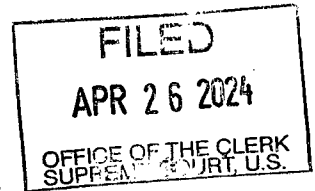


23-7346
No. _____

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

Oksana Marinaro

Petitioner

VS.

Zimmer & Lewis, Attorneys & Counselor at Law

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
COURT OF APPEALS OF VIRGINIA

PETITION FOR WRIT OF CERTIORARI

Oksana Marinaro

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QUESTIONS PRESENTED

1). The XIV Amendment of the United States Constitution guarantees the due process of law. Can a retired judge preside over the case without an appointment required by a state statute?

LIST OF PARTIES

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

RELATED CASES

Zimmer & Lewis, Attorneys & Counselor at Law v. Oksana Marinaro, No. CL22-6421-00, Circuit Court for the City of Virginia Beach, Judgement entered October 28, 2022.

Oksana Marinaro v. Zimmer & Lewis, Attorneys & Counselor at Law, No. 1803-22-1, Court of Appeals of Virginia. Judgement entered June 6, 2023. Order Denying petition for rehearing entered July 5, 2023.

Oksana Marinaro v. Zimmer & Lewis, Attorneys & Counselor at Law, No. 230551, Order refusing the petition for appeal entered October 31, 2023, and order denying the petition for rehearing entered January 31, 2024.

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OPINIONS BELOW

The opinion of the Court of Appeals of Virginia appears at Appendix A, page 2 – 6A to the petition and is unpublished. Its order denying the petition for rehearing appears at Appendix A, page 7A.

The refusal of the Supreme Court of Virginia to review the merits appears at Appendix C, page 12A; and denying a petition for rehearing appears at Appendix C, page 13A. All are unpublished.

JURISDICTION

The date on which the Supreme Court of Virginia decided my case was October 31 of 2023. A copy of that decision appears at Appendix C, page 12A.

A timely petition for rehearing was thereafter denied on January 31, 2024, and a copy of the order denying rehearing appears at Appendix C, page 13A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The XIV Amendment of the United States Constitution, Section 1 (App. D, 26A)

Article 6 of the United States Constitution (App. D, 26A)

Virginia Code §17.1-105 (App. D, 26-27A)

STATEMENT OF THE CASE

This Petition will refer to Petitioner as “Marinaro”, to Respondent as “Lewis”, to Virginia Beach Circuit Court as “Trial Court”. Reference to the Appendix page numbers as (App.).

At a hearing held November 18, 2021, the Virginia Beach General District Court granted Lewis’ warrant in debt, rendering a duplicative order against Marinaro in the amount of \$3,729 that was already awarded to Lewis by Virginia Beach Circuit Court, plus interest. Several months later, on August 5, 2022, Marinaro filed a “notice and motion to set aside judgement and dismiss with prejudice” the warrant in debt asserting that the General District Court did not have jurisdiction to entertain the matter. The General District Court “heard and denied” Marinaro’s motion stating that it was confusing and for this reason the motion was denied.

Marinaro then appealed to the Trial Court, and the Trial Court dismissed the matter sua sponte for lack of jurisdiction (App. 9 – 10A). In support of dismissal, the Trial Court found that the November 18, 2021 the General District Court order was a final order and that the statute requires that appeals from a final order of the general district court be noted within ten days of the entry of the final order.

Marinaro then moved to vacate the Trial Court’s order arguing that the question of jurisdiction can be heard in any court at any time. The Trial Court did not rule on Marinaro’s motion.

Marinaro appealed the final order to Virginia Court of Appeals arguing that the Trial Court had jurisdiction to entertain the matter and that the General District Court was without jurisdiction to entertain the matter. The Virginia Court of Appeals affirmed the Trial Court order holding that Marinaro did not preserve her argument for appeal (App. 2 – 6A).

Marinaro filed the Petition for Rehearing arguing that under Va. Code § 8.01-384 Marinaro does not lose her right for appeal because she could not object at the time the Trial Court sua sponte entered its final order as well as under the same Va. Code she was not required to file any motions after the Trial Court entered its final order, and the fact that she did file a motion is irrelevant under the same Va. Code. The Virginia Court of Appeals denied Marinaro's Petition for Rehearing (App. 7A).

Marinaro appealed to the Supreme Court of Virginia arguing that the Trial Court violated Marinaro's due process rights when entered the sua sponte order. The Supreme Court of Virginia refused the petition for appeal (App. 12A). Marinaro filed the petition for rehearing arguing that the retired judge who issued the final order in the circuit court was without legal power to do so (App. 16 – 18A). The Supreme Court of Virginia denied Marinaro's petition for rehearing (App. 13A).

REASONS FOR GRANTING THE PETITION

Question 1. The XIV Amendment of the United States Constitution guarantees the due process of law. Can a retired judge preside over the case without an appointment required by a state statute?

“Pro se submissions are reviewed with "special solicitude," and "must be construed liberally and interpreted to raise the strongest arguments that they suggest.” Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474-75 (2d Cir. 2006).

The XIV Amendment of the United States Constitution guarantees that “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”.

“The Constitution guarantees a fair trial through the Due Process Clauses”, U.S. v. Gonzalez-Lopez, 548 U.S. 140, 146 (2006). Among those basic fair trial rights that "can never be treated as harmless" is a defendant's "right to an impartial adjudicator, be it judge or jury. Equally basic is a defendant's right to have all critical stages of a ... trial conducted by a person with jurisdiction to preside. Gomez v. United States, 490 U.S. 858, 876, 109 S. Ct. 2237 (1989).

Article 6 of the United States Constitution guarantees that “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States,

shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

In U.S. v. American-Foreign Ss. Corp., 363 U.S. 685, 691 (1960), this Court explained that a retired judge is without legal power to participate in en banc decision.

In Yovino v. Rizo, 139 S. Ct. 706, 709, 203 L. Ed. 2d 38 (2019), this Court explained again its holding in U.S. v. American-Foreign Ss. Corp. that “an ‘active’ judge is a judge who has not retired ‘from regular active service,’ ” and “a case or controversy is ‘determined’ when it is decided. Because Judge Medina was not in regular active service when the opinion issued, he was “without power to participate” in the en banc decision.”

In U.S. v. Scott, 260 F.3d 512 (6th Cir. 2001), the United States Court of Appeals held that a warrant signed by a retired judge who did not have any legal authority and in violation of state law to sign the warrant is void ab initio.

In State v. Nunez, 634 A.2d 1167, 1169-1171 (R.I. 1993), the Supreme Court of Rhode Island held that the warrant issued by a retired judge who was not assigned to the case pursuant to statutory requirements is void ab initio.

In this instant case, the Retired Judge appeared in the case on his own without being appointed as required by Virginia Code and entered a court order under the name of the United States.

Pursuant to Va. Code §17.1-105(a) a retired judge can be requested only if an active presiding judge is unable to perform his entire duty of the term or part of the term. The judge must not be able to go to work at all and perform his duty at all to request a retired judge, and it clearly states that a disabled judge, or another judge can make a personal request for a retired judge to perform the entire duty of the disabled judge. A disabled judge is the one who cannot go to work to perform his entire duty and only in that case he can make a personal request for a retired judge to perform the entire duty of the disabled judge. It also permits another judge to make a personal request for a retired judge to replace the disabled judge, because the disabled judge, apparently, may not be able to do so on his own if he has the severe health disability.

Furthermore, Va. Code §17.1-105(a), requires that even if a retired judge was designated by a judge of a circuit court "The designation of such judge shall be entered in the civil order book of the court, and a copy thereof sent to the Chief Justice of the Supreme Court. The Chief Justice shall be notified forthwith at the time any disabled judge is able to return to his duties.", that has not been done and could not be done in this instant case as there was no judge in the Trial Court who was unable to perform his term duty or part of his term duty, and there was no request by any judge of the Trial Court to replace any other judge in that court, all judges of the Trial Court went to work every day at that time and fully performed their term duty.

Va. Code §17.1-105(b) permits a retired judge to be appointed by the Chief Justice of the Supreme Court of Virginia if all judges disqualify themselves in a particular case. In this case, no judge disqualified himself.

The Retired Judge was a passer-by in this case, who entered a courtroom and issued court orders under the name of the United States. He was not requested to replace another active judge to perform the term duty of that judge as well as he was not appointed by the Chief Justice of the Supreme Court of Virginia because all judges of the Trial Court disqualified themselves in this matter as no judge disqualified himself.

This question is of public importance, as now any passer-by can enter a courtroom and issue court orders under the name of the United States.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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April 26, 2024