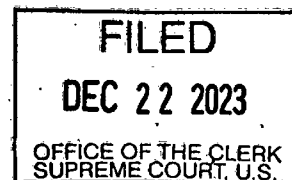


No. **23 - 6376**



IN THE  
SUPREME COURT OF THE UNITED STATES

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JUDY THORPE,

*Plaintiff-Petitioner,*

vs.

STATE OF NEW JERSEY, DEPARTMENT  
OF TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
*Defendants-Respondents.*

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On Petition for Certification to the  
Supreme Court of New Jersey

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**PETITION FOR WRIT OF CERTIORARI**

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Respectfully submitted by:

Judy Thorpe  
*Pro Se Petitioner*  
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Email: [nursejudymae@aol.com](mailto:nursejudymae@aol.com)  
December 12<sup>th</sup>, 2023.

(i)  
**QUESTION(S) / ISSUES PRESENTED**

- i. Whether it was manifest error and significantly prejudicial for the Supreme Court of New Jersey to Deny Certification and Not Fairly and Equitably Review the Erroneous Decisions of the Appellate Division, the Board of Trustees of the Public Employees' Retirement System and State of New Jersey, Department of the Treasury Division of Pensions and Benefits

(ii)  
**LIST OF PARTIES**

Petitioner submits that all parties appear in the caption of the case on the cover page, and are listed below for the Court's reference:

Petitioner:           JUDY THORPE

Respondents:       STATE OF NEW JERSEY, DEPARTMENT  
                          OF TREASURY  
                          DIVISION OF PENSIONS AND BENEFITS

(iii)

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits as it appears at Appendix “BB” to the petition and is found at *Judy Thorpe v. State of New Jersey, Department of Treasury Division of Pensions and Benefits Appellate Division Docket NO. A-000689-20T2 Opinion Dated March 8,2023*. Also, Supreme Court of New Jersey No.88236. Order Denying Petition for Certification Dated September 19,2023, Filed September 25,2023, Postmarked September 27,2023 and received by Petitioner September 29,2023 with the incorrect caption Appendix “AA”

JURISDICTION

The date on which the highest state court decided the merits of the case was March 8,2023 opinion of the Appellate Division a copy of that opinion appears at Appendix “BB”. In addition, the Supreme Court Filed order September 25,2023 at Appendix “AA”.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a), which provides: “Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of

certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.”

### CONCISE STATEMENT OF THE CASE

On or about April 6, 2005, Petitioner, a long-standing forensic nurse, 25-year pioneer of the State of New Jersey. Transferred to the New Jersey Juvenile Justice Commission as a regional supervisor of nursing services, where she successfully directed nursing services in seven secure environments for a newly developing medical department. In this role, Petitioner coordinated the operations and patient care activities of a multi-site healthcare delivery system, serving approximately 2,000 patients. In 2008, Petitioner was unlawfully and wrongfully terminated from her position.

### PETITIONER'S PRO SE STATUS

Indigent and unrepresented litigants have a right to the fair and impartial review of their claims and defenses. An important issue of fairness in our judiciary is raised in this case, in the course of which Petitioner has been a victim of grave injustice and has been forced to represent herself as an indigent, pro se litigant.

Petitioner thus respectfully requests that the statements of her case be given due and equitable consideration, with reasonable lenience, with respect to precedence set by existing case law, to include but not be limited to, the standards of perfection

and defense against dismissal. See *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 595, 30 L.Ed.2d 652 (1972) and *Conley v. Gibson*, 355 U.S. 41 at 48 (1957).

Here, as argued below, the Superior Court and Appellate Division applied the wrong law. Litigants have a right to a fair and impartial review of their claims and defenses. This case raises an important issue of fairness in our judiciary, especially in circumstances such as here, where an aggressive lawyer and Board is actively defending against claims put forth by a pro se litigant.

#### CONCISE STATEMENT OF THE CASE CONTINUED

Regarding Robert E. Kelly's letter brief, on behalf of the Respondents, in opposition to my petition for certification before this Court. Although Mr. Kelly's reply brief is dated August 14, 2023, I did not receive it until after hours on August 16, 2023. As such, I understand that my time frame to reply extends until Monday, August 28, 2023, pursuant to R.2:12-8. In addition, I bring to the Court's attention that Mr. Kelly's documents arrived in two separate mailings, each of which included two copies of the contents; I would greatly appreciate any clarity that can be provided on the reason for this, as the distinction between these packages is unclear to me. Please also note that these documents submitted by Mr. Kelly contain the incorrect caption. To prevent further iterations of this error, I have herein used the correct caption, consistent with all prior documentation with the Appellate Division related to this case.



At this time, I ask that the Supreme Court of the United States to please accept this Petition for Writ of Certiorari and appendix in further support of my June 5, 2023 Petition for certification in the above-captioned matter. Foremost, I contend that I have indeed met the Court's standards for certification including, but not limited to, my demonstration of conflicts in court decisions made regarding my case. While I have detailed them collectively in my prior appeal briefs, appendices, and motions to the Appellate Division, which are part of the existing record, I herein reiterate the heart of my arguments from those submissions, both for clarity and emphasis for this Court's present consideration.

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To begin, Mr. Kelly's August 14, 2023 response, and his earlier August 11, 2022 letter merits brief to the Appellate Division, have relied largely on the

Appellate Division's May 17, 2022 opinion in my case against my former attorney, Rosemarie Cipparulo, Esq. (Docket No. A-0418-20). However, as I understand it, the May 17, 2022 decision, which deals with a legal malpractice matter, and not my ordinary disability case, must not be applied as evidence in this forum.

Furthermore, as Mr. Kelly himself acknowledged, the May 17, 2022 decision remains in dispute including, but not limited to, pending litigation at the Appellate Division (*Judy Thorpe v. Rosemarie Cipparulo, Esq.*, Docket No. A-003770-22 Team 04) and the U.S. Supreme Court (*Judy Thorpe v. Rosemarie Cipparulo, et al.*, No. 22-7499). Therefore, Mr. Kelly's claims based on the Appellate Division's May 17, 2022 decision cannot here be considered solid evidentiary support.

### **ARGUMENT**

**THE COURT SHOULD GRANT MY PETITION; THIS MATTER INDEED MEETS THE STANDARD OF RULE 2:12-4, AS THE APPELLATE DIVISION'S DECISION INDICATES CONFLICTS IN COURT DECISIONS AND PRESENTS SPECIAL REASONS FOR REVIEW AND INTERVENTION.**

The very crux of my matter is the fact that my termination from employment by the Juvenile Justice Commission *was* due to my disability, and thus I am eligible for disability retirement benefits. Mr. Kelly's August 11, 2022 letters merits brief pointed to a statement relayed in the Appellate Division's May 17, 2022 opinion, that I was still able to work while suffering from my documented medical disability of vigorous achalasia with esophageal stricture. Indeed, I could still perform the

essential duties of a nurse and supervisor for some time. However, as the record shows, as my condition remained untreated, I physically could not continue to work full-time and earn a livable salary. In fact, before and in the near time frame of my wrongful termination, I was still working full-time, but my exacerbated medical condition had already forced me to call out of work, as approved under FMLA, per certification by Dr. Paul Axelrad, MD (CC). Thus, the Social Security Administration granted me a fully favorable decision, backdating my disability to January of 2008 (DD And EE). By then, I needed, and was scheduled for, a surgical laparoscopic Heller myotomy procedure as per a 2008 medical certification by Dr. Morris Washington, MD (FF). Had I undergone surgery successfully, my disability would likely have diminished.

That said, had I not been wrongfully terminated by the JJC, I would have willingly returned to employment upon diminution of my disability—a fact which Mr. Kelly, and the May 17, 2022 opinion, also omitted. As I have maintained throughout my case, I was psychologically fit and able to work as a nurse and supervisor, even with my medical condition. However, upon my wrongful termination, I lost my health/medical benefits, making the aforementioned surgery impossible for me to afford. That is how I remained permanently disabled and unable to work. Put simply, my condition had rendered me disabled at the time I separated altogether from service. My disability had also *led* to my wrongful

termination—for which my union-appointed attorney at arbitration was also critically responsible. Therefore, Mr. Kelly’s August 14, 2022 statements that my employment ended by way of “unrelated disciplinary termination” or that I “concede[d] that [I] was, in fact, terminated on disciplinary grounds, not due to disability,” echo falsehoods that gloss over the depth of my situation. To the contrary, my employment ended due to *both my disability and my wrongful termination by my employer without cause.*

I am also hereby compelled to respond to the statement from the Appellate Division’s March 8, 2023 opinion that, “Contrary to Thorpe’s newly minted arguments on appeal, she did not leave her employment because of an alleged disability,” suggesting that I had never raised the issue of my disability before. This is patently untrue, as I absolutely made this clear to the Board, including but not limited to, in my March 12, 2020 request for reconsideration (GG); this is already part of the record at the Board, Appellate Division, and Supreme Court levels. I fully explained then:

A full consideration of my situation, in its totality, would reveal that my separation from employment, by way of a wrongful termination, indeed resulted from issues including, but not limited to, my disability. As documented, I received Social Security Disability benefits for a medical condition of vigorous achalasia and esophageal stricture ... Due to my legitimate complaints of a hostile work environment including, but not limited to, its failure(s) to accommodate my ADA-recognized disability, the JJC unjustly disciplined and ultimately terminated me. Therefore, ... my separation from employment *was essentially linked* to my disability, rendering me indeed eligible to apply for Ordinary Disability retirement benefits.

As such, the claims regarding my disability are clearly not “newly minted,” and have been a basis for my argument all along, as I have explained above.

Then please note that, during the COVID pandemic, I never received full due process before the Board, nor did I receive timely notifications that my matter was being heard. In appealing the Board's initial February 24, 2020 denial of my application, I sought proper redress, requesting that my case be transferred to the Office of Administrative Law, as the material adjudicative facts of my termination including, but not limited to, those relayed above, continue to be lawfully disputed in the courts. Per mandated procedure, contested cases such as mine are to be afforded the rightful opportunity to be heard by an Administrative Law judge, and the Board erred in retaining my case, issuing its premature determination, and denying me that right.

Ultimately, I truthfully established my qualification for ordinary disability benefits, met all requirements for members applying beyond two years' cessation of active employment, and provided documentation of my disability as required by the State of New Jersey Division of Pensions and Benefits:

- Accrual of ten-plus of PERS pension membership credit for New Jersey service; in fact, my records demonstrated that I had accrued 25 years of service.

- Documentation of a physician's medical examination and finding of total incapacitation from performing my job duties when my service was terminated; my records included such confirmation from three different physicians (HH and II).
- Documentation of my continued incapacitation by that same disabling condition; a 2020 Medical Review Board statement confirmed my total and permanent disability with achalasia (JJ).

Next, the Appellate Division's May 17, 2022 decision, upon which Mr. Kelly and the Respondents so heavily based their opposition to my petition, indicated conflicts throughout the adjudication of my case. In my subsequent *letter brief* in support of my Motion for Reconsideration and Clarification of the Court's May 17, 2022 Decision (*Judy Thorpe v. Rosemarie Cipparulo, Esq. and Weissman & Mintz, LLC*, Docket No.: A-0418-20 T2), Dated May 23, 2022 with its own set of exhibits A-F enclosed also. I Must emphasize *please review* all exhibits; indeed, substantial credible evidence was provided. I extensively proved the existence of an attorney-client relationship between myself and my union-appointed attorney, Rosemarie Cipparulo, Esq., in the May 23, 2022 *letter brief*. and in doing so, I countered the Courts' erroneous presumption that I was represented by my "own attorney" at grievance arbitration Excerpted Transcript OER-9817 dated December 10, 2010 (B ). Neither the Law Division's July 24, 2020 order nor the Appellate Division's May 17, 2022 decision offered "competent evidential materials" beyond the Respondents'

(then Defendants) word to prove otherwise, in accordance with *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 540 (1995). This is but one discrepancy in the courts' views on my case.

More notably, an inconsistency on this issue appeared in the June 24, 2016 motion hearing before the Honorable Thomas F. Scully, J.S.C., in the N.J. Superior Court Law Division. In my legal malpractice case, Judge Scully himself found that my "complaint sets forth sufficient facts upon which the cause of action may be gleaned" (E), and thereby decided against the dismissal of my claim. His Honor's finding of potential cause of action for legal malpractice necessarily means that I had sufficiently demonstrated an attorney-client relationship between myself and Ms. Cipparulo. This was an established conclusion from a judge in this very case, and yet Judge Scully's legal authority appears to have been erroneously overlooked, misinterpreted, or neglected. Such a contradiction reveals fault in the conclusions of both the July 24, 2020 order and May 17, 2022 decision.

Similarly, Judge Scully was not alone in recognizing Ms. Cipparulo as my attorney. The March 24, 2017 opinion regarding my charge(s) against the CWA, before the Honorable Heidi W. Currier and Honorable Michael J. Haas, clearly states, "Appellant was represented by a union-appointed attorney..." (F). Such a statement reveals the Appellate Division's own previous interpretation that despite being appointed by my union, Ms. Cipparulo was my representative as well. This



statement further conflicts directly with the May 17, 2022 decision's repeated assertion that Ms. Cipparulo did not represent me; these conflicts in decisions cannot go ignored and warrants intervention and review.

#### REASONS FOR GRANTING THE PETITION

**It was manifest error and significantly prejudicial for the Supreme Court of New Jersey to Deny Certification and Not Fairly and Equitably Review the Erroneous Decisions of The Board of Trustees of The Public Employees' Retirement System and The Appellate Division.**

The Board of Trustees of The Public Employees' Retirement System August 2020 final administrative determination denying Petitioner application for Ordinary Disability Retirement Benefits and the subsequent Appellate Division's affirmance of same constitute manifest error. Further prejudicial to Petitioner is the fact that the Supreme Court of New Jersey denied certification and refused, even after Petitioner proffered sufficient evidence in support of her application, to grant certification.

"'Manifest error' is one that 'is plain and indisputable, and that amounts to a complete disregard of the controlling law.'" *Guy v. Crown Equip. Corp.*, 394 F.3d 320, 325 (5th Cir. 2004) (quoting *Venegas-Hernandez v. Sonolux Records*, 370 F.3d 183, 195 (1st Cir. 2004)); See *Black's Law Dictionary* 563 (7th ed.1999). Other authorities have defined manifest error as "an error that is obvious and indisputable, that warrants reversal on appeal. It is an indisputable error of judgment in complete disregard of the facts of the case, the applicable rule or law and credible evidence." *See uslegal.com*.

The Board denied Petitioner's application for Ordinary Disability Retirement Benefits, and the Appellate Court affirmed the denial in its March 8, 2023 Opinion. The New Jersey Supreme Court subsequently denied certification.

The appellate courts, in upholding the Board's denial of Petitioner's application for Ordinary Disability Retirement Benefits have relied on the Board's unlawful reasoning. The opinion of Philip L. Faccenda Esq. Legal Malpractice Expert explains in detail. (LL) R.P.C.1. *Matter of Johnson, 105 N.J.249 (1987)* Petitioner submits that the finding was clearly erroneous and prejudicial.

Petitioner's application for Ordinary Disability Retirement Benefits, accompanied by exhibits, when given a generous reading, clearly suggest a cause of action. Then Respondents in the matter of (*Judy Thorpe v. Rosemarie Cipparulo, Esq. and Weissman & Mintz, LLC*, Docket No.: A-0418-20 T2), failed to assert expert testimony and reports as crucial material evidence related to the unwarranted psychological fitness evaluation performed on Petitioner in or around August of 2008; failed to secure depositions of key expert witnesses in support of Petitioner's claims and defenses; and failed to properly investigate expert testimony key to Petitioner's claims and defenses. Additionally, Petitioner proffered sufficient allegations in the moving papers that supported the facts. The Board and Appellate Division was under an obligation to follow the standard of review. This was not done, and it was manifestly erroneous and unjustly prejudicial to Petitioner for the New Jersey Supreme Court to deny certification and further review of this case. The opinion of Philip L. Faccenda Esq. Legal Malpractice Expert explains in detail. (LL) R.P.C.1.

The Board and the Appellate Division does not have the license to misapply well established law and standards of review, which clearly allow the liberal granting of the Petitioner her rightful opportunity to her Ordinary Disability Retirement Benefits.

As officers of the Court, Then Respondents in the matter of (*Judy Thorpe v. Rosemarie Cipparulo, Esq. and Weissman & Mintz, LLC*, Docket No.: A-0418-20 T2), had an affirmative duty in the Arbitration case to actively prosecute and defend Petitioner's claims. They failed to do so. Then Respondents in the matter of (*Judy Thorpe v. Rosemarie Cipparulo, Esq. and Weissman & Mintz, LLC*, Docket No.: A-0418-20 T2), had an affirmative duty to advise Petitioner of all possible legal options. They failed to do so. Then Respondents in the matter of (*Judy Thorpe v. Rosemarie Cipparulo, Esq. and Weissman & Mintz, LLC*, Docket No.: A-0418-20 T2), had an affirmative duty to represent Petitioner's best interests in the course of litigation. They failed to do so. It is only when Officers of the Court are held to the professional standards which govern the practice of law will litigants truly believe in the notion of a fair and impartial judiciary dedicated to justice and the pursuit of truth.

Accordingly, the petition for Writ of Certiorari should be granted.

### CONCLUSION

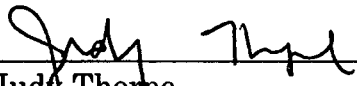
I began this battle over a decade ago, after unjustly losing my nursing career, only to then face wrongfully losing my hard-earned pension as well. I will continue to fight, on behalf of all citizens who choose careers in public service in New Jersey, and nationwide, because it is, without a doubt, a matter of public importance. My

case also exposes conflicts in decisions that warrant review and remedy of the Board's decision denying me ordinary disability benefits. Therefore, I respectfully maintain that my petition for certification should be granted.

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

Dated: December 12<sup>th</sup>, 2023.

Respectfully submitted,

  
\_\_\_\_\_  
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