18-7891

No.

In The
Supreme Court Of The United States

HAYMOND, LESLIE ANN
Petitioner,

v.

SUPREME COURT OF VIRGINIA
Respondent.

PETITION FOR A WRIT OF CERTIORARI

Pet respectfully petitions for a writ of Certiorari to review the dismissal by the Supreme Court of Virginia, Fourth District.

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QUESTIONS PRESENTED

Did the Court error when disregarding the maxim of *stare decisis et non quieta movere*: "to stand by decisions and not disturb the undisturbed." when they failed to stand by their landmark decision in June 2016 of *Parrish v. FEDERAL NAT. MORTG. ASSOCIATION*, 787 SE 2d 116- Va: Supreme Court 2016?

Did the Court consider *Haines v. Kerner,* 404 U.S. 519 (1972) when reviewing Petitioner's assignment of error, that the trial court erred by granting possession of real property in an unlawful detainer case because the lower court lacked subject matter jurisdiction over disputes of title?

Did the Court error, constitutional or otherwise, when a "court dismisses pro se litigant without instruction of how pleadings are deficient and how to repair pleadings." *Sims v. Aherns*, 271 SW 720 (1925) *B.Platsky v. CIA*, 953 F.2d 25, 26 28 (2nd Cir. 1991).

When the Court denied Petitioners' appeal, did the Court deny the right to Due Process and Equal Protection?

PARTIES TO THE PROCEEDING

The parties to the proceeding whose judgment is sought to be reviewed, are:

- Leslie Ann Haymond, defendant, appellant , and petitioner here.
- SUPREME COURT OF VIRGINA

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RULE 29.6 STATEMENT

The petitioner is a natural individual.

OPINIONS BELOW

The Virginia Supreme Courts' order dismissing Leslie Ann Haymond's Appeal on April 18, 2018 see Appendix A, and denied a timely petition for rehearing and rehearing *en banc* was entered June 29, 2018, see Appendix B.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). Petitioner seeks review of the decision of the Virginia Supreme Court entered on April 18, 2018. Timely petitions for rehearing and rehearing *en banc* were denied on June 29, 2018.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The district court had jurisdiction under 18 U.S.C. § 1964 and 28 U.S.C. §§ 1331 and 1367.

MANDATORY NOTICE

Please take mandatory notice (Federal Rules of Evidence 201(d)) that "Petitioner should not be charged fees or costs for the lawful and constitutional right to petition this court in this matter in which she is entitled to relief; as it appears that the filing fee rule was originally implemented for fictions and subjects of the State; and, should not be applied to the Petitioner is a natural individual and entitled to relief." *Hale v. Henkel*; 201 U.S. 43.

"A constitutional provision that right and justice shall be administered according to such guarantees is mandatory upon the departments of government. Hence, it requires that a Cause shall not be heard before a prejudicial court; the word "prejudice"; however, in the constitutional provision that justice shall be administered without prejudice. These guarantees cannot be destroyed, denied, abridged or impaired by legislative enactments." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)

JUDICIAL NOTICE

The said Petitioner is not a lawyer and her pleadings cannot be treated as such. In fact, according to *Haines v. Kerner*, 404 U.S. 519 (1972), a complaint, "however in artfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the Petitioner can prove no set of facts in support of his claim which would entitle him to relief." Id., at 520-521, quoting *Conley v. Gibson*, 355 U:S. 41,45-46 (1957). "[A] prose petitioner's pleadings should be liberally construed to do substantial justice." *United States v. Garth*, 188 F. 3d 99, 108 (3dCir.1999).

INTRODUCTION

The American legal system is based on the principle of *stare decisis* and the idea that like cases should be decided alike.[1] Did the Virginia Supreme Court error when disregarding the maxim of *stare decisis et non quieta movere*: "to stand by decisions and not disturb the undisturbed." when they failed to stand by their landmark decision in June 2016 of *Parrish v. FEDERAL NAT. MORTG. ASSOCIATION*, 787 SE 2d 116- Va: Supreme Court 2016.

Did the Virginia Supreme Court unwittingly allow for a wrongful foreclosure that ended in theft of the Petitioner's property?

Did the Court consider *Haines v. Kerner,* 404 U.S. 519 (1972) when reviewing Petitioner's assignment of error, that the trial court erred by granting possession of real property in an unlawful detainer case because the lower court lacked subject matter jurisdiction over disputes of title? "Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers." *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1959); *Picking v. Pennsylvania R. Co.*, 151 Fed 2nd 240; *Pucket v. Cox*, 456 2nd 233

Did the court error, constitutional or otherwise, when a "court dismisses pro se litigant without instruction of how pleadings are deficient and how to repair pleadings." *Sims v. Aherns*, 271 SW 720 (1925) *B.Platsky v. CIA*, 953 F.2d 25, 26 28 (2nd Cir. 1991).

Did the Virginia Supreme Courts deny the right to Due Process and Equal Protection when the court denied Petitioners' appeal?

SINCE our nation's earliest days, the federal judiciary has claimed for itself "the province and duty . . . to say what the law is. *Marbury v. Madiso*n, 5 U.S. (1 Cranch) 137, 177 (1803)." Because of stare decisis, a judicial opinion creates law that can bind subsequent decision-makers just as much as a statute or constitutional provision.[2] If stare decisis means "to stand by things decided,"[3] there should be a sensible way to determine what "things" have in fact been "decided."

"In Virginia, the doctrine of *stare decisis* is more than a mere cliche'. That doctrine plays a significant role in the orderly administration of justice by assuring consistent, predictable, and balanced application of legal principles. And when a court of last resort has established a precedent, after full deliberation upon the issue by the court, the precedent will not be treated lightly or ignored, in the absence of flagrant error or mistake. *Selected Risks Ins. Co. v. Dean*, 233 Va 265, 355 S.E.2d at 579, 581 (1987), *Kelly v. Trehy*,133 Va. 160, 169, 112 S.E. 757, 760 (1922).

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1 *See* Thomas R. Lee, *Stare Decisis in Historical Perspective: From the Founding Era to the Rehnquist Court*, 52 Vand. L. Rev. 647, 661-62 (1999).

2 Antonin Scalia, The Rule of Law as a Law of Rules, 56 U. Chi. L. Rev. 1175, 1176–77 (1989) ("In a judicial system such as ours, in which judges are bound, not only by the text of code or Constitution, but also by the prior decisions of superior courts, and even by the prior decisions of their own court, courts have the capacity to 'make' law.").

3 Black's Law Dictionary 1537 (9th ed. 2009).

It is "this Court's obligation to reexamine critically its precedent" and, by doing so, "confidence in the judiciary" and "the importance of *stare decisis* in our jurisprudence" will be enhanced. *Nunnally v. Artis*, 254 Va. 247, 253, 492 S.E.2d 126, 129 (1997). *Jones v. Commonwealth*, 227 Va. 425, 428, 317 S.E.2d 482, 483 (1984).[4]

"Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment." *Maty v. Grasselli Chemical Co.*, 303 U.S. 197 (1938)

TIMELINE OF THE CASE

The Petitioner had held possession and remained in the real property since 2003.

February 27, 2017 Helmand Investment, LLC filed an Unlawful Detainer action in General District Court of Loudoun County, to evict Petitioner from property. The Petitioner objected that Helmand lacked standing as well as the GDC lacked subject matter jurisdiction over questions of title.

April 5, 2017 Helmand was issued a Foreclosure Deed. Note: 37 days after filing the unlawful detainer action.

April 22, 2017 the Loudoun General District court granted possession.

On or about May8, 2017 Petitioner filed an appeal to the Loudon County Circuit Court.

October 6, 2017 Petitioner's appeal in Loudoun County Circuit Court case #CL00108438 for unlawful detainer was dismissed.

The Petitioner filed her Notice of Appeal to the Virginia Court of Appeal on October 25, 2017

Writ of Possession withdrawn by Loudoun County General District Court on November 15, 2017. Received copy of the Notice of Appeal from October 25, 2017.

November 21, 2017, Helmand Investment LLC filed Motion to reinstate the writ of possession and requested additional security of $25,000.

December 1, 2017 Loudoun Circuit Court held a hearing and issued an Order that the General District Court was to retain Jurisdiction.

December 7, 2017, Loudoun Circuit Court issued and Order granting security. No parties were present, this was ordered after remanding back to General District Court.

The Virginia Court of Appeals received the appeal on December 4, 2017.

December 14, 2017, the Virginia Court of Appeals issued an order to mandate transfer of the case #1946-17-4 to the Virginia Supreme Court for lack of subject matter jurisdiction.

January 3, 2018 the Petitioner scheduled a hearing to Quash Writ of Possession for a hearing on January 5, 2018.

January 9, 2018, Petitioner requested ExParte Motion to Stay Writ. The earliest court date on Motions Day calendar was January 22, 2018.

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4 Jurist Prudent -- The Judicial Opinions of Lawrence L. Koontz, Jr., Volume 5, Lawrence L. Koontz, Jr., John S. Koehler (Editor), Elizabeth B. Lacy (Foreword)

January 12, 2018 Loudoun County Sheriff issued Writ of Possession and evicted Petitioner from property. Petitioner was allowed 9 hours during the 24 allowed to remove personal property.

January 22, 2018 motion denied as Moot.

April 18, 2018 the Virginia Supreme Court issued its order dismissing Petitioner's appeal, see Appendix A.

June 29, 2018 the Virginia Supreme Court denied a timely petition for rehearing and rehearing *en banc*.

STATEMENT OF THE CASE

Scholars have struggled with this question in numerous thoughtful ways, stretching back for the better part of a century.[5] there should be a sensible way to determine what "things" have in fact been "decided."[6] According to Madison, it is a "safe [rule of] construction" that a precedent should be presumptively followed "which has the uniform sanction of successive legislative bodies, through a period of years and under the varied ascendancy of parties."[7]

The body of precedents is called "common law" and it binds future decisions (this principle is called **stare decisis** from the Latin **maxim Stare decisis** et non quieta movere: "to stand by decisions and not disturb the undisturbed."). ... Thereafter, the new decision becomes precedent, and will bind future courts. *Stare decisis* is "the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne* v. *Tennessee, 501 U.S. 808, 827 (1991).* "Considerations of *stare decisis* have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done." *Patterson* v. *McLean Credit Union, 491 U.S. 164, 172-173 (1989).* Furthermore, "stare decisis obligate courts to follow the explicit rules stated by the precedent-setting court in its opinion? "*Stare decisis* is at least the everyday working rule of our law"[8] There should be a sensible way to determine what "things" have in fact been "decided."[9] In addition, "appellate courts are, supposedly, subject to the doctrine of stare decisis, which is defined as the policy of courts to stand by their precedents and not to disturb settled points of

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5 Kent Greenawalt, Statutory and Common Law Interpretation 177–277 (2013); Monaghan, supra note 5, at 763–67, and see generally Llewellyn, Adam Liptak, Justices Long on Words but Short on Guidance, N.Y. Times, Nov. 18, 2010, at A1; see also Henry Paul

6 Henry P. Monaghan, Taking Supreme Court Opinions Seriously, 39 Md. L. Rev. 1, 3 (1979) see also Michael J. Gerhardt, The Role of Precedent in Constitutional Decision making and Theory, 60 Geo. Wash. L. Rev. 68, 76–77 (1991)

7 Letter from James Madison to Charles Ingersoll (June 25, 1831), in The Mind of the Founder, supra note 36, at 391.

8 Benjamin N. Cardozo, THE NATURE OF THE JUDICIAL PROCESS, 20 (1921)

9 Henry P. Monaghan, Taking Supreme Court Opinions Seriously, 39 Md. L. Rev. 1, 3 (1979) see also Michael J. Gerhardt, The Role of Precedent in Constitutional Decision making and Theory, 60 Geo. Wash. L. Rev. 68, 76–77 (1991)

law."[10]

At a bare minimum, stare decisis means a court of last resort should not change its mind on a settled legal principle simply because it produces a result the court dislikes. Id. at 172-73; see also *Square D Co. v. Niagara Frontier Tariff Bureau, Inc*, 476 U.S. 409, 424 (1986); *Ill. Brick Co. v. Illinois*, 431 U.S. 720, 736 (1977). "But stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience." *Helvering v. Hallock*, 309 U.S. 106, 119 (1940). However, while stare decisis is not an "inexorable command," *Payne* v. *Tennessee, 501 U.S. 808, 827 (1991)* the careful observer will discern that any detours from the straight path of stare decisis " occur only "for articulable reasons." *Vasquez v. Hillery*, 474 U.S. 254, 266 (1986). When asked to abandon precedent, a court must distinguish between statutory and constitutional questions. A party "advocating the abandonment of an established precedent" bears a greater burden where "the Court is asked to overrule a point of statutory construction."*Patterson* v. *McLean Credit Union, 491 U.S. 164, 172-173 (1989).* This is because "unlike in the context of constitutional interpretation, the legislative power is implicated," and the legislature "remains free to alter what we have done."

The challenge of determining "what the law is" has been especially acute in the area of civil procedure, where blockbuster decisions in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) have overhauled class actions and pleading standards. Or perhaps they have not--it depends, in large part, on what the basic rules are for determining the lawmaking effect of such judicial decisions.

The topic of *stare decisis* seems to be in the midst of a resurgence, as we grapple with issues such as the precedential impact of the Supreme Court's recent decision upholding the Affordable Care Act,[11] the stare decisis effect of interpretive methodology, and more. See infra notes 27–48

Under Virginia law, an "unlawful detainer" action is *in personam,* relying on the point that "unlawful detainer actions do not address, and have no bearing upon, title to the property." . Because an unlawful detainer action adjudicates the right to possession, and because possession is an interest in real property, that an unlawful detainer action concerns the title or, at least, concerns an interest in the property",*Seitz v. Federal National Mortgage Ass'n*, 909 F.Supp.2d 490, 499 (ED Va. 2012)

Prior to 2016, many practitioners believed that any issues with respect to a foreclosure were not relevant in an action seeking possession. Virginia General

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10 Charles E. Friend, THE LAW OF EVIDENCE IN VIRGINIA § 1.6(b), at 32 (5th ed. 1999)

11 Monaghan, Stare Decisis and Constitutional Adjudication, 88 Colum. L. Rev. 723, 765 n.236 (1988); Precedent in Law (Laurence Goldstein ed., 1987); Michael Abramowicz & Maxwell Stearns, Defining Dicta, 57 Stan. L. Rev. 953 (2005); Larry Alexander, Constrained by Precedent, 63 S. Cal. L. Rev. 1, 3 (1989); Michael C. Dorf, Dicta and Article III, 142 U. Pa. L. Rev. 1997 (1994);

District Courts, which do not have subject matter jurisdiction over title claims, usually hear actions with respect to possession in the form of an action for unlawful detainer for landlord/tenant issues.

A Trustee's Deed was sufficient evidence of the right to possession of the property, and any challenge to the validity of a Trustee's Deed would have to come in the form of a separate action by the former property owner in the Virginia Circuit Court. The foreclosure purchaser would not be entitled to possession until the Circuit Court had ruled on any action related to the validity of the Trustee's Deed. The Petitioner raised the "question of title in the unlawful detainer proceeding, thereby divesting the general district court of subject matter jurisdiction."

Perhaps one of the most surprising of the recent decisions following a foreclosure has come in the context of an action to take possession of foreclosed property in *Parrish v. FEDERAL NAT. MORTG. ASSOCIATION*, 787 SE 2d 116-Va: Supreme Court 2016, where the Virginia Supreme Court stated in Warwick, *Warwick v. Mayo*, 56 Va. 528, 540-41 (1860), that subject matter jurisdiction to try title must be "expressly conferred [upon courts not of record] by statute." 56 Va. (15 Gratt.) at 542. Va Code§§ 16.1-77(3) and Va. 8.01-126 do not expressly confer that power upon general district courts. *Addison, I* 85 Va. at 648-49, 40 S.E.2d at 262. The Petitioner is entitled to dispute the validity of the trustees sale and place the purchaser's title in issue. Since the burden of proof is on the Plaintiff to show the trust property had been duly sold to him and that title was duly perfected. This brings further into question the rights of a purchaser moving forward with a unlawful detainer, to evict the Petitioner which is solely dependent upon the passage of good title at foreclosure.

The Petitioner further states that allegations of "wrongful foreclosure" exist and should prevent an award of possession to the purchaser. The court should not permit a grantor in trust to be deprived of his/her property by an unauthorized act of the trustee. A trustee under a deed of trust acts as a fiduciary for both debtor and creditor. See *Smith v. Credico Indus. Loan Co.*, 362 S.E.2d 735, 7_36 (Va. 1987) (citing *Whitlow v. Mountain Trust Bank*, 207 S.E.2d 837, 840 (Va. 1974)). Because of this, a trustee must "act toward each with perfect fairness and impartiality." *Powell v. Adams*, 18 S.E.2d 261, 263 (Va. 1942). A trustee may not permit a creditor who is seeking to realize on his security to force a sale which would unfairly injure the debtor.. A trustee conducting a foreclosure sale has an affirmative duty to seek assistance from the court to remove any cloud on title and to ascertain the amount of prior encumbrances. *Linney v. Normoyle*, 145 Va. 589, 593, 134 S.E. 554, 555 (1926); *Hudson v. Barham*, 101 Va. 63, 67, 43 S.E. 189, 190 (1903); *United States v. Romer*, 148 F.3d 359, 363 (4th Cir. 1998) In the event the trustee fails to do so, a secured creditor has the "unquestionable right" to seek relief from the court. Id., 43 S.E. at 190. If a trustee . . . attempts to make such sale while there is a cloud resting on the title to the property, or there is any doubt or uncertainty as to the debts secured or the amounts thereof, or a dispute or conflict among the creditors as to their respective claims, a court of equity, on a bill filed by the debtor, secured creditor, subsequent incumbrancer, or other person having an interest, will restrain the trustee until these impediments to a fair sale have by its aid been removed. . .

.Id.; 43 S.E. at 190 (emphasis added). This is because a cloud on title has a chilling effect on potential purchasers, precluding the trustee from obtaining the highest possible sale price for the property. C*herokee Corp., Trustee v. Chicago Title Ins.* Corp., 40 Va. Cir. 1, 13-14 (Warren County 1995). In cases where a trustee has ignored its affirmative duty to halt a foreclosure sale and did not seek assistance from the court, courts in Virginia have granted a temporary injunction. See, e.g., *Hudson v. Barham*, 101 Va. 63, 67, 43 S.E. 189, 190 (1903) (temporary injunction granted where there was a dispute as to validity and priority of other liens); *Bremer v. Bittner*, 19 Cir. 143320 (Fairfax County, Dec. 4, 1997) (granting temporary injunction where debtor disputed amount due under the note).

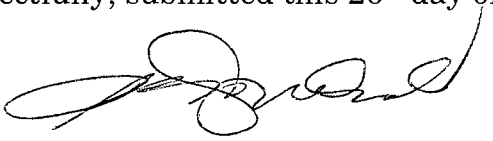
REASONS FOR GRANTING THE PETITION

Stare decisis is a bedrock principle of the American legal system and builds confidence in the judicial process. The Certiorari should be granted to maintain this confidence in the judicial system that American's are proud of.

CONCLUSION

Today, more then ever, procedural due process jurisprudence requires, at the very least, that courts should give the prose civil litigant a liberal construction of their pleadings. The court should then determine what further process is due, based on the individual facts and circumstances of the case. Unfortunately, sometimes pro se litigants never truly get their day in court, even though the facts deserve judicial review.

Respectfully, submitted this 26th day of November2018.



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