

No. 17-1313

IN THE
Supreme Court of the United States

DEK-M, NATIONWIDE, LTD.
Petitioner

v.

DAVID HILL, INDIVIDUALLY & D/B/A DOH OIL Co.,
CASSIE MOSELEY, DAVID MOSELEY, AND COLORADO
COUNTY CENTRAL APPRAISAL DISTRICT,
Respondents

On Petition For A Writ Of Certiorari
To The 14th Court Of Appeals Of Texas

PETITION FOR REHEARING

JONATHAN C. ANDRESEN
THE ANDRESEN FIRM, PLLC
3700 Buffalo Speedway, Ste. 500
Houston, Texas 77098
(713) 335-0155
jandresen@andresenfirm.com

Counsel for Petitioner

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PRELIMINARY STATEMENT

On May 14, 2018 the Court released an order denying DEK-M Nationwide, Ltd.'s Petition for Writ of Certiorari. Between the time that DEK-M filed its Petition and the Court's order another entity, Kenneth D. Eichner, P.C., filed an amicus brief and accompanying motions to preserve certain due process rights that it contends will be impacted by the decision in this matter. As such there exists substantial intervening facts and circumstances not previously presented in DEK-M's Petition for Writ of Certiorari. DEK-M therefore respectfully requests that this Court reconsider its denial of DEK-M's Petition for a Writ of Certiorari.

MOTION FOR REHEARING

DEK-M Nationwide, Ltd. (“DEK-M”) filed its Petition for Writ of Certiorari on March 15, 2018 raising an important due process question regarding the requirements of a county taxing authority to notify record deed holders of a tax sale prior to conducting the sale.

The essential facts in this case are that Petitioner purchased certain royalty interests at a trustee foreclosure sale on February 5, 2013.¹ One month later, on March 5, 2013, the county taxing authority conducted a sheriff’s sale of the same property and respondents were the prevailing purchasers.² The county taxing authority did not provide any notice of the subsequent sale to Petitioner despite Petitioner being the record owner at the time.

Petitioner presented argument that the due process clause of the 14th Amendment requires such notice as set forth by this Court in *Jones v. Flowers* and, previously, in *Mennonite Bd. of Missions v. Adams*. See 547 U.S. 220 (2006); and 462 U.S. 791 (1983) respectively.

On or about May 10, 2018 – a time period 2 months after Petitioner filed its petition with this Court – another entity, Kenneth D. Eichner, P.C. (“KDEPC”), filed an amicus brief and accompanying motions with this Court. KDEPC was the entity from whom Petitioner bought the royalty interests on February 5, 2013. In those documents KDEPC

¹ See App. 96.

² See App. 97.

sets forth several arguments in support of Petitioner, but also raises a challenge to the composition of the parties in this matter.

KDEPC asserts that it has standing to participate in the proceedings in this matter as a party and further argues that it should have been joined in this case – thus raising a potential jurisdictional question.

This question arises from the fact that there were two cases in the trial court concerning the ownership of the royalty interests in question. The first was the actual delinquent tax suit that gave rise to the sheriff's sale at issue. In that case both Petitioner and KDEPC intervened as parties post-judgment and challenged the sale.³ In fact, a hearing was conducted on that issue but a ruling was never made and that case technically remains open.⁴ Subsequent to that hearing the instant matter was filed and KDEPC was not a party.

KDEPC's position is that should the Court here deny or reject the Petitioner's Petition then KDEPC may lose its right to maintain and assert its own due process rights and action, which is still technically pending.

In this respect, KDEPC is legally correct. The Texas Rules of Civil Procedure do require that all necessary parties be joined to a suit if complete relief cannot be afforded or the party has an interest relating to the subject of the action and its absence may impede or impair his ability to protect his

³ See Amicus Brief at p. 3.

⁴ *Id.*

interest or leave any of the other parties subject to double, multiple or otherwise inconsistent obligations. Tex. R. Civ. P. 39 (a). Since the two separate actions regarding the royalty interests are in state court it is this state rule that will govern. Further, based on this rule, it is clear that KDEPC does have a legitimate colorable legal argument that it should have been a party to the instant action.

KDEPC states that its claim against the same respondents as in this matter stems from their failure to provide notice to KDEPC of the tax sale. KDEPC asserts that it should have also received notice as a creditor since it had filed an abstract of judgment several years before any of the sales in this matter and that its due process rights under the fifth and fourteenth amendments were violated when it was denied such notice.⁵ As a party, KDEPC would therefore have been able to assert its own due process claim in this matter rather than through, largely, duplicative litigation. Additionally, KDEPC urges that since Respondents based their arguments in the lower courts on the existence of privity as between Petitioner and KDEPC that KDEPC is rightly a necessary party for full adjudication.

Granting this Petition for Rehearing will therefore allow the opportunity to review these additional issues – which were raised subsequent to DEK-M's Petition – and allow full consideration of the important federal due process question at issue in this appeal.

⁵ *Id.* at 3-4.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that the Court granting rehearing on this matter and subsequently grant DEK-M's Petition for Writ of Certiorari.

Respectfully submitted,

JONATHAN C. ANDRESEN

Counsel of Record

THE ANDRESEN FIRM, PLLC

3700 Buffalo Speedway, Ste. 500

Houston, Texas 77098

(713) 335-0155

jandresen@andresenfirm.com

Counsel for Petitioner

June 8, 2018

CERTIFICATE OF COUNSEL

Pursuant to Rule 44.2, the undersigned hereby certifies that this Petition is restricted to the grounds specified in Rule 44 and is being presented in good faith and not for delay.

JONATHAN C. ANDRESEN