

Summary of SC94435, *In re: the Marriage of John William McNeal v. Sylvia Ruth McNeal-Sydnor*

Appeal from the Jackson County circuit court, Judge Kevin D. Harrell
Submitted on briefs March 18, 2015; opinion issued September 8, 2015

Attorneys: McNeal, a prisoner at the Jefferson City correctional center, represented himself. His wife did not file a brief or argue in this Court but was represented in the circuit court by Michaela C. Shelton of Overland Park, Kansas, (913) 341-3001.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A prisoner whose petition for dissolution of his marriage who was unable to appear in court appeals the circuit court's dismissal of his petition. In a 4-3 decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri finds this case does not invoke the Court's exclusive appellate jurisdiction and, therefore, transfers the case to the appeals court.

Judge Laura Denvir Stith dissents. She would find the prisoner presents a real and substantial constitutional question sufficient to invoke this Court's exclusive appellate jurisdiction. As such, she would reverse the circuit court's judgment and would remand (send back) the case to allow the prisoner to proceed either in person or through one of the alternatives available under the law.

Facts: This case involves challenges to section 491.230, RSMo, and section 544.275, RSMo, in the context of a petition for dissolution of marriage filed by a prisoner, John McNeal. Section 491.230 generally prohibits prisoners from attending most civil proceedings, and section 544.275 gives a judge discretion to hold a non-jury trial proceeding in a correctional facility rather than a courthouse. Under these statutes – as well as this Court's 1996 decision in *Call v. Heard* – a prisoner must be provided with significant alternatives to personal appearance in court. McNeal was unable to appear in court, and the circuit court dismissed his petition. McNeal appeals.

CAUSE TRANSFERRED.

Court en banc holds: McNeal has failed to allege a real and substantial constitutional issue sufficient to invoke this Court's exclusive jurisdiction. Article V, section 3 of the state constitution vests this Court with exclusive appellate jurisdiction in all cases involving the validity of a statute. This jurisdiction is invoked only when a party asserts that a statute directly violates the constitution, either on its face or as applied. McNeal does not allege the statutes violate the constitution on the face. His allegation also is not based on the circuit court's application of the statutory requirements. His allegation instead is that the circuit court failed to apply the statutes. Even if the circuit court dismissed McNeal's petition for failure to appear, McNeal makes no credible assertion that any provision of any statute required such a result. As such, this Court does not have exclusive appellate jurisdiction over his case. The case is transferred to the appeals court.

Dissenting opinion by Judge Stith: The author would reverse the circuit court's judgment and remand with directions to allow McNeal to proceed on his dissolution petition, either in person or through one of the "significant alternatives" available to him under Missouri law. The author would find the circuit court abused its discretion in dismissing McNeal's petition due to his failure to appear in person after not granting his requests for an alternative to appearing in person. His claim that this

application of the statutes to deny him the right to dissolve his marriage violates due process presents a real and substantial constitutional question sufficient to invoke this Court's original appellate jurisdiction. Even if it were not, because McNeal's case already is before this Court, this Court can retain the case pursuant to its authority under article V, section 10 of the Missouri Constitution to transfer cases to this case prior to opinion in the appeals court.