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Supreme Court, U.S.
FILED

JAN - 2 2025

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

DUANE ANTIONNE FAIRFAX,

Applicant,

v.

TRACEY NICHOLE MARTINEZ

Respondent.

**EMERGENCY APPLICATION FOR STAY OF ENFORCEMENT OF
DECEMBER 1, 2025 ORDER**

(Supreme Court Rule 23; 28 U.S.C. § 1651(a))

Submitted to the Circuit Justice

with Request for Referral to the Full Court

On Application for a Stay of Enforcement

from the Circuit Court of Stafford County, Virginia

Duane Antionne Fairfax
Applicant, Pro Se
7 Ferrous Ct.
Stafford, VA 22554
Phone: 240-273-4906
Email: duane.fairfax@gmail.com

RECEIVED

JAN - 6 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

APPLICATION FOR STAY

Applicant respectfully requests a temporary stay of enforcement of the December 1, 2025 enforcement order entered by the Circuit Court of Stafford County, Virginia, pending disposition of Applicant's appeal and related stay proceedings in the Court of Appeals of Virginia, or further order of this Court.

I. JURISDICTION

This Emergency Application is submitted pursuant to Supreme Court Rule 23 and the All Writs Act, 28 U.S.C. § 1651(a). Applicant seeks narrowly tailored interim relief to prevent enforcement of a state trial court order that would irreparably impair federal statutory and constitutional protections and defeat meaningful federal review.

The December 1, 2025 enforcement order entered by the Circuit Court of Stafford County, Virginia is presently under appellate review in the Court of Appeals of Virginia (VCOA Record No. 2108-25-4). Applicant has sought emergency stay relief in that court, and no stay is currently in place.

Absent temporary relief from this Court, continued enforcement of the December 1 order will result in irreparable mootness of substantial federal questions, including claims arising under the Supremacy Clause and 38 U.S.C. § 5301(a), before those issues may be addressed through the ordinary appellate process. This Application does not seek review of any final judgment but requests interim relief in aid of this Court's authority to prevent state action from foreclosing federal protections.

II. PROCEDURAL POSTURE AT A GLANCE

- Underlying divorce decree — review denied by Supreme Court of Virginia (SCV Record No. 250503)
- Prior contempt enforcement — contempt purged by \$25,000 payment; suspended

incarceration remains outstanding; appeal pending; emergency stay denied (SCV Record No. 250845)

- Current enforcement order — entered December 1, 2025; authorizes garnishment; sets new enforcement deadlines; preserves authority to activate suspended incarceration
- Current appellate proceedings — appeal and emergency stay pending in Court of Appeals of Virginia; no ruling; no stay (VCOA Record No. 2108-25-4)
- Present request — temporary stay of enforcement to preserve federal protections and prevent irreparable harm

III. FEDERAL QUESTIONS PRESENTED

1. Whether the Supremacy Clause and 38 U.S.C. § 5301(a) prohibit a state court from enforcing spousal support through contempt, garnishment, or equivalent coercive mechanisms when compliance is impossible without surrendering federally protected VA disability compensation.
2. Whether due process permits enforcement measures where the obligor lacks any lawful means of compliance other than the use of federally protected benefits.

IV. PROCEDURAL HISTORY

Applicant is a disabled veteran whose VA disability compensation is protected from attachment, levy, or other legal process under 38 U.S.C. § 5301(a).

Applicant previously sought discretionary review in the Supreme Court of Virginia, which declined review. Subsequent enforcement proceedings have continued notwithstanding unresolved federal questions. In later enforcement proceedings, the circuit court entered a contempt order imposing a suspended sentence of incarceration. Applicant purged that contempt by tendering a \$25,000 payment, funded in substantial part through VA disability compensation. That contempt order remains on appeal.

On December 1, 2025, the circuit court entered a further enforcement order authorizing garnishment of Applicant's remaining non-exempt income, setting new compliance deadlines, and preserving authority to activate the previously suspended incarceration. (App. A)

While an emergency stay application was pending in the Supreme Court of Virginia in connection with the ongoing contempt appeal (SCV Record No. 250845), Applicant submitted the December 1, 2025 enforcement order as supplemental authority. At that time, the Supreme Court of Virginia was the appropriate court to consider interim relief. Notwithstanding that submission, emergency relief was denied. (App. E)

Following entry of the December 1, 2025 enforcement order, Applicant timely noted an appeal from that order and simultaneously sought emergency stay relief in the Court of Appeals of Virginia on December 8, 2025 (VCOA Record No. 2108-25-4). No ruling has issued, and no stay is presently in effect. (Apps. B-C)

V. WHY INTERIM RELIEF FROM THIS COURT IS WARRANTED NOW

Although state appellate proceedings remain pending, interim relief from this Court is warranted because no stay is presently in effect and continued enforcement of the December 1, 2025 order threatens irreparable impairment of federal statutory and constitutional protections. Applicant has sought emergency stay relief in the appropriate state courts at each procedural stage, and no ruling has issued.

Absent temporary intervention, the state trial court's enforcement mechanisms will compel compliance through garnishment or incarceration, effectively nullifying federal protections afforded under 38 U.S.C. § 5301(a) before those protections may be meaningfully reviewed. Once enforced, the resulting loss of liberty and compelled surrender of federally protected benefits

cannot be undone, and subsequent appellate review would be rendered moot. Interim relief is therefore necessary in aid of this Court's authority to prevent state action from foreclosing federal rights.

VI. REASONS FOR GRANTING A STAY

A. IRREPARABLE HARM

Absent a stay, Applicant faces imminent and irreparable harm. The December 1 order authorizes garnishment of Applicant's remaining non-exempt income, including federal civilian wages and the portion of military retired pay not already awarded to Respondent. Applicant's only remaining income consists of VA disability compensation.

If enforcement proceeds, Applicant will be left without lawful income for basic living expenses other than VA disability compensation, indirectly compelling the use of federally protected benefits to satisfy state-ordered obligations. Federal law prohibits states from accomplishing indirectly what 38 U.S.C. § 5301(a) forbids directly. See *Howell v. Howell*, 581 U.S. 214 (2017).

The order also preserves authority to activate the previously suspended incarceration if compliance is deemed insufficient. Loss of liberty cannot be remedied after the fact and would moot federal review. (App. A; App. D)

Enforcement proceedings have already required Applicant to report the matter to federal security authorities, causing collateral and ongoing harm to Applicant's federal employment and security clearance that cannot be undone by later relief.

B. Federal Preemption

Applicant's VA disability compensation is protected from attachment, levy, or legal process under 38 U.S.C. § 5301. Enforcement mechanisms that indirectly compel use of protected benefits violate the Supremacy Clause. See *Howell v. Howell*, 581 U.S. 214 (2017).

C. BALANCE OF EQUITIES

The balance of equities strongly favors a temporary stay. Absent relief, Applicant faces irreparable

loss of liberty and compelled surrender of federally protected VA disability compensation. By contrast, Respondent will suffer no comparable harm from a brief pause in enforcement. Applicant does not seek to vacate or modify the underlying support order and seeks only to preserve the status quo while federal questions are resolved through ongoing appellate review.

D. PUBLIC INTEREST

The public interest favors granting a stay. Congress has expressly determined that VA disability compensation must remain insulated from attachment, levy, or other legal process. A temporary stay preserves the supremacy of federal law, prevents states from accomplishing indirectly what federal law forbids directly, and ensures that constitutional questions are not mooted through coercive enforcement before appellate review can occur. Granting interim relief also promotes uniform application of federal veterans' protections nationwide.

VII. RELIEF SOUGHT

Applicant respectfully requests that this Court enter a temporary stay of enforcement of the December 1, 2025 enforcement order entered by the Circuit Court of Stafford County, Virginia, including any contempt, garnishment, or equivalent coercive measures, pending resolution of Applicant's appeal and emergency stay proceedings in the Court of Appeals of Virginia.

Applicant seeks this relief solely to preserve substantial federal statutory and constitutional protections and to prevent irreparable mootness of federal questions before they may be addressed through the ordinary appellate process. Applicant does not seek review of the merits of the underlying support order and requests only interim relief necessary to maintain the status quo until state appellate review is completed or further order of this Court.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Court grant the requested emergency stay to preserve substantial federal protections and prevent irreparable harm pending completion of state appellate review.

Respectfully submitted,



DUANE ANTIONNE FAIRFAX

Applicant, Pro Se

7 Ferrous Ct.

Stafford, VA 22554

Phone: (240) 273-4906

Email: duane.fairfax@gmail.com

Appendix Index

Appendix A — Circuit Court Enforcement Order dated December 1, 2025

Appendix B — Notice of Appeal to the Court of Appeals of Virginia
(VCOA No. 2108-25-4)

Appendix C — Emergency Motion for Stay filed December 8, 2025
(VCOA No. 2108-25-4)

Appendix D — Circuit Court Contempt Order and Purge Conditions (Suspended
Incarceration & \$25,000 payment)

Appendix E — Supreme Court of Virginia Order Denying Emergency Stay
(SCV No. 250845)

Appendix A

CIRCUIT COURT OF STAFFORD COUNTY, VIRGINIA

ENFORCEMENT ORDER

DATED DECEMBER 1, 2025 (Docket No. CL3104-01)

VIRGINIA:

**IN THE CIRCUIT COURT FOR THE
COUNTY OF STAFFORD**

DUANE ANTIONNE FAIRFAX,
Plaintiff/Counter-Defendant,

v.

CL22-3104

TRACEY NICHOLE MARTINEZ,
(formerly known as Tracey Nichole Fairfax)
Defendant/Counter-Plaintiff

**ORDER COMPELLING PLAINTIFF/COUNTER-DEFENDANT
TO COMPLY WITH FINAL DECREE OF DIVORCE**

This matter came before the Court on December 1, 2025, at 1:00 p.m., upon the Notice and Motion for Order requiring the Plaintiff/Counter-Defendant's Compliance with and enforcement of the Final Decree of Divorce filed by the Defendant; Counsel for the Defendant was present, the Plaintiff was present and the matter was heard.

Upon consideration of the evidence presented and the testimony of the Plaintiff and Defendant and the argument of Counsel, it is **ORDERED**,

ADJUDGED AND DECREED as follows:

~~ADJUDGED, ORDERED AND DECREED~~ that the Plaintiff, Duane

~~Antionne Fairfax shall be confined and imprisoned in jail for period of~~

~~unless the Plaintiff, Duane Antionne Fairfax shall be sooner~~
~~discharged by due process of law;~~

~~Provided, however, the Plaintiff may purge himself of his contempt by~~
~~complying with the Final Decree of Divorce dated November 20, 2023 and it is~~

ORDERED;

That the Plaintiff pay Defendant \$ 96,332.22 ^{agreement} in cashier and or certified funds, with post rate judgement of interest of six percent (6%) from February 18, 2024 until paid, as and for the funds awarded to Defendant on or before 1/30/26

as come per Judge Bass; it is further ^{hearing the matter}

That the that the Court **ORDERS** the Plaintiff to pay Defendant \$20,000.00 ^{with post rate judgment of interest of six percent (6%) from 2/18/2024} as and for the joint account awarded to her in the Final Decree of Divorce on or ^{until paid} before 1/30/26 as come per Judge Bass ^{hearing the matter}; it is further

That the that the Court **ORDERS** the Plaintiff to pay Defendant \$50,510.00 in spousal support arrears as of November 20, 2023 through November 20, 2025, with post rate judgment of interest of 6% included, on or before Jan 30, 2026 ^{as come should} and to ^{Judge} ^{Bass} ^{hearing} ^{the} ^{matter} timely pay \$2,000.00 each month thereafter as well by garnishment to ensure timely payment of Defendant's spousal support award in the amount of \$2,000.00;

ADJUDGED, ORDERED AND DECREED that the Court **ORDERS** the Plaintiff to pay to the Defendant an award of the Defendant's fees and costs in seeking Plaintiff's compliance, with said amount being \$ 1275⁰⁰, to be paid to the Defendant, through her Counsel of Record, Yvonne J. Nageotte, Esquire, Nageotte, Nageotte & Nageotte, PC, 385 Garrisonville Road, Suite 202, Stafford, Virginia 22554, within 120 days from entry of this Order; it is further

NAGEOTTE, NAGEOTTE
& NAGEOTTE, P.C.
ATTORNEYS AT LAW

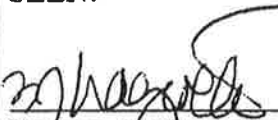
SUITE 201 & 202
AQUA PROFESSIONAL VILLAGE
385 GARRISONVILLE ROAD
STAFFORD, VIRGINIA 22554
LOCAL: (540) 659-5050
FAX: (540) 659-2166
FAX: (540) 288-0960

THIS CAUSE IS CONTINUED to January 5, 2025, 2025. ^{ADS}



Judge Designate

SEEN:




Yvonne J. Nageotte, Esquire
VSB No. 39494
Nageotte, Nageotte & Nageotte, P.C.
385 Garrisonville Road, Suites 201 & 202
Stafford, Virginia 22554
(540) 659-5050
Facsimile (540) 288-0960
Counsel for Tracey Nichole Martinez

A COPY SENT:

JANUARY 5, 2025
CLERK
OF THE COURT

SEEN: *AND Objected TO.*



Duane Antionne Fairfax
7 Ferrous Court
Stafford, Virginia 22554
Plaintiff/Counter-Defendant *Pro se*

NAGEOTTE, NAGEOTTE
& NAGEOTTE, P.C.
ATTORNEYS AT LAW

SUITE 201 & 202
AQUA PROFESSIONAL VILLAGE
385 GARRISONVILLE ROAD
STAFFORD, VIRGINIA 22554
LOCAL: (540) 659-5050
FAX: (540) 659-2166
FAX: (540) 288-0960

Appendix B

COURT OF APPEALS OF VIRGINIA

NOTICE OF APPEAL

VCOA RECORD NO. 2108-25-4

December 8, 2025

VIA VACES ELECTRONIC FILING

A. John Vollino, Clerk of the Court
Court of Appeals of Virginia
109 North Eighth Street
Richmond, VA 23219-2321

Re: Duane A. Fairfax v. Tracey N. Martinez
Stafford Circuit Court Case No.: CL22-3104-01
Record No.: (to be assigned)
Notice of Appeal Filed in Circuit Court

Dear Mr. Vollino:

Please be advised that on December 8, 2025, I filed a Notice of Appeal with the Stafford County Circuit Court from the Enforcement Order entered on December 1, 2025, in the above-referenced matter. A copy of the Notice of Appeal, including the Certificate of Service, is being submitted herewith for the Court's records.

I understand that the Court of Appeals will assign a Record Number upon receipt and processing of this filing, and I will reference that number in all future submissions.

Please advise if any additional information, documents, or fees are required at this stage.

Thank you for your assistance.

Respectfully submitted,



Duane A. Fairfax
Appellant, Pro Se

Enclosure

December 8, 2025

VIA HAND DELIVERY

Kathleen M. Sterne, Clerk of the Court Stafford
County Circuit Court
P.O. Box 69
Stafford, VA 22555

Re: Duane A. Fairfax v. Tracey N. Martinez
Case No.: CL22-3104-01
Notice of Appeal from December 1, 2025 Enforcement Order

Dear Ms. Sterne:

Please accept for filing the enclosed Notice of Appeal from the Enforcement Order entered on December 1, 2025, in the above-referenced matter.

Pursuant to Rule 5A:6, the Notice of Appeal is being timely filed with the Circuit Court, and service has been completed on counsel for Appellee, as reflected in the Certificate of Service.

Please date-stamp the enclosed copy and provide a stamped copy for my records.

Thank you for your assistance.

Respectfully submitted,


Duane A. Fairfax
Appellant, Pro Se

Enclosure

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF STAFFORD

Notice of Appeal to the Court of Appeals of Virginia

Record No.: (to be assigned by VCOA)

DUANE ANTIONNE FAIRFAX

Plaintiff/Counter-Defendant

v.

**TRACEY NICHOLE MARTINEZ
(F/K/A TRACEY NICHOLE FAIRFAX)**

DEFENDANT/COUNTER-PLAINTIFF

Case No.: CL22-3104-01

NOTICE OF APPEAL TO THE VIRGINIA COURT OF APPEALS

COMES NOW the Appellant, Duane Antionne Fairfax, pro se, and hereby gives notice of his appeal to the Court of Appeals of Virginia from the Enforcement Order entered by this Court on December 1, 2025 in the above-referenced matter.

Pursuant to Rule 5A:6 of the Rules of the Supreme Court of Virginia, Appellant states as follows:

1. Appellant appeals the December 1, 2025 Enforcement Order entered in this case.
2. The appeal is taken to the Court of Appeals of Virginia.
3. A transcript is not available for the December 1, 2025 hearing; Appellant intends to proceed on a Written Statement of Facts pursuant to Rule 5A:8 if needed.

4. Appellant has served notice of this appeal on counsel for Appellee as reflected in the Certificate of Service below.

Respectfully submitted,



Duane Antionne Fairfax
Pro Se Appellant
7 Ferrous Ct.
Stafford, VA 22554
240-273-4906
duane.fairfax@gmail.com

December 8, 2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of December 2025, a true and correct copy of the foregoing Notice of Appeal was served via U.S. Mail upon:

Yvonne J. Nageotte, Esq. VSB #39494
Counsel for Appellee
Nageotte, Nageotte & Nageotte, P.C.
385 Garrisonville Road, Suite 201 and 202
Stafford, Virginia 22554



Duane Antionne Fairfax
Appellant, Pro Se

Appendix C

COURT OF APPEALS OF VIRGINIA

EMERGENCY MOTION FOR STAY

FILED DECEMBER 8, 2025

VCOA RECORD NO. 2108-25-4

VIRGINIA APPELLATE COURTS EFILING SYSTEM

DOCUMENT SUBMISSION SUMMARY

Court: Court of Appeals of Virginia

Record Number:

Case Style: Fairfax v. Martinez (f/k/a Fairfax)

Confirmation Number: 338993

Submission Date/Time: 12/8/2025 2:32 PM

Calculated Fees: \$0.00

Fee Exemption Requested: No

| Document | Document Type |
|---|---|
| Ltr to VCOA Emergency Motion to Stay 20251208.pdf | Emergency Motion to Stay Enforcement Pending Appeal |
| VCOA Emergency Motion to Stay v2 20251208.pdf | Cover Letter |

Total number of documents submitted: 2

December 8, 2025

VIA VACES ELECTRONIC FILING

A. John Vollino, Clerk of the Court
Court of Appeals of Virginia
109 North Eighth Street
Richmond, VA 23219-2321

Re: Duane A. Fairfax v. Tracey N. Martinez
Stafford Circuit Court Case No.: CL22-3104-01
Record No.: (to be assigned)
Emergency Motion to Stay Enforcement Pending Appeal

Dear Mr. Vollino:

Enclosed for filing, please find:

1. Appellant's Emergency Motion for Stay Pending Appeal pursuant to Rule 5A:7; and
2. Certificate of Service reflecting service by U.S. Mail upon Appellee or her last counsel of record.

This motion requires urgent consideration because the Circuit Court has scheduled a compliance hearing for January 5, 2026, at which Appellant faces potential incarceration based on an enforcement order that is the subject of this appeal.

Please process this filing at the earliest opportunity. Thank you for your assistance.

Respectfully submitted,



Duane A. Fairfax
Appellant, Pro Se
7 Ferrous Ct.
Stafford, Va 22554
duane.fairfax@gmail.com

Enclosure

IN THE COURT OF APPEALS OF VIRGINIA

| | | |
|--|---|-----------------------------|
| DUANE ANTIONNE FAIRFAX, |) | |
| |) | |
| Appellant, |) | |
| v. |) | |
| |) | Record No. (to be assigned) |
| TRACEY NICHOLE MARTINEZ |) | |
| (f/k/a Tracey Nichole Fairfax) |) | |
| |) | |
| Appellee. |) | |
| |) | |
| (On Appeal from Stafford Circuit Court |) | |
| Case No. CL22-3104-01) |) | |

EMERGENCY MOTION TO STAY ENFORCEMENT PENDING APPEAL
(RULE 5A:7; Imminent Irreparable Harm – Jan. 5, 2026 hearing)

COMES NOW the Appellant, Duane Antionne Fairfax, pro se, and respectfully moves this Court for an **emergency stay** of the Stafford County Circuit Court's December 1, 2025 Enforcement Order pending resolution of the appeal. Enforcement without a stay will result in immediate and irreparable harm, including unlawful incarceration, violation of federal law, and coercive enforcement based on legally defective arrears.

I. APPELLATE JURISDICTION AND PROCEDURAL POSTURE

1. Appellant has timely filed a Notice of Appeal from the Circuit Court's December 1, 2025 Enforcement Order.
2. Issues in this appeal overlap with matters currently before the Supreme Court of Virginia (Record Nos. 250503 and 250845).

3. A compliance hearing is scheduled for January 5, 2026, at which Appellant faces the threat of incarceration based on an order entered without required findings and supported by defective arrears.

II. IMMINENT IREPARABLE HARM (JANUARY 5, 2026)

4. Without a stay, Appellant faces immediate incarceration, garnishment, and coercive enforcement measures that cannot be remedied through later appeal.
5. Enforcement would require Appellant to violate federal law, as his only remaining income includes protected VA disability compensation under 38 U.S.C. § 5301.
6. A stay is required to preserve Appellant's due-process rights and this Court's ability to issue meaningful appellate relief.

III. APPELLANT'S NONCOMPLIANCE WAS NOT WILLFUL AND WAS CAUSED BY APPELLEE AND COUNSEL

7. Between March 21–26, 2024, Appellant attempted to tender the \$86,332.22 equity payment and repeatedly requested wiring instructions and execution of the Quitclaim Deed.
8. Opposing Counsel refused to accept payment unless Appellant simultaneously paid the disputed \$20,000 equitable-distribution award, which is under appellate review.
9. On October 10, 2025, Appellant personally visited Opposing Counsel's office to tender the equity funds and execute the Quitclaim Deed. Counsel was absent, and her legal assistant presented a legally incorrect deed, making execution impossible.
10. Appellant arranged a meeting with his estate attorney for a proper simultaneous transaction, but Opposing Counsel refused to attend or participate.
11. These facts establish non-willfulness as a matter of law. Any noncompliance resulted from Appellee's obstruction, not Appellant's refusal.

IV. THE CIRCUIT COURT FAILED TO MAKE REQUIRED FINDINGS BEFORE ISSUING AN ENFORCEMENT ORDER

12. Under Virginia law and *Turner v. Rogers*, 564 U.S. 431 (2011), a court must make explicit findings of (1) willfulness and (2) present ability to pay before issuing an enforcement order that carries coercive consequences, including future contempt exposure.
13. The December 1 Enforcement Order imposed obligations, deadlines, and the threat of contempt without any findings regarding Appellant's ability to comply.
14. The mere continuation of the matter to January 5, 2026 does not cure the due-process defect. Findings must exist at the time an enforcement order enters.
15. The lack of findings renders the Enforcement Order facially invalid and warrants an immediate stay.

V. LIMITS OF VIRGINIA CODE § 20-115 (SUPPORT-ONLY INCARCERATION)

16. Although § 20-115 authorizes enforcement of § 20-107.3 orders, Virginia appellate precedent holds that **incarceration is permissible only for support obligations**, not for equitable-distribution, property-based debts, military-retirement arrears, or attorney's fees. *Alexander v. Alexander*, 12 Va. App. 691 (1991); *Street v. Street*, 24 Va. App. 14 (1997); *Wright v. Wright*, 61 Va. App. 432 (2013).
17. The December 1 order does not distinguish between enforceable and non-enforceable categories and therefore threatens unlawful incarceration.

VI. FEDERAL PREEMPTION — 38 U.S.C. § 5301 AND HOWELL v. HOWELL

18. Appellant's only available income includes VA disability compensation, expressly protected from attachment or legal process under 38 U.S.C. § 5301(a).
19. The U.S. Supreme Court held that states may not indirectly compel the use of protected VA disability benefits through coercive enforcement mechanisms. *Howell v. Howell*, 581 U.S.

Fairfax v. Martinez (f/k/a Fairfax)

Emergency Motion to Stay Enforcement Pending Appeal

Page 3 of 6

214 (2017).

20. Enforcement of the December 1 order would leave Appellant no way to comply except by violating federal law.

21. Federal preemption alone requires issuance of an immediate stay.

VII. THE ARREARS FIGURE IS LEGALLY DEFECTIVE BECAUSE IT FAILS TO CREDIT THE \$25,000 PURGE BOND AND MISALLOCATES FUNDS

22. The December 1 order lists spousal support arrears as a basis for potential contempt; however, the arrearage figure is legally inaccurate because it fails to credit the \$25,000 purge bond paid by Appellant in the earlier contempt proceeding.

23. Under Virginia law, a purge bond may be applied only to the obligation supporting incarceration — here, spousal support arrears, as property-based obligations cannot support contempt. *Alexander; Street, supra*.

24. Opposing Counsel improperly allocated portions of the purge bond to military-retirement arrears and attorney's fees, neither of which can legally support contempt incarceration.

25. The arrears figure used in the Enforcement Order is therefore inflated, unreliable, and legally defective. Enforcement based on an incorrect arrearage calculation violates due process and must be stayed pending appeal.

VIII. STANDARD FOR EMERGENCY STAY UNDER RULE 5A:7 IS SATISFIED

A. Likelihood of success on the merits

- Enforcement based on defective arrears is reversible error.
- Lack of required findings violates *Turner* and Virginia law.
- Federal preemption under § 5301 bars enforcement.

B. Irreparable harm

- Imminent incarceration (Jan. 5).
- Forced violation of federal law through compelled use of disability income.
- Garnishment and coercive actions cannot be undone.

C. No prejudice to Appellee


- Appellee has refused all attempts at payment.
- A stay preserves the status quo.

IX. RELIEF REQUESTED

WHEREFORE, Appellant respectfully requests that this Court:

1. Stay the December 1, 2025 Enforcement Order pending appeal;
2. Stay all payment, compliance, and interest accrual provisions;
3. Stay the January 5, 2026 compliance hearing and prohibit any contempt proceedings during this appeal;
4. Prohibit any enforcement action requiring use of federally protected VA disability benefits;
and
5. Grant any further relief deemed just and proper.

Respectfully submitted,



Duane A. Fairfax
Appellant, Pro Se
7 Ferrous Ct.
Stafford, VA 22554
240-273-4906
Email: duane.fairfax@gmail.com

December 8, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December 2025, a true and correct copy of the foregoing Emergency Motion to Stay Enforcement Pending Appeal and Emergency Justification Addendum, was electronically filed via the Virginia Appellate Courts Electronic System (VACES) and first-class U.S. Mail, postage prepaid, addressed as follows:

Yvonne J. Nageotte, VSB #39494
Counsel for the Appellee
NAGEOTTE, NAGEOTTE, & NAGEOTTE, P.C.
385 Garrisonville Road, Suite 201 and 202
Stafford, VA 22554
(540) 650-5050
(540) 659-2166 (facsimile)



Duane A. Fairfax
Appellant, Pro Se

IN THE COURT OF APPEALS OF VIRGINIA

| | | |
|---|----------|-----------------------------|
| DUANE ANTIONNE FAIRFAX, |) | |
| |) | |
| Appellant, |) | |
| v. |) | |
| |) | |
| |) | Record No. (to be assigned) |
| TRACEY NICHOLE MARTINEZ |) | |
| (f/k/a Tracey Nichole Fairfax) |) | |
| |) | |
| Appellee. |) | |
| (On Appeal from Stafford Circuit Court |) | |
| Case No. CL22-3104-01) |) | |

EMERGENCY JUSTIFICATION ADDENDUM

(Submitted Pursuant to Rule 5A:7 for Immediate Consideration)

Appellant respectfully submits this Addendum in support of his Emergency Motion for Stay

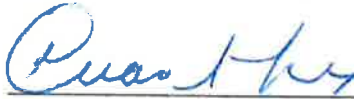
Pending Appeal. Immediate action is warranted because:

1. The Circuit Court has scheduled a January 5, 2026 compliance hearing, at which Appellant faces potential incarceration.
2. The December 1 Enforcement Order was entered without findings of willfulness or present ability to comply, as required by Virginia law and *Turner v. Rogers*, 564 U.S. 431 (2011).
3. The arrearage figure used by the Circuit Court is legally inaccurate because it fails to credit Appellant's \$25,000 purge bond and improperly allocates funds to military-retirement arrears and attorney's fees—categories that cannot support contempt incarceration under *Alexander v. Alexander*, 12 Va. App. 691 (1991), and *Street v. Street*, 24 Va. App. 14 (1997).

4. Enforcement would violate federal law, as Appellant's only remaining income includes VA disability compensation, which is expressly protected under 38 U.S.C. § 5301. Under *Howell v. Howell*, 581 U.S. 214 (2017), a state may not indirectly compel the use of protected disability benefits through contempt or coercive enforcement mechanisms.
5. Appellant has made multiple good-faith attempts to comply—including visiting opposing counsel's office on October 10, 2025 to tender funds and execute the Quitclaim Deed—but Opposing Counsel refused to participate in a proper closing.
6. Without a stay, Appellant will suffer irreparable harm that cannot be remedied by later appellate review.

Appellant therefore respectfully requests immediate entry of a stay pending appeal.

Respectfully submitted,



Duane A. Fairfax
Appellant, Pro Se
7 Ferrous Ct.
Stafford, VA 22554
240-273-4906
Email: duane.fairfax@gmail.com

December 8, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December 2025, a true and correct copy of the foregoing Emergency Justification Addendum, was electronically filed via the Virginia Appellate Courts Electronic System (VACES) and first-class U.S. Mail, postage prepaid, addressed as follows:

Yvonne J. Nageotte, VSB #39494
Counsel for the Appellee
NAGEOTTE, NAGEOTTE, & NAGEOTTE. P.C.
385 Garrisonville Road, Suite 201 and 202
Stafford, VA 22554
(540) 650-5050
(540) 659-2166 (facsimile)



Duane A. Fairfax
Appellant, Pro Se

Appendix D

CIRCUIT COURT OF STAFFORD COUNTY, VIRGINIA

CONTEMPT ORDER AND PURGE CONDITIONS

SUSPENDED INCARCERATION & \$25,000 PAYMENT

AMENDED ORDER

JMB

VIRGINIA:

**IN THE CIRCUIT COURT FOR THE
COUNTY OF STAFFORD**

DUANE ANTIONNE FAIRFAX,)

Plaintiff/Counter-Defendant,)

v.)

CL22-3104 - 01

TRACEY NICHOLE MARTINEZ,)

(formerly known as Tracey Nichole Fairfax))

Defendant/Counter-Plaintiff)

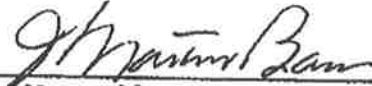
**ORDER COMPELLING PLAINTIFF/COUNTER-DEFENDANT
TO COMPLY WITH FINAL DECREE OF DIVORCE**

This matter came before the Court on November 6, 2024 at 10:00 a.m., upon the Notice and Motion for Order requiring the Plaintiff/Counter-Defendant's Compliance with and enforcement of the Final Decree of Divorce filed by the Defendant, Notice and Motion to Suspend and Amended Motion to Suspend filed by Counsel for the Plaintiff, Response to Notice and Motion to Suspend and Amended Motion to Suspend filed by Counsel for the Defendant, and Notice and Motion for Sanctions filed by the Defendant; Counsel for the Defendant was present, the Plaintiff and his Counsel were present and the matter was heard.

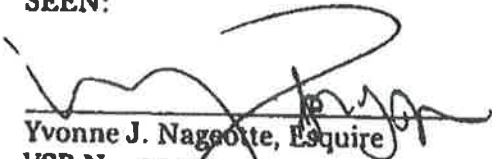
Upon consideration of the evidence presented and the testimony of the Plaintiff and the argument of Counsel, it is **ORDERED, ADJUDGED AND DECREED** as follows:

1. That the Motion to Comply is granted;
2. That the Motion to Suspend and the Amended Motion to Suspend are denied; and
3. That the Motion for Sanctions against Plaintiff and his Counsel are denied.

20th
ENTERED this 6th day of November 2024.


The Honorable J. Martin Bass, Judge Designate,
15 Judicial Circuit of Virginia

SEEN:


Yvonne J. Nageotte, Esquire
VSB No. 39494
Nageotte, Nageotte & Nageotte, P.C.
385 Garrisonville Road, Suites 201 & 202
Stafford, Virginia 22554
(540) 659-5050
Facsimile (540) 288-0960
Counsel for Tracey Nichole Martinez

SEEN:

**ENDORSEMENT DISPENSED
WITH PURSUANT TO RULE 1:13
OF THE SUPREME COURT
OF VIRGINIA, WITH NOTICE OF
SAID PROCEEDING PURSUANT
TO SERVICE OF PROCESS.**
Bruce R. Eells, VSB No. 23009
Virginia Family Law Center, PC
3975 University Drive, Suite 325
Fairfax, Virginia 22030
Counsel for Plaintiff/Counter-Defendant

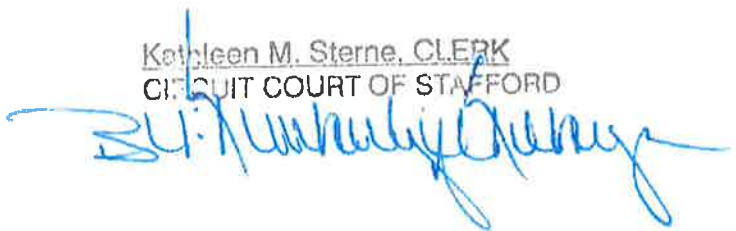
PAGE 3
FAIRFAX V. FAIRFAX

The foregoing Order is amended
for the sole purpose of providing endorsement
with objections noted by Counsel.

Enter this
J. Martin Bean
12/6/2024

A COPY TESTE:

Kathleen M. Sterne, CLERK
CIRCUIT COURT OF STAFFORD



VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF STAFFORD

DUANE ANTIONNE FAIRFAX,

Plaintiff/Counter-Defendant,

v.

Case No. CL 22-3104-01

TRACEY NICHOLE FAIRFAX,

Defendant/Counter-Plaintiff

PLAINTIFF'S OBJECTIONS TO ORDER ENTERED ON NOVEMBER 20, 2024

COMES NOW the Plaintiff/Counter-Defendant (hereinafter "the Plaintiff"), by counsel, and as and for his objections to the final Order entered by this Honorable Court on November 20, 2024, by the Hon. J. Martin Bass, Judge in the above-styled matter, states as follows:

1. Plaintiff objects to the Court's ruling that the evidence presented at the hearings held on this matter on September 3, 2024 and November 6, 2024 regarding his failure to pay the sums alleged to be owed by him to Defendant/Counter-Plaintiff (hereinafter "the Defendant") as set forth in Defendant's Rule to Show Cause filed herein was willful.
2. Plaintiff objects to the Court's ruling that the evidence he presented that his financial situation was due to his due to his physical/psychological condition, making it impossible for him to fulfill the terms of the parties' Final Decree of Divorce entered in the above matter on November 23, 2023 failed to demonstrate that his failure to make the aforesaid payment was not willful.
3. Plaintiff objects to the Court's finding that his evidence that pursuant to the terms of his TSP account he was unable to access the funds necessary to fulfill the requirements of the parties' Final Decree of Divorce entered on November 23, 2023, as such funds were the

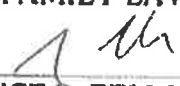
only financial source he had available to do so failed to demonstrate that his failure to make the aforesaid payments was not willful.

4. Plaintiff objects to the Court hearing Defendant's Motion to Comply, etc. on November 6, 2024 after counsel for Plaintiff had advised the Court that he had not received a copy of said Motion prior to hearing on that day.
5. Plaintiff objects to the Court ordering him to supply his current address to the Court and to Defendant, while not ordering the Defendant to similarly supply him with Defendant's current address.
6. Plaintiff objects to the Court ordering him to pay opposing counsel's attorney's fees.

DUANE ANTIONNE FAIRFAX
By Counsel

VIRGINIA FAMILY LAW CENTER, P.C.:

By:


BRUCE R. EELLS (VSB No. 23009)
FAYE K. CARROLL (VSB No. 40931)
SHARIE REYES ALBERS (VSB No. 83583)
STEPHEN D. KLEIN, ESQ. (VSB No. 92343)
Counsel for Plaintiff
4041 University Dr., Suite: 103
Fairfax, VA 22030
Telephone: (703)865-5839
Facsimile: (703)865-5849
www.virginiafamilylawcenter.com

CERTIFICATE

I HEREBY CERTIFY that a true copy of the foregoing as been mailed, first-class postage prepaid, to Yvonne J. Nageotte, Esquire, Nageotte, Nageotte & Nageotte, P.C., 385 Garrisonville Road, Suite 202, Stafford, Virginia 22554, yvonne.nageotte@nageottelawfirm.com this 3rd day of December, 2024.


Bruce R. Eells

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF STAFFORD, VIRGINIA

DUANE A. FAIRFAX,

Petitioner, or Complainant / COUNTER-DEFENDANT

v.

CASE NUMBER: CL 22003104-01

TRACEY N. FAIRFAX,

Defendant or Respondent / COUNTER-PLAINTIFF

ORDER

This cause came to be heard this 6TH day of NOVEMBER, 2024 upon pending motion for RULE TO SHOW CAUSE MOTION TO COMPLY. Whereupon, the Court having considered all testimony and evidence submitted and the arguments of Counsel, it is

ADJUDGED, ORDERED and DECREED as follows:

MOTION TO
SUSPEND
MOTION FOR
SANCTIONS

DUANE A. FAIRFAX HAVING BEEN
FOUND IN WILLFUL CONTEMPT IS SENTENCED TO
180 DAYS IN JAIL WITH 120 DAYS SUSPENDED
ON THE FOLLOWING CONDITIONS: (1) COMPLIANCE WITH
TERMS OF THE FINAL DECREE ENTERED NOVEMBER 20, 2023,
(2) PAYMENT WITHIN 90 DAYS OF RELEASE FROM
CONFINEMENT, ATTORNEY'S FEES IN THE AMOUNT OF
\$7237.69; (3) PROVIDE CORRECT PHYSICAL ADDRESS
OF RESIDENCE TO CLERK OF COURT. FAIRFAX MAY
PURGE HIMSELF OF CONTEMPT BY PAYMENT OF \$25,000
AGAINST HIS COURT ORDERED OBLIGATIONS *
ENTERED this 6TH day of NOVEMBER, 2024

* MOTION TO COMPLY IS GRANTED, ITS NAGEOTIE TO PREPARE ORDER.
MOTION TO SUSPEND DENIED.
MOTION FOR SANCTIONS DENIED.

J. Martin Bass
Victoria A. B. Willis, Judge

J. MARTIN BASS

BRUCE R. ELLIS

Plaintiff (Counsel)

YVONNE J. NAGEOTIE

Defendant (Counsel)

Endorsements dispensed with Rule 1:13

A COPY TESTE:

Kathleen M. Sterne, CLERK
CIRCUIT COURT OF STAFFORD

RELEASE ORDER

ACCUSED: FAIRFAX, DUANE ANTIONNE
NAME (LAST, FIRST, MIDDLE)

R

ADDRESS:

Jurisdiction: STAFFORD

SSN: 000-00-1071 DOB: 08/26/1972

- ☐ GENERAL DISTRICT (TRAFFIC)
☐ GENERAL DISTRICT (CRIMINAL)
☐ GENERAL DISTRICT (CIVIL)
☐ J&DR DISTRICT COURT
☒ CIRCUIT COURT

CHARGE(S):

| Offense Tracking Number | Virginia Crime Code (For Administrative Use Only) | Code Section | Case Number |
|-------------------------|--|--------------|---------------|
| | | 18.2-456 | CL22003104-01 |
| | Description: CIVIL CONTEMPT OF COURT | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |

☐ Addendum listing additional charges is attached and incorporated.

TO THE SHERIFF, JAIL OFFICER OR CORRECTIONAL OFFICER:
You are ordered to RELEASE the accused on the above charge(s).

11/07/2024 11:45AM

DATE AND TIME

KATHY M STERNE

Judith M. Byman
MAGISTRATE ☒ CLERK ☐ JUDGE

Released DATE AND TIME AM/PM By

RELEASE ORDER

COURT ADDRESS:
P. O. BOX 69
STAFFORD, VA 22555
PHONE # : 540-658-8750



OFFICIAL RECEIPT
STAFFORD COUNTY CIRCUIT COURT
CIVIL

DATE : 11/07/2024 TIME : 11:27:34 CASE # : 179CL2200310401
RECEIPT # : 24000011418 TRANSACTION # : 24110700018 FILING TYPE : CM PAYMENT : FULL PAYMENT
CASHIER : JLR REGISTER # : G895
SUIT AMOUNT : \$0.00
ACCOUNT OF : FAIRFAX, DUANE ANTIONNE
PAID BY : HESTER, JENNIFER BAKER
CREDIT/DEBIT CARD : \$26,000.00
DESCRIPTION 1 : TRY: 11/07/24 CHG:
2 : OFF: OL#: N/A

| ACCOUNT CODE | DESCRIPTION | PAID |
|--------------|--------------------|-------------|
| 501 | COLLECT FOR OTHERS | \$25,000.00 |
| 407 | CONVENIENCE FEE | \$1,000.00 |

TENDERED : \$ 26,000.00
AMOUNT PAID : \$ 26,000.00

COURT ADDRESS:
P. O. BOX 69
STAFFORD, VA 22555
PHONE # :540-658-8750



OFFICIAL RECEIPT
STAFFORD COUNTY CIRCUIT COURT
MISCELLANEOUS

DATE : 11/07/2024 TIME : 09:46:58
RECEIPT # : 24000011406 TRANSACTION # : 24110700006
CASHIER : JLR REGISTER # : G895

CASE # : 179CGM240002249

FILING TYPE : OTH TYPE : FULL PAYMENT

ACCOUNT OF : BAKER HESTER, JENNIFER
RECEIVED OF : BAKER HESTER, JENNIFER

CREDIT/DEBIT CARD : \$26,000.00

DESCRIPTION 1 : PURGE BOND FOR CL22-3104-01 FOR DUANE FAIRFAX

| ACCOUNT CODE | DESCRIPTION | PAID |
|--------------|----------------------------------|-------------|
| 236 | DOC. REPRO. COSTS | \$25,000.00 |
| 315 | MISCELLANEOUS FEES & COMMISSIONS | \$0.00 |
| 415 | SECURED REMOTE ACCESS | \$0.00 |

| ACCOUNT CODE | DESCRIPTION | PAID |
|--------------|-----------------|------------|
| 407 | CONVENIENCE FEE | \$1,000.00 |

TENDERED : \$ 26,000.00
AMOUNT PAID : \$ 26,000.00

Appendix E

SUPREME COURT OF VIRGINIA

ORDER DENYING EMERGENCY STAY

SCV RECORD NO. 250845

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday, the 4th day of December, 2025.

DUANE A. FAIRFAX,

APPELLANT,

against

Record No. 250845

Court of Appeals No. 2067-24-4

TRACEY N. FAIRFAX,

APPELLEE.

FROM THE COURT OF APPEALS OF VIRGINIA

On December 1, 2025, came the appellant, who is self-represented, and filed a motion to stay lower tribunal proceedings and a motion for immediate consideration of the motion to stay.

Upon consideration whereof, the Court denies the motions.

A Copy,

Teste:


Clerk

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of January, 2026, a true and correct copy of the foregoing *Emergency Application for Stay* and Appendix was served by first-class mail, postage prepaid, upon the following counsel of record:

Sandra L. Havrilak, Esq., VSB No. 26138
Staci H. Figueroa, Esq., VSB No. 87635
BLANKINGSHIP & KEITH, P.C.
4020 University Drive, Suite 300
Fairfax, Virginia 22030
Telephone: (703) 691-1235
Facsimile: (703) 691-3913
bkfl@bklawva.com

Respectfully submitted,



Duane A. Fairfax
Applicant, Pro Se
7 Ferrous Ct.
Stafford, VA 22554
Email: duane.fairfax@gmail.com

January 2, 2026