

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

LINH THI MINH TRAN
PETITIONER,

VS.

KATHY HUNG PHAM
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO

IN THE SUPREME COURT OF THE STATE OF OREGON

PETITION FOR WRIT OF CERTIORARI

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09/18/2018

Original

QUESTION(S) PRESENTED

1. Did the trial court error in granting General Judgment of Dismissal that as a matter of law in this matter in favor of defendant Kathy Hung Pham?
2. Did the trial court error in ruling that plaintiff Linh Thi Minh Tran is not the real party in interest pursuant to ORCP 26A and 27B that as a matter of law because she is not the Guardian, Conservator, or the Guardian ad litem for Minh Duy Tran?
3. Did plaintiff Linh Thi Minh Tran may maintain an action to have compensated monies in the amount of \$1 million-dollars for Minh Duy Tran's personal injuries, brain dead, and vegetative state condition against the wrongdoer/respondent Kathy Hung Pham?
4. Did the dead brain or vegetative state condition of Minh Duy Tran is caused by the wrongful act, negligence, abuse, harm, or omission of defendant Kathy Hung Pham?
5. Is the trial court's errors that as a matter of law results in a serious injustice to senior disability Minh Duy Tran?
6. Is the Court of Appeals 'errors that as a matter of law results Petitioner-Appellant Linh Thi Minh Tran lose her chance of filing a complaint in Oregon State Court for Minh Duy Tran's personal injuries, dead of brain, blind, and vegetative state condition, and compensation damages monies in

the amount of \$1,000,000.00 (one million dollars) to against defendant-respondent Kathy Hung Pham?

7. Is Petitioner-Appellant Linh Thi Minh Tran is the real party in interest pursuant to ORCP 26A and 27B if she is surviving legal children of Minh Duy Tran pursuant to ORS 30.020?
8. Is this case or questions presented on review have importance and must require decision by the Supreme Court of The United States?

LIST OF PARTIES

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

ORDERS BELOW

[X] For cases from **state courts**:

The Order Denying Reconsideration in the Case Name: Linh Thi Minh Tran vs. Kathy Hung Pham, Case Number: S065602 in The Supreme Court of the State of Oregon was issued on 06/21/2018 by Thomas A. Balmer, Chief Justice Supreme Court.

The Order Denying Review in the Case Name: Linh Thi Minh Tran vs. Kathy Hung Pham, Case Number: S065602 in The Supreme Court of the State of Oregon was issued on 03/22/2018 by Thomas A. Balmer, Chief Justice Supreme Court.

The Appellate Judgment and Supplemental Judgment Review in the Case Name: Linh Thi Minh Tran vs. Kathy Hung Pham, Case Number: A163562 in The Court of Appeals of The State of Oregon was issued on 07/24/2018 by Court Oregon of Appeals seal.

Order Denying Reconsideration in the Case Name: Linh Thi Minh Tran vs. Kathy Hung Pham, Case Number: S065602 in The Court of Appeals of The State Linh Thi Minh Tran vs. Kathy Hung Pham. Petition For A Writ of Certiorari. Petitioner Linh Thi Minh Tran, 12542 SE Capella Court, Happy Valley, Oregon 97086 | Tel: 503-558-0886 | Email: minhlinhtrn@gmail.com | Page 10 of 52

of Oregon was issued on 12/04/2017 by Rex Armstrong, Presiding Judge, Court of Appeals.

The General Judgment of Dismissal in the Case Name: Linh Thi Minh Tran vs. Kathy Hung Pham, Case Number: 16CV15440 in The Circuit Court of The State of Oregon For the County of Multnomah was issued on 10/24/2016 by Circuit Court Judge Adrienne C.Nelson.

JURISDICTION

[X] For cases from state courts:

The date on which the highest state court Oregon Supreme Court decided this case was 06/21/2018. A copy of Order Denying Petition for Reconsideration appears at Appendix A.

[x] A timely petition for a writ of certiorari in the Matter of Guardianship of Minh Duy Tran was filed to Supreme Court of the United States on 09/18/2018, and a copy of the order denying petition for reconsideration of the highest state court Oregon Supreme Court in this case was issued on 06/21/2018 appears at Appendix A.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 7. Right to Dignity. The elderly have the inherent right to life, dignity, and the integrity of their persons, which shall be protected by law.

Article 8. Right to Freedom from Abuse, Neglect, and Exploitation. The elderly has the right to be free from abuse, neglect, and exploitation.

Article 10. Right to Adequate Healthcare The elderly have the right to a standard of living adequate for the health and wellbeing of themselves, including

access to affordable health care. Adequate and affordable healthcare includes medication,

immunization and medical care such as physical therapy, surgery, nursing, check-ups, in the event of sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control.

Article 18. Duty of the State.

18.1. The State shall have the duty to protect the health and mental well-being of the elderly when the family lacks sufficient means to do so.

18.2. The State shall have the duty to represent and protect the lawful rights and interests of the elderly.

18.4. The State shall have the duty to punish in accordance with law those who abuse, neglect, exploit or discriminate against the elderly. These duties may be carried out by the Department of Justice or the agency set out in Section 18.10.

This duty shall include, but not be limited to:

18.4.1. Enacting of criminal laws prohibiting the abuse, neglect, exploitation and discrimination of the elderly,

18.4.2. Designing and managing of a program of response and services for the elderly who have been, or are alleged to be, victims of abuse, neglect, exploitation, or discrimination,

18.4.3. Establishing a fund to aid local government agencies, provider agencies, or both, to carry out these functions, and, contingent on adequate funding, to fund attorneys or legal services provider agencies for the provision of legal assistance to the elderly.

18.6. The State shall have the duty to take measures to ensure the elderly basic necessities of life such as adequate nutrition and potable water necessary for their health and wellbeing.

The state shall also be responsible to take measures to create conditions conducive for the elderly to have access to basic amenities of life including but not limited to appropriate shelter, clothing, and sanitation as per prevailing societal standards. The State shall strive to create such conditions through committing state resources toward developing necessary infrastructure, and provision of apt economic assistance to the elderly.

18.7. The State shall have the duty to establish necessary programs and regulations that provide material assistance to the elderly and those who support the elderly.

Material assistance shall be provided in the form of tangible support necessary for the maintenance of the elderly at times when an elderly person cannot support himself or herself or rely on support from their family, including basic necessities and amenities as provided by 11.1 and 11.2.

18.9.2. Mandating frequent and continuing training for all caretaking professionals to keep these important professionals up-to date on the best practices to ensure that the health and wellbeing of the elderly are protected,

18.9.3. Providing appropriate legal structures and remedies in the case of third-party caretaker abuse or negligence,

18.9.4. Educating thirdparty caretakers and the elderly on their rights, responsibilities, protections guaranteed under this law and domestic law, and

18.9.5. Continuously supervising authorized organizations and professionals to ensure that the elderly is served in accordance with their legal rights and protections and appropriately sanction those caretaking professionals who do not adhere to this and all applicable law concerning their patients or clients.

18.10. The State shall establish a government body for the protection of the elderly

. The department shall have the responsibility to:

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18.10.1. Establish and enforce rules, regulations, and laws necessary to ensure the Rights provide by this law,

18.10.2. Evaluate, license, and monitor all programs, services, and facilities for the elderly,

18.10.3. Receive and disperse federal funds in relation to the protection of the elderly,

18.10.4. Promote community education and research regarding the problems and vulnerability of the elderly,

18.10.5. Promote collaborative efforts with local government agencies, the community, and nonprofit organizations to examine the needs and protect the interests of the elderly,

18.10.6. Develop objectives, priorities, and policy for a Protection of the Elderly Program,

18.10.7. Facilitate the development and implementation of a Protection of the Elderly Program,

18.10.8. Research issues related to elderly, including, but not limited to, abuse, neglect, exploitation, discrimination, ailments, adequate healthcare and medicine, and

18.10.9. Provide federal guidance to local government and community efforts in carrying out a Protection of the Elderly Program.

18.11. The Protection of the Elderly Program shall include elder abuse prevention, detection, treatment, intervention, and response.

PLAINTIFF-PETITIONER LINH THI MINH TRAN'S PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Nature of the action and relief sought

This is an action against defendant-respondent Kathy Hung Pham caused Minh Duy Tran for personal injuries and compensation damages in the amount of \$1,000,000.00 regarding his dead brain damages, blinds, and vegetative state condition of Minh Duy Tran during times Kathy Hung Pham had lived together with Minh Duy Tran as his wife at the address 5212 SE Flavel Drive, Portland, Oregon 97206 since June 4, 2011 up until August 31, 2015 because Kathy Hung Pham acted wrongful act, negligence, abuse, or omission caused Minh Duy Tran had severe dead bread over 90 percent brain severe damages results he is currently persistent vegetative state condition for the rest of his life and his two eyes blind without any opportunity to correct. Unfortunately, Defendant-respondent Kathy Hung Pham through her attorney, Kenneth Lee Baker filed Motion to Dismiss Proceedings pursuant to ORCP 7, 26, and 28, coming on to be heard on October 5, 2016 before Multnomah County Circuit Court State of Oregon trial court judge Adrienne C. Nelson, and the trial court's ruling that Plaintiff-petitioner Linh Thi Minh Tran was not the real party in interest pursuant to ORCP 26A and 27B

because she is not the Guardian, Conservator, or the Guardian ad litem for Minh Duy Tran and the trial court granted motion to dismiss the case in favor of defendant Kathy Hung Pham and issued the General Judgment of Dismissal the case and ordered and adjudged that plaintiff Linh Thi Minh Tran's complaint be dismissed in all of its particulars and defendant-respondent Kathy Hung Pham was awarded judgment for her costs in this matter. Petitioner-Appellant Linh Thi Minh Tran had already filed Notice of Appeal to Oregon Court of Appeals and had filed petition for review and petition for reconsideration this matter to Oregon Supreme Court to seek reversal of the trial court's general judgment of dismissal of plaintiff Linh Thi Minh Tran's complaint and requested Oregon Court of Appeals and Oregon Supreme Court grants for plaintiff-petitioner Linh Thi Minh Tran is entitled to recover claims for Minh Duy Tran's personal injuries and compensation damages in the amount of money one-million dollars (\$1,000,000.00) plus accrued and accruing interest, costs and fees against defendant-respondent Kathy Hung Pham but unfortunately, The both of highest courts in Oregon State, Oregon State Courts Oregon Court of Appeals and Oregon Supreme Court have already denied Plaintiff-Petitioner Linh Thi Minh Tran's requested instead Oregon Court of Appeals issued Appellate Judgment and supplemental judgment to against petitioner Linh Thi Minh Tran by to request petitioner Linh Thi Minh Tran to pay cost for money award for Kathy Hung Pham with interest 9% per annum from the Linh Thi Minh Tran vs. Kathy Hung Pham. Petition For A Writ of Certiorari. Petitioner Linh Thi Minh Tran, 12542 SE Capella Court, Happy Valley, Oregon 97086 | Tel: 503-558-0886 | Email: minhlinhtrn@gmail.com | Page 19 of 52

date of July 24, 2018. Therefore, Petitioner must immediately file PETITION FOR WRIT OF CERTIORARI TO UNITED STATES OF SUPREME COURT because in this case there are sufficient evidences to determine that defendant-respondent Kathy Hung Pham who has DOB# 09/05/1957, Allen Registration Card (Green Card) Number: A048220908, 4 digits Social Security Number: 9065 was severe mental illness, abuse, dangerous, negligence, risks, inconvenient, and harm to Minh Duy Tran who has DOB# 10/24/1944, 4 digits Social Security Number: 7295, and Allen Registration Card Number: A073321214.

Nature of the Judgment

The nature of the trial court Multnomah County State of Oregon is General Judgment of Dismissal of plaintiff-petitioner Linh Thi Minh Tran's complaint because the trial court finding that plaintiff Linh Thi Minh Tran is not the real party in interest pursuant to ORCP 26A and 27B because she is not the Guardian, Conservator, or the Guardian ad litem for Minh Duy Tran but it is not true. Petitioner Linh Thi Minh Tran is legal daughter of Minh Duy Tran.

Basis of appellate jurisdiction

Plaintiff-Petitioner Linh Thi Minh Tran filed Notice of Appeal to Oregon Court of Appeals and Petition for Review and Petition for Reconsideration to Oregon Supreme Court for Appellate jurisdiction is based on ORS 19.010(1); ORS 30.020; ORCP 26 A; ORCP 27A; and ORCP 27B.

Effective date for appellate purposes

The General Judgment of Dismissal was signed on October 24, 2016 and was entered on October 26, 2016. The Notice of Appeal was filed and served on November 7, 2016.

Summary of argument

Pursuant to ORS 30.020, *when the death of a person is caused by the wrongful act or omission of another, surviving children may maintain an action against the wrongdoer.* Here, petitioner Linh Thi Minh Tran submitted to trial court all evidences include certified birth certificate, Will of Minh Duy Tran created for Linh Thi Minh Tran on September 30, 1997 at Kyle B. Dukelow, Attorney at Law, pictures, and documents to prove that petitioner Linh Thi Minh Tran is Minh Duy Tran's legal daughter. Therefore, Linh Thi Minh Tran has legal rights to maintain an action against defendant Kathy Hung Pham because Kathy Hung Pham's negligence, abuse, wrongful act, and omission results Minh Duy Tran has dead brain, blind, and vegetative state condition since August 31, 2015 until present.

Pursuant to ORCP 27B (3)(4), *when the plaintiff or petitioner or the defendant or respondent is a person who is incapacitated or is financially incapable, as those terms are defined in ORS 125.005, upon application of a*

relative or friend of the person, or other interested person. Here again, petitioner Linh Thi Minh Tran is legal daughter of Minh Duy Tran who is incapacitated vegetative state condition, she has authority to maintain an action against defendant-respondent Kathy Hung Pham.

Pursuant to ORCP 26A, *No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.* Here, plaintiff-petitioner Linh Thi Minh Tran submitted to trial court all evidence include certified birth certificate, Will of Minh Duy Tran created in 1997 for Linh Thi Minh Tran in Kyle B. Dukelow, Attorney at Law office to determine to trial court that Linh Thi Minh Tran is legal daughter of Minh Duy Tran. Pursuant to ORCP 26A, *no action shall be dismissed on the ground.* Thus, a General Judgment of Dismissal of all plaintiff Linh Thi Minh Tran's claims of trial court was issued in error and should be reversed.

Statement of facts

On May 9, 2016 plaintiff Linh Thi Minh Tran filed a complaint in Multnomah County Circuit Court against defendant Kathy Hung Pham because

Kathy Hung Pham's negligence, abuse, wrongful act, or omission caused the death of brain, blind, and vegetative state condition of Minh Duy Tran. Plaintiff-Petitioner Linh Thi Minh Tran seeks award in an amount of one million dollars (\$1,000,000.00) for pain, suffering and loss of income and for pecuniary loss and for loss of the society, companionship and services of Minh Duy Tran father of daughter. Petitioner also seeks a restraining order and permanent injunctive relief against Kathy Hung Pham because her dangerous, mental illness, risks, abuse, wrongful act or omission caused Minh Duy Tran the death of brain and vegetative state condition and his two eyes blind without opportunity correct of Minh Duy Tran.

On October 5, 2016 defendant Kathy Hung Pham's Motion to Dismiss Proceedings pursuant to ORCP7, 26 and 28, coming to be heard before the Honorable Adrienne C. Nelson, Judge of the above-entitled court, and the court finding that Plaintiff-Petitioner Linh Thi Minh Tran is not the real party in interest pursuant to ORCP 26A and 27B because petitioner is not the Guardian, Conservator, or the Guardian ad litem for Minh Duy Tran, and the trial court's ruling orders and adjudge that plaintiff Linh Thi Minh Tran's complaint be dismissed in all of its particulars and defendant Kathy Hung Pham is awarded judgment for her costs in this matter.

Plaintiff-Petitioner Linh Thi Minh Tran disagreed with trial court's decision, therefore, on October 16, 2016, Plaintiff-Petitioner filed to trial court foregoing document: Plaintiff Linh Thi Minh Tran's Objection to Trial Court's ruling General Judgment of Dismissal and petitioner also filed a Notice of Appeal this matter to Oregon Court of Appeals on November 7, 2016.

ASSIGNMENT OF ERROR

Plaintiff-Petitioner Linh Thi Minh Tran assigns trial court's errors as the following:

- i. The trial court erred in granting General Judgment of Dismissal of all plaintiff Linh Thi Minh Tran's claims that as a matter of law.
- ii. The trial court erred in ruling that as a matter of law Plaintiff Linh Thi Minh Tran is not the real party in interest pursuant to ORCP 26A and 27B because she is not the Guardian, Conservator, or the Guardian ad litem for Minh Duy Tran.
- iii. The trial court erred in ruling that as a matter of law Plaintiff-Petitioner is not a suitable person to be appointed guardian of Minh Duy Tran.
- iv. The trial court erred in ruling that as a matter of law Kathy Hung Pham has Durable Power of Attorney and Last of Will and Testament of Minh Duy Tran.

v. The trial court erred in granting that as a matter of law defendant Kathy Hung Pham is awarded judgment for her costs in this matter.

Preservation of Error

Plaintiff-Petitioner Linh Thi Minh Tran assigns the trial court erred that as matter of law in granting of defendant's motion to dismiss and issued the general judgment of dismissal of all plaintiff-petitioner Linh Thi Minh Tran's claims.

Plaintiff-petitioner Linh Thi Minh Tran preserved Defendant Kathy Hung Pham's motion to dismiss by filed to trial court Multnomah County State of Oregon the foregoing documents: Plaintiff Linh Thi Minh Tran's response in opposition to defendant Kathy Hung Pham's motion to dismiss and plaintiff-petitioner Linh Thi Minh Tran also filed to trial court Multnomah County State of Oregon a foregoing document: Plaintiff Linh Thi Minh Tran's Objection to trial court's issued a General Judgment of Dismissal of all plaintiff Linh Thi Minh Tran's claims on October 16, 2016 and plaintiff has already filed a Notice of Appeal this matter to Oregon Court of Appeals on November 7, 2016.

Standard of Review

The trial court entered A General Judgment of Dismissal of plaintiff's claim must review all evidence and take all reasonable inferences that may be drawn therefrom in the light most favorable to Appellants. This Court is also required to

view the evidence in the light most favorable to Appellants. *Schiele v. Montes*, 218 P. 3d 141, 231 Or. App. 43, 48 (2009) (reversing motion to dismiss treated as a motion for summary judgment and citing ORCP 47C and *Jones v. General Motors Corp.*, 325 Or 404, 408, 939 P2d 608 (1977).

“[a] material fact is one that, under applicable law, might affect the outcome of a case.” *Zygar v. Johnson*, 169 Or App 638, 646, 10 P3d 326 (2000).

Where an error of law is shown to have influenced the court trying a case without a jury, reversal is necessary. *Babler Brothers v. Pac Intermountain*, 244 Or 459, 467, 415 P.2d 735 (1996).

“Whether the complaint states a claim is a question of law.” *Hansen v. Anderson*, 113 Or App 216, 218, 831 P2d 717 (1992). “In considering the sufficiency of plaintiffs’ complaint, we accept all well-pleaded allegations of the complaint as true and give plaintiffs the benefit of all favorable inferences that may be drawn from the facts alleged.” *Stringer v. Car Data Systems, Inc.*, 314 Or 576, 584, 841 P2d 1183 (1992).

ARGUMENTS

A. The trial court erred in issued A General Judgment of Dismissal of all plaintiff Linh Thi Minh Tran's claims.

- 1. Petitioner Linh Thi Minh Tran is legal daughter of Minh Duy Tran therefore, she is real party in interest to maintain action at Court against the wrongful act of respondent Kathy Hung Pham who is person caused as results of the totaled loss from 80 percent up to 90 percent of damages and injuries about physical and mental health of Minh Duy Tran who is now current living in worse condition physical and mental health of severe multifocal stroke, dead of brain with totaled lost of 80% up to 90% unable correct or fix as results of eyes blind and, and persistent vegetative state condition for the rest of his life.**

Pursuant to ORS 30.020, *when the death of a person is caused by the*

wrongful act or omission of another, surviving children may maintain an action against the wrongdoer. Here, plaintiff-petitioner Linh Thi Minh Tran submitted to trial court all evidences include birth certificate Plaintiff-Petitioner submitted to trial court all evidences include: Linh Thi Minh Tran's birth of certificate with certified by Viet Nam General Consulate and certified of translator of Linh Thi Minh Tran's birth of certificate, Will of Minh Duy Tran created in September 30, 1997 at Kyle B. Dukelow, Attorney at Law Office, pictures, and documents to prove that Linh Thi Minh Tran is Minh Duy Tran's daughter. Therefore, Linh Thi Minh Tran has legal rights to maintain an action against defendant Kathy Hung Pham because the death brain and persistent vegetative state condition of Minh

Duy Tran is caused by the wrongful act, negligence, dangerous, abuse, or omission of Kathy Hung Pham.

The trial court is clearly errors, abuse discretion standard of law when it granted the General Judgment of Dismissal of all plaintiff Linh Thi Minh Tran's claims in favor of Respondent Kathy Hung Pham although based on the trial court files, the trial court has already had full understand and full knowledge that because respondent Kathy Hung Pham's wrong doing acts, negligence, abuse, failure to provide the proper care, or service necessary assistant to maintain the health and safety for Minh Duy Tran since June 4, 2011 up until August 31, 2015 at address 5212 SE Flavel Drive, Portland, Oregon 97206 results of Minh Duy Tran has total loss of suffering damages and injuries up to 90% of dead of brain, severe multifocal stroke, and persistent vegetative state condition since August 31, 2015 up until present. The neurology doctor at Portland Adventist Hospital, Brent Burroughs indicated that Minh Duy Tran was totaled loss of 90 percent brain dead and damages and his total loss of dead brain damages and injuries could not able to correct or fix results Minh Duy Tran would be blind the both of his eyes and he must live in persistent vegetative condition for the rest of his life.

Although Kenneth Lee Baker, attorney of Respondent Kathy Hung Pham argued into Respondent Kathy Hung Pham's answer brief that Minh Duy Tran is not died yet but at this time present, Minh Duy Tran has total loss up to 90% Linh Thi Minh Tran vs. Kathy Hung Pham. Petition For A Writ of Certiorari. Petitioner Linh Thi Minh Tran, 12542 SE Capella Court, Happy Valley, Oregon 97086 | Tel: 503-558-0886 | Email: minhlinhtrn@gmail.com | Page 28 of 52

percent of suffering damages and injuries of brain-dead results he is incapacitated, persistent vegetative state condition, and blind the both of his eyes.

Pursuant to ORCP 27B (3)(4), *when the plaintiff or petitioner or the defendant or respondent is a person who is incapacitated or is financially incapable, as those terms are defined in ORS 125.005, upon application of a relative or friend of the person, or other interested person.* Here again, Linh Thi Minh Tran is legal daughter of Minh Duy Tran, she has authority to maintain an action against defendant Kathy Hung Pham. Therefore, trial court erred in granting General Judgment of Dismissal.

Pursuant to ORCP 26A, *No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.* Here, plaintiff-petitioner Linh Thi Minh Tran submitted to trial court all evidence include certified birth certificate of Linh Thi Minh Tran, Will of Minh Duy Tran created in 1997 for Linh Thi Minh Tran in Kyle B. Dukelow Attorney at Law office to determine to trial court that petitioner Linh Thi Minh Tran is legal party in interest of Minh Duy Tran and petitioner has

authority to maintain an action against defendant Kathy Hung Pham in Oregon State Court.

Based on evidences, petitioner states that Kathy Hung Pham tried to act fraudulent and mislead the trial court by her counsel Kenneth Lee Baker submitted a forge and fraud Durable Power Attorney document and Last Will Testament to trial court. Based on Durable Power Attorney document of Kathy Hung Pham filed to the trial court on March 3, 2016, in page15, the notary officer Vinh Huynh indicated that: “*This is to certify that on this 13th day of May, 2015, before me, the undersigned Notary Public in and for the state of Oregon, duly commissioned and qualified, personally appeared Minh Duy Nguyen, to me known to be the person described in and who executed the within and foregoing Power of Attorney, and acknowledged to me that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written. Notary signature and print name: Vinh Huynh. State of Oregon, residing at Portland, OR 97216.*” Here, based on the Durable Power of Attorney document of Kathy Hung Pham submitted to the trial court, the court can see that notary officer Vinh Huynh indicated that personally appeared Minh Duy Nguyen and acknowledged to him that she signed the same as her free. Minh Duy Tran has never appeared before notary officer Vinh Huynh therefore a person who appeared

before Vinh Huynh notary officer was female that why Vinh Huynh used his words to define exactly the sexual gender of a person appeared before notary officer was female as she and her. Addition, Vinh Huynh is notary officer therefore he must follow the Oregon Notary Act by requested a person named Minh Duy Nguyen's identification issued by State Government. An identification issued by State Government always has all information of a person including name, address, gender, height, picture and date of birth. This is strong evidence for appellant to prove with the court that Kathy Hung Pham acted fraud and abuse senior respondent Minh Duy Tran by she used fraud and forge Durable Power Attorney and Last Will Testament and married license without any signature of Minh Duy Tran for her personal benefit and against plaintiff- appellant Linh Thi Minh Tran at trial court.

On March 3, 2016, Kathy Hung Pham submitted to the court a certificate of marriage, but petitioner Linh Thi Minh Tran discovered that this document does not have legal signatures of the both parties Minh Duy Tran and Kathy Hung Pham. More important there is no evidence in the record to show that Kathy Hung Pham is a legal wife of Mr. Minh Duy Tran. Therefore, plaintiff-petitioner Linh Thi Minh Tran states that Kathy Hung Pham does not have legal right to be wife of Mr. Minh Duy Tran.

According to Last Will and Testament which Kathy Hung Pham submitted to the trial court, petitioner Linh Thi Minh Tran discovered that Kathy Hung Pham continue acted fraud and forge by she gave false statement in Article I, Identification of Family, page 1, that: "At the present time I am unmarried and have no children. In making this Will, I do not have in mind to provide for any children hereafter born to or adopted by me." From these statements of the Last Will and Testament, petitioner Linh Thi Minh Tran states this document was forge and fraud by Kathy Hung Pham because in real, petitioner Linh Thi Minh Tran is legal daughter of Minh Duy Tran.

More important, according to all medical history records of Minh Duy Tran since December 2014 to August 31, 2015, respondent Minh Duy Tran has altered mental status, confused, dementia, and vision deficit due glaucoma retinal surgery of the both of his eyes therefore, Mr. Minh Duy Tran was not able to execute and acknowledge a Durable Power of Attorney and a Last Will and Testament on May 13, 2015 in favor of Kathy Hung Pham.

Kathy Hung Pham used her fraud and forge Durable Power of Attorney document to sell the property 5212 SE Flavel Dr. Portland, Oregon 97206 on November 15, 2016 at the price \$265,000.00 without consent or authorization of Minh Duy Tran although Kathy Hung Pham indicated in her formal letter to U.S Administrative Law Judge of Office of Medicare Hearings and Appeals, Richard S. Linh Thi Minh Tran vs. Kathy Hung Pham. Petition For A Writ of Certiorari. Petitioner Linh Thi Minh Tran, 12542 SE Capella Court, Happy Valley, Oregon 97086 | Tel: 503-558-0886 | Email: minhlinhtrn@gmail.com | Page 32 of 52

Bush that, Kathy Hung Pham and Minh Duy Tran together lived, purchased, and made down payment to pay off second mortgage and the mortgage of the house 5212 SE Flavel Dr. Portland, Oregon 97206 since May 2011 until August 31, 2015. However, after Kathy Hung Pham sold this house 5212 SE Flavel Drive, Portland, Oregon 97206 on November 2016, Kathy Hung Pham has never paid any money for Minh Duy Tran instead she kept all money \$265,000.00 from selling this house for herself future regardless Minh Duy Tran is significantly living in vegetative state condition and dead brain and blind at Prestige Care in Gresham.

The trial court erred in ruling Kathy Hung Pham is Mr. Minh Duy Tran's wife based on the fraud and forge documents of Kathy Hung Pham. Thus, the General Judgment of Dismissal and orders in this matter of the trial court were issued in errors and should be reversed and plaintiff-petitioner Linh Thi Minh Tran may maintain an action in Oregon State Court to against the wrongdoer Kathy Hung Pham for Minh Duy Tran's personal injuries, dead of brain and persistent vegetative state condition and compensated damages in the amount of monies \$1 million-dollars (\$1,000,000.00).

- 2. The total dead brain and 90 percent total brain damages of Minh Duy Tran and persistent vegetative state condition of Minh Duy Tran was caused by the wrongful act, negligence, dangerous, mental illness, abuse, or omission of defendant-respondent Kathy Hung Pham. Petitioner Linh Thi Minh Tran is legal daughter of Minh Duy Tran therefore, she is real party in interest to maintain action at Court against the wrongful act of respondent Kathy Hung Pham. The trial court erred that as of**

law when it stated that petitioner is not the real party interest of Minh Duy Tran to maintain an action at Oregon State Courts to against respondent Kathy Hung Pham.

On January 27, 2016, Kathy Hung Pham sent a letter to Judge Richard Bush at Medicare Administrative Law in which she indicated that: *"I have the honor to be in the phone hearing on Wednesday 01/27/2016 at 10:30AM because a notice was sent to my address. I am his wife and I have power of attorney. I am requesting a copy of the file paper and the rescheduled notice letter mailed to my current address at 5212 SE Flavel Dr, Portland, Oregon 97206. This is the same address where my husband and I have resided for the last 4 years until he was transferred to nursing home several months ago due to his illness. As his wife and his power of attorney, I need to know what's going on with this case. Up until this minute, I have no idea of what's going on. His daughter, Linh Tran does not have power of attorney. Please correct me if I'm wrong but I was told the decision should go through me, not his daughter. Signed by Kathy Pham."* See Exhibit is attached. From this letter, Kathy Hung Pham admitted she and Minh Duy Tran lived together in 4 years until August 31, 2016 at the address 5212 SE Flavel Drive, Portland, Oregon 97206 and she wanted the decision about Minh Duy Tran should go through her not his daughter. On 09/06/2015 Kathy Hung Pham and primary doctor Hoang Nguyen several time to push doctors at Portland Adventist Hospital to end Minh Duy Tran's life by leaning toward comfort measure and

withdrew all ventilator to let him die even Minh Duy Tran admitted to ER only few days.

On February 23, 2016, Kathy Hung Pham filed to the trial court a document: Objection to Appointed of Linh Tran as Guardian in which she indicated that:

“Comes now Kathy Hung Pham, the wife of Minh Duy Tran, and objects to the appointment of Linh Tran as the guardian for her husband, I have no objection to the appointment of a professional fiduciary as the guardian for my husband who needs assistance because of multiple strokes. Linh Tran has been estranged from her father for a number of years and is argumentative and difficult to deal with because of her unreasonable demands and conduct. Minh Tran and I were married in the country of Vietnam on July 4, 2000. Attached to this objection is a copy of our marriage certificate and a copy of my name change. Minh Tran and I own a vehicle in our joint names and we filed bankruptcy last year on a house in Happy Valley that was in our joint names. We released any interest in the house which is in foreclosure at this time. Signed by Kathy Hung Pham, objector, 5212 SE Flavel Drive, Portland, Oregon 97206.” See Exhibit is attached. From Kathy Hung Pham’s objection, it is clear that Kathy Hung Pham refused to be appointed guardian for Minh Duy Tran but she does not want his daughter Linh Thi Minh Tran to be appointed guardian for her father Minh Duy Tran. Kathy Hung Pham

also indicated that she and Minh Tran filed bankruptcy at U.S Bankruptcy Court Linh Thi Minh Tran vs. Kathy Hung Pham. Petition For A Writ of Certiorari. Petitioner Linh Thi Minh Tran, 12542 SE Capella Court, Happy Valley, Oregon 97086 | Tel: 503-558-0886 | Email: minhlinhtrn@gmail.com | Page 35 of 52

Case number: 15-31294-rld7 in which she and Minh Tran released any interest in the house in Happy Valley that was in joint names.

According to Court Visitor's Report filed to the court on January 26, 2016, Angela Plowhead declared that: "This Visitor has learned of a Police report to Adult Protective Services (APS) in July 2015 and then another report made by the Petitioner in September 2015. This Visitor is attempting to contact the APS investigator for additional details of these reports and any resulting findings. Attempts were made to contact Ms. Kathy Hung Pham. However, she has a very limited ability to communicate in English so an interpreter is being sought."

According to Court Visitor's Report filed to the court on February 8, 2016, Angela Plowhead declared that: "Ms. Kathy Hung Pham reported to this Visitor that prior to the 8/3/2015 hospitalization Mr. Minh Duy Tran 'could take care of himself' although she describes his physical condition as requiring help with showering due to weakness, an inability to dress independently and needing incontinence care to include help with changing his briefs. When asked what type of care he had available to him when she was not in the home due to working 12 hour shifts, 6 days a week, she indicted that a roommate was in home and if he asked for help he would help him.' There appears to be a lack of understanding of what level of care would have been appropriate for Mr. Minh Duy Tran to prevent further medical complications in light of a prior hospitalization for altered mental

status and hyperglycemia initiated by Portland Police just one month prior to his stroke and the level of impairment described.”

According to Kathy Hung Pham’s objection to appointment of Linh Thi Minh Tran as guardian, Kathy Hung Pham indicated that: “I have no objection to the appointment of a professional fiduciary as the guardian for my husband who needs assistance because of multiple strokes.” From this statement, the court can see Kathy Hung Pham did not intend to be fiduciary as the guardian for Mr. Minh Duy Tran.

On July 29, 2015 at 11:35 PDT Discharge Summaries Note of Portland Adventist Medical Center stated by Boyd A. Erin that they found out that the last hospitalization of respondent Minh Duy Tran in admission at Providence Portland Medical in March 2015 stated that Mr. Minh Duy Tran has neuropathy, history of altered mental status in the setting of hyperglycemia caused him to be confused, suffer memory loss, display lack of awareness, and other significant residual mental and physical deficits including blindness.

On 12/9/2014 at 18:14PST EMS reported that while walking down at SE 82nd Street, the patient Mr. Minh Duy Tran felt weak and slid down to the ground and experienced chest pain while walking along SE 82nd Street. Speaking through a video translator, the patient Mr. Minh Duy Tran stated that he was on his way to buy food when he collapsed in the street and could not get up. From this evidence, Linh Thi Minh Tran vs. Kathy Hung Pham. Petition For A Writ of Certiorari. Petitioner Linh Thi Minh Tran, 12542 SE Capella Court, Happy Valley, Oregon 97086 | Tel: 503-558-0886 | Email: minhlinhtrn@gmail.com | Page 37 of 52

petitioner-appellant contends this incident is evidence of Minh Duy Tran was abuse by Kathy Hung Pham's neglect. Kathy Hung Pham did aware that Mr. Minh Duy Tran was not able to walk to the street alone without somebody be with him to buy food due to his altered mental status, confused, and high fall risks but she apparently did not care, and her neglect, put his life in severe jeopardy, and caused him to suffer injury and dangerous.

On July 29, 2015 Portland Police Chief Complaint found respondent Minh Duy Tran at a Max Stop. Based on the police report, they stated that: "the police officers found Mr. Minh Duy Tran at the Max train and appeared weak, in an altered mental state, dehydrated, confused, and unsure why he was there. After the police officers were concerned and called EMS, Minh Duy Tran denied falling on that day, but he reported that he did fall at home 5212 SE Flavel Dr. the day before. He describes the fall as a slip-on water at home, and he fell on his buttocks. The doctors of hospital stated that the patient Minh Duy Tran is a high fall risk. The patient was last seen in the hospital in the ED on 12/9/2014 with generalized weakness due to a slip and fall." From this report of hospital and Portland Police, petitioner-appellant believes that Kathy Hung Pham was neglect and abuse and no care of Mr. Minh Duy Tran at home 5212 SE Flavel Dr., Portland, Oregon 97206 since June 2011 until August 31, 2015.

On August 31, 2015 the EMS summary chart note stated that Minh Duy Tran was found unresponsive in bed at 9:00 PM by Kathy Hung Pham at home 5212 SE Flavel Dr. Portland, Oregon 97206 when she returned from her work at Thanh Long Bakery Restaurant. Unfortunately, she did not call 911 EMS immediately instead she waited for up to 2 hours to call his friend while Minh Duy Tran has still remained unresponsive. Upon records of Portland Adventist Hospital Emergency Department, Minh Duy Tran was brought to ED at Adventist Medical Portland Hospital at 22:20pm on August 31, 2015. At that time Minh Duy Tran's blood glucose dropped down abnormal 19. He has since been intubated and unresponsive at Adventist Medical Center. He has not been on any sedation and he has not aroused. He has no purposeful movements and has been unable to wean off his ventilator. He was unable to eat and has been getting fed through an NG tube. Defendant Kathy Hung Pham indicated to medical staffs at Adventist Emergency Department that she was unaware how much insulin she injected on that date for him but she stated she noticed that Minh Duy Tran skipped lunch. Kathy Hung Pham left Minh Duy Tran at home in 5212 SE Flavel Dr, Portland, Oregon 97206 by himself without somebody be with him and she went to work at Thanh Long Bakery Restaurant for the shift 12 hours on August 31, 2015. When Kathy Hung Pham found Minh Duy Tran unresponsive in bed at 9:00 pm on that date, she ignored him and waited up until 22:20 pm to call 911 and he was brought to

Portland Adventist Medical Center Emergency Room. Because Minh Duy Tran was unresponsive for at least up to 2 hours prior to him being brought into emergency department, he had severe stroke and his brain dead caused him persistent vegetative state condition. Kathy Hung Pham's neglect and dangerous activities as results caused the death of brain and persistent of vegetative state of Minh Duy Tran. Minh Duy Tran was seen in neurology consultation by Dr. Burroughs and it was felt that even if he recovered, he would have significant residual deficit including blindness given the occipital involvement. The severe encephalopathy is likely due to permanent neurologic brain damages from the profound hypoglycemia and associated stroke and it is anticipated he will be in a persistent vegetative state. The EMS staffs at Portland Adventist Medical Center stated that Kathy Hung Pham was not aware of how much insulin she injected in respondent Minh Duy Tran on the date of August 31, 2015, but she stated that she did not give him any food to eat after she injected insulin for him because she was hurry to leave for work all day on August 31, 2015. Upon based on information and belief, petitioner-appellant states that Kathy Hung Pham intended to harm respondent Minh Duy Tran because she waited for up 2 hours to call 911 while respondent Minh Duy Tran was remaining unresponsive and suffering the effects of severe of strokes. Addition, Kathy Hung Pham knew respondent Minh Duy Tran was very weakness and he was not able to care himself at home but she still leaves

him alone without somebody be with him and yet she did not give him food to eat after she injected insulin for him, (as she knew she should), prior or after to injecting respondent with insulin. After she injected insulin for him she did not act responsibility, and remain at home to care for him, but instead she left Minh Duy Tran to stay alone by himself at 5212 SE Flavel Dr. Portland, Oregon 97206 without anyone beside him. While no one was home to care for Minh Duy Tran, Kathy Hung Pham went to work for Thanh Long Bakery Restaurant for 9 hours on that date.

Most importantly, petitioner Linh Thi Minh Tran found sufficient evidences to determine that Kathy Hung Pham intended to end respondent Minh Duy Tran's life quickly in order to sell the property at 5212 SE Flavel Dr, Portland, Oregon 97206 and in order to receive a payment from MetLife life insurance policy valued at \$50,000.00 upon respondent Mr. Minh Duy Tran's death and the house at 5212 SE Flavel Drive, Portland, Oregon 97205's value is \$265,000.00. According to EMS ICU Summary Charge Notes on September 6, 2015, stated that respondent Mr. Minh Duy Tran's prognosis was 'very poor' which the hospital staffs were discussed with his wife Kathy Hung Pham significant other "multiple times during the hospitalization' as well as with Mr. Minh Duy Tran's primary care physician Hoang Nguyen. The Chart Summaries Note stated that Kathy Hung Pham the wife agreed respondent Minh Duy Tran was "leaning towards comfort measures."

Kathy Hung Pham never tried to save respondent Minh Duy Tran's life. Instead Kathy Hung Pham pushed and agreed quickly for doctors at ICU Adventist Portland Medical Center took off all ventilation machines from respondent Minh Duy Tran although he admitted to the ICU hospital only few days and he was still very weakness and he could not able to breath by himself without ventilation machine at that time and the doctors might be injected drugs towards comfort measures to let him die.

The reason that respondent Minh Duy Tran is still alive at the present is because petitioner Linh Thi Minh Tran involved on September 8, 2015 and there was a dramatic change in plan because she wanted to remain full code and full treatment. A PEG tube was placed on 9/10/2015 and a tracheostomy on 9/12/2015. Mr. Minh Duy Tran is now eventually weaned off the ventilator and still was on a trach mist with trach care but his brain is death and he is still persistent vegetative state condition and he is currently living and staying in Prestige Care in Gresham, Room 311A.

According to reports of Court Visitor Reports of Dr. Angela Plowhead, Providence Portland Medical Center, Portland Adventist Hospital, and Vibra Specialty Hospital, plaintiff-appellant Linh Thi Minh Tran states that Kathy Hung Pham intend to kill and harm to Minh Duy Tran for her personal beneficial purposes sold the house at 5212 SE Flavel Drive, Portland, Oregon 97206 on Linh Thi Minh Tran vs. Kathy Hung Pham. Petition For A Writ of Certiorari. Petitioner Linh Thi Minh Tran, 12542 SE Capella Court, Happy Valley, Oregon 97086 | Tel: 503-558-0886 | Email: minhlinhtrn@gmail.com | Page 42 of 52

November 15, 2016 with the price \$265,000.00, Multnomah County Official Records document number: 2016-142785 this house Kathy Hung Pham and Minh Duy Tran purchased together on May 17, 2011, Multnomah County Official Records document number: 2011-058047 and Minh Duy Tran's life insurance Medlife value of \$50,000.00 upon the death of Minh Duy Tran and his car Toyota Four Runner \$36,000.00 and Toyota Camry \$22,000.00 and his bank checking and saving account and social security benefit. Kathy Hung Pham's wrongful act, harm, dangerous, abuse, or omission caused the death of brain total brain damages 90 percent and persistent vegetative state of Minh Duy Tran and the both of his eyes blind without opportunity correct.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

For the foregoing arguments in the above and based on Appendices evidence from Case related to this case have already filed petition for a writ of certiorari to U.S Supreme Court on September 04, 2018, Case Name: In The Matter of Guardianship of Minh Duy Tran, Linh Thi Minh Tran vs. Kathy Hung Pham. U.S Supreme Court Case Number: 18-5943 , petitioner Linh Thi Minh Tran is able to determine that the Multnomah County Circuit Court State of Oregon erred that as matter of law when it issued A General Judgment of Dismissal Plaintiff-Petitioner Linh Thi Minh Tran's Complaint because based on the sufficient evidences from appendices to determine that **The total dead brain and 90 percent total brain damages of Minh Duy Tran and persistent vegetative state condition of Minh Duy Tran and his two eyes blind without opportunity to correct were caused by the wrongful act, negligence, risks, dangerous, mental illness, abuse, and omission of defendant-respondent Kathy Hung Pham.** Petitioner Linh Thi Minh Tran is legal daughter of Minh Duy Tran therefore, she has interest to maintain legal action at State Court or U.S Court to against Kathy Hung Pham. Thus, the general judgment of dismissal of trial court Multnomah County State of Oregon should be reversed and plaintiff- petitioner Linh Thi Minh Tran is entitled to

recover compensation damages in the amount of monies \$1,000,000.00 (one million dollars) from defendant-respondent Kathy Hung Pham.

Dated: 09/18/2018



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CONCLUSION

For the foregoing arguments in the above, the petition for a writ of certiorari in this case should be grant.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

Dated: 09/18/2018



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