

No. 23-6538

IN THE
SUPREME COURT OF THE UNITED STATES

Ye-Ying Cen – PETITIONER

vs.

Oliver W. Cass – RESPONDENT

On Petition for Writ of Certiorari to the
State of Minnesota Supreme Court

**BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI**

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(612) 335-5056

Counsel for Respondent

Question Presented

Should Petitioner's Petition for Writ of Certiorari be denied for failing to state a compelling reason for the United States Supreme Court to grant her Writ, as set forth in 28 U.S.C. §1257(a) and in Rule 10 of the Rules of the Supreme Court of the United States?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

There are no related cases.

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**IN THE
SUPREME COURT OF THE UNITED STATES
BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI**

Respondent respectfully prays that Petitioner's Petition for a review of the judgment below be denied.

OPINIONS BELOW

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at **Appendix F** to the Petitioner's petition and is

☐ reported at _____; or
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Minnesota Court of Appeals appears at **Appendix H** to the Petitioner's petition and is

☐ reported at _____; or
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The Orders of the Minnesota District Court appear in both Appendices I to the Petitioner's Petition and are unpublished.

JURISDICTION

☒ For cases from **state courts**:

The date on which the highest state court decided the instant case was **August 22, 2023**. A copy of that decision appears at **Appendix F** to Petitioner's petition.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix ____.

☐ An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on timely petition for rehearing was _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

There are no constitutional or federal statutes involved in this matter.

STATEMENT OF THE CASE

Respondent initiated this marital dissolution action in October, 2017. After nearly two years, during which Petitioner successively retained four different well-regarded attorneys to represent her, the case was scheduled for a three-day trial on July 23, 24, and 25, 2019.

During the pendency of the proceeding Petitioner spent approximately six hundred thousand dollars (\$600,000) of marital funds for her own purposes. At the trial's outset, Respondent urged that these expenditures be regarded as dissipation of the marital estate and be treated as advances against Petitioner's share of the marital estate.

On the afternoon of the second day of trial, the parties negotiated a settlement. That settlement disregarded Petitioner's unauthorized expenditures of marital funds and simply divided the parties' marital assets as they existed at the time of trial. The agreement also awarded Petitioner the home in which she was living in Durham, North Carolina, an outcome both parties desired.

The parties agreed that no spousal maintenance would be awarded in light of the property settlement awarded to Petitioner, including Respondent's disregard for the funds Petitioner spent for her own benefit while the case was pending, as well as the short duration of the marriage and Respondent's impending retirement.

The settlement was read into the record, with Petitioner testifying that she wanted the settlement. Almost immediately thereafter, Petitioner began her campaign to challenge the agreement. Following the settlement, Petitioner (who was

then representing herself) sent letters to the district court Referee and sought a hearing date to challenge the settlement. On October 8, 2019, the district court filed its decree incorporating the settlement terms [hereinafter referred to as “Decree 1”], which had been drafted by Respondent’s counsel and approved by Petitioner’s Guardian ad Litem as comporting with the agreement read into the record.

After the parties’ decree was entered, Petitioner appealed the district court’s entry of the decree over her objections to the Minnesota Court of Appeals. On February 1, 2021, the Minnesota Court of Appeals reversed the entry of Decree 1, agreeing with Petitioner that it was not proper for Petitioner’s Guardian ad Litem to sign the decree on her behalf over Petitioner’s objection, and remanded for further proceedings. That opinion can be found in Appendix K attached to Petitioner’s Petition for Writ of Certiorari.

Once Decree 1 was remanded, Petitioner brought a motion to set aside the oral stipulation. That motion was heard on July 27, 2021, and on October 25, 2021 the District Court issued an Order denying Petitioner’s motion to set aside the agreement. In its 18-page Order, replete with references to the record, the district court found, among other things, that Petitioner lacked credibility, and that she had not met her burden of showing that the agreement was improvidently made and in equity and good conscience should not stand. The District Court’s October 25, 2021 Order can be found in the second Appendix I attached to Petitioner’s Petition for Writ of Certiorari (there are two Appendices labeled Appendix I). Thereafter, on February 23, 2022, the district court issued a second decree [hereinafter “Decree 2”] based on

the agreement the parties had read into the record in July 2019. Decree 2 can be found in the first Appendix I attached to Petitioner’s Petition for Writ of Certiorari.

Petitioner appealed the district court’s October 25, 2021 order and Decree 2 to the Minnesota Court of Appeals. After review of the facts and applicable law, the Minnesota Court of Appeals affirmed the district court’s order on June 12, 2023, finding no abuse of the district court’s broad discretion. That opinion can be found in Appendix H attached to Petitioner’s Petition for Writ of Certiorari.

Petitioner then sought further review in the Minnesota Supreme Court, raising the same arguments that were rejected by both the District Court and the Minnesota Court of Appeals. On August 22, 2023, the Minnesota Supreme Court denied review of Petitioner’s case. That decision can be found in Appendix F attached to Petitioner’s Petition for Writ of Certiorari. Petitioner now seeks review in the United States Supreme Court. This case was docketed on January 23, 2024; Petitioner never notified Respondent or his counsel of that fact, as required by Rule 12(3) of the Rules of the Supreme Court of the United States.

ARGUMENT

I. This case does not warrant review by the United States Supreme Court.

There is nothing in Petitioner’s Petition for a Writ of Certiorari that warrants review by the highest court of this Country. This court exercises discretion in granting a Petition for Writ of Certiorari and does so only in exceptional circumstances. As stated in Rule 10 of the Rules of the Supreme Court of the United

States, “Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons.” The Rule then gives examples of “compelling reasons” in cases from State Courts, as follows:

...(b) A state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Similarly, 28 U.S. Code § 1257(a) 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.

In the instant case, Petitioner did not raise a federal question in the Minnesota courts, and the Minnesota Supreme Court did not decide a federal question; it did not even address a federal question. Nothing about the issues in this case conflict with other state or federal laws. This is simply a case where Petitioner is claiming that factual findings were erroneous, but she has not demonstrated that any federal law was misapplied.

This is not a case that requires review by the United States Supreme Court. This is a case where a district court in Minnesota properly applied the law to the facts, and issued an Order that denied the relief Petitioner was seeking. The Minnesota Court of Appeals reviewed the same evidence and affirmed the district court's decision and the Minnesota Supreme Court denied review of the case. Despite Petitioner's urgent wish that another court review her case, that is not a proper basis for the United States Supreme Court to grant a Petition for Writ of Certiorari.

Petitioner reached an agreement in July 2019 that she has been trying to get out of since then. She has tried every judicial avenue available to her to get out of the agreement she made on July 24, 2019, but there is no factual or legal basis for her to do so. In her Petition for Writ of Certiorari, she makes factual allegations that are contrary to those found by the District Court and affirmed by the Minnesota Court of Appeals. It is not in the United States Supreme Court's purview to make factual findings, but only to review decisions that have national impact and are necessary for the administration of justice. This is not such a case.

II. Petitioner's Petition does not accurately set forth the record or the facts.

Petitioner makes many assertions of fact in her Petition that are contrary to the record. She also included documents in her Appendix that are not part of the record that was reviewed by the Minnesota Supreme Court when it issued the Order which Petitioner now asks this Court to review.

For example, in her “Table of Authorities,” Petitioner lists nine items, all of which relate to her claim that she was suffering from Gadolinium poisoning when she entered into the agreement on July 24, 2019. In her Table of Authorities Petitioner asserts that items 2, 3, 7, 8, and 9 were submitted before the trial in July 2019. However, the record shows that Petitioner submitted **no** documents before or during the trial about Gadolinium. Petitioner’s only submissions about Gadolinium were part of her motion to vacate and set aside the agreement, filed on June 6, 2021, almost two years after the parties’ agreements were read into the record. See attached **Appendix A**.

Another example of Petitioner’s misrepresentation of facts is Petitioner’s assertion that the district court would not postpone the trial due to her alleged poor health during the trial. On page 13 of her Petition, she says the following:

On the first day of trial, July 22, 2019 [sic], Petitioner directly addressed the referee, stating, “Your Honor, I am very sick. I am having a severe reaction to gadolinium. I have asked my attorneys to postpone the trial and provided them with my lab report yesterday, Did you receive it? I have a copy here. Gadolinium is banned in the European Union, but unfortunately not in this country.”

She then states that the court refused to postpone the trial. What actually occurred, as reflected in the partial transcript, attached as **Appendix B**, is the following interaction:

MR. HENSCHER [Petitioner’s counsel]: Your Honor, Ms. Cen has just asked that I inform the Court that she had M. R. I. with contrast with Gadolinium, contrast over a week ago, and she's having a reaction from that. And she can be here, she intends to be here and participate she's affirmed, but she may, she has told me that she has become dizzy at times and, you know, that she might faint at times, and so she just wants to be able to inform the Court of that.

THE COURT: All right. Well, I appreciate that, Ms. Cen. Is it Ms. Cen, right?

MS. CEN: C-E-N, is fine.

THE COURT: If you need to take a break you should let your attorney know or let Ms. Brenner know and they'll let the Court know. All right?

MS. CEN: I want to point out just add Gadolinium based is banned in Europe, but it's not banned in this country unfortunately.

THE COURT: Okay, thank you.

MS. CEN: And so I have repeated in my images, and I just ought to know this information just –

THE COURT: Well, I'm glad you're here today.

MS. CEN: Thank you. I'm very happy to be here.

(Trial Transcript, July 23, 2019, pp. 5-6 attached hereto as **Appendix B**.)

The truth is, Petitioner never requested a postponement, and although the court told her to let her counsel know if she needed a break, she sought no breaks during the almost two days of trial, during which she was testifying for the majority of the time. There was no other mention of Petitioner's health during the two days of trial testimony or when the settlement was read into the record on July 24, 2019. (See transcript of settlement in Appendix R attached to Petitioner's Petition for Writ of Certiorari.)

Petitioner also asks for relief based on the fact that the district court would not provide her with a translator. Petitioner provides no evidence that she or anyone on her behalf ever requested a translator, or that the court or anyone in the court room felt it would help her or the court proceeding if a translator was provided. In fact, as found by the district court in its October 25, 2021 Order,

[Petitioner] acknowledges her English is very good. The Court noted no concerns of [Petitioner]’s capacity to understand questions other than typical nervousness while being examined under oath in front of a judicial officer. However, [Petitioner] states when she is sick, tired, or not feeling her best, her listening skills are impaired. [[Petitioner]’s affidavit filed July 6, 2021 at 4]. The Court has no way other than observing and listening to the questions and testimony of [Petitioner] to assess [Petitioner]’s comprehension. The Court reviewed the transcripts of [Petitioner]’s testimony. There is one incident noted where [Petitioner] noted that she was “still in an allergic state. You can see from my eyes I used to have large clear big eyes. Right now I’m very very swollen.” [Transcript – Day 1 at 127]. The undersigned did not observe the swollen eyes, but also did not have a lot of in-person experience with [Petitioner] due to the distance. Neither [Petitioner]’s Rule 17 Guardian nor counsel, all of whom have had much more contact with [Petitioner] asked the Court to order a recess. The Court took its regular mid-session break shortly thereafter. [*Id.* at 131]. These observations and review of the transcripts do not cause the Court to be concerned about [Petitioner]’s comprehension of the issues.

See Finding of Fact 24 of Order denying Motion to Vacate dated October 25, 2021, in the second Appendix I attached to Petitioner’s Petition for Writ of Certiorari.

Petitioner also argues, without any supporting evidence, that the change in the tax law that occurred in 2018, which eliminated the tax deduction for payors of spousal maintenance, caused her attorney and her Guardian ad Litem to “violate the law” insofar as she was not awarded spousal maintenance. Petitioner has never argued this in the Minnesota courts, and she provided no foundation for this argument, other than speculation.

III. Petitioner’s Petition ignores relief already granted to her by the Minnesota courts.

In support of her Petition for Writ of Certiorari Petitioner also cites issues that were resolved in Petitioner’s favor by the lower courts in Minnesota before Petitioner sought review in the Minnesota Supreme Court, and therefore are moot. For example,

throughout her Petition, Petitioner complains that her Guardian ad Litem signed a stipulation on her behalf and that the district court wrongfully relied on that stipulation when it issued Decree 1. Petitioner made those arguments in her first appeal to the Minnesota Court of Appeals and on February 1, 2021, the Minnesota Court of Appeals reversed and remanded the matter back to the District Court, agreeing with Petitioner that her Guardian ad Litem's signature was insufficient. See Appendix K, attached to Petitioner's Petition for Writ of Certiorari. This is, therefore, a non-issue, yet Petitioner cites it in support of her argument that her constitutional rights were violated.

IV. Petitioner improperly includes information and documentation that was not before the Minnesota Supreme Court when it issued the Order from which she is appealing.

Petitioner also includes a number of items in her Appendices that were not part of the record that was reviewed by the Minnesota Supreme Court when it issued the Order from which she is appealing, as follows:

- Appendix A, "Referee Jenna Westby's Order on 12/11/2023." This Order was issued *after* the Minnesota Supreme Court issued the Order from which Petitioner is seeking review in this Court.
- Appendix B, "Complaint Letter on Referee Jenna Westby's conflicts of Interest..." This complaint was filed by Petitioner *after* the Minnesota Supreme Court issued the Order from which Petitioner is seeking review in this Court and is not part of any court file.

- Appendix C, “Assignment of Referee Starr to My Case on 11/21/2023.” This assignment occurred *after* the Minnesota Supreme Court issued the Order from which Petitioner is seeking review.
- Appendix D, “Motion to Re-open and amend the Divorce Decree on 11/14/2023.” Petitioner filed this Motion *after* the Minnesota Supreme Court issued the Order from which Petitioner is seeking review in this Court.
- Appendix M, “Complaint Letter on Referee Street’s Bias....” This complaint by Petitioner is not part of any court file.
- Appendix N, “Supporting Documents to My Complaint Letter.” Petitioner’s Complaint about the judicial officer that heard her motions is not part of the court file, nor is it relevant to her Petition for Writ of Certiorari.

Including these documents, most of which are both irrelevant and self-serving, is a deliberate misrepresentation of the record that existed when the Minnesota Supreme Court denied Petitioner’s request for review.

In sum, Petitioner has misrepresented facts throughout her Petition, and included numerous documents that were not part of the record reviewed by the Minnesota Supreme Court when it issued the Order from which she is appealing. Her Petition complains of relief she wasn’t granted in the district court *that she did not request*, and she complains of actions taken in the district court that were resolved *in Petitioner’s favor* by the Minnesota Court of Appeals.

V. Reason for denying Petitioner’s Petition for Writ of Certiorari.

Petitioner seeks relief from an agreement she entered into in July 2019. The Minnesota courts found her to be competent at the time she entered into that agreement and that she did not meet her burden to set aside the agreement. She has exhausted the Minnesota judicial system and now seeks relief from this Court. Petitioner's unhappiness with the outcome of her divorce proceeding does not constitute an issue for the United States Supreme Court. As provided in 28 U.S. Code § 1257(a) and as stated in Rule 10 of the Rules of the Supreme Court of the United States, "a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

Petitioner's petition, with its many misrepresentations and distortions of truth, seeks nothing more than correction of what she feels are erroneous factual findings and misapplication of the law. She has raised no important question of federal law, nor is she seeking this court's resolution of a conflict in the law. She simply wants her divorce case reconsidered, which is not the purview of this high court.

CONCLUSION

For the above-stated reasons, Respondent respectfully requests that Petitioner's Petition for Supreme Court review be denied.

Respectfully Submitted,

BINDER LAW OFFICES, P.A.

By: /s/ Jane Binder

Jane Binder, #149123

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Minneapolis, MN 55402

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ATTORNEY FOR RESPONDENT

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
FAMILY COURT DIVISION
DISSOLUTION WITHOUT CHILDREN

Court File No.: 62-FA-17-2558

In Re the Marriage of:

Oliver Wilfred Cass,

Petitioner,

and

Ye Ying Cen,

Respondent.

CONFIDENTIAL
SOURCE DOCUMENTS
(Provided in Accordance with
Rule 11.03 of the Minnesota
Rules of Practice)

THE LISTING OF SEALED SOURCE DOCUMENTS IS ACCESSIBLE TO THE PUBLIC
BUT THE SOURCE DOCUMENTS SHALL NOT BE ACCESSIBLE TO THE PUBLIC
EXCEPT AS AUTHORIZED BY COURT RULE OR ORDER.

☒ Other: Respondent's Medical Records of Philip Barr, M.D.
Periods: 9/30/2019

Declaration of Richard Semelka, M.D.
9/30/2019

Richard Charles Semelka, MD, FRCPC Curriculum Vitae

Information supplied by: Respondent

HENSON & EFRON, P.A.

Dated: June 6, 2021

By: Kathryn A. Graves
Kathryn A. Graves, #016415X
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Telephone: (612) 252-2840
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Attorneys for Respondent

1 STATE OF MINNESOTA: DISTRICT COURT:
2 SECOND JUDICIAL DISTRICT: RAMSEY COUNTY:

3
4 File No. 62-FA-17-2558

5 TRANSCRIPT OF COURT TRIAL - DAY 1
6

7 In Re The Marriage Of Oliver Wilfred Cass,
8

9 PETITIONER,

10 and
11

12 YeYing Cen,
13

14 RESPONDENT.
15 -----
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17

18 The following coming on for hearing
19 before the HONORABLE James Street, Judge for Ramsey County,
20 Minnesota, on the 23rd day of July, 2019, at the Courthouse in
21 the City of St. Paul, County of Ramsey, State of Minnesota,
22 commencing at 9:00 a.m.
23
24
25

1 APPEARANCES:

2

3

4

5 ON BEHALF OF THE PETITIONER:

6

7 Jane Binder, and Jami Milow
120 S. Sixth St., Suite 1450
8 Minneapolis, MN 55402

9

10

ON BEHALF OF THE RESPONDENT:

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Ben Martin Henschel and Michelle Travers
13 100 Washington Ave. S, Suite 1500
Minneapolis, MN 55401

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1 P R O C E E D I N G S

2 * * *

3 THE COURT: Good morning. Parties remain standing
4 and raise right hands.

5 Witness sworn,

6 OLIVER W. CASS AND YEYING CEN

7 Duly sworn, testified as follows:

8 THE COURT: You may be seated. This Is In The
9 Marriage of Oliver Cass YeYing Cen, Court file
10 62-FA-17-2558. You are Mr. Cass?

11 MR. CASS: Yes.

12 THE COURT: And you are Ms. Cen?

13 MS. CEN: Yes.

14 THE COURT: All right. Counsel can we have note
15 your appearances for the record starting with Ms.
16 Binder.

17 MS. BINDER: Jane Binder representing the
18 petitioner Oliver Cass.

19 THE COURT: All right.

20 MS. MILOW: Jami Milow, paralegal for Jane Binder.

21 THE COURT: All right. Can you spell Milow,
22 please.

23 MS. MILOW: M-I-L-O-W.

24 THE COURT: All right, welcome. Mr. Henschel.

25 MR. HENSCHER: Thanks, Your Honor, Ben Henschel,

1 H-E-N-S-C-H-E-L, and Michelle Travers, T-R-A-V-E-R-S,
2 on behalf of petitioner Yeying Cen who is present --
3 I'm sorry, respondent Yeying Cen.

4 THE COURT: All right. And, Ms. Brenner, can you
5 note your appearance, please.

6 MS. BRENNER: Good morning, Your Honor, Victoria
7 Brenner appointed as a Rule 17 Guardian Ad Litem for
8 Ms. -- For the Court to assist Ms. Cen.

9 THE COURT: All right. Do you want to be at the
10 table?

11 MS. BRENNER: Yes.

12 THE COURT: You're welcome to set up, sit up at
13 the table. All right. Well, my name is James Street,
14 I'm your judicial officer, we've met before, welcome
15 back to this courtroom. We're here today for what is
16 the first of three days of trial. There are some
17 motions in limine that have been filed and we're going
18 to address those first. I attempted to set up a phone
19 conference but my schedule's been very busy and
20 everyone else's has been busy, so we weren't able to
21 do that. Are there any other preliminary matters we
22 need to address or do you want to wait until we here
23 arguments on the motions in limine?

24 MR. HENSCHER: Your Honor, Ms. Cen has just asked
25 that I inform the Court that she had M. R. I. with

1 contrast with Gadolinium, contrast over a week ago,
2 and she's having a reaction from that. And she can be
3 here, she intends to be here and participate she's
4 affirmed, but she may, she has told me that she has
5 become dizzy at times and, you know, that she might
6 faint at times, and so she just wants to be able to
7 inform the Court of that.

8 THE COURT: All right. Well, I appreciate that,
9 Ms. Cen. Is it Ms. Cen, right?

10 MS. CEN: C-E-N, is fine.

11 THE COURT: If you need to take a break you should
12 let your attorney know or let Ms. Brenner know and
13 they'll let the Court know. All right?

14 MS. CEN: I want to point out just add Gadolinium
15 based is banned in Europe, but it's not banned in this
16 country unfortunately.

17 THE COURT: Okay, thank you.

18 MS. CEN: And so I have repeated in my images, and
19 I just ought to know this information just --

20 THE COURT: Well, I'm glad you're here today.

21 MS. CEN: Thank you. I'm very happy to be here.

22 THE COURT: All right. Ms. Binder, anything? Any
23 other preliminary?

24 MS. BINDER: Your Honor, there are some
25 stipulations that are relatively minor, but I think it