ORIGINAL

No. 24-7187

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ELIZABETH ANNE FITZGIBBON – PETITIONER

vs.

ADAM PAUL FITZGIBBON – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

APPELLATE COURT OF WISCONSIN

PETITION FOR WRIT OF CERTIORARI

ELIZABETH ANNE FITZGIBBON
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QUESTIONS PRESENTED

1. Did the trial court violate Elizabeth Fitzgibbon's due process and equal protection rights under the Fourteenth Amendment by:

   - Losing the parties' final and intended Marital Settlement Agreement (MSA) for their uncontested divorce;
   - Incorrectly granting a divorce based on a previously nullified agreement;
   - Fabricating a new and inequitable MSA based on false testimony to replace the document lost by the court;
   - Falsely attributing approval of the fabricated MSA to a long-retired Family Court Commissioner (FCC) who had never reviewed it;
   - Backdating a new divorce judgment without consent or proper trial;

   ...thereby depriving Elizabeth of her constitutional right to a lawful and voluntary dissolution of marriage?

2. When a state court disregards its own binding contractual obligations by failing to follow its own civil and criminal statutes—including those prohibiting fraud and forgery—does such conduct violate the Contract Clause of Article I, Section 10 and thereby warrant federal review where the state has failed to provide relief?

3. When a state court acts simultaneously as both adjudicator and interested party in a dispute—such as through financial or institutional entanglements—does this structural conflict of interest violate the Due Process Clause of the Fourteenth Amendment and warrant federal review where the state has failed to provide relief?

LIST OF PARTIES

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

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows: N/A

RELATED CASES

Elizabeth Fitzgibbon is aware of no directly related proceedings arising from the same trial court.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Elizabeth Fitzgibbon respectfully requests that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

Wisconsin's Supreme Court's Order denying review is reproduced at Appendix A ("App." A).

Wisconsin's District II Appellate Court's unpublished decision affirming the Circuit Court's decision is reproduced at App. B along with the Order denying the Motion for Reconsideration at App. C.

Wisconsin's Winnebago County Circuit Court's Order is reproduced at App. D.

JURISDICTION

The Wisconsin State Supreme Court denied review and entered judgment on December 10, 2024. The Wisconsin Appellate Court District II last reviewed the case on its merits and entered final judgment on June 19, 2024 in response to a Motion for Reconsideration.

Elizabeth Fitzgibbon timely filed a writ of certiorari extension request (#24A756) on January 31, 2025, which was granted on February 4, 2025. Elizabeth timely filed this petition on May 9, 2025. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment Due Process Clause: "No State shall... deprive any person of life, liberty, or property, without due process of law…"

Fourteenth Amendment Equal Protection Clause: "No State shall... deny to any person within its jurisdiction the equal protection of the laws."

Article I, § 10, Clause 1: "No State shall... pass any... Law impairing the Obligation of Contracts."

STATEMENT OF THE CASE

I. Introduction

What began as a straightforward stipulated, uncontested divorce proceeding on February 7, 2022 has spiraled into a protracted legal struggle, driven by the court's loss of critical documents and inexplicable deviations from state statutes, case law, and standard civil procedure. Central to the case is the court's loss of the parties' final, mutually agreed-upon Marital Settlement Agreement (MSA) that was intended to govern their stipulated divorce. Unbeknownst to anyone at the time, the court mistakenly granted a divorce based on a previous (nullified) agreement. Once the problem had been identified, a new divorce hearing was scheduled and the parties were directed to create and approve another MSA. Months later, after several new divorce hearing reschedules and the Family Court Commissioner's (FCC) retirement, the court chose instead to fabricate its own MSA, claiming that the court had reconstructed the MSA it had lost. The new MSA has never been reviewed and approved by the court, nor approved by either of the litigants (much less both), as state statutes and case law require. The court then repurposed the already-retired FCC's approval of the nullified MSA to backdate the divorce to the original hearing date. This appears to have removed the hole in the case record. However, both divorcing parties agreed through case record filings that the court never reconstructed the MSA. As such, the court-created MSA is inaccurate, incomplete, and has zero of the three approvals required by statute, yet the court insists that it is valid because it was "ordered". What should have been a simple divorce has instead become a legal quagmire, undermining the rights of all parties, including the State of Wisconsin.

While the specific facts of this case are extraordinary, arising from a series of rare and nearly irreproducible events, the legal issues it presents are far from unique and are of significant national importance. At the core of this case lies the critical question of whether federal intervention is necessary in domestic relations cases when constitutional violations occur and state-level remedies prove illusory.

II. The Court's Loss of the Marital Settlement Agreement (MSA) and the Improper February 7, 2022 Divorce

On September 8, 2021, in Winnebago County, Wisconsin, Petitioner Elizabeth Anne Fitzgibbon filed a Petition for Divorce with Minor Children from Respondent Adam Paul Fitzgibbon, pursuant to Wis. Stat. § 767.34.

On January 7, 2022, she submitted to the court an original and three copies of the parties' Original MSA, which was reviewed and approved by Family Court Commissioner (FCC) John Bermingham (App. E) for a default divorce (uncontested; stipulated).

Meanwhile, Adam and Elizabeth agreed to jointly create a new MSA to replace their original version. To assist their negotiations, Elizabeth's limited-scope attorney provided the parties a partly-updated, draft Amended MSA. Around 4:30AM on January 28, 2022, Adam and Elizabeth completed their final MSA negotiations by making hand-written

edits directly onto a printed copy of the Amended MSA. After both signed the updated document—referred to as the Hand-Edited Amended MSA (HE Amended MSA)—Elizabeth submitted it the same day, along with the required copies, to the court. Neither party retained a copy of the HE Amended MSA, as they relied on the court to properly preserve the filing, given the Court's duty to retain legal documents. Because Elizabeth's attorney did not participate in the January 28, 2022 negotiations (having withdrawn from case on December 6, 2021, App. AF), he never saw, nor did he ever possess a copy of the HE Amended MSA.

On February 7, 2022, Adam and Elizabeth, appeared—both unrepresented—before FCC Bermingham for their stipulated, uncontested divorce hearing. They believed the hearing would finalize their divorce under the terms of the HE Amended MSA that Elizabeth had submitted to the court on January 28, 2022. No copy of the agreement was provided to them during the proceeding and they were informed they would receive copies by mail.

Soon after the February 7, 2022 divorce hearing, disagreements between Adam and Elizabeth emerged, but with no copy of the MSA yet available, neither party could verify the terms they believed had been finalized. For example, Elizabeth believed that they were to co-create a Parenting Plan and placement schedule for their son (A.J.F.), while Adam insisted on continuing their temporary arrangements that had served to bridge the period between their October 2021 physical separation until their divorce hearing.

On March 26, 2022, Adam informed Elizabeth that he had received notice indicating that the court had lost the parties' HE Amended MSA. As such, the divorce judgment issued by the court was inaccurate, as it reflected their intended January 28, 2022 agreement, but their nullified Original MSA was instead attached (App. F). Upon learning this, Elizabeth immediately contacted the court to acquire the correct, HE Amended MSA.

In response to Elizabeth's inquiry, Winnebago County Clerk of Courts, Tara Berry, confirmed that the parties' HE Amended MSA had been properly submitted to the court on January 28, 2022 (App. AF), but Ms. Berry disclosed that the document had been destroyed prior to it being scanned into the court's system, rendering it permanently lost.

Following the court's admission of its error, and at the direction of the Clerk of Courts, Elizabeth promptly requested Adam's cooperation in reconstructing the parties' lost HE Amended MSA. Adam refused and instead attempted to enforce the existing divorce Judgment that contained the parties' Original MSA (App. F)—a document that had been nullified upon its replacement on January 28, 2022 by the parties HE Amended MSA. With Adam unwilling to cooperate, Elizabeth submitted a letter to the court on April 5, 2022 (App. G), requesting assistance in resolving the MSA issue, stating, "I am unwilling to accept the…original MSA…evidenced by the …amended version."

After receiving Elizabeth's letter, FCC Bermingham scheduled a telephone conference for April 26, 2022 to address the situation. During the call, Adam, his newly-retained attorney (Culp), and Elizabeth joined the FCC, who confirmed the Clerk of Court's prior statement—that the parties' HE Amended MSA had been properly submitted to the Winnebago County Clerk of Court on January 28, 2022, but that it was irretrievably lost.

Critically, the FCC admitted that he had never seen nor approved the parties' HE Amended MSA and that as a result, the divorce hearing on February 7, 2022 had mistakenly proceeded under the terms of the nullified Original MSA.

This admission by the FCC was legally consequential, for under Wis. Stat. § 767.315(1)(c), any MSA must be court-approved for its legal custody provisions and property dispositions (e.g. clear, equitable) prior to granting a divorce. Wis. Stat. § 757.69(1) empowers the FCC to approve MSAs and grant stipulated, uncontested divorces, but no dissolution of marriage can occur without the court's review and approval of the intended MSA. The court's review and approval never occurred.

The FCC also determined during the April 26, 2022 conference that the lost MSA was not only unrecoverable by the court, but irreproducible by the parties because both Adam and Elizabeth swore that they could not sufficiently recall the HE Amended MSA's provisions to accurately reconstruct its contents. Consequently, he ordered the parties to instead create a reconfigured MSA within ten days (App. J), and he rescheduled another default divorce hearing for May 23, 2022 (App. I), contingent upon his approval of our new MSA.

To provide some stability for the parties' young son amidst the legal uncertainty, it was agreed during the April 26, 2022 call that Adam and Elizabeth would temporarily use to the placement and custody terms found in the erroneous Original Judgment and MSA (App. F), that were supported by the recording of the February 7, 2022 hearing (App. P). This provided at least summary-level terms (grants of joint legal custody for their minor child, placed 60% with Elizabeth and 40% with Adam) that had been approved by all parties in all MSAs submitted to the court (e.g. Original, HE Amended). Adam and Elizabeth verbally agreed to this plan prior to the FCC implementing it (App. I).

Shortly after the conference, however, the plan unraveled as the parties were unable to agree on a new MSA. Instead, Adam sought to enforce the Original MSA and motioned the court to change the MSA's (App. F) custodial terms to ones he either preferred or simply thought he had agreed to in the February 7, 2022 hearing. In an effort to provide Adam more time to cooperate with Elizabeth in co-creating and submitting a new MSA to the court for the FCC's approval, Adam and his attorney sought to adjourn the May 23, 2022 divorce hearing, with which Elizabeth agreed (App. 34). The court rescheduled the new default divorce hearing from May 23, 2022 to July 25, 2022.

Elizabeth shared her draft of a new MSA, which Adam rejected for both financial and custodial reasons. Adam provided only draft terms for equal placement, but sought to maintain the inequitable financial terms of the Original MSA. After continuing to struggle to co-create a new MSA with Adam, Elizabeth and her attorney filed a motion (App. L-M) on July 12, 2022 to declare the February 7, 2022 divorce hearing void under Wis. Stat. § 806.04 and Wis. Stat. § 806.07, as clearly, the parties had material unresolved financial and custodial disputes. Worse, the veneer of their divorce and Adam's sole possession of their son and virtually all of their assets were unhelpful for driving negotiation (App. Q). The motion argued that the required three-party meeting of the minds had not occurred during the February hearing, since on April 26, 2022, FCC

Bermingham had confirmed never seeing, much less approving, the HE Amended MSA. This claim was further supported by the FCC's subsequent order for the parties to co-create a new MSA for review and approval prior to a later default divorce hearing, now scheduled for July 25, 2022.

On July 13, 2022, Elizabeth requested an emergency hearing to address Adam's withholding of their son that could not wait another two weeks for the next hearing. However, since FCC Bermingham, who had presided over the February 7, 2022 divorce hearing, had retired earlier that summer, FCC Lisa Krueger filled in and responded to the request, denying it (App. N). She expressed confusion as to why the parties were scheduled for a default divorce hearing on July 25, 2022, given that she could see that one had already taken place on February 7, 2022, so there appeared to be little transparency into the divorce hearing errors that had occurred and the plan to resolve them. She then rescheduled the July 25, 2022 default divorce hearing for September 9, 2022 before the newly appointed FCC, Michael Rust.

At the September 9, 2022 hearing, the parties' default divorce matter fell by the wayside as Elizabeth's Motion to Declare as Void was certified to the trial court for review (App. W). The motion was scheduled to be heard on November 16, 2022 before the newly appointed judge, Bryan Keberlein (App. O).

At the November 16, 2022 hearing to address Elizabeth's Motion to Declare as Void (App. L-M), the judge acknowledged the gravity of the case, describing it as "complex" and "significant." Both Adam and Elizabeth reiterated that they did not know the details of the HE Amended MSA that has been lost and destroyed by the court. In response, the judge stated, "Typically my thought process, as the Court, is to not get involved in the structure. And what I mean is forcing conversations or ideas because I don't know what the [MSA] issues are. I don't know... I can't get involved in negotiations... I think there's a lot of power in the parties coming up with their own agreement and something they want that they can carve out with a scalpel as opposed to the Court cutting things in half with a chainsaw." His position generally mirrored that of FCC Bermingham during the April 26, 2022 conference call, where the parties were instructed to co-create a new MSA beginning with Adam and Elizabeth exchanging MSA-related issues by November 30, 2022, and depositions to be heard in early December (App. T). A follow-up status conference was scheduled for December 20, 2022 to assess progress, and it was noted that if a resolution could not be reached, a contested divorce trial may be necessary.

However, the plan quickly faltered once again as Adam continued to obstruct MSA progress, once again pushing to revive and enforce the parties' nullified Original MSA from January 7, 2022. Depositions fell by the wayside upon Adam's attorney's withdrawal from the case. As a result, the parties had no material progress to report at the December 20, 2022 status conference.

Beginning the December 20, 2022 status conference, Elizabeth's new attorney (Vesely) correctly outlined the situation, stating, "The issue is that the parties had filed an amended MSA [HE Amended MSA] that was lost by the clerk of court's office, and that was the one...they were testifying to...at...the final hearing." He concluded, "That order

[February 7, 2022 divorce judgement]...does not include...agreement of the parties [HE Amended MSA]." This occurred because promptly after the February 7, 2022 hearing, Elizabeth submitted a proposed Findings of Fact, Conclusions of Law, and Judgment (App. F) citing the parties' January 28, 2022 HE Amended MSA, which no one yet knew had already been lost by the court.

Frustrated by the lack of resolution, the judge abruptly discarded both FCC Bermingham's approach and his own November 16, 2022 plan for properly resolving the divorce. Instead, he instructed Adam and Elizabeth to "write down what... the [HE Amended MSA] agreement was", ignoring their prior eight months of testimony and filings that disclaimed their ability to sufficiently and accurately recall the HE Amended MSA's terms, even before the judge himself on November 16, 2022.

Attorney Vesely reiterated that neither Elizabeth nor Adam recalled the hand-written edits to the Amended MSA (App. H) that formed the HE Amended MSA that the court lost. Even so, the judge signaled his intent to pursue a resolution that diverged from standard divorce processes. He adjourned the December hearing and rescheduled it for January 6, 2023, explicitly directing Adam and Elizabeth to recreate the final MSA that had been lost by the court and file materials by year's end that aided its reconstruction. Elizabeth did so (App. R, S, Y). Adam also did so with wildly differing claims.

The judge ignored the parties' repeated assertions that their efforts to recreate the lost MSA had proven impossible, and the judge disregarded FCC Bermingham's April 26, 2022 conclusion that the document was both irrecoverable and irreproducible, which resulted in his order for the parties to co-create a new, reconfigured MSA. The judge's new demand would require Adam and Elizabeth to contradict their prior testimonies in a futile attempt to "reconstruct" the lost document. The judge concluded the hearing by stating that he would then assess the parties' credibility based on their new sworn statements, making it clear that he would finalize the MSA. Elizabeth made clear that she would not deviate from her previous sworn statements, perjuring herself (App. R, S, Y).

III. The January 6, 2023 Creation of a New MSA

On January 6, 2023—just hours before the much-anticipated hearing—Adam, who for nearly a year had obstructed every attempt to resolve the court's original error, abruptly reversed course and sought negotiations. Adam informed Elizabeth's attorney that he was now open to negotiating a new MSA with the assistance of a mediator. Encouraged by what appeared to be an overdue shift toward resolution, Elizabeth's attorney promptly contacted the judge to request an adjournment of the hearing—anticipating that meaningful progress could now be made without further judicial intervention or escalation. The judge denied the request, insisting that the hearing would proceed as scheduled.

At the January 6, 2023 hearing, the judge acknowledged, "Here, we clearly have unique and extraordinary facts...I don't have a memorialization of what was agreed to...So to me, this is not a family issue right now; this is a contract issue. There was a contract that occurred. There was a meeting of the minds when the two drafted with handwritten notes

on an MSA and what they thought submitted it, and it should have been taken care of by the clerk of courts/family court commissioner, but it wasn't…I need to find out what was agreed to. So what I'm going to do today is I'm going to swear the two parties in…I've got a copy of the [Amended] MSA; you're going to sit up here in the witness stand and I'm going to have you draft or make what hand-written notes you think you had…I'm going to determine what our MSA is going forward." (App. X)

Despite clear and repeated testimony from both parties—and from the former FCC Bermingham himself—that the document the judge sought to reconstruct could never accurately be and that a reconfigured MSA needed to be created instead along with a new default divorce hearing following the court's review and approval of the new MSA, the judge pressed forward. He swore Adam in, handed him an unedited copy of the Amended MSA, directing him to recreate the HE Amended MSA that had been lost by the court—a document Adam had repeatedly stated he did not recall the changes of. By doing so, the court compelled testimony that, by its very nature, contained material falsehoods and was in direct contradiction with previously established facts of the case. Disregarding these prior statements and the legal consequences of fabricating a binding legal document under oath, Adam complied, edited the draft, unedited Amended MSA (App. H) as he saw fit, and returned it to the judge.

The judge then called Elizabeth forward and swore her in, handing her an unedited copy of the Amended MSA and directed her to recreate the HE Amended MSA that the court had lost. Despite the demand placed upon her by the court, Elizabeth refused to abandon her integrity or compromise the truth by fabricating testimony to "recreate" a document both she and Adam had long since acknowledged could not be reconstructed. In doing so, she remained aligned with the factual record and her consistent position—the same one Adam himself had previously asserted: that the final January 28, 2022 MSA lost by the court was irrecoverable and irreproducible. She said in response to her directive, "I've been consistent in the fact that I don't recall exactly what the handwritten edits were to said document."

Attorney Vesely stated in defense of Elizabeth, accurately reviewing the situation, "I understand what your concern is [Judge Keberlein]. However, I think both parties in the record of this case have stated they don't recall, including Mr. Fitzgibbon, and, you know…he [Adam] mentioned [it when] they both appeared with Court Commissioner Bermingham…in March – or in April. They both said at that point they didn't recall [the details of the HE Amended MSA], he ordered them to reconfigure it, and that's where they have been treading – you know, basically spinning the wheels since that time." Elizabeth's attorney added, "I think it's an impossible task to try to reconstruct what happened, what was in that handwritten version of the marital settlement agreement that got lost... And that's part of the record in this case from both parties. And you know, I don't know how we can, at this juncture, force terms on them when they both have said earlier they don't recall. And, you know, I do think that we are in the situation with…were the parties divorced?...They didn't really have a meeting of the minds."

The judge inquired, "Well, what's the proof that they didn't have a meeting of the minds. They both said they were in the same place…so what's the proof that they didn't have a meeting of the minds?"

Attorney Vesely responded, "I think the proof is in the record starting, you know, with the meeting with Commissioner Bermingham. One of the documents submitted is…Exhibit A. You know, it's an OurFamilyWizard message from Mr. Fitzgibbon to his wife. He states: 'I don't exactly remember what was in the lost MSA.' My client has said the same statement on, you know, several occasions on this record, and, you know, so the difficulty that my client and I have trying to reconstruct that handwritten, how do you reconstruct it and say with any degree of certainty these are the terms, but yet I didn't recall them earlier without perjuring yourself?"

The judge replied, "If a Court sentences someone to jail and there's a judgment of conviction that comes from it…the court sentenced someone to 83 days' jail. That, in fact, happened. Now, if the judgment of conviction [is lost and] has to be re-created through all sorts of different means, that's what has to happen. This question that I'm looking at is only what is the MSA. And if the parties don't agree, if they can't remember, I'm going to take the pieces that I have…as jumping off point. It's a contract issue. They agreed to something. I have a transcript that tells me they did [have an agreement]. Is it [the court-created MSA with Adam's false testimony] a fair, accurate representation of your agreement? Yes. How can they say it's not?"

Notably, Elizabeth's attorney answered, "Obviously the record from the final hearing on February 7th is the record. However, I think the subsequent record that has been developed in this case is that they both thought they were testifying, when they said that, to an agreement that wasn't in the record." The agreement that Adam and Elizabeth believed they were testifying to on February 7, 2022 was based on all considerations associated with the HE Amended MSA, not the Original, nullified MSA. During the February hearing, FCC Bermingham only addressed the few overlapping terms between the two documents, so neither Adam nor Elizabeth realized that the FCC was mistakenly proceeding under the incorrect MSA.

The judge responded, "Correct. Right. But it [an agreement] existed. It was somewhere. It just wasn't in our system…It was lost in the clerk of courts, it was lost in the family court commissioner… they went into court and they testified. They were talking about two MSAs, right?..."

Elizabeth's attorney confirmed, "Right."

The judge declared, "So we have an agreement. Now we have to figure out what that agreement was...Now, I've got sworn testimony that they had an agreement, we're going to create an agreement today, and then if there are motions that are going to come for it, so be it, but at least we have something to work off of…We're only doing the MSA that they agreed to from February 7, 2022…am I forcing terms on them? No. Because they've had since July to come up with any terms they wanted, and nobody's done anything." He went on to add, "What'd I'd like you [Elizabeth] to do is write it down because I'm going to take them both in the back and I'm going to look at them both to determine—to make

my credibility determinations…and then I'm going to create what is the MSA that I think they agreed to."

Elizabeth attempted to enter Exhibit G into the record, which would have disproven the judge's claim that his efforts to recreate the MSA resulted in an equal property division, as Exhibit G detailed Elizabeth's January 28, 2022 understanding of the marital assets and her estimates of their valuation. However, the judge repeatedly refused to admit Elizabeth's Exhibit G (App. Y.) into the record or materially consider the relevant details that at least needed to be somehow accounted for. Rightful to at least attempt to recreate the lost MSA, the judge was only the terms of the lost agreement and refused materials that might require his review and approval.

Despite the judge's earlier statement during the hearing that FCC Bermingham had ordered Adam and Elizabeth to recreate the lost MSA, a statement that Elizabeth's attorney had to correct, the judge ultimately acknowledged the true directive from April 26, 2022. Critically, he stated, "I would note that we are, boy, eight-plus months probably from when Commissioner Bermingham was originally alerted to the issue and ordered the parties to reconfigure [a new MSA] within ten days..."

The judge disregarded the fact that it was Adam's continued refusal to comply with the April 26 MSA co-creation order and that it was Elizabeth who sought the court's assistance with overcoming the obstruction and resolve the situation. Instead, the judge declared that the case was now a matter of credibility, stating that, "the court weighs credibility in trying to determine what the – again, because there was a contract…So the only question here before the court then is how to re-create the agreement that should have been memorialized on paperwork."

Because Elizabeth declined to participate in what she viewed as the judge's 'game of liar's poker' to recreate an irreproducible document, the judge proceeded to award Adam the hand-written edits he had fabricated on the Amended MSA while under oath moments earlier. This decision was based on the judge's assessment of the "...credibility of the witnesses," despite the contradictory nature of those edits and the lack of any supporting evidence.

In a final effort to challenge the judge's decisions, especially the credibility determinations that led to the acceptance of Adam's unsupported and inconsistent testimony regarding the hand-written edits of the Amended MSA, Attorney Vesely stated, "She's [Elizabeth's] being honest in every assertion she's made. I find it difficult – you know, as far as credibility, I think Mr. Fitzgibbon's credibility is also in question because now if he's recalling something that he previously said he didn't recall, I don't understand how that can occur either."

The judge responded, "I hold that against both of them, to be honest. It's which one I find more credible." That party was Adam, who had shifted his testimony, now recalling details that he had denied being able to accurately recall, as well as providing testimony that conflicted with his filings on record from only a few days prior. This contrasted with Elizabeth, who had remained consistent in her testimony and had actively sought the

court's help in addressing the issue caused by the loss of their HE Amended MSA and the improper divorce judgment entered on February 7, 2022.

Further defending Elizabeth's credibility, her attorney continued, "You know, and the other thing, your Honor, I just can't help but saying. You know, the transcript from February 7th, you know, is very poor in that at that time, there is no reference to any of the personal property. I mean, that's I think contrary to every final hearing I've ever had where there's no reference that, you are getting this amount from bank account, you're getting this piece of property at this value. And, you know, the confusion, you know, may start there." Attorney Vesely continued, now addressing Elizabeth's Motion to Declare as Void, "Are you denying then the motions that – what I call the Attorney Fozard motions [806.07 to declare as void the February 7, 2022 divorce hearing]?"

To confirm his refusal to void the February 7, 2022 stipulated divorce hearing, the judge simply replied, "Yes." However, he then went on to explain the methods he had used to justify granting himself the authority to create a contract without the parties' consent, effectively bypassing both the uncontested and contested divorce processes. He stated, "Well, granted as to (h), but then to my – as to (h), I'm granting it, but that was the purpose of the hearing today. (h) was – so I find that there is a need to clarify, but I'm not finding…it unenforceable, again, because I'm attempting, through contract law, to reconstruct what the parties agreed to. I think that given the very unique, exceptional, in that I've never heard of it happening before, MSA being lost by the family court commissioner/clerk of courts, that there had to be some type of extraordinary step taken. I anticipate there's more litigation coming out of this case, as there have been already hearings in front of the court commissioner…I still firmly believe and hold that there was an agreement, a meeting of the minds, a contractual agreement between the parties. So the only question is not if there's an agreement, but what was the memorialization of that agreement, and so that is what I accomplished today."

IV. Reuse of a Retired Court Official's Approval of a Nullified MSA to Backdate a Divorce Judgment

That so-called "extraordinary" step—even more incredible than encouraging false statements under-oath statements to fabricate an MSA lost by the court—came when the judge backdated the parties' divorce to February 7, 2022. In doing so, he omitted Adam's and Elizabeth's signatures from the MSA and falsely attributed the long-retired FCC Bermingham's approval of the nullified Original MSA to the fabricated version of the lost document. Furthermore:

1. Zero of the Three Necessary Approvals for a Divorce Occurred

- Adam and Elizabeth, the only individuals who had seen the HE Amended MSA, both agreed—though for different reasons—that the judge's MSA was not an accurate reconstruction of the lost document. Adam disclaimed the accuracy of the MSA (App. AB) even in his filings on record (App. AE).

- FCC Bermingham, the supposed third approver:

- Had no involvement in or knowledge of the January 6, 2023 hearing.
- Explicitly stated on April 26, 2022, that he had never seen the document the judge later claimed to have reconstructed.

- The judge, who had no involvement in the original February 7, 2022 hearing:
  - Was the only person to assert that his version of the MSA accurately represented the document that Adam and Elizabeth had intended to use for their February 7, 2022 divorce.
  - Used this unverified document to retroactively backdate the divorce—despite lacking authority or consent from any of the parties involved.

2. The MSA Was Never Reviewed for Equity

- FCC Bermingham was not involved in the document's "reconstruction" process and therefore could not have reviewed or approved it for equity—yet his name was falsely used to imply such approval on February 7, 2022.
- The judge, had he attempted a proper equity review, would have been required to include the exhibits he repeatedly refused to enter into the record on January 6, 2023—documents essential for evaluating the fairness and equitability of the MSA. If the divorce trial had been properly conducted through him on January 6, 2023, it would have needed to be approved on January 6, 2023 by him when he was involved, rather than on February 7, 2022, when he was not.

In the wake of the judge's January 6, 2023 decision (App. U, V), Elizabeth filed a timely Motion for Reconsideration (App. Y), presenting Adam's own post-hearing admission that acknowledged that the judge had, in fact, failed to recreate their final MSA, as Elizabeth had asserted. She motioned to stay the Order (App. AD). Her motions were denied, even after her attorney's clarifications (App. AA) of his statements on her behalf. Elizabeth appealed (App. AG) to the Wisconsin Appellate Court, which affirmed even after Elizabeth corrected (App. AH) the Appellate Court's facts, misunderstanding that a stipulated agreement requires the divorcing parties' consent absent a default, and the use of two-party case law inapplicable to divorces (and most legal domestic affairs).

Both courts' rulings have raised concerns about their interpretations of the case facts as well as their understanding and application of fundamental divorce requirements:

1. **The Trial Court's Position**: "I still don't even know what the judgment is because we don't have a written memorialization of it. We have a divorce, but not a memorialization of what essentially was a stipulated contract." The judge's statement conflates two distinct issues: an agreement and a flawed divorce proceeding.

   While the parties may have reached an agreement for their divorce on January 28, 2022, that agreement alone does not satisfy the legal requirements for a valid divorce, as it was never reviewed or approved by the presiding official. Furthermore, the agreement was lost and could not be lawfully reconstructed, rendering the January 28,

2022 agreement effectively moot, as FCC Bermingham acknowledged on April 26, 2022. Therefore, a divorce cannot be finalized without a newly stipulated agreement or, at the very least, a lawfully obtained contract through a contested divorce process.

Similarly, simply participating in a flawed divorce proceeding does not automatically result in a valid divorce, even if divorce was the intended outcome. In this case, the presiding official only had access to a document that no longer accurately reflected the parties' true agreement. For a divorce to be legally binding, it must be supported by a formal, memorialized agreement that has been properly reviewed and approved by the appropriate state official. Absent such approval, the divorce process remains incomplete and fails to meet statutory requirements.

2. **The Appellate Court's Opinion**: In affirming the lower court's decision, the appellate court appeared to misunderstand the unique and complex facts of the case. Among its justifications, the court referenced Wis. Stat. § 757.69(1)(p)1, emphasizing that the FCC had statutory authority to grant a divorce. While true in a general sense, its application was misplaced, as the court overlooked the fact that although Adam and Elizabeth appeared at the February 7, 2022 hearing and acknowledged the irretrievable breakdown of their marriage, the FCC had not reviewed their intended MSA, even if history had not already demonstrated that material issues had been resolved. While the statute allows an FCC to finalize a divorce when all material issues are resolved, it does not authorize the finalization of a judgment based on a document the court never reviewed or an approval of an MSA that no longer reflected the parties' mutual consent.

Because of this, Elizabeth filed a Motion for Reconsideration (App. AH) with the appellate court, highlighting her concerns with their decision. Despite the arguments made, however, the motion was denied. Elizabeth then proceeded to file a petition for review with the Wisconsin Supreme Court, but her petition was also denied, marking yet another setback in her effort to achieve a lawful divorce.

For more than two years, the judge has maintained the claim that the fabricated MSA from January 6, 2023, represents a valid and equitable reconstruction of the parties' final MSA, which was lost by his court (and employer). This erroneous claim served as the basis for his decision to backdate the divorce to February 7, 2022, under the false premise of approval by FCC Bermingham—who had neither reviewed, nor authorized the court-generated MSA and nor had Adam or Elizabeth (even if Adam sought to enforce this, since it incorporated most of Adam's financial preferences).

Recently, at Adam's request, the judge ordered Elizabeth to comply with the court-created MSA, compelling her to sign Quit Claim Deeds that would irreversibly transfer real estate to Adam—an irreversible transaction without Elizabeth's due contractual consideration. Adam's enforcement of this MSA follows his repeated denial of the MSA's accuracy.

The judge's and Adam's enforcements of the MSA directly contradicts this Court's longstanding precedent in *United States v. Throckmorton*, 98 U.S. 61 (1878), which holds that "fraud vitiates everything," including judgments. *Throckmorton* provides no leeway

for courts to enforce contracts born of deception, misrepresentation, or fraud—regardless of how procedurally final such judgments may appear.

Elizabeth has firmly refused to sign any documents related to the MSA or accept any marital assets identified in the MSA, so as to avoid any consent to the MSA. She asserts that the court-created MSA fails to incorporate the essential terms from the lost HE Amended MSA, which were critical for her to have agreed to the property transfer. She maintains that, without a new stipulation, as ordered on April 26, 2022, or a contested divorce, the divorce she sought over three years ago remains invalid until an equitable division of the marital estate is properly resolved.

However, Elizabeth now finds herself in an untenable position, increasingly coerced to accept what she views as fraud perpetrated against her. If she refuses to comply, she faces escalating legal consequences, including the possibility of sanctions, which were recently said by the judge may include loss of property or liberty (and with that, possibly their child's access to his mother). If Elizabeth complies, she lock-in devastating financial losses (perhaps bankruptcy), as she has already collateralized the entirety of her assets to pay the legal fees of multiple attorneys for years to remedy the court's simple original error, compounded by Adam's and the court's decisions. Whether she submits or resists, she will unduly suffer additional great harm, despite her immediate, constant, and consistent desire for a peaceful, voluntary, and respectful resolution.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

At first glance, this case may appear to fall within the traditional domain of domestic relations matters, which are typically considered beyond the reach of federal review under *Ankenbrandt v. Richards*, 504 U.S. 689 (1992), a decision reaffirming the longstanding principle that such issues are typically reserved for state courts. However, while this principle generally governs, occasionally there are circumstances that warrant federal review. In such instances, this Court has exercised its authority by granting certiorari, signaling a willingness to examine potential constitutional concerns that merit closer scrutiny, as demonstrated by *Griffin v. Griffin*, 327 U.S. 220 (1946), *Estin v. Estin*, 334 U.S. 541 (1948), *Cook v. Cook*, 342 U.S. 126 (1951), *May v. Anderson*, 345 U.S. 528 (1953), and *Zablocki v. Redhail*, 434 U.S. 374 (1978).

Elizabeth Fitzgibbon's divorce case continues that tradition of cases raising urgent domestic relations issues of national importance—issues that warrant federal review. Here, a state court, after losing critical legal documents in direct violation of its own record retention rules (Wis. Supreme Court Rule ("SCR") § 72.01(11), Wis. SCR § 72.02), proceeded without consent, without trial, and without lawful authority. It fabricated an inequitable, incomplete, inaccurate Marital Settlement Agreement (MSA) and issued a final divorce judgment backdated to a proceeding where that document was never presented or approved—falsely misrepresenting judicial approval.

This conduct did not merely deviate from best practices—it openly violated numerous state civil statutes and codes, including but not limited to: Wis. SCR § 60.02, Wis. SCR 60.04(1a, 4d, 6); Wis. Stat. § 757.81(4), Wis. Stat. § 767.201, Wis. Stat. § 767.205(2), Wis. Stat. § 767.215, Wis. Stat. § 767.34, and the broader provisions of Chapters 801 through 847; as well as Wis. Stat. § 946.31(1)(c), Wis. Stat. § 946.32(1)(b), and (2). Moreover, it implicates federal statutes including 18 U.S.C. § 1001, 18 U.S.C. § 1621, and 18 U.S.C. § 1001, and 28 U.S.C. § 144. In doing so, the court abandoned its neutral role, became an adversary to one of the parties, and violated its own statutory safeguard obligations, contravening Article I, § 10 of the U.S. Constitution, which prohibits any state from enacting laws that impairs its contractual obligations. These obligations, however, are not limited to statutory laws alone, as they also extend to judicial decisions, which together form case law. The Court in *Muhlker v. New York & Harlem R. Co.*, 197 U.S. 544 (1905) reinforced this idea, asserting that:

> We are not called upon to discuss the power, or the limitations upon the power, of the courts of New York to declare rules of property or change or modify their decisions, but only to decide that such power cannot be exercised to take away rights which have been acquired by contract and have come under the protection of the Constitution of the United States. And we determine for ourselves the existence and extent of such contract. This is a truism, and when there is a diversity of state decisions, the first in time may constitute the obligation of the contract and the measure of rights under it.

This critical principle underscores that rights acquired through contract are constitutionally protected, and no court, whether state or federal, may exercise its power in a manner that undermines or violates those rights.

The actions in Elizabeth's case were not technical oversights or discretionary missteps; they were deliberate violations of such civil and criminal statutory safeguards, conducted under the color of law. In doing so, the court not only also violated the due process and equal protection rights under the Fourteenth Amendment, it became an adversarial actor, weaponizing its authority against a party it was bound to treat impartially.

Unlike *Barber v. Barber*, 62 U.S. 582 (1858), where federal equity jurisdiction was invoked to prevent a valid alimony decree from being undermined by fraud, this case presents the inverse, and far more alarming, scenario: A divorce decree was procured through fraud perpetuated by the court. As such, Elizabeth is not seeking this Court's assistance to enforce a valid decree, but instead seeks to invalidate a fraudulent one, for despite her exhaustive efforts to pursue every lawful avenue within the state to rectify the incredible situation, the judiciary refused to acknowledge its own violations, and the appellate court affirmed the trial court's fabricated ruling, doing so with opinions that contradicted both the factual record and binding statutory mandates and obligations.

Moreover, this Court has long held that fraud vitiates even the most solemn of judgments. In *United States v. Throckmorton*, 98 U.S. 61, 65–66 (1878), the Court recognized that, while finality in litigation is important, it cannot stand when obtained by fraud so profound that it subverts the integrity of the judicial process itself. Elizabeth's case embodies such exception. There was a clear, lawful process to obtain a divorce—either uncontested through stipulation or contested through trial—but it was bypassed in favor of an extrajudicial outcome imposed by judicial misconduct and sealed by appellate indifference. Where *Barber* allowed federal equity to protect a valid judgment from fraudulent interference, and where *Throckmorton* underscored that fraud may unravel even final judgments, Elizabeth's case presents an equally compelling need for this Court's equitable jurisdiction: to prevent state judicial authority from being misused to construct and enforce fraudulent orders cloaked in the legitimacy of the law.

As *Mapp v. Ohio*, 367 U.S. 643 (1961) held, state procedures cannot shield constitutional violations from federal scrutiny. As such, state courts should not be allowed to circumvent federal oversight when their actions directly violate due process and equal protection, and while states may retain authority over domestic relations, that authority is not absolute. When a state's judicial system is manipulated to violate fundamental rights and shield from redress, it becomes a matter of national concern and sets a precedent that threatens the very constitutional safeguards designed to protect individuals in family law and beyond.

The enduring uncertainty surrounding the federal judiciary's role in domestic relations matters has left a troubling legal void—one that has exposed litigants to harm and left state courts operating without consistent oversight. Fortunately, however, Elizabeth's extraordinary case, shaped by a series of nearly irreproducible events, presents this Court

with a pivotal opportunity to define the constitutional boundaries of federal oversight in domestic relations matters—drawing a new bright line where ambiguity has long reigned.

There are countless documentaries, websites, publications, and sad stories that fault state courts for misuse of judicial authority. In seemingly every case, the party or parties first to error were the litigants and not the state's judicial system itself, so judicial discretion, paired with limited to no oversight, is prone to abuse. The instant case has perfectly preserved an opportunity to rethink the boundaries of federal oversight into the virtually exclusive powers of states over domestic affairs.

By establishing a clear and consistent federal framework, this Court can ensure that constitutional protections are not abandoned at the doors of state courts. In doing so, it will strengthen public trust and protect millions of families from unchecked judicial overreach. Elizabeth's case is more than a call for justice—it is the key to establishing the domestic relations framework that has been missing for generations.

Federal oversight should be activated when:

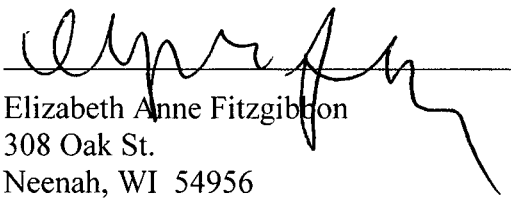
- Constitutional rights are violated by state courts, state officials, or the state's own laws or statutes or orders (*Mapp v. Ohio*, 367 U.S. 643 (1961));
- State courts disregard their own civil and criminal statutes, resulting in the failure to uphold legally binding contractual obligations (Article I, Section 10, Clause 1; *Muhlker v. New York & Harlem R. Co.*, 197 U.S. 544 (1905));
- State courts act as both adjudicator and representative party—such as when the states receive federal Title IV-D funding—creating inherent conflicts of interest (e.g., prioritizing the advancement of a divorce to retain funding or to avoid institutional liability for lost court records).

Now is the time to bring national coherence to a fractured area of law. In answering the questions raised by Elizabeth Fitzgibbon's case, this Court can establish long-needed constitutional guardrails that ensure justice is not left to chance, but protected by principle—across every court in every state.

CONCLUSION

Elizabeth Fitzgibbon respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted, this 9th day of May, 2025.

By: 

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