

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

MICHELLE M. LEPENDORF

Petitioner

vs.

JOHN A. HARTMANN, III

Respondent

**PETITIONERS' APPLICATION FOR STAY OF ORDER
ISSUED BY THE SUPERIOR COURT OF NEW JERSEY PENDING DISPOSITION OF
PETITION FOR WRIT OF CERTIORARI**

**Michelle M. Lependorf, Pro Se
81 Westcott Road
Princeton, NJ 08540
609-250-3537**

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	3
INTRODUCTION	4
PROCEDURAL AND FACTUAL BACKGROUND	5
THE U.S. SUPREME COURT’S NEED FOR REVIEW	8
LEGAL ANALYSIS	11
CONCLUSION.....	17
CERTIFICATE OF SERVICE	18

TABLE OF AUTHORITIES

Cases

Page

<i>Birtcher Corp. v. Diapulse Corp. of America</i> , 87 S. Ct 6 (1966).....	11
<i>AT&T Tech., Inc. v. Communications Workers of America</i> , 475 U.S. 643 (1986)	4,8,9,12,14
<i>Steelworkers Trilogy Cases:</i>	4,8,9,12,14
<i>Steelworkers v. American Mfg. Co.</i> , 363 U.S. 564 (1960)	
<i>Steelworkers v. Warrior & Gulf Navigation Co.</i> , 363 U.S. 574 (1960)	
<i>Steelworkers v. Enterprise Wheel & Car Corp.</i> , 364 U.S. 593 (1960)	
<i>Crowe v. DeGioia</i> , 90 N.J. 126, 132-134 (1983)	7, 11,12, 17

Statutes/Rules

28 U.S.C. § 2101(f)	4,11
Sup. Ct. R. Rule 23.3	4,11

Other Authority

Moore's Federal Practice – Civil Section 523.04 (2016)	11
--	----

TO: THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

I. INTRODUCTION

Petitioner is the financially dependent spouse in a pending divorce that is presently being arbitrated in New Jersey, which was initially filed in the Superior Court of New Jersey in 2022. She has filed this application, *Pro se*, pursuant to Supreme Court Rule 23.3 and 28 U.S.C. § 2101(f). Petitioner seeks to stay an Order issued by the Superior Court of New Jersey that compels her to arbitrate a dispute with a party, the Respondent, who is not a signatory to the arbitration agreement in her divorce. When Petitioner agreed to arbitrate her divorce, she only consented to arbitrate disputes with her husband, not disputes with third parties who did not sign her arbitration agreement. Moreover, the arbitrator in Petitioner's divorce bears a relevant conflict of interest with Respondent.

This Court has stated, more than once, that a party cannot be forced to arbitrate a dispute in the absence of a contract to arbitrate that dispute. See e.g., AT&T Tech., Inc. v. Communications Workers of America, 475 U.S. 643 (1986) and Steelworkers Trilogy (Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960); Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); and Steelworkers v. Enterprise Wheel & Car Corp., 364 U.S. 593 (1960).) This prohibition has its roots in the requirements of procedural due process and it prevents her from being forced to arbitrate any disputes between herself and Respondent in her divorce. In support of this Application, Petitioner relies on the enclosed Certification.

II. RELEVANT PROCEDURAL & FACTUAL BACKGROUND

- ***The Trial Court's Orders***

On May 2, 2025, the trial court in Petitioner's divorce declined jurisdiction of a motion that sought to clarify rights between Petitioner and Respondent arising under an Order that had been issued by the trial court in April 12, 2024, nearly one year before Petitioner engaged the current arbitrator in her divorce (the "April 2024 Order"). Under the April 2024 Order, Respondent had been granted the right to assert an alleged attorney fee lien for services rendered as Petitioner's former divorce counsel during the period January 2023 through August 2023. The exact amount of Respondent's lien was unknown at that time but, per the April 2024 Order, it was to be determined in a separate administrative forum conducted by the New Jersey Office of Attorney Ethics. As a result, the trial court ordered divorce counsel to sequester "amounts awarded" to Petitioner in her divorce and that "come into the possession of divorce counsel," up to the amount of Respondent's claimed lien. The trial court's order further stated that any disputes concerning the fee lien were to be decided by the arbitrator, which Petitioner assumed meant disputes between Petitioner and her husband concerning how amounts awarded to her in her divorce at the conclusion of her divorce were to be allocated in payment of the Respondent's fee lien.

In September or October of 2024, prior to concluding their divorce, Petitioner and her husband mutually agreed to sell their NJ marital home for their own personal reasons. Upon learning that Petitioner's home had been listed for sale, Respondent began to write to several third parties outside of Petitioner's action for divorce asserting that he had the right to sequester proceeds from the sale of Petitioner's home and threatening legal action if

they did not sequester the proceeds thereof to satisfy his lien. This prompted Petitioner to seek declaratory relief asking the trial court to clarify whether the April 2024 Order allowed Respondent to sequester proceeds received from the sale of her NJ marital home, given that they were not being “awarded” to her was contemplated by the language contained in the April 2024 Order; however, the trial court denied this motion, stating that it lacked jurisdiction to provide such relief because Petitioner’s divorce was in arbitration. It, therefore, ordered Petitioner to arbitrate the issue in her divorce, which she immediately appealed because: (i) she did not consent to arbitrate disputes with Respondent under the arbitration agreement in place in her divorce; and (ii) the arbitrator is conflicted with Respondent. Moreover, Petitioner believed it was improper for the trial court to vest jurisdiction in her marital arbitrator to interpret an Order that had been issued by it long before the arbitrator had been engaged as the arbitrator in her divorce.

- ***The Appellate Division and New Jersey Supreme Court Decisions***

On May 6, 2025, Petitioner filed an emergent appeal with the New Jersey Appellate Division because she is facing displacement from her marital home on May 30, 2025, which is the date on which it will be sold. As a stay-at-home, primarily, non-working spouse throughout most of her 24-year marriage, Petitioner is already operating from a relative place of financial lack and she requires the use of all proceeds received from the sale of her home to secure a new home. While Petitioner faces this type of housing insecurity, Respondent seeks to sequester funds that he cannot currently be paid, as the amount of his claimed lien has not yet been determined by the New Jersey Office of Attorney Ethics (“OAE”). Thus, on balance, it makes no sense to deprive Petitioner of the

use of proceeds that are needed by her to secure a new home, when Respondent cannot even be paid the funds he seeks to have sequestered. More importantly, however, there are ample assets to be equitably divided and awarded to Petitioner in her divorce upon its conclusion, but that will not occur prior to May 30, 2025. Consequently, if this Court were to issue the stay that is being requested herein, Respondent's claimed fee lien would still be adequately protected and, therefore, easily satisfied, once its precise value has been determined by the OAE and the divorce concludes.

Despite these compelling facts, the New Jersey Appellate Division denied Petitioner's Application for Emergent Relief, based on a lack of irreparable harm. Petitioner immediately appealed to the New Jersey Supreme Court, given that her home was being sold in less than 25 days, however, that court also denied her application for Emergent Relief on the basis that she had failed to satisfy entitlement to such relief under Crowe v. DeGioia, 90 N.J. 126 (1983), a case that sets forth the criteria for obtaining emergent relief to enjoin a stay of proceedings in New Jersey. Petitioner submits that both the Appellate Division and the New Jersey Supreme Court have failed to consider that **a denial of due process**, under the circumstances presented, **is itself a form of irreparable harm**, particularly where, as here, there would be no time to challenge an adverse decision made by the conflicted marital arbitrator, thus allowing the sequestration of Petitioner's home sales proceeds and depriving Plaintiff of the means to purchase a new home, upon losing her current home.

III. U.S. SUPREME COURT'S NEED FOR REVIEW

Significant Constitutional Interests Are at Stake and, Absent Review by This Court, There Will Be Uncertainty and/or a Split in Decisional Jurisprudence

Petitioner intends to file a Petition for a *Writ of Certiorari* and, therefore, requires a stay of the trial court's decision compelling arbitration, pending the filing and disposition of that petition. The actions taken by all three courts in Petitioner's underlying divorce invite this Court to consider an important issue that was ***not*** addressed in *AT&T Tech., Inc.* or the *Steelworkers Trilogy* cases, namely, whether there are any exceptions to the rules established under those cases for the scope of arbitral jurisdiction and the arbitrability of a dispute where the challenged duty to arbitrate derives from ***both*** a contract and a judicially prescribed arbitration framework. Petitioner submits that, at the time the foregoing cases were decided, arbitrations conducted by private individuals under the auspices of state courts for functions that are traditionally performed by state courts were not as common as they are today. In order to keep pace with the growing prevalence of these evolving mechanisms for the resolution of court-initiated disputes, this Court should endeavor to clarify the scope of arbitral jurisdiction and the arbitrability of disputes for arbitrations that take place pursuant to arbitral frameworks that are ***hybrid*** in nature, meaning, those that entail both consent to arbitrate under an arbitration agreement, as well as adherence to a judicially prescribed procedural framework.

What has occurred in Petitioner's divorce shows that there is a disconnect between what state courts are actually doing in hybrid arbitral frameworks and the rule(s) articulated by this Court in *AT&T Tech., Inc.* and the *Steelworkers Trilogy* cases regarding the

scope of an arbitrator's jurisdiction and the arbitrability of disputes. This disconnect threatens to create inconsistency in the approach taken by courts tasked with addressing procedural due process challenges made within the context of judicially prescribed arbitration proceedings. These types of arbitrations are something more than just "creatures of contract," and when due process concerns arise within them, given their unique character, it requires a more nuanced analysis than has previously been performed by this Court in analyzing due process challenges to arbitrations.

As Your Honor may be aware, most of the arbitration cases decided by this Court have addressed questions concerning the scope of arbitral jurisdiction or the arbitrability of disputes that arise in the context of collective bargaining, employment and commercial consumer disputes. In those situations, this Court has preliminarily observed that the duty to arbitrate is a "creature of contract," without which there can be no such duty. However, unlike the arbitral challenges raised in those cases, Petitioner has been compelled to arbitrate her dispute with Respondent as a result of an arbitral framework that arises from something more than a "creature of contract." Her divorce is being arbitrated pursuant to a judicially prescribed set of rules and procedures, only part of which entails the execution of a contract. This begs the question of whether the principles articulated by this Court in *AT&T Tech., Inc.* and the *Steelworkers Trilogy* apply or even go far enough.

While the lynchpin of arbitral jurisdiction in labor, employment and consumer disputes has been the existence of an agreement to arbitrate, jurisdiction in the case of arbitrations that are being conducted pursuant to a judicially prescribed set of rules and procedures is decidedly different. It is for this reason that Petitioner's Petition for a *Writ of Certiorari*

deserves this Court's consideration and why she seeks to stay the trial court's Order compelling her to arbitrate her dispute, as well as a stay of any efforts made to deprive Petitioner of her home sales proceeds, given that the balance of the harms in this case weighs decidedly in Petitioner's favor. Petitioner is likely to suffer irreparable harm that is two-fold if the stay she requests is not granted, as follows: 1) she will experience the denial of procedural due process that inheres in being forced to arbitrate a dispute that she has not consented to arbitrate; and 2) she will be deprived of a substantial property interest if, in the course of that compelled arbitration, the proceeds from the sale of her home are allowed to be sequestered by the Respondent, which will expose Petitioner to housing insecurity at a time when market conditions are not favorable to those seeking new homes.

IV. LEGAL ANALYSIS

Staying a lower court's order is a form of temporary injunctive relief that stops the normal litigation process. As a result, the Court's inquiry must center on whether the party seeking the stay can show both a likelihood of success on the merits and that they will suffer irreparable harm without a stay. Additionally, the requesting party has the further burden of showing that there is a "reasonable probability that four Justices will vote to grant *certiorari*, and that there is a reasonable probability or "fair prospect" that five Justices will vote to reverse the judgment of the lower court whose judgment is being appealed. That party must further show that irreparable harm will occur without the stay. See 20A-341 Moore's Fed. Practice – Civil Section 341.14(2) (2016); and *Birtcher Corp. v. Diapulse Corp. of America*, 87 S. Ct 6 (1966).

Per SUPREME COURT RULE 23.3:

"An application for a stay shall set out with particularity why the relief sought is not available from any other court or judge. Except in the most extraordinary circumstances, an application for a stay will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof . . ."

28 U.S.C. Code Section 2101(f) further provides that:

"In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court and may be conditioned on the giving of security . . ."

As was explained above, both the Appellate Division and the Supreme Court of New Jersey denied Petitioner's Application for Emergent Relief on the basis that she did not satisfy the

standard for obtaining an injunction under Crowe v. DeGioia, 90 N.J. 126 (1983), a view with which Petitioner disagrees. Thus, there is no other opportunity for Petitioner to obtain a stay in the state courts of New Jersey, and she requires a reasonable amount of time to petition for and to obtain a *writ of certiorari* from this Court. Otherwise, **she will face irreparable harm in the form of a denial of due process and the imminent housing insecurity that threatens to result therefrom**, given that Petitioner's home is scheduled to be sold on May 30, 2025. Additionally, and as was explained hereabove, there is a reasonable probability that four Justices will vote to grant *certiorari* given that the issue(s) being presented concern a question that has not yet been squarely considered by this Court and which, if left unaddressed, threatens to create a schism in jurisprudence in this country concerning the scope of arbitral jurisdiction and the arbitrability of disputes, where the source or origin for engaging in arbitration is both a "creature of contract" as well as part of a judicially prescribed procedural framework. There is also a reasonable probability or "fair prospect" that five Justices will vote to reverse the judgment of the trial court, as this Court has already held that a party may not be compelled to arbitrate a dispute that they have not agreed to arbitrate.

Given that the Supreme Court of New Jersey based its decision to deny her request on DeGioia factors that are similar to the factors required to obtain a stay in this Court, Petitioner invites this Court to consider whether, in light of the parallel federal standard for granting a stay and the important due process rights recognized by this Court in the AT&T Tech., Inc. and Steelworkers Trilogy cases, the New Jersey Supreme Court and the Appellate Division correctly interpreted and applied the standard articulated in DeGioia.

Under DeGioia, there are four prongs a court considers when injunctive relief is being sought:

- (1) whether it is necessary to prevent irreparable harm,
- (2) whether the legal right underlying the application is settled,
- (3) whether the applicant has made a preliminary showing of a reasonable probability of ultimate success on the merits, and
- (4) the relative hardship to the parties in granting or denying the application.

Id. at 132-134 (1983).

Petitioner submits that she has satisfied each and every prong of this standard as follows:

1. **Irreparable Harm**: Without a stay, Petitioner will be forced to arbitrate a dispute for which there is no agreement to arbitrate, contrary to the requirements of procedural due process, and for which there will be no opportunity to avoid the *other* harm she faces, namely, housing insecurity, given the relative immediacy of her scheduled home sale on May 30, 2025. Under her arbitration agreement with the arbitrator in her divorce, Petitioner did not agree to arbitrate disputes with any party other than her husband. Forcing Petitioner to arbitrate a dispute with Respondent, in the absence of an agreement to do so, violates procedural due process and gives rise to a type of irreparable harm that cannot be undone given the immediacy of Petitioner's housing crisis. If she is subjected to an arbitral decision that allows the

funds from her home sale to be sequestered, there will not be enough time to alter that outcome, as her home will be sold on May 30, 2025.

2. **The Legal Right Underlying Petitioner's Application is Settled:** The U.S. Supreme Court has held that a party cannot be forced to arbitrate a dispute for which there is no agreement to agreement. There is no contract in place between Petitioner and Respondent. As such, Petitioner may not be compelled to arbitrate her dispute with Respondent.
3. **Likelihood of Success on the Merits:** Based on this Court's holdings in the *AT&T Tech. Inc.* and *Steelworkers Trilogy* cases, Petitioner is likely to prevail on the merits of her claim. In those cases, this Court has stated that a party cannot be compelled to arbitrate a dispute for which there is no contract to arbitrate such dispute. In this case, there is no arbitration agreement in place between Petitioner, Respondent and her marital arbitrator, pursuant to which she has agreed to arbitrate any disputes with Respondent. The only arbitration agreement that exists in Plaintiff's divorce is the one that Petitioner signed with her husband, their respective counsel and the arbitrator. Respondent is NOT a party to that agreement. Absent some exception created by **this** Court, Petitioner should not be forced to arbitrate disputes with a party who did not sign her marital arbitration agreement. Furthermore, it must be noted that **the arbitrator in Petitioner's action for divorce is conflicted with Respondent.** Respondent had initially recruited the arbitrator in Petitioner's divorce when Respondent was Petitioner's divorce counsel. However, before the arbitrator was engaged, Petitioner terminated her relationship with Respondent. Thereafter,

Petitioner's new counsel attempted to remove Petitioner's divorce from arbitration altogether, and Respondent, upon learning of those efforts, began object and to advocate for the arbitrator's engagement, over the objections of Petitioner's new counsel, and despite the fact that Respondent was no longer her divorce counsel. He was able to insert himself in this way because he refused to execute a substitution of counsel after being fired and then deliberately withheld Petitioner's file for over 4 months. Despite this highly improper behavior by Respondent, the trial court ordered Petitioner to arbitrate her divorce and to engage in arbitration with the very arbitrator who had been chosen by Respondent, even though Respondent was no longer Petitioner's divorce counsel and despite Respondent's insistence that the arbitrator HE had chosen be used. This, Petitioner submits, was suspect, given that Respondent was no longer Petitioner's counsel. Collectively, these factors make arbitrating any claims with Respondent in her divorce inappropriate.

4. **Relative Hardships/Balancing of Harms:** If Petitioner is forced to arbitrate her dispute with Respondent as part of the arbitral process in her divorce, it is very likely that the conflicted arbitrator will allow the proceeds received from the sale of her home to be sequestered, which will deprive Petitioner of the most significant means she has of securing a new home.¹ By contrast, the funds being sought for

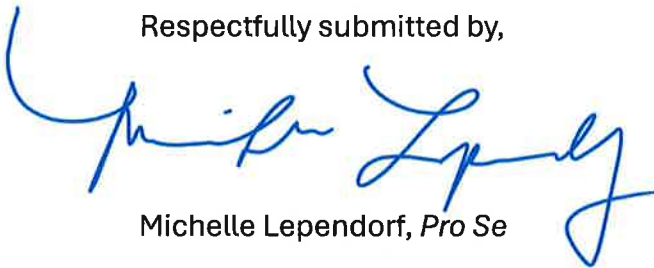
¹ That the arbitrator would be inclined to issue an award that favors Respondent is evidenced by the fact that he has already, sua sponte, ordered that \$300,000 of Petitioner's home sales proceeds be set aside for the satisfaction of counsel fees and expert fees, including his own fees. There is no reason to force Petitioner and her husband to relinquish control of their sales proceeds to parties who they can very well choose to pay themselves, as they are not incapacitated persons. Moreover, to wrest control of these funds from Petitioner and her husband in this manner prevents either party from challenging or questioning those litigation expenses before they are paid or from controlling expenses going forward in any way.

sequestration by Respondent cannot even be paid to him at this time, as the OAE proceeding is still pending. Moreover, there are ample assets to be equitably divided and awarded to Petitioner in her divorce that can be used to satisfy Respondent's claimed lien, after the amount of such lien has been determined and once her divorce has been concluded. Thus, the balance of harms favors Petitioner.

V. CONCLUSION

Based on the above, Petitioner has satisfied the factors for obtaining emergent relief set forth in *Crowe v. DeGioia*, 90 N.J. 126, 132-134 (1983), and for this reason her request for a stay of the Order requiring her to arbitrate the fee lien issue must be stayed, to provide her with an opportunity to file and to give this Court the chance to consider whether to grant or deny her Petition for a *Writ of Certiorari*.

Respectfully submitted by,



Michelle Lependorf, *Pro Se*

cc: Divorce Counsel: Bettina Munson, Esq. and Barbara Ulrichsen, Esq. (via email)
Arbitrator: Glynn Dwyer, Esq. (via email)

CERTIFICATE OF SERVICE

I, Michelle Lependorf, proceeding *Pro Se*, do hereby certify that I have caused a true and correct copy of the foregoing Application to be mailed to Mr. John A. Hartmann, III on May 12, 2025, at the following address:

John A. Hartmann, III, Esquire
c/o Pellettieri Rabstein and Altman
989 Lawrenceville, Suite 101
Lawrenceville, New Jersey 08648
609-520-0900
609-896-1265

jhartmann@pralaw.com


Michelle Lependorf