

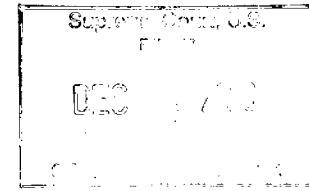
No. 20-856

IN THE  
SUPREME COURT OF THE UNITED STATES

GARY PISNER PETITIONER,

v.

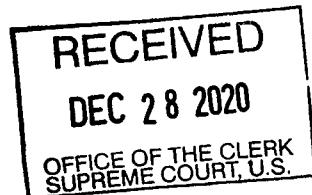
ROBERT MCCARTHY  
RESPONDENT



ON PETITION FOR A WRIT OF CERTIORARI TO THE  
MARYLAND COURT OF THE SPECIAL APPEALS

PETITION FOR A WRIT OF CERTIORARI

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## I. QUESTIONS PRESENTED

1. In this matter there was no procedural due process for the Petitioner, no notice, no review of evidence, no testimony under oath, no service of documents prior to the trial court removing the Petitioner, the beneficiary of a trust and trustee of the trust, before the trial court appointed its default court appointed trustee and before the court appointed trustee transferred all of the trust assets to a prior beneficiary of the trust, who was working with the trustee and to the appointed trustee?
2. Does a court appointed trustee have the powers and responsibilities of a trustee that was not appointed by a court, such as the ability to issue orders, which can be enforced by a contempt proceeding; the ability to override court orders; the ability to have ex parte contacts with the judges; the ability to disregard the trust agreement?
3. Does a court appointed trustee have the ability to use the assets of the trust, the assets, held in trust for the beneficiary, to use as consideration in an attempt to acquire a general release of liability for the trustee and his associates?
4. Does a court appointed trustee have the ability to seek the incarceration of a beneficiary after the beneficiary moves for the court appointed trustee's removal?

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## II. PARTIES TO THE PROCEEDINGS

Gary Pisner, Esq. was a beneficiary and one of the original trustees named in the trust agreement, in the Marion E. Pisner Trust (hereinafter “Trust”), a Maryland Trust formed in late 2009 by Marion Pisner, shortly before her death in January 2010, Petitioner.

Robert McCarthy, Esq. is a lawyer who has had a law practice that subsists on trustee and guardianship court appointments in a number of Maryland jurisdiction, including Montgomery, Queen Anne, and Baltimore counties (also Baltimore City)- apparently for a number of decades and who was appointed as the substitute trustee of the Trust, Respondent.

### **III. PETITION FOR A WRIT OF CERTIORARI**

Gary Pisner, beneficiary of the Marion E. Pisner Trust, respectfully petitions this court for a writ of certiorari to review the memorandum opinion of the Maryland court of Special appeals.

### **IV. OPINION BELOW**

The unpublished memorandum opinion, which was the consolidation of three appeals, in the Maryland Court of Special Appeals of March 18, 2020 and the court's order of May 4, 2020 denying Pisner's Motion for Reconsideration: for cases 3041 included herein as Appendix 1.

Gary Pisner Appellant vs. Robert McCarthy Appellate, No. 3041, September Term 2018, Court of Special Appeals (Circuit Court No. 42798V), which appears to be a combination of two appeals, one from December 19, 2018 and one from May 13, 2019, which were combined, without the knowledge of this Petitioner. The other appeal included was for case Appeal 1037, which related to contempt proceedings.

### **V. JURISDICTION**

This Court has jurisdiction of this petition to review the Opinion of the Maryland Court of Special Appeals, which was appealed to the Maryland Court of Appeals, where writs of certiorari were denied on July 24, 2020 (see Appendix 2), which is within the one hundred and fifty (150) days allotted for appeals under this court's emergency order.

## VI. CONSTITUTIONAL PROVISIONS INVOLVED

5th Amendment to the United States Constitution.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Section 1 of the 14th Amendment to the United States

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or 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.

## VII. STATEMENT OF THE CASE

### A. How around \$800,000, through the actions of the courts, was taken without any procedural due process.

Pisner was a beneficiary of the Marion E. Pisner Trust and a former CoTrustee of the Marion E. Pisner Trust, who opposed the appointment of McCarthy who was appointed by the trial court as a Substitute Trustee during a proceeding to address a Petition for a Declaration of Rights, submitted by the Trust, whose purpose was to interpret the settlor's Marion E. Pisner, Trust Agreement, in light of Maryland law.

The main reason for the Petition for a Declaration of Rights, was to address an issue that had arisen in the sale of a trust property, which the CoTrustee Marla Rubinstein (hereinafter "Rubinstein"), had endorsed and encouraged; moreover, that property sale was the source for the funds to pay for an audit and to pay off the debts of the Trust. This was during a period of time when Rubinstein had volunteered to run the Trust, because Pisner's son had been diagnosed with leukemia. There was an offer to purchase the property pending, but Rubinstein was silent, not returning calls, and unresponsive to the sale offer.

This continued for months and the Trust faced fines for maintaining a vacant property and for maintenance violations; moreover, property taxes were unpaid, and the District of Columbia had initiated the process of a tax sale of the property.

After many months, Rubinstein indicated that the reason for her lack of responsiveness was that she had decided that she wanted the property for herself and that she would not sign any agreement or endorse any deed because she wanted the property for herself.

She initially indicated that she would pay Pisner \$50,000 for the property which had been estimated to be worth over \$200,000. As for the trust debt and audit, Rubinstein would require Pisner to pay for that. Finally, the person who made the offer to purchase the property was losing his patience. There was obvious self-dealing on the part of Rubinstein, but to be fair, Pisner and Rubinstein decided to let a court decide.

Prior to the hearing on the Petition for a Declaration of Rights, Rubinstein filed a document with the court making easily disproven falsehoods about Pisner and she demanded that a replacement Trustee should be appointed.

The problem was that Rubinstein never served that document on Pisner, so on the day of the hearing on the Trust's Petition for a Declaration of Rights, rather than address the Declaration of Rights, the court decided before Pisner even saw Rubinstein's document that, based on Rubinstein's filing, which Pisner had not seen, she was going to appoint a replacement trustee.

After the hearing, Pisner was given a copy of Rubinstein's filing: It was a total fiction. Pisner responded by filing a Motion to Strike and Reply to Rubinstein's document. After Rubinstein was served with Pisner's Motion, she filed another document, recanting her earlier filing and she withdrew her request for the appointment of a substitute trustee – both were ignored and at the follow-up hearing the court decided that It would appoint McCarthy, who is the default court appointed trustee, so as one can see there was no procedural due process prior to the appointment of the trustee. Keep in mind that Pisner was a beneficiary of the trust.

After McCarthy's appointment and a notice by McCarthy that he intended to dispose of the assets of the trust immediately; in addition, McCarthy indicated that he would not allow Pisner to review the Trust files. Pisner appealed to the Maryland Court of Special Appeals the appointment of McCarthy and, in response, McCarthy filed a motion to dismiss the appeal, where he claimed that he did not intend to dispose of Trust property and that an interlocutory appeal was premature: The appellate court granted his motion, which McCarthy would

later allege had been false.

At this point in time Rubinstein's document withdrawing her request for the appointment of a replacement trustee, Pisner's Motion to Strike and Reply and his Motion for Reconsideration, had not been reviewed by the court, but approximately 4 months after McCarthy's and a day before the record of the trial court was scheduled to be transferred to the appellate court, an inconsistent order was issued by the court summarily disposing of all outstanding matter, without explanation, so consider this, after month, there had been no hearing, no testimony under oath, no proceeding to verify or discredit anything that Rubinstein had submitted to the court or stated to the court; moreover, Pisner had no access to the trust file, McCarthy refused to speak to Pisner and the court blocked any testimony by McCarthy.

To be clear, the trust had approximately \$800,000.00 in assets at the time of McCarthy's appointment.

Later, McCarthy filed a document in another case in the Maryland court of Special Appeals claiming that he had sold the trust assets: Again – remember at this time there had been no procedural due process and \$800,000.00 of the Trust assets were, according to McCarthy, sold and no longer under the control of the Trust. Once McCarthy admitted to the court that there were no longer any assets to distribute, Pisner filed an appeal to the Maryland court of Special Appeals.

In January of 2020 Pisner filed a suit against Rubinstein for among other things, that she had committed fraud and in February Pisner discovered that McCarthy had transferred the assets of the trust, with the exception of a substantial payment to McCarthy, which Rubinstein had approved, in secret, to

Rubinstein's personal trust and that she had deeds issued by McCarthy.

Rubinstein notified McCarthy of this legal action and, although the trust, had no assets, McCarthy improperly filed a Motion for Distribution, in the trial court, while the appellate court had jurisdiction over the case, where the trial court, during an ex parte hearing, permitted McCarthy to pay Pisner \$50,000 in exchange for a general release of McCarthy, his associates, his contractors and Rubinstein for any liability. Even more disturbing, McCarthy claimed that rather than do a three-year audit, pursuant to the court order he had decided to do an audit going back to 2008 and that Pisner had failed to supply documents, apparently, from the 2010 to 2011 time period, which the record indicates were turned over to the Trust's accountant. Again- the hearing was ex parte. Pisner was not noticed of it.:

**B. The contempt proceedings: How a lawyer can make money by putting his client in jail.**

The trial court, upon replacing the trustees ordered a three-year audit. Based on that order Pisner supplied all documents related to the trust for the prior three years. McCarthy filed a suggestion of contempt and in court he alleged that McCarthy could issue orders and that Pisner has failed to comply with his order: The court rejected McCarthy's position, but expanded discovery to prior years, stating that you would need some information before the three-year audit period for the three-year audit: There is a three-year statutory bar for an audit.

Later McCarthy, a few days after being served with a motion to have him removed as the trustee for numerous causes, filed an action with the trial court alleging that Pisner had failed to supply documents, which the record indicates that McCarthy had actually received from Pisner. The court deferred to the court appointed McCarthy and it issued an order of an order finding Pisner, the beneficiary of the Trust, in contempt of court; moreover, the trial court order required Pisner to be incarcerated for sixty (60) days, unless Pisner purged his contempt by turning over documents, which were alleged to be missing. After Pisner submitted evidence to the trial court, which showed that McCarthy's witnesses had given false testimony, under oath, and the alleged missing documents had been supplied, McCarthy withdrew his request for incarceration, but the court decided that it would leave the contempt issue to the appellate court: The Judge was retiring in a few weeks. This was also the period where the Trust assets were being transferred to Rubinstein.

#### **C. Something worse than no procedural due process.**

One has to be incredibly careful with trusts. This court has heard a number of cases related to the procedural due process rights of a trustee. Consider this, as in this instance, the trustee will use the beneficiary's money to defend himself and the victim, the beneficiary, will have no money to hire a lawyer because the trustee has his money. No wonder this kind of trust related procedural due process failure is so hidden. That is why the state laws and fiduciary duties, and the legal ethics are a second line of defense for a beneficiary. The problem here is that you may not see these guardrails in cases where there is a court appointed trustee or guardian. When a court appointed trustee, ignores

the terms of the trust agreement, when a trustee works for the benefit of himself, rather than the for the benefit of the beneficiary; when the trustee seeks to incarcerate a beneficiary after that beneficiary opposes the trustee's behavior; when the trustee refuses to permit access to trust documents; when a trustee conceals asset transfers and compensation, the guardrails are gone.

### **VIII. REASONS FOR GRANTING THE WRIT**

This case amply exposes the flaws in the state court's handling of trust cases. This case is a cautionary example where the lack of procedural due process in trust matters can result in hundreds of thousands of dollars in assets being taken from a person without any of those constitutional safeguards coming into play by using a court appointed proxy, who is, as in this case, not bound by any legal or ethical constraints.

This court has issued opinions related to the due process rights of trustee, but this matter is different in that the Trustee that was removed was also a beneficiary, so the right to procedural due process is blatant – replacing a trustee who is also a beneficiary will always deprive that beneficiary of his property and in this instance potentially his liberty.

In addition, one can see that, for a trust, procedural due process must be more than a day in court, because a trustee, as in this instance, can behave in a quasi-judicial manner and the statutes that regulate the behavior of a trustee or a guardian should be treated, from a due process standpoint, no differently than the rules that regulate the behavior of a judge. In this instance, we have procedural due process failures by both the court s and the trustee.

There is little case law on point in this area of the law; it is time to rectify this for the sake of the beneficiaries and wards, who are forcibly deprived of their property by a court or its appointee.

As argued in his appeals court brief, Pisner stated that:

A court can remove a trustee, but there must be some degree of due process before that is done. The removal of a trustee is not something that can be done as a knee-jerk reaction to a filing by one party, without proper review of the veracity of the filing, especially when that trustee is also a beneficiary. There are constitutional issues that are required before a beneficiary's rights and property are taken and, as the record indicates that was not done.

The Fifth Amendment to the United States Constitution provides:

"No person shall ... be deprived of life, liberty, or property, without due process of law ..."

Section One of the Fourteenth Amendment to the United States Constitution provides:

" [N]or shall any State deprive any person of life, liberty, or property, without due process of law."

## IX. Conclusion

For the reasons set forth above, the Petitioner Pisner respectfully requests that this Court issue a Writ of Certiorari to review the memorandum opinion and order denying Pisner's motion for reconsideration.

Respectfully,

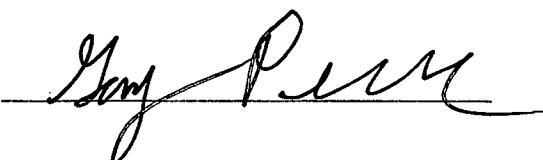


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Certificate of service and word count.

I certify that a copy of this petition has been mailed to Charles H. Fleischer, Oppenheimer, Fleischer & Quiggle, P.C. 4419 East West Highway Bethesda, MD 20814, counsel for Respondent on Dec 22, 2020.

I certify that this Petition contains 2854 words



## X. APPENDIX