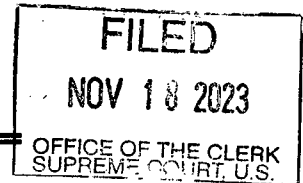


ORIGINAL

23-856
No. _____



In The
Supreme Court of the United States

URVE MAGGITT
Petitioner,

v.

Victor J. Maggitti
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI

URVE MAGGITT, *Pro Se*
58 E Swedesford Road, Apt. 327
Malvern, PA 19355
Telephone: (917)340-0561
E-mail: urve.maggitti@gmail.com

¹ Victor J. Maggitti is not an interested party [APPENDIX A 25].

QUESTIONS PRESENTED

“If he has a right, and that right has been violated, do the laws of this country afford him a remedy? The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.” *Marbury v. Madison*, 5 U.S. 137, 162–63, 2 L. Ed. 60 (1803)

Under what circumstances, is it acceptable to lose the legal remedy by suit or action at law when the courts themselves have failed to perform their duty?

Where can those individuals get recourse for violation of their rights when the state’s highest court is party to the failure during the “administrative” process of the case, and despite having the opportunity to rectify they chose not to. Is there a remedy for that?

Petitioner comes before this Court as the remedy of last resort because the lower courts’ have violated not only meaningful access to court for vindication of injury in one case but the collateral damage Petitioner was attempting to prevent is now basically a *fait accompli* considering the slim to none chance of having this court choose this case for review.

“Due process does not, of course, require that the defendant in every civil case actually have a hearing on the merits.....What the Constitution does require is ‘an opportunity * * * granted at a meaningful time and in a meaningful manner”

Boddie v. Connecticut, 401 U.S. 371, 378, 91 S. Ct. 780, 786, 28 L. Ed. 2d 113 (1971)

PARTIES TO THE PROCEEDINGS

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner was a Respondent-Appellant in the Superior Court of Pennsylvania, Eastern District and Appellant in the Supreme Court of Pennsylvania, Middle District.

There is no adverse party in the meaning of court rule in the appellate proceedings.
[APPENDIX A 25]

RELATED PROCEEDINGS

Superior Court of Pennsylvania, Middle District
Victor Maggitti v. Urve Maggitti No. 2299 EDA
2022. (January 27, 2023) (order dismissing
appeal)

Supreme Court of Pennsylvania, Middle District
Victor Maggitti v. Urve Maggitti No. 116 MAL
2023 (August 22, 2023) (order dismissing
petition for allowance of appeal)

The proceeding collaterally related to this case:

Urve Maggitti v. Hillary J. Moonay, David A. Nasatir, Mathieu J. Shapiro, Thomas A. Leonard III, Nicholas Poduslenko, Civil Tort Action, No. 2022-01774-TT, Court of Common Pleas, Chester County, Pennsylvania (May 10, 2022 – active)

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DECISIONS BELOW

The Superior Court of Pennsylvania No. 2299 EDA 2022 dismissed the appeal for failure to file a brief. Supreme Court of Pennsylvania No. 116 MAL 2023 dismissed petition for allowance of appeal. This case has not been adjudicated on the merits in the appellate courts.

JURISDICTION

The Supreme Court of Pennsylvania issued its order denying review on August 22, 2023. This Court has jurisdiction under 28 U.S.C. § 1257(a).

STATUTORY PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment commands that no State shall “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, § 1.

STATEMENT OF THE CASE

This case centers on the right of the Petitioner to take an appeal from trial court order based upon correct record.

Petitioner was a party to a divorce action¹ and simultaneously was and still is a plaintiff in a separate civil tort action. The evidence obtained from the divorce action was and is currently being used as evidence in the civil tort action.

Petitioner hired Certified Court Reporter for the Evidentiary Hearing in the divorce action to memorialize the proceeding for the record. On the day of the hearing judge denied Petitioner the right to use the privately hired court reporter.

Petitioner ordered the official court transcript which contains obvious errors, two of which are substantial, made by the court reporter, as evidenced from the recording of the hearing.

The judge presiding over the case has denied Petitioner's multiple motions to amend the transcript without providing any reason for the denial. The same judge was also presiding over Petitioner's tort action, where the transcript is being used by defendants in their defense.

Petitioner's inability to establish the elements of causes of action due to the spoliation of evidence will be direct causation for her eventual impending loss in her tort action.

¹ Petitioner and ex-husband Victor J. Maggitti Jr. are amicably divorced. Victor J. Maggitti Jr. was never an interested party to Petitioner's appeal, as it does not involve him, nor is he a party to the tort action. [APPENDIX A 25]

Appeal to Superior Court of Pennsylvania

“It is your responsibility to review the record inventory list and make sure that the certified record forwarded to this court contains those documents necessary to the issues raised on appeal; failure to do so may result in waiver. Pa. R.A.P. 1926, 1931 (d); *Bennyhoff v. Pappert*, 790 A.2d 313 (Pa.Super.2001); *Commonwealth v. Wint*, 730 A.2d 965 (Pa.Super.1999).”

Parallel Tort Action, Two Jurisdictions

The Superior Court of Pennsylvania has the exclusive appellate jurisdiction² over the appeal from final order, but no jurisdiction over cases in the inferior court where no final Order has been entered by the court.

The Supreme Court of Pennsylvania “In addition, the schedule to Article V of the Constitution continues post-ratification the jurisdiction vested in the Supreme Court in 1968—such as the jurisdiction of the King's Bench. Pa. Const. Sched. art.V, § 1;” *In re Bruno*, 627 Pa. 505, 556, 101 A.3d 635, 665 (2014)

“Further, we may issue writs of mandamus and/or prohibition where a petitioner has a clear legal right, the responding public official has a corresponding duty, and no other adequate and appropriate remedy at law exists. *See Delaware River Port Auth. v.*

² Pa. Title 42, § 742. Appeals from courts of common pleas.

Thornburgh, 508 Pa. 11, 493 A.2d 1351, 1355 (1985)

On November 23, 2023, Petitioner filed petition for writ of mandamus or in the alternative petition for injunction with the Supreme Court of Pennsylvania, No. 121 MM 2022.³

December 20, 2023, an emergency petition to stay the appeal was filed in the Superior Court of Pennsylvania pending the decision from the Supreme Court of Pennsylvania on mandamus No. 121 MM 2022.

“However, interference by injunction may be justified by circumstances such as a multiplicity of suits, irreparable injury, or the facts that the proceedings sought to be annulled or corrected are valid on their face and that the alleged invalidity concerns matters to be established by extrinsic evidence.” *Ewing v. City of St. Louis*, 72 U.S. 413, 18 L. Ed. 657, 1866 WL 9361 (1866).

December 23, 2022, the **Superior Court** of Pennsylvania No. 2299 EDA 2022 issued an order *per curiam* denying the emergency petition to stay appeal. [Appendix A 13]

December 27, 2022, Petitioner filed emergency petition with **Superior Court** of Pennsylvania No. 2299 EDA 2022 and moved the court to order

³ May 15, 2023, Supreme Court of Pennsylvania ORDER denying writ of mandamus No. 121 MM 2022 [Appendix A 19]

the trial court to correct the record, extend time to file brief, reconsider Order denying stay.⁴

December 28, 2022, Petitioner filed emergency stay request in the **Suprem Court** of Pennsylvania, No. 135 MM 2022.⁵

December 30, 2022, **Superior Court** of Pennsylvania granted extension to file the brief from September 28, 2023, to January 6, 2023. [Appendix A 15]

January 6, 2023, Petitioner filed emergency for reconsideration in the **Superior Court** of Pennsylvania.

Appeal to Supreme Court of Pennsylvania

On February 22, 2023, Plaintiff filed in the Supreme Court of Pennsylvania Petition For Allowance Of Appeal, No. 116 MAL 2023.

On August 22, 2023, the Supreme Court of Pennsylvania denied the petition. [Appendix A 23]

⁴December 28, 2022, Superior Court of Pennsylvania Order

⁵February 6, 2023, Supreme Court of Pennsylvania Order [Appendix A 19]

Federal Question

Petitioner raised the federal question of due process, equal protection under the law starting from the trial court when her right to have a witness, the privately hired court reporter for the court hearing, was denied without a valid reason. In the Superior Court of Pennsylvania, the appeal raised federal constitutional issues from the start prior to Brief stage of the appeal process:

“Appellant will raise issues of due process, and equal protection under the law, the 14th Amendment violation of her substantive rights to have a witness, and to have any method that she chooses to memorialize testimony at the March 11, 2022, court Hearing for making sure that the record reflects the actual testimony provided at the hearing.” “Refusal to apply due process of law and equal protection of law” “to deny Appellant Urve Maggitti the right to amend the court transcript which is a violation of Appellant’s right, to have a complete and verbatim notes of testimony and transcript of the March 11th 2022, Court Hearing and is a denial of Appellants right to have a true and accurate reflection of the record.”⁶

The above listed petitions between the two appellate courts all raise constitutional violations and are preserved for the record.

⁶ *Victor Maggitti v. Urve Maggitti*, No. 2299 EDA 2022.
“Appellant’s Response to Show Cause why the appeal No. 2299 EDA 2022 must not be quashed/dismissed”

REASONS FOR GRANTING THE WRIT

Petitioner persisted in her attempts to stay the appeal process and to have the trial court amend the record for taking of the appeal. Appellant did not waive her substantial right to file her brief based on a correct record.

"[D]ue process is flexible," the Supreme Court tells us, "and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

The fundamental tool for appellate review is the official record

"The fundamental tool for appellate review is the official record of what occurred at trial. Only the facts that appear in this record may be considered by a court. As recently as *McCaffrey v. Pittsburgh Athletic Association*, 448 Pa. 151, 293 A.2d 51 (1972), this Court held that "*it is black letter law that an appellate court cannot consider anything which is not a part of the record in the case.*" *Id.* at 162, 293 A.2d at 57. Consistent with our responsibility to view only the record facts, we cannot accept the assertions in the trial court's written opinion that any reasonable doubt instruction was given other than that which appears in the record." *Commonwealth v. Young*, 456 Pa. 102, 114-16 (Pa. 1974)

Pa. R.A.P. Rule 1926. Correction or Modification of the Record.

(a) If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court after notice to the parties and opportunity for objection, and the record made to conform to the truth.

(b) If anything, material to a party is omitted from the record by error, breakdown in processes of the court, or accident or is misstated therein, the or omission misstatement the following means:

(1) by the trial court or the appellate court upon application or on its own initiative at any time; in the event of correction or modification by the trial court, that court shall direct that a supplemental record be certified and transmitted if necessary; or

(2) by the parties by stipulation filed in the trial court, in which case, if the trial court clerk has already certified the record, the parties shall file in the appellate court a copy of any stipulation filed pursuant to this rule, and the trial court clerk shall certify and transmit as a supplemental record the materials described in the stipulation.

(b) *Duty of trial Court.* — After a notice of appeal has been filed, the judge who entered the order appealed from shall comply with Pa.R.A.P. 1925, shall cause the official court reporter to comply with Pa.R.A.P. 1922 or shall otherwise settle a statement of the evidence or proceedings as prescribed by this chapter, and shall take any other action necessary to enable the clerk to

assemble and transmit the record as prescribed by this rule.

(f) *Inconsistency between list of record documents and documents actually transmitted.* — If the clerk of the trial court fails to transmit to the appellate court all of the documents identified in the list of record documents, such failure shall be deemed a breakdown in processes of the court. Any omission shall be corrected promptly pursuant to Pa.R.A.P. 1926 and shall not be the

“Prejudice means that the alleged error worked to the Petitioner's actual and substantial disadvantage.” *United States v. Frady*, 456 U.S. 152, 170, 102 S.Ct. 1584, 71 L.Ed.2d 816 (1982)

“Supreme Court granted allocatur and remanded the case to Superior Court to determine, by further remand to trial court if necessary, whether absence of trial transcript was attributable to appellant (in which case Superior Court's finding of waiver of **issue** would be reinstated) or attributable to court personnel (in which case Superior Court was directed to resolve on the merits **issues** previously deemed **waived** because of the absence of the transcript)”

Com. v. Barge, 560 Pa. 179, 743 A.2d 429 (1999)

“where Superior Court had refused to hear **issue** on grounds of waiver for **failure** to transcribe trial testimony, Supreme Court grante allocatur, remanded case to

Superior Court to determine whether absence of trial transcripts was attributable to appellant (in which case the Superior Court's finding of waiver would be reinstated) or attributable to court personnel (in which case the Supreme Court directed Superior Court to resolve **issues** previously deemed **waived** on the merits)"

United Nat. Ins. Co. v. J.H.

France Refractories Co., 558 Pa.

409, 737 A.2d 738

Petitioner has the right not to be deprived of her constitutionally protected right to access the court, to due process and equal protection under the law

'It cannot be presumed that any clause in the constitution is intended to be without effect; and, therefore, such a construction is inadmissible, unless the words require it."

Marbury v. Madison, 5 U.S. 137, 174 (1803)

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted.

URVE MAGGITTI, *Pro Se*
58 E Swedesford Road, Apt. 327
Malvern, PA 19355
Telephone: (917)340-0561
E-mail: urve.maggitti@gmail.com

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