

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF EMMANUEL § No. 135, 2006
LAZARIDIS FOR A WRIT OF §
PROHIBITION. § Del. Fam. Ct., C.A. No. CN04-08707

Submitted: April 10, 2006

Decided: April 12, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 12th day of April 2006, upon consideration of the petition for a writ of prohibition and the motion to amend the petition filed by Emmanuel N. Lazaridis, it appears to the Court that:

(1) Lazaridis, through counsel, filed a motion to vacate registration in the Family Court. The Family Court denied the motion to vacate and Lazaridis' motion for reargument that followed.

(2) Lazaridis filed a pro se notice of appeal with this Court (hereinafter "appeal on the merits").¹ Lazaridis also filed a motion to proceed in forma pauperis, which the Court granted, "limited only to waiver of the docketing deposit required by Supreme Court Rule 20(a)" (hereinafter "IFP

¹*Lazaridis v. Lazaridis*, Del. Fam Ct., C.A. No. CN04-08707, Wasserstein, J. (Sept. 9, 2005), *appeal docketed*, Del. Supr., No. 461, 2005 (Sept. 29, 2005).

Order”).² At the present time, Lazaridis’ appeal on the merits is pending before the Court for a decision on the basis of the parties’ briefs.

(3) In his petition for a writ of prohibition, Lazaridis complains that the Family Court wrongfully refused to reimburse the \$90 filing fee that it charged him to prepare the court’s record for the appeal on the merits.³ Lazaridis requests that this Court prohibit the Family Court from charging such a filing fee “in every case where an appellant is permitted by this Court to proceed in forma pauperis on appeal” as well as in “all appeals brought by [Lazaridis] relative to [his] Family Court case.”

(4) Lazaridis also complains that the Family Court has persisted in using an incorrect mailing address for him in the matter underlying the appeal on the merits. Lazaridis requests that this Court direct that the Family Court amend its records to correct his mailing address. In his motion to amend the petition for a writ of prohibition, Lazaridis seeks to update and restate his requests for relief

²See Del. Supr. Ct. R. 20(a), (h) (authorizing commencement of appeal without payment of \$300 filing fee). *Lazaridis v. Wehmer*, Del. Supr., No. 461, 2005, Ridgely, J. (Oct. 3, 2005) (issuing IFP Order).

³According to Lazaridis, the Family Court denied his motion for reimbursement on February 21, 2006. Lazaridis has filed an appeal from that order in *Lazaridis v. Wehmer*, Del. Supr., No. 134, 2006.

in view of a related order that was issued by the Family Court on March 20, 2006.⁴

(5) It appears that the Family Court's March 20, 2006 order corrected Lazaridis' mailing address in the court's database, refunded Lazaridis the \$90 filing fee, and granted him in forma pauperis status. Thus, on the basis of the March 20, 2006 order, it appears that Lazaridis' petition for a writ of prohibition is subject to dismissal as moot.

(6) Whether or not Lazaridis' petition for a writ of prohibition is subject to dismissal as moot, it is clear that the petition fails to invoke the jurisdiction of this Court.⁵ A writ of prohibition is designed to prevent a tribunal from exceeding its jurisdiction in a cause of action under review.⁶ Prohibition will not issue if the petitioner has another adequate and complete remedy at law to pursue the claim.⁷

⁴*Wehmer v. Lazaridis*, Del. Fam. Ct., C.A. No. CN04-08707, Wasserstein, J. (March 20, 2006).

⁵Del. Const. art. IV, § 11(5); Del. Supr. Ct. R. 43.

⁶*In re Hovey*, 545 A.2d 626, 628 (Del. 1988).

⁷*Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

(7) In this case, Lazaridis has an adequate remedy at law to challenge the Family Court's orders that were issued incident to his appeal on the merits.⁸ Indeed, the availability of that remedy requires the dismissal of Lazaridis' petition for a writ of prohibition.⁹ This Court will not allow Lazaridis to invoke the extraordinary writ process as a substitute for appellate review.¹⁰

NOW, THEREFORE, IT IS ORDERED, *sua sponte*, pursuant to Supreme Court Rule 29(c),¹¹ that Lazaridis' petition for a writ of prohibition is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁸*Cf.* Del. Supr. Ct. R. 9(i) (providing that decision of trial court as to payment of transcript cost reviewable as appeal issue). *See Shearin v. Lacy*, 2003 WL 1711947 (Del. Supr.) (finding no error or abuse of discretion in Superior Court's denial of motion to proceed in forma pauperis and affirming dismissal of complaint); *Nicotra v. Rowe*, 2000 WL 1671235 (Del. Supr.) (affirming Court of Chancery's denial of request to proceed in forma pauperis); *Coleman v. State*, 1998 WL 986010 (Del. Supr.) (affirming Superior Court's denial of in forma pauperis status).

⁹*Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

¹⁰*Id.*

¹¹*See* Del. Supr. Ct. R. 29(c) (providing in pertinent part that the Court may dismiss a petition for an extraordinary writ, *sua sponte*, without notice, when the petition manifestly fails on its face to invoke the jurisdiction of the Court and where the Court concludes, in the exercise of its discretion, that the giving of notice would serve no meaningful purpose and that any response would be of no avail).