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UNITED STATES SUPREME JUDICIAL COURT

NO. 22-5582

DEBORAH FISHMAN

Petitioner

v.

VICTOR POLITIS

Respondent

EMERGENCY PETITION FOR A WRIT OF CERTIORARI

COMMONWEALTH OF MASSACHUSETTS - SUPREME JUDICIAL COURT

PETITIONER- Deborah Fishman

ORIGINAL

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SEPTEMBER 03, 2022

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DISABILITY ACCOMMODATIONS REQUEST

1. Immediate Oral hearing in support of petition as accommodation due to disability prior to determination of whether or not to exercise discretion re writ.
2. No extra copies due to indigency, disability and Pro Se
3. Waive procedural requirements that would prevent this petition from immediate consideration due to disability and oppression from lack of equal access, lack of disability accommodations for past 8 years and Pro Se status. Including, but not limited to waiving requirements for:
 - a. Opinions section
 - b. Jurisdiction Section
 - c. Constitutional and Statutory Provisions
 - d. Particular Order for the sections of petition or appendix
 - e. Table of Authorities
4. Oral hearing in lieu of legal brief for relief.
5. Priority case handling due to irreparable harm to young Child involved and irreparable harm from lack of disability accommodations and equal access for the past 8 years.
6. As accommodation due to disability and lack of effective communication, please read the following exhibits prior to any determination whether to accept the case or not; and prior to Exhibit R – the final judgment from MA SJC dated 08/12/22 from which the Writ Of Certiorari is sought, in order to have context of the magnitude and severity of consequences and legal issues I endured due to disability. This provides gravity of risk to millions of citizens in this country with disabilities and millions of their children at risk.
 - 06/09/17 Emergency Rule 60B Vacate Divorce Judgment, Exhibit G
 - 06/09/17 Emergency Rule 60B Vacate GAL Appointment, Exhibit H
 - 04/12/21 Petition 211,3 to MA SJC Docket Docket SJ-2021-0138, Exhibit I
 - 05/24/22 Emergency Motion Rule 60B(6) re Divorce Judgment 03/17/17, Exhibit K
 - 08/11/22 Petition 211,3 to MA SJC Single Justice, Docket SJ-2022-0313, Exhibit Q

QUESTIONS PRESENTED

- 1) How are people with disabilities supposed to access relief from abuses of discretion in legal system when their disability is not accommodated and lack equal access to judicial system? And the grievance mechanism is dysfunctional? How does a litigant with a disability obtain timely relief from abuse without equal access?
- 2) What role/responsibility/obligation does the United States Government have to assist people with disabilities access relief in the legal system when unable due to lack of equal access due to lack of disability accommodations and without representation?
- 3) How is the United States Government ensuring equal access to equal protection for litigants with disabilities when unaccommodated and need relief but unable to access relief because no equal access in judicial system as required per 14th Amendment? In order to stop abuse, exploitation, violations in or by the legal system requires litigants to have equal access and full participation but that's not accessible without disability accommodations. How to obtain timely redress without accommodations and Pro Se? No tolling and statutes expire when treated as nondisabled litigant. Children of people with disabilities suffer the same outcome of abuse and exploitation as their parents in family court. Irreparable harm to substantial rights as time passes without relief.
- 4) What are disabled litigants supposed to do and where are they supposed to go to stop abuse of the legal system by opposing parties and abuses of discretion in the legal system and obtain timely relief?
- 5) What oversight mechanism or independent “watchdog” exists to ensure human rights, constitutional rights and disability rights are effective and accessible, and if not, that relief is accessible to people with disabilities who are Pro Se?

LIST OF PARTIES

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PRIOR PROCEEDINGS/RELATED CASES

SJC- Full Panel	<i>Pending</i>	Commonwealth of Massachusetts Supreme Judicial Court- Full Panel Docket SJC-13319, Re: SJ-2022-0313
COA- Full Panel	<i>Pending</i>	Commonwealth of Massachusetts Appeals Court- Full Panel Docket 2022-P-0815, Re: 2022-J-0411
Direct Appellate Review	<i>Pending</i>	Commonwealth of Massachusetts Supreme Judicial Court Docket DAR-29019
Interlocutory Petition 231,118		Commonwealth of Massachusetts Appeals Court- Single Justice Docket 2022-J-0448
Motion To Stay Proceedings And Motion For Enlargement Of Time		Commonwealth of Massachusetts Appeals Court- Single Justice Docket 2022-J-0411
Petition to MA SJC 211,3		Commonwealth of Massachusetts Supreme Judicial Court- Single Justice Docket SJ-2022-0313

Petition to MA SJC 211,3

Commonwealth of Massachusetts
Supreme Judicial Court- Single Justice
Docket SJ-2021-0138

05/24/22 Emergency Rule 60B(6)
Relief from Divorce Judgment 03/17/17

06/09/17 Notice of Appeal of Divorce Judgment 03/17/17
06/09/17 Motion For Enlargement Of Time To File Appeal of Divorce Judgment
06/09/17 Emergency Rule 60B Vacate Divorce Judgment
06/09/17 Emergency Rule 60B Vacate GAL Appointment

Removal United States District Court
District Of Massachusetts
Docket 16-cv-10591
Filed 03/24/16

Divorce Modification *In Progress* Massachusetts Probate & Family Court
Middlesex County
Docket. 14D0781
Filed 11/26/19

Divorce Judgment 14D0781 Massachusetts Probate & Family Court
Middlesex County
Docket. 14D0781
Divorce Judgment dated 03/17/17

STATEMENT OF THE CASE.

Petitioner seeks emergency review of the final judgment from MA Supreme Judicial Court, the highest state court in the state of Massachusetts. Petition for Writ Of Certiorari is sought from final judgment dated 08/12/22 SJ-2022-0313 Judgment denying Petition for Emergency General Superintendence per M.G.L c. 211,3. See Exhibit R.

Proceedings are so far departed from the accepted and usual course of judicial proceedings, and accepted by and furthered by the Appeals Court Single Justice and Full Panel and SJC Single Justice and Full Panel, allowing and participating in such departures. Due to severe abuses,

procedurally and substantively, and irreparable harm to the young Child, *emergency review is requested.*

I am a Pro Se litigant, with a disability, without accommodations when they are needed, and a low-income parent. I have endured severe abuses of discretion, violations and deprivations of substantial rights, human rights, fundamental rights, deprivations of constitutional rights and other severe violations including but not limited to severe financial exploitation and abuse of a person with a disability, for the past 8 years without relief. *To be clear, I am not seeking review of divorce issues, do however provide context of severe violations of constitutional rights, human rights, fundamental rights, etc. and why particular questions are presented because having the rights is not enough for people with disabilities and their children.*

Some examples include but are not limited to:

- 1) I filed a grievance on 9/17/15 for lack of disability accommodations after months of requests. This caused the General Counsel for the trial courts to call the Judge Ex-Parte and four days later on 9/21/15 I was incapacitated instead of accommodated. See Exhibit A for grievance and B for 9/21/15 incapacity order for divorce.
- 2) Deprived of rights to self-determination, without notice, without a hearing, without a petition before the court, without counsel present, without capacity questions, "sua sponte", without counsel present for my young son, twice. On 09/21/15 and 02/13/17. Both times without written findings of incapacity or the need or basis for substitute decision-making or defined role or scope limitation of a GAL proceeding in my name. She excluded me entirely from my own divorce for 2 years. Then on the same day as trial, the judge decided "sua sponte" to hold trial without me and proceed with substitute judgment, without notice to me, without a hearing, without opportunity to oppose or challenge, without counsel present for my young son, without opportunity to

be heard or appeal prior to deprivation

- 3) My parental rights were terminated per divorce judgment dated 03/17/17, without requisite findings of parental unfitness or requisite “clear and convincing evidence”, without any written findings, rationale or evidence whatsoever. See Divorce Judgment in Exhibit C and Memorandum Supporting Divorce Judgment in Exhibit D.
- 4) My parenting time was reduced by 50% on 03/04/20 with no findings or rationale, with no evidence supporting the ruling, and evidence to the contrary so overwhelming that no reasonable person could make the same ruling.
- 5) Due to disabling health issues I have had no physical access to my son since November 2015. On 03/07/22 I filed an FTO re dire circumstances and went in to request an emergency hearing re lack of physical access to young child, irreparable harm to him since I was primary from birth to age 4 and traumatic separation and irreparable harm to him. And irreparable financial harm- unable to self-support due to low income and disability and unable to self support and 14,000 in fees to avoid homelessness. Court deemed lack of physical access to Child not an emergency as well as inability to self-support due to disability and set hearing for 06/13/22. New Judge removed it from calendar without notice, refused to re-schedule and on 07/21/22 denied my request to hear FTO/lack of physical access at hearing on 7/29/22, when trial set for 8/17/22. Materially prejudices trial in my modification to increase parenting time and resume primary when no access to child for 10 months. Disability discrimination. Irreparable harm to Child to be deprived of relationship with Mother due to lack of physical access to child.
- 6) Lower court refuses to stop trial so I can get disability accommodations prior to modification trial. See order dated 07/29/15 denying Motion To Cancel Trial.

7) Financial Exploitation:

- a. Divorce Judgment – judge disregarded material fact that I paid \$129,000 in sole payment of mortgage in excess of Father’s contribution.
- b. Divorce Judgment- judge at trial included my premarital assets into the marital estate when they were supposed to be excluded, then all were equalized, with no findings, rationale or calculations
- c. Divorce Judgment- no retroactive child support at trial when during litigation judge stated 3 years of o/s child support would be retroactive at trial, no findings or rationale. I was primary caretaker for years w/disparate incomes v. Father.
- d. No consequences for Father or criminal referral or investigation for financial abandonment when I was primary caretaker for years without child support, spousal support and paid mortgage by myself on ssdi and unable to self-support since 2014 due to lack of temp orders. No temp orders because no equal access because no disability accommodations for 8 years.
- e. No attorney fees awarded when I paid \$140,000 in 1.5 years of 3 years of divorce litigation in sole defense against Father’s 13 emergency motions in 1.5 years and abuse of legal system. I needed disability accommodations and lacked equal access and was not able to get basic needs met like file for child support due to lack of access. No findings or rationale regarding no award of attorney fees.
- f. Disregard of \$129,000 in excess financial contribution towards marital home and disregard of \$140,000 in attorney fees in sole defense of Father’s motions, wiped out all of my pre-disability life savings.
- g. Disregard of my disability status, permanent disability, and permanent inability

to work or acquire income or assets or financially recover forced me into permanent poverty and inability to self-support since 2014.

h. No disability accommodations for 8 years since 2014.

The issues above have been lost in a myriad of abuses of discretion, when the above violations and deprivations are severe irreparable harm. I am petitioning because of the inability to access relief for 8 years despite herculean efforts. I have human rights, constitutional rights, that I can not access because I do not have equal access to the judicial system. The above issues are buried under multi-layered abuses of discretion for 8 years and I have been unable to get the issues addressed substantively. All attempts are disregarded or otherwise thwarted, all while needing disability accommodations. The circumstances have caused oppression, injury, exploitation, worsened my disability and my health. And to this day, 8 years later, there are no substantive findings or rationale or relief regarding the termination of my parental rights, lack of physical access to my child, lack of hearing for temporary orders for 2.10 years during pending divorce modification. Unable to self-support, permanently impoverished, permanently terminated parental rights, deprived of notice and hearings prior to deprivations, and deprived of disability accommodations, without a single substantive ruling on the merits.

I am now too injured, disabled, oppressed and impoverished and unaccommodated, and do not have equal access to the judicial system in solely written format.

Previous attempts for relief:

2017- Notice of Appeal and 2 Rule 60 B Motions to Vacate GAL and Vacate Divorce Judgment.

See Exhibits E, F, G, H. None were not responded to.

2021- Petition to MA SJC 211,3 “Other alternatives available”. Discriminatory disregard of disability, need for accommodations, procedural accommodation was due, due to lack of equal

access 7 years and irreparable harm and re-routing me as if nondisabled, nonoppressed litigant that had access. See Exhibits I + J.

2022- Rule 60B Motion denied without findings. See Exhibits K+L. Lower court refuses to docket notices of appeal including appeal of denied 60B which entitled to as matter of right. COA- Full Panel refuses to accept and transmit notice of appeal to lower court “b/c no assembly received by lower court”. COA-Single Justice- Abuse of discretion to treat denied 60B re divorce judgment as interlocutory.

At the Federal Level, The Constitution exists, the ADA and ADAAA exists and Section 504 of the Rehabilitation Act of 1973 exists, International Human Rights Treaties exist. In my home state of Massachusetts we have M.G.L 151B and other laws to ensure the rights of people with disabilities, rights to nondiscrimination, rights to accommodations, etc. Yet for 8 years I have endured abuse and exploitation through the legal system and by the legal system and have been powerless to stop it. The U.S. District Court of MA and MA State Courts have been utterly inept and untrained or simply disregard obligations, and abuses of discretion are responded to with further abuses of discretion, which on paper appear to be reasonable because my disability is non-obvious, so is the disregard. Equal access is required to identify and argue the rights violated, the basis, in order to seek and access relief.

Every attempt I have made for relief is disregard or denied, while disregarding my disability status, nondiscrimination rights and needs for accommodations. I have had my rights to self-determination removed without notice, without a hearing, without counsel present, without written findings, without a shred of procedural or substantive due process. This happened on 09/21/15 and on 02/13/17 and prevented me from participating in my own divorce, when our baby was so young, without counsel present or appointed for him, without notice to both of us. Terminating my parental rights and rights to self-determination, with one signature, no findings,

no notice, no petition, no counsel. This happened six days after filing a detailed grievance for lack of accommodations on 09/15/15, which made general counsel for the court call the Judge ex-parte and the result was that I was incapacitated instead of accommodated.

My parental rights were terminated again by divorce judgment on 03/17/17, without findings, rationale or evidence. Without requisite findings of unfitness or “clear and convincing evidence, without being allowed to participate in my own divorce, testify in my own divorce trial, without notice of substitute judgment before trial because the determination was made the same day as trial “sua sponte”, depriving me of opportunity to oppose or appeal prior to deprivation.

Severe financial abuses of discretion permanently impoverished me by the divorce judgment as well, and financial exploitation and lack of child support for 3 years not investigated and disregarded. With no consideration of my disability status and permanent inability to work, deprived of rights to self-support.

I have no access to the legal system due to lack of disability accommodations. See Exhibits S, T, U

I have no physical access to my son since November 2021, when I used to be primary from birth to age 4. We have a strong connection and this traumatic separation has caused him irreparable harm.

It is well settled at the Federal and State level that parents have rights to accommodations prior to child custody proceedings. Popovich v. Cuyahoga County Court of Common Pleas, 276 F.3d 808, 811 (6th Cir.), 537 U.S. 812 (2002). Parents have rights to nondiscrimination in custody proceedings, and as in Adoption of Gregory, 434 Mass. 117, 124 (2001).

It is well settled at the Federal and State level that litigants in the judicial system are entitled to accommodations and nondiscrimination:

“Conclusion. We are cognizant of the many challenges faced in our society by individuals with disabilities, see Tennessee v. Lane, 541 U.S. 509, 516 (2004), quoting 42 U.S.C. § 12101(a)(7) (individuals with disabilities "have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society"), and of the *important public policies reflected in MERA, art. 114, and the ADA to ensure that they are treated equally with other persons. Because of their vulnerabilities, persons with disabilities may often be crime victims, and their interests need protection no less than other victims.* See G.L. c. 258B, § 3 (setting forth "rights" of "victims and witnesses of crime"). It is incumbent on all judges and judicial staff to ensure that every person with a disability be provided with reasonable accommodation, if available, to ensure that she can be a full and equal participant in our system of justice. “ (Ruby McDonough, petitioner., No. SJC-10609., August 11, 2010)

I have rights that I can not access, and no way to access relief or redress from abuses of discretion, with abuses of discretion being responded to with abuses of discretion, while I am forced to proceed as if I do not have a disability. For 8 years, while unable to self-support, with parental rights terminated without due process, deprived of legal rights for 3 years with no due process which caused irreparable harm in many ways, with no relief since 03/17/17.

Appellate rights as a matter of right were obstructed and emergency motions for relief disregarded, with lower court refusing to docket or respond in 2017 and 2022, completely obstructing appeal as matter of right. Discretionary route results in abuses of discretion, while continuing to refuse to provide accommodations. This has gone on for 8 years. Now I'm too

injured, too disabled, too oppressed to continue fighting the abuses of discretion unaccommodated due to the cumulative effect of deprivations causing multi-year oppression and exploitation.

I request an oral hearing as accommodation due to disability and lack of equal access in solely written format.

I request the hearing to occur forthwith due to irreparable harm to my young son, as he has been deprived of a relationship with me due to lack of physical access for 10 months and unwarranted state interference terminating our relationship with total disregard for procedural safeguards and the United States Constitution and other obligations. The lack of equal access for 8 years has caused many kinds of irreparable harm, however, I require an oral hearing and equal access accommodations prior to adjudication or disregard from this court.

REASONS FOR GRANTING THE WRIT

This case will be of strong public interest as there are millions of citizens with disabilities and millions of them parents with disabilities, including our finest, our military returning home from war to their families and children but returning home with disabilities. This case is also of vital interest as children of parents with disabilities have to live with the consequences of abuse against their parents and their lack of relief and effect on children.

The best interest of a child is fair hearings with for it's parents.

Respectfully Submitted,

9/3, 2022


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APPENDIX

9/17/15	Grievance #1 for Lack of Disability Accommodations	A
9/21/15	GAL Appointment	B
03/17/17	Divorce Judgment Nisi	C
04/13/17	Memorandum In Support of Div Judgment	D
06/09/17	Notice of Appeal of Divorce Judgment 03/17/17	E
06/09/17	Motion For Enlargement Of Time To File Appeal of Divorce Judgment	F
06/09/17	Emergency Rule 60B Vacate Divorce Judgment	G
06/09/17	Emergency Rule 60B Vacate GAL Appointment	H
04/12/21	Petition 211,3 to MA SJC Single Justice, Docket Docket SJ-2021-0138	I
05/03/21	Order from SJC Single Justice	J
05/24/22	Emergency Motion Rule 60B(6) Relief re Divorce Judgment 03/17/17	K
06/06/22	Order Denying Rule 60B re Div Judgment from Family Court	L
08/15/22	Interlocutory Appeal- Petition 231,118, COA-SJ, Docket 2022-J-0448	M
08/16/22	Order denying petition	N
07/27/22	Motion To Stay Proceedings & Enlarge Time To File Appeal Re: Denied 60B re Divorce Judgment + Interlocutory Appeals COA- Single Justice Docket 2022-J-0411	O
08/10/22	Order denying both motions re 60B Div Judg + Interloc Appeals	P

08/11/22	Petition 211,3 to MA SJC Single Justice, Docket SJ-2022-0313	Q
08/12/22	Order from SJC Single Justice Denying Petition 211,3 Docket SJ-2022-0313	R
08/24/22	MA-SJC Full Panel Stay Proceeding While Obtaining Accommodations	S
08/29/22	MA-SJC Full Panel DAR Application, Docket DAR-29019	T
09/02/22	COA-FP Emergency Motion Zoom Hearing Due To Lack Of Equal Access	U