

No. 23-A-_____

IN THE SUPREME COURT OF THE UNITED STATES

BRUCE J. CHASAN, ESQ.

Petitioner-Plaintiff

v.

CORREALE F. STEVENS

Superior Court President Judge Emeritus

CAROLYN H. NICHOLS

Superior Court Judge

MARY P. MURRAY

Superior Court Judge

Respondents-Defendants

**APPLICATION FOR EXTENSION OF TIME
TO FILE A PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA**

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**TO THE HONORABLE SAMUEL A. ALITO, JR.,
ASSOCIATE JUSTICE OF UNITED STATES AND
CIRCUIT JUSTICE FOR THE THIRD CIRCUIT**

Pursuant to Supreme Court Rules 13.5, 22 and 30, Petitioner respectfully requests a 60-day extension of time, up to and including Monday, June 5, 2023, to file a petition for a writ of certiorari to the Pennsylvania Supreme Court to review the decision in *Chasan v. Stevens*, No. 169 CD 2021, 2022 WL 2920995 (Pa. Cmwlth. July 26, 2022) (unpublished), *app. den.*, ___ A.3d ____, 2023 WL 31264 (Pa. Jan. 4, 2023) (table). The Memorandum Opinion and Order of the Pennsylvania Commonwealth Court are attached as Exh. A, and the discretionary Order of the Pennsylvania Supreme Court denying Petitioner's petition for allowance of appeal is attached as Exh. B.

The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257, and the time to file a petition for a writ of certiorari without extension will expire on April 4, 2023. This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition will expire.

This case involves the Pennsylvania Commonwealth Court's interpretation (or misinterpretation) of the Federal common law of judicial immunity as enunciated in the seminal decision of *Bradley v. Fisher*, (13 Wall.) 80 U.S. 335 (1872). There is only one Court in the U.S. that can be the final arbiter of whether a state court has properly interpreted and/or applied the Federal common law of judicial immunity, and that is the U.S. Supreme Court. Also, if there be any ambiguity in *Bradley v. Fisher*, there is only one Court in the U.S. that can clarify it, or modify it – again, the U.S. Supreme Court.

In this case, the Commonwealth Court held that the three Pennsylvania appellate judges of the Superior Court *exceeded* their jurisdiction within the meaning of *Bradley, supra*, 80 U.S. at 352, and did not lose judicial immunity. Petitioner contended that the three Judges acted without jurisdiction because they engaged in defamatory fact-finding in a decision when they were constrained by a statute (42 Pa. C. S. A. § 741) that expressly provided they did not have “original jurisdiction.”

Article III, Sec. 2, Para. 2 of the U.S. Constitution defines the “original jurisdiction” and “appellate jurisdiction” of the U.S. Supreme Court. In FEDERALIST No. 81, Alexander Hamilton clarified that “appellate jurisdiction” did not authorize appellate courts to re-do jury verdicts, as that was the province of juries and courts of original jurisdiction. Later, the Seventh Amendment enshrined this concept. It is settled jurisprudence that the Circuit Courts of Appeal are not fact-finding bodies. *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 714 (1986) (remand to the trial court to make findings of fact, not to the Court of Appeals).

In Petitioner’s view, the three Superior Court Judges made *ultra vires* factual findings in their decision, and thus usurped authority and acted without jurisdiction, and are not protected by judicial immunity. *Bradley, supra*, 80 U.S. at 351-352. In essence, the three judges were akin to the example in *Bradley* of the probate judge, whose jurisdiction is limited to cases involving wills and estates, but usurps authority by trying a criminal case. *Id.* Such a probate judge has “no protection ... in the exercise of usurped authority.” *Id.* It is action without jurisdiction and should not be deemed a “judicial act” that is clothed with immunity.

Judge Fisher was a trial judge in the criminal court of the District of Columbia, *i.e.*, he had original jurisdiction. In this Court's later cases that have followed *Bradley v. Fisher*, the immune jurists were also judges of original jurisdiction. See *Pierson v. Ray*, 386 U.S. 547 (1967); *Stump v. Sparkman*, 435 U.S. 349 (1978); *Mireles v. Waco*, 502 U.S. 9 (1991). The "wrinkle" in this case is a situation not previously addressed by the Supreme Court, *i.e.*, appellate jurists who by statute do not have original jurisdiction.

But if the jurist has some jurisdiction, what if he or she does something beyond his jurisdiction? In the example of the hypothetical probate judge in *Bradley, supra*, suppose the judge is trying a will contest between two legatees, and then decides to try one of them criminally for allegedly burglarizing the other's home? The criminal matter is outside his jurisdiction, and under the logic of *Bradley*, the jurist should have no immunity for trying the criminal matter.

This leads to the oft-cited sentence in *Bradley*, stating: "A distinction must be here observed between excess of jurisdiction and the clear absence of **all** jurisdiction over the subject-matter." *Bradley, supra*, 80 U.S. at 351 (emphasis added). The word "all" adds ambiguity and causes confusion. Judge Fisher had jurisdiction to strike Attorney Bradley from the roll of practicing attorneys for misconduct and threats, albeit he did it without affording Bradley notice and an opportunity to be heard. *Id.*, 80 U.S. at 354, 357. There was no question of Judge Bradley having limited jurisdiction, as in the example of the probate judge.

The word "all" in the phrase "clear absence of all jurisdiction over the subject-matter" in the *Bradley* case is at best surplusage, and it has led to mischief in cases such as *Petitioner's* where the Superior Court Judges had jurisdiction to

hear an appeal, but no jurisdiction to be fact-finders, as if they were a court of original jurisdiction. The meaning of *Bradley* needs to be clarified so that acts done without jurisdiction are properly deemed *ultra vires* and not protected.

So when is some act of judge outside of the judge's jurisdiction or merely in excess of jurisdiction? The Pennsylvania Commonwealth Court held that the *ultra vires* fact-finding of the Superior Court Judges was simply in excess of jurisdiction, not a usurpation of authority. Petitioner contends the Commonwealth Court misinterpreted or misapplied *Bradley*, or otherwise the *Bradley* decision needs clarification by the only U.S. Court that can clarify it.

What are the facts that may bring this matter to the Supreme Court docket? Petitioner Chasan was defending a client in a property damage case between two condo owners. Chasan's client (Feierstein) believed with good reason that the claim was frivolous and authorized Chasan to file a counterclaim against the plaintiff and the plaintiff's attorney (Littman) seeking recovery of attorney's fees. Littman sent Chasan a letter demanding that the counterclaim be withdrawn, and alleging that both Chasan and Feierstein were engaged in criminal witness intimidation in that the counterclaim was supposedly filed to intimidate Littman's brother who was a witness against Feierstein in an unrelated criminal case. Littman published the letter to others not connected with the property damage case. Chasan did not represent Feierstein in the criminal case, and there was absolutely no evidence that Chasan was involved in criminal witness intimidation. Littman relied solely on speculation and belief.

Later Chasan sued Littman for defamation. The case was dismissed on summary judgment. Chasan appealed contending that there were disputed

issues of fact, and the case should be remanded for trial. The Superior Court Judges wrote an opinion that affirmed the summary judgment dismissal and besmirched and skewered Chasan's reputation by finding that Littman had a "reasonable belief" Chasan was involved in witness intimidation. *Law Offices of Bruce J. Chasan, LLC v. Freundlich & Littman, LLC*, No. 2928 EDA 2016, 2019 Pa. Super. Unpub. LEXIS 321 (Pa. Super. Jan. 29, 2019). This defamatory opinion is locatable on the internet forever.

The Superior Court Judges combed deposition transcripts and cherry-picked speculative testimony to support their holding. They took upon themselves a function that should have been the province of a jury, and in doing so, deprived Chasan of his constitutional right to a civil jury trial. There is really no dispute that they acted as fact-finders. The dispute is whether their conduct was simply in excess of their jurisdiction, as held by the Pennsylvania Commonwealth Court, or without jurisdiction, which results in a loss of immunity.

The question presented will likely have a bearing on all cases nationwide involving judicial immunity, in light of the prominence of *Bradley v. Fisher, supra*. Petitioner believes the issue is a meritorious one for Supreme Court adjudication.

REASONS FOR REQUESTING AN EXTENSION OF TIME

Petitioner Chasan was admitted to the Supreme Court Bar in 1976, but does not practice in the Supreme Court, and has been peripherally involved in only four cases that have reached the Supreme Court's docket in more than 45 years. Petitioner is pursuing assistance from more experienced Supreme Court practitioners in the preparation of a suitable petition for a writ of certiorari.

Also, Petitioner Chasan is a solo practitioner with a crowded personal docket, and his time is divided amongst numerous matters with successive court deadlines. In addition, Petitioner Chasan is scheduled to be away in Europe between April 21 and May 6, 2023.

Petitioner is not aware of any prejudice that would result to the Respondents in this matter if an extension of time is granted.

CONCLUSION

For all of the above reasons, Petitioner respectfully requests a 60-day extension of time to file the petition for a writ of certiorari, to Monday, June 5, 2023.

Respectfully submitted,

/s/ Bruce J. Chasan

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Date: March 17, 2023

CERTIFICATE OF SERVICE

As required by Supreme Court Rule 29.3 and 29.5, I, Bruce J. Chasan, a member of the Supreme Court Bar (and appearing here *pro se*), hereby certify that all parties required to be served have been served with one copy of the within Application on March 17, 2023, via electronic mail and by U.S. First Class Mail to counsel of record for the Respondents, as follows:

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/s/ Bruce J. Chasan

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