

NO. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

**BARBARA D. TERRELL,
f/k/a Barbara D. Renner,**

Petitioner,

vs.

JOHN LEWIS RENNER, II,

Respondent.

**Motion To Set Aside Dismissal And To Reinstate Appeal
The Supreme Court of Appeals of West Virginia**

PETITION FOR WRIT OF CERTIORARI

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*Counsel for Petitioner***

QUESTIONS PRESENTED

- 1) Whether the customarily recognized domestic relations exception for federal and state jurisdiction applies where a state appellate court of last resort in a divorce circumscribes rights under the Fifth and Fourteenth Amendments regarding property.
- 2) Where applicable rules require notice to parties did state appellate court of last resort dismissing appeal concerning alimony and division of marital assets in a divorce and not reinstating the appeal after the party learns of the dismissal violate rights protected by the Fifth and Fourteenth Amendments depriving that party of property without due process of law.
- 3) Where applicable rules require notice to parties of pending dismissal did state appellate court of last resort dismissing an appeal regarding alimony and division of marital assets and not reinstating appeal after the party discovers the dismissal violate a constitutionally enumerated and incorporated right of the Fourteenth Amendment prohibiting a state from making or enforcing a law which abridges privileges or immunities of a citizen of the United States.
- 4) Where applicable rules require notice to parties pending dismissal did state appellate court of last resort dismissing appeal regarding alimony and division of marital assets in divorce and not reinstating the appeal when the party learns of its dismissal, did the court majority with a demonstrable record opposing gender equality violate rights under the Fourteenth Amendment for equal protection of the laws?

PARTIES TO THE PROCEEDINGS

Petitioner Barbara D. Terrell, f/k/a Barbara D. Renner, was the respondent in family court and petitioner in state appellate court.

Respondent John Lewis Renner, II was the petitioner in family court and respondent in state appellate court.

RELATED PROCEEDINGS

Family Court of Tyler County, West Virginia:
John Lewis Renner, II v. Barbara D. Renner
Civil Action No. 16-D-34
Judgment entered June 5, 2020

The Supreme Court of Appeals of West Virginia
Barbara D. Terrell v. John Lewis Renner, II
Case No. 19-0816
Reinstatement of Appeal Denied July 23, 2020

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*ON MOTION TO SET ASIDE DISMISSAL AND
TO REINSTATE APPEAL
THE SUPREME COURT OF APPEALS OF WEST VIRGINIA*

PETITION FOR WRIT OF CERTIORARI

Barbara D. Terrell, formerly known as Barbara D. Renner, by counsel, respectfully petitions for issuance of a writ of certiorari to review a judgment of the Supreme Court of Appeals of West Virginia, appellate state court of last resort in that jurisdiction for the matter(s) therein.

OPINION BELOW

In matter of *Barbara D. Terrell v. John Lewis Renner, II*, Case No. 19-0816 the Supreme Court of Appeals of West Virginia denied reinstatement of Petitioner's appeal regarding alimony and division of marital assets after she learned of the dismissal.

JURISDICTION

Judgment of the state appellate court of last resort was entered July 23, 2020 with no provision under state court rules for reconsideration. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Due Process Clause (U.S. Const., Amend. V)

No person shall be deprived of property without due process of law.

U.S. Const., Amend. IV, § 1

No State shall make or enforce any law which shall abridge the privileges immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

September 16, 2019 Petitioner Barbara Terrell, f/k/a Barbara Renner, by counsel, filed a Notice of Appeal in the Supreme Court of Appeals of West Virginia to rulings of the Family Court of Tyler County, West Virginia over alimony and division of marital assets in a divorce. The state appellate court pursuant to its rules entered a scheduling order for perfecting the appeal by certain dates and mailed the scheduling order to her counsel but not to the Petitioner.

Thereafter the state appellate court notified Petitioner's counsel of deficiencies in perfecting the appeal and entered an amended scheduling order with new dates for correction. The amended scheduling order added failure to correct deficiencies risked dismissal. Once more the amended scheduling order was provided to counsel but not to the Petitioner.

February 18, 2020 the state appellate court dismissed Petitioner's appeal for failure to perfect the appeal. The Order of Dismissal was mailed to counsel but again not to the Petitioner. Three months later Petitioner received notice of a hearing in the Family Court to effect alimony and division of marital assets, matters she thought were pending appeal. She contacted the clerk of the appellate court and learned her appeal had been dismissed and why. She immediately retained new counsel, who filed to set aside the dismissal and to reinstate the appeal and to stay proceedings in

family court pending adjudication of reinstatement. July 23, 2020 the Supreme Court of Appeals of West Virginia (3-2 majority) entered an Order refusing to reinstate the appeal with no provision in court rules for reconsideration.

In 2010 the state appellate court adopted new rules that established a two-step procedure of first docketing then perfecting the appeal adding “(i)f a party fails to comply with a scheduling order the Court may impose sanctions including dismissal.” [Rule 5(e), West Virginia Rules of Appellate Procedure] (emphasis supplied) The rules further state, “(t)he court may, on its own motion, send a notice to the parties of its intent to dismiss an action for failure to comply with the Rules of Appellate Procedure or for other just cause, and may thereafter dismiss the action if the interests of justice so require.” [Rule 27(b), Rules of Appellate Procedure] (emphasis supplied)

The foregoing rules do not make any distinction whether a party is represented by counsel with notice only to counsel, and fault of counsel was the cause for dismissal. Dismissal of this appeal occurred without notice to the Petitioner and not reinstating it deprived her of property rights that implicitly incorporated Constitutional violations and constitute the basis of this Petition. Property rights in divorce involving Constitutional rights represent important questions of federal law that have not been settled by this Court but should be.

ARGUMENT

1. Domestic Relations Exception for Federal and State Jurisdiction

Customarily state, not federal, courts adjudicate domestic law matters including divorce. Property rights constitute a primary issue in most divorce actions, and due process protection of those rights as well as not abridging privileges or immunities of citizenship or denying equal protection of the laws are Constitutional matters often present in divorces affecting property.

Neither longstanding limitation on federal-state jurisdiction whether family law or probate is compelled by the Constitution or federal statute but instead is a “judicial doctrine from a misty understanding of English legal history.” Marshall v. Marshall, 547 U.S. 293 (2006). Chief Justice Marshall in Cohens v. Virginia, 6 Wheat. 264, 404 (1821), “(t)his Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should . . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.” 547 U.S. 298-299 Present day prevalence of divorce and corresponding critical issue of property commend the attention of this Court particularly where fundamental rights protected by the United States Constitution are at issue.

2. Right to Due Process Regarding Property

There is no dispute here Petitioner had no notice her appeal concerning property was pending dismissal, then dismissed; yet state appellate court of last resort refused reinstatement. For notice, state procedures and property rights under the Fourteenth Amendment this Court holds the “fundamental requisite of due process of law is the opportunity to be heard.” Mullane v. Central Hanover Bank Trust Co., 339 U.S. 306, 314 (1950) A state must take reasonable steps to afford individuals notice in matters affecting property. Jones v. Flowers, 547 U.S. 220 (2006) Due process rights should apply to matters of property in a state court divorce action as well.

3. Privileges or Immunities for Property

Viewing a right to bear arms under the Second Amendment a privilege or immunity of citizenship in McDonald v. City of Chicago, 561 U.S. 742 (2010), the attention the Constitution affords property and rights thereto, makes these rights equally, if not more, a privilege or immunity of citizenship. Firearms have always protected property. A right to notice regarding property is also a privilege or immunity of citizenship protected by Fourteenth Amendment.

4. Gender Equality and Equal Protection

2018 West Virginia switched from partisan elections for judges to non-partisan causing candidates to openly identify with various public views including opposition to gender equality, namely reproductive rights which only affects females. While some may question a relationship between reproductive rights and a woman denied notice and refused reinstatement in a matter affecting property, ignoring this relationship and the effect it has on those who rely upon electoral approval would be naive and historically inaccurate.

State laws regarding equal protection for women can be patently blatant. Reed v. Reed, 404 U.S. 71 (1971) Here the effect may be viewed more subtle but is no less blatant. Equal protection of the law regarding property rights denied a female by state action, a matter with a long historical pedigree, calls for this Court's attention. Shibboleth of federal state exception should not lie where fundamental Constitutional rights of due process and property are at issue.

Conclusion

This Petition asks the Court to put aside the federal state exception for domestic matters where fundamental Constitutional values and rights are in question. Matters of divorce and accompanying property rights are too prevalent and too important in modern society to ignore. The Constitution should not be set aside for adjudication of these matters.

Respectfully submitted,

Richard Allen Robb
Counsel for Petitioner
Barbara D. Terrell

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APPENDIX

- 1) Order entered by the Supreme Court of Appeals of West Virginia July 23, 2020 refusing to reinstate appeal in Barbara D. Terrell v. John Lewis Renner, II, No. 19-0816

- 2) Order entered by the Supreme Court of Appeals of West Virginia February 18, 2020 dismissing appeal in Barbara D. Terrell v. John Lewis Renner, II, No. 19-0816

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CERTIFICATE OF SERVICE

I, Richard Allen Robb, counsel for Petitioner, Barbara D. Terrell, certify pursuant to Rule 29.3 I have sent by US Mail this day of October 20, 2020 a true copy of the foregoing Petition for Writ of Certiorari together with a copy of the accompanying Appendix and contents to Jeffrey V. Kessler, (304) 845-2580, counsel for respondent John Lewis Renner, II, at the mailing address 514 Seventh Street, Moundsville, WV 26041 and electronic filing of same to respondent's counsel jkessler@bkctg.com.

/s/_____
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