

COURT OF APPEALS OF WISCONSIN

DISTRICT I

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Manuel Garcia, Jr.,

Petitioner-Appellee,

v.

PETITION FOR  
APPEAL BY  
PERMISSION

Pearl Garcia,

Respondent-Appellant.

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Pursuant to §§808.03 and 809.50(1), Wis. Stats., Petitioner Pearl Garcia asks the Court of Appeals of the State of Wisconsin, District I, for leave to appeal from the attached letter order entered June 21, 2005, in the Circuit Court for Milwaukee County, the Hon. John DiMotto, presiding, Case No. 2005 FA 003434, in which the Court denied Petitioner's motion asking the Court, pursuant to the Wisconsin Constitution, to appoint counsel to represent her in her divorce action.

Petitioner asserts as grounds for this appeal:

1. Statement of Issues: The issue is whether the Wisconsin

Constitution, Article I, §§21(2), 1 and 22, provide to an impoverished suitor the fundamental right to an attorney in her civil action.

2. Statement of Facts: Petitioner is impoverished, and cannot afford to retain an attorney to represent her in her divorce action. Her husband and adversary in the divorce is represented by counsel. Petitioner does not know the law, and needs the assistance of counsel to protect her rights in the divorce litigation. These facts are set forth in petitioner's affidavit filed with the Circuit Court. Petitioner filed a motion with the Circuit Court to provide counsel; it was denied the same day.

3. Statement re Statutory Criteria:

(a) §808.03(2)(a): This appeal will materially advance the termination of the litigation or clarify further proceedings because the presence of an attorney will eliminate the numerous problems of delay and uncertainty caused by *pro se* litigants. An attorney provided to petitioner will make the presentation of her case smoother and faster; will counsel her as to the meaning of case developments so that she does not have to ask questions of the

judge; will ensure that direct and cross-examination is relevant and to the point; will relieve the judge of the dilemma caused by the desire to assist a *pro se* litigant yet remain an impartial arbiter; will explain to petitioner the necessity of events or results with which petitioner may be dissatisfied; and will protect petitioner's legal rights to placement, child support and property in a manner much more efficient than will petitioner on her own. The two adversary counsel will ensure a clarity and refinement of the further proceedings in this divorce and custody case that will not be possible if petitioner must proceed *pro se*.

(b) §808.03(2)(b): This appeal will protect the petitioner from substantial or irreparable injury. Petitioner will suffer substantial injury in proceeding without counsel because she is opposed by an experienced and trained attorney, while she knows nothing about the law governing her case and has no experience or skill in marshalling or presenting the facts that she wishes the court to hear. Proceeding without counsel in an action which will determine her rights to the love, nurture and companionship of her children, the amount of

income she will receive in the future with which to support those children, and the division of property and debts acquired during the marriage is similar to performing surgery on herself because she can't afford a surgeon.

The injury is irreparable because, once the critical decisions are made while she is without counsel, the appointment of counsel years down the road will not repair the injury. For instance, should all of her children be placed primarily with her husband now, an appeal of a final judgment decided four years from now in which she is given counsel will neither restore the four years of lost companionship nor guarantee that her then-attorney will be able to change the placement order. She needs a lawyer now, when all of the critical decisions are being made.

(c) §808.03(2)(c): This appeal will clarify an issue of general importance in the administration of justice. The tremendous strain on judges, court personnel and even adversary parties posed by *pro se* litigants has been repeatedly discussed and documented. Our oft-repeated fundamental precept of "equal justice under law" is

not honored when only one party can afford a lawyer, and thus has a substantial advantage over his adversary, who is too poor to afford one. There is a very compelling argument, set forth in the attached memorandum, that the Wisconsin Constitution provides a right to counsel to impoverished suitors in civil cases, yet many judges, as did Judge DiMotto in this case, labor under the assumption that court-appointed counsel are available only in criminal cases. A decision in this appeal will clarify that either the Wisconsin Constitution provides a solution to the very important issue of *pro se* litigants and equal justice, or that it does not.

Therefore, as this appeal meets the criteria of §808.03(2), Wis. Stats., petitioner respectfully asks that this Court accept this appeal. Further, pursuant to §809.52, Wis. Stats., the petitioner requests that the Court stay the proceedings below pending its disposition of this petition.

Should the Court deny this appeal, petitioner requests that it grant the petition for a writ of prohibition filed simultaneously with this appeal.

Dated: June 29, 2005

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