

No. 23-3593

IN THE UNITED STATES COURT
OF APPEALS FOR THE EIGHTH CIRCUIT

JOANNA BURKE

Plaintiff-Appellant,

v.

PHH MORTGAGE CORPORATION, ET AL

Defendants-Appellees.

On Appeal from the United States District Court
For the District of Minnesota;
USDC No. 0:23-cv-01119-WMW

APPELLANT JOANNA BURKE's MOTION FOR EXTENSION OF TIME

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Pro Se Appellant

Appellant and non-prisoner, Joanna Burke, pro se, moves this court for an extension of 30 days to file for rehearing in this appeal. This is not for the purposes of delay, but relies upon recent high-profile *venue-related* case, currently battling between the Fifth Circuit, the Northern District Court in Texas and the DC District Court. At the time of this filing, the case in question, *Chamber of Commerce of the United States of America v. Consumer Financial Protection Bureau* (4:24-cv-00213), has been stayed by the Fifth Circuit until 1700 hrs on Jun 18, 2024 (Doc. 97, May 29). The pleadings and orders in this Texas case repeatedly cite to *In re Volkswagen of Am.*, 545 F.3d 304, 312-13 (5th Cir. 2008) and which Appellant relies upon as part of her argument in this appeal, related to venue and general jurisdiction. The Appellant provides the following in support of her motion:

BACKGROUND & ARGUMENT (WITH LEGAL AUTHORITIES)

The Appellant was denied the opportunity for briefing in this appeal, which was decided by the three-panel solely based on the District court docket and pleadings. Joanna Burke has examined the court's original "order" (not an opinion), which cited local Rule 47(b). In her view, the appeal panel should have prioritized the following key grievances, but evidently did not:

(i) The indefensible appointment of conflicted Magistrate Judges, especially the latter David Schultz, who worked as defendant's counsel for PHH Mortgage Corporation (PHH) on the very case which led Appellant to file in Minnesota

District Court, see *Residential Funding Co. v. Mortg. Network, Inc. (In re RFC Liquidating Trust Litig.)* 14-cv-4701 (JRT) (D. Minn.) (David T. Schultz, #169730, david.schultz@maslon.com, ATTORNEYS FOR DEFENDANT PHH MORTGAGE CORPORATION);

(ii) The blanked motion for an interlocutory appeal (MOTION TO CERTIFY DISPOSITIVE INTERLOCUTORY APPEAL AND TO STAY PROCEEDINGS PENDING APPEAL, July 21, 2023);

(iii) The blatant misconstruing of the English vernacular to assert incorrectly Appellant was asking for “prepayment” rather than “preapproval” of costs related to process of service, along with an extension of time to complete said service;

(iv) Discounting “general jurisdiction” when officers of the court include a federal clerk, and a private defendant – PHH - who operate and retain physical presence in every state in the United States of America, including Minnesota.

Local Appellate Rule 47(b)

Interpreting the rule in layperson's terminology; the Rule basically says that if there isn't a specific law that tells a Court of Appeals how to handle a certain situation, they can make their own rules about it.

However, these rules they make have to follow the overall federal laws, the rules set out in Rule 47 itself, and any local rules that the Court of Appeals has.

It also says they can't punish or disadvantage someone just because there

isn't a specific law on the matter.

Joanna Burke has been “punished and disadvantaged” by this court’s refusal to provide the same due process afforded to other litigants in similar cases. In short, the panel has chosen to ignore its own precedent (unpublished), considering the miniscule number of cases where Rule 47(b) has been invoked.

Process of Service Costs: Pre-Approval, not Pre-Payment

For example, the lower court willfully and maliciously (which federal and circuit judges can do with absolute immunity - and impunity - but it doesn’t make it correct in law *e.g.*, *Kaisamba-Kanneh v. Dakota Cnty. Dist. Court*, 22-cv-2661 (ECT/TNL), at *9 (D. Minn. Feb. 1, 2023); *Gu v. Hittner*, 4:23-mc-301, at *4 (S.D. Tex. Mar. 8, 2023)) referred to Appellants request for “pre-approval” of process of service as a request for “pre-payment” of these services. This is patently false.

Joanna Burke clearly stated that “officers of the court,” including attorneys and a clerk at the Fifth Circuit, refused to waive service, which violates their ethical responsibilities. She was seeking confirmation from the judicial system itself that she would be reimbursed for the costs of serving process on these "officers of the court" and PHH.

See this court’s opinion in *PROBY V. CORIZON MED. SERVS.*, NO. 20-2018 (8TH CIR. OCT. 28, 2020) reversing the lower court and allowing process of service denied to a *pro se* prisoner. Notably, Judge RAYMOND W.

GRUENDER is on Joanna Burke's panel, as he was in the Proby appeal.

That case mirrors this appeal, insofar as there was no briefing (no defendants). However, that did not stop the panel from actually writing an "opinion", which included allowing process of service to be completed (on a large number of individuals and entities at taxpayer's expense).

Here, fixed income pensioner and widower Joanna Burke was merely asking for confirmation that her costs would be "reimbursable" due to the fact these "officers of the court" refused to waive service. She was not looking for a handout or a prepayment, unlike Proby. Appellant paid her District Court and Appellate Court fees immediately upon request. This court's refusal to apply the same standard to an elder, law-abiding citizen over a convicted armed bank robber and felon is abhorrent and scandalous.

Venue: Transfer Over Dismissal Prevails Everywhere Other than MN

The appellant is flummoxed by the application of Rule 47(b) to the facts of her appeal, particularly in light of recent lower court rulings, such as a New York case involving mortgage servicer PHH Mortgage Corporation. Although the case initially disguised the identity of the defendant PHH, it became evident that venue was at the core of the issue. Chief Judge Laura Taylor Swain of the Southern District of New York correctly applied the law by transferring the civil lawsuit, stating, "Under Section 1404(a), transfer appears to be appropriate in this case."

(See *Keita v. Nerdrez (and PHH Mortgage Corporation)*, 23-CV-2103 (LTS) (S.D.N.Y. Apr. 5, 2023)).

In essence, the District of Minnesota's dismissal of the case without prejudice is needlessly escalating litigation costs for Joanna Burke, which contradicts the principle of fairness when compared to similar cases across the nation.

PETITION FOR PANEL REHEARING & REHEARING EN BANC

If this court denies the motion for an extension of time, Appellant Joanna Burke relies upon the “Minutes of the Fall 2021 Meeting of the Advisory Committee on the Appellate Rules October 7, 2021” and requests this motion be converted to a Petition for Panel Rehearing and Rehearing En Banc. The Committee has also asserted that pro se litigants Petition could be in hand or type-written form, without need for strict compliance to legal format or style.

CONCLUSION

Respectfully, and for the above reasons, Appellant prays the court will GRANT the extension of 30 days in order that she may file her rehearing in this appeal. In the alternative, the court should convert this motion to a Petition and render its final decision.

DATED: June 8, 2024

JOANNA BURKE

By s/ Joanna Burke
JOANNA BURKE

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CERTIFICATE OF COMPLIANCE

I, Joanna Burke, undersigned, certify that:

1. This document complies with the type-volume limitation of Fed. R. App.P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R App. P. 32(f), this document contains 1,110 words, as determined by Microsoft Word for Microsoft 355 word processing software.

2. This document complies with the typeface requirement of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in Times New Roman (14-point).

DATED: June 8, 2024

s/ Joanna Burke

JOANNA BURKE

CERTIFICATE OF SERVICE

I hereby certify that a certificate of service is not required in this appeal.

s/ Joanna Burke
JOANNA BURKE