doings therein; and , upon a just settlement of such account, to pay over and deliver to such successor all money remaining in his hands, and all property, effects and credits of the deceased not then administered.

NH RSA 480:1 Homestead Right (2016), providing, in relevant part, that [e]very person is entitled to \$120,000.00 . . . which is owned and occupied as a dwelling by the same person.

NH RSA 480:9 Homestead Right (1998), providing, in relevant part, that a conveyance of real property by deed to one or more trustees of a revocable trust shall not result in the loss of homestead rights of any person executing the deed.

NH RSA 510:1 Time; Where returnable (2014) All original writs and writs of mesne process shall be served by the service date specified by the court on the summons, and shall be returnable to the superior court for Rockingham County at Brentwood; Strafford County at Dover; Belknap County at Laconia; Carroll County at Ossipee; Merrimack County at Concord; Hillsborough County at either Manchester or Nashua, as is appropriate; Cheshire County at Keene; Sullivan County at Newport; Grafton County at North Haverhill in the town of Haverhill; and Coos County at Lancaster.

NH RSA 511-A:1 - Pre-Judgment Attachments; Limitation (2014) In civil actions in which pre-judgment attachment is authorized, except as otherwise provided in replevin actions, a defendant shall be given notice and an opportunity for a preliminary hearing before any pre-judgment attachment, including attachments of property held by a trustee,

shall be made. This chapter shall apply only to pre-judgment attachments, except as provided in RSA 676:17.

NH RSA 511-A-3 Hearing by Court (1977) When a defendant objects to the making of attachments, the court shall set a hearing on such objection within 14 days of the receipt of such objection. Upon hearing, the burden shall be upon the plaintiff to show that there is a reasonable likelihood that the plaintiff will recover judgment including interest and costs on any amount equal to or greater than the amount of the attachment. . . . The court may appoint such masters, referees or magistrates as may be necessary to conduct such hearings.

NH RSA 527:6 Limitation of Issue (2001) Executions may be issued at any time within two years after judgment rendered, or after the return day of the former execution, provided, however, that when real or personal property is attached executions against such real or personal property may be issued at any time within six years after judgment rendered.

NH RSA 547-C Partition of Real Estate (2001).

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

New Hampshire Superior Court Rule 15 Intervention. Any person shown to be interested may become a party to any civil action upon filing and service of an Appearance and pleading briefly setting forth his or her relation to the cause; or, upon motion of any party, such person may be made a party by order of court notifying him or her to appear therein. If a party, so notified, neglects to file an Answer or other

responsive pleading on or before the date established by the court, that party shall be defaulted. No such default shall be set aside, except by agreement or by order of the court upon such terms as justice may require.

New Hampshire Superior Court Rule 47(b) Attachments without Notice (Ex-Parte).

The following procedure is to be used where the plaintiff requests permission to attach using the method that does not require notice to the defendant prior to the attachment: 1) The motion for attachment shall be executed under oath, and accompanied with the Notice to defendant and order form; 2) The motion, and copies, are to be filed in court, and an entry fee paid; 3) if the motion is denied . . . ; 4) If the motion is granted, the plaintiff or his or her representative is authorized to prepare a Writ of Attachment in accordance with the Order granting the request. 5) A certified copy of the Motion, the Notice to the defendant, and the court's order thereon shall be fastened to the face of the Writ of Attachment. 6) The Writ of Attachment, Complaint and Summons, together with copies, shall be delivered to the sheriff with directions to serve them within the time directed by the court's order. In those cases where permission is granted to make real estate attachment, . . . The Returns of Service are to be filed immediately after service has been completed.

VIII) STATEMENT OF THE CASE

Mary E. Feeney, almost 14 years ago, in New Hampshire Superior Court Northern District (hereafter trial court) on June 28, 2010 filed a complaint against Karyn M. Kelley (hereafter Karyn) under a Petition to Partition to partition real and personal property under NH RSA 547-C. The only parties in the case were Mary Feeney and Karyn Kelley.

See NH RSA 547-C:1. The case was tried to conclusion with a (2) day trial in July 2020 with the Final Partition Order Noticed August 31, 2020.

1 *LC*: Refers to documents filed in the case summary for Hillsborough Superior Court Northern District #216-2010-EQ-00193

Brief: Refers to Appellant's Brief filed with the State of New Hampshire Supreme Court

Edna Kelley (hereafter Edna) and Karyn were Mother and Daughter, which Karyn was the primary care taker for Edna from 1999 to 2014. Edna lived with Karyn from October of 1999 in Manchester, New Hampshire, Micco, Florida and Merrimack, New Hampshire through February 2014. Karyn informed Edna that Mary E. Feeney filed a Partition action against Karyn to take her homestead, which Edna and Karyn resided at 62 Indian Rock Road, Merrimack, New Hampshire. Karyn had an automatic homestead exemption of 120,000.00 under NH RSA 480:1 and NH RSA 480:9. Edna had multiple health issues: heart, Parkinson, cancer, bi-monthly phlebotomies and Dementia, which Karyn altered 16-years of her life to solely care for her Mother.

Karyn resided in her second home in Florida with Edna for the winter. Kevin M. Kelley (hereafter Intervenor), Karyn's brother, decided to write Karyn a "Dear John" letter in December 2012 because Karyn refused to reside and pay rent to Intervenor's to reside in his home with Edna for the winter in Florida. Karyn has described Intervenor actions or personality of a narcissistic man. Intervenor and Karyn had no direct contact after Intervenor wrote his "Dear John" letter in December 2012.

On July 31, 2014, Karyn returned from Florida to her home in Merrimack, New Hampshire for the summer, which Intervenor had removed most of Edna's personal property and had her living in a chair with no access to her bed or shower, which Karyn

called the Merrimack Police to report deplorable conditions. Subsequently, Karyn called Intervenor to return the missing personal property. Intervenor and his brother Ronald A. Kelley came up from Massachusetts and removed Edna from Karyn's home in Merrimack, New Hampshire, where Edna resided. The Merrimack police in their report did note what Edna said, "Karyn, I have no idea what is going on" as Edna was being removed By Intervenor and his brother. See Merrimack Police Report of July 31, 2014.

On August 1, 2014, Intervenor, as power of attorney over Edna, filed a landlord/tenant complaint titled Edna V. Kelley v. Karyn M. Kelley, in Merrimack District Court No. 457-2014-LT-00153. This was in retaliation to Karyn's refusal to rent Intervenor's home in Florida and Intervenor being caught removing and selling Edna's tangible and personal property.

On November 13, 2014, at hearing, the Hon. Paul S. Moore, Presiding Justice refused to have Edna testify, which Intervenor testified that misrepresented or impeached himself on the facts. Edna had dementia which Intervenor took advantage of Edna's condition, made himself Power of Attorney over Edna, obtained or sold all her assets to benefit himself. Further, Intervenor stole from Karyn's home about \$45,000.00 of personal property that belonged to Karyn, which is on record at the Merrimack Police Department and Karyn's homeowner's insurance company. See Merrimack Police Reports July 31, 2014 through June 20, 2016.

On November 17, 2014, Hon. Paul S. Moore issued judgment to Edna for \$33,000.00.

In October 2017, the Hon. Paul S. Moore was removed from the Bench in open court subsequently; the disgraced former Judge Paul S. Moore entered a felony guilty plea to fraud in May 2018. In July 2018, disgraced former Judge Paul S. Moore was disbarred,

barred from practicing law, by (5) Justices in the New Hampshire Supreme Court. See State of New Hampshire Judicial Conduct Committee #JC-17-042-C and New Hampshire Supreme Court Order.

Edna had no intention of collection of said debt or Edna would have filed a motion for periodic payments, motion for non-compliance or filed to execute an attachment on Karyn's real property. Pursuant to NH RSA 527:6, “[e]xecutions may be issued at any time within two years after judgment rendered.” The judgment in question was issued on November 18, 2014. Thus, Edna was time-barred on or about November 18, 2016 from seeking execution. Edna's date of death was on December 5, 2017 over (3) years after said debt that Edna failed to collect or execution her judgment under NH RSA 527:6. Edna let her judgment lapse, which she could no longer legally collect by execution, therefore the Estate of Edna is time-barred from seeking execution. Edna sat on her hands, which she was barred by the Doctrine of Laches. “Laches is an equitable doctrine that bars litigation when a potential plaintiff has slept on his rights. In re Estate of Laura, 141 N.H. 628,635 (1977). “Laches . . . is not a mere matter of time, but is principally a question of the inequity founded in some change in the conditions or relations of the property or the parties involved.” Id. (quotation omitted). “In determining whether the doctrine should apply to bar a suit, the court should consider the knowledge of the plaintiffs, the conduct of the defendants, the interest to be vindicated, and the resulting prejudice.” Miner v. A&C Tire Co., 146 N.H. 631, 633 (2001) (quotation omitted).

On December 5, 2017 Edna passed away. On January 8, 2018, Intervenor filed a Voluntary Administration Statement pursuant to MA GL c. 190B section 3-1201 in Massachusetts Essex County Probate and Family Court. Edna, for over 85 years never

had a Will, which Intervenor had his attorneys create a Will on September 30, 2014 with a Codicil on December 3, 2014, which Intervenor attached to the Voluntary Administration Statement. Intervenor signed under the pains and penalties of perjury that “The Estate of Edna” had a total asset value of \$860.00, which was every asset of the probate estate. The Estate of Edna was docketed as ES17P3683EA, opened and closed with a total asset of \$860.00. Intervenor failed to list said judgment for \$33,000.00 in the Voluntary Administration Statement. See Appendix H-8 through H-10. Intervenor under his Bond failed to pursue said judgment with the Commonwealth of Massachusetts, Essex County Probate and Family Court. “By executing this bond, a Personal Representative or Trustee submits personally to the jurisdiction of any court of the Commonwealth in any proceeding pertaining to the estate that may be instituted by any interested person.” See Appendix J-1 through J-2, Essex Probate Estate of Edna case summary ES17P3683EA.

Intervenor failed to have proceedings in the Commonwealth of Massachusetts Essex County Probate Court under the Estate of Edna V. Kelley # ES17P3683EA to attempt to have the probate court award the Estate \$33,000.00 as a judgment creditor. Moreover the Estate of Edna V. Kelley opened and closed with a total asset of \$860.00. Essex Probate records do not support a judgment or asset in the amount of \$33,000.00, therefore Intervenor is not a judgment creditor for \$33,000.00 or had a right to pursue or execute a stale judgment from November 2014 on behalf of the Estate. See Appendix H-8 through H-10, J1 through J2, Essex County Probate Court case summary #ES17P3683EA.

On April 29, 2019, Karyn file chapter 7 bankruptcy protection, docket #19-10567-BAH, she listed all creditors in her schedules. Karyn listed the 5-year old unsecured non-

priority stale debt to Edna from 2014 for \$33,000.00. Intervenor on July 30, 2019 filed adversary proceedings without legal authority or standing, docket #19-1045-BAH. Intervenor was granted Personal Representative of the Estate with letters of authority on October 24, 2019 and the Bond issued on October 17, 2019 almost 3-months after Intervenor claimed to be authorized to represent the Estate, subsequently the \$33,000.00 was exempt from discharge. See Appendix J-1 through J-2, Massachusetts Essex County Probate case summary #ES17P3683EA.

On September 30, 2020, Intervenor filed a motion to Intervene and motion for Ex-Parte Attachment on a stale judgment from Edna Noticed November 18, 2014 or almost (6) years later that Edna sat on her hands for over 3-years which she had no intention of collecting said debt. Intervenor filed in the State of New Hampshire, Hillsborough County Superior Court North under docket 216-2010-EQ-00193, a 10-year old concluded Partition case between Mary E. Feeney v. Karyn M. Kelley, which Intervenor claimed to be a judgment creditor representing The Estate of Edna V. Kelley and had a right to Intervene and Ex-Parte attachment property or funds that belonged to Karyn in the amount of \$46,107.72.

On October 1, 2020, the trial court sent an order that Intervenor filed a motion to intervene to a concluded Partition case between Mary E. Feeney and Karyn M. Kelley and a motion for ex-parte attachment of Karyn's property for \$46,000.00, which Karyn may object by October 15, 2020. See Appendix I-1. Karyn timely objected to Intervenor's motion to intervene and ex-parte attachment. See Appendix H-1 through H-16. Karyn within the objection stated that Intervenor's motions were untimely and not in accordance with New Hampshire rules, practices or procedures. This case was filed as a

Partition Petition in 2010 relative to personal property and the real property, 62 Indian Rock Road, Merrimack, NH, which was Karyn's homestead. The parties under NH RSA 547-C:1 were Plaintiff, Mary E. Feeney and Defendant, Karyn M. Kelley. The trial concluded, such that there is no open trial court case in which to intervene. Moreover, Defendant by October 26, 2020 would timely file Rule 7 Mandatory Appeal with the State of New Hampshire Supreme Court.

“Any person shown to be interested may become a party to any civil action. . . “ N.H. super. Ct. Civil Rule 15. “It is within the trial court’s discretion to grant intervenor status.” Lamarche v. McCarthy 158 N.H. 197,200 (2008). The Movant must demonstrate:

1. A right involved in this case
2. A direct and apparent interest
3. That his interest would suffer if denied intervention.

Snyder v. N.H. Savings Bank 134 N.H.32,35 (1991). Movant can not satisfy each of these criteria.

1. Movant has no right involved in this case. The parties involved in the 6-year old judgment from Merrimack District Court on November 18, 2014 were Edna V. Kelley and Karyn M. Kelley. The Estate had no rights relative to the real estate subject to this partition action that was tried to conclusion. The Estate attempted to enforce a judgment that had nothing to do with property dispute between the Parties, Mary E. Feeney and Karyn M. Kelley, which is the subject of this action. Put another way, the Estate is attempting to assert an independent cause of actions in a concluded case, which would morph the present actions into something entirely distinct from its current posture. Moreover, the Estate has no right involved in this case where the attempted intervention

and attachment is procedurally improper and time-barred. The Estates requested intervention and attachment of funds is essentially an attempt to execute a judgment. Such as execution is time-barred. Pursuant to NH RSA 527:6, “[e]xecutions may be issued at any time within two years after judgment rendered.” The judgment in question was Noticed on November 18, 2014. Thus, the Estate is time-barred from seeking execution. The Estate has no right to pursue because it waived and/or is estopped from pursuing the claimed judgment. The judgment was issued on November 18, 2014. On January 8, 2018 Intervenor signed under the penalties of perjury a Voluntary Administration State pursuant to MA GL 190B, section 3-1201 in Essex County Probate, docket #17P3683EA that listed Edna’s total assets in the amount of \$860.00. Intervenor failed to list the judgment of \$33,000.00 as an asset with the Essex Probate Court in Massachusetts. Even if the Estate was deemed to have otherwise had a right involved in this case, any such right has been extinguished by the doctrine of laches, where Edna sat on her hands. “Laches is an equitable doctrine that bars litigation when a potential plaintiff has slept on his rights.” In re Estate of Laura 141 N.H. 628, 635 (1997). “Laches . . . is not a mere matter of time, but is principally a question of the inequity of permitting the claim to be enforced – an inequity founded in some change in the conditions or relations of the property or the parties involved.” Id. (quotation omitted). “In determining whether the doctrine should apply to bar a suit the court should consider the knowledge of the plaintiffs, the conduct of the defendants, the interest to be vindicated, and the resulting prejudice.” Miner v. A&C Tire Co., 146 N.H. 631,633 (2001)(quotation omitted). The Estate’s attempted intervention is unreasonably delayed and would result in unfair prejudice to Karyn, who had no reasonable basis to expect that the Estate would

pursue the judgment, where Intervenor failed to list the judgment as an asset of the Estate in probate proceedings and failed previously intervene in this years-old litigation. Additionally, Edna and thereafter the Estate failed to file a motion for periodic payments or motion for non-compliance, pursue and post-judgment attachment or lien, pursue execution of the judgment, or otherwise attempt collection or execution of the judgment until nearly 6-years afterward. The Codicil to Edna's Will filed in Essex Probate Court was executed 2-weeks after the judgment in question was issued, specifically referenced efforts to collect personal property (not listed as an asset in the Estate) purported to belong to the Estate but makes no reference to the \$33,000.00 judgment. See Appendix H-16.

2. Movant has no direct and apparent interest As set forth above, Edna had no direct or apparent interest in this Partition Case initiated in 2010 or she could have filed to intervene in 2014 or attach the partitioned property under her rights at the time.

3. Movant's interest would no suffer if denied intervention. As set forth above, the Estate has no interest properly before the court. To the extent it otherwise would have had an interest, it has already suffered from its own inaction. Karyn in her objection requested a jury trial, under her rights should the trial court grant the motion to intervene and ex parte attachment. Karyn in her objection to the extent that the Estate is permitted to intervene, its claim is subject to a counterclaim for various tortious and wrongful conduct and would require extensive litigation. For the reasons stated above as to why intervention is improper, the Estate cannot demonstrate a reasonable likelihood of recovery to support the requested attachment. Thus, the motion for Ex-parte attachment should also be denied. See Appendix H-1 through H-16.

On October 19, 2020 the trial court granted the motion to intervene and the ex-parte attachment in the amount of \$46,000.00 which by Order and Law, Intervenor must serve Karyn within 30 days or no later than November 11, 2020. See Appendix G-1 through G-7, NH RSA 510:1, NH RSA 511-A:1, NH RSA 511-A:3, NH Superior court Rule 47(b).

On October 26, 2020, Karyn filed an Appeal with the New Hampshire Supreme Court on the concluded or final Partition order of August 31, 2020 between Mary E. Feeney v. Karyn M. Kelley that was filed in June 2010. See 547-C, NH RSA 547-C:1.

On October 26, 2022 over (2) years later Intervenor without Notice or Service upon Karyn, filed a motion for judgment and to disburse funds, which the trial court granted. The trial court failed to adhere to its own Order, Law or Due Process. See Appendix E-1 through E-4, Amendment V, Amendment XIV, NH RSA 510:1, NH RSA 511-A:1, trial court case summary LC September 30, 2020 through December 22, 2022. The trial court ordered Intervenor complete service on Karyn within 30 days. See Appendix G-7.

Intervenor failed to complete service on Karyn, which the trial court case summary records under docket 216-2010-EQ-00193 supports no Return of Service was filed or even issued. See trial court case summary LC September 30, 2020 through December 22, 2022.

On November 22, 2022, the trial court granted Intervenor \$37,436.40 of Karyn's property from the Ex-Parte Attachment without Due Process, which Karyn was never served or had an opportunity to be heard which deprived Karyn of substantial property. The order had an appearance of impartiality or bias when the court stated, "**The Court will not repeat the long and tortured procedural history of this case . . .**", (bold added) which this matter failed to have a procedural history. See Appendix E-2.

On November 22, 2022, the trial court stated, “**Karyn’s objection has little merit (except as to several items of personal property that are discussed below). She argues that the attachment order was never served upon her. Even if that were true, it would not matter at this point**”. (bold added) See Appendix E-3 paragraph 2, Appendix C-1, D-1 through D-11, E-1 through E-4, F-1 through F-4, G-1 through G-7, Amendment V, Amendment XIV, NH RSA 510:1, NH RSA 511-A:1, NH RSA 511-A:3, NH Superior Court Rules 47(b).

On December 1, 2022 Karyn objected to disbursement of her funds, which the trial court violated Karyn’s right to Due Process under the 1st, 4th, 5th and 14th Amendments. Moreover, Karyn was never served as a matter of law, which she has an absolute right to be heard and a right to a jury trial, which she previously requested in the initial objection on October 15, 2020, over 2-years prior that deprived Karyn a substantial loss of property or funds in the amount of \$46,000.00.

Karyn timely appealed the decision pertaining to the Intervenor under case nos. 2022-0733 and 2023-0037 to preserve her rights to Appeal. Both Appeals were accepted and consolidated for the highest state court’s opinion. Karyn argued a well plead brief filed on April 5, 2023 and reply brief filed on May 24, 2023. See Briefs.

Karyn in summary of her Appeal argued, the court incorrectly ruled on Intervenor’s motion to intervene, motion for ex-parte attachment that Intervenor had no interest in the underlying dispute between the parties Mary Feeney and Karyn Kelley since the conception of the case in June 2010, moreover the Estate of Edna was not a judgment creditor as Intervenor claimed. See Appendix H-9-H-10, J-1-J-2, Brief App. 31-33, 35-50,56-57. The court incorrectly granted disbursement of funds without considering

Karyn's motion to reconsider for over 2-years then claimed "moot" moreover, the Ex Parte attachment was not served therefore, VOID. Karyn's right to due process was violated that prejudiced her with a financial loss for \$37,436.40, which as a matter of law the un-served Ex-Parte attachment was VOID. See Brief App. 58-65, 62-68, Amendment V, Amendment XIV, RSA 510:1, RSA 511-A:1, New Hampshire Superior Court Rule 47(b), Dionne v. Bouley, 757 F.2d 1344 (1st Cir. 1985), Endicott Johnson Corp. v. Encyclopedia Press, 266 U.S. 285, 45 S. Ct. 61 (1924), In re Manter Corporation v. Ballard et al, N.H. Bk. No. 98-11772-MWV, Adv. No. 99-1030-MWV September 1999 Opinion, Mathews v. Eldridge, 424 U.S. 311, 96 S. Ct. 893 (1976).

On August 22, 2023, the highest state court erred when it stated that some issues were not properly before the court considering there was a Partition Appeal and the trial court lacked jurisdiction to act. Intervenor without having an interest in the Partition case interjected an entirely different subject matter of an Ex-Parte Attachment of Karyn's funds in the amount of \$46,000.00 into the conclude case between Mary E. Feeney v. Karyn M. Kelley, which the trial court had jurisdiction to act in matters not related to the subject matter of the Appeal, which was Partition. See Appendix B-1 through B-3.

" An Appeal to this Court from a nisi prius court does not necessarily stay all further proceedings in the trial court, nor does it strip said court of all power over the proceedings in which the appeal has been taken. The trial court may act with reference to matters not relating to the subject matter of, or affecting, the proceedings. See Rautenberg v. Munnis, 107 N.H. 446 (1966). In this case, Intervenor interjected an entirely new proceedings in a concluded case on Appeal for Partition, which was not the subject

matter that was on Appeal at the time of Intervenor's improper or untimely motion to intervene and motion for ex-parte attachment of Karyn's property for \$46,000.00.

IX) REASONS FOR GRANTING THE WRIT

This case presents issues of importance to individuals who face potential violations of Constitutional Rights, Due Process if the Government deprives an individual of property, due process requires notice and an opportunity to be heard, the V and XIV Amendments state that no one shall be "deprived of life, liberty or property without the due process of law."

The questions to be reviewed under Writ of Certiorari are important questions that were determined adversely by the Supreme Court of the State of New Hampshire. The decision conflicts with the U.S. Const. V and XIV Amendments, Endicott Johnson Corp. v. Encyclopedia Press, 266 U.S. 285, 45 S. Ct. 61 (1924), Fuentes v. Shevin, 407 U.S. 67 (1972) and Goldberg v. Kelly, 397 U.S. 524 (1970).

The ruling directly conflicted with V and XIV Amendment, due process. Due process is a requirement that legal matters be resolved according to established rules and principles, and that individuals be treated fairly. Due process requires notice and an opportunity to be heard. In this case, Karyn was deprived \$46,000.00 of property or funds by ex-parte attachment without notice, service, hearing or trial that as a matter of law said attachment should be VOID. See Brief App. 58-65, 62-68, Amendment V, Amendment XIV, RSA 510:1, RSA 511-A:1, New Hampshire Superior Court Rule 47(b), Dionne v. Bouley, 757 F.2d 1344 (1st Cir. 1985), Endicott Johnson Corp. v. Encyclopedia Press, 266 U.S. 285, 45 S. Ct. 61 (1924), In re Manter Corporation v. Ballard et al, N.H. Bk. No.

98-11772-MWV, Adv. No. 99-1030-MWV September 1999 Opinion, Mathews v. Eldridge, 424 U.S. 311, 96 S. Ct. 893 (1976).

The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be “deprived of life, liberty or property without due process of law.” The Fourteenth Amendment, ratified in 1868, used the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law (“legality”) and provide fair procedures.

The promise of legality and fair procedure. Historically, the clause reflects the Magna Carta of Great Britain, King John’s thirteenth century promise to his noblemen that he would act only in accordance with the law (legality) and that all would receive the ordinary processes (procedure) of law. The clause also promise that before depriving a citizen of life, liberty or property, government must follow fair procedures. Action denying the process that is “due” would be unconstitutional. Suppose, for example, state law gives students a right to public education, but doesn’t say anything about discipline. Before the state could take that right away from a student, by expelling her for misbehavior, it would have to provide fair procedures, i.e. “due process.”

The decision in Goldberg v Kelly, a case arising out of a state administrated welfare program. The Court found that before the state terminates a welfare recipients benefits, the state must provide a full hearing before a hearing officer, finding that Due Process Clause requires such a hearing.

Just as cases have interpreted when to apply due process, others have determined the sorts of procedures, which are constitutionally due. The Goldberg Court answered the

question by holding the state must provide a hearing before an impartial judicial officer, the right to an attorney's help, the right to present evidence and arguments orally, the chance to examine all materials that would be relied on or to confront the cross-examine adverse witnesses, or a decision limited to the record thus made and explained in an opinion.

A successor case to Goldberg, Mathews v Eldridge, tried instead to define a method by which due process questions could be successfully presented by lawyers and answered by courts.

While there is no definitive list of "required procedures" that due process requires, Judge Henry Friendly generated a list that remains highly influential, as to both content and relative priority:

1. An unbiased tribunal
2. Notice of the proposed action and the grounds asserted for it
3. Opportunity to present reasons why the proposed action should not be taken
4. The right to present evidence, including the right to call witnesses
5. The right to know opposing evidence
6. The right to cross-examine adverse witnesses
7. A decision based exclusively on the evidence presented
8. Opportunity to be represented by counsel
9. Requirement that the tribunal prepare a recode of the evidence presented
10. Requirement that the tribunal prepare written findings of fact and reason for its decision

In this case, the trial court failed, as a matter of Law, to have Intervenor Serve Karyn, which denied her process that was “due”; right to be heard, right to present evidence, right to present witness, right to cross-examine adverse witnesses, right to hearing, right to jury trial. See Brief App. 58-65, 62-68, Amendment V, Amendment XIV,RSA 510:1, RSA 511-A:1, New Hampshire Superior Court Rule 47(b), Dionne v. Bouley, 757 F.2d 1344 (1st Cir. 1985), Endicott Johnson Corp. v. Encyclopedia Press, 266 U.S. 285, 45 S. Ct. 61 (1924), In re Manter Corporation v. Ballard et al, N.H. Bk. No. 98-11772-MWV, Adv. No. 99-1030-MWV September 1999 Opinion, Mathews v. Eldridge, 424 U.S. 311, 96 S. Ct. 893 (1976).

The V and XIV Amendments of the United States Constitution guarantees, that an individual will not be deprived “of life, liberty, or property without the due process of law.” Karyn was denied the process that was due. Karyn was deprived of her property for \$46,000.00 without Notice, Service or an Opportunity to be Heard, which the outcome would have been different with a hearing or jury trial under Karyn’s rights and Due Process.

The main reason to grant certiorari is Karyn’s process that was “due” was violated whereby Karyn was deprived her property for \$46,000.00 by Ex-Parte Attachment, which Intervenor failed to Serve Karyn, as a matter of Law, that denied Karyn and opportunity to be heard, invoke her right to a jury trial, submit evidence, cross-examine a witness, which the results would have changed had Karyn’s rights not been violated. The constitutional provision encompasses the fundamental right to cross-examine witnesses to impeach their credibility. State v. LaClair, 121 NH 74 (1981).

In a landmark case the United States Supreme Court stated that the Supreme Court “. . . normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, the words on the page constitute the law adopted by Congress and approved by the President. If Judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the peoples representatives.” Bostock v. Clayton County, 590 U.S. ____ (2020)

Although the Supreme Court in Bostock analyzed the application of Title VII of the Civil Rights Act, the statutory construction used: “...From the ordinary public meaning of the statute’s language at the time of the law’s adoption, a straightforward rule emerges: An employer violates Title VII when it intentionally fires an individual employee based in part on sex” applies to this case. Id

In this case using the formulation and statutory construction that “from the ordinary public meaning of the statute’s language at the time of the law’s adoption, a straightforward rule emerges: the language in;

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

U. S. Const., Amend XIV section 1 provides in relevant part: “No State shall . . . 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[.]”

MA GL c. 190B, Sec. 3-1201 (2017) Collection of personal property by affidavit, If a person domiciled in the commonwealth dies leaving an estate consisting entirely of personal property the total value of which may include a motor vehicle of which the

decedent was the owner, and other personal property not exceeding \$25,00000 in value, any interested person or, in the case of a person who at the persons death, was receiving services from the department of mental health, . . . verified by oath, or affirmation containing (a) the name and residential address of the petitioner, (b) the name, residence and date of death of the deceased, (c)the relationship of petitioner to the deceased, (d) a schedule showing every asset of the estate known to the petitioner and the estimate value of each such asset, (e) a statement that the petitioner was undertaken to act as voluntary personal representative of the estate of the deceased and will administer the same according to the law, and apply the proceeds thereof in conformity with this section, . . . Upon payment of the proper fee, the register may issue a certificate of appointment tot such voluntary personal representative, with a copy of the statement annexed thereto.

MA GL c. 194, Sec. 2 (2017) Bond; form; conditions Section 2. A public administrator shall give bond for the faithful administration of each estate . . . First, to make and return to the probate court, within three months from the time of granting to him, . . . a true inventory of all the real and personal property of the deceased . . . Second, to administer according to the law all personal property of the deceased . . . Third, To render on oath a true account of his administration at lease once a year until his trust is fulfilled . . . Fourth, to pay the balance of such estate remaining in his hands upon the settlement of his accounts . . . Fifth, Upon the appointment and qualification of an executor or administrator as his successor, to surrender into probate court said letters of administration, with an account on oath of his doings therein; and , upon a just settlement of such account, to pay over and deliver to such successor all money remaining in his hands, and all property, effects and credits of the deceased not then administered.

NH RSA 480:1 Homestead Right (2016), providing, in relevant part, that [e]very person is entitled to \$120,000.00 . . . which is owned and occupied as a dwelling by the same person.

NH RSA 480:9 Homestead Right (1998), providing, in relevant part, that a conveyance of real property by deed to one or more trustees of a revocable trust shall not result in the loss of homestead rights of any person executing the deed.

NH RSA 510:1 Time; Where returnable (2014) All original writs and writs of mesne process shall be served by the service date specified by the court on the summons, and shall be returnable to the superior court for Rockingham County at Brentwood; Strafford County at Dover; Belknap County at Laconia; Carroll County at Ossipee; Merrimack County at Concord; Hillsborough County at either Manchester or Nashua, as is appropriate; Cheshire County at Keene; Sullivan County at Newport; Grafton County at North Haverhill in the town of Haverhill; and Coos County at Lancaster.

NH RSA 511-A:1 - Pre-Judgment Attachments; Limitation (2014) In civil actions in which pre-judgment attachment is authorized, except as otherwise provided in replevin actions, a defendant shall be given notice and an opportunity for a preliminary hearing before any pre-judgment attachment, including attachments of property held by a trustee, shall be made. This chapter shall apply only to pre-judgment attachments, except as provided in RSA 676:17.

NH RSA 511-A-3 Hearing by Court (1977) When a defendant objects to the making of attachments, the court shall set a hearing on such objection within 14 days of the receipt of such objection. Upon hearing, the burden shall be upon the plaintiff to show that there is a reasonable likelihood that the plaintiff will recover judgment including

interest and costs on any amount equal to or greater than the amount of the attachment. . .

. The court may appoint such masters, referees or magistrates as may be necessary to conduct such hearings.

NH RSA 527:6 Limitation of Issue (2001) Executions may be issued at any time within two years after judgment rendered, or after the return day of the former execution, provided, however, that when real or personal property is attached executions against such real or personal property may be issued at any time within six years after judgment rendered.

NH RSA 547-C Partition of Real Estate (2001).

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

New Hampshire Superior Court Rule 15 Intervention. Any person shown to be interested may become a party to any civil action upon filing and service of an Appearance and pleading briefly setting forth his or her relation to the cause; or, upon motion of any party, such person may be made a party by order of court notifying him or her to appear therein. If a party, so notified, neglects to file an Answer or other responsive pleading on or before the date established by the court, that party shall be defaulted. No such default shall be set aside, except by agreement or by order of the court upon such terms as justice may require.

New Hampshire Superior Court Rule 47(b) Attachments without Notice (Ex-Parte).

The following procedure is to be used where the plaintiff requests permission to attach using the method that does not require notice to the defendant prior to the attachment: 1)

The motion for attachment shall be executed under oath, and accompanied with the Notice to defendant and order form; 2) The motion, and copies, are to be filed in court, and an entry fee paid; 3) if the motion is denied . . . ; 4) If the motion is granted, the plaintiff or his or her representative is authorized to prepare a Writ of Attachment in accordance with the Order granting the request. 5) A certified copy of the Motion, the Notice to the defendant, and the court's order thereon shall be fastened to the face of the Writ of Attachment. 6) The Writ of Attachment, Complaint and Summons, together with copies, shall be delivered to the sheriff with directions to serve them within the time directed by the court's order. In those cases where permission is granted to make real estate attachment, . . . The Returns of Service are to be filed immediately after service has been completed.

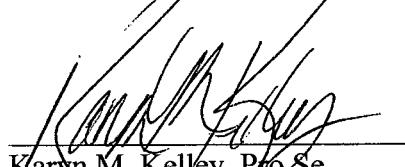
Due Process and fairness dictates that an individual should not have to guess as to whether a court is going to give an alternative meaning to unequivocal language and directives of statutes and orders of the court.

X) CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that this Court grant her petition for writ of certiorari.

February 1, 2024

Respectfully Submitted by Petitioner,
Karyn M. Kelley, Pro Se



Karyn M. Kelley, Pro Se
P.O. Box 1706
Merrimack, NH 03054
(603) 820-2664