

Alexander M. Falconi

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IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEXANDER M. FALCONI,
Petitioner,

Case No.:

vs.

SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE; AND THE
HONORABLE BRIDGET ROBB, DISTRICT
JUDGE;

Respondent,

ANN

Real-Party in Interest.

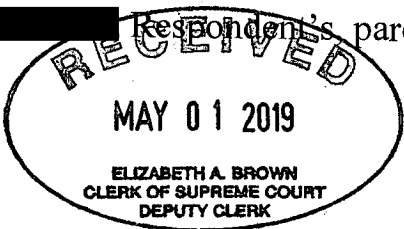
PETITION FOR WRIT OF MANDAMUS

COMES NOW, Petitioner, Alexander M. Falconi, appearing in proper person, and hereby files a petition for writ of mandamus. This petition is based upon the following memorandum of points and authorities and the appendix on file herein.

Memorandum of Points and Authorities

I. Summary

Alexander M. Falconi ('Falconi'), Petitioner, terminated Respondent's parental rights. Respondent, judgment-debtor, owes Falconi,



1 judgment-creditor, \$500 in costs. Falconi sought to obtain a designation of
2 entitlement to [REDACTED] property held in custody of Secretary of Treasury's ('The
3 Division') Unclaimed Property Division. Falconi also sought to obtain the
4 information of any and every depositor to have turned funds over to the Nevada
5 State Collection and Disbursement Unit ('SCDU') for the year of 2018.
6

7 Respondent, the Second Judicial District Court, refused. Falconi appealed. This
8 Court dismissed for lack of jurisdiction. This writ petition follows.
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10 II. Routing Statement

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12 This appeal should be retained by the Supreme Court of Nevada. It brings an
13 issue of "statewide public importance" as a publication on this complex area of law
14 would create a gateway to assets that have remained unavailable to the child
15 support enforcement divisions of this State; namely, cash and property held in the
16 custody of The Division. NRAP 17(a)(12). The Court of Appeals' April 26, 2019
17 disposition in SCN 76519 ('Mr. Badea's Case') underlines the confusion and
18 exposes a contradiction between the orders of two of the district judges in this
19 State. Respondent in the instant case refused relief, rejected Falconi's efforts using
20 available administrative remedies, and directed Falconi to instead have *writs* of
21 execution issued. PA-000036:5-9. The district court in Mr. Badea's Case refused
22 relief, rejected Mr. Badea's efforts using *writs* of execution, and directed Mr.
23 Badea to use the administrative remedies. One of these district judges is right, and
24 the other is wrong. The question before this Court is which?
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III. Relief Requested

Petitioner requests this Court issue a *writ of mandamus* commanding Respondent to: vacate its order denying The Motion, enter an order designating Falconi as entitled to [REDACTED] property held in The Division's custody, and set a hearing for examination of SCDU.

IV. Issues Presented

1. Whether a judgment-creditor must exhaust administrative remedies in seeking to obtain a judgment-debtor's property held in the custody of the Unclaimed Property Division; and,
2. Whether judgment-creditor is entitled to examine the State Collection and Disbursement Unit for the purposes of locating a judgment-debtor's assets.

V. Factual Background

On August 9, 2018, the district court entered *Order Granting Motion for Costs on Appeal* allowing \$500 in costs to Falconi and against [REDACTED] PA-000004. These awards were based on this Courts dispositions in SCN 73469 (reversed) and SCN 69341 (reversed).

On August 13, 2018, Falconi filed *Notice of Entry of Order*. PA-000002.

On September 5, 2018, Falconi filed *Motion for Designation of Entitlement to Property Held in the Custody of the Unclaimed Property Division and for Hearing* ('The Motion'). PA-000009.

1 On October 30, 2018, Falconi filed *Declaration Regarding Letter from*
2 *Secretary of Treasury*. PA-000030. The letter duly notified Respondent that he
3 received a letter from The Division informing him that they would await an order
4 from Respondent designating Falconi as entitled to [REDACTED] property held in The
5 Division's custody. PA-000034.
6

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8 On December 6, 2018, the district court entered *Order Denying September*
9 *5, 2018 Motion* ('The Order Denying'). PA-000035.
10

11 On December 30, 2018, Falconi filed *Notice of Appeal*. PA-000039.

12 On February 26, 2019, this Court entered *Order Dismissing Appeal* in SCN
13 77848.
14

15 On April 26, 2019, the Court of Appeals affirmed the decision in Mr.
16 Badea's Case, exposing the contradiction Falconi brings to this Court's attention
17 now.
18

19 This writ petition follows.
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21 VI. Legal Analysis

22 *Extraordinary Relief is Appropriate and Necessary*

23 "A writ of *mandamus* is available to compel the performance of an act that
24 the law requires or to control a manifest abuse of discretion." *State ex rel. Masto v.*
25 *Second Judicial Dist. Ct.*, 125 Nev. 37, 199, ___ P. 3d 828, 832 (2009) (citing NRS
26 34.160; *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d
27 534, 536 (1981)). "In general, a *writ* may issue only when petitioner has no plain,
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adequate, and speedy legal remedy, such as an appeal.” *Id* at P. 3d 832 (citing NRS 34.170). This Court has expressly held The Order Denying unappealable. *Order Dismissing Appeal* filed in SCN 77848.

██████████ residence and place of employment is unknown. Efforts to conceal herself are so extreme that, in the previously litigated termination of parental right’s proceedings, Dept. L of the Eighth Judicial District Court had to order service by publication and ██████████ own family responded by reporting her a missing persons through the San Diego Police Department. PA-000025:1-000027:7. Falconi has successfully executed on ██████████ assets in the past, and will be able to do so in the future, given the appropriate opportunity to discover necessary information. PA-000001 (*Writ of Execution*). PA-000002 (*Satisfaction of Judgment*).

A Judgment Creditors Rights and Entitlements, Generally

“Statutes permitting execution against specified kinds of property must be liberally construed for the benefit of creditors. [] The general rule is that if the interest is assignable or transferable, it is subject to execution.” *Sportsco Entertainment v. Morris*, 112 Nev. 625, ___, 917 P. 2d 934, 937 (1996) (citations omitted.) PA-000010:15-22.

On Seizure of Property Held in Custody of the Unclaimed Property Division

“Unclaimed property and an unpaid judgment collide in this marital dissolution case.” *Dept. of Financial Services v. O’Connor*, 155 So. 3d 497, 480,

1 Court of Appeals, 1st Dist., Florida (2015). This succinct statement leads the
2 publication that should control on this issue. Analogous with the aforementioned
3 case, Falconi seeks to seize [REDACTED] assets currently held in custody of The
4 Division. “As neither our statutory nor our case authority sheds light on this
5 question”, we should “look to extrajurisdictional authority to guide our
6 determination as to how Nevada courts should” approach it. *Falconi v. Secretary of*
7 *State*¹, 129 Nev. ___, ___, 299 P. 3d 378, 385 (2013). PA-000012:6-000013:11.
8
9 Consistent with the procedure articulated, Falconi “filed a claim with the
10 Department seeking [REDACTED] unclaimed property pursuant to [].” *Dept. of*
11 *Financial Services v. O’Connor* at 155 So. 3d, at 480. PA-000020. This act
12 complies both with NRS 120A.650 and the “exhaustion of administrative
13 remedies” doctrine. *Dept. of Financial Services v. O’Connor* at 155 So. 3d, *Id.*
14
15 Falconi requested Respondent designate an entitlement to Falconi of [REDACTED]
16 property consistent with NRS 21.290. Based on The Division’s response to
17 Falconi’s claim, this was necessary for Falconi to proceed. PA-000034.
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22 Respondent’s refusal to “provide Mr. Falconi with additional rights” is misplaced
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27 ¹The *Falconi* Court, looked to New Jersey’s *Sacharow* procedure for guidance on
28 how to approach issues concerning a clash between a parent’s right to know where
a child resides with another parent’s right to protection from domestic violence.
Likewise, this Court should look to Florida’s approach in *Dept. of Financial*
Services v. O’Connor.

1 as the designation Mr. Falconi seeks is not "additional" but rather, entirely
2 necessary². PA-000036:8-9. PA-000034.

3 ***Examination of the State Collection and Disbursement Unit***

4 A creature of NRS 425.363(1)³, SCDU consists of a fund which accepts an
5 obligor's child support payments and disburses same to the corresponding obligee.
6 The fund is managed by a Chief as designated by the Department of Child and
7 Family Services ('DCFS'). NRS 425.285 (defining the Chief). NRS 425.310
8 (designating DFS as the controlling Division.) See also NRS 423.365 (authorizing
9 Administrator to adopt regulations and carry out chapter), and NRS 425.270
10 (defining Administrator.) DCFS is a creature of the Department of Health and
11 Human Services ('DHHS'). NRS 232.300(2)(d). See also NRS 232.320(1)(a)(3)
12 (the administrator of DCFS is appointed by the Director of DHHS.) PA-000011:6-
13 15.

14 After almost two years of not being able to locate [REDACTED] the SCDU began to
15 receive child support payments from what is likely to be her employer. Falconi is
16 entitled to the information detailing who this depositor-employer is because he has
17 a cost judgment against [REDACTED] in the amount of \$500 and he could likewise serve a
18 writ of execution upon [REDACTED] employer to satisfy the judgment debt. Permitting
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28 ² As Mr. Badea encountered, The Division intends to refuse on the basis that
administrative remedies are available for a claimant to proceed under.

³ See also 42 U.S. § 654b(a)(1): requiring "State agenc[ies to] establish and operate
a unit [] for the collection and disbursement of payments under support orders."

1 the examination of the DCFS would lead to information necessary for the
2 satisfaction of this judgment. Relevant evidence is generally admissible. NRS
3 42.025. Evidence is relevant if it has “any tendency” to make the existence of a
4 fact more or less probable. NRS 48.015. Ross Armstrong, the administrator for
5 DCFS, under *subpoena* or the direction of Respondent, could answer the relevant
6 questions at issue. NRS 12.015 (“service may be made upon clerk or secretary of
7 political subdivision corporation or agency.”) PA-000011:16-25. Respondent’s
8 reliance on *Rock Bay, LLC., v Dist. Ct.*, 129 Nev. 205, 212-13, 298 P.3d 441, 446
9 (2013) is misplaced. PA-000036:10-19. Firstly, *Rock Bay* is distinguishable from
10 the instant case; judgment-creditors were fishing for “highly sensitive financial
11 information” from third-parties, whereas Falconi is merely seeking the names of
12 employee-depositors specific to [REDACTED]. Secondly, Respondent mischaracterizes
13 Falconi’s intent as to seize monies held by SCDU; Falconi has clearly stated that
14 he intends to obtain information as to who is depositing monies into the SCDU, so
15 that Falconi can use that information⁴ to issue *writs* of garnishment to satisfy the
16 cost judgment. PA-000011:16-21.

23 ***Conclusion***

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25 THEREFORE, Petitioner hereby requests that:

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28 ⁴ For example, if it is discovered that Walmart is depositing [REDACTED] wages into the SCDU, Falconi can use that information to issue writs of garnishment on Walmart to have those wages seized to satisfy the cost judgment as well.

- 1 1. This Court issue a writ of *mandamus* consistent with the relief requested
2 in this petition; and,
3
4 2. For an award of costs; and,
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6 3. For such further relief as this Court deems necessary and just.

7 DATED THIS 28 day of April, 2019.

8 

9 Alexander M. Falconi

10 **Verification**

11 I, Alexander M. Falconi, declare that I am competent to testify to the facts in
12 this *Declaration*. I have read the foregoing *Petition*, and know the content thereof;
13 that the same is true of my own knowledge except for those matters therein stated
14 on information and belief, and as to those matters, I believe them to be true. Those
15 factual averments contained in the referenced filing are incorporated here as if set
16 forth in full.
17

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19
20 ***I declare⁵ under penalty of perjury that the foregoing is true and correct.***

21 EXECUTED this 28 day of April, 2019.

22
23 

24 Alexander M. Falconi

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27 ⁵ NRS 53.045(1): "Any matter whose existence or truth may be established by an
28 affidavit or other sworn declaration may be established with the same effect by an
unsworn declaration of its existence or truth signed by the declarant under penalty
of perjury, and dated, in substantially the following form: [i]f executed in this State:
I declare under penalty of perjury that the foregoing is true and correct."

NRAP 25(5)(c)(1)(B) Certificate of Service

I, Alexander M. Falconi, do hereby declare that I am over the age of 18 and a party to this action, and that I have placed a true and correct copy of this *Petition* into a sealed envelope and mailed it, postage prepaid, *via* United States Postal Service, addressed as follows:

Second Judicial District Court

Ann

SERVED THIS 28 day of April, 2019.



Alexander M. Falconi