

No. **22-1012**

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In The  
Supreme Court of the United States

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**ORIGINAL**

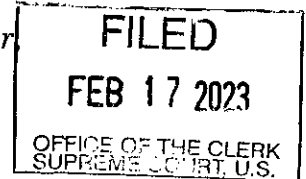
JANET AUSTEN,

*Petitioner*

V.

FRANKLIN HERMAN,

*Respondent.*



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On Petition for Writ of Certiorari  
to the Court of Special Appeals  
of Maryland

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

Most importantly, if the trial Judge miscalculated the alimony recipient's monthly income (or pay) was it right for the appeals court to uphold her decision?

Should permanent alimony be discontinued when the person receiving the alimony is 68 years old; was married for 24 years and was not responsible for the demise of the marriage? The person paying the alimony dissipated \$983,915.00 (Appendix E) in the 2 years prior to the divorce. This dissipation caused by the use of cocaine, payment for an apartment for an "exotic dancer" and her son as well as cars, dental care, gym passes, medical care and jewelry for 2 ½ years.

Should permanent alimony be discontinued if doing so will leave the receiver homeless when she retires (which could be any day); while the person paying the alimony (although retired) receives Social Security Benefits of \$3,776.00/month which accounts for a Medicare payment of \$148.00/month. Retirement Income, 2 homes, 3 cars and his own business for a total of over \$2.7million.

Should the person paying the alimony have been allowed to include his 3<sup>rd</sup> wife of 5 years expenses in his financial statement. The Judge during

the proceedings stating multiple times that they would not be included then in her decision. These expenses including psychiatrists, vacations, private health insurance and manicures. The reasoning for inclusion as per the Judge being that his 3<sup>rd</sup> wife is "dying of cancer". This never having been introduced during the proceedings and stated without and evidence.

Is it not discriminatory that someone who works 2 jobs to support herself has her alimony discontinued while the person who caused her to have to work two jobs retires comfortably? Is it not discriminatory that a person who never worked and has an unproven medical condition be included in a financial statement for the payee? This, leaving the person who is receiving the alimony is being finally assessed at the rate of 2 jobs at age 68? Is she being discriminated against for being independent and trying to take care of herself?

And finally, is she being discriminated against as she looks Hispanic and was treated differently at the Alimony trial and with the court's decision. She was forced to come to court during COVID while the payee stayed home and used video communication.

RELATED CASES

Janet Austen v. Franklin Herman, No 119743FL,  
Circuit Court for Montgomery County-Family,  
Montgomery Circuit Court, Maryland. Judgement  
entered November 9, 2015.

Janet Austen v. Franklin Herman, No 119743FL,  
Circuit Court For Montgomery County-Family,  
Montgomery Circuit Court, Maryland. Termination  
of Alimony, Judgement entered April 27, 2021.

Janet Austen v. Franklin Herman, No 419,  
September Term 2021, Unreported in the Court of  
Special Appeals of Maryland. Judgement entered  
April 12, 2022

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## **TABLE OF AUTHORITIES**

### **CASES**

Innerbichler 132 Md Ap @ 248 (cite Ware vs Ware,  
131 Md Ap 2007 (2000)).

Innerbichler 132 Md App @ 248 citing (Crabill vs  
Crabill)

U.S. Legal, Discrimination legal definition, 2020

All Cited from Appendix C (Appellant – Appeals  
Court Summary)

### **Statutes and Rules**

Civil Procedure Rule 52(a)

Code of Judicial Conduct Maryland Rule 2.2

**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 judgement below

**OPINIONS BELOW**

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished. The Court of Special Appeals of Maryland Appendix B.

**JURISDICTION**

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

**CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED**

Discrimination in evaluating my case because I was independent and worked throughout the marriage, during the divorce and after the marriage. Regarding Discrimination and it's legal definition:

"Discrimination refers to the treatment or consideration of, or making a distinction in favor of or against, a person or thing based on the group,



class, or category to which that person or thing belongs rather than on individual merit".<sup>1</sup>

This discrimination including my sex and race. Sex being applicable to stay at home parents either part or full time and whether male or female and the fact that I am usually thought to be of Hispanic descent.

In regard to Unconscionable economic disparity, Innerbichler in *Ware v. Ware* states that "to be unconscionable, the disparity in the post-divorce standards of living must show a gross inequity; or create a situation in which one spouse's standard of living is so inferior, qualitatively or quantitatively, to the standard of living of the other as to be morally unacceptable and shocking to the court."<sup>2</sup> I worked 2 jobs to be able to pay my monthly expenses. Mr. Herman increased his salary, bonuses, owned 2 houses, 3 cars and took vacations. I feel this was an extremely unconscionable both qualitatively and quantitatively for me. I have no money and I am exhausted from working. To have to continue with 2 jobs at age 68 with no retirement while Mr. Herman has retirement accounts, savings accounts, Social Security, houses, cars, vacations, gifts, haircuts and manicures; all agreed to by the court. After dissipating over \$983,915.00 from our retirement account on hookers and cocaine as well as possibly

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<sup>1</sup> <https://definitions.uslegal.com/d/discrimination>. U.S. Legal, 2020

<sup>2</sup> Innerbichler, 132 Md. App. At 248 (citing *Ware v. Ware*). 131 Md. App. 207, 229 (2000).

draining the accounts after finding out about the divorce and placing them in his LLC.

As per Innerbichler “economic self-sufficiency per se does not bar an award of indefinite alimony if there nonetheless exists an unconscionable economic disparity in the party’s standard of living after divorce.”<sup>3</sup> I’m working 2 jobs and have been since the divorce. If I stop working, I’m homeless as he dissipated/ or hid our retirement as per the above. Again, an unconscionable disparity.

“Gross disparities in income levels frequently have been found unconscionable, and have supported the award of indefinite alimony”.<sup>4</sup>

I’d like to apply the laws for clearly erroneous facts – Federal Rule of Civil Procedure Rule 52(a) – being or containing a finding of fact that is not supported by substantial or competent evidence.

The Judge misquoted my monthly salary and expenses. She subtracted the minimal expenses she noted from my Gross not net salary which are much different as I pay 40% in taxes. This also taking into account the statement by the Judge that his wife was dying and that she can’t work with no evidence nor having it been addressed in court.

The Appeals Court stated that I said I made \$94,000.00 per year. I was being questioned by Mr. Gardner and I though he meant at the time of the initial divorce. All of my financial statements that I sent in note me actual and present income and

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<sup>3</sup> Innerbichler, 132 Md App. At 248 (citing Ware v. Ware). 131 Md. App. 207, 229 (2000).

<sup>4</sup> Innerbichler, 132 Md App. 207, 248 (2000) (quoting Crabill v. Crabill, 119 Md. App. 249, 266 (1998).

salary and pre - retirement financial statement  
(Appendix

And finally, I would like to apply the code of judicial conduct (Maryland rule 2.2). This law "requires a Judge to apply the law fairly and impartially". As I stated earlier, I do feel there was discrimination in her judgement standard and treatment of me. I am working 2 jobs at 68 to pay monthly expenses and have no retirement due to his dissipation of our assets when we were married. None of this was taken into account but, a great deal of time was spent on how Mr. Herman will have to live on his \$1.7million post-retirement funds. My medical problems nor age was taken into account yet, the judge let the consideration of Mr. Herman's present and 3<sup>rd</sup> wife of 5 years and her unproven illness enter into her decision. The appeals court adds that as she never worked, she shouldn't have to. They don't mention my 24-year marriage, his dissipation of our retirement account and that I work. So, she's getting rewarded for not working.

Also, my sons and I had to appear in court during COVID despite chronic medical conditions. I have type 2 diabetes, hypertension, hyperlipidemia and osteoporosis; my 1 son has type 1 diabetes and epilepsy. While Mr. Herman did a video visit from home.

Apparently, she could have proceeded with the case differently as I was Pro Se yet she let Mr. Gardner proceed with his tactic of treating me like a lawyer.

**STATEMENT OF THE CASE**

I represent myself in court as I do not have enough money to hire an attorney yet, I make too much money to get free legal help.

I was in a 24-year marriage. Trusted my husband. Found out he was leading a double life with a hooker in Arizona x 2 ½ years. This included an apartment for her and her son, a car, medical and dental care, jewelry, and cocaine use. He dissipated much of our retirement (\$983,915.00 Appendix E) and/or aid it in his present company Nash Software Solutions (Appendix G). Before the Alimony trial I had gotten a subpoena for the business finances. I did not receive the information and applied for a contempt order for the information. It was blocked by Mr. Gardner (Mr. Herman's attorney) and the court.

After the divorce I bought the house, we had been living in as my son had 1 more year of college and my other son was in the Fire Academy testing. I was awarded \$440,000.00 of what was supposedly left in our retirement accounts. I used \$400,000.00 in refinancing the house; leaving me with \$40,000.00 in my spousal IRA account at Fraunhofer, Mr. Herman's employer. The \$40,000 is still in the account. I was not allowed to enter any funds into this account only withdraw funds and it had a minimal ROR. The interest rate on the IRA was less than the ROR I would receive on the house (Appendix K and L). I had no IRA's where I worked after

the divorce. I was already 63 years old so saving for retirement was already over although I tried. I am presently paying \$1,700/month in mortgage payments which is cheaper than apartment rates in the area.

The house transfer was final in 2016 (or the completion of the divorce: and Mr. Herman opened his business just after that date. As I stated in court why would someone as precise as him have just left the business open x 4 years and paid registered agent fees, corporate taxes and added it to his tax returns each year if there was nothing in the company. If there was nothing to hide, why didn't he shoe the corporate assets as per the subpoena.

After the divorce I was awarded a minimal alimony, with yearly taxes taking  $\frac{1}{2}$  of the alimony payments leaving me with \$1,250.00/ month in alimony. I had to work 2 jobs to meet my monthly bills with the alimony (Appendix N). I saved what I could and used it for repairs to the house that he had left in disrepair. During the Alimony trial I had \$40,000.00 in savings. I used most of that to purchase a new car (Nissan Sentra 2022). My Nissan Sentra from 2011 was 11 years old and not working well.

In April my ex-husband retired and my permanent alimony was discontinued by the court although I have no retirement due to his dissipation. After the initial divorce proceeding, I noted that he had also dissipated \$100,000.00 from my youngest

son's college account (Appendix S). I did bring this to the family court after the divorce along with other issues but it was never addressed by the court.

At the time of the termination of my alimony he owned 2 houses for a total of \$686,000.00, 3 cars including a Lexus, was receiving social security (\$3776.00) and had over \$789,664.00 in retirement accounts with a **minimum** monthly distribution of \$1,250/month, \$100,113.57 in bank accounts, \$3,776.00 in stocks and his own business with an undisclosed amount.

Mr. Herman is on his 3<sup>rd</sup> marriage (someone other than the hooker) of 5 years with someone who never worked during the marriage and had a teenage son. The Judge would note that his 3<sup>rd</sup> wife had sold her home and used the sale to finance their new home however, the actual amount received from the sale of her house was much lower than what the Judge quoted (Appendix T).

During the trial the Judge repeatedly stated that she was not going to include his 3<sup>rd</sup> wife's expenses in the decision. She went as far as telling Mr. Gardner (Mr. Herman's Attorney) to show her the law that required her to include her to do so (Appendix M). During her final judgement she included his 3<sup>rd</sup> wife expenses as well as stated "she can't work, she's dying of cancer" which was never stated in court and was most likely not true. Also, his 3<sup>rd</sup> wife never worked according to their yearly tax returns. Her expenses included private health insurance, vacations, family gifts, monthly

psychiatrist visits, manicures and a Lexus automobile.

The Judge didn't understand that the words (postretirement) on my 2<sup>nd</sup> financial statement (Attachment O) meant after retirement and screamed at me in court that I was a liar, which I am not. This scared and shocked me and I just shut down. I was unable to think straight and didn't argue back. She yelled that I had said my income was 0. Which it would be if I was retired.. I had included my retirement Social Security amount down farther on the form. This financial statement had included what my monthly social security income would be at that time as well as monthly expenses. My pre- retirement financial statement had included my monthly income and insurance costs for Medicare (which would be 0 or free post-retirement) (Appendix O). The Court of Special Appeals stated that the circuit court hadn't received the other financial statements but, they had (Appendix W). The judge yelled that I had not included my insurance on my post-retirement financial statement started to put it in and then became upset and stopped.

She subtracted what she said was my gross monthly wage or \$12,751.42 which is not my gross wage and from my net wage. I attached my pay stubs from the trial (Attachment Q). With my first job Medical Consultants (Medical Access) my bi-weekly salary goes from \$4,000 to \$5,000 my net

after 40% in taxes and deductions for Social Security and Medicare is \$3,442.04 and \$3,472.50. My net total for my first job being \$7,184.54. My second job (Access Now) I usually worked 1 day per week; very rarely 2 days per week. As per the pay stub 1 day per week gave me a gross of \$540.00 and net of \$422.53. If I worked a second day the gross was \$840.00 and net approximately \$640.00. The pay check from Access not for 12/20 included a bonus of \$1,650.00 increasing my net for that paycheck which is what the Judge went by for my biweekly salary. If you add the net for 2 checks (1 month) from Medical Access (my primary job) ( $3472.50 + 3442.04 = 6914.54$ ) or \$6914.54 for my monthly net salary from Medical Access. If you add 4 days for Access Now (my 2<sup>nd</sup> job) using my net ( $\$423.00 \times 4 = \$1,692.00$ ). So, if you add  $\$6,914.54 + \$1,692.00 = \$8,606.54$  which is nowhere near the \$12,751.42 the Judge claimed I made. Also, why should I have to work 2 jobs to make ends meet.

I attached tables (Appendix I&J), submitted to the Appeals Court) and included the income from 2 jobs pre-retirement and post-retirement.

In regard to Mr. Herman's credibility, he lied in the divorce proceedings regarding my behavior, my son's negated his lies but the Judge quoted his statements in the court summary and did not include his behavior with hookers and cocaine. He forged my name on the 2012 tax returns (Appendix R) taking over \$500,000 from the retirement accounts. He cancelled my oldest son's health insurance for which he was paying \$63.00/month.



My eldest son having type 1 diabetes and epilepsy. He refused to pay for my 2<sup>nd</sup> sons last year of college. He had taken \$100,000.00 from my second sons college account which I found out about after the divorce (Appendix X). He repeatedly told me he loved me verbally, in cards and on phone calls (2x/day).

I never kept tabs on him; he called me twice a day when he was working in Maryland and when he was away on trips. He turned on trackers on my iPad and iPhone, my son's noticed. He stated he was riding his bike for 4-6 hours on Saturdays and Sundays but phone records (obtained after the divorce order) show he was up the road calling various persons. In court he admitted to drug use in Arizona as well as paying for the drugs for the hooker and her friends.

During the Alimony trial he stated his second house was a "fixer upper" vacation home worth approximately \$222,000.00. That he and his wife were going to use it more often now that he was retired. As per the attached info. sent to the Appeals Court (Appendix B) after the Alimony trial he sold the house for \$500,000.00. (Appendix V)

After the Alimony trial I was giving my eldest son his baby book and noted that Mr. Herman had written about the pregnancy and dates of testing and confirmation. As per his own hand (Appendix U) the pregnancy was noted after the marriage. He noted no displeasure regarding the pregnancy in the book

yet in the deposition his lawyer stated that I had "saddled him with children".

He often told me that he did not want to take care of anybody. I therefore, took care of his friend Charlie after his cardiac bypass surgery and his dad when he was dying of cancer. He paid for my long-term care insurance as he did not want to have to take care of me. He stated in court he was retiring to "spend time with his wife". I would find this very hard to believe having known him. All he lived for was work - money and I guess hookers and coke. Also, noted in court by his attorney he maintained a life insurance policy on his wife through his company after his retirement. He had increased a life insurance policy on me prior to our divorce.

During the alimony trial the judge would not let me introduce evidence from the first trial however, she let his attorney (Mr. Gardner) include a summary from the original trial. In this summary as noted earlier the Judge did not note Mr. Herman's behavior re: hookers, cocaine and dissipation of assets. He did quote Mr. Herman's statements about me which were not true and which my sons had negated.

I and my sons (witnesses) were forced to come to court for the alimony hearing during COVID. My older son has type 1 diabetes and epilepsy. I have type 2 diabetes, hypertension, hyperlipidemia and osteoporosis. While Mr. Herman was allowed to video from home in the comfort of his office with his computer with his financial information and facts at

his fingertips. The Judge mocked me for not being organized but, I too could have been more organized had I videoed from home. Also, much safer physically and emotionally.

She stated she did not like my demeanor. I think my demeanor was very good considering I am in court questioning the person who destroyed my trust and stole my retirement. As well as facing his attorney (Mr. Gardner) who kept me in a divorce deposition for 6 hours; sent me threatening letters after the fist trial and again after the alimony trial. Also, I thought this was about justice not whether she liked my demeanor or not.

I feel that with my age a the time of the divorce; my inability to have any retirement accounts my need to work 2 jobs to meet monthly expenses the fact that he is worth over \$1.7 million in retirement that my alimony should be continued or with all his assets that he should have to reimburse the retirement assets he dissipated during our 24 year marriage.

If I have to stop working, I will be homeless as all I will have to live on is Social Security.

### REASONS FOR GRANTING THE PETITION

The fact that the Judge based her decision on erroneous monthly financial income for me and that the Appeals court upheld her decision. The fact that I have to work 2 jobs to pay monthly expenses.

It seems unfair and discriminatory that I and other women or men worked part time to raise children and put their careers on hold while our husbands/wife's pursued their careers uninterrupted receiving full benefits while moving up in their careers. That alimony is only based on income at the time of the divorce and not the loss of benefits and lack of upward career mobility. Also, that someone can dissipate (steal) retirement funds from their prior marriage and accumulate millions in their next marriage and not have to reimburse the first for the dissipation.

When divorce comes at older ages no consideration is given to the lost Social Security benefits for having worked part time while raising children. The lost benefit of having employee retirement accounts again for having worked part time while raising children. The fact that even if you start working full time at an older age you are started at the bottom rung for salary and job stability often without benefits.

The additional discrimination that I should work 2 jobs to maintain pre-divorce level of lifestyle which was described as "moderate" according to the Judge.

The fact that my continuation of alimony was based on me working 2 jobs at age 68.

The discrimination regarding my demeanor in court while facing the person who did all this to me and his harassing attorney.

The discrimination that I and my son's had to come to court and be exposed further to COVID when 2 of the 3 of us have chronic illnesses while my ex got to sit at home and do a video call.

It feels discriminatory that my ex who dissipated our retirement account, cheated on me, did drugs; is able to retire with a substantial amount of money, kept his job and security clearance despite drug use, was allowed to forge my name and continue on his way to a comfortable retirement. I don't feel my son's learned much about justice and how to treat women from this experience.

I really feel that I am being punished financially for having been independent and trying to take care of myself and my children. If I had sat and done nothing it appears I would have gotten taken care of better by the courts. Which seem like rewarding bad behavior.

I feel like I am being punished financially when all I did was honor my vows and have compassion for someone I trusted. I never asked him for anything financially. I paid for my own masters in nursing with school loans and pain for my own gas and clothes.

I was never in any way mean to him. He ignored myself and my sons. When we tried to include him

in family activities or talks, he would just get up and leave to ride his bike or work on his computer.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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