

NO. 25-5507

In the
Supreme Court of the United States

JAMILLAH CHERRY-WIGGINS,

Petitioner,

v.

THE METHODIST HOSPITAL, INC.,

Respondent.

On Petition for a *Writ of Certiorari* to the
Supreme Court of the United States

**BRIEF OF RESPONDENT THE METHODIST HOSPITAL, INC.
IN OPPOSITION TO PETITION FOR *WRIT OF CERTIORARI***

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COUNTERSTATEMENT OF QUESTION(S) PRESENTED

1. Should this Court grant Petitioner's *Writ of Certiorari* given there have been no grounds cited by Petitioner justifying review under Sup.Ct.Rule 10?
2. Are Petitioner's repeated and documented failures to comply with Indiana's applicable electronic filing requirements and Rules of Appellate procedure sufficient to serve as the basis to grant Petitioner's *Writ of Certiorari*?
3. Is Petitioner's *Writ of Certiorari* in contravention of Sup.Ct.Rule 14 given that none of the state court decisions, either at the trial court or appellate level, were based on federal questions?

RELATED CASES NOT SPECIFICALLY IDENTIFIED BY PETITIONER

Indiana Lake County Superior Court 1; Docket No. 45D01-1910-CT-1084; Caption: *Jamillah Cherry-Wiggins, individually and on behalf of Toriano Wiggins, deceased, Plaintiff v. The Methodist Hospital, Inc., Defendant*; Order Granting Defendant's Second Motion for Summary Judgment against Jamillah Cherry-Wiggins on February 21, 2023.

Indiana Court of Appeals; Docket No. 24A-CT-38; Caption: *Jamillah Cherry-Wiggins, Appellant v. The Methodist Hospital, Inc., Appellee*; Order Dismissing Appellant's appeal issued July 17, 2024; Order Denying Appellant's Petition for Rehearing Denied issued on September 13, 2024.

Indiana Supreme Court; Docket No. 24A-CT-38; Caption: *Jamillah Cherry-Wiggins, Appellant v. The Methodist Hospital, Inc., Appellee*; Order Denying Appellant's Petition to Transfer issued on January 23, 2025.

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INTRODUCTION

Petitioner, Jamillah Cherry-Wiggins (“Petitioner”), *pro se*, filed a medical malpractice claim under Indiana’s Medical Malpractice Act against Respondent. In what she described as her capacity as “individually and on behalf of Toriano Wiggins”, Petitioner filed her Complaint for Medical Malpractice in Lake County, Indiana Superior Court in October 2019 following completion of Indiana’s Medical Malpractice Act medical review panel process. Her efforts to prosecute her medical malpractice case were largely derailed and proved unsuccessful due to her failure to comply with Indiana Trial and Appellate Rules of procedure governing responses to dispositive motions and appellate briefs.

After years of litigation at the state court level, on February 21, 2023, the Lake County, Indiana Superior Court granted Respondent’s Second Motion for Summary Judgment against Petitioner due to Petitioner’s failure to timely respond to the pending motions in contravention of applicable state court case law and Indiana Trial Rule(s). Subsequently, Petitioner filed a Notice of Appeal with the Indiana Court of Appeals seeking to challenge the trial court’s February 21, 2023 Order. Petitioner’s appeal was dismissed due to her failure to comply with Indiana’s Appellate Rules, specifically those governing the requirements for content and deadline(s) for filing an appeal. After these orders entered against her at both the trial court and Indiana Court of Appeals level, Petitioner filed a Petition for Transfer to the Indiana Supreme Court. On January 23, 2025, the Indiana Supreme Court issued a final order denying Petitioner’s Petition for Transfer.

Following receipt of the Indiana Supreme Court's final order of January 23, 2025, Petitioner filed this *Writ of Certiorari* seeking this Court's jurisdiction pursuant to 28 U.S.C. §1257(a) and suggesting that provisions of the United States Constitution, specifically "Amendments #1, 4 & 14th" are implicated.

STATEMENT OF CASE

On or about October 16, 2019, Petitioner, *pro se*, filed her Complaint for Damages against Respondent alleging what appeared to be claims of medical malpractice resulting in injuries and death to a patient, Toriano Wiggins. (See Respondent's Appendix D). This court filing followed completion of the Medical Review Panel process required by Indiana's Medical Malpractice Act, which began when Petitioner filed her Proposed Complaint with the Indiana Department of Insurance on April 24, 2017. (See Respondent's Appendix E).

Notably, neither Petitioner's Proposed Complaint nor state court Complaint for Damages claimed any Federal causes of action, but rather only sounded under state law, specifically, Indiana's Medical Malpractice Act. (See App. D and App. E).

After approximately four (4) years of state court litigation in Lake County, Indiana's Superior Court, on February 21, 2023, the trial court granted Respondent's Motion for Summary Judgment against Petitioner. (See Petitioner's "Exhibit C" – Order Granting Respondent's Second Motion for Summary Judgment). In relevant part, without reciting the entirety of the grounds for the Second Motion for Summary Judgment, Petitioner had until November 30, 2022 to file a response in opposition. (*Id.*). After Petitioner failed to do so and instead filed a handwritten "response" on December 1, 2022, the trial court, citing the Indiana Supreme Court opinion of *Mitchell v. 10th & The Bypass, LLC*, 3 N.E.3d 967 (Ind. 2014), entered summary judgment against Petitioner. (*Id.*)

Importantly, the entry of summary judgment was based on Petitioner's failure to file a timely response in opposition to Respondent's Second Motion for Summary

Judgment and was wholly unrelated to any interpretation of Federal law or Constitutional rights under Federal law. (*Id*).

Following entry of summary judgment, Petitioner proceeded to file a Notice of Appeal with the Indiana Court of Appeals. After a request for extension of time to tender her Appellant's Brief, Petitioner again failed to comply with the deadline to do so. The Indiana Court of Appeals issued an Order dated July 17, 2024 confirming that Petitioner failed to file her brief and appendix by June 10, 2024. (See Respondent's Appendix A – Indiana Court of Appeals July 17, 2024 Order).

The Court of Appeals July 17, 2024 Order, dismissed Petitioner's appeal with prejudice. (*Id*). Again, the dismissal and decision of the Indiana Court of Appeals was based on Petitioner's failure to comply with established filing deadlines under Indiana's Appellate Rules and was not related to any interpretation or analysis of Federal law or Petitioner's constitutional rights under Federal law. Petitioner then filed a Petition for Rehearing with the Indiana Court of Appeals which was denied on September 13, 2024. (See Respondent's Appendix F - September 13, 2024 Indiana Court of Appeals Order).

On October 12, 2024 following dismissal of her appeal by the Indiana Court of Appeals, Petitioner filed a Petition for Transfer with the Indiana Supreme Court seeking review of the Court of Appeal's decision. (See Respondent's Appendix B – Petitioner's State Court Petition to Transfer). At no point in Petitioner's Petition to Transfer is there any allegation, or reference to Federal law or that her federal

constitutional rights were affected by any state court decision in the pending case. (*Id*)(emphasis added).

On January 23, 2025, the Indiana Supreme Court issued an Order denying the Petition to Transfer. The Supreme Court's Order was based on the fact that Petitioner failed to file a brief that was free of defects which Petitioner had been notified to correct but failed to do so by the deadline(s) established by the Indiana Court of Appeals. The opinion of the Indiana Supreme Court was a result of Petitioner's failure to comply with Indiana Appellate Rules and not following a determination or interpretation of Federal law or Petitioner's Constitutional rights under federal law. (*Id*) (emphasis added).

This Petition for *Writ of Certiorari* followed.

SUMMARY OF ARGUMENT

It is black letter law that the principal purpose for which this Court uses certiorari jurisdiction is to resolve conflicts among circuit courts of appeals and state courts concerning provisions of federal law. *Braxton v. United States*, 500 U.S. 344, 348 (1991)(interpreting Sup.Ct.Rule 10.1). Respondent contends that this cornerstone purpose for granting certiorari is not present in Petitioner's *Writ of Certiorari*.

Petitioner has not satisfied the jurisdictional requirement to establish why this Court should grant her *Writ for Certiorari*. Petitioner's *Writ of Certiorari* fails to comply with Sup.Ct.Rule 10 and Rule 14. Petitioner fails to identify any of the bases justifying grant of a *writ of certiorari* described by Sup.Ct.Rule 10. Likewise, Petitioner fails to comply with Sup.Ct.Rule 14. In sum, the *Writ of Certiorari* is devoid of a single reference specific to where or how the Federal claims she alleges her Writ is based on according to 28 U.S.C. §1257(a), were presented to the Indiana state courts.

REASONS TO DENY THE WRIT

A. Petitioner's *Writ of Certiorari* fails to comply with Supreme Court Rule 10.

This Court's Rules, specifically Rule 10 titled "Considerations Governing Review on *Writ of Certiorari*" confirms that review on a *writ of certiorari* is not a matter of right, but of judicial discretion and that a writ will only be granted for compelling reasons. Sup.Ct.Rule 10. When deciding to grant a *writ of certiorari*, this Court typically considers those circumstances laid out in subparagraphs (a) through (c) of Sup.Ct.Rule 10. Petitioner's *Writ of Certiorari* contains none of those circumstances.

This Court does not sit to satisfy a scholarly interest in intellectually interesting and solid problems nor for the benefit of particular litigants. *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S.70, 74 (1955). In the present case, Petitioner is not requesting this Court address Federal Constitutional issues for the benefit of the citizens of the United States. Instead, at its most basic level, Petitioner seeks review of Indiana's trial, appellate and supreme court orders dismissing her medical malpractice claim and subsequent appeal due to her unilateral failure to follow Indiana's Trial Rule 56 and appellate filing Rules.

With all due respect to Petitioner, the "Questions Presented" as contained in her *Writ of Certiorari* are difficult, if not impossible, to understand. It remains wholly unclear, based on the substance of the hand-written "questions", what Petitioner is asking this Court to review. From what Respondent can gather, it appears that Petitioner seeks this Court's review the dismissal of her appeal from the Indiana

Court of Appeals’ July 17, 2024 Order. Based on the second “question” listed by Petitioner, it appears she is seeking this Court’s review of “error” in Indiana’s electronic filing system. Petitioner then appears to contend that her *Writ of Certiorari* involves interpretation of “United States Constitution” and “Amendments #1, 4 & 14th”. (See *Writ of Certiorari*, p. 8).

Confusion and lack of clarity aside, what is abundantly clear is that the “questions presented” by Petitioner do not request this Court to review any determinations made by Indiana trial and appellate courts concerning Federal law or her rights under Federal law. Likewise, the “questions presented” do not request this Court to resolve conflicts between United States Court of Appeals on federal questions. They also do not request this Court to resolve Indiana state courts’ opinions on Federal law which conflict with another state’s highest court or the United States Court of Appeals.

B. Petitioner’s *Writ of Certiorari* fails to comply with Supreme Court Rule 14.

Petitioner seeks jurisdiction of this Court to review her *Writ of Certiorari* under 28 U.S.C. §1257(a). (See *Writ*, p. 7). Since a review of a state-court judgment is sought under 28 U.S.C. §1257(a), Sup.Ct.Rule 14(g)(i) requires Petitioner to identify:

when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears, so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a *writ of certiorari*.

(Sup.Ct.Rule 14(g)(i)).

With very rare exceptions, the Court reviewing state court judgments will not consider a petitioner's federal claim unless it was either addressed by or properly presented to the state court that rendered the decision to be reviewed. *Adams v. Robertson*, 520 U.S. 83, 86 (1997). Before this Court will review a decision of a state court, it must affirmatively appear from the record that a federal question was presented to the highest court of the state having jurisdiction and that its decision of federal question was necessary to its determination of the cause. *Williams v. Kaiser*, 323 U.S. 471, 477 (1945). When the highest state court is silent on a federal question, this Court assumes that the issue is not properly presented, and the aggrieved party bears the burden of defeating that assumption by demonstrating that the state court had a fair opportunity to address the federal question(s) sought to be presented. (*Adams*, 520 U.S. 83 at 86-87).

Petitioner's *Writ of Certiorari* omits any of the required information and content required by Sup.Ct.Rule 14(g)(i). Review of the justifications for the decisions to dismiss her medical malpractice Complaint at the trial court level in Indiana confirms that the dismissal was due to Petitioner's failure to comply with applicable Indiana Trial Rules governing filing deadlines. Entry of summary judgment and dismissal of her subsequent appeal had nothing to do with interpretation of Federal law or Petitioner's rights under the same whether they be First Amendment, Fourth Amendment or Fourteenth Amendment concerns. (See Petitioner's "Exhibit C"). Likewise, neither the decision to dismiss Petitioner's Appeal by the Indiana Court of

Appeals nor the decision to deny transfer by the Indiana Supreme Court were, in any way, based on interpretation of Federal law.

The Court may note that the Orders of the Lake County, Indiana Superior Court, Indiana Court of Appeals and Indiana Supreme Court do not contain any reference to Federal law or Constitution. Likewise, Petitioner can point to no filing reviewed by the trial court, Indiana Court of Appeals or Indiana Supreme Court where she “raised” any Federal question for interpretation by the state courts. (emphasis added).

Based on the holdings in *Adams v. Robertson* and *Williams v. Kalser, supra*, Petitioner has not satisfied the jurisdictional element of her *Writ of Certiorari*. Her vague handwritten reference to “United States Constitution” or “Amendments #1, 4, & 14th” within her *Writ of Certiorari* under “Constitutional and Statutory Provisions Involved” is not sufficient under applicable case law precedent or this Court’s Rules to confer jurisdiction and justify granting the *Writ of Certiorari*. Neither the United States Constitution nor the First, Fourth and Fourteenth Amendments to the Constitution have any connection to Petitioner’s state court medical malpractice claim and appeal being dismissed by her repeated failures to comply with Indiana Trial and Appellate filing requirements.

Because of the lack of any articulable and objective basis to establish jurisdiction over Petitioner’s *Writ of Certiorari* pursuant to 28 U.S.C. §1257(a), and the failure to comply with Sup.Ct.Rule 14, the Court should deny certiorari.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for a *Writ of Certiorari*.

Respectfully Submitted,

/s/ Michael E. O'Neill

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APPENDIX

APPENDIX A:	July 17, 2024 Indiana Court of Appeals Order	1(a)
APPENDIX B:	Petitioner's State Court Petition to Transfer	3(a)
APPENDIX C:	Respondent's Response in Opposition to Petition to Transfer	13(a)
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IN THE
COURT OF APPEALS OF INDIANA

Jamillah Cherry-Wiggins,

Appellant,

v.

The Methodist Hospital, Inc.,

Appellee.

Court of Appeals Cause No.
24A-CT-38

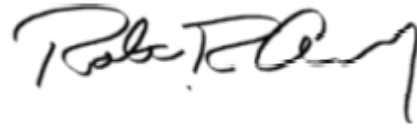


Order

- [1] On March 22, 2024, the Court granted, in part, Appellant’s “Motion for Extension of Time to Correct Brief and to Extend Deadline Time to Respond and Complete Brief” and directed Appellant, among other things, to file an Appellant’s brief and appendix within thirty days of service of the Notice of Completion of Transcript. The Court’s March 22nd order cautioned Appellant that failure to comply with the Court’s order may result in dismissal of this appeal.
- [2] Notice of Completion of Transcript was served on May 10, 2024, making the Appellant’s brief and appendix due on June 10, 2024. To date, Appellant has failed to file an Appellant’s brief and appendix.
- [3] Appellee has now filed a Second Ind. Appellate Rule 36(B) Motion to Dismiss Appeal. No response has been filed.
- [4] Having reviewed the matter, the Court finds and orders as follows:
1. Appellee’s Second Ind. Appellate Rule 36(B) Motion to Dismiss Appeal is granted, and this appeal is dismissed with prejudice. *See App. R. 45(D).*

2. The Clerk of the Court is directed to send this order to the parties, the trial court, and the Lake Circuit and Superior Courts Clerk.
3. The Lake Circuit and Superior Courts Clerk is directed to file this order under Cause Number 45D01-1910-CT-1084, and, pursuant to Indiana Trial Rule 77(D), the Clerk shall place the contents of this order in the Record of Judgments and Orders.

[5] Ordered: 7/17/2024

A handwritten signature in black ink, appearing to read "Robert F. Allen", written over a horizontal line.

Chief Judge

IN THE INDIANA COURT OF APPEALS

CASE NO. 24A-CT – 38

JAMILLAH CHERRY-WIGGINS	)	Appeal from the Indiana Court of Appeal
Individually and on behalf of	)	Case No. 24A-CT-38
TORIANO WIGGINS, deceased	)	Appeal from the Lake Circuit / Superior
Appellant	)	Case No. 45D01-1910-CT-001084
vs	)	The Honorable JOHN M. SEDIA
THE METHODIST HOSPITAL., INC)	Judge Presiding
Appellee)	

PETITION TO TRANSFER

Jamillah Cherry Wiggins

ProSe

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QUESTION PRESENTED ON TRANSFER

I. Whether the Court of Appeals Erred in its September 13, 2024, Order dismissing Appellant's Appeal, with prejudice, following Appellant's failure to file a brief and appendix pursuant to Ind. Appellate Rule 45(D) is subject to rehearing under Ind. Appellate Rule 54.

In this matter the court dismiss Appellant's Appeal with prejudice. The Appeal court, granted, in part, Appellant's "Motion for Extension of Time to Correct Brief and to Extend Deadline Time to Respond and Complete Brief" and directed Appellant, among other things, to file an Appellant's brief and appendix within thirty days of service of the Notice of Completion of Transcript. The court determined that Appellant failed to file an Appellant's brief and appendix. The Appellant Jamillah Cherry-Wiggins humbly requested that The Supreme Court accept transfer and reverse The Court of Appeal judgement. The Court of Appeal judgement is erroneous in regard to inconsistent deadline dates given to Appellant as well as failure to give the deadline of times for brief to be submitted. The Appell rules nor clerks office never explained the difference in calendar days or business days as it relates to the 30day timeframe for brief to be submitted. Neither until after brief being submitted central time, eastern or pacific time. Appellants brief of correction was submitted before 12am before deadline. There has been a significant amount of inconsistency from the start of filing of case into the appeal and amendment. With this in mind, The Appellant motioned for the court to clarify information received; to be submitted by mail and recipient's continue to submit information electronically and by email further delaying the time for Appellant to respond to court.

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BACKGROUND AND PRIOR TREATMENT OF ISSUE ON TRANSFER

Appellant/Plaintiff followed the compliance of the court; to file documents in a timely manner. Documents were filed on and before the deadline date publicly and privately with several attempts to produce a receipt on the Indiana E-filing System (see filing history from Efileincourts.gov/e-filing support Tyler Technologies). Since 12/01/ 2022 and after hearing on 2/21/2023 thru 3/01/2023 plaintiff/appellant made several attempts via telephone and email to produce verification of 11/30/2022 case filings. The e-filing support Tyler Technologies team members suggested that the plaintiff should resubmit files, contact the clerk office and that no other proof can be given for filings by only the filing history's. The support team also mentioned of the system have had updates and maintenance but unable to offer further assistance.

Appellant/Plaintiff Jamillah Cherry Wiggins, Pro Se humbly requests that the Supreme Court transfer case and reverse Appeal Court and Trial Court decision. set aside judgement entered in this case on 7/17/2024 and transfer petition. As well as set aside judgement for relief on 2/21/2023 and acknowledge proof of compliance. With strong emphasis of history as proof in support of this motion for relief. Also in this matter the process of obtaining court transcripts was delayed, Appellant made several attempts via phone and in person to order transcripts even after completion I was never notified via mail neither received a printed copy after submitting request in person verbally and written.

Appellant/Plaintiff state judgement should be set aside under Indiana Trial Rule 60 (A) due to clerical error and Trial Rule (B) (1) there was excusable neglect.

Appellant Jamillah Cherry Wiggins Petition to Transfer

This case lacks consistency and compliance in its communication. Noncompliance in the court order ruling to clarify Appellants/Plaintiff information via mail. Causing more delay in response time in addition to computer error. As well Court compliance of granting The Honorable Judges order to give appellant necessary documents to assist in filing for deceased personal representative.

Filings, rulings proceedings continue without personal representative appointment. Review case consider to transfer appeal petition ss well as both judgements on the summary judgement decisions. Appellant Jamillah Cherry Wiggins Petition to Transfer and reverse Appeal and Trial Court decisions. And grant Appellant a proper Trial or mediation to speak with Judges of The Supreme Court Justice System. Please allow Appellant time to be heard and present case of the Death of her Loved one the deceased Toriano Wiggins

ARGUMENT

Appellant//Plaintiff Jamillah Cherry—Wiggins, Individually and on behalf of Toriano Wiggins, deceased filed a complaint for Damages/Medical Malpractice cause of action against Defendant The Methodist Hospitals, INC. d/b/a Methodist Hospitals Northlake Campus, Jamillah Cherry-Wiggins and Toriano Wiggins was married and residents of Lake County, State of Indiana. Toriano was 44 years old at the time of his passing, he had no children.

Toriano Wiggins was patient at the Defendants Hospital from April 29, 2015, thru May 12. On the morning of May 1, 2015, Jamillah Phoned and visited the ICU; upon entering Toriano's room; I Jamillah Cherry-Wiggins found him in bed struggling to breathe, unconscious, unresponsive to his name, several attempts was made to awaken Mr. Wiggins by shaking him, tapping his shoulder and opening his eyelids. Jamillah Cherry-Wiggins call for help from the Defendants, employees and designees, represented to assist, implement and comply with all reasonable standards of care to render emergency care/intervention for TORIANO. At the same time and place TORIANO was experiencing problems breathing, Jamillah Cherry—Wiggins heard and witness the monitor for vitals alarming and request for the Defendants employees and designees represented to assist Toriano. The nursing staff failed to respond to call Doctor or Rapid Response Team.

This process continues on more than 30 minutes. During that present time, I Jamillah Cherry-Wiggins had been a LPN with the State of Indiana for more than 15years. As a LPN I was skilled with respiratory distress life support, dialysis care and an American Red Cross Adult, Infant and Child CPR AED and First Aide Instructor for Lay responders and healthcare workers.

Appellant Jamillah Cherry Wiggins Petition to Transfer

I was informed that Toriano suffered an anoxic brain injury and worse than a vegetative state. And that he would not recover. Appellant/ Plaintiffs, without counsel filed proposed complaint against the Defendant with the Indiana Department of Insurance, Plaintiffs, without counsel filed proposed complaint against the Defendant with the Indiana Department of Insurance. The medical review panel members issued an opinion on July 16, 2019. A Genuine material issue of Fact.

CONCLUSION

TO THE HONORABLE PRESIDING JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE INDIANA SUPREME COURT, I Jamillah Cherry Wiggins, petition this Court for a Transfer in the above-entitled matter after an was filed on 7/17/2024 opinion, dated The Trajectory of my life changed 4/30/2015 and 5/1/2015. I plead with The Court to transfer and reverse The Appeal Court and Trial Courts decision. I Plead with emphasis for a trial for case to be heard. For The Honorable Justice System to read and hear me. As an emergency responder. I found my husband unresponsive for more than 15min to an hour without rapid response being called nor emergent intervention. My mental, emotional and physical state has never been the same.. I have never been the same. I plead for a opportunity for my voice and rights to be heard and justice be granted.

WORD COUNT CERTIFICATION

I, Jamillah Cherry Wiggins verify that this Petition for rehearing contains 1427 words of the 4,200 allowed under App. Rule 44(E), excluding those items excluded from page length limits under App.Rule 44(C), as determined by the word counting function of Word 2010.

/s/ Jamillah Cherry Wiggins

Jamillah Cherry Wiggins

Appellant Jamillah Cherry Wiggins Petition to Transfer

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was served upon the following this
11th day of October, 2024 , via the Court's electronic filing system:

Jamillah cherry Wiggins

645 Pierce Street

Gary, Indiana 46402

/s/ Jamillah Cherry Wiggins

Jamillah Cherry Wiggins

**IN THE
SUPREME COURT OF INDIA
CAUSE NO. 24S-_____**

JAMILLAH CHERRY-WIGGINS,	)	Appeal from the
individually and on behalf of deceased,	)	Lake Superior Court
TORIANO WIGGINS,	)	Hammond, Indiana
)	
Appellant,	)	Appellate Cause No.: 24A-CT-38
)	
vs.	)	Trial Court Cause No.
	)	45D01-1910-CT-01084
THE METHODIST HOSPITAL, INC.,)	
	)	The Honorable John M. Sedia, Judge
Appellee.)	

APPELLEE’S BRIEF IN RESPONSE TO APPELLANT’S PETITION TO TRANSFER

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I. QUESTION PRESENTED ON TRANSFER

Whether the Court of Appeals erred in its July 17, 2024 Order dismissing Appellant's Appeal, with prejudice, due to Appellant's failure to file a brief and appendix as required by Ind. Appellate Rule 45(D).

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**IV. BACKGROUND AND PRIOR TREATMENT
OF ISSUES ON TRANSFER**

As an initial point of housekeeping, due to Appellant's appeal being dismissed with prejudice following her failure to comply with Ind. Appellate Rule 45(D), there are no appellate briefs for Appellee to cite in its Response to Petition to Transfer for its procedural or factual background. Instead, Appellee relies on the orders, motions and notices by the Clerk of the Court of Appeals to provide this Court that information contemplated by Ind. Appellate Rule 57(G).

On or about January 5, 2024, *pro se* Appellant filed her initial January 5, 2024 Notice of Appeal with the Indiana Court of Appeals seeking to appeal a Lake County, Indiana Superior Court Order denying Appellant's Motion for Relief From Judgment. (See Appellate Court Docket).

On January 9, 2024, the Lake County, Indiana Superior Court's Clerk issued a Notice of Completion of Clerk's Record and confirmed that no transcript had been requested by Appellant in her Notice of Appeal. (See Appellate Court Docket).

On or about February 7, 2024, Appellant filed an "Amended Notice of Appeal" which requested certain transcripts of various hearings in front of the Lake County, Indiana Superior Court in that matter. (See Appellate Court Docket).

Only two (2) days later, on February 9, 2024, despite the requested transcripts not yet being available, Appellant attempted to file brief which was found to be defective and non-compliant with the Indiana Appellate Rules for numerous reasons. (See Appellate Court Docket). The brief was listed as "received" but not "filed" due to the defect(s) as required by Ind. Appellate Rule 23(D). Curiously, Appellant also filed a simultaneous "Motion for Extension of Time to File Appellant's Brief" on February 8, 2024 (despite filing a brief that same day). (See Appellate Court Docket)(emphasis added).

A Notice of Defect was issued by the Clerk of the Court of Appeals on February 9, 2024 confirming that Appellant's February 9th brief failed to comply with no less than approximately twenty-two (22) separate Rules of Appellate Procedure. (See February 9, 2024 – Notice of Defect). Appellant was given ten (10) business days from February 9, 2024 to correct the defects. (See February 9, 2024 – Notice of Defect).

The deadline for Appellant to file a brief and appendix then came and passed with no brief of any sort being filed, specifically a conforming brief that was required by the February 9, 2024 Notice of Defect. (See Court's Docket).

During the afternoon of March 14, 2024, Appellant filed a "Motion for Extension of Time to Correct Brief and to Extend Deadline Time to Respond and Complete Brief." (See Appellate Court Docket). That same day, Appellee filed a "Response in Opposition to (Appellant's) Motion for Extension of Time to Correct Brief and to Extend Deadline Time to Respond and Complete Brief" which argued that the Appellant's March 14th Motion for Extension failed to comply with Ind. Appellate Rules 35(A) and (B). (See Appellate Court Docket).

On or about March 22, 2024, the Court of Appeals issued an Order which in relevant part required Appellant, within thirty (30) days from the date the Notice of Completion of Transcript is served" to file her brief and appendix. (See March 22, 2024 Court of Appeal's Order)(emphasis added). The Court of Appeals expressly confirmed and put Appellant on notice that "failure to comply with this order may result in the dismissal of this appeal." (See March 22, 2024 Court of Appeal's Order)(emphasis added).

Almost two (2) months later on May 10, 2024, the Lake County, Indiana Superior Court Clerk filed a Notice of Completion of Transcript. (See Appellate Court Docket). Therefore, a fully

conforming brief and appendix were required to be filed by the Appellant by no later than June 10, 2024.

On June 11, 2024, Appellant, again attempted to file a non-conforming brief with an appendix (the appendix contained no written content). The Clerk of the Court of Appeals again marked as “received” and not “filed” pursuant to App. R. 23(D). (See Appellate Court Docket). That same day, the Clerk issued another Notice of Defect to Appellant confirming that Appellant failed to tender fully compliant corrected documents by the deadline reflected in the prior February 2024 Notice of Defect. (See June 11, 2024 Notice of Defect).

On June 25, 2024, Appellee filed an Ind. Appellate Rule 36(B) Motion to Dismiss Appeal requesting dismissal of the appeal with prejudice due to Appellant's failure to comply with scheduling orders of the Court of Appeals and/or applicable Indiana Appellate Rules. (See Appellee's June 25, 2024 Motion to Dismiss).

On or about July 17, 2024, the Court of Appeals, via the Chief Judge, issued an order granting Appellee's Motion to Dismiss the appeal, and pursuant to Ind. Appellate Rule 45(D) dismissed Appellant's appeal with prejudice due to her failure to file a brief and appendix. (See Court of Appeal's July 17, 2024 Order).

Appellant then timely filed a Petition for Rehearing on August 17, 2024. (See Appellate Court Docket). Appellee filed its Response to Petition for Rehearing on September 3, 2024. (See Appellate Court Docket). The Court of Appeals denied Appellant's Petition for Rehearing on September 13, 2024. (See Court of Appeal's September 13, 2024 Order).

This pending Petition to Transfer followed.

V. ARGUMENT

As an initial point, although not dispositive, Appellant continues to suggest (now in her Petition to Transfer) that she should be afforded some type of preferential treatment or

“understanding” from the Court due to her unrepresented status, or because of what she was allegedly told or instructed to do by unnamed individuals throughout the pendency of this case. It is black letter law in Indiana, and something that has been highlighted by Appellee in its filings throughout the pendency of this appeal, that *pro se* litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so. *Basic v. Amouri*, 58 N.E.3d 980, 983-984 (Ind. Ct. App. 2016)(internal citations omitted), *reh'g denied*. Although unfortunate for the viability of Appellant's appeal, Appellant wholly failed to comply with the Indiana Rules of Appellate Procedure over the course of many months, which appropriately culminated in the dismissal of her appeal with prejudice on July 17, 2024.

In its most distilled and basic form, this Court must decide a simple question. Does the Court believe transfer is appropriate to review the Court of Appeal's July 17, 2024 order dismissing Appellant's appeal with prejudice pursuant to App. R. 45(D). Appellee believes that the answer should be a resounding “no”, specifically for the reasons listed below.

a. Appellant's Lack of Compliance with Ind. Appellate Rule 57(G)(4)

Review of Appellant's Petition for Transfer, specifically the “Argument” section, contains no reason or basis for how or why transfer should be granted. (emphasis added). This alone should be fatal to the Petition.

Ind. Appellate Rule 57(G)(4) contemplates that an argument section in a petition for transfer should explain “the reasons why transfer should be granted.” (App. R. 57(G)(4)). Instead of complying with App. R. 57(G)(4), Appellant spends the entirety of the Argument section listing a host of uncited, largely random, often incomplete, and difficult to follow statements concerning her perception was of what occurred at Appellee's hospital during medical treatment provided to Toriano Wiggins and the underlying Medical Review Panel Process contemplated by Indiana's Medical Malpractice Act codified at I.C. §34-18, *et seq.* These statements then continue through

the “Conclusion” section of Appellant’s Petition to Transfer. Close review of Appellant’s appellate filings to date confirm that this trend and strategy has permeated said filings since January 2024.

Respectfully, none of this information listed by Appellant is a basis or reason for this Court accepting transfer to review the propriety of the Court of Appeal’s decision to dismiss Appellant’s appeal with prejudice on July 17, 2024. Similarly, Appellant’s recitation of this information is contrary to the requirements of App. R. 57(G)(4). Thus, the Petition for Transfer should be denied.

b. Petition for Transfer Contains None of the Considerations Governing the Grant of Transfer Contained in Ind. Appellate Rule 57(H)

Appellant’s Petition to Transfer fails to list any of the considerations governing the grant of transfer as identified by Ind. Appellate Rule 57(H).

Although the grant of transfer is a matter of judicial discretion, App. R. 57(H) contains principal considerations governing this Court’s decision whether to grant transfer. Specifically, transfer may be justified if: 1) the Court of Appeals entered a decision in conflict with another decision of the Court of Appeals on the same important issue; 2) the Court of Appeals entered a decision in conflict with a decision of the Supreme Court on an important issue; 3) the Court of Appeals has decided an important federal question in a way that conflicts with a decision of the Supreme Court of the United States or the United States Court of Appeals; 4) the Court of Appeals has decided an important question of law or a case of great public importance that has not been, but should be, decided by the Supreme Court; 5) The Court of Appeals has correctly followed ruling precedent of the Supreme Court but such precedent is erroneous or in need of clarification or modification in some specific respect; 6) The Court of Appeals has so significantly departed from accepted law or practice or has sanctioned such a departure by a trial court or Administrative Agency as to warrant the exercise of Supreme Court jurisdiction. (App. R. 57(H)(1)-(6)).

Here, the Court of Appeals appropriately dismissed Appellant's appeal with prejudice pursuant to the authority granted to it under App. R. 45(D). Moreover, the record is abundantly clear that Appellant was provided with ample warning that failure to file a compliant brief and appendix would subject her appeal to summary dismissal. This is specifically what occurred in this case. Although Appellant no doubt takes considerable issue with her appeal being dismissed with prejudice, the Court of Appeals' July 17, 2024 Order did nothing to implicate any of the considerations listed as bases for transfer within App. R. 57(H)(1)-(6). Thus, the Petition for Transfer should be denied.

VI. CONCLUSION

Appellee, by counsel, respectfully requests that the Court deny Appellant's Petition for Transfer.

Respectfully submitted,

/s/ Daniel F. Ford

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Counsel for Appellee,
The Methodist Hospital, Inc.

WORD COUNT CERTIFICATE

I verify that this Brief contains no more than 4200 words as permitted by Ind. Appellate Rule 44(E), as reflected by the word count system of Word.

/s/ Daniel F. Ford

Daniel F. Ford (29916-71)

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on October 28, 2024, the foregoing *Appellee's Brief in Response to Appellant's Petition to Transfer* was filed with the Clerk of the Indiana Supreme Court, Court of Appeals and Tax via the Indiana Electronic Filing System (IEFS) and further certify that the foregoing was served upon the below party by depositing the same in the U.S. Mail with proper first class postage affixed and by email transmission.

Jamillah Cherry-Wiggins
645 Pierce Street
Gary, IN 46402
Sjordan1724@yahoo.com

O'NEILL McFADDEN & WILLETT LLP

By: /s/ Daniel F. Ford

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

IN THE LAKE SUPERIOR/CIRCUIT COURT
CAUSE NO. 45D01 1910 CT 01084

JAMILLAH CHERRY-WIGGINS,
individually and on behalf of
TORIANO WIGGINS, Deceased,

Plaintiffs,

vs.

THE METHODIST HOSPITALS, INC.
d/b/a METHODIST HOSPITALS –
NORTHLAKE CAMPUS

Defendant.

Filed in Clerk's Office

OCT 16 2019

Lorenzo Anedonelo
CLERK LAKE SUPERIOR COURT

COMPLAINT FOR DAMAGES

Comes now the Plaintiff Jamillah Cherry-Wiggins, individually and on behalf of Toriano Wiggins, deceased, for her Complaint for Damages, alleges and states as follows:

Parties

1. At all relevant times herein, Jamillah Cherry-Wiggins and Toriano Wiggins were residents of the State of Indiana, County of Lake, and the Plaintiff Toriano Wiggins received the subject medical treatment by the Defendants in Lake County, Indiana.
2. Defendant, The Methodist Hospitals, Inc. d/b/a Methodist Hospitals – Northlake Campus, is, and at all relevant times herein, was a Qualified Health Care Provider as defined by the Indiana Medical Malpractice Act ("the Act").
3. On April 24, 2017, Plaintiffs, filed a proposed complaint against the Defendant with the Indiana Department of Insurance. The medical review panel members issued an opinion on July 16, 2019. Exhibit A.

Factual Background

4. Toriano Wiggins was a patient of the Defendant from April 29, 2015 through May 12, 2015, and received medical care and treatment from the Defendant.
5. The conduct and treatment of The Methodist Hospitals, Inc. d/b/a Methodist Hospitals – Northlake Campus fell below the applicable standards of care in several respects.
6. As a direct and proximate result of each of said several, separate and distinct acts of malpractice on the part of defendant, the decedent died on or about May 5, 2016.
7. As a further direct and proximate result of said acts and omissions on the part of the defendant, Jamillah Cherry -Wiggins has lost and will continue to lose in the future, the consortium, society, support and services of the Decedent.
8. As an alternative to the above, the plaintiff alleges that the Decedent died for reasons other than the above-alleged negligence of the defendant, and the plaintiff hereby alleges an alternative claim for a "Survival Action" pursuant to Indiana Code section 34-9-3-4, et. seq.
9. As a direct and proximate result of Defendant's negligence, Plaintiff Toriano Wiggins has unnecessarily suffered severe and permanent physical injuries and disabilities, endured pain and suffering, emotional distress and anguish, and other injuries and damages.
10. That by reason of the Defendant's negligence, Plaintiff, Jamillah Cherry-Wiggins has had to perform additional services to care for her husband, and has lost the consortium of her husband.

WHEREFORE, Plaintiffs pray that judgment be rendered against the Defendant in an amount which will compensate the Plaintiffs for their injuries and damages, for the costs of this action, and for all other just and proper relief in the premises.

Respectfully submitted,

By:

Jamillah Cherry-Wiggins
Jamillah Cherry-Wiggins

JURY DEMAND

NOW COME Plaintiffs and demand trial by jury on all issues so triable.

By: _____

45D01 1910 CT 01084

Before the Department of Insurance

State Of Indiana

TORIANO Wiggins / Jamillah Cherry Wiggins
Plaintiff(s)

vs.

Methodist Hospital (Northlake)
6600 Grant St
Greely, IN. 46402
Defendant(s)

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STATE OF INDIANA
DEPT. OF INSURANCE

PROPOSED COMPLAINT FOR DAMAGES

Comes now the Plaintiff(s), TORIANO Wiggins, and
for his/her complaint for damages against the Defendant(s), states
as follows:

1. That Plaintiff TORIANO Wiggins, was a patient of the
Defendant(s), Methodist Hospital (Northlake)
Greely, IN. 46402, from 4/29/15
through 5/12/15, and received medical care and/or treatment from
Defendant(s).

2. Said medical care or treatment rendered by Defendant(s) was
negligent and below the appropriate standard of care.

3. That as a proximate result of the negligence of the Defendant(s),
the Plaintiff(s) TORIANO Wiggins, has/have incurred medical
expenses, additional treatment, related expenses, lost wages and/or
intangible damages of a nature as to require compensation.

WHEREFORE, the Plaintiff(s) respectfully pray(s) for an award against the
Defendant(s) in an amount that will fairly and fully compensate Plaintiff(s)
for all losses, injuries and damages, for the costs of this action, and for
all other just and proper relief.

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Respectfully submitted,

Jamulah Cherry-Niggins
% Toriano Niggins

Phone: 219 545-9033

Address: 645 Pierce St

Date: 4-22-17

Gray, IN 46402

Email Sjordan1724@yahoo.com

IN THE
COURT OF APPEALS OF INDIANA

Jamillah Cherry-Wiggins,

Appellant,

v.

The Methodist Hospital, Inc.,

Appellee.

Court of Appeals Cause No.
24A-CT-38



Order

[1] On July 17, 2024, this appeal was dismissed with prejudice pursuant to Appellate Rule 45(D). Appellant has now filed a Petition for Rehearing. In addition, Appellee has filed a Response to Petition for Rehearing.

[2] Having reviewed the matter, the Court finds and orders as follows:

1. Appellant's Petition for Rehearing is denied.
2. This appeal remains dismissed.

[3] Ordered: 9/13/2024

Crone, Felix, JJ., Baker, Sr. J., concur.

For the Court,

A handwritten signature in black ink, appearing to read "Robt. Crone", written over a horizontal line.

Chief Judge