

No. **22-6447**

Action from Tenn. Sup. Ct. # M2021-01482-SC-R11-CV

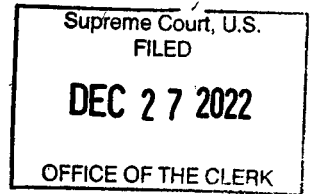
IN THE SUPREME COURT OF THE UNITED STATES

In re: David A. Avery, Petitioner

VS.

Roger A. Page, Respondents
Thomas R. Frierson, II (state officers)
D. Michael Swiney
Arnold B. Goldin

ORIGINAL



PETITION FOR WRIT OF MANDAMUS

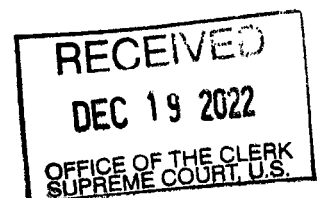
In this matter, although the issuance of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, however, the ministerial duty of the U.S. Sup. Ct. to recognize, apply and enforce the petitioner's guaranteed constitutional and substantive rights is nondiscretionary. As such, the Court's discretionary powers are inapplicable in this particular dispute, as it is in regards to the arbitrary deprivation of the petitioner's guaranteed constitutional and substantive right to trial by jury in this civil dispute; see Bill of Rights 7th Amendment, Fed. R. Civil P. 38. The Supreme Court's Article III § 2 original and exclusive jurisdiction is hereby invoked, including UCC 1-103.6 and every other applicable law.

Submitted with clean hands in good faith

~~UNDER DURESS; ALL RIGHTS RESERVED UCC 1-308~~

David A. Avery

David A. Avery
% Core Civic Inc.
140 Macon Way
Hartsville, Tennessee 37074



QUESTIONS PRESENTED FOR REVIEW

1. WHETHER THE PETITIONER IS ENTITLED TO THE PROVISIONS SET FORTH IN THE BILL OF RIGHTS 7th AMEND, FED. R. CIVIL P. RULE 38, TENN. CONST. ART. 1 § 6 AND TENN. R. CIVIL P. 38.01
2. WHETHER THE TENN. SUP. CT., TENN. CT. APP., AND THE CIRCUIT COURT ARBITRARILY DEPRIVED THE PETITIONER OF HIS GUARANTEED CONSTITUTIONAL AND SUBSTANTIVE RIGHT TO TRIAL BY JURY IN THIS CIVIL ACTION

LIST OF THE MOST RELEVANT PROCEEDINGS

1. In the Davidson County Circuit Court
David A. Avery
v.
Cheryl A. Blackburn et al,
Case No. 21C751

MOTION FOR RELIEF, Filed: May 3, 2021 - Date of judgment entry: November 10, 2021

2. In the First Circuit Court, Tennessee, Hamilton V. Gayden Jr. presiding
David A. Avery
v.
Mary E. McCulloch's, Lauren D. Kisner, Angela D. Williams
Case No. 21C751

REMOTE BY ZOOM HEARING, Held November 4, 2021 - ended with no resolution
Transcript of Proceedings

3. In the Court of Appeals, Midd. Div.
David A. Avery
v.
Cheryl A. Blackburn et al,
Case No. M2021-01482-COA-R3-CV

NOTICE OF APPEAL Filed: ~~DECEMBER~~ 8, 2021; APPELLATE BRIEF Filed: January 22, 2022
Date of judgment entry: August 31, 2022

4. IN THE TENNESSEE COURT OF APPEALS
David A. Avery
v.
Cheryl A. Blackburn et al,
Case No. M2021-01482-COA-R3-CV
from Case No. 21C751

RULE 39 PETITION FOR REHEARING, Filed: September 7, 2022 - entry of judgment Sept. 16, 2022

5. IN THE TENNESSEE SUPREME COURT
David A. Avery
v.
Cheryl A. Blackburn et al
Case No. M2021-01482-SC-R11-CV

TRAP 11 PERMISSION TO APPEAL, Filed: September 20, 2022 - entry of judgment: Nov. 16, 2022

6. IN THE UNITED STATES DISTRICT COURT, MIDD. DIST. FOR TENNESSEE
David A. Avery v. Roger A. Page, Thomas R. Frieson, II, D. Michael Sluiney, Arnold B. Goldin
Case No. M2021-01482-SC-R11-CV, From Tenn. Sup. Ct. Motion for Redress of Deprivation of a
Guaranteed Constitutional & SUBSTANTIVE RIGHT, Filed: Nov. 30, 2022 - no confirmation yet

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1. Transcript of Proceedings, Case No. 21C751; held 11/4/2021
2. Circuit Court Order, Case No. 21C751; entered 11/10/2021
3. Ct. of App. Opinion & Judgment, Case No. M2021-01482-COA-R3-CV; entered 8/31/2022
4. Ct. of App. Order denying Rule 39 P.F.R, Case No. M2021-01482-COA-R3-CV; entry 9/16/2022
5. Tenn. Sup. Ct. order Trap 11, Case No. M2021-01482-SC-R11-CV; entered 11/16/2022

TABLE OF AUTHORITIES

UNITED STATES CONSTITUTION ARTICLE III § 2...

BILL OF RIGHTS 7th AMENDMENT...

BILL OF RIGHTS 9th AMENDMENT...

TENN. CONSTITUTION ARTICLE 1 § 6...

U.S. SUP. CT RULE 17(1)...

FED. R. CIVIL P. RULE 38...

28 USC § 1651(a)...

TENN. R. CIVIL P. RULE 38.01...

UCC 1-103.6...

CITATIONS OF OPINIONS AND ORDERS ENTERED IN THIS CASE

Davidson County Circuit Court, Transcript of Proceedings #21C751 held 11/4/2021
"Remote by Zoom" hearing

Dav. Cnty. Cir. Ct., #21C751 order entered 11/10/2021

Tenn. Ct. App., Rule 3 #M2021-01482-COA-R3-CV Notice of Appeal entered 12/8/2021

Tenn. Ct. App., #M2021-01482-COA-R3-CV entered 2/4/2022

Tenn. Ct. App., #M2021-01482-COA-R3-CV, entered 2/14/2022

Tenn. Ct. App., #M2021-01482-COA-R3-CV, entered 2/14/2022, Remand to Trial denied 3/7/2022

Tenn. Ct. App., #M2021-01482-COA-R3-CV, entered 3/4/2022, Oral Argument denied

Tenn. Ct. App., #M2021-01482-COA-R3-CV, entered 5/23/2022 order of denial

Tenn. Ct. App., #M2021-01482-COA-R3-CV, entered 8/31/2022 Appeal denied

Tenn. Ct. App., #M2021-01482-COA-R3-CV, entered 9/16/2022 Rule 39 denied

Tenn. Sup. Ct., #M2021-01482-SC-R11-CV, entered 11/16/2022 Trap 11 denied

Tenn. Sup. Ct., #M2021-01482-SC-R11-CV, entered 11/23/2022 Mandate issued.

STATEMENT OF THE BASIS FOR JURISDICTION

1. The petitioner hereby invokes the judicial power of the U.S. Sup. Ct. under Article III § 2 provisions, which vests all judicial power in the Supreme Court, and further invokes his common law rights under UCC 1-103.6 & Bill of Rights 9th Amend., along with his innate guaranteed constitutional & substantive right to Trial by Jury, 7th Amend. Bill of Rights. This Court's jurisdiction is applicable also under Sup. Ct. Rule 17 (1).
2. The U.S. Sup. Ct. is authorized to issue an extraordinary writ pursuant to 28 USC § 1651(a). However, although the issuance of an extraordinary writ is not a matter of right, the U.S. Sup. Ct.'s ministerial duty to recognize, apply and enforce the guaranteed constitutional and substantive rights of petitioner, in this particular civil dispute poses a matter of right, and warrants Art. III original & exclusive jurisdiction.
3. This request for mandamus relief arises from interlocutory determinations made by two (2) of the highest courts in Tennessee (Tenn. Sup. Ct, Tenn. Ct. App.) which arbitrarily deprived and prejudiced the petitioner's guaranteed constitutional and substantive right to Trial by Jury in this civil matter; see Bill of Rights 7th Amend, Fed. R. Civil P. 38.
4. The blatant miscarriage of justice displayed by the Tenn. Sup. Ct. and the Tenn. Ct. App. opens the door for the original and exclusive jurisdiction of the U.S. Sup. Ct. under Art III § 2 and all other applicable laws.

CONSTITUTIONAL PROVISIONS

U.S. Constitution Article III § 2 et seq. . . .

Bill of Rights 1st Amendment . . .

Bill of Rights 9 Amendment . . .

Tenn. Const. Art. 1 § 6 . . .

STATEMENT OF THE CASE

On May 3, 2021 the petitioner filed a civil action in the Davidson County Circuit Court, Case No. 21C751 against Cheryl A. Blackburn, Victor S. Johnson III, and Daniel D. Newbern asserting the execution of fraudulent commercial instruments under color of authority against DAVID ANTHONY AVERY (Trust). On June 1, 2021 the Circuit Ct. issued summons for the defendants to appear and answer the specific averments against them; (served by the Dav. Cnty. Sheriff's Office on 6/14/21, 6/15/21 & 6/28/21). After several months of unnecessary delays, the Circuit Ct. conducted a "Remote by Zoom" hearing on November 4, 2021, but failed to settle the dispute (see Transcript of Proceedings). Shortly thereafter, on November 10, 2021 the Circuit Ct. entered an interlocutory order denying petitioner civil relief. On December 8, 2021 the petitioner timely filed the notice of appeal. After several appellate filings, the Tenn. Ct. App. also entered an interlocutory order denying the petitioner appellate relief on August 31, 2022. The petitioner did file a timely Rule 39 Petition for Rehearing immediately after the Court of App. 8/31/2022 denial of appellate relief, which was denied without cause. On September 26, 2022 the petitioner initiated the Trap Rule 11 in the Tenn. Sup. Ct. After several filings related to the Rule 11 proceedings, the Tenn. Sup. Ct. entered an order denying the Rule 11 submission on November 16, 2022. After these proceedings, the petitioner then tendered a Writ of Mandamus to the Honorable Supreme Court of the United States for relief in this capacity.

REASON(S) FOR GRANTING THE WRIT

1. In this case, the petitioner was arbitrarily denied his guaranteed constitutional and substantive right of trial by jury in this civil dispute. The issuance of the Writ of Mandamus will aid the Court's appellate jurisdiction by authorizing the U.S. Sup. Ct. to intervene only to command the performance of a nondiscretionary, ministerial act where the petitioner has a clear right to such performance; see Bill of Rights 7th Amend. Fed. R. Civil P. 38. Issuance of the writ will not only resurrect the petitioner's guaranteed right to trial by jury, but would also negate the Tenn. Sup. Ct., Tenn. Ct. App. & the Dav. Cnty. Cir. Ct.'s dereliction of a ministerial duty, which caused a grave miscarriage of justice, and will protect and secure the integrity of our judiciary and the application of long established congressional and legislative enactments.
2. In this particular case, the circumstances presented before this court do not warrant the Court's exercise of discretionary powers regarding the issuance of extraordinary writs, but warrants the exercise of the U.S. Sup. Ct.'s supreme judicial authority to apply original and exclusive jurisdiction in matters where federal questions of the application of legislative enactments arise without discretion under Art. III § 2, and in the nature of the common law; see UCC 1.103.6.
3. In this instant matter, no other adequate relief can be obtained from any other court because the petitioner has already attempted to obtain adequate relief in the Dav. Cnty. Cir. Ct., Tenn. Ct. Appeals and the Tenn. Sup. Ct., subordinate state courts that have all issued orders contrary to constitutional mandates, and failed to recognize the petitioner's guaranteed constitutional and substantive right of trial by jury in this matter. This shows that remedy and adequate relief can only be obtained with the issuance of the writ under the U.S. Sup. Ct.'s Article III original and exclusive jurisdiction.

CONCLUSION

In this matter before the U.S. Sup. Ct., it is reasonably evinced that the Writ of Mandamus must issue immediately for the purpose of aiding the court's appellate jurisdiction, which serves to correct and resolve subordinate state court interlocutory judgments and orders that are issued contrary to long established constitutional mandates, that clearly appear to be blatant miscarriages of justice. The petitioner is entitled to the requested relief.

Submitted with clean hands in good faith
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David A. Avery

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