

No. 22-1012

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In The  
**Supreme Court of the United States**

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JANET AUSTEN,

*Petitioner,*

v.

FRANKLIN HERMAN,

*Respondent.*

—◆—  
**On Petition For A Writ Of Certiorari  
To The Court Of Special Appeals Of Maryland**

—◆—  
**BRIEF IN OPPOSITION**

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DAVID C. GARDNER  
GARDNER LAW FIRM, P.C.  
600 Jefferson Plaza, Suite 308  
Rockville, Md. 20906  
301-762-8475  
Dgardner@davidgardnerlaw.com

*Counsel for Respondent*

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**BRIEF IN OPPOSITION**  
**OPINIONS BELOW**

The Court of Special Appeals of Maryland (renamed the Appellate Court of Maryland), issued an unpublished opinion on April 12, 2022, upholding an order from the Circuit Court for Montgomery County, Maryland, granting the Respondent's Motion to Terminate Alimony. The Petitioner filed for a Writ of Certiorari to the Court of Appeals of Maryland (renamed the Supreme Court of Maryland), and the Petition was dismissed on the ground of lateness on November 22, 2022. Neither opinion is published.



**JURISDICTIONAL STATEMENT**

The Petitioner alleges that the jurisdiction of this court is invoked under 28 U.S.C. 1257(a). However, this Court does not have jurisdiction because a final decision was never issued by the highest court of Maryland, as will be explained below.

Under 28 U.S.C. 1257(a) the Supreme Court may review a final judgment or decree issued by the highest court of a State in which a decision could be had. In this case, a final judgment was never issued by the highest court of Maryland<sup>1</sup> because the Petitioner never filed a timely request for certiorari from the

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<sup>1</sup> Maryland's highest court was formerly the Court of Appeals of Maryland and was renamed the Supreme Court of Maryland on December 14, 2022.

unreported decision issued by Maryland's intermediate appellate court<sup>2</sup> on April 12, 2022. Instead, the Petitioner delayed filing her Petition for a Writ of Certiorari to the Court of Appeals of Maryland for more than thirty days after the decision issued by the Court of Special Appeals, and her Petition was dismissed on the ground of lateness. See Order at p. A1 of Petition for Writ of Certiorari. Because a decision was never issued by the Court of Appeals of Maryland this Court does not have jurisdiction to hear this case.



### **COUNTERSTATEMENT OF THE CASE**

The Circuit Court for Montgomery County (the “trial court”) granted the Respondent’s Motion to Terminate Alimony on May 5, 2021. The Respondent was 71 years of age when the Motion was granted, and the Petitioner was 66. The reasons why alimony was terminated were because the Respondent had retired as of April 16, 2021, and had no plans to return to work. His income was substantially reduced from what it had been when alimony was awarded at the time of the parties divorce in 2015, and all he would be receiving was social security income of \$3,924.70 per month plus \$2,975 per month in required minimum distributions from his three retirement accounts, for a total income

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<sup>2</sup> Maryland’s intermediate appellate Court was formerly the Court of Special Appeals and was renamed the Appellate Court of Maryland on December 14, 2022.

of \$6,750. (Court of Special Appeals Decision, (“CSA Decision”) Appendix D, p. A9 to Petitioner’s Brief).

On the other hand, at the time of the trial on Respondent’s motion to terminate alimony, the Petitioner was earning gross monthly income of \$12,751.42, with \$8,100 in monthly expenses. Based on this, the trial court found that she had a net surplus of \$4,051 per month. Furthermore, she had total assets of \$628,412, and a net worth of \$321,256.63. (CSA Decision, Appendix D, p. A11). After reviewing the parties’ respective financial positions, the trial court found that the Respondent was barely able to cover his monthly expenses, while the Petitioner had \$4,000 remaining after meeting her monthly expenses. Under these circumstances, the trial court granted the Respondent’s motion to terminate alimony. (CSA Decision, Appendix D, p. A12).

The Court of Special Appeals upheld the trial court’s decision, finding that the Respondent had demonstrated a material change in circumstances that justified the action, and that the trial court did not abuse its discretion in granting the Respondent’s petition. (CSA Decision, Appendix D, p. A14) The trial court’s decision was reviewed on appeal to determine if there was clear error in the court’s factual finding, and none was found. Furthermore, the Court of Special Appeals found that under the facts and circumstances presented in this case, “the termination of alimony was not an arbitrary use of the Court’s discretion.” (CSA Decision, Appendix D, p. A18)

The Petitioner failed to file a timely request for a writ of certiorari to the Court of Appeals of Maryland (renamed the Supreme Court of Maryland) and her petition was therefore dismissed as untimely.



### **REASONS FOR DENYING THE PETITION**

**1) THIS CASE HAS NOT BEEN HEARD BY THE HIGHEST COURT OF MARYLAND AND THEREFORE THIS COURT DOES NOT HAVE JURISDICTION TO HEAR THE CASE**

As noted above, the Petitioner failed to file for a writ of certiorari to the Court of Appeals of Maryland, and therefore her petition was dismissed as untimely. If there were ever a case in which this Court would chose to hear an issue involving age discrimination, this would not be the case because the issue was not preserved at the state court level, where the issue could have been raised and resolved by the highest state court. Until that has occurred, it would be inappropriate to accept certiorari.

**2) THE PETITIONER DID NOT RAISE AGE DISCRIMINATION OR ANY FEDERAL ISSUE BEFORE THE TRIAL COURT OR THE COURT OF SPECIAL APPEALS OF MARYLAND**

The Petitioner is *pro se*, and her petition for certiorari does not raise any cogent federal issue. Nor did she preserve any at the trial level or before the Court

of Special Appeals. In her petition she appears to raise the issue of age discrimination, but cites no federal statute to support her argument. Instead, she claims that it is “unfair” that she will have to work “2 jobs at age 68.” (Petition, p. 14) However, the fact that she feels that she is “being punished financially” for having independently taken care of herself and the parties’ two adult children is not the basis for a claim of age discrimination. Indeed, the Respondent himself felt that he had been discriminated against because the order that he pay indefinite alimony when his divorce was granted in 2015, when he was 66 years of age, meant that he had to work another 5 years before he could finally retire.

It is unfortunate that the Petitioner feels that she was treated unfairly by the trial court in this case. However, no cogent claim of age discrimination has been made and there is no federal issue raised in her petition.



## CONCLUSION

The Supreme Court does not have jurisdiction to hear this case because it was dismissed by the highest court of Maryland. Furthermore, the Petitioner has not identified any federal issue in her Petition and

therefore the Respondent requests that this Court deny Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

DAVID C. GARDNER  
GARDNER LAW FIRM, P.C.  
600 Jefferson Plaza, Suite 308  
Rockville, Md. 20906  
301-762-8475  
Dgardner@davidgardnerlaw.com

*Counsel for Respondent*