

IN THE SUPREME COURT OF INDIANA

NO. [REDACTED]



STATE OF INDIANA ON THE
RELATION OF [REDACTED]

RELATOR,

v.

THE [REDACTED] COUNTY [REDACTED]
THE HONORABLE [REDACTED] JUDGE,
AND [REDACTED] PRO TEMPORE,
AS JUDGES THEREOF,

RESPONDENTS.

VERIFIED PETITION FOR EMERGENCY AND PERMANENT WRITS OF
PROHIBITION

Comes now [REDACTED] ("Relator [REDACTED]", who is "Respondent" or "Husband" in the divorce case in the trial court below and "Appellant" in the case related hereto filed in the Indiana Court of Appeals below), in person and by counsel, Bryan L. Ciyou and Darlene Seymour, pursuant to Original Action Rules 1(A), 3(A), and in support of his Verified Petition for Emergency and Permanent Writs of Prohibition, states and shows this Court, as follows:

1. The Indiana Supreme Court has jurisdiction over this application as an original action because [REDACTED] Judge Pro Tempore ("Pro Tempore [REDACTED]") of the [REDACTED] appointed by Judge¹ of the [REDACTED] is enforcing terms of a final order, namely the Decree of Dissolution of Marriage ("Decree") entered

¹ [REDACTED] signed this Order on [REDACTED] as approved by his magistrate, who is no longer magistrate in this Court; The Honorable [REDACTED] retired, and the Honorable [REDACTED] is on the bench in [REDACTED]. Record on Writ, pages [REDACTED] (Stipulation to judge pro tempore and order by the elected judge). It does not appear a magistrate had to be involved in this case after approval by the elected or appointed judge of Pro Tempore [REDACTED] Ind.Code 33-38-15.2-1 (A judge pro tempore serving in a county . . . may, with the consent of the . . . judge . . . sit as the judge of the consenting judge's court in any matter as if the judge pro tempore were the elected judge or the appointed judge of the court).

under Cause Number [REDACTED] (Denton County) on April 24, 2018 that are not contained in the Decree for post-judgment enforcement thereupon; and thus Judge Pro Tempore [REDACTED] is acting beyond jurisdiction of the trial court to enforce the terms of the Decree in this case.² Record on Writ, pages [REDACTED] (Decree). Original Action Rule 3(A)(1).

2. This application is being made expeditiously after jurisdiction of the respondent court became an issue when the Judge Pro Tempore [REDACTED] issued the court's Immediate Court Order on Sale of the [REDACTED] Street Property ("Immediate Order") on [REDACTED] 21, 2018 in post-judgment enforcement of terms of the Decree that are not contained in the Decree. Judge Pro Tempore [REDACTED] then summarily denied [REDACTED] Respondent's Motion to Vacate the Immediate Order of [REDACTED] 21, 2018, said denial being signed by Judge Pro Tempore [REDACTED] on [REDACTED] 6, 2018 and entered on the Chronological Case Summary on [REDACTED] 10, 2018. Record on Writ, pages [REDACTED] [REDACTED] (Immediate Order). Original Action Rule 3(A)(2).
3. The respondent court has exceeded its jurisdiction because, while it may enforce a post-decree matter in this case, it may not enforce the Decree on terms for the property division that do not exist within the Decree, notwithstanding its language in the Immediate Order that the sale of the [REDACTED] Street Property was "*done without Notice to, and without the consent of this Court as ordered*" where this language *is not* contained in the Decree, pages [REDACTED] (bold and italics emphasis added). Original Action Rule 3(A)(3).

² The Decree is titled "The Courts [sic] Findings of Fact, Conclusions of Law, and Court Order."

4. The absence of jurisdiction of the respondent court has been raised in several ways to the respondent court, including, most notably and recently, in Relator [REDACTED] Motion to Stay Order of [REDACTED] 21, 2018, filed in the respondent court on [REDACTED] 12, 2018, stating, in pertinent part, as follows: “8. In the Immediate Order, this Court held that Husband’s actions in selling the [REDACTED] Street Property were contrary to the Decree, as the sale was conducted *without notice and consent* of this Court, notwithstanding the Decree contains no such language ordered therein.”³ (emphasis added). Record on Writ, pages [REDACTED] (Trial Court Stay). This Motion to Stay (post-judgment enforcement of the Decree based on terms that are not contained in the Decree and thus outside the respondent court’s jurisdiction) was summarily denied by the Judge Pro Tempore [REDACTED] on [REDACTED] 12, 2018. Record on Writ, pages [REDACTED] (Denial of Stay). Original Action Rule 3(A)(4).
5. The denial of the application will result in extreme hardship to Relator Wesolek in that he will be deprived of his private property, namely proceeds of the sale of the [REDACTED] Street Property, which the Respondent court approximated to be a value of \$1,566,000.00; he is likely to face other sanctions for non-compliance with terms of the Decree that do not exist; as well as be subject to a request by Petitioner’s counsel for a bench warrant. Record on Writ, pages [REDACTED] (Immediate Order and Wife’s Submission and Support of her Request for Additional Sanctions). Original Action Rule 3(A)(5).

³ Pursuant to paragraph 5 of the Decree, Husband was awarded a commercial real estate property located at [REDACTED] Street, [REDACTED] Area, Florida (the “[REDACTED] Street Property”).

6. Given the obscure posture of this case, Relator ██████ provides the following procedural and factual background to elucidate the foregoing required portions of this Petition *supra* and the extreme hardships--in the absence of a Writ--to Relator ██████
- a. The Decree of April 24, 2018 dissolved the parties' marriage and divided the marital property and all other incidents of marriage between Husband and Wife, thereby making it a final enforceable judgment when it was entered on the Chronological Case Summary. Indiana Rule of Trial Procedure 62(A). Indiana Rule of Appellate Procedure 9(A)(1).
 - b. Motions to Correct Errors were timely filed by both parties, and a hearing was held by the trial court on August 14, 2018 on these pending Motions. Record on Writ, pages 96-100, 110-116 (Motions to Correct Errors).
 - c. During this hearing on the Motions to Correct Errors, Wife's⁴ counsel unexpectedly, and without prior notice or motion, raised the issue that Husband had sold the █ Street Property, an asset awarded to Relator ██████ pursuant to the Decree. Record on Writ, pages 27 (Decree) (Transcript of 8/14/2018 Hearing). Wife's trial counsel requested that the proceeds of the █ Street Property sale be ordered to be deposited with the █ County Clerk. Record on Writ, pages 226-227 (Transcript of 8/14/2018 Hearing). This post-judgment enforcement matter was not before the trial court, and thus Husband's trial counsel⁵ objected on notice and due process grounds to the court hearing this unrelated post-decree enforcement issue. Record on Writ, pages 227-240 (Transcript of 8/14/2018 Hearing).

⁴ ██████ is Petitioner in the Trial Court below, and Appellee if she participates in the appellate process, who is represented at the trial court level by ██████

⁵ ██████

- d. Upon conclusion of the hearing on the Motions to Correct Errors, the trial court ordered that all proceeds of the sale of the [REDACTED] Street Property be deposited with the [REDACTED] County Clerk over the objection of Husband's trial counsel. Record on Writ, pages [REDACTED] (Transcript of [REDACTED] Hearing).
- e. On [REDACTED] 21, 2018, the trial court memorialized its oral ruling and issued a written order titled, "Immediate Court Order on Sale of [REDACTED] Street Property", which is the subject of an Emergency Motion to Stay filed in the Indiana Court of Appeals on this post-judgment enforcement final order (as addressed *infra*). Record on Writ, pages [REDACTED] (Immediate Order).
- f. In the Immediate Order, the trial judge, [REDACTED] Pro Tempore, held that Husband's actions in selling the [REDACTED] Street Property were contrary to the Decree as the sale was "*done without Notice to, and without the consent of this Court as ordered*". (bold and italics emphasis added) *Id.* The Decree contains no such language. Record on Writ, pages [REDACTED] (Decree). The trial court then ordered Husband to deposit all net proceeds resulting from the sale of the [REDACTED] Street Property with the [REDACTED] County Clerk. Record on Writ, pages [REDACTED] (Immediate Order).
- g. On [REDACTED] 4, 2018, Husband's trial counsel moved to vacate the Immediate Order based on a violation of due process and because there is no legal basis for this order based on the language contained in the Decree (i.e., notice and consent of the trial court, which *is not* a part of the Decree). Record on Writ, pages [REDACTED] (Respondent's Motion to Vacate). In fact, the Decree explicitly awards the [REDACTED] Street Property to Husband without any restrictions on sale of the property or

requirements to provide notice or obtain consent of the court. Record on Writ, pages 20-25 (Decree).

- h. On September 6, 2018, the trial court summarily denied Husband's Motion to Vacate the Immediate Order. Record on Writ, page 205 (Order denying Motion to Vacate).
- i. Husband then timely filed his Notice of Appeal of the Immediate Order, a final order on post-judgment enforcement, with the Indiana Court of Appeals on September 12, 2018⁶
- j. Husband also filed a Motion to Stay the Immediate Order with the trial court on September 12, 2018, which was summarily denied the following day on September 13, 2018. Record on Writ, pages 288-289 (Order Denying Motion to Stay).
- k. Specifically, then following the issuance of the Immediate Order, on September 10, 2018, the trial court *sua sponte* issued a Court Order to Show Cause setting the Immediate Order for an Emergency Hearing on Rule to Show Cause three (3) days later September 13, 2018 (the "Contempt Hearing") based on Relator Wessaleh not complying with the Immediate Order enforcing terms of the Decree that do not exist in said order and paying his private funds from the 1st Street Property sale into the Porter County Clerk. Record on Writ, page 206 (Court Order to Show Cause).
- l. Husband (again, Relator Wessaleh) who resides in Florida, filed a Motion to Continue the Contempt Hearing, or in the alternative, to appear by phone, since the Motion to Stay had not been granted or otherwise ruled upon. The trial court

⁶ Relator Wessaleh requests this Court take judicial notice of Cause 101-DR-02201

ordered Husband to appear telephonically, and the hearing was held. Record on Writ, (Transcript of **September 13, 2018** Hearing).

- m. Following and at the Contempt Hearing (Record on Writ, page **407** of Transcript of **September 13, 2018** Hearing), the trial court, by oral ruling, found Husband in direct contempt of court and ordered him to post One Million Two Hundred Thousand Dollars (**\$1,200,000.00**) by surety bond or letter of credit with the **Porter** County Clerk.
- n. The trial court also entered its order on the pending Motion to Correct Errors based on the Decree on **September 12, 2018**, which appeared on the Chronological Case Summary on **September 14, 2018**, which acknowledged the **W. St.** Property was sold “after entry of the Court’s Final Order, but prior to the required actions to be taken made which were part of the Final Order, specifically the completion of the payments, and removal of the Petitioner’s name as 50% owner of **W. St. Properties.**” Record on Writ, pages **201-207** (Order on MTCE). The terms of the Decree do not state this in the Decree, notwithstanding this language in the Order on the motions to correct errors to the contrary. Record on Writ, pages **20-25** (Decree).
- o. The respondent court then set matter for an additional hearing on **September 26, 2018**, wherein Husband has been ordered to personally appear and answer the contempt citations and the noncompliance with the Immediate Order.
- p. Further, Wife’s counsel has filed a Submission and Request for Additional Sanctions asking that the Decree be further modified by apparently forfeiting Husband’s interest in other real property awarded to him in the Decree and

requested this additional request for relief be heard at the hearing on ~~September 26, 2018~~ Record on Writ, pages ~~208-209~~ (Wife's Submission and Support of her Request for Additional Sanctions).

- q. Wife's counsel also requested a bench warrant for the arrest of Husband at the hearing on ~~September 13, 2018~~ Record on Writ, page ~~209~~ (Transcript of ~~September 13, 2018~~ Hearing).
- r. The Decree has not been stayed and is thus enforceable,⁷ and the time filing a Notice of Appeal on the trial court's Decree has not passed.⁸ Thus, Relator ~~Wendell~~ is entitled to the proceeds of the ~~Law Street~~ Property he sold after the Decree and should be without risk of legal jeopardy for following the Decree order in the absence of a reversal on appeal or subsequent successful challenge under Indiana Rule of Trial Procedure 60(B), as the *notice to and consent of the court to the sale of the ~~Law Street~~ Property is not a term of the Decree.*

- 7. The remedy available by appeal will be wholly inadequate, given by the time an appeal is perfected and prosecuted, unless stayed by the Indiana Court of Appeals, as Relator ~~Wendell~~ will have been deprived of his private property by the escrow required to be deposited with the ~~Porter~~ County Clerk according to the Immediate Order, additional unknown sanctions at the hearing set on ~~September 26, 2018~~ and perhaps unlawful incarceration. Record on Writ, page ~~209~~ (Transcript of ~~September 13, 2018~~ Hearing).

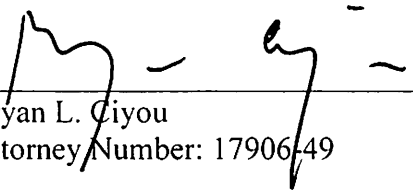
⁷ Indiana Rule of Trial Procedure 62(A): Execution may issue upon notation of a judgment in the Chronological Case Summary except as provided as other provided in this rule hereinafter. None of the stay of execution provisions of Indiana Rule of Trial Procedure (B)(1)-(5) have been granted, such as a discretionary stay pending a ruling on a Motion to Correct Errors or Appeal. Relator ~~Wendell~~ request this Court take judicial notice of this fact from the Chronological Case Summary and absence of order staying proceedings)

⁸ Relator ~~Wendell~~ requests this Court take judicial notice of this fact from the Chronological Case Summary's time of entry of the order on the Motions to Correct Error and Indiana Rule of Appellate Procedure 9(A)(1), which provides thirty (30) days to file a Notice of Appeal of a final order on all issues.

However, Relator ██████ did file a Verified Emergency Motion to Stay Order of ██████ 21, 2018, and Related Subsequent Proceedings in the Indiana Court of Appeals on Tuesday, ██████ 18, 2018, the day his appellate counsel received the expedited transcripts he requested in order to properly prepare said stay motion of the final orders on post-judgment enforcement and contempt.⁹ This stay is pending in the Court of Appeals below but has not been ruled upon as of Friday, ██████ 21, 2018, the day this Petition is filed. With the contempt hearing set for ██████ 26, 2018, and in the absence of ruling on the stay by the Court of Appeal, Relator ██████ has no other remedy to avoid the supplemental contempt hearing set on ██████ 26, 2018 set in excess of the trial court's jurisdiction. Original Action Rule 3(A)(6).

WHEREFORE, Relator, ██████ ██████ prays this Court receive and consider his Petition requesting an Emergency and Permanent Writs of Prohibition to respondent court's enforcement of Immediate Order of ██████ 21, 2018, now on appeal; the Court Order to Show Cause issued *sua sponte* on ██████ 10, 2018, the oral ruling on ██████ 13, 2018 that Relator post \$1,200,000.00 by surety bond or letter of credit; and subsequent hearings on contempt based on the Immediate Order, including the hearing set for ██████ 26, 2018, and any other proceedings related to the Immediate Order, and for all other relief just and proper in the premises.

Respectfully submitted,



Bryan L. Ciyou
Attorney Number: 1790649

⁹ Indiana Court of Appeals Cause No. ██████

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7-97-17906-49

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VERIFICATION

I, **William D. Mason** swear and affirm under penalty of perjury the foregoing is true.

