

No. 18-1284

In the
Supreme Court of the United States

Jennifer L. Wilson,

Petitioner,

v.

*SUNTRUST BANK; SUNTRUST MORTGAGE, INC.; DEUTSCHE BANK
TRUST COMPANY AMERICAS; THE LAW FIRM OF HUTCHENS,
SENER & BRITTON, P.A.; SUBSTITUTE TRUSTEE SERVICES, INC. ;
AND DOES/JANES 1-10 inclusive,*

Respondent.

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On Petition For Writ of Certiorari To The North Carolina Court of Appeals

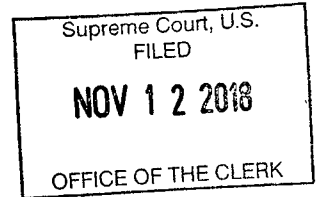
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PETITION FOR WRIT OF CERTIORARI

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November 12, 2018



QUESTION PRESENTED

1. Did the Trial Court hearing of August 15, 2016, Judge Gregory R. Hayes presiding, violate Article VI Section 11 of the North Carolina Constitution; N.C.G.S. §§ 1-493, 7A-41, 7A-41.1, 7A-46, and 7A-47.3; and N.C.R.Civ.P. Rule 40(a)?

LIST OF PARTIES

Jennifer L. Wilson

SUNTRUST BANK

SUNTRUST MORTGAGE INC.

DEUTSCHE BANK TRUST COMPANY AMERICAS

THE LAW FIRM OF HUTCHENS, SENTER & BRITTON, P.A.,

SUBSTITUTE TRUSTEE SERVICE, INC.

CORPORATE DISCLOSURE STATEMENT

STATE OF NORTH CAROLINA

SUNTRUST BANK

SUNTRUST MORTGAGE INC.

DEUTSCHE BANK TRUST COMPANY AMERICAS

HUTCHENS LAW FIRM, LLP, *f/k/a* THE LAW FIRM OF HUTCHENS, SENTER,

KELLAM & PETTIT, P.A., *f/k/a* THE LAW FIRM OF HUTCHENS, SENTER &

BRITTON, P.A.,

SUBSTITUTE TRUSTEE SERVICE, INC.

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PETITION FOR WRIT OF CERTIORARI

Jennifer L. Wilson, a citizen of the State of North Carolina, petitions for a Writ of Certiorari to the North Carolina Court of Appeals Opinion.

OPINIONS BELOW

The General Court of Justice Superior Court Division of the State of North Carolina grant of SunTrust Bank; SunTrust Mortgage, Inc.; Deutsche Bank Trust Company Americas; The Law Firm of Hutchens, Senter & Britton, P.A.; and Substitute Trustee Services, Inc. motions to dismiss and quiet title in favor of Deutsche Bank Trust Company Americas is repugnant to Article IV, Section 11, of the North Carolina State Constitution.

The North Carolina Court of Appeals opinion is reported as Jennifer L. Wilson v. SUNTRUST BANK; SUNTRUST MORTGAGE, INC.; DEUTSCHE BANK TRUST COMPANY AMERICAS; THE LAW FIRM OF HUTCHENS, SENTER & BRITTON P.A. n/k/a HUTCHENS, SENTER, KELLAM & PETTIT, P.A.; SUBSTITUTE TRUSTEE SERVICES, INC.; AND DOES /JANES 1-10 INCLUSIVE, Case No. COA17-482 (Published *WILSON v. SUNTRUST BANK*, 809 S.E.2d 286 (Dec. 19, 2017)).

The petition for review to The Supreme Court of North Carolina is reported as Jennifer L. Wilson v. SUNTRUST BANK; SUNTRUST MORTGAGE, INC.; DEUTSCHE BANK TRUST COMPANY AMERICAS; THE LAW FIRM OF HUTCHENS, SENTER & BRITTON P.A. n/k/a HUTCHENS, SENTER, KELLAM & PETTIT, P.A.; SUBSTITUTE TRUSTEE SERVICES, INC.; AND DOES /JANES 1-10 INCLUSIVE, Case No. 2P18.

The September 29, 2016 opinion of the General Court of Justice Superior Court Division State of North Carolina is reprinted in the Appendix (“App.”) at App. “F”.

The December 5, 2016 opinion of the General Court of Justice Superior Court Division State of North Carolina is reprinted in the Appendix (“App.”) at App. “G”.

The Court of Appeals of North Carolina opinion is reprinted at App. “H”.

The Supreme Court of North Carolina opinion is reprinted at App. “I”.



JURISDICTION

The Opinion of the Court of Appeals of North Carolina was filed on December 19, 2017, and the subsequent denial of the petition for review to the Supreme Court of North Carolina was filed on August 14, 2018. Therefore this petition is timely filed within ninety days after final review of the highest State Court in the STATE OF NORTH CAROLINA and this Court has jurisdiction pursuant to 1 Stat. 85 Sec. 25 as lawfully amended.



CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional provision in this case is cited here as N.C. Const. Art. IV Sec. 11 and is reproduced in the Appendix. (See App. “E”)

The statutory provisions in this case are lengthy, they are cited here as N.C.G.S. § 7A-41; N.C.G.S. § 7A-41.1(a); N.C.G.S. § 7A-47.3(a); N.C.G.S. § 1-493; and the relevant sections are reproduced in the Appendix. (See App. “B”, “C”, “D”, and “E” respectively) 62

Stat. 971, as lawfully amended, may apply and the State of North Carolina Office of Attorney General has been served with this Petition.

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STATEMENT OF THE CASE

On July 8, 2016, Wilson brought a Verified Complaint, for Fraud Upon the Court and to Quiet Title in the General Court of Justice, Cabarrus County naming SUNTRUST BANK; SUNTRUST MORTGAGE, INC.;; DEUTSCHE BANK TRUST COMPANY AMERICAS; THE LAW FIRM OF HUTCHENS, SENTER & BRITTON, P.A. n/k/a HUTCHENS, SENTER, KELLAM & PETTIT, P.A.; SUBSTITUTE TRUSTEE SERVICES, INC.; and DOES/JANES 1-10 inclusive.

On July 13, 2016, post a Notice to Vacate, Wilson moved for Temporary Restraining Order and Preliminary Injunction restraining the Clerk of the Court from issuing an Order of Possession.

On July 29, 2016, SUNTRUST BANK moved the Court to dismiss Wilson's Verified Complaint for failure to state a claim upon which relief may be granted citing N.C.R.Civ.P Rule 12(b)(6).

On August 1, 2016, DEUTSCHE BANK TRUST COMPANY AMERICAS moved the Court to dismiss Wilson's Verified Complaint for lack of jurisdiction, failure to state a claim upon which relief may be granted, Res Judicata and/or Collateral Estoppel citing; N.C.R.Civ.P. Rules 12(b)(1); N.C.R.Civ.P. 12(b)(6), N.C.G.S. Sec. 45-21.29A, N.C.G.S. Sec. 1-52.

On August 1, 2016, THE LAW FIRM OF HUTCHENS SENTER & BRITTON, P.A. moved the Court to dismiss Wilson's Verified Complaint for lack of jurisdiction, insufficiency of process, insufficiency of service of process, and failure to state a claim upon which relief may be granted citing N.C.R.Civ.P. Rules 12(b)(2), 12(b)(4), 12(b)(5), and 12(b)(6).

On August 15, 2016, Wilson filed response in opposition to SUNTRUST BANK; SUNTRUST MORTGAGE, INC.; THE LAW FIRM OF HUTCHENS, SENTER & BRITTON, P.A. n/k/a HUTCHENS, SENTER, KELLAM & PETTIT, P.A.; SUBSTITUTE TRUSTEE SERVICES, INC.; and DEUTSCHE BANK TRUST COMPANY AMERIAS motions to dismiss.

On August 15, 2016, the matter was heard in Cabarrus County Superior Court, Division VI, District 19A, before Judge Gregory R. Hayes a resident of Catawba County Superior Court, Division VII, District 25B.

Wilson was never served notice of the assignment of Judge Gregory R. Hayes from Catawba County Superior Court, Division VII, District 25B to preside in stead of the regularly assigned Judge, Julia L. Gullett, resident in Division VI, District 22A.

On September 29, 2016, Judgment of Judge Gregory R. Hayes granted Defendants, SUNTRUST BANK; SUNTRUST MORTGAGE, INC.; THE LAW FIRM OF HUTCHENS, SENTER & BRITTON, P.A. n/k/a HUTCHENS, SENTER, KELLAM & PETTIT, P.A.; SUBSTITUTE TRUSTEE SERVICES, INC.; and DEUTSCHE BANK TRUST COMPANY

AMERICAS motions to dismiss, with prejudice, Wilson's Verified Complaint, and Quieted Title in the name of DEUTSCHE BANK TRUST COMPANY AMERICAS. See App. A.

On October 12, 2016, Wilson moved the Court for an Order to Show Cause the Jurisdiction of the Court at the August 15, 2016 hearing. Wilson's motion for Order to Show Cause averred Article IV Section 11 of the North Carolina State Constitution did not permit assignment of a Superior Court Judge from one Division District to another Division District. See App. "J" for a complete reprint.

On October 13, 2016, Wilson moved the Court to Alter or Amend the September 29, 2016 Judgment. See App. "K" for a complete reprint.

On October 31, 2016, Wilson was served notice that Counsel for Defendant, DEUTSCHE BANK TRUST COMPANY AMERICA, unilaterally changed venue, for from Cabarrus County, Division VI, District 19A to Catawba County, Division VII, District 25B, setting the hearing date of November 14, 2016 for Wilson's motion for Order to Show Cause and motion to Alter or Amend Judgment.

On December 5, 2016, Judgment was entered denying Wilson's motion for Order to Show Cause the Jurisdiction of the Court, and motion to Alter or Amend Judgment. See App. B.

On December 21, 2016, Wilson appealed the judgments of the trial court.

On June 19, 2017, Wilson filed the Opening Brief in the North Carolina Court of Appeals. Wilson's Opening Brief averred the assignment of Superior Court Judge Gregory R. Hayes, duly elected in Catawba County, and resident in Division VII, District 25B, to

Cabarrus County, Division VI, District 19A violated Article IV Section 11 of the North Carolina State Constitution. See App. “L” for reprint of relevant sections of the Opening Brief.

On July 21, 2017, Appellees’ SUNTRUST BANK and SUNTRUST MORTGAGE, INC. filed a Brief in the North Carolina Court of Appeals.

On July 31, 2017, Appellees’ HUTCHENS, SENTER & BRITTON, P.A. and SUBSTITUTE TRUSTEE SERVICE, INC. filed a Brief in the North Carolina Court of Appeals adopting SUNTRUST BANK and SUNTRUST MORTGAGE, INC. Brief.

On August 3, 2017, Appellee DEUTSCHE BANK TRUST COMPANY AMERICAS filed a Brief in the North Carolina Court of Appeals adopting SUNTRUST BANK AND SUNTRUST MORTGAGE INC. Brief.

On August 29, 2017, Wilson filed a Reply Brief. See App. “M” for a reprint of the relevant sections of the Reply Brief.

On December 19, 2017, the opinion of the North Carolina Court of Appeals was entered. See App. “C”.

On January 3, 2018, Wilson petitioned the Supreme Court of North Carolina for review of the December 19, 2017 opinion of the North Carolina Court of Appeals.

On August 14, 2018, the Supreme Court of North Carolina denied Wilson’s petition for review. See App. “D”.

REASONS FOR GRANTING PETITION

A. The Standing Decision IN THE COURT OF APPEALS OF NORTH CAROLINA Is Worthy of Supreme Court Review Because It Concerns Important Constitutional Question.

a. The ruling below is repugnant to Article IV Section 11 of the North Carolina State Constitution.

“On appeal, plaintiff argues that the trial court lacked jurisdiction to conduct a hearing on 15 August 2016, erred by entering an order out of county on 29 September 2016, and erred by dismissing her complaint and denying her motion for entry of a temporary restraining order and a preliminary injunction. We conclude that the trial court did not err by entering the 29 September 2016 order out of county, by dismissing plaintiff’s complaint, or by denying plaintiff’s motion asking the trial court to “show cause how this court . . . possessed jurisdiction. Because we conclude that the trial court did not err by dismissing plaintiff’s complaint, we dismiss as moot plaintiff’s argument regarding the denial of her motion for a temporary restraining order and preliminary injunction.

Trial Court’s Jurisdiction over the 15 August 2016 Hearing

“Plaintiff contends that the trial court lacked jurisdiction to conduct the hearing on 15 August 2016, on the grounds that the court failed to produce evidence of a commission properly assigning Judge Gregory R. Hayes to preside in Cabarrus County on that date.

The premise of plaintiff's argument is that her filing of a motion demanding that the trial court "show cause" demonstrating the source of its jurisdiction to preside over the hearing on 15 August 2016, unaccompanied by any evidence showing affirmatively that the court lacked jurisdiction, shifted to the court the burden of establishing the existence of jurisdiction. Plaintiff has misapprehended the law in this regard.

Plaintiff appears to contend that her allegation that the trial court lacked jurisdiction is sufficient to impose upon the court the duty and burden of proving that it had jurisdiction. However, it is long-established that there is a presumption of regularity in the proceedings of our courts:

Where a judgment rendered by a domestic court of general or superior jurisdiction is attacked in a collateral proceeding, there is a presumption, which can only be overcome by positive proof, that it had jurisdiction both of the persons and the subject-matter, and proceeded in the due exercise of its jurisdiction. . . .

Presumptions against the validity of the proceedings will not be indulged in, where the record does not affirmatively show any error or irregularity. . . . As jurisdiction is presumed, at least *prima facie*, any acts or omissions affecting the validity of the proceedings and judgment must be affirmatively shown[.]

Starnes v. Thompson, 173 N.C. 466, 467-68, 92 S.E. 259, 259-60 (1917) (emphasis added).

Moreover, the party challenging the court's jurisdiction has the burden of producing evidence that the court lacked jurisdiction:

If a court finds at any stage of the proceedings that it is without jurisdiction, it is its duty to take proper notice of the defect, and stay, quash or dismiss the suit.

The Superior Court is a court of general state-wide jurisdiction. N.C.

Constitution, Article IV § 2[.] Plaintiffs are entitled to call to their aid the . . .

prima facie presumption of rightful jurisdiction which arises from the fact that a court of general jurisdiction has acted in the matter. . . . “The burden is on the party asserting want of jurisdiction to show such want.”

Jackson v. Bobbitt, 253 N.C. 670, 673, 117 S.E.2d 806, 807 (1961) (quoting *Dellinger v. Clark*, 234 N.C. 419, 424, 67 S.E.2d 448, 452 (1951)) (emphasis added). This principle was recently applied by our Supreme Court. In *In re N.T.*, 240 N.C. App. 33, 769 S.E.2d 658 (2015), this Court held that the trial court lacked jurisdiction over a juvenile case, stating that “[g]iven the absence of any competent evidence in the record to show that the petition was properly verified, the trial court never obtained jurisdiction over the subject matter of the juvenile case.” *N.T.*, 240 N.C. App. at 35, 36-7, 769 S.E.2d at 661. Our Supreme Court reversed:

“. . . [W]here the trial court has acted in a matter, every presumption not inconsistent with the record will be indulged in favor of jurisdiction. . . .” Nothing else appearing, we apply “the *prima facie* presumption of rightful jurisdiction which arises from the fact that a court of general jurisdiction has acted in the matter.” As a result, “[t]he burden is on the party asserting want of jurisdiction to show such want.” . . . [Given] the presumption of regularity that attaches to

the trial court's decision to exercise jurisdiction, the Court of Appeals had no basis to conclude that the petition was not properly verified."

In re N.T., 368 N.C. 705, 707-08, 782 S.E.2d 502, 503-04 (2016) (quoting *Cheape v. Town of Chapel Hill*, 320 N.C. 549, 557, 359 S.E.2d 792, 797 (1987) (internal quotation omitted); *Williamson v. Spivey*, 224 N.C. 311, 313, 30 S.E.2d 46, 47 (1944); and *Dellinger*, 234 N.C. at 424, 67 S.E.2d at 452).

In the present case, plaintiff has not produced any evidence tending to show that the trial judge was not duly commissioned to preside over the 15 August 2016 session of Cabarrus County Superior Court. We hold that plaintiff's bare assertion that the trial court lacked jurisdiction is insufficient to overcome the presumption of regularity, and that the trial court did not err by denying plaintiff's motion demanding that the trial court "show cause" that it had jurisdiction to preside over the hearing on 15 August 2016."

b. The Appellate Court Applied Non-Constitutional Law In Determining the Jurisdiction of the Trial Court.

1) The North Carolina State Constitution Article IV Section 11 only permits rotation of Superior Court Judges among the various Districts within their respective Division.

The present North Carolina State Constitution Article IV Section 11 states, "The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or

specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge.”

2) N.C.G.S. Sec. 7A-47.3 only permits judicial assignments within that judges judicial division.”

“To effect the intent of Article IV, Section 11 of the North Carolina Constitution, each regular resident superior court judge may, upon each rotation, be assigned to hold the courts either of one of the districts or of one of the sets of districts, as defined in G.S. 7A-41.1(a), in that judge's judicial division.”

CONCLUSION

The opinion of the North Carolina Court of Appeals failed to address the quintessential issue raised in Wilson’s Opening and Reply Briefs and was simply stated, “The consequential issue before this court is whether the language of the North Carolina Constitution under Art. IV, § 11 provides for the assignment of judges from one district division to another district division for temporary duty.”

This case is a proper vehicle for reviewing the constitutionality of assigning a Superior Court Judge from their duly elected and resident District Division to a District

Division that the Superior Court Judge was not duly elected to serve, and is a pure question of Constitutional law.

November 12, 2018

Respectfully submitted,

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