

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED

JAN 23 2023

APPEAL FROM CHARLESTON COUNTY
Bentley Price, Circuit Judge

SC Court of Appeals

Appellate Case No. 2022-000660

Vanessa Richardson El.....Petitioner,

v.

DITECH FINANCIAL, LLC.....Respondent.

PETITIONER VANESSA RICHARDSON EL'S PETITION FOR REHEARING

Bakha Yawuti El, Next Friend/Representative,
Durable POA of Vanessa Richardson El, Petitioner
Non-Domestic Mail in care of:
PO Box 22591
Charleston, South Carolina Republic (zip exempt) A.R.R.
North Amexem (America) ©AA222141

Pursuant to Rules 221(a) and 240, SCACR, Petitioner Vanessa Richardson El through her Next Friend representative / Durable Power of Attorney respectfully petitions the Court to reconsider and rehear Richardson vs. DITECH FINANCIAL, LLC Case No. 2022-000600. For the reasons set forth herein, Vanessa Richardson El submits that the court should grant the petition for rehearing, withdraw its previous order, and allow the appeal to continue forward for the opportunity for lawful relief for the Petitioner.

BACKGROUND

This case arises out of a foreclosure matter concerning one Ms. Vanessa Shevell, of the freonama Richardson, noble and national title El, concerning a mortgage matter in which the company DITECH FINANCIAL, LLC, representatives filed a complaint in the Charleston County Court of Common Pleas in August 11th of 2017 for foreclosure. I, Bakha Yawuti El, her cousin and next friend, at the time unaware that she was experiencing stroke conditions that were affecting her memory but I knew other debilitating conditions of hers, was notified by her of the complaint in September and ensured that her answer was promptly filed. Because of her brain trauma and mental condition, she was not aware that she had mail from the court of the default judgment of the December 29th, 2017 hearing, until a few weeks later sometime in late January of 2018 in which the Charleston County Master In Equity Mikell Scarborough immediately signed an order of Foreclosure and Sale. I looked at her mail and only saw notice from the court of the judgment in her absence, I did not see any mail giving due notice of the hearing. At the end of that month (January 2018) the Petitioner had an MRI done which discovered that she was suffering from Microangiopathy/Chronic Stroke condition, and Master In Equity Scarborough was subsequently given those medical records in a following void order hearing, and he made a determination to disregard those medical records and uphold the Default Judgment, ruling against the void order motion in an abuse of discretion and lack of due care when his skillset is in equity and not the medical profession. After a long period of attempting to exhaust all options I eventually filed a suit as POA in the Charleston County court of Common Pleas to challenge the validity of the debt and claim made by DITECH FINANCIAL, LLC representatives, in which Charleston County Circuit Court Judge Bentley Price dismissed in the 1st hearing without giving the opportunity for the case to be heard, which resulted in the present appeal.

STANDARD

Rule 221(a), SCACR, allows a party to petition the Court for rehearing. The petition for rehearing must state “the points supposed to have been overlooked or misapprehended by the court,” Rule 221(a), SCACR, so as “to aid the court in deciding correctly a case heard by it,” *Arnold v. Carolina Power & Light, Co.*, 168 S.C. 163, ___, 167 S.E. 234, 238 (1933).

ARGUMENT

1. The order filed 1/05/2023 in regard to accepting filing by Durable Power of Attorney that are non-lawyers is in error of International Customary Law, the federal and state Constitutions of the United States of America and South Carolina, Federal and State Rules of Civil Procedure, and South Carolina Code of Law see FRCP 17(c), SCRPC 17(c), and SC Code of Law 62-8-212 Claims and Litigation. Vanessa Shevell Richardson El is indeed disabled and incapacitated because of chronic cerebrovascular accidents/strokes, neuropathy, etc and other diagnosed conditions and has as her ‘next friend’ her Appointed Durable power of Attorney (Representative) I, her cousin Bakha Yawuti El, who being in propria persona sui juris has persona standi in judicio, am competent, well-versed in law and have her best interest at heart.
2. I the above named Next Friend / Representative with Durable Power of Attorney am charged with the Fiduciary duty to File, Litigate and/or Defend the appeal in which this court official(s) have a duty not to impair/come in between or create unconstitutional obstacles that assist the opposing parties in gaining an unwarranted and unfair legal advantage to avoid their liability for the injury they have caused to the Petitioner, and

prevent me from executing my contractual duty to her in deprivation of due process and equal protection of law, when both the federal and the state rules and code do in fact provide a remedy that we are utilizing our right to exercise in accord with constitutionally protected rights and international human rights peremptory norm standards. The Petitioner and her representative/agent/next friend/Durable power of Attorney are of aboriginal and indigenous relation to the North American land being bound to the continent by heritage, and have a fundamental and internationally recognized right to utilize our own national representatives as well as participate in the life of the occupational state when so chosen to do so.

3. a) F.R.Civ.P. 17(c):

(1) With a Representative. The following representatives may **sue or defend** on behalf of a minor or an incompetent person:

- (A) a general guardian;
- (B) a committee;
- (C) a conservator; or
- (D) a like fiduciary.

b) SCRCF Rule 17(c):

(c) Minor or Incompetent Persons. Whenever a minor or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, **the representative may sue or defend on behalf of the minor or incompetent person.** If a minor or incompetent person does not have a duly appointed representative he may sue by his next friend or by guardian ad litem.

c) SC Code of Law SECTION 62-8-212. Claims and litigation.

Unless the power of attorney otherwise provides and subject to Section 62-8-201, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

- (1) assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief;
- (2) bring an action to determine adverse claims or intervene or otherwise participate in litigation;

d) The Constitution for the united states of North America is the Supreme Law of the Land and any law rule or regulation contrary is not withstanding. To deny anyone but B.A.R. members the right to help or assist others in matters of law or litigation is an unconstitutional act of denying the people / public equal access to the courts and an open admission that those courts are not public and are not constitutional venues.

Article VI Clause 2: This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

e) South Carolina Constitution Article 1 Section 9: Courts; speedy remedy.

All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained. (1970 (56) 2684; 1971 (57) 315.)

f) As stated by the Court in *In re Zawisza*, 73 B.R. 929, 935 (Bankr. E.D. Pa. 1987):

“We begin our analysis of F.R.Civ.P. 17(c) by recognizing that Bankruptcy Rule 7017 incorporates F.R.Civ.P. 17 for adversary proceedings, thus permitting an incompetent, by his or her next friend, to initiate or defend an *adversarial* proceeding in bankruptcy. We conclude that a next friend is thus logically also a proper party to file a voluntary petition for an incompetent. Since the next friend may file every other type of federal action pursuant to F.R.Civ.P. 17, there is simply no reason to preclude a next friend from filing a bankruptcy petition and several reasons support the allowance of such an action.”

“The Debtor's argument that she will be denied equal protection of the laws if not allowed to file voluntary bankruptcy is compelling on two bases. First we cannot agree with the result of treating an incompetent, acting by her guardian or next friend, differently from a competent debtor by prohibiting the filing of a bankruptcy petition by an incompetent. **We find such a distinction to be irrational.** Secondly, the concept of allowing an involuntary bankruptcy to be filed against an incompetent, while not allowing the same incompetent, acting by her guardian or next friend, to do so is clearly irrational as **being dissimilar treatment of the same individual based only upon the irrational distinction of who purportedly has the right to file a bankruptcy petition on the individual's behalf.**” *In re Zawisza*, 73 B.R. 929, 934 (Bankr. E.D. Pa. 1987)

“Another constitutional issue, even more serious, would arise from the denial of the incompetent's right to due process of law if we held that the Code precluded the filing. The Debtor accurately cites *United States v. Kras*, 409 U.S. 434, 93 S.Ct. 631, 34 L.Ed.2d 626 (1973); *Lindsey v. Normet*, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 36 (1972); and *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971), for the proposition that **due process requires that access to the courts cannot be precluded**. Denial of the right of an individual to file bankruptcy because of mental incompetence would clearly be a preclusion of incompetents from our Court comparable to the denial of the right of an individual to prosecute a divorce action because of poverty. Thus, as in *Boddie*, **the result would be a denial of "a meaningful opportunity be heard" to a certain class of individuals in violation of due process of law.** 401 U.S. at 379, 91 S.Ct. at 787.” *In re Zawisza*, 73 B.R. 929, 934 (Bankr. E.D. Pa. 1987)

e) Citing *In Re Thompson*, C/A No. 10-06831-DD, (Bankr. D.S.C. Dec. 22, 2010:

“If an infant or incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the infant or incompetent person.”

“A person's competence is generally determined under the incompetency laws of the state of the debtor's domicile. *In re Whitehead*, No. 05-50136, 2005 WL 1819399, at *2 (Bankr. M.D.N.C. July 22, 2005). South Carolina law states:”

“It is not necessary to prove mental incompetence by an adjudication of incompetency.

Conversely, an adjudication of incompetency is but prima facie evidence of that fact. Mental

incompetence is established by credible evidence that the subject, because of mental impairment, has become incapable of managing his own affairs.”

4. Concerning the distorted, and illogical claims made in *Brown v. Coe* 365 S.C. cited by the Defendants counsel in their Motion to Dismiss. I am not unaware of the origin of the establishment of the American B.A.R. Association during the period of U.S. Reconstruction, the organization’s relationship to the “new” 13th amendment of 1865, and the disappearance of the original 13th amendment leading up to that time. The well documented history of South Carolina Senator Ben Tillman’s speeches about the intent of their coup d’etat of government during the time of the establishment of the American B.A.R. and the taint of the 1895 State Of South Carolina Constitution he described in detail, the Southern Rights Clubs documented intent of formation, the Act of Congress Feb. 2nd, 1871, the 1870-1871 defacto amendments to the Naturalization Act of 1790 concerning the definition of (Free) White Persons and the changing of the Classes/Castes Black and White to “Races”, the incorporation and copyrighting of the states, state constitutions, state court venues, municipalities, etc and the instituting of the Black Codes in the South Carolina state statutes 1868 whereafter the other states of the union followed suit. I have the references for all of the aforementioned but do not have the time to cite them, and don’t think that it’s necessary if the reviewers of this Petition be just, lawful and fair. If I am forced to produce a Writ of Certiorari then I’ll lay it all out. If justice is to prevail, I should not have to mention it at all or deviate from the aforementioned provisions of U.S. Federal and State Rules of Civil Procedure that clearly provide a remedy applicable in this matter. All of these acts that constitute as Ben Tillman worded

it, "Violence and Fraud", violence also meaning distortion of fact, work in unison to accomplish the unconstitutional intent documented behind those actions and serve as a foundation to deny people equal access to constitutional protections of law from being compelled to associate with the private BAR Association and equal access to justice. The Constitution for the united states of America being a document in the nature of Positive Law, the same constitutional provisions hence exist in International Customary Law. This is why the law of Nations exist. It acknowledges the distinction between the Perfect and the Imperfect Right. The right to Compel and the Right to Ask. Aboriginal/Indigenous peoples have the fundamental right pursuant to the jus cogens/compelling law Right to Self-Determination and internationally recognized Judicial Guarantees to participate in decision-making in matters which would affect their rights, through their own national representatives chosen by themselves. That constitutes the exercising of primary pre-existing, everlasting, guaranteed rights, and is in fact Distinguished and is Not in fact "practicing" law in an incorporated foreign occupational body politic STATE OF SOUTH CAROLINA" Duns Number: 067006072.

a) Organization of American States (OAS) Declaration on the Rights of Indigenous Peoples Article XXII. Indigenous law and jurisdiction

1. Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

2. Indigenous law and legal systems shall be recognized and respected by national, regional and international legal systems.
3. Matters concerning indigenous individuals or their rights or interests in the jurisdiction of each State shall be conducted in such a way as to afford indigenous individuals the right to full representation with dignity and equality before the law. Consequently, they are entitled, without discrimination, to equal protection and benefit of the law, including the use of linguistic and cultural interpreters.
4. States shall take effective measures in conjunction with indigenous peoples to ensure the implementation of this article.

b) United Nations Declaration on the Rights of Indigenous Peoples Article 5:

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

c) United Nations Declaration on the Rights of Indigenous Peoples Article 18:

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.


5. The Proof of Service filed to cure the listed deficiencies was a mistake whether unilateral or mutual due to the fact that the Deficiency letter specifies to state that a copy of the Notice of Appeal has been served on the “Respondent’s Counsel”, but at the 1 and only lower court hearing, the counsel that appeared said he was the counsel for all of the defendants except the Respondent (DITECH FINANCIAL LLC) and The Respondent never gave a notice of appointment of counsel in this case. So I listed the Defendants’ collective Registered Agent as being given notice of appeal on the proof of service attempting to make sure it was reflected that everyone was notified and mistakenly left off the counsel for all of the Defendants except the Respondent. This mistake is the fault of mine and not of the Petitioner. The main substantive purpose of a proof of service is for the Defendants & Counsel to receive notice, which such notice is proven to have taken place by the multiple correspondences in this matter filed by the Defendants’ counsel of record dating back to July 2022. The appeal was held in abeyance due to the ongoing bankruptcy case at the time, and the mistake as a result of these facts caused no harm to the Defendants.

CONCLUSION

Substantially the purpose for this Appeal is for the Petitioner to receive the right to have the Respondent provide proof of a debt owed by the Petitioner and proof of the lawful right of the Respondent to dispossess the Petitioner of her land and home which has never taken place in this matter. According to South Carolina positive law of void orders pursuant to the Supreme Law of the Constitution for the united states of America if there’s any inference that the Petitioner can gain remedy the court officials have a duty to

yield in favor of the claimant and her guaranteed rights. The Petitioner never had an opportunity to challenge the claim or have her day in court due to an abuse of discretion upon an error of law by the circuit judge of the lower court. To Remit the matter back to the very court where the abuses took place without giving the Petitioner the opportunity to be heard in a full and meaningful way would irreparably injure the Petitioner due to the seriousness and severity of the issue.

Respectfully submitted,



Bakha Yawuti El, Next Friend and Durable POA of
Vanessa Richardson El, Petitioner

Non-Domestic Mail in care of:

PO Box 22591

Charleston, South Carolina Republic (zip exempt) A.R.R.

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©AA222141

January 18th, 2023

Vanessa Richardson

v.

LOANCARE LLC, DITECH FINANCIAL LLC, et alia

Appellate Case No. 2022-000660

Exhibit A

Vanessa Richardson El's Medical Records

**PETITIONER VANESSA RICHARDSON EL
PETITION FOR REHEARING**

Exhibit A pg1

RICHARDSON, Vanessa S DOB: [REDACTED]
08/26/2021



PALMETTO AND SPECIALTY
PRIMARY CARE
PHYSICIANS

Richardson, Vanessa S

1143 HAMLIN RD, MOUNT PLEASANT, [REDACTED]
[REDACTED]

Appointment Facility: PCP Island Court

08/26/2021

Progress Notes: Ann Kelly MD

Reason for Appointment

- 1 month f/u Meds

Assessments

1. Essential hypertension - I10 (Primary)
2. Avascular necrosis of bone of right hip - M87.051
3. Insomnia, unspecified type - G47.00
4. Other chronic pain - G89.29
5. ~~History of CVA (cerebrovascular accident)~~ - Z86.73
6. GERD without esophagitis - K21.9
7. Lupus - M32.9
8. Anemia of chronic disease - D63.8

Treatment

1. Essential hypertension

Clinical Notes: Elevated today, however patient did not take her medication this morning. Advised to take blood pressure medication at night instead. Will not make any changes today.

2. Avascular necrosis of bone of right hip

Clinical Notes: Patient is urged to see orthopedic surgery for evaluation. She is overdue for hip replacement. Has significantly limited mobility and pain.

3. Insomnia, unspecified type

Refill Zolpidem Tartrate Tablet, 5 MG, 1 tablet at bedtime, Orally, Once a day, 30 days, 30 Tablet, Refills 0

4. Other chronic pain

Refill oxyCODONE-Acetaminophen Tablet, 10-325 MG, 1 tablet as needed, Orally, three times a day, 30 days, 90 Tablet, Refills 0

Refill diazePAM Tablet, 5 MG, 1 tablet as needed, Orally, twice a day, 30 days, 60 Tablet, Refills 0

5. History of CVA (cerebrovascular accident)

LAB: LIPID PANEL

6. GERD without esophagitis

Refill NexIUM Capsule Delayed Release, 40 MG, 1 capsule, Orally, Once a day, 90 day(s), 90 Capsule, Refills 1

7. Lupus

LAB: MICROALBUMIN/CREATININE RATIO (MALB) URINE

LAB: COMPREHENSIVE METABOLIC PANEL (CMP)

8. Anemia of chronic disease

LAB: CBC WITH PLATELET AND DIFF

Progress Note: Ann Kelly MD 08/26/2021

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Exhibit A pg 2

East Cooper Medical Center
2000 Hospital Drive
Mt Pleasant, SC 29464-3764

Patient: RICHARDSON, VANESSA S
[Redacted]
[Redacted] / Female
Attending Provider: STROUD MD, JASON
Admission Date: 1/30/2018
Discharge Date: 1/30/2018
Lab Medical Director(s): Joseph M. Sanfrancesco, MD

Magnetic Resonance Imaging

[Redacted] Exam Date/Time: 1/30/2018 12:47 EST Procedure: MRI Brain w/o Contrast Ordering Provider: STROUD MD, JASON

Report

EXAMINATION: MRI Brain W/O Contrast 1/30/2018 11:30 AM

PATIENT: VANESSA S RICHARDSON [Redacted]

INDICATION: S09.90XA

COMPARISON: None.

TECHNIQUE: Multi-planar, multi-sequence MRI of the brain without IV contrast.

FINDINGS: There are 12 hyperintensities within the right greater than left basal ganglia likely representing the sequelae of prior lacunar infarctions. Minimal periventricular and supratentorial white matter changes noted, nonspecific but may be secondary to chronic small vessel disease. The ventricles and other CSF spaces are symmetrical and appropriate. Diffusion imaging shows no evidence of acute infarction or other acute abnormality. There is no evidence of intracranial blood products.

IMPRESSION:

No evidence for traumatic injury to the brain.

Findings likely related to prior lacunar infarctions of the right greater than left basal ganglia. Minimal supratentorial and periventricular white matter change, nonspecific but may be secondary to chronic microangiopathy. These findings would be atypical in a patient of this age and consider further workup for vasculitis or other etiology.

Final Report

Dictated: 01/30/2018 1:48 pm Dictated By: PAULS MD, DARRYL
Electronic Signature: 01/30/2018 1:53 pm Signed By: PAULS MD, DARRYL

[Redacted] Exam Date/Time: 1/30/2018 12:39 EST Procedure: MRI Spine Lumbar w/o Contrast Ordering Provider: STROUD MD, JASON

Report

EXAMINATION: MRI Spine Lumbar W/O Contrast 1/30/2018 11:30 AM

PATIENT: VANESSA S RICHARDSON [Redacted]

STATE OF SOUTH CAROLINA,)

IN THE SOUTH CAROLINA)
COURT OF APPEALS)

Vanessa Richardson El)
Appellant)

**MOTION AND AFFIDAVIT TO)
PROCEED IN FORMA PAUPERIS)**

vs.)

DITECH FINANCIAL, LLC)
Respondent(s).)

FILE NO. 2022 - 000660

I, Bakha Yawuti El, Durable Power of Attorney of Vanessa Richardson El, the Petitioner, attest and affirm that she does not have the funds available to pay the costs of filing, service and court costs in the present matter. I hereby request that the case be filed and proceeded without costs.

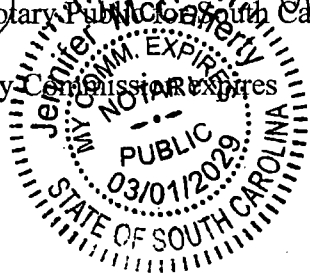
Affirmed to and Subscribed before me)
this 18th day of January, 2023.)

[Signature])
Notary Public for South Carolina)

[Signature])
Signature Of Petitioner Representative)

My Commission Expires 03/01/29)

All Rights Reserved)
UCC 1-103 1-207 1-308 7-202)



ORDER

Leave is *granted* to proceed in forma pauperis without payment of the filing fee.

Leave is *granted* to proceed in forma pauperis without payment of the service cost.

Leave is *denied* to proceed in forma pauperis.

Dated: _____, 20____)
JUDGE/CLERK OF COURT

_____, South Carolina

RECEIVED

JAN 23 2023

SC Court of Appeals

**PROOF OF SERVICE OF
A PETITION FOR REHEARING**

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley Price, Circuit Judge

Case No. 2022-000660

Vanessa Richardson El,

Appellant,

v.

DITECH FINANCIAL, LLC,

Respondent.

PROOF OF SERVICE

I certify that I have served copy of the Petition For Rehearing and Exhibits on Defendants by depositing a copy of it in the United States Mail, postage prepaid, on January 18th, 2023 ccy, addressed to the attorney of record, BROCK AND SCOTT, PLLC, 3800 Fernandina Road, Suite #110, Columbia, South Carolina 29210.



January 18th, 2023

Defendants Counsel of Record:
Chad W. Burgess, Esq.
BROCK AND SCOTT, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
803-454-3540



Bakha Yawuti El, Next Friend,
Durable POA of
Vanessa Richardson El
Non-Domestic Mail in care of:
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North Amexem (America) A.R.R.
chakoramooors@gmail.com

FROM:
Bakha Yaruti El
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Charleston, South Carolina Republic
North American (America) A.R.R.

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