

METODI DONCHEV AND FAITH
DONCHEV, HIS WIFE,

Plaintiff-petitioner,

V.

DENNIS DESIMONE, AND JANE
DOE DESIMONE, DENNIS
DESIMONE'S WIFE, JOHN DOE
RESPONSIBLE PARTY,
INDIVIDUALLY, JOINTLY,
SEVERALLY, AND/OR IN THE
ALTERNATIVE,

Defendants-respondents.

SUPREME COURT OF THE UNITED
STATES

DOCKET NO.: 17-6375

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

METHFESSEL & WERBEL, ESQS.

2025 Lincoln Highway, Ste 200

P.O. Box 3012

Edison, New Jersey 08818

(p) (732) 248-4200

(f) (732) 248-2355

thornton@methwerb.com

Attorneys for Dennis DeSimone

Our File No. 63074 ELT

AMANDA J. SAWYER, ESQ.

On the Brief

EDWARD L. THORNTON, ESQ.

Of Counsel and On the Brief

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STATEMENT OF THE CASE

I. NEW JERSEY LAW DIVISION

On or about June 8, 2011 through July 7, 2011, a jury trial was held in this matter. At the conclusion of trial, the jury rendered a verdict against Respondent. Subsequently, Petitioner filed a motion to reinstate her previously-dismissed wrongful death claim. Respondent opposed this motion and filed a cross-motion for remittitur or, in the alternative, a new trial on all issues.

The Law Division rendered its decision regarding both Petitioner's motion and Respondent's cross-motion on September 2, 2011; both motions were denied. Ra001-005. The Law Division's September 2, 2011 decision with regard to Petitioner's motion and Respondent's cross-motion were memorialized in orders dated September 6, 2011. Id.

II. NEW JERSEY APPELLATE DIVISION

In September of 2011, Respondent filed a notice of appeal from the orders of the Law Division which denied Respondent's pre-trial motions for summary judgment and which denied Respondent's motion for remittitur or, in the alternative, a new trial. Respondent's brief and appendix in support of this motion were filed on or about January 27, 2012. On or about February 17, 2012, Respondent received Petitioner's appellate brief and appendix. On or about March 5, 2012, Respondent filed a motion to suppress Petitioner's brief for failure to conform with court rules and for unwarranted attacks on Respondent. Petitioner filed a letter brief in opposition to Respondent's motion.

By order filed April 26, 2012, the Appellate Division granted Respondent's motion to suppress, but noted that if Petitioner filed a conforming brief no later than May 29, 2012, the Appellate Division would reconsider this decision. Ra006. The Appellate Division ordered that if Petitioner chose to file a new brief, she was to refrain from presenting any arguments in her brief challenging the Law Division's ruling excluding evidence in support of a wrongful death claim and requesting reinstatement of that claim given that she had not appealed those rulings. Id. The Appellate Division so ordered in light of Petitioner's failure to file a notice of cross-appeal. Id.

On or about May 29, 2012, Respondent received Petitioner's new submission. On or about June 1, 2012, Respondent wrote to the Appellate Division to request that the Appellate Division uphold its prior order of suppression. Given that Petitioner failed to submit a brief which conformed with court rules, and given that Petitioner ignored the Appellate Division's order to refrain from presenting any arguments in her brief challenging the Law Division's ruling excluding evidence in support of a wrongful death claim and requesting reinstatement of that claim due to Petitioner's failure to submit a brief which conformed with court rules, Respondent requested that Petitioner's brief remain suppressed and that Petitioner be prohibited from filing any additional briefs.

Petitioner subsequently filed a "MOTION TO FILE and accept...Letter Brief and Appendix as submitted," which Respondent interpreted as a motion to deem Petitioner's May 29, 2012 submission to be in conformance with court rules.

Respondent opposed this motion. Petitioner subsequently filed a reply brief in support of this motion.

By order filed July 24, 2012, the Appellate Division denied Petitioner's motion to file and accept her letter brief and appendix as submitted, noting that the brief submitted did not actually or substantially comply with the requirements set forth in New Jersey Court Rule 2:6-1 and that there was no compliance with the Appellate Division's April 26, 2012 order, and advising Petitioner that she has "to abide by the rules." Ra010. Pursuant to the Appellate Division's July 24, 2012 cover letter to Petitioner enclosing a copy of the July 23, 2012 order, Petitioner was suppressed from filing a brief/appendix. Ra011.

Oral argument with regard to Respondent's notice of appeal was heard on September 14, 2012. On September 24, 2012, the Appellate Division issued an opinion, without dissent, reversing the Law Division's denial of Respondent's summary judgment motion. Ra012.

On October 11, 2012, Respondent received Petitioner's "motion for reconsideration and redetermination." By letter dated October 11, 2012, the Appellate Division advised Petitioner that her motion for reconsideration and redetermination was not being filed due to the fact that Petitioner was suppressed from filing any papers without leave of court. Ra024. The letter further advised that if Petitioner wanted the motion for reconsideration filed, she would also need to file a motion asking the Appellate Division to vacate the suppression. Id.

On October 15, 2012, Respondent received Petitioner's motion to vacate the prior orders of suppression and to consider Petitioner's motion to reconsider the Appellate Division's September 24, 2012 decision. On October 24, 2012, Respondent received the Appellate Division's October 15, 2012 motion filing notice, which advised that the only motion under consideration at that time was Petitioner's motion to vacate the prior order of suppression. Ra025. Respondent opposed Petitioner's motion to vacate the prior order of suppression by letter dated October 25, 2012.

By order filed November 13, 2012, the Appellate Division denied Petitioner's motion to vacate suppression, as well as Petitioner's motion for reconsideration and redetermination and summary disposition. Ra026.

III. SUPREME COURT OF NEW JERSEY

Petitioner subsequently filed a notice of petition for certification with the Supreme Court of New Jersey. Pursuant to the notice, Petitioner was seeking an order "certifying the entire judgment entered by the Appellate Division...on September 24, 2012 and on November 13, 2012."

Petitioner's notice of petition was filed and Respondent received Petitioner's supporting letter brief on December 27, 2012. Respondent opposed Petitioner's petition for certification by letter brief dated January 11, 2013. Respondent received a reply brief filed on behalf of Petitioner on January 23, 2013.

Petitioner subsequently filed a motion for summary disposition with the Supreme Court of New Jersey. Respondent opposed this motion. Petitioner's motion for summary disposition was denied by order dated April 26, 2013. Ra027.

Petitioner's petition for certification was denied by order dated April 29, 2013. Ra028. Petitioner subsequently filed a motion to stay and for clarification of the Supreme Court orders dated April 26, 2013 and April 29, 2013. This motion was denied by order of the New Jersey Supreme Court dated July 12, 2013. Ra029.

IV. NEW JERSEY LAW DIVISION

On October 25, 2013, Respondent received a motion filed by Petitioner with the Law Division. On its face, the motion appeared to be one to vacate the Law Division's November 5, 2012 order¹, reinstate all of Petitioner's claims, as well as the July 2011 jury verdict, and seek a trial with regard to wrongful death damages. Respondent filed opposition to this motion, along with a cross-motion for counsel fees and other relief. Petitioner subsequently filed a supplemental brief in support of her motion. Petitioner's motion and Respondent's cross-motion were denied by orders of the court dated November 22, 2013. Ra030-034.

V. NEW JERSEY APPELLATE DIVISION

On February 6, 2014, Respondent received a submission made by Petitioner to the Appellate Division, which purported to be notice of motions to: (1) vacate the

¹Following the Appellate Division's reversal of the trial court's denial of Respondent's prior motions for summary judgment, the trial court entered a November 5, 2012 order vacating the prior orders denying Respondent's motions for summary judgment, vacating the July 2011 jury verdict, and vacating any judgment entered by the clerk against Respondent.

Appellate Division's April 26, 2012 order granting Respondent's motion to suppress; (2) reconsider the Appellate Division's September 24, 2012 decision; (3) affirm the Law Division's denial of Respondent's pre-trial motions for summary judgment and post-trial motion for remittitur or, in the alternative, a new trial; and (4) affirm the July 2011 jury verdict and remand to the Law Division on the issue of wrongful death damages. It appeared that the submission was not an appeal of any Law Division action not previously ruled on by the Appellate Division; that no matter how one interpreted the application, no notice of appeal was filed; that there was no cognizable "motion"; that the Petitioner was suppressed from any Appellate Division filing; that there was no Appellate jurisdiction over whatever Petitioner had filed; that the clerk should not have accepted any submission from Petitioner for filing; and that, however one interpreted Petitioner's submission or what went on previously, the submission was untimely. Accordingly, Respondent filed opposition to these "motions," along with a cross-motion for fees, costs and other relief. Petitioner subsequently filed a brief in opposition to the cross-motion and in further support of her motions.

Petitioner's motions, including her motion to vacate the prior order of suppression, and Respondent's cross-motion were denied by orders of the Appellate Division dated March 24, 2014. Ra035-037.

On April 24, 2014 Respondent received another submission on behalf of Petitioner to the Appellate Division, which purported to be a notice of motion to re-hear Respondent's September 2011 appeal or, in the alternative, to affirm the

Law Division's denial of Respondent's post-trial motion for remittitur or, in the alternative, a new trial, and remand to the Law Division on the issue of wrongful death damages. Once again, it appeared that the submission was not an appeal of any Law Division action not previously ruled on by the Appellate Division; that no matter how one interpreted the application, no notice of appeal was filed; that there was no cognizable "motion"; that the Petitioner was suppressed from any Appellate Division filing; that there was no Appellate jurisdiction over whatever Petitioner had filed; that the clerk should not have accepted any submission from Petitioner for filing; and that, however one interpreted Petitioner's submission or what went on previously, the submission was untimely. Accordingly, Respondent filed opposition to this "motion," along with a cross-motion for fees, costs and other relief.

Petitioner's papers were returned to her by the Appellate Division on May 20, 2014. Ra038. Petitioner's motion papers were not filed because they did not comport with New Jersey court rules and because the motion was seeking the same relief Petitioner previously requested from the Appellate Division. Id. In light of the above, Respondent's cross-motion papers were returned as well. Ra039.

VI. NEW JERSEY LAW DIVISION

On July 9, 2014, Respondent received Petitioner's motion, filed with the Law Division, to reinstate all claims, including the three-year-old jury verdict. This motion was denied by order of the court filed on July 26, 2014. Ra040. Pursuant

to the handwritten note on this order, “Per decision on record 7/25/14, any refiling of similar motion will be considered for possible sanctions and/or submission to procedure to determine if future motions should be subjected to review and possible rejection.” Id.

On August 20, 2014, Respondent received Petitioner’s motion “for reconsideration of July 25, 2014 decision and to alter or amend that judgment order by [New Jersey Court Rule 4:50, 4:49 and 4:37(2)(b)].” On August 21, 2014, Respondent wrote to the pro se Petitioner with regard to her motion for reconsideration and urged her to withdraw same in light of the court’s July 25, 2014 order, which was filed by the court on July 26, 2014. Ra040. Respondent advised that if the motion was not withdrawn, sanctions would be sought. When the motion was not withdrawn, Respondent submitted a written request to the court requesting that sanctions be imposed and that a procedure be devised for determining whether any future motions should be subject to review and possible rejection from filing.

Petitioner’s motion for reconsideration was denied by order of the court dated September 5, 2014. Ra041. Respondent’s requests for relief were not addressed within the September 5, 2014 order. Id.

Petitioner subsequently filed a motion for reconsideration of the court’s September 5, 2014 order, as well as a “motion to clarify the judgment entered against the homeowner defendant and to add cost and interest to date.” Respondent filed a brief in opposition to these motions and in support of

Respondent's cross-motion for fees, costs and other relief. Respondent once again urged the court to reject the pending motions and to issue a directive that no further application from the Petitioner was to be accepted by the clerk with regard to this matter. Pursuant to the Law Division's July 25, 2014 order, see Ra040, it was requested that sanctions be imposed upon Petitioner. It was further requested that the court enter costs and fees. Petitioner filed a brief in response to Respondent's cross-motion. At the request of the Law Division, on October 24, 2014 Respondent provided additional information regarding the procedural history of this case, as well as Respondent's attorney's billing pertaining to this matter.

On October 20, 2014, the court entered an order denying Petitioner's motions for reconsideration and to enter judgment. Ra056. Respondent's motion for attorney's fees was also denied. Id. However, pursuant to New Jersey Court Rule 1:4-8, Petitioner was sanctioned in the amount of \$50.00 and was put on notice that "any further frivolous motions made to this Court shall lead to further, harsher sanctions, including monetary sanctions and plaintiff being sanctioned from being able to file any further pleadings at the discretion of the Assignment Judge." Id.

Nine days after the entry of the court's October 20, 2014 order, Petitioner filed what appeared to be a motion for a new jury trial and for leave to amend the complaint; this motion was dated October 29, 2014 and was received by Respondent on October 30, 2014. On November 4, 2014, Respondent wrote to

Petitioner advising of the frivolous nature of her submission. By way of copy of the letter to the Law Division, Respondent requested that Petitioner's submission not be accepted and that it, and any further pleading filed on behalf of Petitioner, be reviewed by the local Assignment Judge for further imposition of sanctions, acceptance of any pleading by the court, and attorney's fees.

Petitioner filed a response to Respondent's October 24, 2014 letter (pertaining to her prior submission), in the form of what appeared to be yet another motion, on or about November 13, 2014. Petitioner filed a response to Respondent's November 4, 2014 letter on or about November 19, 2014. Respondent filed a brief in opposition to Petitioner's motion and in support of Respondent's cross-motion for fees, costs and other relief. Respondent once again urged the court to reject the pending motion and to issue a directive that no further application from the Petitioner was to be accepted by the clerk with regard to this matter. It was requested that sanctions be imposed upon Petitioner. It was further requested that the court enter costs and fees. Petitioner filed a brief in opposition to Respondent's cross-motion.

By order of the court dated December 5, 2014, Petitioner's motion was denied. Ra059. Respondent's cross-motion was also denied. Ra060.

On or about February 26, 2015, Petitioner filed a "motion to amend orders dated December 8, 2014 November 5, 2012 and the post jury trial and the 2011 jury trial orders regarding plaintiff wrongful death and survivorship claims." On March 5, 2015, Respondent wrote to Petitioner advising of the frivolous nature of

her submission. Respondent demanded that Petitioner withdraw her motion, with prejudice, within twenty-eight (28) days. Respondent advised that in the event Petitioner did not withdraw her motion, Respondent would respond with an application to the court in which damages and sanctions would be sought pursuant to New Jersey Court Rule 1:4-8. Respondent further advised that, pursuant to New Jersey Court Rule 1:4-8(b)(1), if Petitioner did not request an adjournment of the return date of her pending motion, she would be deemed to have elected to waive the balance of the twenty-eight (28) day period. Respondent also filed a brief in opposition to Petitioner's motion. Petitioner filed a brief in opposition to Respondent's March 5, 2015 letter and subsequently filed a reply brief in support of her motion.

Petitioner neither withdrew her motion, nor requested an adjournment of the return date of her pending motion, as requested in Respondent's March 5, 2015 letter. Petitioner's motion was returnable on March 20, 2015.

On or about March 31, 2015, Petitioner filed a motion for reconsideration of the denial of her motion. As of April 8, 2015, Respondent had not been served with a filed copy of the order pertaining to Petitioner's motion "to amend orders dated December 8, 2014 November 5, 2012 and the post jury trial and the 2011 jury trial orders regarding plaintiff wrongful death and survivorship claims." Upon request, a filed copy of the March 20, 2015 order denying Petitioner's motion "to amend orders dated December 8, 2014 November 5, 2012 and the post jury

trial and the 2011 jury trial orders regarding plaintiff wrongful death and survivorship claims” was faxed to Respondent by the court on April 8, 2015. Ra063.

On or about April 10, 2015, Respondent filed a motion for an order imposing sanctions upon Petitioner and awarding Respondent fees, costs and other relief. Within the motion, it was specifically requested that the court issue a directive that no further application from the Petitioner with regard to this matter is to be accepted by the clerk and that the clerk close the docket in this matter. Pursuant to the Law Division’s July 25, 2014 and October 20, 2014 orders, see Ra040 and Ra056, respectively, additional, harsher sanctions, including monetary sanctions and Petitioner being barred from making any additional filings, were also requested. It was further requested that the court enter costs and fees pursuant to an affidavit of attorney time and costs that would be submitted at the request of the court.

On or about April 10, 2015, Respondent filed a letter brief in opposition to Petitioner’s pending motion for reconsideration. Petitioner subsequently filed a reply brief in support of her motion for reconsideration. Petitioner later filed a brief in opposition to Respondent’s motion for sanctions, fees, costs and other relief, along with a cross-motion to reinstate all claims. A letter brief in opposition to Petitioner’s cross-motion was filed on behalf of Respondent.

On May 8, 2015, the court entered an order granting Respondent’s request for attorney’s fees and costs. Ra065. It was ordered that attorney’s fees and costs be

awarded to the Respondent for any fees incurred in opposing Petitioner's most recent frivolous application, and the imposition to file Respondent's subsequent motion seeking fees and costs. Id. Pursuant to the order, Respondent was to submit a certification of costs and fees within twelve (12) days, after which Petitioner was permitted five (5) days to rebut the certification. Id.

On or about May 21, 2015, a certification of costs and fees was submitted to Petitioner and to the Law Division. The certification noted that Respondent was seeking a total of \$1,201.50 in costs and fees from Petitioner. More than a month passed and Petitioner did not submit any rebuttal to the certification. Accordingly, on June 26, 2015 a proposed order, entering judgment in favor of Respondent and against Petitioner in the amount of \$1,201.50, was submitted to the court for filing. As of July 16, 2015, that order had not been filed.

On July 14, 2015, Respondent received Petitioner's brief in opposition to Respondent's motion for sanctions, fees, costs and other relief, along with her cross-motion to reinstate all claims. As set forth above, these materials were previously received by Respondent on May 5, 2015. As set forth above, on May 6, 2015, Respondent opposed Petitioner's submissions. Pursuant to Petitioner's July 6, 2015 cover letter, her cross-motion was never filed with the Court. She did not make a similar representation with regard to her opposition to Respondent's motion for fees and costs. In the interest of caution, Respondent objected to and opposed same, respectively, noting, most importantly, that Respondent's motion for attorney's fees and costs had already been granted. Given that nearly two (2)

months had passed since the certification of costs and fees was submitted to the court, and given that Petitioner had yet to articulate any reasonable rebuttal to same, Respondent renewed his request that the court file the previously submitted order, entering judgment in favor of Respondent and against the pro se Petitioner in the amount of \$1,201.50.

On August 4, 2015, the court entered an order entering judgment against Petitioner in the amount of \$1,201.50. Ra067. That order was served on Petitioner. Respondent subsequently filed a motion to enforce litigant's rights. Within the motion, Respondent renewed his request to have the court issue a directive that no further application from the Petitioner with regard to this matter was to be accepted by the clerk and that the clerk close the docket in this matter. Respondent also requested fees and costs pertaining to the filing of the motion.

Petitioner's cross-motion to reinstate all claims was denied by order of the court dated August 21, 2015. Ra069. Oral argument with regard to Respondent's motion to enforce litigant's rights was scheduled for October 13, 2015 before the Assignment Judge presiding over the Cumberland/Gloucester/Salem Vicinage. In the interim, Petitioner filed a motion for reconsideration of the court's August 4, 2015 order entering judgment against Petitioner in the amount of \$1,201.50 and August 21, 2015 order denying Petitioner's motion to reinstate all claims. Respondent filed opposition to Petitioner's motion. Petitioner subsequently filed an additional submission pertaining to the pending motions.

Respondent's motion to enforce litigant's rights was granted and Petitioner's motion/cross-motion was denied pursuant to orders entered on October 14, 2015. Ra074-083.

VII. NEW JERSEY APPELLATE DIVISION

On November 23, 2015, Respondent received Petitioner's notice of appeal of "the entire judgment" and all orders entered after the 2011 jury trial. By letter dated December 2, 2015, Petitioner was advised by the Appellate Division that her notice of appeal was being returned as unfiled due to failure to file notice of appeal within time permitted by court rules for the August 21, 2015, May 8, 2015, September 14, 2014, April 21, 2014, and November 5, 2012 orders. Petitioner was further advised that the orders dated September 2, 2011 and September 6, 2011 were the subject of a prior appeal and could not be appealed again.

After several more deficient filings, the Appellate Division accepted Petitioner's notice of appeal of the October 14, 2015 order granting Respondent's motion to enforce litigant's rights and denying Petitioner's various cross-motions. Oral argument regarding Petitioner's notice of motion was heard on June 7, 2017. On July 5, 2017, the Appellate Division issued an opinion affirming the Law Division's October 14, 2015 decision. Ra084.

VIII. UNITED STATES SUPREME COURT

Petitioner has now filed a petition for a writ of certiorari.

REASON FOR DENYING PETITION FOR WRIT OF CERTIORARI

**PETITIONER HAS NOT ESTABLISHED A COMPELLING REASON,
PURSUANT TO RULE 10, FOR THE PETITION FOR A WRIT OF
CERTIORARI TO BE GRANTED**

Pursuant to Rule 10:

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United State court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

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

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

In the instant matter, Petitioner has not established a compelling reason, pursuant to Rule 10, for the petition for a writ of certiorari to be granted. There is no federal question presented here. Rather, this is a pro se litigant's misguided attempt to have a State question reviewed by a Federal Court.

This matter has already been adjudicated to the fullest extent, and then some. This matter came to an end when the New Jersey Supreme Court disposed of it on July 12, 2013 without remand. Nevertheless, Petitioner continues to file applications over which no court in the country has jurisdiction. Moreover, the

specific relief that Petitioner requests in each of her applications is relief that was previously requested and denied at the New Jersey Appellate, Supreme and Law Division levels, before it was once again requested and denied at the New Jersey Appellate and Law Division levels. In short, there is no basis, in either law or procedure, for Petitioner's continued applications.

It is for these reasons that Respondent sought an order barring Petitioner from filing any further submissions with regard to this matter with the New Jersey Law Division. It was, and remains, patently clear that absent such an order Petitioner would be intent on subjecting Respondent and the entire judicial system to an interminable cycle of regurgitated, baseless motions and appeals. To be quite blunt, this has to stop. Judicial resources are now being wasted at every level of the system, Respondent has paid enormous legal costs and fees, yet there is no end in sight.

All of Petitioner's submissions following the New Jersey Supreme Court's entry of its July 12, 2013 order have been precluded by the legal doctrine of *res judicata*. Accordingly, the order enjoining Petitioner from filing any further submissions with regard to this matter with the Law Division was properly upheld by the New Jersey Appellate Division. This case has visited the New Jersey Law Division and the New Jersey Appellate Division on numerous cycles, has even visited the Supreme Court of New Jersey and is now visiting the United States Supreme Court. Within her petition, Petitioner simply reargues that which has been

argued and rejected before without establishing a compelling reason for the petition for writ of certiorari to be granted.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied. Respondent requests attorney's fees and double costs, pursuant to Rule 42(2) and 43(7), for Petitioner's filing of a frivolous petition.

Respectfully submitted,

METHFESSEL & WERBEL, ESQS.
Attorneys for Dennis DeSimone



By: _____
Edward L. Thornton

DATED: November 13, 2017