

IN THE SUPREME COURT OF GEORGIA

DENNY C. CORMIER
Appellant, *pro se*

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CASE NUMBER:

v.

NANCY CORMIER
Appellee

APPLICANT'S REPLY BRIEF

REQUEST FOR DISCRETIONARY APPEAL

And

WRIT OF MANDAMUS

Case Number 03-CVD-2211

Colquitt County Superior Court

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APPLICATION FOR DISCRETIONARY APPEAL

INTRODUCTION

The Applicant's effort to obtain a declaratory judgment opinion as to the constitutionality of the Georgia alimony statutes has carried him through seven legal proceedings in two state and two federal court. His conduct has not been dilatory, meant to harass, or burden courts valuable resources. In good faith he has offered each court reasoned argument supported by caselaw creating a colorable argument as to the constitutionality of the alimony statutes. Nothing in any of the courts can be deemed frivolous or vexious. All issues raised create valid issues of law and are good faith attempts to change existing law.

The Applicant prays this court will not fall under the spell of a recognized judicial psychological bias, i.e. hindsight bias. (See Heuristics and Biases in the Courts:Ignorance or Adaptation, 79 Or. L. Rev. 61, 2000, Jeffrey J. Rachlinski,; Inside the Judicial Mind,Cornell Law Review, Vol. 86, No. 4, May 2001 Chris Guthrie , Jeffrey J. Rachlinski and Andrew J. Wistrich.)

A judicial decision making flaw can stem from the hindsight bias that legal arguments raised by *pro se* litigants are not of the caliber of experienced attorneys, the novelty of the legal argument that an alimony

statute violates constitutional rights, that the legal argument is one of first impression here and therefore must lack merit when raised by *pro se* litigant. All of these heuristics precondition the decision maker to short circuit otherwise in depth analysis of the law offered for the argument.

The Applicant merely ask this Court to set aside its *pro se*, alimony, involuntary servitude definition, Right of Privacy and constitutional challenge heuristics and review the legal arguments raised with the case law and legal logic offered in support.

FORMER SPOUSE'S REASONS TO DENY REVIEW

The Brief offered in opposition to review has broad sweeping unsubstantiated language that this court must not find persuasive to deny review. The issues raised, the declaratory judgment constitutional challenge, the Writ of Mandamus for the trial court's ultra vires proceedings during the period after removal o federal court and its remand as contrary to 28 U.S.C. § 1446, and the abuse of discretion on financial distribution are valid..

Constitutional Statutory Challenge

Opposing brief ignores the Applicant's Georgia Constitutional challenges of the alimony statutes as violative of the Right of Privacy, Ban on involuntary servitude and equal protection (married v non married) spousal support.

Ex parte trial for divorce

Applicant offers the reason for his inability to appear at divorce trial was the coercion by the trial court judge in an off the record comment to jail the Applicant if he re-removed his case again to federal court. In good faith with changed circumstances the Applicant did remove the case a second time to federal court. The Applicant refrained from his appearance at trial because it was probable to result in incarceration with a deprivation of his liberty interest and freedom for attempting to raise a constitutional challenge to the alimony statutes.

Opposition brief ignores the loss of liberty coercion by the trial court for non appearance and instead relies on sufficiency of notice of service shifting burden to Applicant for non appearance.

Writ of Mandamus

The Applicant offers that his Petition for Writ of Mandamus was obligatory not discretionary. 28 U.S.C. § 1446 and case law back to 1882 are unambiguous that a state court must proceed no further after removal to federal court until remand to state court. The Applicant filed his original Writ of Mandamus with this court but was informed via a Clerk of the Georgia Supreme Court checksheet) the proper venue was to file it was with the trial court itself. (See *Brown v Johnson*, 251 Ga 436 (1983)) He did so.

Opposing Brief mischaracterizes the Petition for Writ of Mandamus as discretionary, legally insufficient and a nullity without any reasoning. The brief errors based on 28 U.S.C. § 1446 and the overwhelming case law cited in the Petition. The state trial court proceedings resulted in deprivation of liberty interest and civil rights sufficient to warrant this court's review.

Second Removal to Federal Court

Opposing brief attempts to characterize the second removal to federal court as harassing, delaying, improper, and without merit. It erroneously cites the federal court as dismissing the removal. It did not. It remanded. The remand order has been appealed as contrary to federal claim reservations preserved pursuant to *England v Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964) and mandatory removal/federal question original jurisdiction pursuant to *Breuer v. Jim's Concrete of Brevard Inc.*, 292 F.3d 1308 (11th Cir. 2002), *cert. granted*, 123 S. Ct. 816, affirmed 123 S.Ct. 1882(2003).

Abuse of Discretion in Financial Awards to Former Spouse

The Application complied with family court discovery rules. Additional requests to produce of him were created in state court while the case was in federal court and therefore were void ab initio. Upon remand no discovery request were provided to the Applicant.

In its rush to judgment, the trial court made an alimony award based on one prematurely filed financial affidavit without benefit of a history of earnings or current earning capacity. It used one quick “snapshot” of the Applicant’s earnings without distributing liability or crediting the former wife for her significant beneficiary trust interest. The trial court record substantiates this claim of the former husband.

Facts and Proceeding Below

The Applicant, in good faith, accurately presented the facts and proceedings below.

Former Husband Complied with Trial Court Orders that Were Not Ultra

Vires

The Applicant did not comply with ultra vires court proceeding for fear of being considered to have waived his removal rights.

PRAYER FOR RELIEF

Wherefore, the Applicant prays this court accept this case for review.

Respectfully submitted,

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Dated: September 23, 2005

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of September, 2005, I caused a true and accurate copy of the foregoing Application for Discretionary Appeal to be sent by postage prepaid via U.S. Mail to:

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