

No. 18-1060

IN THE SUPREME COURT OF THE UNITED
STATES

MICHAEL A. WEISS Individually and as EXECUTOR OF
ESTATE OF JANE L. MARSH,
Petitioners,

vs.

STEPHEN D. MARSH and DAMON MARSH, Co-Executors
Estate of Monroe F. Marsh
Respondents.

ON PETITION FOR REHEARING (SUPPLEMENTED)
WRIT OF CERTIORARI TO THE COURT OF APPEALS
DISTRICT 4 DIV 3, STATE OF CALIFORNIA

PETITION FOR REHEARING (SUPPLEMENTED) WRIT
OF CERTIORARI

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I. I Michael Weiss declare that I am the attorney of record for the Opposing Party in this matter Michael Weiss as Executor of the Estate of Jane L. Marsh Deceased. I give this Declaration in support of this supplement to the Petition for Rehearing on 18-1060. I have personal knowledge of the facts contained in this Declaration, and if called as a witness, I could and would competently testify to the facts contained herein. All exhibits herein are true and correct copies of same as I have compared them.

2. There is an immediate need to prevent distribution of separate property of Estate of Jane L. Marsh and continued enforcement of void orders.

3. On June 4, 2019 Commissioner Edward Hall determined (see Suppl Appx at its Ex 1, incorporated herein by reference) that I had no standing to defend the Estate of Jane L. Marsh by filing objections to the final distribution petition (see Suppl Appx at its Ex 2, incorporated herein by reference) nor a Memo of Points & Authorities in Support Thereof (See Suppl Appx at its Ex 3 incorporated herein by reference). However I filed as attorney (not in pro per) for the executor of the Estate of Jane L Marsh because Judge

Hubbard's void vexatious litigant 9-5-2017 order required me to obtain permission to file any new in pro per new litigation. That denial of access to court to defend the property interests of my cleint violated the U.S. Constitution Due Proces Clause as recognized by John v. Superior Court (2016) 63 Cal.4th 91 [201 Cal.Rptr.3d 459].

4. I need an order vacating the Court of Appeals decisions now that there is a final decision.

5. My stepfather Monroe F. Marsh died in November 2009 and within 60 days I purchased a \$640,000 cashier's check (see Suppl Appx at p. 93) which I loaned to my mother on February 4, 2010 so that she could acquire a reconveyance deed (see Suppl Appx at p. 99) per paragraphs 10 & 16 of my stepfathers trust deed (see Suppl Appx at p.85) on the family residence because my stepfather left a \$640,000 mortgage on it. Since Jane L. Marsh acquired that money after Monroe died, the court sitting in probate and on appeal, had no subject matter jurisdiction over it.

6. The character of my mothers separate property never changed in form from separate property to community property. The first form change of the \$640,000 was into the reconveyance deed she

received; and, the second form change was into the sale proceeds of the family residence.

7. I, as attorney (not in pro per) for the executor of Estate of Jane L. Marsh filed objections and Cross petition to the petition for final distribution etc. grounded on the fact that the court had no subject matter jurisdiction over void orders and in particular over (A) the \$640,000 of separate property; (B) the order for sale of the real property and for the preliminary distribution of its proceeds. I submitted pages from reporter transcripts showing that there was zero evidence offered at the hearing to support those petitions (see Suppl Appx Ex 4 attached hereto and made a part hereof) and © contended that the orders for sale of property and preliminary distribution violated the U.S. Constitution Equal Protection Clause. The objections and cross petition did not seek to revisit any issues previously determined due to error or insufficient evidence; rather, just the fact the orders were void which inspection of the judgment roll would reveal.

8. I alleged that the law of the case doctrine cannot be used to create subject matter jurisdiction in a trial court which it never had; and that

affirmance by appeal court of a void trial court order can never create subject matter jurisdiction in the trial court which it never had.

If the trial court had no subject matter jurisdiction neither did the court of appeals. All such factual contentions had case support as cited in my Objections and Memo of Points & Authorities which Commissioner Hall disagreed with by denying both defensive and offensive standing.

9. The Appeals Court dismissal of the appeal on the preliminary distribution orders etc was not on the merits; but, it was denied for lack of standing grounded on its prior decisions. Even that lack of standing determination was not an adjudication on the merits that a fatal fact or law existed; but, rather an adjudication that there was no right to file any appeal.

10. There were three versions of the same pre filing order of Judge Hubbard but all void because of violation of Code of Civ.Proc. 1008(b) and (e), since nowhere in Mr. Magro's declaration did he identify the judge to whom the first application for a prefiling order was made. The first request was filed 10-31-14 (trial court Registry of Action #836 and denied on 1-8-15 per Registry #700).

11. The two federal question for review are (1) whether the suppression of Jane L. Marsh's separate property in the form of a \$640,000 cashier's check and related evidence by the co-executors, who received substantial state actor assistance, suggest a reasonable probability that a due process or equal protection clause taking of such property and an unfair probate distribution occurred in her husband's probate distribution proceedings because that \$640,000 and other separate property was in effect distributed to her husband's devisees and their attorney and (2) Whether the appeals court was in error in refusing to conduct an evidentiary hearing into the claimed violation of the United States Constitutional rights as just mentioned on the ground of law the case and/or res judicata.

12. Because the Court of Appeals dismissed the appeal in G054553 and the related appeal in G054796 on grounds of lack of standing and concluded petitioners were ineligible for further state review and because the California Supreme Court denied hearing, those events and the intervening event of final distribution provide strong evidence that the federal claims been given full consideration and the result would be different if Estate of Jane L. Marsh were to appeal

the final distribution order. See Cone v. Bell (2009) 556 U.S. 449, 466-467 [129 S.Ct. 1769, 173 L.Ed.2d 701].

13. Although the Cone case was a habeas proceeding the same underlying fundamental principles of constitutional fairness are applied to civil proceedings.

14. Alternatively, my stay request is grounded on contention that the materiality test of Brady was applicable; namely, that had the suppressed evidence been considered there is a reasonable probability of a different result since it put the whole case in such a different light as to the undermine confidence in the judgment.

15. De novo review is the standard for this court to apply per Cone supra p. 472.

16. Wellons v. Hall (2010) 558 U.S. 220 [130 S.Ct. 727, 175 L.Ed.2d 684] is cited in support of the rehearing petition because of the claim of Justice and executor misconduct in violation of the United States Constitution Due Process and Equal Protection clauses as neither could categorically, per se, and inflexibly rely upon the procedural bar of law the case due to lack of standing and refuse to honor the United States Constitution clauses invoked.

I Declare under Penalty of Perjury of the Laws of the United
States that the foregoing is true and correct.

Executed on 6-12-19 at Irvine, CA 92604

LAW OFFICE OF MICHAEL WEISS

By: _____

Michael Weiss, Attorney for

Petitioners