

CASE NO.: 24-6568

SUPREME COURT OF THE UNITED STATES

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT No. 23-7165

ANDRIVIA FRANCES WELLS,

Plaintiff - Appellant,

v.

MECKLENBURG COUNTY CLERK OF PROBATE ESTATES;

MEMPHIS L. SMITH, JR.;

AUDRIS VERONICA FORD ASMOND,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Max O. Cogburn, Jr.,

District Judge. (3:23-cv-00356-MOC-SCR) October 18, 2023, after the court granted a motion to dismiss for failure to state a claim.

Submitted: March 28, 2024 Decided: April 2, 2024 Before KING and RUSHING, Circuit dismiss for appeal was dismissed due to procedural issues.

Judges, and MOTZ, Senior Circuit Judge. Dismissed by unpublished per curiam opinion the appeal was dismissed due to procedural issues, including timeliness rehearing en banc.

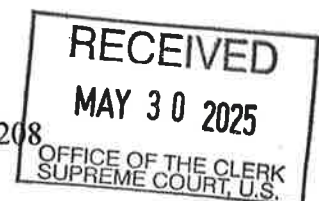
Supreme Court Petition: A petition for a writ of certiorari was placed on the docket on February 14, 2025, seeking Supreme Court review.

Petition for Review Pursuant to Rule 44 Filed on: CASE NO.: 24-6568 Date: May 26, 2025

Andrivia Frances Wells, Appellant Pro Se. J.P. McGuire Boyd, Jr.

WILLIAMS MULLEN, Richmond, Virginia, for Appellee Audris Veronica Ford Asmond

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Phone number 704-6198383
521 South Summit Ave Charlotte NC 28208
awellssmith2014@gmail.com



29 **CONSTITUTIONAL QUESTIONS PRESENTED**

30 **A. Violations of Due Process Under the Fifth and Fourteenth Amendments**

31 **1. Did the state court violate due process by finalizing the divorce decree before ruling on**
32 **equitable distribution under NCGS § 50-20(k)? 2. Did the failure to serve Petitioner properly**
33 **while she was incarcerated violate her constitutional right to procedural fairness under the**
34 **Fourteenth Amendment? 3. Did the unauthorized sale of marital assets via illegitimate**
35 **testamentary letters violate the Fifth Amendment's Takings Clause? 4. Did the delays in**
36 **adjudicating Petitioner's claims amount to an unconstitutional deprivation of property**
37 **rights?**

38
39 **CERTIFICATE OF GOOD FAITH (RULE 44 COMPLIANCE)**

40 **I, Andrivia Frances Wells, hereby certify pursuant to Rule 44 of the Rules of the United States**
41 **Supreme Court that this Petition for Rehearing is presented in good faith and not for the purpose**
42 **of delay.**

43 **This petition is based solely on intervening circumstances of substantial controlling effect and**
44 **substantial grounds not previously presented, which warrant reconsideration by this Honorable**
45 **Court.**

46 **I affirm that all statements contained herein are true and accurate to the best of my knowledge and**
47 **belief, in accordance with the procedural requirements governing rehearing petitions.**

48 **Respectfully submitted,**

Andrivia Frances Wells

Date: May 26, 2025

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- 73 1. Did the State Court Violate Due Process by Finalizing the Divorce
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92 **TABLE OF AUTHORITIES**

93 **I. U.S. Supreme Court Cases**

- 94 • Armstrong v. Manzo, 380 U.S. 545 (1965) – Failure to provide proper notice invalidates
95 judicial proceedings.
- 96 • Goldberg v. Kelly, 397 U.S. 254 (1970) – Mandates notice and opportunity to be heard
97 before property deprivation.
- 98 • Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) – Inadequate service
99 denies due process.
- 100 • Williams v. North Carolina, 317 U.S. 287 (1942) – Jurisdiction must be properly
101 established before issuing a divorce decree.
- 102 • Shaffer v. Heitner, 433 U.S. 186 (1977) – Reinforces minimum contacts for jurisdiction.
- 103 • Pennoyer v. Neff, 95 U.S. 714 (1878) – Courts must have proper jurisdiction over a party
104 before issuing judgment.
- 105 • Brown v. Brown, 529 S.E.2d 721 (2000) – Equitable distribution does not abate upon death.
- 106 • Smith v. Rodgers, 831 S.E.2d 532 (2019) – Third-party interference with equitable
107 distribution claims is unlawful.
- 108 • Upchurch v. Upchurch – Unauthorized transactions cannot override rightful marital
109 property claims.
- 110 • Marshall v. Marshall, 547 U.S. 293 (2006) – Federal courts retain jurisdiction over probate
111 disputes where third-party interference occurs.

112 **II. Federal Rules & Statutes**

- 113 • Federal Rule of Civil Procedure 60(b)(4) – Judgment is void due to lack of jurisdiction.
- 114 • Federal Rule of Civil Procedure 60(b)(6) – Relief justified for extraordinary injustice.
- 115 • NCGS § 50-20(k) & (l) (2003 Amendment) – Equitable distribution must be adjudicated
- 116 before divorce finalization and survives probate.
- 117 • NCGS §28A-19-6(a)

118 **APPENDICES & EXHIBITS**

119 **Appendices**

120 Appendix A: Relevant North Carolina Statutes (NCGS § 50-20(k), NCGS § 50-20(l), NCGS §

121 28A-2-4). Appendix B: Full Text of Supreme Court Decisions Cited. Appendix C: Procedural

122 Timeline of Divorce, Probate Proceedings & Asset Distribution. Appendix D: Filed Rule 60(b)

123 Motion for Relief.

124 **Exhibits**

125 Exhibit A: Improperly Issued Testamentary Letters – Proof of unauthorized estate administration.

126 Exhibit B: Record of Improper Service – Confirms procedural due process violations. Exhibit C:

127 Probate & Marital Property Records – Demonstrates third-party interference. Exhibit D: Case Law

128 Precedents – Supports legal arguments for vacatur based on improper service and conveyance of

129 assets.

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133 **MOTION TO VACATE DIVORCE DECREE DUE TO FAILURE OF SERVICE,**
134 **PROCEDURAL VIOLATIONS, JURISDICTIONAL ERRORS, AND EQUITABLE**
135 **DISTRIBUTION CLAIMS IMPACTING INCARCERATED INDIVIDUALS**

136

137 COMES NOW, Petitioner, Andrivia Frances Wells, by and through herself, respectfully submits
138 this Motion to Vacate Divorce Decree, citing jurisdictional deficiencies due to incarceration,
139 improper service, third-party interference in equitable distribution, unconstitutional conveyance of
140 marital property, and the court's failure to adjudicate property rights under NCGS § 50-20(k)&(l)
141 before issuing a final divorce decree.

142 **I. INTRODUCTION**

143 Petitioner, Andrivia Frances Wells, respectfully challenges the Mecklenburg County Court's
144 improperly issued absolute divorce decree, arguing that the court lacked jurisdiction over her due
145 to federal incarceration, failed to properly serve key parties, and illegally finalized the divorce
146 before equitable distribution was adjudicated under NCGS § 50-20(k).

147 Additionally, the Mecklenburg County Probate Clerk improperly issued illegitimate heir
148 testamentary letters, facilitating the unauthorized sale of marital property, which constitutes a
149 procedural violation requiring judicial correction.

Petitioner further asserts that the court ignored her Rule 60(b) motion, deliberately delaying adjudication of her equitable distribution claims, thereby violating procedural fairness and due process protections under *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Fuentes v. Shevin*, 407 U.S. 67 (1972). Petitioner now moves for vacatur of the divorce decree, invalidation of unauthorized testamentary letters, and reinstatement of marital property rights under controlling precedent.

II. STATEMENT OF THE CASE

Petitioner, Andrivia Frances Wells, seeks relief from the absolute divorce decree issued by the Mecklenburg County Court, which was finalized before adjudicating equitable distribution property rights under NCGS § 50-20(k).

At the time of the divorce proceedings, Petitioner was incarcerated in federal custody, preventing her from fully participating in hearings or defending her property interests. Despite this, the court failed to establish jurisdiction over her before issuing the divorce decree, violating Supreme Court precedent under *Pennoyer v. Neff*, 95 U.S. 714 (1878) and *Shaffer v. Heitner*, 433 U.S. 186 (1977), which mandate proper jurisdictional authority over all affected parties.

Furthermore, the Mecklenburg County Probate Clerk issued illegitimate testamentary letters, facilitating unauthorized sales of jointly held marital property without proper adjudication. The District Court failed to serve Petitioner and her son, obstructing their ability to contest improper asset transfers and violating fundamental due process protections.

Petitioner's Rule 60(b) motion was ignored, causing procedural delays and preventing rightful property adjudication. Given these jurisdictional failures, unconstitutional conveyances, and

procedural deficiencies, Petitioner moves to vacate the divorce decree, restore her marital property rights, and correct judicial errors that have deprived her of equitable relief.

1. Equitable Distribution Versus Estate Administration Equitable distribution is the process by which a court divides property belonging to a married couple based upon a variety of statutory factors. N.C. Gen. Stat. § 50-20(c) (2017). It is presumed that an in-kind distribution of marital property is equitable; however, if the presumption is rebutted by the greater weight of the evidence, or “by evidence that the property is a closely held business entity or is otherwise not susceptible of division in-kind, “the court shall provide for a distributive award to be paid by either party, incrementally or in a lump sum, to achieve equity fundamental right. Petitioner rights was never substantiated or acknowledged N.C.G.S. §§ 50-20(b)(3), (e). “The rights of the parties to an equitable distribution of marital property and divisible property are a species of common ownership, the rights of the respective parties vesting at the time of the parties’ separation.” Id. §50-20(k).Chapter 28A establishes the procedure for the administration of a decedent’s estate. The personal representative appointed to oversee the decedent’s estate is obligated to, among other things, accumulate the assets of the estate, notify potential claimants, and pay valid claims against the estate. Different categories of claims are paid according to a statutory hierarchy, which includes the following:(a) After payment of costs and expenses of administration, the claims against the estate of a decedent must be paid in the following order:....Sixth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the decedent at the decedent’s death.. .

.Eighth class. A claim for equitable distribution. Ninth class. All other claims. N.C. Gen. Stat. § 28A-19-6(a) (2017). The eighth class of claims was added to the statute in 2005, after Section 50-20(l) had been amended to provide that equitable distribution claims whether pending or not-yet filed at the time of a spouse's death, could be pursued against the decedent's estate. Act of July 12, 2005. (Amended)

III. JURISDICTIONAL ERRORS IMPACTING INCARCERATED INDIVIDUALS

1. *Pennoyer v. Neff*, 95 U.S. 714 (1878) mandates that courts must obtain proper jurisdiction over all affected parties before issuing a judgment.
2. *Shaffer v. Heitner*, 433 U.S. 186 (1977) reinforces the necessity of minimum contacts for jurisdiction, which were absent due to Petitioner's federal incarceration.
3. The presiding court failed to properly establish jurisdiction over Petitioner, rendering the divorce decree legally deficient.

IV. FAILURE TO SERVE, CONTINUED DELAY & DUE PROCESS VIOLATIONS

4. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) mandates adequate notice and opportunity to be heard before a court ruling, both of which were denied.
5. *Fuentes v. Shevin*, 407 U.S. 67 (1972) confirms that deliberate procedural delays in civil cases violate fundamental fairness, reinforcing Petitioner's claim.
6. *Armstrong v. Manzo*, 380 U.S. 545 (1965) establishes that failure to properly serve key parties invalidates judicial proceedings.
7. *Goldberg v. Kelly*, 397 U.S. 254 (1970) requires that parties must have a fair opportunity to contest proceedings affecting their property rights, which did not occur.

213 **V. EQUITABLE DISTRIBUTION RIGHTS VIOLATED UNDER NCGS § 50-20(k) & (l)**

214 8. Boddie v. Connecticut, 401 U.S. 371 (1971) holds that access to courts for divorce
215 proceedings is a fundamental right, meaning procedural barriers due to incarceration may
216 be unconstitutional.

217 9. NCGS § 50-20(k) mandates that equitable distribution must be decided before entry of a
218 divorce decree, which did not happen in this case.

219 10. NCGS § 50-20(l) (2003 Amendment) preserves post-divorce equitable distribution rights,
220 ensuring claims survive probate proceedings.

221 **VI. RELIEF REQUESTED**

222 WHEREFORE, Petitioner respectfully requests the Court to:

223 Vacate the divorce decree due to lack of jurisdiction over an incarcerated party and premature
224 entry before equitable distribution was adjudicated under NCGS § 50-20(k). Declare that failure
225 to serve Petitioner properly resulted in constitutional due process violations requiring judicial
226 correction. Invalidate unauthorized estate property transfers and affirm Petitioner's equitable
227 distribution rights under NCGS § 50-20(l). Declare the testamentary letters issued by the
228 Mecklenburg County Probate Clerk invalid due to procedural errors and unauthorized asset
229 transfers. Apply federal jurisdiction under Marshall v. Marshall to address third-party interference
230 affecting probate claims and ensure due process protections.

231 Respectfully submitted,

232 
Andriana Frances Wells

Date: May 24, 2025

APPENDICES & EXHIBITS

Appendices

Appendix A: Relevant North Carolina Statutes (NCGS § 50-20(k), NCGS § 50-20(l), NCGS § 28A-2-4). Appendix B: Full Text of Supreme Court Decisions Cited. Appendix C: Procedural Timeline of Divorce, Probate Proceedings & Asset Distribution. Appendix D: Filed Rule 60(b) Motion for Relief.

Exhibits

Exhibit A: Improperly Issued Testamentary Letters – Proof of unauthorized estate administration. Exhibit B: Record of Improper Service – Confirms procedural due process violations. Exhibit C: Probate & Marital Property Records – Demonstrates third-party interference. Exhibit D: Case Law Precedents – Supports legal arguments for vacatur based on improper service and conveyance of assets.

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254

CERTIFICATE OF SERVICE

255

256 I, **Andrivia Frances Wells**, hereby certify that on Date, May 20 2025 true and
257 correct copy of the **Motion to Vacate Divorce Decree Due to Failure of Service, Procedural**
258 **Violations, Jurisdictional Errors, and Equitable Distribution Claims Impacting**
259 **Incarcerated Individuals**, along with all supporting documents, was served upon the parties
260 listed below in accordance with Supreme Court Rule 29.

261 **Parties Served:**

262 **Clerk of the Supreme Court of the United States Address:** 1 First Street NE, Washington,
263 D.C. 20543

264 **Respondents:** Mecklenburg County Probate Court, Clerk of Estates **Opposing Party**
265 **1.Mecklenburg County Probate** Physical Address: Estates Division – Suite 3720, Mecklenburg
266 County Courthouse, 832 E. 4th Street, Charlotte NC 28202

267 **2.Respondent Audris Veronica Asmond Attorney: J.P. McGuire Boyd, Jr**

268 200 South 10th Street, Suite 1600 Richmond, Virginia 23219

269 **3.Memphis Lewis Smith, Jr**

270 4014 Martin Canyon Court, Bonita, California 91902

271 Service was completed via **certified mail with return receipt** to verify delivery.

272 **Method of Service:**

273 The documents were served via [U.S. Mail | Certified Mail], pursuant to **Rule 29.3** of the
274 Supreme Court Rules.

275 I certify that this service complies with Supreme Court Rule 29 and that all parties have been
276 duly notified.

277 **Respectfully submitted,**

278

279 **Andrivia Frances Wells**

280

281 Signature: 

282

283 Date: 

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285

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