

No. 23-132

8/8/2023

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

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ORIGINAL

CYNTHIA L. POLLICK,

*Petitioner,*

v.

ANTHONY P. TROZZOLILLO,

*Respondent.*

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On Petition For Writ Of Certiorari  
To The Supreme Court Of Pennsylvania

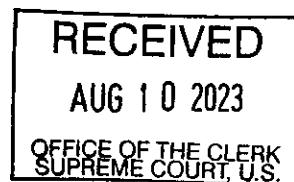
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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

Whether imprisoning a citizen for a divorce judgment of attorney fees violated 28 U.S.C. § 2007(a) since a citizen cannot be imprisoned for a money judgment in the Commonwealth of Pennsylvania.

Whether this Court has abolished debtors' prison.

Whether the state appellate process must provide due process and equal protection to its citizens.

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## **PARTIES TO THE PROCEEDING**

Petitioner Cynthia L. Pollick was the Plaintiff in the trial court and Appellant in the Superior Court of Pennsylvania. Respondent Anthony P. Trozzolillo was Defendant in the trial court and Appellee in the Superior Court of Pennsylvania.

## **STATEMENT OF RELATED PROCEEDINGS**

- *Pollick v. Trozzolillo*, 20 FC 40119, Court of Common Pleas of Lackawanna County, Judgment entered 7/26/2021.
- *Pollick v. Trozzolillo*, 20 FC 40119, Court of Common Pleas of Lackawanna County, Writ of Execution issued 3/22/2022.
- *Pollick v. Trozzolillo*, 20 FC 40119, Court of Common Pleas of Lackawanna County, Order of contempt entered 4/12/2022.
- *Pollick v. Trozzolillo*, 20 FC 40119, Court of Common Pleas of Lackawanna County, Notice of Appeal entered 4/22/2022.
- *Pollick v. Trozzolillo*, 620 MDA 2022, Superior Court of Pennsylvania, dismissing appeal entered 10/19/2022.
- *Pollick v. Trozzolillo*, 620 MDA 2022, Superior Court of Pennsylvania, denying reinstatement application entered 11/2/2022.
- *Pollick v. Trozzolillo*, 514 MAL 2023, Supreme Court of Pennsylvania, denying Petition for Allowance of Appeal entered 5/23/2023.

## TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED .....	i
PARTIES TO THE PROCEEDING.....	ii
STATEMENT OF RELATED PROCEEDINGS ...	ii
TABLE OF CONTENTS .....	iii
TABLE OF AUTHORITIES.....	v
PETITION FOR A WRIT OF CERTIORARI .....	1
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISIONS INVOLVED .....	1
INTRODUCTION .....	2
STATEMENT OF THE CASE.....	3
REASONS FOR ALLOWANCE OF THE WRIT ...	8
I. THE STATE'S DECISION CONFLICTS WITH 28 U.S.C. § 2007(a) THAT PROHIB- ITS IMPRISONMENT FOR A MONEY JUDGMENT IN THE COMMONWEALTH OF PENNSYLVANIA .....	8
II. THE STATE'S DECISION VIOLATES EQUAL PROTECTION AND DUE PRO- CESS SINCE DEBTORS' PRISON HAS BEEN ABOLISHED IN THE U.S. AND A LITIGANT MUST BE AFFORDED DUE PROCESS IN THE APPELLATE PRO- CESS AND BE HEARD.....	12

## TABLE OF CONTENTS – Continued

	Page
III. PETITIONER COULD NOT BE IN CON- TEMPT OF THE 7/26/2021 JUDGMENT AND THROWN IN PRISON BECAUSE SHE DID NOT HAVE THE ABILITY TO PAY .....	16
CONCLUSION.....	19

## APPENDIX

<i>Pollick v. Trozzolillo</i> , 514 MAL 2023, Order, Supreme Court of Pennsylvania dated 5/23/23.....App. 1
<i>Pollick v. Trozzolillo</i> , 620 MDA 2022, Order, Superior Court of Pennsylvania dated 11/2/22 ....App. 2
<i>Pollick v. Trozzolillo</i> , 620 MDA 2022, Order, Superior Court of Pennsylvania dated 10/19/22....App. 3
<i>Pollick v. Trozzolillo</i> , 20 FC 40119, Order, Court of Common Pleas of Lackawanna County dated 4/12/22 .....App. 4
<i>Pollick v. Trozzolillo</i> , 20 FC 40119, Writ of Execution dated 3/22/22 .....App. 8
<i>Pollick v. Trozzolillo</i> , 20 FC 40119 Judgment dated 7/26/21 .....App. 12

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>Aetna Cas. &amp; Sur. Co. v. Markarian</i> , 114 F.3d 346 (1st Cir. 1997) .....	16
<i>Calloway v. Calloway</i> , 594 A.2d 708 (Pa. Super. 1991) .....	18
<i>Chaffin v. Stynchcombe</i> , 412 U.S. 17 (1973) .....	14, 16
<i>Clark v. Cartledge</i> , 829 F.3d 303 (4th Cir. 2016).....	13
<i>Combs v. Ryan's Coal Co.</i> , 785 F.2d 970 (11th Cir. 1986).....	16
<i>Commonwealth v. Mutnik</i> , 406 A.2d 516 (Pa. 1979) .....	5, 11
<i>Counterman v. Colorado</i> , 2023 U.S. LEXIS 2788 (2023) .....	14
<i>Griffin v. Illinois</i> , 351 U.S. 12 (1956) .....	10
<i>Griggs v. Provident Consumer Disc. Co.</i> , 459 U.S. 56 (1982) .....	11
<i>Harvey v. Dep't of Corr.</i> , 823 A.2d 1106 (Pa. Commw. 2003).....	14
<i>In re Oliver</i> , 333 U.S. 257 (1948) .....	11
<i>Lindsey v. Sols. Exch. (In re Lindsey)</i> , 178 B.R. 895 (Bankr. N.D. Ga. 1995) .....	10
<i>McDonald's Corp. v. Victory Inv.</i> , 727 F.2d 82 (3d Cir. 1984) .....	9

## TABLE OF AUTHORITIES – Continued

	Page
<i>North Carolina v. Pearce</i> , 395 U.S. 711 (1969) .....	14
<i>Phila. Gas Works v. Pa. PUC</i> , 249 A.3d 963 (Pa. 2021) .....	10
<i>Pierce v. Vision Inv.</i> , 765 F.2d 539 (5th Cir. 1985).....	9
<i>Price v. Dunn</i> , 139 S. Ct. 1533 (2019) .....	13, 15
<i>United Bhd. of Carpenters &amp; Joiners, Local 610 v. Scott</i> , 463 U.S. 825 (1983) .....	15
<i>United States v. Big Crow</i> , 327 F.3d 685 (8th Cir. 2003).....	8
CONSTITUTION	
U.S. Const. art. VI, cl. 2.....	2
U.S. Const. amend. I .....	2
U.S. Const. amend. XIV .....	2
STATUTES	
28 U.S.C. § 2007(a).....	2, 8, 9, 12, 17, 18

**PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully requests a writ of certiorari to review the order of Supreme Court of Pennsylvania.

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**OPINIONS BELOW**

The Supreme Court of Pennsylvania's denial of the petition for allowance of appeal is reproduced at App. 1. The dismissal of the appeal and denial of application for reinstatement of the Superior Court of Pennsylvania is reproduced at App. 2 and 3. The trial court's order of 4/12/22 is reproduced at App. 4-7. The 3/22/22 writ of execution is reproduced at App. 8-11. The 7/26/2021 Judgment of \$26,950 against Petitioner is reproduced at App. 12-13.

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**JURISDICTION**

The Supreme Court of Pennsylvania issued its order on May 23, 2023. (App. 1). This Court has jurisdiction under 28 U.S.C § 1257(a).

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**CONSTITUTIONAL PROVISIONS INVOLVED**

The Supremacy Clause provides, “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the

Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2.

The First Amendment to the United States Constitution provides, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” U.S. Const. amend. I.

The Fourteenth Amendment to the United States Constitution provides, in relevant part: “ . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV.

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## INTRODUCTION

As well known by this Court, state courts must follow federal law and the United States abolished debtors’ prison years ago. 28 U.S.C. § 2007(a). Pursuant to 28 U.S.C. § 2007(a), Pennsylvania jurists could not imprison a debtor for a judgment for attorney fees in a divorce proceeding. Pennsylvania jurists also could not imprison a *pro se* litigant when an appeal was taken on that very divorce imprisonment order since it violates appellate law, equal protection and due process.

When the litigant is *pro se*, it is even more egregious because the imprisoned *pro se* litigant cannot obtain legal help from outside to remedy the situation but must languish in prison until released.

A writ of execution is the sole remedy for a money judgment. The Lackawanna County legal system cannot use its might to turn a judgment into an order and find a debtor in contempt of a judgment and place a *pro se* litigant in prison. The legal system provides the mechanism to collect on judgments; and should not strong arm a debtor into poverty by placing her in prison when the litigant has property the Sheriff can execute to obtain the remaining monies owed on a judgment since the divorce imprisonment decimated her 20-year civil rights legal business and Respondent received Petitioner's entire law practice account of \$20,318.94 on the writ of execution.

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#### **STATEMENT OF THE CASE**

Petitioner, Cynthia L. Pollick, brought a divorce complaint in the Court of Common Pleas of Lackawanna County against Anthony P. Trozzolillo on January 24, 2020, after a seven-year relationship with three (3) years of marriage. (R. 2a). Both parties were practicing lawyers with Petitioner being a solo practitioner concentrating on constitutional and civil rights law dependent on settlements and trial victories for income while Respondent was employed by a Philadelphia based law firm with a stream of income as a W2

employee performing civil defense work. (R. 171a, 176a, 528a, 553a, 599a, 609a-610a, 721a, 739a-740a).

The marriage was Petitioner's first while Respondent's third. (R. 133a-134a). Petitioner was 50 years old while Respondent was 57. (R. 160a). The parties were married on January 7, 2017. (R. 143a). Based on 2019 tax returns, Respondent made six figures and almost twice the amount Petitioner made as a solo proprietor.

The divorce litigation did not move until a judge was assigned in September 2020 because of the COVID pandemic. The first status, court appearance was on October 6, 2020. (R. 92a). The trial court called the divorce a "blue collar"<sup>1</sup> divorce yet he sealed the entire judicial record on March 10, 2021, against the wishes of Petitioner.

After only four (4) hearings where the parties were present, on July 20, 2021, the trial court granted a divorce decree and provided zero to Petitioner in the distribution of marital property with no alimony awarded to her, the lower earning spouse. (7/20/21 Equitable Distribution Op. pg. 2). The trial court entered a divorce decree in less than one year since the first hearing occurred on October 6, 2020.

The trial court altered Petitioner's 2019 IRS tax returns and "added back" proper deductions to make Petitioner's income appear similar to Respondent's six

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<sup>1</sup> The trial judge called the divorce "blue collar" because he determined without any discovery there were only two (2) marital assets – wife's increased value of her self-employed pension (SEP account) and husband's 401K.

figure salary. (7/20/21 Equitable Distribution Op. pg. 6). Instead of allowing the parties to depart without punishment, the trial court sanctioned Petitioner, who was forced to proceed *pro se*, \$26,950.00 in attorney fees, which was reduced to a money judgment on July 26, 2021. (R. 970a, App. 12-13). The divorce cost Petitioner, the moving party, \$26,950.00 to obtain a divorce decree.

On July 26, 2021, Petitioner filed an appeal on the final judgment. (R. 1a). While that matter was pending, on March 22, 2022, Respondent filed a writ of execution on the \$26,950 divorce judgment for attorney fees. (App. 8-11). Through that writ of execution, Respondent wiped out Petitioner's law practice account of \$20,318.94, and closed her business line of credit that Petitioner relied on to survive as a solo practitioner. (1/20/23 Hearing Tr. pg. 29). The writ of execution also caused Petitioner's line of credit to become due immediately in the amount of approximately \$50,000.00. (1/20/23 Hearing Tr. pg. 29).

On April 12, 2022, the trial court held a contempt hearing, and found Petitioner in contempt and ordered her imprisonment if the 7/26/21 judgment was not satisfied by April 22, 2022. On April 22, 2022, Petitioner filed an appeal on the after-judgment contempt finding, specifically informing the court " . . . *[i]mprisonment* for civil debt is *abhorrent* to the law of this Commonwealth." *Commonwealth v. Mutnik*, 406 A.2d 516, 519 (Pa. 1979) (emphasis added). Regardless of appealing the after-judgment contempt finding, the trial court issued a bench warrant for Petitioner's arrest and she

was imprisoned on April 25, 2022 until September 15, 2022, housed in solitary confinement upon entry in the Lackawanna County Prison.

While in prison, Petitioner could not receive electronic filings and did not receive the Superior Court of Pennsylvania's briefing notice for the after-judgment contempt finding. On September 15, 2022, Respondent filed electronically a motion to dismiss the appeal based on the briefing notice, which Respondent did not receive yet the parties attended a hearing later that same day. Respondent's counsel could have provided a *hand-delivered copy* of that electronically filed 9/15/22 motion to dismiss to Petitioner but she intentionally did not.

After the hearing on September 15, 2022, Petitioner was finally released from prison after almost five (5) months with the majority of time housed in solitary confinement<sup>2</sup> with only a ½ hour to shower and make phone calls per day with no outside time at all. For the majority of time while in prison, Petitioner was housed in a cell with 24-hour lighting with no dimming at night. Consequently, she was housed in a cell with constant lighting even at night for over four (4) months.

Petitioner had no employees working for her in 2022, and because she was *pro se*, she had no help from the outside to receive relief from the wrongful imprisonment in violation of state and federal law. (R. 180a).

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<sup>2</sup> Petitioner received no disciplinary infractions while incarcerated yet she was housed in solitary confinement since 4/25/22.

Upon release from prison on 9/15/2022, Petitioner learned that DeNaples<sup>3</sup> took and owned her leased Audi 2020<sup>4</sup>. See *VM Credit Leasing Ltd. v. Lackawanna County and DeNaples Auto Parts*, 23-CV-378 (M.D. Pa. 2023). Petitioner walked out of prison with no car, no money, no active credit cards or active Pennsylvania law license since she could not pay the annual Pennsylvania attorney registration fee or the minimum balances on her credit cards while in prison.

This was the first time in over 20 years that Petitioner could not pay her Pennsylvania annual attorney registration fee. Additionally, this was the first time in 52 years that Petitioner had no active credit – not one single credit card to buy food, shelter or clothing.

The Superior Court granted Respondent's motion to dismiss, and after registering for electronic service, Petitioner filed for a motion for reinstatement, which

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<sup>3</sup> Louis DeNaples has a 1978 federal fraud conviction related to a federal program and in 2008 “ . . . a grand jury . . . accused DeNaples of lying to the board about his relationship with a pair of reputed mobsters . . . ”. <https://www.poconorecord.com/story/business/2008/01/31/denaples-rags-to-riches-story/52649681007/>; <https://www.poconorecord.com/story/news/2008/01/30/mount-airy-owner-denaples-charged/52650299007/>. As noted by the Pocono Record, “ . . . that case has long provided fodder for speculation about DeNaples’ alleged ties to the underworld.” *Id.* Recently, “The Life We Chose, William “Big Billy” D’Elia and the Last Secrets of America’s Most Powerful Mafia Family”, was published about DeNaples being tied to organized crime. <https://currently.att.yahoo.com/att/opinion-chris-kelly-opinion-book-190900530.html>

<sup>4</sup> The illegal seizure is currently being litigated in the United States District Court for the Middle District of Pennsylvania by the leasing company.

was denied by the Superior Court on October 22, 2022, although there was no prejudice to either party since Petitioner timely filed her notice of appeal. (App. 2).

This petition should be granted because a state court must abide by federal law, which prohibits imprisonment for a debt judgment even when a lawyer is the holder of the judgment.

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### **REASONS FOR ALLOWANCE OF THE WRIT**

The trial court decision conflicts with federal law, specifically 28 U.S.C. § 2007(a) since Petitioner could not be imprisoned for a divorce judgment for attorney fees in the amount of \$26.950. Pursuant to federal law, there is no debtors' prison in Pennsylvania, and this warrants this Court's review to ensure there are no future victims placed in prison for a debt in Pennsylvania.

#### **I. THE STATE'S DECISION CONFLICTS WITH 28 U.S.C. § 2007(a) THAT PROHIBITS IM- PRISONMENT FOR A MONEY JUDGMENT IN THE COMMONWEALTH OF PENNSYLVANIA**

“Our society closed its debtor’s prisons long ago.” *United States v. Big Crow*, 327 F.3d 685, 689 (8th Cir. 2003). “Both Rule 69 of the Federal Rules of Civil Procedure (“Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise”) and 28 U.S.C. § 2007(a) (“A person

shall not be imprisoned for debt on a writ of execution or other process issued from a court of the United States in any State wherein imprisonment for debt has been abolished") look to the availability of imprisonment for debt in the forum state. Pennsylvania is among the states which have abolished imprisonment for debt." *McDonald's Corp. v. Victory Inv.*, 727 F.2d 82, 86 (3d Cir. 1984).

"For section 2007(a) to apply in this case, the consent order must be a 'money judgment' or debt." *Pierce v. Vision Inv.*, 765 F.2d 539, 544 (5th Cir. 1985). Here, there is no doubt that Petitioner had a judgment entered against her since it was entered on the docket. (App. 12-13). It could never be an order since Respondent issued a writ of execution, and wiped-out Petitioner's entire law practice account of \$20,318.94. Only a writ of execution could obtain the same – not an order. Thereby, Petitioner was never in contempt of an order since it was a judgment.

Consequently, pursuant to 28 U.S.C. § 2007(a), Petitioner could not be held in contempt of a judgment and imprisoned since it violated federal law. "Providing equal justice for poor and rich, weak and powerful alike is an age-old problem. People have never ceased to hope and strive to move closer to that goal. This hope, at least in part, brought about in 1215 the royal concessions of Magna Charta: "To no one will we sell, to no one will we refuse, or delay, right or justice. . . . No free man shall be taken or *imprisoned*, or disseised, or outlawed, or exiled, or anywise destroyed; nor shall we go upon him nor send upon him, but by the lawful

judgment of his peers or by the law of the land.” *Griffin v. Illinois*, 351 U.S. 12, 16-17, 76 S. Ct. 585, 100 L.Ed. 891 (1956) (emphasis added).

“Moreover, the Eleventh Circuit has explicitly stated, ‘that when a party fails to satisfy a court-imposed money judgment the appropriate remedy is a writ of execution, not a finding of contempt.’” *Lindsey v. Sols. Exch. (In re Lindsey)*, 178 B.R. 895 (Bankr. N.D. Ga. 1995). “. . . [A] writ of execution is the mechanism by which a judgment is enforced. . . . A prevailing party need only file a praecipe for a writ of execution in the county in which judgment was entered to set in motion the procedures necessary to sell the property and collect on the judgment.” *Phila. Gas Works v. Pa. PUC*, 249 A.3d 963, 973 (Pa. 2021) (cleaned up).

Here, Respondent could use the writ of execution process to collect on the money judgment by having Lackawanna County Sheriff sell Petitioner’s personal and real property in Lackawanna County to satisfy the judgment – not imprison her for almost five (5) months and hold her hostage under the continued threat of imprisonment when it was a money judgment not an order that was at issue.

Additionally, once a notice of appeal was docketed with the Superior Court of Pennsylvania<sup>5</sup>, the trial court could no longer act on that contempt order since

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<sup>5</sup> The final judgment was already on appeal before the Superior Court of Pennsylvania, 991 MDA 2021. Consequently, the trial court was without jurisdiction to even entertain the contempt petition until the appellate process was completed.

it was on appeal. The imprisonment issue was on appeal, and jurisdiction was divested from the trial court. “Even before 1979, it was generally understood that a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58, 103 S. Ct. 400, 74 L.Ed.2d 225 (1982).

Nonetheless, in this case, the trial court disregarded the appeal process by imprisoning Petitioner even after she provided caselaw in her notice of appeal showing that “ . . . [i]mprisonment for civil debt is *abhorrent* to the law of this Commonwealth.” *Commonwealth v. Mutnik*, 406 A.2d 516, 519 (Pa. 1979) (emphasis added). Without a lawyer on the outside of prison, Petitioner could not help herself while housed in solitary confinement without access to the law library. “It is ‘the law of the land’ that no man’s life, liberty or property be forfeited as a punishment until there has been a charge fairly made and fairly tried in a public tribunal. . . . The petitioner was convicted without that kind of trial.” *In re Oliver*, 333 U.S. 257, 278, 68 S. Ct. 499, 92 L.Ed. 682 (1948) (cleaned up).

The 4/25/22-9/15/22 divorce judgment imprisonment destroyed Petitioner’s life as she knew it. After being placed in prison as a business owner, Petitioner’s life will never be the same since she can never regain

what she lost because her business is now insolvent with debt collectors chasing her while before divorce imprisonment she was in debt but able to survive on her business line of credit and personal credit cards.

Not only was Petitioner's life ruined by being wrongfully imprisoned in a divorce, but also the community lost a constitutional, civil rights trial lawyer since after being released from prison Petitioner's leased car was taken by DeNaples and she had to walk to shelter. Having a car is a requirement for a rural civil rights trial lawyer. Now, Petitioner must rely on the public bus system for transportation in a community that does not cater to public transportation since there is no 24/7 access to all areas or train service.

The consequences that Petitioner suffered by being imprisoned for a debt illustrates why 28 U.S.C. § 2007(a) was created. No citizen should be imprisoned for a debt and Pennsylvania state courts must be held accountable for violating federal law by imprisoning Petitioner. This will ensure that there are no more victims wrongfully imprisoned for a debt.

## **II. THE STATE'S DECISION VIOLATES EQUAL PROTECTION AND DUE PROCESS SINCE DEBTORS' PRISON HAS BEEN ABOLISHED IN THE U.S. AND A LITIGANT MUST BE AFFORDED DUE PROCESS IN THE APPELLATE PROCESS AND BE HEARD**

"Thus, as the Eleventh Circuit has long recognized, 'a district court generally is without jurisdiction

to rule in a case that is on appeal’ – even after the court has rendered a decision – ‘until the mandate has issued.’ . . . see also *Kusay v. United States*, 62 F. 3d 192, 194 (CA7 1995) (Easterbrook, J.) (until the Court of Appeals issues its mandate, the case remains in the Court of Appeals, and ‘any action by the district court is a nullity’); 16AA C. Wright & A. Miller, *Federal Practice and Procedure* §3987, p. 612 (3d ed. 2008) (Wright & Miller).” *Price v. Dunn*, 139 S. Ct. 1533, 1537, 204 L.Ed.2d 238 (2019) (concurring opinion) (cleaned up).

Here, on July 26, 2021, Petitioner filed an appeal over the July 26, 2021 judgment for attorney fees. (R. 1a). Consequently, that judgment was under appeal and the trial court should have refrained from disturbing it until the appellate process ran its course: let alone imprison Petitioner for failing to satisfy the \$26,950.00 judgment. “If we construe the motion for an extension of time as a notice of appeal, then all events that occurred in the district court after the notice of appeal was filed are of no moment, as a ‘timely filed notice of appeal transfers jurisdiction of a case to the court of appeals and strips a district court of jurisdiction to rule on any matters involved in the appeal.’” *Clark v. Cartledge*, 829 F.3d 303, 305 (4th Cir. 2016).

Nonetheless, the trial court imprisoned Petitioner on 4/25/22, after she filed a notice of appeal on 4/22/22. That 4/22/22 notice of appeal should have stopped the divorce imprisonment; however, it did not. The trial court imprisoned a *pro se* divorcee for almost five (5) months when it knew she was running a solo practitioner law practice with clients dependent on her for

service. Petitioner did not have the ability to pay the judgment since her liabilities exceeded her assets and the 7/26/21 judgment was already on appeal.

This Court recently noted the dire consequence of imprisoning citizens for speech, which is exactly what happened here because Petitioner was imprisoned after she appealed the trial court's finding of contempt and its earlier sanction judgment. "Nonetheless, under such a standard, there will be some speech that some find threatening that will not and should not land anyone in prison." *Counterman v. Colorado*, No. 22-138, 2023 U.S. LEXIS 2788 (June 27, 2023). Divorce litigation should not result in the imprisonment of the lower earning spouse and ruin her life while her ex-husband enjoys his life outside prison walls. ". . . [A] non-incarcerated judgment debtor may have reasons of necessity for seeking to avoid payment of a judgment *food, clothing, and shelter, . . .*" *Harvey v. Dep't of Corr.*, 823 A.2d 1106, 1109 (Pa. Commw. 2003) (emphasis added).

"While there is no *per se* constitutional right to appeal, this Court has frequently held that once a State establishes an appellate forum it must assure access to it upon terms and conditions equally applicable and available to all." *Chaffin v. Stynchcombe*, 412 U.S. 17, 93 S. Ct. 1977, 36 L.Ed.2d 714 n.11 (1973). "This Court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts." *North Carolina v. Pearce*, 395 U.S. 711, 724, 89 S. Ct. 2072, 23 L.Ed.2d

656 (1969). “The Equal Protection Clause of the Fourteenth Amendment prohibits any State from denying any person the equal protection of the laws.” *United Bhd. of Carpenters & Joiners, Local 610 v. Scott*, 463 U.S. 825, 831, 103 S. Ct. 3352, 77 L.Ed.2d 1049 (1983).

Two pending appeals did not stop the trial court from imprisoning a debtor for a money judgment of \$26,950.00. “The section from which this statement is plucked, however, reiterates that a notice of appeal ‘is an event of jurisdictional significance’ that ‘divests the district court of its control over those aspects of the case involved in the appeal.’” *Price, supra*. Consequently, Petitioner was denied due process and equal protection of the law since the 7/26/21 judgment was not an order that could be purged. A judgment can only be satisfied. When imprisoned *pro se* status is added to the mix, it is clear Petitioner was denied her constitutional right to representation because she was held behind prison walls without legal help from the outside.

After the 9/15/22 release from divorce judgment imprisonment, the appellate courts refused to entertain Petitioner’s appeal yet she filed a timely notice of appeal. Petitioner advised the appellate court that she did not receive a briefing notice while in prison. Instead of understanding that a *pro se* divorce litigant was imprisoned with no lawyer on the outside to receive electronic notice of a briefing schedule, the Superior Court refused to review her appeal although there was no prejudice to either party. Consequently, the appellate court denied Petitioner due process since she had no appellate review of a patently wrong decision of

imprisoning a debtor who was *pro se* in that very litigation. *Chaffin, supra*.

**III. PETITIONER COULD NOT BE IN CONTEMPT OF THE 7/26/2021 JUDGMENT AND THROWN IN PRISON BECAUSE SHE DID NOT HAVE THE ABILITY TO PAY**

“It is equally clear that when a party fails to satisfy a court-imposed money judgment the appropriate remedy is a writ of execution, not a finding of contempt. *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1147-48 (9th Cir. 1983); Fed.R.Civ.P. 69(a)”. *Combs v. Ryan’s Coal Co.*, 785 F.2d 970, 980 (11th Cir. 1986); See *Aetna Cas. & Sur. Co. v. Markarian*, 114 F.3d 346, 349 (1st Cir. 1997). The trial court was wrong to find Petitioner in contempt and imprison her for almost five (5) months. The divorce imprisonment ruined Petitioner’s 52 years of good credit and solo proprietor business.

Petitioner did not have the ability to pay, which was proven when the trial court noted she had to dip into her self-employment retirement fund (SEP account) – her only savings – and withdrawal \$30,000.00 in 2021 after the divorce decree just to survive since her divorce from a fellow lawyer caused her business earnings to decline. (App. 4-5). Due to taxation, it makes common sense that a person who makes a hardship withdrawal is faced with a financial emergency because she is penalized with extra taxation for taking the early withdrawal. Instead of allowing the 3/22/22

writ of execution to unfold, the trial court imprisoned Petitioner in violation of 28 U.S.C. § 2007(a).

The 3/22/22 writ of execution provided Respondent with Petitioner's entire law practice account of \$20,318.94, and closed her business survival line of credit and triggered the accessed line of credit of approximately \$50,000 due immediately. Consequently, Petitioner with no stream of income clearly did not have the ability to pay the \$26,950 judgment and Respondent could have taken Petitioner's 2018 Jeep for the remainder of monies owed for the judgment, which the trial court valued at \$36,000 to \$37,000, but declined to recognize as a marital asset yet it was purchased by Petitioner during the marriage. (7/20/21 Equitable Distribution Op. pg. 6).

Contrary to the trial court's opinion, which inaccurately stated that Petitioner's self-employment retirement account (SEP Account) contained \$100,000, that could never be the case since Petitioner withdrew \$30,000 in 2021 after the divorce decree was entered. Given Petitioner's only savings was contained in her SEP Account, and she showed she had debt of over \$70,000 and no stream of income, the trial court erred by finding "beyond a reasonable doubt" Petitioner was solvent and had the ability to pay.

"Unquestionably, the court had it within its discretion to dismiss the contempt action as contempt is founded on failure to comply with a valid support Order but also requires a finding of present ability to pay. . . . Here, the court made findings of fact that

during the period in question, appellee was *unemployed, or marginally employed, and lacked the ability to pay.*" *Calloway v. Calloway*, 594 A.2d 708, 710 (Pa. Super. 1991) (emphasis added). When a divorcee has no stream of income like a law firm employee and debt of over \$70,000 with her only savings in her self-employed (SEP) retirement fund of \$65,002.45 as of December 31, 2021, there is no doubt she did not have the ability to pay the 7/26/2021 Judgment on 4/12/22. (1/20/23 Hearing Tr. pg. 55:8-12). Imprisoning a newly divorced litigant who was a solo proprietor ensured she would not financially survive the divorce or practice law since she was faced with disciplinary repercussions because she was a jailed lawyer.

The consequences of the divorce imprisonment caused Petitioner to become insolvent and hounded by debt collectors for the first time in her life since she had excellent credit before the divorce at 51. A financial nightmare was made worse by imprisoning a debtor and illustrates why debtors' prisons have been abolished pursuant to 28 U.S.C. § 2007(a). Throwing debtors in prison does not make sense and only creates an impossible financial situation for the debtor to overcome. First comes divorce, then comes bankruptcy should not be the ending of a divorce proceeding between two lawyers by forcing one out of the practice of law into debt while the other – a male – flourishes.

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## **CONCLUSION**

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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