

20-6797

SUPREME COURT OF THE UNITED STATES

DOCKET No. _____

HEATHER STANTON (F/K/A
HEATHER SEMBRAT,

RESPONDENT,

v.

KEVIN SEMBRAT,

PETITIONER-APPELLANT.

CIVIL ACTION

ON PETITION FOR WRIT OF CERTIFICATION TO
THE SUPREME COURT OF NEW JERSEY
DOCKET No. 084595

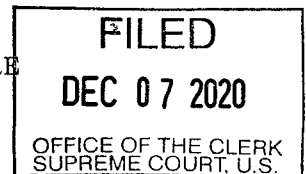
PETITION FOR WRIT OF CERTIORARI

SAT BELOW:
HONORABLE STUART RABNER, CHIEF JUSTICE
AT TRENTON, SEPTEMBER 9, 2020

PETITION FOR WRIT OF CERTIORARI

ORIGINAL

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QUESTION(S) PRESENTED

1. Whether, in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, as well as The Civil Rights Act of 1871 "Section 1983" Statute, *42 U.S.C. § 1983*, Petitioner was unconstitutionally deprived of his \$3,800 property without due process of law after being victimized by Respondent's theft of Petitioner's \$3,800, wherein Respondent was illegally given access to Petitioner's \$3,800 by the Trial Court breaching its fiduciary duty to safeguard Petitioner's \$3,800, and wherein thereafter the Trial Court breached its duty against impropriety and for impartiality, as specified in the New Jersey Code of Judicial Conduct, CANON 2, and Rule 2.1, with an agreement-breaching credit and related 'made-up' language that improperly advocated on behalf of Respondent's and her theft?

LIST OF PARTIES

- [X] All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this Petition is as follows:

RELATED CASES

No related cases outside of the subject Trial Court case and subsequent appeals to the Appellate Court and Supreme Court of New Jersey, included herein.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States Court of Appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States District Court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix __A__ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. [Cert Denied.]

The opinion of the Superior Court of New Jersey, Appellate Division, to review the merits appears at Appendix __B__ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished, "Not for Publication Without the Approval of the Appellate Division, Docket No.A-5389-1873 (N.J. Super, May 22, 2020)."

JURISDICTION

☐ For cases from **federal courts**:

The opinion of the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date _____, and a copy of the order denying rehearing appears at Appendix ____.

☐ An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest court decided my case was September 9, 2020. A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date _____, and a copy of the order denying rehearing appears at Appendix ____.

☐ An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Due Process Clause of the Fourteenth Amendment

42 U.S.C. § 1983, The Civil Rights Act of 1871 "Section 1983" Statute,

New Jersey's Criminal Code, N.J. Stat. § 2C:20-3: Theft by Unlawful Taking or Disposition.

STATEMENT OF THE CASE

The issue before this Supreme Court began as an extraordinarily simple “1-L” (first-year law student) agreement... gone terribly awry.

During a 4/13/18 Trial Court Hearing, Respondent refused to release her financial records as Court-mandated in preparation for an upcoming scheduled plenary hearing. The Trial Court advised she must do so unless she could reach agreement with Petitioner not to release her financial records. As such, Respondent met with Petitioner and the Judge’s capable Law Clerk. Thereafter, Respondent entered into such “simple” agreement, thereby to resolve “all outstanding issues...at the scheduled plenary hearing on May 29, 2018” as memorialized in the 4/13/18 Court Order. (Appendix C, ¶8).

Significantly, Petitioner benefited from that agreement by avoiding having any arrears payback while paying mandated Support until the parties’ youngest son’s emancipation in 2021. Concurrently, Respondent benefited from that agreement by avoiding disclosure of her financial records, thereby successfully keeping secret from Petitioner mortgage deposit funds with which she intended to buy a house. Sure enough, only six months later on 10/12/18, Respondent did secure a \$183,658 Mortgage using her ‘agreement benefit’ of a successfully hidden \$6,342 down payment on a \$190,000 house that exceeds three times her annual salary.

The aforementioned simplicity was provided by the Trial Court, who drafted the clear and concise expertly-worded 14-word sentence, “Defendant’s

arrears payback shall be set at \$0, to be revisited upon Schafer's emancipation" (Appendix C, ¶3), effectively conveying the agreement between the parties.

At the same time, the Trial Court instructed the Trial Court's Probation Division (hereinafter "Probation") within that Court Order, "The Probation Department shall update its records to reflect... ...[Petitioner] shall not be required to make any payments toward his arrears until [the parties' youngest son] Schafer's emancipation [i.e. some 3 years hence]." (Appendix C, ¶23)

Thereafter, "terribly awry" was provided by Probation. Probation repeatedly failed to obey the Trial Court's Order to update its records, including its state-wide database that is checked by all New Jersey courts prior to distribution of litigation/settlement funds, as herein. As a result, Probation subsequently misappropriated Petitioner's \$3,800. Additionally, Probation breached its fiduciary duty to protect against misappropriation of any party's funds.

To further complicate the subject simple agreement, when Respondent discovered around 5/15/19 that she did receive the deposit [i.e. Petitioner's \$3,800] in her checking account from the court. Respondent failed to honor her agreement of \$0 arrears payback until Schafer's emancipation, as conveyed with simple language provided by the Trial Court.

Instead, Respondent kept the \$3,800; moreover, when queried under oath by the Trial Court during a 6/28/19 Hearing wherein Petitioner sought return of said \$3,800, Respondent claims to have spent it.

The Trial Court opted to deny Petitioner's request to compel Respondent to reimburse Petitioner \$3,800, reasoning in its Statement of Reasons that "[Petitioner] received the necessary credit for this payment." (Appendix D, page 4 lines 8-9). Herein, Petitioner respectfully submits that this 'credit' from the Trial Court made complex the simplicity of the agreement otherwise initially provided by the Trial Court.

Petitioner appealed. The Appellate Court opted to "defer in great measure to the Family Part" (Appendix B) – idiomatically putting the fox who stood accused of eating the chickens BACK IN CHARGE of guarding the henhouse.

Finally, the Supreme Court of New Jersey denied Petitioner's petition for certification with two additional errors not previously presented: 1) when Respondent kept the subject \$3,800, she met all of the elements of Theft by unlawful taking or disposition, N.J. Stat. § 2C:20-3; and 2) the Trial Court erred by breaching its duty of impartiality under Canon 2 and Rule 2.1 of the New Jersey Code of Judicial Conduct. Petitioner submitted that both such other errors not previously presented are reviewable.

REASONS FOR GRANTING THE PETITION

Petitioner respectfully asserts that in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, as well as The Civil Rights Act of 1871 "Section 1983" Statute, *42 U.S.C. § 1983*, Petitioner was unconstitutionally deprived of his \$3,800 property without due process of law after being victimized by Respondent's theft of Petitioner's \$3,800.

In this case, Respondent was illegally given access to Petitioner's \$3,800 by the Trial Court breaching its fiduciary duty to safeguard Petitioner's \$3,800. Thereafter, the Trial Court inappropriately bastardized Petitioner's written agreement with Respondent by the Trial Court through improper and erroneously crediting Petitioner's arrears account with the \$3,800 stolen by Respondent – as if the agreement between the parties that specified “no arrears payback pending Schafer’s emancipation” somehow also included new language made-up by the Trial Court that enabled the Trial Court to credit Petitioner’s arrears account with the \$3,800 stolen by Respondent!

Petitioner respectfully asserts that, in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, as well as The Civil Rights Act of 1871 "Section 1983" Statute, *42 U.S.C. § 1983*, such a credit by the Trial Court is not part of the agreement between the parties, and such a credit by the Trial Court unconstitutionally deprived Petitioner of his \$3,800 property stolen by the Respondent without due process of New Jersey’s Criminal Code,

particularly N.J. Stat. § 2C:20-3 entitled Theft by Unlawful Taking or

Disposition, to wit:

2C:20-3 Theft by unlawful taking or disposition

a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

In fact, such a credit essentially characterized the stolen \$3,800 as an unauthorized “arrears payment” in violation of the clear language “...[Petitioner] shall not be required to make any payments toward his arrears until [the parties’ youngest son] Schafer’s emancipation [i.e. some 3 years hence].” (Appendix C, ¶23).

Moreover, Petitioner respectfully asserts that such an unauthorized credit by the Trial Court constituted advocacy on behalf of Respondent that clearly was 'not impartial', despite violation of that Trial Court's declaratory decree (Appendix C, ¶3) and N.J. Stat. § 2C:20-3a ('Theft by Unlawful Taking or Disposition').

Further, declaratory relief was available in the form of the Trial Court admitting erroneous misappropriation of Petitioner's \$3,800 to Respondent and ordering proper return of said \$3,800 to Petitioner. However, instead, Petitioner respectfully asserts that the Trial Court breached the New Jersey Code of Judicial Conduct, CANON 2 ("A judge shall avoid impropriety and the appearance of impropriety.") and Rule 2.1 Promoting Confidence in the Judiciary

("A judge shall act at all times in a manner that promotes public confidence in ... impartiality of the judiciary..."), improperly advocating with a made-up credit for Respondent to keep the stolen \$3,800 after improperly, erroneously, and 'not impartially' unilaterally crediting Petitioner's arrears account with the stolen \$3,800. Such a made-up credit by the Trial Court freshly characterized – similar to an illegal 'money laundering' of sorts – the stolen \$3,800 as an unlawful 'arrears payment' in violation of the Trial Court's declaratory decree, depriving Petitioner of the benefit secured by agreement of having \$0 arrears payback until the parties' youngest son's emancipation in 2021.

In response to Petitioner's appeal, the Appellate Court essentially ignored the merits of Petitioner's issue, opting instead to rule merely on a non-issue ("Respondent did nothing to cause the \$3,800 intercept." (Appendix B). Such non-issue relating to whether Respondent did anything or nothing to cause the \$3,800 is not relevant to the fact that Respondent stole Petitioner's \$3,800 property once Respondent had access to said \$3,800 – without regard to who actually caused Respondent to have access to the \$3,800 intercept.

Instead, the Appellate Court opted to remain silent about Petitioner's raised Trial Court errors, and further, seemingly without regard to those raised Trial Court errors, deferred "in great measure to the Family Part" (Appendix B).

Petitioner respectfully asserts that, in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, as well as The Civil

Rights Act of 1871 "Section 1983" Statute, 42 U.S.C. § 1983, the Appellate Court's silence as to Petitioner's raised Trial Court errors and deferral "in great measure to the Family Part" (Appendix B) unconstitutionally deprived Petitioner of his \$3,800 property stolen by the Respondent without due process of New Jersey's Criminal Code, particularly N.J. Stat. § 2C:20-3 entitled Theft by Unlawful Taking or Disposition.

The Supreme Court of New Jersey denied Petitioner's Petition for Certification.

Petitioner was deprived by both the Trial Court and the Appellate Court of proper redress and due process including criminal prosecution of Respondent for theft of Petitioner's \$3,800 property, as well as the rightful return of Petitioner's \$3,800 property by Respondent to Petitioner. The Supreme Court of New Jersey's mere denial of Petitioner's Petition for Certification completed Petitioner's deprivation of proper redress and due process. Petitioner turns to this "court of last resort", this honorable Supreme Court of the United States, for remand, thereby to restore Petitioner's unconstitutional deprivation of proper redress and due process Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and the "Section 1983" Statute.

CONCLUSION

Petitioner therefore respectfully asks this honorable Supreme Court to grant a writ of certiorari. Oral Argument is hereby respectfully requested.

Respectfully submitted,

Date: 12/7/20

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