No. _____

SUPREME COURT OF THE UNITED STATES

DANIEL T. MORGAN

Petitioner

v.

SHERI A. MORGAN

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF
PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

No court has addressed this case's question:

Whether it is due process of law for an intermediate appellate court, not en banc, to overrule its decision in the same case.

ALL PROCEEDINGS

This case comprises three appeals.

The trial court from which all the appeals occurred is the Court of Common Pleas of Franklin County, Pennsylvania.

The docket number for all three trial court judgments is the same: 2007-1502.

The first trial court judgment, entered December 5, 2007, is captioned: Daniel Morgan, Plaintiff/Respondent v. Sheri Morgan, Defendant/Petitioner.

The second trial court judgment, entered January 14, 2011, is captioned: Daniel Morgan, Plaintiff v. Sheri Morgan, Defendant.

The third trial court judgment, entered September 27, 2016, is captioned: Daniel T. Morgan, Plaintiff/Respondent v. Sheri A. Morgan, Defendant/Movant.

All three appeals were to the Pennsylvania Superior Court (hereinafter called the "appellate court").

The first appellate court decision, on November 13, 2008, is docketed at 50 MDA 2008,

and captioned: Daniel T. Morgan, Appellee v. Sheri A. Morgan, Appellant.

The second appellate court decision, on December 16, 2011, is docketed at 334 MDA 2011, and captioned: Daniel T. Morgan, Appellee v. Sheri A. Morgan, Appellant.

The (latest) third appellate court decision, on July 20, 2018, has three docket numbers: **(1)** 1770 MDA 2016, captioned: Daniel T. Morgan v. Sheri A. Morgan, Appellant; **(2)** 1841 MDA 2016, captioned: Daniel T. Morgan, Appellant v. Sheri A. Morgan; and **(3)** 128 MDA 2017, captioned: Daniel T. Morgan, Appellant v. Sheri A. Morgan. (The second docket number, 1841 MDA 2016, is Daniel

T. Morgan's cross-appeal of the trial court's latest (third) judgment, on September 27, 2016; and the third docket number, 128 MDA 2017, is Daniel T. Morgan's appeal from the trial court's refusal to strike its latest judgment, on September 27, 2016.

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>
> The second decision "corrected" the first decision by affirming the contract and the contract's termination of alimony in July 2007.
>
> The third decision, the overruling not en banc:
>
> - ignores the contract altogether;
>
> - ignores the contract's affirmance by the second decision; and
>
> - ignores the contract's performance by petitioner, Daniel T. Morgan.
>
> Therefore, the overruling is baseless.

Also, the overruling instructs the trial court do something that would be void: reinstate alimony, which would alter the contract, which alteration is impermissible. 32

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This case concerns a contract. 47

Yet, only two things in this case are based on the contract:

- Daniel T. Morgan's petition to terminate alimony; and

- The appellate court's second decision (in December 2011) affirming the contract and the contract's termination of alimony in July 2007.

Therefore, everything else is baseless.

> The most baseless occurrence, other than the overruling, was the treatment of this case's alimony *contract*—as if it were an alimony *court award*.
>
> The entities that engaged in such treatment are:
>
> - the opposing party, throughout such party's three appeals;
>
> - the appellate court, in its first decision; and
>
> - the trial court.

The trial court's jurisdiction was limited to enforcing the contract. 71

Instead, the trial court acted without jurisdiction in the following ways:

- The trial court treated the alimony contract—as if it were an alimony court award;

- The trial court allowed the opposing party to relitigate the trial court's final judgment—after the final judgment was affirmed and after the opposing party's appeals were exhausted;

- The trial court altered the contract (explicitly); and

- The trial court altered its final judgment—almost five years after such judgment was affirmed.

None of such extrajurisdictional actions is addressed by the overruling. 81

Order on March 20, 2019 by highest state court denying petition for allowance of appeal

Order on September 21, 2018 by appellate court denying reargument (of its latest (third) decision, on July 20, 2019)

Daniel T. Morgan's petition to terminate alimony, May 4, 2007

Parties' divorce judgment, March 20, 2003

Parties' agreement (contract) concerning alimony, March 18, 2003

TABLE OF CITED AUTHORITIES

Statutes

OFFICIAL AND UNOFFICIAL REPORTS

The latest (third) appellate court decision is reported at 193 A.3d 999 (Pa. Super. Ct. 2018).

The appellate court did not report its second decision, on December 16, 2011, in 334 MDA 2011.

Nor did the appellate court report its first decision, on November 13, 2008, in 50 MDA 2008.

The trial court's first decision, on December 5, 2007, is reported in the Franklin County, Pa. Legal Journal, volume 25, number 34, February 29, 2008 (but the date of such decision is indicated, incorrectly, as *November* 5, 2007). The other two trial court decisions, on January 14, 2011 and on September 27, 2016, are not reported.

BASIS FOR JURISDICTION

The date of the order sought to be reviewed is July 20, 2018 (the appellate court's third decision).

On September 21, 2018 the appellate court denied reargument.

On March 20, 2019 the highest state court (the Pennsylvania Supreme Court) denied the petition for allowance of appeal.

And on May 2, 2019 the highest state court denied reconsideration of its denial of the petition for allowance of appeal.

The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the order in question is 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution: "nor shall any State deprive any person of life, liberty, or property, without due process of law"

STATEMENT OF THE CASE

No court has addressed this case's question:

> **Whether it is due process of law for an intermediate appellate court, not en banc, to overrule its decision in the same case.**

In February 2019 the Supreme Court recognized that panel decisions by federal appellate courts can be overruled only by a decision of an en banc court or by the Supreme Court:

> Like other courts of appeals, the Ninth Circuit takes the position that a panel decision . . . can be overruled only by a decision of the en banc court or this Court.

Yovino v. Rizo, 139 S. Ct. 706, 708 (2019) (emphasis added).

That is the law of the state from which this case arises:

> [T]he Superior [intermediate appellate] Court affirmed . . . . [O]nly an *en banc* panel of the Superior Court or this Court could overturn that decision.

In re Adoption of S.E.G., 901 A.2d 1017, 1022 (Pa. 2006) (underscoring added).

> [U]pon a[n] . . . appeal, an appellate court may not alter the resolution of a legal question previously decided by the same appellate court . . . .

Commonwealth v. Starr, 664 A.2d 1326, 1331 (Pa. 1995) (emphasis added).

> [J]udges of equal jurisdiction sitting in the same case should not overrule each others' decisions.

Ario v. Reliance Insurance Company, 980 A.2d 588, 597 (Pa. 2009) (emphasis added).

But no court has indicated, definitively, that an overruling by an intermediate appellate court, not en banc, *is not due process of law*.

It appears to petitioner that the closest the Supreme Court has come to such indication is when the Supreme Court stated (a long time ago): "No judgment of a court is due process of law, if

rendered without jurisdiction in the court . . . . " Scott v. McNeal, 154 U.S. 34, 46 (1894).

Therefore, it appears that if an overruling by an intermediate appellate court, not en banc, is without jurisdiction, then the overruling would not be due process of law. Id.

But again, petitioner has found no decision (state or federal) stating, directly and definitively, that an overruling not en banc is not due process of law.

Therefore, respectfully, petitioner believes this a matter worthy of the Supreme Court's attention.

The overruling is the latest of *three* decisions, all by the (same) appellate court.

The first decision treated a *contract* for alimony—as if it were an alimony *award by a court*.

The second decision "corrected" the first decision by affirming the contract and the contract's termination of alimony in July 2007.

The third decision, the overruling:

- **ignores the contract altogether;**
- **ignores the contract's affirmance by the second decision; and**
- **ignores petitioner's performance of the contract.**

Therefore, the overruling is baseless.

This case concerns a contract, for alimony.

The appellate court has decided this case three times:

(1) on November 13, 2008;

(2) on December 16, 2011; and

(3) on July 20, 2018.

Appendix pages 52, 36, and 2.

The first decision treated the alimony *contract*—as if the alimony had been *awarded by a court*.

The appellate court relied on sections of the Domestic Relations Code pertinent to *alimony awards by a court*: 23 Pa. Cons. Stat. Ann. §§

3701(b) and 3701(e). Appendix pages 63 – 65 and 67 – 70. And the overruling admits such treatment. Appendix page 6.

Such treatment was wrong—because, in this case, the alimony did *not* derive from a court award, it derived from a contract. Appendix pages 92 – 94.

The second decision "corrected" the first decision (1) by affirming the contract, which occurred in March 2003 and (2) by affirming that the contract terminated alimony in July 2007:

> Specifically, we find . . . that Husband . . . [had a] contractual obligation to pay alimony . . . .
>
> . . . .
>
> [T]he . . . agreement [contract] . . . [occurred] on March 18, 2003 . . . .
>
> . . . .
>
> The trial court did not err in . . . reduc[ing] . . . alimony retroactive to 7/1/07 [July 2007] and crediting [husband's] resulting overpayments . . . .

Appendix pages 48, 45, and 49 (emphasis added). (The termination of alimony is referred to as a "reduction" because the monthly alimony *reduced* from $5,000 to $1,000 and the latter, the monthly

$1,000, has never been disputed. Trial court judgment, January 14, 2011.

Such second decision is hereinafter called the "Contract Affirmance."

The third decision, the overruling, ignores the contract altogether. Appendix pages 2 – 35.

The overruling—the appellate court's third decision (on July 20, 2018)—is hereinafter called the "Overruling."

The Overruling's analysis does not even mention the word "contract." Appendix pages 14-32.

The Overruling ignores the Contract Affirmance. Appendix pages 2 – 35.

The Overruling ignores the performance of the contract by petitioner (hereinafter called "husband"). Appendix pages 2 – 35. Indeed, husband not only performed the contract; he overpaid alimony. Trial court opinion, January 14, 2011, page 97; Appendix page 49.

Therefore, because the Overruling: (1) ignores the contract; (2) ignores the Contract Affirmance; and (3) ignores husband's performance of the contract—the Overruling is baseless.

Also, the Overruling instructs the trial court to do something that would be void: reinstate alimony, which would alter the contract, which alteration is impermissible.

The Overruling instructs the trial court to do something that would be void: reinstate alimony. Appendix page 31.

Reinstatement of alimony would be void because it would alter the contract, which is impermissible. Steuart v. McChesney, 444 A.2d 659, 662 (Pa. 1982); Delaware County v. Delaware County Prison Employees Independent Union, 713 A.2d 1135, 1138 (Pa. 1998).

Because a court's alteration of a contract is impermissible, it is outside a court's subject matter jurisdiction.

A judgment outside a court's subject matter jurisdiction is void, and therefore must be stricken. M & P Management, L.P. v. Williams, 937 A.2d 398, 401, and 402 (Pa. 2007).

The Overruling also:

- **invents evidence;**
- **falsifies evidence;**
- **cites impertinent statutes;**
- **misstates law; and**
- **addresses irrelevancies.**

The Overruling invents evidence.

Because the alimony derives from a contract, husband petitioned to terminate alimony pursuant to the contract. Appendix page 78.

Yet, the Overruling invents that husband petitioned to terminate alimony pursuant to the court's "equitable powers." Appendix page 23.

The Overruling uses such invention as the (nonexistent) "basis" to apply the "unclean hands" doctrine. Appendix page 23.

The Overruling falsifies evidence.

The Overruling states that when husband petitioned, in May 2007, to terminate alimony, he produced "false documents." Appendix pages 19 - 20.

No evidence supports such statement, and such statement contradicts the trial court's finding that when husband petitioned to terminate alimony, he produced no false documents. Trial court opinion, September 27, 2016, page 4, note 8.

The Overruling misstates law.

The Overruling states that an agreement can be enforced "in equity," citing Stamerro v. Stamerro, 889 A.2d 1251, 1258 (Pa. Super. Ct. 2005). Appendix page 17.

The Overruling's citation of Stamerro is wrong because it is incomplete: Stamerro states, completely: "Private support agreements are subject to *contract* principles and are enforceable . . . in equity *for specific performance*." Id. at 1257 (italics added).

As stated, husband not only (specifically) performed the alimony contract; he overpaid

alimony. Trial court opinion, January 14, 2011, page 97; appendix page 49.

The Overruling cites impertinent statutes.

The Overruling cites 23 Pa. Cons. Stat. Ann. § 3323(f), which concerns a Pennsylvania trial court's equity power when entering a divorce. Appendix page 17.

Such statute is impertinent because it has nothing to do with contracts and, also, because the divorce judgment was not entered by the trial court in Pennsylvania, but rather by a court in Maryland. Appendix page 86.

(After the divorce, husband petitioned, in Franklin County, Pennsylvania for termination of alimony, and the parties stipulated to the application of Pennsylvania law. Appendix page 78; trial court opinion, December 5, 2007, page 3.)

The Overruling also cites 23 Pa. Cons. Stat. Ann. § 4352(e), which concerns a court's support orders. Appendix page 25. Such statute has nothing to do with contracts (between private parties).

The Overruling addresses irrelevancies.

The Overruling cites a portion of the trial court opinion that accompanies the trial court's latest (third) judgment, on September 27, 2016. Appendix pages 20 - 22.

Such portion concerns husband's income, assets, and spending. Appendix pages 20 - 22.

Such matters—income, assets, and spending—are irrelevant because this case's alimony contract has nothing to do with any of such matters. Appendix pages 92 - 94.

The reason the trial court considered such matters is because it treated this case's alimony *contract*—as if it were an alimony *award by a court*.

The trial court did so by considering factors pertinent to alimony *court awards*, which factors are in 23 Pa. Cons. Stat. Ann. § 3701 of the Domestic Relations Code.

And the trial court began such treatment from the start, in its *first* decision, in December 2007:

> This Court will rely on the factors . . . in 23 Pa.C.S. § 3701 of the Domestic Relations Code . . . .

Trial court opinion, December 5, 2007, page 3.

The trial court had no subject matter jurisdiction to engage in such treatment (because it could not treat something—a contract—as something else—a court award).

The trial court opinion accompanying its most recent judgment, in September 2016, states that husband misrepresented such matters. Trial court opinion, September 27, 2016, pages 4 – 6; appendix pages 20 – 22.

As stated, such matters—income, assets, and spending—are relevant when alimony is awarded by a court. 23 Pa. Cons. Stat. Ann. §§ 3701(b)(1), (3), (10), and (13).

No court award of alimony occurred here.

Notwithstanding the irrelevance of such matters, the trial court applied them anyway, in its most recent decision, and did so explicitly:

> The . . . factors . . . in 23 Pa.C.S.A. §3701(b) will be analyzed . . . .
>
> . . . .
>
> [R]eview of the factors . . . results in changed conclusions regarding factors 1 [earnings], 3

> [income], 10 [assets], and 13 [needs of the parties].

Trial court opinion, September 27, 2016, pages 13 and 23.

And the trial court proceeded in such fashion even though it admitted knowing the difference between an alimony court award and an alimony contract:

> The alimony obligation at issue was <u>not</u> the result of <u>an Order of Court</u> . . . based on . . . <u>statutory factors</u>, but <u>rather</u> arose from the <u>Agreement</u> [contract] . . . <u>by the parties</u> . . . .

Trial court opinion, January 14, 2011, page 43 (emphasis added).

Also, because such matters—income, assets, and spending—are irrelevant, any misrepresentation of such matters is immaterial. The Overruling confirms this by noting that a false statement of fact must concern a fact that is "material." Appendix page 24.

Husband's income became relevant in a different, separate action, that began in July 2011.

Husband's income became relevant in a different, separate action: the lawsuit by respondent (hereinafter called "wife") against

husband for child support, in July 2011. Complaint in Franklin County, Pa., DRS 2009/557, July 13, 2011.

(In July 2011, alimony had been terminated for four years: since July 2007. Trial court judgment, January 14, 2011; appendix page 49)

Wife admits that after she sued husband for child support, husband gave wife his income tax return for the preceding year, 2010. Wife's motion, April 25, 2012, section 9.

The trial court states—incorrectly—that such 2010 tax return was false: "[Husband] produced a . . . false tax return for the year . . .

2010. Trial court opinion, September 27, 2016, page 4.

But wife admitted such tax return was true and accurate:

> [Wife] received from the IRS [Internal Revenue Service] [husband's] . . . 2010 tax return. The 2010 tax return was identical to the 2010 tax return produced by [husband] in . . . discovery . . . .

Wife's motion, April 25, 2012, section 9 (emphasis added).

And the trial court acknowledged that in the year immediately *after* wife sued husband for child support—2012—the parties stipulated to husband's income for the preceding six years, 2007 through 2012. Trial court opinion, June 17, 2013, page 14.

And the trial court admitted that such stipulated income is what the trial court used in its child support determinations. Trial court opinion, June 17, 2013, page 8, note 1.

This case concerns a contract.

Yet, only two things in this case are based on the contract:

(1) husband's petition to terminate alimony; and

(2) the Contract Affirmance.

Therefore, everything else is baseless.

> **The most baseless occurrence, other than the Overruling, is the treatment of the alimony *contract*—as an alimony *court award*.**
>
> **The entities that effectuated such treatment are:**
>
> - **wife, throughout her three appeals;**
> - **the appellate court, in its <u>first</u> decision; and**
> - **the trial court.**

As stated, the appellate court has decided this case three times. Appendix pages 52, 36, and 2.

All three appeals were initiated by wife:

1. on January 3, 2008 (in 50 MDA 2008);

2. on February 11, 2011 (in 334 MDA 2011); and

3. on October 26, 2016 (in 1770 MDA 2016).

Beginning with her first appeal, in January 2008, wife distorted this case to make it appear the alimony derives from a *court award*—rather than from a *contract*.

Wife executed her distortion by not disclosing to the appellate court—in any of her three appeals—the facts that make the parties'

agreement a contract; namely: that the agreement is incorporated—but not merged—into the divorce decree. Appendix page 86.

The controlling law—something else wife never disclosed to the appellate court—occurred in 2004 and 1992—many years before wife's first appeal, in January 2008:

> [T]he . . . Agreement . . . was incorporated, but not merged, with the divorce decree.
>
> . . . .
>
> It is well-established that the law of <u>contracts</u> governs marital settlement agreements.

Kripp v. Kripp, 849 A.2d 1159, 1160 and 1163 (Pa. 2004) (emphasis added).

> The divorce decree states on its face that the agreement is incorporated by reference but does not merge with it. As such, we cannot interpret this agreement as an order of court, . . . but we must respect the agreement as a separate and independent contract which survived the divorce decree. Here, Wife's right to payment is not based on an award but is instead based on . . . a contract.

McMahon v. McMahon, 612 A.2d 1360, 1363 (Pa. Super. Ct. 1992) (en banc) (emphasis added).

Compliance with controlling law is, of course, mandatory:

> [T]he intermediate appellate courts are duty-bound to effectuate this [Supreme] Court's decisional law.

Walnut Street Associates, Inc. v. Brokerage Concepts, Inc., 20 A.3d 468, 480 (Pa. 2011).

> **Precedent.** An opinion of the court en banc is binding on any subsequent panel of the appellate court in which the decision was rendered.

Pa. R. App. P. 3103(b) (underscoring added).

Wife began her distortion, in her first appeal, by citing a statute pertaining to alimony *court awards*: 23 Pa. Cons. Stat. Ann. § 3701. Wife's principal brief in her first appeal, filed March 5, 2008, in 50 MDA 2008, pages 12, 14, 18 - 19, 21 - 23, and 25.

Wife continued her distortion, throughout her three appeals, by citing a total of 56 cases—only *one* of which concerns an alimony contract: Stamerro, 889 A.2d 1251. Wife's principal brief in her second appeal, filed May 11, 2011, in 334 MDA 2011, pages 37 – 38 and 57.

Ironically, it is such sole contract case, Stamerro, that the Contract Affirmance relied on (in affirming the alimony contract):

> Private support agreements are subject to contract principles . . . . ***Stamerro v. Stamerro,*** 889 A.2d 1251, 1257 (Pa. Super. 2005) . . . .
>
> . . . .
>
> Marital settlement agreements are private undertakings between two parties, each having responded to the give and take of negotiations and bargained consideration. ***Stamerro,*** 889 A.2d at 1258 . . . .
>
> . . . .

> Specifically, we find . . . that Husband . . . [had a] contractual obligation to pay alimony . . . .

Appendix pages 40 – 41, 44, and 48 (emphasis added, except for "Stamerro")

Wife's distortion has been intentional. For example, wife's latest principal brief, for her third appeal, states: "The . . . agreement w[as] incorporated in the divorce . . . . " Wife's principal brief, filed June 9, 2017, in 1770 MDA 2016, page 10.

Thus, wife effectively misrepresents that the alimony agreement was *merged* into the divorce

decree, when it was not. Wife does *not* state the agreement was incorporated—but not merged—into the divorce decree, thereby making the agreement a contract.

The incorporation, but nonmerger, of the alimony agreement into the divorce decree is, of course, apparent from the divorce decree. But wife, the three-time appellant, did not designate the divorce decree for the reproduced record. Wife's designation, March 6, 2017.

Wife's distortion caused the appellate court—in the first of its three decisions—to treat this case's alimony *contract*—as an alimony *court award*. Appendix pages 63 - 70.

Husband alerted the state's appellate courts of this error, but they declined to act. Husband's application for reargument, filed December 1, 2008, in 50 MDA 2008, page 4; husband's petition for allowance of appeal (to highest state court), filed February 27, 2009, in 133 MAL 2009, pages 7 – 8; appellate court orders dated January 30, 2009 and October 9, 2009.

The incorrect treatment of the alimony—as deriving from a *court award*—caused consideration of matters impertinent to this case.

When a court considers awarding alimony, the court must consider 17 factors. 23 Pa. Cons. Stat. Ann. § 3701(b)(1) - (17).

But such factors are impertinent to this case because here the alimony does *not* derive from a court award, it derives from a contract—that has *nothing* to do with any of such factors.

Yet, the first appellate decision remanded the case and directed the trial court to consider such irrelevant factors. Appendix page 70.

However, after such remand, wife admitted to the trial court that this case concerns a contract:

> The Agreement . . . on March 18, 2003 . . . has remained a fully binding and enforceable contract between the parties.

Wife's petition, October 28, 2009, section 19 (emphasis added).

Therefore, husband petitioned the trial court to enforce the contract. Husband's petition, December 17, 2009.

Initially, the trial court ordered wife to answer husband's petition. Trial court order, January 7, 2010, section 4. But wife did not comply; instead, wife preliminarily objected, which was unauthorized because preliminary objections

apply to pleadings, and a petition is not a pleading. Wife's response, March 5, 2010, page 2; Pa. R. Civ. P. 1017.

The trial court overruled wife's preliminary objections, but it "deemed" the averments in husband's petition denied. Trial court order, March 23, 2010, section 3.

Thus, the trial court refused to decide husband's petition to enforce the contract.

Husband then moved for summary judgment, pointing out that the trial court's jurisdiction was limited to enforcing the contract. Woodings v. Woodings, 601 A.2d 854, 859 (Pa.

Super. Ct. 1992). Husband's brief, March 23, 2010, page 3.

The trial court denied husband's motion for summary judgment. Trial court order, April 1, 2010.

The second appellate decision, the Contract Affirmance, "corrected" the first decision—by affirming that the parties contracted, in March 2003, to terminate alimony in July 2007:

> Specifically, we find . . . that Husband . . . [had a] contractual obligation to pay alimony
>
> . . . .
>
> . . . .

> [T]he . . . agreement [contract] . . . [occurred] on March 18, 2003 . . . .
>
> . . . .
>
> The trial court did not err in . . . reduc[ing] . . . alimony retroactive to 7/1/07 [July 2007] and crediting resulting overpayments . . . .

Appendix pages 48, 45, and 49 (emphasis added). (The termination of alimony is referred to as a "reduction" because the monthly alimony *reduced* from $5,000 to $1,000 and the latter, the monthly $1,000, has never been disputed. Trial court judgment, January 14, 2011.

Despite the Contract Affirmance, wife continued to proceed as if the alimony derived from a *court award*.

Wife did so in two significant ways: (1) by asking the appellate courts to supplement the record with something irrelevant: husband's bonuses; and (2) by petitioning the trial court to modify alimony—again, as if the alimony derived from a court award (not a contract). Wife's petition, January 24, 2012; wife's application, August 17, 2011.

The number of times wife asked the appellate courts to supplement the record is *six*. Wife directed four of the six requests to the

appellate court, and the other two to the highest state court: **(1)** application, August 17, 2011; **(2)** application, December 30, 2011; **(3)** application for reargument, December 30, 2011; **(4)** application, February 3, 2012; **(5)** petition for allowance of appeal, March 23, 2012, 225 MAL 2012; **(6)** application for post submission communication, June 15, 2012.

All six of wife's requests were denied. **(1)** contract affirmance, page 9, note 5; **(2)** order, January 20, 2012; **(3)** order, February 22, 2012; **(4)** order, February 24, 2012; **(5)** order, April 3, 2013, denying petition for allowance of appeal; and **(6)** order, April 3, 2013, denying application for post submission communication.

Husband's bonuses were (and are) irrelevant because, as already stated, the alimony contract has nothing to do with income.

As also stated, income (such as a bonus) is relevant when alimony is *awarded by a court*. 23 Pa. Cons. Stat. Ann. § 3701(b)(1) and (3).

Wife first asked for such record supplementation after husband's employer disclosed to wife husband's income, including his bonuses. Wife's application, August 17, 2011, page 2.

But the employer's disclosure occurred in a different and separate case: wife's lawsuit against husband for *child support*. Complaint in Franklin County, Pa., DRS 2009/557, July 13, 2011.

Wife asked for the record supplementation while wife's *second* appeal—in this case—was pending. Wife's application, August 17, 2011; the second appellate court decision, the Contract Affirmance, occurred in December 2011, appendix page

The record supplementation was denied notwithstanding that husband did not object to it. Husband's response, August 19, 2011. Indeed, in testimony, husband confirmed the bonuses:

Wife's counsel:	[A]t the support conference . . . on August 10, 2011 . . . there was a document produced . . . that disclosed a whole bunch of . . . income . . . correct? Right?
Husband:	It disclosed the bonuses.
Wife's counsel:	You don't think that's a whole bunch of income?
Husband:	Defines—it discloses the bonuses.
Wife's counsel:	Excuse me?
Husband:	It disclosed the bonuses.
Wife's counsel:	At least some of the bonuses, right?
Husband:	I think it disclosed all the bonuses.
. . . .	
Wife's counsel:	August 20, 2007. There's the first bonus . . . . Do you see that one?

Husband: Yes, I do.

Transcript of hearing in child support action, Franklin County, Pennsylvania, DRS 2009/557, July 2, 2012, pages 79 – 80.

Even if husband's income *were* relevant, his bonuses would still be *irrelevant* because, as shown, the earliest bonus occurred in August 2007. August 2007 is after the March 2003 alimony contract that terminated alimony in July 2007 and after alimony (actually) terminated in July 2007. Wife's application, August 17, 2011, pages 2 and 3.

The first denial of the record supplementation occurred in the Contract Affirmance. Appendix page 51, n.5.

Wife ignored the Contract Affirmance.

Wife also ignored that, after the Contract Affirmance, wife's petition to the highest state court, for allowance of appeal, was denied. Order dated April 3, 2013, in 225 MAL 2012,

Instead, wife returned to the trial court and petitioned to have the alimony modified—again, as if the alimony derived from a court award (not a contract). Wife's petition, January 24, 2012; trial court opinion, September 27, 2016, pages 2 – 3.

Indeed, wife filed such petition for alimony modification more than a year *before* the highest state court ruled on wife's petition for allowance of appeal: Wife petitioned the trial court on January 24, 2012, and the highest state court denied wife's petition for allowance of appeal on April 3, 2013 (in 225 MAL 2012). Trial court opinion, September 27, 2016, pages 2 – 3.

The trial court's jurisdiction was limited to enforcing the contract.

Instead of enforcing the contract, the trial court acted without jurisdiction in the following ways:

- **The trial court treated the alimony contract as an alimony court award;**

- **The trial court allowed wife to relitigate the trial court's final judgment—after such judgment was affirmed, and after wife had exhausted her appeals;**

- **The trial court altered the contract (explicitly); and**

- **The trial court altered its final judgment almost five years after such judgment was affirmed.**

The trial court's jurisdiction was limited to enforcing the contract. Woodings v. Woodings, 601 A.2d 854, 859 (Pa. Super. Ct. 1992); Peck v. Peck, 707 A.2d 1163, 1166 (Pa. Super. Ct. 1998).

Instead of enforcing the contract, the trial court acted outside its subject matter jurisdiction, in multiple ways. The *first* way was, as stated, to treat the alimony *contract*—as if it were an alimony *court award*.

As also stated, the trial court did so by considering factors that are pertinent when alimony is awarded by a court, which factors are in 23 Pa. Cons. Stat. Ann. § 3701(b):

> The . . . factors . . . in 23 Pa.C.S.A. §3701(b) will be analyzed . . . .

Trial court opinion, September 27, 2016, page 13.

The *second* way the trial court acted without subject matter jurisdiction was allowing wife to relitigate the trial court's final judgment. Relitigation of final judgment is precluded. In re Stevenson, 40 A.3d 1212, 1222 (Pa. 2012).

The trial court's final judgment was that the alimony terminated in July 2007. Trial court order, January 14, 2011. The trial court found that such termination of alimony, in July 2007, was the parties' (contractual) intent when they contracted, in March 2003, because July 2007 was when parties' children would be old enough for wife to return to work:

The Agreement[‘s] [contract’s] . . . July 1, 2007 [termination] **. . .** date [was] intentionally chosen by the parties.

. . . .

The intent of the parties when entering the Agreement [contract in March 2003] was that . . . alimony would decrease [from $5,000 per month to $1,000 per month] following the parties’ children obtaining [sic] majority . . . .

. . . .

Wife . . . obtained further freedom by . . . the . . . children’s . . . adulthood . . . .

. . . .

> [Wife] had marketable skills as a registered nurse at the time of the agreement [contract] in [March] 2003 and . . . she had her Master's degree . . . [in] 2010 . . . and anticipated completion of her Ph.D. in the immediate future.

Trial court opinion, September 27, 2016, page 12; trial court opinion, January 14, 2011, page 37; trial court opinion, September 27, 2016, pages 12 - 13 (emphasis added).

Also, the trial court's conclusion—that the parties contracted, in March 2003, to terminate alimony in July 2007 because that is when their children would be old enough for wife to return to

work—is what the trial court concluded in *all three* of its decisions. Trial court opinion, December 5, 2007, pages 5 and 7; trial court order, December 5, 2007; trial court opinion, January 14, 2011, pages 37 and 46; trial court order, January 14, 2011; trial court opinion, September 27, 2016, pages 12 – 13.

Moreover, the trial court allowed wife to relitigate the case—after the case was over. The case was over (1) because the trial court's final judgment had been affirmed and (2) because wife had exhausted her appeals: the final judgment occurred in January 2011; it was affirmed in December 2011; and wife's attempt to affect such affirmance—her petition, to the highest state court, for allowance of appeal—was denied in April 2013.

Trial court judgment, January 14, 2011; Contract Affirmance, appendix page 36; highest state court order, April 3, 2013.

The *third* way the trial court acted without subject matter jurisdiction was to alter the contract by extending the alimony for four years. Trial court order, September 27, 2016.

The trial court altered the contract explicitly:

> [T]he alimony here . . . is a <u>contractual</u> obligation . . . .
>
> . . . .
>
> [Husband] is <u>contractually</u> obligated to pay [alimony] . . . .

. . . .

[A]n extension of the contractually obligated alimony . . . is warranted.

. . . .

[Husband's] obligation for . . . alimony shall be . . . [extended from July 2007] through June . . . 2011 . . . . The . . . resulting . . . four additional years of alimony . . . differs from our January 14, 2011 Order . . . .

Trial court opinion, September 27, 2016, pages 7, 19, and 23; trial court judgment, September 27, 2016, section 1 (emphasis added)

A court's alteration of a contract is impermissible. Steuart v. McChesney, 444 A.2d at 662; Delaware County v. Delaware County Prison Employees Independent Union, 713 A.2d at 1138.

The *fourth* way the trial court acted without subject matter jurisdiction was to modify its judgment (order) when it no longer had authority to do so: The trial court modified its judgment almost five years after the judgment was affirmed: The trial court entered its judgment in January 2011; the judgment was affirmed in December 2011; and the trial court modified it in September 2016. Trial court order, January 14, 2011; Contract Affirmance, appendix page 36; trial court order, September 27, 2016.

The maximum amount of time a trial court has to modify its order is 30 days. 42 Pa. Cons. Stat. Ann. § 5505.

Because the trial court's actions lacked subject matter jurisdiction, its judgment, on September 27, 2016, was (and is) void. "A void judgment arises when the court lacks subject matter jurisdiction, and a judgment from a court that lacks jurisdiction cannot be made valid through the passage of time." M & P Management v. Williams, 937 A.2d 398 (Pa. 2007).

The lack of subject matter jurisdiction for the trial court's September 27, 2016 judgment caused

husband to move that the judgment be stricken. Husband's motion, January 11, 2017. "[A]t any time that a void judgment is brought to the attention of the court, it must be stricken." M & P Management, 937 A.2d at 402. The trial court denied the motion, husband appealed, and the appeal was docketed at 128 MDA 2017. Trial court order, January 12, 2017; notice of appeal, January 17, 2017.

The trial court's extrajurisdictional actions are not addressed by the Overruling.

Instead, the Overruling instructs the trial court to act without jurisdiction again.

The trial court's actions outside its subject matter jurisdiction are not addressed (at all) by the Overruling.

Instead, the Overruling instructs the trial court to act without subject matter jurisdiction—again—by altering the contract—again—by reinstating alimony. Overruling, page 17.

Reinstatement of alimony would be void because it would alter the contract, which is impermissible, and therefore outside the trial court's subject matter jurisdiction. Steuart, 444 A.2d at 662; Delaware County, 713 A.2d at 1138; M & P Management, 937 A.2d at 398, 401, and 402.

When federal question was raised

The federal question is whether it is due process of law for an intermediate appellate court, not en banc, to overrule its decision in the same case.

The highest state court refused to address such question—even though it is such court that has declared, a number of times, that an overruling not en banc is unauthorized:

> [T]he Superior [intermediate appellate] Court affirmed . . . . [O]nly an *en banc* panel

> of the Superior Court or this Court could overturn that decision.

In re Adoption of S.E.G., 901 A.2d at 1022 (emphasis added).

> [U]pon a[n] . . . appeal, an appellate court may not alter the resolution of a legal question previously decided by the same appellate court . . . .

Commonwealth v. Starr, 664 A.2d at 1331 (emphasis added).

> [J]udges of equal jurisdiction sitting in the same case should not overrule each others' decisions.

Ario v. Reliance Insurance Company, 980 A.2d at 597 (emphasis added).

Indeed, the first question husband presented to the highest state court was:

> Whether a three-judge panel of the Superior [intermediate appellate] Court has authority to overrule a preceding Superior Court decision in the same case.

Husband's petition for allowance of appeal, October 19, 2018, table of contents and page 2.

Husband also stated in his petition for allowance of appeal:

> Because such overruling is by a three-judge panel, it is unauthorized: "[J]udges of equal jurisdiction sitting in the same case should not overrule each others' decisions." Ario v. Reliance Insurance Company, 980 A.2d 588, 597 (Pa. 2009). "[T]he Superior Court affirmed . . . . [O]nly an *en banc* panel of the Superior Court or this [Supreme] Court could overturn that decision." In re Adoption of S.E.G., 901 A.2d 1017, 1022 (Pa. 2006).

> "[U]pon a[n] . . . appeal, an appellate court may not alter the resolution of a legal question previously decided by the same appellate court . . . . " Commonwealth v. Starr, 664 A.2d 1326, 1331 (Pa. 1995).

Husband's petition for allowance of appeal, October 19, 2018, pages 50 -51.

Husband also pointed out, as he did in his application to the appellate court, for reargument, that:

> The Overruling (by the latest Superior [appellate] Court also disregards the contract

> that is recognized by the Supreme [highest] Court and Superior Court en banc, respectively, in Kripp, 849 A.2d at 1160 and 1163 [(Pa. 2004)]; and McMahon, 612 A.2d at 1363 [(Pa. Super. Ct. 1992) (en banc)].

Husband's petition for allowance of appeal, October 19, 2018, page 51.

The court responsible for the Overruling, the appellate court, had also stated such an overruling is unauthorized—and did so *en banc*:

> [U]pon a[n] . . . appeal, an appellate court may not alter the resolution of a legal

> question previously decided by the same appellate court . . . .

In re Estate of Elkins, 32 A.3d 768, 776 (Pa. Super. Ct. 2011) (en banc) (citing Commonwealth v. Starr).

In response to husband's petition for allowance of appeal, wife asked that husband post security (pending husband's petition). Wife's application, November 2, 2018.

Husband answered wife's application by stating:

> The latest (third) Superior Court decision (on July 20, 2018)—by a three-judge panel—

overrules the preceding (second) Superior Court decision (R. 318a); such overruling is unauthorized, and therefore lacks a basis in *law*.

i. Ario v. Reliance Insurance Company, 980 A.2d 588, 597 (Pa. 2009).

ii. In re Adoption of S.E.G., 901 A.2d 1017, 1022 (Pa. 2006).

iii. Commonwealth v. Starr, 664 A.2d 1326, 1331 (Pa. 1995).

iv. In re Estate of Elkins, 32 A.3d 768, 776 (Pa. Super. Ct. 2011) (en banc).

The preceding (second) Superior Court decision affirmed that the alimony *contract* in this case terminated alimony in July 2007 (R. 323a, 323a, 322a, 320a, 324a, 325a); the latest (third) Superior Court decision makes no mention of a contract, and therefore such latest decision lacks a basis in *fact*.

The highest state court denied husband's petition for allowance of appeal (as well as wife's application that husband post security). Appendix page

Husband then applied for reconsideration, raising the federal question. Application, April 2, 2019.

In such application, husband stated the following:

> **The Superior Court decision [Overruling] is unauthorized because it is not *en banc*.**
>
> The (latest) Superior Court decision overrules the preceding Superior Court decision (in December 2011). The overruling is by a panel of three judges.

An overruling of a Superior Court decision, by the Superior Court, must be *en banc*. Ario v. Reliance Insurance Company, 980 A.2d 588, 597 (Pa. 2009); Commonwealth v. Starr, 664 A.2d 1326, 1331 (Pa. 1995); In re Adoption of S.E.G., 901 A.2d 1017, 1022 (Pa. 2006).

Court actions without jurisdiction are not due process of law.

Court actions without jurisdiction are not due process of law under the Constitution: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

"No judgment of a court is due process of law, if rendered without jurisdiction in the court . . . . " Scott v. McNeal, 154 U.S. 34, 46 (1894).

"Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Steel Company v. Citizens for a Better Environment, 523 U.S. 83, 94 (1998).

Husband's application for reconsideration, April 2, 2019, pages 12 – 14 (emphasis in original).

In response to husband's application for reconsideration, wife applied for sanctions against husband. Wife's application, April 9, 2019.

Husband answered wife's application for sanctions by stating (among other things):

> The overruling is unauthorized:
>
> [U]pon a[n] . . . appeal, an appellate court may not alter the resolution of a legal question previously decided by the same appellate court.

Commonwealth v. Starr, 664 A.2d 1326, 1331 (Pa. 1995).

Because the overruling is unauthorized, it lacks jurisdiction.

And the lack of jurisdiction is lack of due process, which is required by the Fourteenth Amendment of the Constitution. U.S. Const. amend. XIV, § 1.

"No judgment of a court is due process of law, if rendered without jurisdiction . . . . " Scott v. McNeal, 154 U.S. 34, 46 (1894).

> "Without jurisdiction the court cannot proceed at all in any cause." Steel Company v. Citizens for a Better Environment, 523 U.S. 83, 94 (1998).

Husband's answer to wife's application, April 15, 2019, pages 12 – 13.

Husband also pointed out that wife's application for sanctions, like the Overruling, was baseless because it ignored the contract. Husband's answer, April 15, 2019, pages 2 – 3.

The highest state court denied wife's application for sanctions. Order, May 2, 2019.

Finally, husband applied to the highest state court to stay remand of the record pending United States Supreme Court review. Husband's application, May 10, 2019.

In such application, husband stated the following:

> **The Decision [Overruling] has no legal basis.**
>
> The Decision [Overruling] purports to overrule the preceding Superior Court decision on December 16, 2011 in 334 MDA 2011. (R. 318a) Such preceding decision affirmed that the March 2003 alimony

contract terminated alimony in July 2007. (R. 323a, 324a, 325a)

The overruling is unauthorized because it is not en banc. Ario v. Reliance Insurance Company, 980 A.2d 588, 597 (Pa. 2009); Commonwealth v. Starr, 664 A.2d 1326, 1331 (Pa. 1995); In re Adoption of S.E.G., 901 A.2d 1017, 1022 (Pa. 2006).

Because the overruling is unauthorized, it lacks jurisdiction. Without jurisdiction, a court cannot proceed at all. Steel Company v. Citizens for a Better Environment, 523 U.S. 83, 94 (1998).

> Lack of jurisdiction is not due process of law. Scott v. McNeal, 154 U.S. 34, 46 (1894).
>
> Due process of law is required by the Constitution. U.S. Const. amend. XIV, § 1.
>
> **The Decision [Overruling] has no factual basis.**
>
> The Decision [Overruling] has no factual basis because it ignores this case's alimony contract.

Husband's application, May 10, 2019, pages 3 – 4 (emphasis in original).

The highest state court denied the application to stay remand of the record (pending United States Supreme Court review). Order, June 17, 2019.

Husband then applied for reconsideration of such denial. Husband's application, June 24, 2019.

Such application was denied by the highest state court on July 25, 2019.

ARGUMENT

An intermediate appellate court's overruling of its decision must be en banc; otherwise, the overruling is unauthorized.

Such rule has been recognized by (1) the Supreme Court; (2) the highest court of the state from which this case arises; and (3) even by the appellate court responsible for the Overruling. Yovino v. Rizo, 139 S. Ct. at 708; In re Adoption of S.E.G., 901 A.2d at 1022; Ario v. Reliance Insurance Company, 980 A.2d at 597; Commonwealth v. Starr, 664 A.2d at 1331; In re Estate of Elkins, 32 A.3d at 776.

Therefore, the rule is not esoteric or unusual.

Hence, its observance is probably—usual.

Perhaps that is why, apparently, there has been no need for a court to say that an overruling, by an intermediate appellate court, not en banc, *is not due process of law*.

But in this case, the rule was *not* observed.

It is difficult to believe that the appellate court (in this case) was *unaware* of the rule.

The more plausible view is that the appellate court *was* aware of the rule.

And yet, the appellate court did not comply with the rule.

Such noncompliance, normally, would be surprising.

But not in this case.

The noncompliance is not surprising here because it is consistent with everything that has occurred in this case.

Everything in this case has been about ignoring this case's contract.

Indeed, in this case, which comprises three appeals, and which has been litigated for more than 10 years, only two occurrences are based on the contract:

1. Husband's petition, in May 2007, to terminate alimony; and

2. The appellate court's second decision, on December 16, 2011, affirming the contract and affirming the contract's termination of alimony in July 2007.

Appendix pages 78 and 36.

Everything else is baseless.

Everything else is baseless because, other than husband, all the entities involved in this case—the appellate court, the trial court, and wife—have ignored the contract.

The appellate court has ignored the contract in two of its three decisions: in its most recent (third) decision, the Overruling, and in its first decision, where it treated the alimony contract as if it were an alimony court award (again, treating something—as if it were something else).

The Overruling evidences that the appellate court's exertion to ignore the contract is so great that the Overruling, in addition to ignoring the

contract, ignoring the contract's affirmance, and ignoring husband's performance of the contract, also: (1) invents evidence; (2) falsifies evidence; (3) misstates law; (4) cites impertinent statutes; and (5) addresses irrelevancies. (Such occurrences are specified in pages 32 – 37 of this petition.)

The trial court has: (1) not only refused to enforce the contract, which was the limit of its jurisdiction; but also (2) acted without jurisdiction by treating the alimony contract as an alimony court award; (3) acted without jurisdiction by allowing the contract to be relitigated; (4) acted without jurisdiction by altering the contract; and (5) acted without jurisdiction by altering its judgment that affirmed the contract—and doing so

almost five years after the affirmance. (Such occurrences are specified in pages 67 – 78 of this petition.)

After all such extrajurisdictional acts, the appellate court, in its Overruling, instructs the trial court to act without jurisdiction—again—by altering the contract—again—by reinstating the alimony that was declared terminated, in July 2007—by *such appellate court*: "The trial court did not err in . . . reduc[ing] . . . alimony retroactive to **7/1/07 [July 2007]** and crediting [husband with] resulting overpayments . . . . Appendix page 49 (emphasis added).

Wife has distorted the alimony contract into an alimony court award, intentionally: (1) by citing an impertinent statute, 23 Pa. Cons. Stat. Ann. § 3701; (2) by never disclosing the determinative facts: that the alimony agreement is incorporated, but not merged, into the divorce decree; (3) by never disclosing the controlling law: that such an agreement is a contract; (4) by citing 56 cases only *one* of which concerns a contract, which sole contract case, ironically, is the basis of the Contract Affirmance; (5) by asking the appellate courts, six times, to supplement the record with something irrelevant to the contract, husband's bonuses; (6) by ignoring the denial of all six of such requests; (7) by ignoring the Contract Affirmance; (8) by ignoring the denial of her petition for allowance of appeal;

and (9) by asking the trial court, after all such occurrences—and as if they had not happened—to modify the alimony—again, as if the alimony derived from a court award and not a contract. (Such occurrences are specified in pages 45 – 67 of this petition.)

In sum, the appellate court, the trial court, and wife have all ignored reality.

But such "unreality" has been all too real for husband, who has had to endure wife's three appeals, since her first appeal in January 2008.

And, each of wife's three appeals has been from the same trial court decision: the parties

contracted, in March 2003, to terminate alimony in July 2007 because July 2007 was when the parties' children would be old enough for wife, who has been working on her Ph.D. degree, to return to work. Trial court opinion, December 5, 2007, pages 5 and 7; trial court order, December 5, 2007; trial court opinion, January 14, 2011, pages 37 and 46; trial court order, January 14, 2011; trial court opinion, September 27, 2016, pages 12 – 13.

Indeed, the trial court, in rather odd fashion, not only (1) alters the alimony contract explicitly; (2) admits, four times, that husband's alimony is contractual; but also (3) admits that its alteration of the contract is directly contrary to the parties' contractual intent because the parties

"intentionally chose," in their March 2003 contract, to terminate alimony in July 2007. Trial court opinion, September 27, 2016, pages 7, 19, 23, and 12; trial court judgment, September 27, 2016.

Under these circumstances, husband perceived he had a reasonable chance of obtaining relief from the state's highest court, especially because: (1) the lower appellate did something—the Overruling—that it had to have known was unauthorized; (2) the lower appellate court completely ignored what this case is about—a contract; (3) the lower appellate court effectuated the Overruling by ignoring the decision overruled—which was the appellate court's *own* decision; and (4) the highest state court had declared, a number

of times, that an overruling not en banc is unauthorized.

But the highest state court "turned away," and declined to act.

Thus, the contract has now been ignored by *all* the state's courts.

And so, Daniel T. Morgan presents this situation to the United States Supreme Court.

Respectfully submitted,

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