

No. 21-927

In The
Supreme Court of the United States

Donald Clinton Crabtree,
Petitioner,
v.

Christine Renee Crabtree,
Respondent.

*On Petition For A Writ Of Certiorari To
The South Carolina Supreme Court*

**BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI**

Marian D. Nettles
Nettles Turbeville & Reddeck
PO Box 699
Lake City, SC 29560
843-374-8511
missy@ntrlaw.com
Counsel for Respondent

QUESTIONS PRESENTED

- I. Did the Court violate the 1st Amendment protection of freedom of expression and generally condemn religious expression of men?
- II. Did the South Carolina Trial Court err in facilitating divorce of Washington State residents?
- III. Did the Court ignore substantial exonerating evidence in support of Husband at the beginning of litigation and fail to render him due process?
- IV. Did the Court ignore its own psychological reports and expert testimony and wrongly assign credibility to the Wife?
- V. Did the Court convert issues, conflate mischaracterizations, minimize salient facts and construct findings in order to inappropriately assign credibility to the Wife?
- VI. Do the findings of the Court demonstrate mischaracterization, religious persecution, abuse of power in order to exercise prejudice and ignore torts against partnership obligations?
- VII. Did the Court bring discredit to the judiciary by manifest gender prejudice and malfeasance?
- VIII. Did the Court Facilitate the Wife's Construction of Desertion of the Husband?

IX. Did the Court violate 14th Amendment equal application of the law?

X. Did the *Guardian Ad Litem* manifest bias, and do his actions and assignment by the Court indicate collusion?

XI. Did the Court err in awarding custody of the children to the Mother?

PARTIES TO THE PROCEEDINGS

Donald Crabtree as Defendant, Appellant/Petitioner

Christine Crabtree as Respondent Plaintiff and Respondent

CORPORATE DISCLOSURE STATEMENT

Not Applicable

RELATED PROCEEDINGS

Supreme Court of South Carolina

Christine Crabtree v. Donald Crabtree, No. 2021-000088 (SC. Jul 06, 2021)

The South Carolina Court of Appeals

Christine Crabtree v. Donald Crabtree, No. 2018-000269 (SC. Dec 21, 2021)

Christine Crabtree v. Donald Crabtree, No. 2018-0001571 (SC. 29 Apr, 2021)

Christine Crabtree v. Donald Crabtree, Op. No. 2017-UP-461 (SC 13 Dec, 2017).

Christine Crabtree v. Donald Crabtree, No. 2015-DR-43-1428 (SC. Jan 26, 2018)

Family Court of Sumter County, South Carolina

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CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. Art I, § 10, cl. 1:

No...law impairing the obligation of contracts.....shall be passed.

U.S. Const., amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

U.S. Const. Art. VI, cl. 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const., amend. XIV § 1:

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.

§ 20-3-30 *South Carolina Code of Laws* (1976, as amended)

In order to institute an action for divorce from the bonds of matrimony the plaintiff must have resided in this State at least one year prior to the commencement of the action or, if the plaintiff is a nonresident, the defendant must have so resided in this State for this period; provided, that when both parties are residents of the State when the action is commenced, the plaintiff must have resided in this State only three months prior to commencement of the action. The terms 'residents' as used in this section as it applies to a plaintiff or defendant stationed in this State on active duty military service means a continuous presence in this State for the period required regardless of intent of permanently remain in South Carolina.

JURISDICTION

This Court has jurisdiction pursuant to § 28 U.S.C. 1257.

STATEMENT OF THE CASE

This action for Separate Support and

Maintenance, Custody, and related relief was commenced by the Wife's filing a Verified Summons and Complaint on November 10, 2015. (R. Vol. 1 p. 5) The Husband filed his Verified Answer and Counterclaims dated November 13, 2015. (R. Vol. 1 p. 17-27) Both parties filed Motions for Temporary Relief. (R. Vol. 1 p-3 and p. 14-15) A Temporary Order was filed on December 30, 2015. (R. Vol. P. 98-106)

On May 18, 2017, the Wife filed an Amended Complaint requesting a Divorce on the ground of one year's continuous separation. (R. Vol. 1 p. 419-436) The Husband filed an Amended Answer on June 19, 2017 also requesting a divorce. (R Vol. 1 p. 441-460) This case was tried from October 2- October 4, 2017, resulting in the Final Amended Order and Decree of Divorce filed January 26, 2018. (R. p. 192-236) The Husband timely filed his Notice of Appeal. The South Carolina Court of Appeals issued its ruling affirming the decision of the Family Court in the matter of *Christine Crabtree v. Donald Clinton Crabtree* opinion No. 2018-0000269 on November 18, 2020. (Petitioner's Appendix B) The Husband then filed a Motion for Rehearing on December 8, 2020. Next, the Husband filed his Petition for *Writ of Certiorari* to the Supreme Court of South Carolina on January 26, 2021. This Motion was denied by Order filed July 6, 2021. (Petitioner's Appendix A)

ARGUMENT

I. Did the Court violate the 1st Amendment protection of freedom of expression and generally condemn religious expression of men?

The Family Court found that “The children’s cultural and spiritual backgrounds are not an issue in this case.” Further, “The parties profess a strong Christian faith, but Father’s use of his Christian faith toward Mother in this regard was the main cause of the demise of the marriage”. Also, “The Mother has continued to insure that the children attend church as had been the custom prior to the parties’ separation.” The Court noted that “During Father’s visitation, he has continued to encourage the children’s spiritual background.” (Final Order and Decree of Divorce (Amended) filed January 26, 2018. (R. Vol 4 p. 199)

Clearly, the Court considered the children’s religious upbringing in its decision. Religion is one of the factors the Family Court is tasked with considering in the custody analysis. *S.C. Code of Laws* § 63-15-240 (13) In the case at bar, this factor was treated as neutral between the parties.

Insofar as the relationship issues between the Husband and the Wife herein, religion was clearly an issue between the parties. Plaintiff’s Exhibits 1 and 2 support the conclusion of the Court that this led to the demise of the marriage. (Tr. Vol 3 p. 89 line 1-p.93 line 8) In Plaintiff’s Exhibit 1, (R. Vol. 2 p. 1-2) an email

sent by the Husband to the Wife, The Husband insisted that he was the pastor and spiritual leader of the house and that the Wife was incapable of judging what is fair. The Wife felt that she was being attacked and accused. The Husband directed the Wife to present her excuses to the Lord. He opined that the Wife was "in rebellion against the Lord" and that her only lasting peace would be found in obedience. He finally stated "you are simply following the curse of the woman, trying to unbalance my leadership, covy (sic) my authority, and attacking me." In Plaintiff's Exhibit 2, (R. Vol. 1 p.2) the husband sent the Wife a letter of admonishment accusing her of "living in open defiance and rebellion against me and the Lord for over a year." The Wife testified that she felt spiritually intimidated and began to wonder about the Husband's stability. (R. Vol 3 p. 92 line 20- p. 93 line 18)

Plaintiff's Exhibits 1 and 2 and the Wife's testimony as to how these documents made her feel demonstrate the existence of an irreconcilable difference between the parties. Nothing in the Final Order and Decree of Divorce (Amended) shows that the Court was trying to subvert freedom of religion. The Husband is clearly free to believe what his biblical role in the household should be. The Wife felt demeaned and attacked by Husband's stance as to their relative roles in the marriage. For this reason, among others, the marriage ended. There were no violations of the constitutional provisions of U.S. Constitution Amend. I or the S.C. Constitution Art. I.

II. Did the South Carolina Trial Court err in facilitating the divorce of Washington State residents?

Petitioner argues for the first time since the case was filed over six years ago that South Carolina did not have jurisdiction of the parties. He argues in his Petition that the parties were Washington residents who were only living in South Carolina because he had been stationed in South Carolina, citing the *Service Member's Civil Relief Act* of 2003 50 U.S.C. § 3901. Later, he admits that his service with the military had ended December 31, 2014. (Petition p.4)

The Family Court case which is now before this Court was filed over a year after the Husband's separation from the service on November 10, 2015. The parties continued to reside in South Carolina up to and following the institution of this action. The Wife's verified complaint alleged that the parties were residents of the State of South Carolina. (R. Vol. 1. p. 5 paragraph 1) The Husband's verified Answer and counterclaims admitted residency. (R. Vol 1 p. 17 paragraph 2) The South Carolina Residency requirement is set forth in §20-3-30 S.C. *Code of Laws* (1976, as amended)

That section provides:

Residence requirement.

In order to institute an action for divorce from the bonds of matrimony the plaintiff

must have resided in this State at least one year prior to the commencement of the action or, if the plaintiff is a nonresident, the defendant must have so resided in this State for this period; provided, that when both parties are residents of the State when the action is commenced, the plaintiff must have resided in this State only three months prior to commencement of the action. The terms 'residents' as used in this section as it applies to a plaintiff or defendant stationed in this State on active duty military service means a continuous presence in this State for the period required regardless of intent to permanently remain in South Carolina.

Petitioner's argument is without merit.

III. Did the Court ignore substantial exonerating evidence in support of Husband at the beginning of litigation and fail to render him due process?

The Petitioner claims that "The Family Court abused discretion in evicting the husband from the marital home based upon allegations of psychological and emotional abuse." Petitioner references Affidavits from the temporary hearing. He proceeds to argue that the only cruelty recognized by South Carolina as a ground for divorce is "physical cruelty." In support of his position Petitioner cites the cases of *Barstow v.*

Barstow, 223 SC 136, 74 SE 2d 54 (1953) and *Lindsey v. Lindsey*, 246 SC 282,143 SE 2d 524 (1965). The Respondent did not request a divorce from the Petitioner on the ground of physical cruelty or any other fault based ground. She requested a Decree of Separate and Maintenance. (Complaint filed November 10, 2015; (R. Vol p.p-8) She further requested temporary possession of the marital home. (R. Vol. 1 p. 7-8) (Answer and Counterclaim) (R. Vol 1 p. 25), On November 18, 2015 the parties appeared before the Family Court for a Temporary Hearing. (R. Vol 1 p.98-106) Consistent with the pleadings of both parties, the Court granted the parties the right to live separate and apart. (Temporary Order filed December 30, 2015 p.2 paragraph 4; Vol. 1 p. 99) The Court, after reviewing the submissions of both parties, granted temporary custody of the children to the mother and ruled that “the Marital home follows the custodial parent, who is the mother.” The court explained that “both cannot live in this (house divided)”. (Temporary Order p.2 paragraph 2 and p.6 paragraph 11.) (R. Vol 1 p. 103) Clearly, the parties were separated and both could not live in the same home. The Temporary Order specifically states that “This is a Temporary Order and is issued without precedential value or prejudice to the rights of any party at a final hearing on the merits”. (Record Vol. 1 p. 98) The Respondent had been a stay at home mom for almost ten years since the birth of their first child. (R. Vol 3 p. 72 lines 19-25). She had been the primary caretaker of the children. (R. Vol. 3 p. 105 lin 7-p.108 line 23) It made sense for the Court to award temporary custody to the mother and to allow her and the four children to stay in the marital home

pending the final hearing on the merits. The Mother and the four children had been staying in a women's shelter. (R. Vol. 3 p. 1056 lines 1-21) The Petitioner fails to indicate in what way the Court's temporary decision denied him due process. The Court of Appeals correctly held that "A temporary order is without prejudice to the rights of the parties" citing *Terry v. Terry*, 400 SC 453, 734 SE 2d 646 (2012) (App A p.12) The due process arguments of the Petitioner are without merit.

IV. Did the Court ignore its own psychological reports and expert testimony and wrongly assign credibility to Wife?

V. Did the Court convert issues, conflate mischaracterizations, minimize salient facts and construct findings in order to inappropriately assign credibility to the Wife?

In Arguments IV and V, Petitioner cites several excerpts from the psychological evaluations of the parties and concludes that the Court ignored these findings in its decisions in their case. Petitioner ignores evidence in the record negative to his positions. For example, the Court indicated that it considered factors 1-17 of *S.C. Code of Laws* § 63-15-240 in its custody decision to the extent those factors were contained in the record. (R. Vol. 2p. 298-372) The Court noted that, ultimately the Court must consider the "totality of circumstances peculiar to each case". *Woodall v. Woodall*, 322 SC 7, 471 SE2d 154 (1996).

After considering the relevant factors, the Court ruled that custody should be awarded to the Mother. (R. Vol. 4 p.217) Evidence negative to the Petitioner in the record includes the testimony of Ms. St. Cyr, the visitation supervisor for the Father, who testified that the Husband brought some snack bars, which had nuts, to serve to the children during a supervised outing. Ms. St. Cyr pointed out that the photograph of the snack bar showed nuts. The husband was aware of the child's peanut allergy. The Husband claimed to have read the packaging and said that it was fine for the child to eat it. The child ended up in the emergency room. (R. Vol. 3 p.57 line 21-p. 58 line 20) Other evidence in the record shows that the father was trying to convince the mother to "take steps toward overcoming the allergy to peanuts so that he would not be susceptible to exposure". (R. Vol. 2 p. 271-274). This evidence goes beyond proving the father unreasonable. It indicates that the father was unfit. This was not an isolated incident. Another child of the parties had become very allergic and had to be taken to the emergency room. He was prescribed an antihistamine and an inhaler. The inhaler was to be administered twice a day. The Husband was opposed to administering the medicine. Petitioner read the list of side effects to the seven year old child and told the child he would be disrespecting him if he took the medicine. The Mother had consulted with the doctor. The Father had not. The Father accused the Mother of "parenting by fear". (R. Vol. 3 p.99 line 1-p. 99 line 10). The Petitioner fails to point out in what way the Court's findings constitute a deprivation of his constitutional rights. There is sufficient evidence in

the record to support the Court's decisions in this case.

VI. Do the findings of the Court demonstrate mischaracterization, religious persecution, abuse of power in order to exercise prejudice and ignore torts against partnership obligations?

In this Argument Petitioner complains that the Court erred in failing to grant him a fault based divorce on the ground of desertion. He argues that this allowed the Wife to breach the marital contract. He says that the Wife is guilty of the "tort" of desertion, since according to him, the Respondent withdrew from the marital relationship leading up to the separation. He cites § 20-3-10 S.C. *Code of Laws* in support of this position. The cited section does not define desertion as a "tort". This statute sets forth the statutory grounds for divorce in South Carolina. The Court of Appeals correctly ruled that in their initial pleadings both parties requested the right to live separate and apart, citing *Machado v. Machado*, 220 SC 90, 101-02, 662 SE 2d 629, 634 (1951) for the proposition that there can be no desertion when the separation is by mutual consent. Furthermore, the Court of Appeals found that the theory of constructive desertion is not applicable because the Husband did not leave the Wife. (Petitioner's Appendix p. 14A)

The Petitioner's arguments are without merit.

VII. Does Court bring discredit to the judiciary by manifest gender prejudice and malfeasance?

The Court mentioned the Husband's admitted addiction to pornography in its findings. The Court also noted that the Husband admitted he objectifies women. (R. Vol. 4 p.16). At trial the Husband admitted that this was "something that's been a weakness in my life", and something that "I'm not proud of". (R. Vol 3 p.494 line 14)

The Husband argues in his Petition for *Writ of Certiorari* p.30 "This is a condemning fabrication to paint the Husband as a hypocrite in his Christianity regarding his sexuality" The Husband complains that "The evidence does not support Judge Monet Pincus's narrative of a patriarchal male who feels entitled to sexual deviance". The Judge said nothing of the sort. She merely noted what the Husband himself admitted.

The Petitioner cites no authority for the proposition that he has been the victim of gender prejudice and religious discrimination by the Court. Furthermore, the Petitioner failed to properly argue gender prejudice in his Final Brief before the Court of Appeals. The Court of Appeals ruled that the Petitioner failed to preserve this issue for appellate review (Petitioner App A p. 8a-9A)

VIII. Did the Court Facilitate the Wife's Construction of Desertion of the Husband?

Respondent would reiterate her argument concerning desertion as a ground for divorce as set forth in her Argument IV hereinabove.

IX. Did the Court violate the 14th Amendment equal application of the law?

The Petitioner summarily concludes that the Trial Judge did not afford him “equal application of the law” as guaranteed by U.S. Constitutional Amendment XIV § 1. He broadly states that the Court did not give adequate consideration to the psychological evaluation, his numerous audio recordings and his witnesses. He also complains that the Court faulted him for his religious expressions.

The Respondent would reiterate her argument in response to argument I herein as it relates to religious freedom.

Concerning the argument that he was denied equal protection of the laws, Petitioner set forth this argument as issue 3 in his statement of issues on appeal before the South Carolina Court of Appeals. He argued that the Trial Court showed “gender prejudice”. Final Brief of Appellant p. ii. The argument section of the Final Brief of Appellant is set forth on pages 28-35. There was no citation of authority on this issue. Issues raised on appeal, but not argued in the brief, are deemed abandoned and will not be considered by the

Appellate Court. *Fields v. Melrose Ltd. Partnerships*, 312 SC 102,439 SE2d 283 (SC App 1993) If anything, the Appellant argued in favor of gender prejudice toward himself as the male head of household and decision maker for the family. (Plaintiff's Exhibit #1) (R. Vol 2 p.1-2) The Court of Appeals specifically ruled that Petitioner's gender prejudice argument had not been properly preserved for Appellate review. (Petitioner's App A p. 8 and 9)

X. Did Guardian Ad Litem, manifest bias, and do his actions and assignment by the Court indicate collusion?

The South Carolina Court of Appeals ruled that the Petitioner had abandoned this issue on Appeal. (Petitioner Appendix A p. 8-9) The Court noted that Petitioner had raised twenty-three issues in his statement of issues on appeal. The Court indicated that, Petitioner either failed to argue seventeen of those issues or to provide any legal authority for his conclusory arguments, or to be specific as to what finding ruling conduct or evidence the issues he raises actually pertains to. (Petitioner A p.8) The Record is totally devoid of any evidence of impropriety by the Guardian or the Family Court Judge.

XI. Did the Court err in awarding custody of the children to the mother?

As set forth in Argument X hereinabove the South Carolina Court of Appeals ruled that the Petitioner had abandoned the issue of whether he was

the “more well adjusted parent” and the issue of whether he was the “more reasonable parent” for custody purposes. (Petitioner A p.8-11) Section III A “Issues Abandoned on Appeal”. In support of this ruling the Court cited Rule 208 (b) (1) (E) South Carolina Appellate Court Rules and *Divine v. Robbins* 385 SC 23, 44 n. 4, 683 SE 2d 286, n.4. (Ct App 2009) The failure to argue an issue in the Final Brief of Appellant is not cured by addressing the issue later in a Reply Brief. Furthermore, on the merits, for the reasons set forth in Arguments IV and V hereinabove, there was substantial evidence in the record to deny the Petitioner custody of the minor children.

CONCLUSION

For the reasons set forth hereinabove the Respondent respectfully requests that the Petitioner’s *Petition for a Writ of Certiorari* be denied.

January 18, 2022

Respectfully submitted,

/s/
Marian D. Nettles
Counsel of Record
Nettles Turbeville and Reddeck
PO Box 699
Lake City, SC 29560
843-374-8511
Missy@ntrlaw.com
Counsel for Respondent