

UNITED STATES SUPREME COURT OF THE UNITED STATES OFFICE of
the Clerk

Washington, DC

No. 17-6012

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1154

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT

No. 1:16-cv-01346-TDS-JEP (M.D.N.C. Feb. 1, 2017).

GRACE MAKAU,

Appellant,

v.

UNITED STATES OF AMERICA,

Before Scott S. Harris, Clerk,

SHEDD, WYNN, and DIAZ, Circuit Judges. Affirmed by unpublished per curiam
opinion

LOUISE MEYER, District Court Judge; KRIS BAILEY, District Court Judge;
VINCE ROZIER, District Court Judge; ERIN GRABER, District Court Judge;
CHRISTINE M. WALZYK, District Court Judge; BEVERLY SCARLETT, District
Court Judge; JOE M. BUCKNER, District Court Judge; LUNSFORD LONG,
District Court Judge; PAIGE VERNON, District Court Judge,

Appellee,

PLAINTIFF APPELLANT'S PETITION FOR PANEL REHEARING

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In re Harton, 156 N.C. App. 655, 577 S.E.2d 334 (2003)
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In the Matter of J.M.D., ___ N.C. App. ___, 708 S.E.2d 167 (2011)
In re Ledbetter, 158 N.C. App. 281, 580 S.E.2d 392 (2003)

In re Ballard, 311 N.C. 708, 319 S.E.2d 227 (1984).....
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 In re Shepard, 162 N.C. App. 215 591 S.E.2d 1 (2004).....
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TABLES OF AUTHORITIES CITED

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1. 17-6012
2. 17-1154
3. 1:16CV1346
4. 15-SCSE-08372
5. 11-JT-2
6. 11-JA-1
7. 11-JA-2
8. 13-CVD-5567
9. 08-CVD-842
10. 12-CVD-7540
11. 13-CVD-142

JURISDICTIONAL STATEMENT

In this case, the U.S. Supreme Court has original jurisdiction concurrently with lower courts. The original jurisdiction of the U.S. Supreme Court is governed by **Article III**, Section 2 of the United States Constitution and Title 28 of the United States Code, section 1251.

Rule 40.2. Related Cases

(a) Directly Related Cases.

(1) At the time a complaint is filed, the filing attorney (or pro se plaintiff) shall file and serve on all parties who have appeared a Notice of Directly Related Case(s). Cases are deemed directly related when an earlier-filed case and the action being filed:

(A) involve the same parties and are based on the same or similar claims; or

(B) involve the same contract, property or patent.

Rule 44.

This petition for the rehearing of this judgment or decision of the Court on the merits was filed within 25 days after entry of the judgment or decision which was entered on November the 27th 2017; within 17 days of the judgment entered on November the 27th 2017.

Rule 44.6

Pursuant to 28 U. S. C. §1746, the petition is hereby filed timely and in good faith, complying with rule 33 and rule 34.

A timely correction form of the petition of the rehearing is submitted within the 15 days of receipt of letter dated December the 15th, 2017, in good faith

STATEMENT OF THE CASE:

Questions Presented, Standard of Review and Summary of the Argument

1. THE US SUPREME COURT ERRED IN DECLINING PETITION FOR WRIT CERTIORARI IN THAT:

- i.) The material fact and legal matter was overlooked in the decision. Plaintiff stated in the complaint that a violation of her 14th Amendment rights and Article I, Section 2, which prohibits state and local government officials from depriving a person of her protected rights without first giving her advance and adequate notice of the charges that could lead to a deprivation and a meaningful opportunity to challenge those charges. Orders rendered without constitutional due process are void "SABARIEGO V. MAVERICK, 124 U.S. 261 (20 88); and the Due Process Clause of the Fourteenth Amendment to the United States.

42 U.S.C. Sec. 1983 civil rights action, prohibits the Defendants from presiding over any action brought in the North Carolina state forum affecting the Plaintiff's/appellant's fundamental parental rights, including the Plaintiff's/appellant's custody and/or custodial rights, right to access her children and the right to live with her children.

- a.) Plaintiff's oldest son was adopted under false pretenses/allegations of abuse which were not substantiated in criminal court with charges dismissed but the adjudication of the abuse, neglect and dependency and disposition built around fabricated allegations of abuse, neglect and dependency continued in OCDSS court undermining plaintiff's testimony and primary eye witnesses accounts of events prior to placement of minors in others' care. The honorable Judge Joe Buckner consented, and ruled without appellant's or primary eye witness' appearance to court by invitation via summons or subpoena, falsely claiming the appellant was evading jurisdiction while the appellant was publicly living in plain sight, in broad daylight with a member/s of clergy, outstanding member/s of the community; against The Fourteenth Amendment and Article I, Section 2, which prohibits state and local government officials from depriving a person of her protected rights
- b.) Plaintiff's second son was also removed under similar circumstances. In December 21st 2010, District court Judge Christine M. Walzyk, gave custody of minor child to known criminals; who according to the Department of Social Services did not "qualify" for custody based on ongoing criminal and violent activity in their home i.e. Jameka Atwater, the other stumbling across crime violating her honor's decree. No neglect or abuse findings substantiated their removal, and the appellant was living in plain sight in spite of custodian's allegations of disappearance.
- c.) Plaintiff's third and youngest son allowed to relocate to Charlotte, NC without provisions or accommodations for visitation in the January 8th 2016 order signed by Judge Lunsford Long, let alone agreeable custody arrangements. It has since been three years since the appellant has had decent acceptable family visitation times with the two minor children who relocated, custodians allowed to make it impossible for visitations let alone custody arrangements possible with the calling of authorities in Charlotte, NC in March 2017 when sibling visits were taking place. The previous 2008 abuse allegations that were dismissed by both criminal and civil authorities based on insufficient evidence.

- ii.) Under the Fifth Amendment: *"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."*

A simpler term **"Pleading the Fifth,"** the colloquial term for invoking the right that allowed the plaintiff witnesses to decline to answer questions where the answers might incriminate them, and generally without having to suffer a penalty for asserting the right.

This evidentiary privilege is supposed to ensure that the defendant upon its execution, cannot be compelled to become witness at plaintiff's own trials. If, however, plaintiff choose to testify, plaintiff is not entitled to the right during cross-examination, where questions are relevant to their testimony on direct examination. The Amendment requires that felonies be tried only upon indictment by a grand jury. Federal grand juries can force people to take the witness stand, but defendants in those proceedings have Fifth Amendment privileges until they choose to answer any question. To claim the privilege for failure to answer when being interviewed by police, the interviewee must have explicitly invoked the constitutional right when declining to answer questions.

A change in the law occurred after the case was submitted and was overlooked by the panel. On September 26th 2017, a warrant for arrest was enforced by Orange County Sherriff Department on a child support matter that was in violation of the 5th Amendment, related to "pleading of the fifth" to produce personal and financial documents which Wake County's Child Support enforcement already had in their possession and access to and had been withholding wages every pay cycle as a result of their possession of the personal and financial documents. Wage withholding began in June, 2017 after having submitted employment information month prior to the actual drafting or wage withholding. Judge V. A. Davidian III ordered the arrest on two conditions: 1. If I didn't show up with the personal and financial information (which they had on file) that violated my privacy and 2. Naturally a no show warranted an arrest to which constitutes the "pleading of fifth" amendment. Having communicated with the case manager of Wake County Child Support of and about the employer's refusal to permit my appointment to appear due to work policies and regulations, the Wake County Child Support Enforcement case manager omitted to convey the employment circumstances that

prohibited my appearance and a 15 day incarceration warrant was issued while they continued to draft the child support payments and I continued to maintain employment. Documents attached with this petition.

Durham County Child Support Enforcement also filed harassment motions and/or cases regarding child support while wage withholding was taking place every pay period.

REASONS FOR GRANTING THE PETITION FOR REHEARING

Pursuant to Federal Rule 40.2 of civil procedure; and **Contents.** The petition states with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument not being permitted.

Pursuant to Federal Rules of Civil Procedure 60(a), Plaintiff/appellant/complainant moves for a preliminary injunction against the named Defendants of the Orange and Wake Counties, North Carolina District and Family Court in this 42 U.S.C. Sec. 1983 civil rights action, prohibiting the Defendants from presiding over any action brought in the North Carolina state forum affecting the Plaintiff/appellant/complainant's fundamental parental rights, including the Plaintiff/appellant/complainant's custody and/or custodial rights, right to access her children and the right to live with her children.

Additionally, the Plaintiff/appellant/complainant seeks a preliminary injunction prohibiting the Defendants from conducting proceedings involving the Plaintiff that are not transcribed verbatim/or as required by North Carolina Law. North Carolina trial courts always retain the necessary inherent power granted them by Article IV, Section 1 of the North Carolina Constitution to control their proceedings and records in order to ensure that each side has a fair and impartial trial. "The paramount duty of the trial judge is to supervise and control the course of the trial so as to prevent injustice." In re Will of Hester, 320 N.C. 738, 741, 360 S.E.2d 801, 804 (1987).

The Plaintiff/appellant seeks a preliminary injunction prohibiting the Defendants from issuing any judgments against the Plaintiff without due process of law, including, prohibiting the Defendants from issuing judgments on ex-parte without advance service of notice, without first investigating whether the petitions are legally sufficient and whether the public's child's interest requires further action, as required by federal law; without findings of facts, without statement of basis in law, without mandatory application of strict scrutiny standard, and without verbatim transcription of said proceedings. Further, the Plaintiff seeks a preliminary injunction prohibiting the Defendants from issuing ex-parte judgments terminating the Plaintiff's access to her child in the above -described manner, or using the power vested in their official capacity to retaliate against the Plaintiff for

uncovering fraudulent practices of Judges who were established to have lied under oath without any consequences.

Lastly, the Plaintiff moves for a preliminary injunction prohibiting the Defendants from issuing judgments against the Plaintiff over in violation of the Due Process Clause of the Fourteenth Amendment to the United States. Orders rendered without constitutional due process are void "SABARIEGO V. MAVERICK, 124 U.S. 261 (20 88);

CONCLUSION

Wherefore the Plaintiff-Appellant, prays that this Court grant rehearing in this cause and, upon reconsideration, vacate the judgment and remand this cause for a new sentencing hearing.

Respectfully submitted,

Dated this 22nd day of december, 2017.

CERTIFICATE OF COMPLIANCE

This motion for rehearing complies with the type-volume limitation of Fed.R.App.P. 40(b)(1) because it contains 2, 709 words. This motion complies with the typeface requirements of Fed.R.App.P. 32(a)(5) and the type style requirements of Fed.R.App.P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using WordPerfect in century schoolbook 12-point font for text and 12-point font for footnotes of the Century Schoolbook.

**Additional material
from this filing is
available in the
Clerk's Office.**