

No. 23-808

IN THE
SUPREME COURT OF THE UNITED STATES

Eurho Joe,
Petitioner,

vs.

Supreme Court of California,
Respondent.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Ninth Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to this Court's Rule 44.2, Petitioner Eurho Joe respectfully petitions for rehearing of this Court's March 18, 2024 Order denying his petition for a writ of certiorari.

The Rule 44.2 authorizes a petition for rehearing based on "*other substantial grounds not previously presented.*"

REASONS FOR GRANTING REHEARING

A. The Ninth Circuit's Decision was Wrong.

Denying Eurho Joe's appeal, the Ninth Circuit quoted its own case, *Speiser, Krause & Madole P.C. v. Ortiz*, 271 F.3d 884, 886 (9th Cir. 2001) in its Memorandum (App. 2:25-26).

However, the Circuit incorrectly read it. In the case, the Circuit affirmed the default judgement for lack of good cause of the default when the defendant responded late.

The Supreme Court of California defaulted. It did not properly respond and filed a motion late.

The Supreme Court of California never defended the default nor provide any cause. It has never defended the cause of action, either.

Therefore, Final Default Judgement should be granted.

B. California State Court did Not Follow Law but Deprived of Liberty and Rights.

1) State court didn't follow law, but shared child custody to offender with no basis.

On November 13, 2012 hearing, the court addressed the California Family Code Section 3044 (App 48:2-5) and found Jungeun Lee's purposeful assault and incredibility,(App. 68:11-17) and accordingly awarded Eurho Joe with the sole physical and legal custody.(App. 106-115)

By the way, the state court deprived Eurho Joe of everything and awarded it to Jungeun Lee afterwards, with no basis. To do that, the court firstly had to lift off the Section 3044, but it didn't.

On November 20, 2012, an emergency screening was held. After the screening, sharing 47:53 ratio of the child custody between Eurho Joe and Jungeun Lee, respectively, was recommended by the screener, without any factual and legal basis. (App. 106-115) Mitchelle Ehrlich, Eurho Joe's then-attorney, recommended to sign on it. Eurho Joe refused because he didn't understand why the child custody was given to Jungeun Lee. Mitchelle Ehrlich said that California is a No-Fault State, appended that the custody order is temporary and would change later, and insisted Eurho Joe to sign. Eurho Joe signed.

During the same day hearing, the court stated "*I'm finding that the presumption under 3044 has been rebutted; that is, it is in the best interest of the children that there be joint legal and joint physical custody.*"(App. 95:19-22) The emergency screening order was filed on November 20, 2012.(App. 106-115) New Restraining Order After Hearing(App. 100-115)

was granted only for Eurho Joe against Jungeun Lee and filed on November 30, 2012. The order states “*The presumption under Family Code Section 3044 is rebutted.*”(App. 103 No. 21)

The court's rebuttal decision was baseless. The Section 3044 states:

“(a) Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence within the previous five years ... an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child ... This presumption may only be rebutted by a preponderance of the evidence”

“(b)(1) ... In determining the best interest of the child, the preference for frequent and continuing contact with both parents ... may not be used to rebut the presumption, in whole or in part.”

“(f)(2)... the court shall state its reasons in writing or on the record as to why paragraph (1) of subdivision (b) is satisfied”.

No preponderance of the evidence fulfilling the Section(a) was found. The court used what the Section(b)(1) suggests not to use. It didn't meet the Section(f)(2) while applying the Section (b)(1).

The state court didn't follow the Section 3044.

The state court didn't follow the California Family Code §3048. The section states “(a) ... every custody or visitation order shall contain all of the following: (1) The basis for the court's exercise of jurisdiction. ... (3) A clear description of the custody

and visitation rights of each party.”

The court didn't follow the Section 3048(a)(1).

The signed emergency screening order doesn't waive nor exempt from the Section 3044 nor 3048.

Why did Michelle Ehrlich falsely excuse and insist Eurho Joe to sign despite the Section 3044? California is never No Fault State under the section regarding domestic violence although Eurho Joe didn't know those days what 3044 means. Michelle Ehrlich knew it. The court addressed the Section 3044 during the hearing on November 13, 2012, (App. 48:2-4) when Michelle Ehrlich attended.

2) State court completely deprived victim of liberty and right with no basis.

The other emergency screening was held on September 8, 2017. The screener was recommending to practically gave the sole child physical custody to Jungeun Lee.

The emergency screening order, filed on the same date, states “*temporary protective order*” and recommends joint physical and legal custody with weekly 4 hour “*care*” given to Eurho Joe for the “*Timeshare*”.(App. 129) That protective order even doesn't specify who to be protected from whom for what reason based on what factual or legal basis.

Alexis Revelo, then attorney of Eurho Joe and successor of Michelle Ehrlich from the same law firm of Lonich and Patton, LLP, recommended Eurho Joe to sign. Eurho Joe refused, and Alexis Revelo

insisted saying that the visitation was given and that it was a temporary order and would change. Eurho Joe signed. The screening recommendation was signed by the court and filed as the emergency screening order on September 8, 2017.(App. 128-133)

The court didn't follow the Section 3044.

The proceeding was staying in the Section 3044 circumstance: It was within the five-year range of the section(a) from the latest domestic violence incident on September 14, 2012; The rebuttal of the presumption was improperly decided in 2012. Therefore, the court had to find the rebuttal of the section's presumption before awarding the joint child custody to Jungeun Lee. But, it didn't.

The state court didn't follow the Section 3048, either, but ordered the child custody with the changed timeshare.

The "timeshare" falls under section 3048(a)(3), so the legal basis of the determination pursuing the section(a)(1) under the section(a) should have been contained in the order. However, no legal or factual basis appears anywhere in the emergency screening order, (App 128-134) Findings and Order After Hearing filed on September 7, 2017,(App. 125-127) from the hearing on August 16, 2017, and the reporter's transcript.(App. 116-124).

The signed screening recommendation doesn't contain waiving or exempting the Section 3044 and 3048.

The order was granted not following the state law.

Recalling Alexis Revelo's memorandum disclosing Jungeun Lee's control with the minor children over the emergency screening, questions rise: How and when Alexis Revelo got aware of it; Why she insisted Eurho Joe to sign the screening recommendation;

Alexis Revelo should have got aware through the screener of Jungeun Lee's control, which means the screener found it during the screening.

Then, why did the screener recommend to give Jungeun Lee the sole child physical custody even being aware of such a child abusive situation? Why did Alexis Revelo not dispute to the screener on such issue, but insisted Eurho Joe to sign on it?

The order was including a hearing schedule for November 15, 2017, (App. 133 item No. 18) which was postponed for December 15, 2017, but disappeared afterwards. No hearing was held until March 2018 when Jungeun Lee filed a motion requesting to modify the child and spousal support corresponding to the custody.

Eurho Joe could not trust the attorneys anymore. They even didn't hold a hearing to modify the baseless custody order for 6 months despite the child abusive situation. Although Eurho Joe was paying more than \$170,000 in total over 5 and a half years, the attorneys did nothing to protect Eurho Joe and the minor children, the victims. That's why Eurho Joe started representing himself although having no legal knowledge at all.

What did the screener and Alexis Revelo do?

3) State court didn't treat both parties equally.

On November 13, 2012, the court stated to grant the Restraining Order for the minor children to be protected from Jungeun Lee. At the same time, the court granted 3 time visitation order between Jungeun Lee and the children before the emergency screening despite being the restrained person without child custody.(App. 84)

On August 16, 2017, the court ordered Eurho Joe not to visit the children without any temporary visitation schedule before the emergency screening although he was the child custody holder.

4) State trial court disregarded evidence and neglected child abuse.

Jungeun Lee testified on August 27, 2019, “*First of all they couldn't express themselves freely in front of their father, ... they cannot talk any serious stuff freely in front of father or in detail. Especially Hannah, she even mention ... she wants to die many times to me because of this issues.*”(App. 419:16-22) and “*Hannah has fear for her dad*”.(App. 420:9-10) Jungeun Lee repeatedly used the word, *fear*.

Here are fractions of texting messages between Hannah and Eurho Joe.(App. 170-175) They were submitted during the state trial and received as evidence. (App. 446 No. 1)

Hannah asked to ride along with her friend to movie theater in January 2019,(App. 174:4-13) and shared news of her another friend's admission to UC

Berkeley in April 2019, 4 months prior to the trial. (App. 175:6-19)

Hannah was freely talking even regarding her detention at school for an issue, (App. 170:2-173:32) which Jungeun Lee wasn't aware of. (App. 433:1-434:12) It seems like Hannah was afraid of letting Jungeun Lee know it.

Who fears whom?

Eurho Joe stated how hard Hannah found her dad out of so huge-populated crowd in her promotion ceremony (App 347:31-348:18) and showed the photos from the ceremony. (App 139-140) Eurho Joe described his relationship with daughters as "*Just daughter and dad*" when testified. (App 394:19, 396:19)

The court's ruling states "*The circumstance that Petitioner does not recognize the existence of a problem, is significant impediment to normalizing his relationship with his children.*" (App. 181:11-15)

The court ordered to dispose all the exhibits afterwards during the appeal pending. They were not found despite Eurho Joe's designation for the appeal.

It is required to recall Jungeun Lee's attempt of alienation and control over minor children back from Alexis Revelo's memorandum in 2017 and Heather Allan's disclosure in 2018 followed by Gabriel Cho's admitting.

Right before Hannah's testimony during the trial on August 13, 2019, Eurho Joe stated that some manipulation was going on and Gabriel Cho was communicating Hannah. (App. 200:28-201:8).

On August 13, 2019, Hannah Joe testified "*when I*

have to see him I'm always, like, I never look forward to it and, like, I dread it."(App 217:6-8) The court asked Hannah "*Did your mom at all suggest what you should tell me?*" Hannah denied.(App. 223:1-3) The court didn't asked if Gabriel Cho did similar thing, although Eurho Joe notified shortly prior.

During the trial on August 27, 2019, Eurho Joe asked Jungeun Lee "*How did you introduce Mr. Cho to Hannah?*" The court stated "*well she can answer it appropriately.*"(435:9-10) Jungeun Lee answered that she didn't introduce. When Eurho Joe requested Jungeun Lee to explain how Hannah could have got Gabriel Cho's e-mail address, Gabriel Cho repeatedly objected, and Jungeun Lee didn't answer. The court didn't demand to answer.(434:26-435:29)

The court decided to stay the same timeshare as the existing, ruling "*The most important issue during this trial is the best interests of the children*"(App. 183:11-12)

The Section 3044 states "*an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child*".

The presumption has never been properly rebutted. Considering the incidents over the minor children reported in 2017 and 2018 and Jungeun Lee's party's interference over the trial, the case should have been staying in the Section 3044 circumstance until now due to child abuse.

During the trial on August 27, 2019, Gabriel Cho repeatedly pointed that Eurho Joe signed on the screening recommendations on November 20, 2012, and September 8, 2017, presenting those 2 orders.

(App. 355-360) Nothing was found waiving or exempting the Section 3044 or 3048.

While more than 11 years has been passing by, no record has been found supporting or justifying the state court's decision regarding the child custody so far.

Why didn't the court do anything to protect the victims despite the repeated abuse report from Alexis Revelo, Heather Allan, and Eurho Joe?

C.Right to Litigation was Fundamentally Blocked.

The appeal process was an un-winnable litigation. The trial court clerk pushed the case out of the statute of limitations of the supreme court, in addition to removing evidences and omitting Eurho Joe's trial brief.

Could the appeal possibly be just and fair in such condition?

A state court clerk sent the Notice of Estimated Cost on June 30, 2021, (App. 462-463)which wasn't complying the California Rules of Court Rule 8.122(c) (1)(A). According to the rule, the notice date was set for January 11, 2020, since Eurho Joe filed the designation of record on December 2, 2019.

The notice was delayed by more than seventeen months.

Considering the notice is the timeline indicator of preparing court record, it is doubted if the state court

intentionally failed to comply the rule for the purpose of passing by the specifically selected date.

The Supreme Court of California alleged the two-year statute of limitations in the Answering Brief to the Ninth Circuit filed on December 19, 2022, on page 15 in line 10 through 14:

“to the extent Appellant’s claims are based upon purported conduct occurring prior to May 31, 2020, the claims are barred by the applicable two-year statute of limitations. ... (Two- year statute of limitations in California for Section 1983 actions.)”

It was referring to the filing date of Complaint of this case, May 31, 2022.

Counting the statute of limitations in a different orientation tells the impact of the procedural delay.

From the trial decision filed on September 25, 2019, the due date of the two-year statute of limitations is set for September 25, 2021. 87 days from the notice date are left for any further legal action.

The California Rules of Court allows 90 days in total for both parties’ preparing the briefs: 40 days for appellant’s opening brief after the transcript; 30 days for respondent’s brief; 20 days for reply brief. Fully spending these timelines makes the case past due of the two-year statute of limitations before being reviewed.

Practically, during the state appeal, both parties fully spent the allowed time preparing briefs. The Sixth District itself took 77 days and affirmed on

January 7, 2022, which was past due the statute of limitations.

It appears such extraordinarily long delay of the notice was designated to incapacitate Eurho Joe from taking any further action by pushing the state court case out of the statute of limitations. This paradoxically tells the state court knew the decision was unjust and incorrect.

Consequently, Eurho Joe lost the litigation at the higher courts.

D. Higher State Courts Abused Discretion.

1) Sixth District

On January 7, 2022, the Sixth District affirmed “*we conclude the trial court did not abuse its discretion*”. It composes the Sixth District’s abuse of discretion because there was no basis for such conclusion.

The Clerk’s Transcript and Certificates seems as if Eurho Joe designated something never submitted. On the other hand, the Reporter’s Transcript tells too much details to disregard the submission of the exhibits.(App. 407:31-410:21)

There were only those two transcripts conflicting each other before the Sixth District those days and no more additional record available because Eurho Joe was prevented from filing supplemental appendix since having designated the clerk's transcript and reporter's transcript, but not own appendix.

Firstly, the Sixth District was logically incorrect. It was a same situation as no-record due to conflicts between the transcripts. The Sixth District should have remanded to the trial court for re-trial or a new trial for insufficient record. It is a simple and cold logic from objective viewpoint, putting aside Eurho Joe's disappointed feeling regarding all the misconducts done in the trial court. The case should not have been concluded as no abuse of discretion even if it were an ambiguous situation to call.

The other is the fairness of proceeding appeal. An appellant appealed in opposition to the trial decision. The court record designated by the appellant was defected by the trial court. Could it be just and fair to proceed the appeal in such a condition?

2) Supreme Court of California

Despite the issues regarding the unfairness and logical incorrectness, the Supreme Court of California denied Eurho Joe's Petition for Review on April 13, 2022. Therefore, the denial was inaccurate.

It appears the Supreme Court of California denied due to the two-year statue of limitation. However, the Sixth District's decision was within the range of the statute of limitations since the appeal was concluded on January 7, 2022. Furthermore, the trial court dissipated 18 months.

The Supreme Court of California's denial was improper and inaccurate in either way.

CONCLUSION

For the foregoing reasons, and those stated in the petition for a writ of certiorari, the Court should grant rehearing, and then grant the petition and review the judgment below.

Dated: March 22, 2024

Respectfully submitted,

By Eurho Joe
Eurho Joe
Petitioner

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CERTIFICATE OF PETITIONER

Pursuant to Rule 44.2, I, Eurho Joe, Petitioner, hereby certify that the petition for rehearing is restricted to the grounds specified in Rule 44.2. I further certify that the petition for rehearing is presented in good faith and not for delay.

Dated: March 22, 2024

Respectfully submitted,

By Eurho Joe
Eurho Joe
Petitioner

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I hereby certify that the attached the Petition for Rehearing contains is set in Century Schoolbook font, double spaced, and contains 2,989 words, excluding the parts of the Brief that are exempted by Supreme Court Rule 33.1(d). In making this certification, I have relied on the word count of the computer program used to prepare the brief.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 22, 2024

Respectfully submitted,

By 
Eurho Joe
Petitioner

AFFIDAVIT OF SERVICE
SUPREME COURT OF THE UNITED STATES
No. 23-808

Eurho Joe, Petitioner,
vs.
Supreme Court of California, Respondent.

1. My name is Ik bae Kim. At the time of service, I was at least 18 years of age and not a party to this legal action.
2. My residence address is 165 Kiely Blvd, Santa Clara, CA 95051.
3. On 4/1/2024, I mailed three copies of same following documents in the above captioned matter, addressed to each individual respectively:

Petition for Rehearing

- a. [X] I mailed a copy of the document identified above in an envelope and deposited the sealed envelope with United States Postal Service, with the postage fully prepaid.
- b. The envelopes were addressed as follows:

Sharon M. Nagle
Bold, Polisner, Maddow, Nelson & Judson
2125 Oak Grove Road, Suite 210
Walnut Creek, California 94598

Attorney for Respondent

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 1st April, 2024

by JK Kim

Sworn to before me this
____ day of _____

Notary Public

A notary public or other officer completing
this certificate verifies only the identity of
the individual who signed the document to
which this certificate is attached, and not
the truthfulness, accuracy, or validity of
that document.

State of California
County of SANTA CLARA)

Subscribed and sworn to (or affirmed) before me
on this 1st day of April, 2024 by
JK BAE KIM

✓ proved to be on the basis of satisfactory evidence
to be the person(s) who appeared before me.

