No. _____

In The Supreme Court of the United States

IN RE: ESTATE OF MIRIAM MAE PHARRIS, DECEASED

On Petition for Writ of Certiorari
to the Supreme Court of the State of Texas

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Tenth Court of Appeals for the State of Texas failed to apply (1) the proper standard of review and (2) perform the correct factual and legal analysis in reviewing the sanctions awarded by the trial court against petitioner in the form of attorney's fees?

PARTIES TO THE PROCEEDINGS

Petitioner is Kathy Roux.

Respondent is Dennis Pharris and Don D. Ford, III, Administrator of the Estate of Miriam Mae Pharris, Deceased.

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On May 4, 2017, Judge Justin W. Lewis presiding over Hill County Probate Court in Hillsboro, Texas rendered judgment in the proceeding styled, numbered and titled as *In the Estate of Miriam Mae Pharris, Deceased*, Cause No. 14,170, County Court of Hill County, Texas, as follows: (1) awarding sanctions against petitioner in the amount of $6,800.00 in the form of attorney's fees to respondents for responding to petitioner's filing and bringing the sanctions motion (1 C.R. 176-177), and (2) awarding sanctions against petitioner in the amount of $2,500.00 in the form of attorney's fees to respondents to deter future conduct. (1 R.R. 62; 1 C.R. 176-177). *See* Appendix A.

Petitioner appealed the trial court's decision. The case was submitted to a panel consisting of Chief Justice Thomas W. Gray, Justice Rex D. Davis and Justice John Edward Neill. On July 3, 2019, the Court of Appeals rendered its Final Judgment and Memorandum Opinion, authored by Justice John Edward Neill, overruling all of petitioner's issues on appeal, and affirming the trial court's judgment. *Estate of Miriam Mae Pharris, Deceased*, No. 10-17-00260-CV, 2019 WL 3047118, (Tex.App.-Waco July 3, 2019), Unreported. *See* Appendix B. On November 20, 2019, the Tenth Court of Appeals denied petitioner's original motion for rehearing and for *en banc* reconsideration. *See* Appendix C.

On April 17, 2020, the Texas Supreme Court issued its order denying petitioner's petition for review. *In Re: Estate of Miriam Mae Pharris, Deceased*, 2020 WL 719562 (Tex. April 17, 2020). *See* Appendix D. On June 26, 2020, the Texas Supreme Court issued its order denying petitioner's motion for rehearing. *See*

Appendix E. On July 17, 2020, the Texas Supreme Court issued its order denying petitioner's stay of the mandate. *See* Appendix F.

JURISDICTION

The jurisdiction of the United States Supreme Court is invoked under Article III, Section 2 of the U.S. Constitution; and under 28 U.S.C. §§ 1257 and 2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 2, Clause 1 of the U.S. Constitution provides that "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States . . . [and] to controversies . . . between a state, or the citizens thereof . . ."

Article III, Section 2, Clause 2 of the U.S. Constitution further provides that "In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

Fifth Amendment of the U.S. Constitution states that "No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . ."

Fourteenth Amendment of the U.S. Constitution states that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law . . ."

STATEMENT OF THE CASE

Trial Court Proceedings

On or about August 8, 2016, Petitioner KATHY ROUX (hereinafter "ROUX") was hired by DENNIS PHARRIS (hereinafter "respondent" or "PHARRIS"), to represent him in the case numbered and styled *In the Estate of Miriam Mae Pharris, Deceased*, No. 14,170, Hill County Probate Court, Texas, to remove the administrator. (1 C.R. 5, 16).

Petitioner filed motions for withdrawal and substitution of counsel to substitute herself as attorney of record for Respondent Pharris' counsel Gershon Cohen. (1 C.R. 5, 6, 8, 9, 13, 14). On September 2, 2016, the trial court signed an order granting the withdrawal and substitution of counsel. (1 C.R. 16).

Petitioner filed a motion to withdraw as counsel for PHARRIS. (1 C.R. 17-20). On September 13, 2016, the court signed an order granting petitioner's motion to withdraw. (1 C.R. 21).

On December 5, 2016, petitioner filed an Application for Payment of Attorney's Fees for legal services that she rendered to Dennis Pharris on behalf of the decedent's estate in the amount of $5,063.47, and an affidavit as to legal services and fees. (1 C.R. 61, 69-70). On December 6, 2016, Appellee DON D. FORD, III, administrator for the Estate of MIRIAM MAE PHARRIS, Deceased, (hereinafter "Respondent" or "Ford") filed an objection to petitioner's application for payment of attorney's fees. (1 C.R. 71-75). On December 16, 2016, petitioner filed a response to appellee FORD's objection. (1 C.R. 90-92).

On December 16, 2016, petitioner filed an Authenticated Unsecured Claim for Money with the court clerk in the amount of her request for attorney's fees. (1 C.R. 95). On December 16, 2016, petitioner also filed two separate supporting affidavits at to her legal services and fees. (1 C.R. 102, 103).

On December 16, 2016, petitioner filed an application for emergency intervention regarding funeral and burial expenses on behalf of WAYNE KNORR in the amount of $15,026.00. (1 C.R. 104, 105).

On February 22, 2017, WAYNE KNORR filed an authenticated unsecured claim in the amount of $11,215.04. (1 C.R. 139-144). On February 27, 2017, respondent FORD filed a memorandum of allowance of Mr. Knorr's claim. (1 C.R. 145-152). On February 28, 2017, the trial court signed an order approving Mr. Knorr's claim against the estate. (1 C.R. 153).

On March 24, 2017, appellee FORD filed a Motion for Sanctions against petitioner on the grounds that her pleadings are factually groundless, legally groundless, in bad faith, caused damage to the estate, and requested an order for sanctions against petitioner in the amount of $7,500.00 in attorney's fees and sanctions in the amount of $2,500.00 to deter further sanctionable conduct. (1 C.R. 155-166). Petitioner's Application for Payment of Attorney's Fees (1 R.R. 1-13) and appellee FORD's Motion for Sanctions was heard on May 2, 2017, and conflicting evidence was submitted. (1 R.R. 13-64).

On May 4, 2017, the trial judge for Hill County Probate Court signed a judgment in favor of appellee FORD awarding sanctions against petitioner in the amount of $6,800.00 in attorney fees, and additional sanctions against in the amount

of $2,500.00 to deter future conduct. (1 C.R. 176-177). Said judgment orders that pay these amounts within 30 days of the judgment. (1 C.R. 177).

In its order, the trial court stated findings that petitioner's pleadings and motions were without factual basis, that petitioner filed pleadings and motions were without legal basis, that petitioner filed pleadings and motions in bad faith, and that the sanctions amounts were just and not excessive (1 C.R. 177).

On May 11, 2017, petitioner filed a request for findings of fact which was rejected by the Court. (1 C.R. 178, 179). On May 23, 2017, the Court, by written letter to appellee FORD instructed appellee FORD to prepare proposed Findings of Fact and Conclusions of Law ". . . so that the Court may review, possibly adopt or add to the same." (1 C.R. 185). On May 24, 2017, petitioner filed her Amended Request for Findings of Fact and Conclusions of Law. (1 C.R. 180-184). On or about May 24, 2017, petitioner received a mailed copy of her May 11, 2017 Request for Findings of Fact and Conclusions of Law, file-stamped May 24, 2017, and with the Court's Annotation of "rejected." (1 C.R. 186). The Court's Findings of Fact and Conclusions of Law were due "within 20 days of the date the Court signed the judgment," that is, on May 31, 2017. (1 C.R. 178, 186).

On May 30, 2017, petitioner filed a motion to set amount required to supersede judgment. (1 C.R. 188-190). On May 31, 2017, Ford filed his objection to motion to set amount required to supersede judgment. (1 C.R. 191-195). On June 5, 2017, petitioner filed a response to Ford's objection and an affidavit of net worth. (1 C.R. 205-214). On June 5, 2017, the trial judge signed an order fixing the amount required to supersede the judgment at $2,500.00. (1 C.R. 215).

On June 7, 2017, Appellee FORD filed his proposed Findings of Fact and Conclusions of Law. (1 C.R. 216-226). On June 12, 2017, petitioner filed her Notice of Past Due Findings of Fact and Conclusions of Law. (1 C.R. 227). On August 2, 2017, petitioner filed her Notice of Appeal. (1 C.R. 252).

On October 23, 2017, the trial court signed appellee FORD's Findings of Fact and Conclusions of Law (1 C.R. 271-281). Petitioner never received a copy or notification of the trial court's signed findings of fact and conclusions of law as required by Texas Rules of Civil Procedure 297.

The Texas Tenth Court of Appeals' Panel Decision

On July 3, 2019, the Tenth Court of Appeals rendered its Final Judgment and Memorandum Opinion overruling all of petitioner's issues on appeal, and affirming the trial court's judgment. *See* Appendix B.

On November 20, 2019, the Tenth Court of Appeals denied petitioner's original motion for rehearing and for *en banc* reconsideration. *See* Appendix C.

The Texas Supreme Court Decision

On February 5, 20202, petitioner filed a petition for review with the Texas Supreme Court. On April 17, 2020, the Texas Supreme Court issued its order denying petitioner's petition for review. *See* Appendix D.

On May 20, 2020, petitioner filed a motion for rehearing with the Texas Supreme Court on the denial of her petition for review. On June 26, 2020, the Texas Supreme Court issued its order denying petitioner's motion for rehearing n the Texas Supreme Court (June 26, 2020). *See* Appendix E.

On July 6, 20202, petitioner filed a motion to stay the mandate with the Texas Supreme Court. On July 17, 2020, the Texas Supreme Court issued its order denying petitioner's stay of the mandate. *See* Appendix F.

REASONS FOR GRANTING THE PETITION

I. The Texas Tenth Court of Appeal's decision has so grossly departed from accepted and usual course of state law, or sanctioned such a departure by a lower court, that it requires the U.S. Supreme Court to exercise its supervisory power

A *Pool* determination is required in cases involving a factual sufficiency review of a punitive damage award. *Ellis County State Bank v. Keever*, 915 SW2d 478, 479 (Tex.1995). *Pool v. Ford Motor Co.*, 715 S.W.2d 629 (Tex. 1986).

The court of appeals must always detail the relevant evidence in its opinion --- explaining why the evidence either supports or does not support the punitive damage award --- regardless of whether the court of appeals upholds or reverses the trial court. *Transportation Insurance Company v. Moriel*, 879 SW2d 10, 30-31 (Tex.1994) (citing *Pool*, 715 S.W.2d at 635); *Jaffe Aircraft Corp. v. Carr*, 867 S.W.2d 27, 28 (Tex.1993).

By requiring the evidence to be detailed in this way, the reviewing court may determine if the court below used the correct standard of review without engaging in an impermissible review of the facts. *Alamo v. Kraus*, 616 SW2d 908, 910 (Tex.1981) (factors for evaluating punitive damage awards explained).

In its opinion, the court of appeals set forth the standard of review for an award of attorney's fees. *Estate of Pharris*, No. 10-17-002600-CV, 2019 WL 3047118, at 7 (Tex.App.-Waco, Texas July 3, 2019). Yet, the court of appeals failed to recognize that

the trial court's order awarded "sanction of $6,800 in attorney fees" and "sanction of $2,500 in attorney fees." Thus, both awards of attorney fees by the trial court were in the form of sanctions against petitioner.

The court of appeals' analysis applied in the case at bar is the "sufficiency of the evidence" standard as shown in its opinion, "we conclude that there is ample evidence to support a sanction against Roux." *Estate of Pharris*, No. 10-17-002600-CV, 2019 WL 3047118, at 7 (Tex.App.-Waco, Texas July 3, 2019). It appears from the opinion that the court of appeals based its judgment upon the legal proposition: 'If there is any evidence of probative force to support this finding of the jury, such finding is conclusive and binding on both the trial court and this court.' That rule, like the rule whereby the reviewing court looks only to the evidence favorable to the verdict, and the rule of whether reasonable minds could differ, applies, and applies only, to the question of whether the evidence as a matter of law requires a conclusion contrary to the verdict. *In re King's Estate*, 244 S.W.2d 660 (Tex.1951) citing *Choate v. San Antonio & A.P. Ry. Co.*, 37 S.W. 319 (Tex.1896). This rule does not apply when contention is that verdict was so contrary to overwhelming weight of all evidence as to be clearly wrong and unjust. *Id.*, Tex. Civil Rules 451, 453, 455, 483.

Petitioner argued in her appellate brief, and argues again in this petition for review, that the trial court's decision was 'so contrary to the overwhelming weight of all the evidence as to be clearly wrong and unjust.' *In re King's Estate*, 244 S.W. 2d 660 (Tex. 1951). This issue requires the Tenth Court of Appeals, in exercise of its peculiar powers under the [Texas] constitution and Texas rules of procedure 451, 453, and 455, Tex. Const. art 5, sec. 6., to consider and weigh all evidence in a case and to

set aside verdict and remand the cause for new trial, if it concludes that the verdict is so against the great weight and preponderance of evidence as to be manifestly unjust, and such action is to be taken regardless of whether the record contains some "evidence of probative force" in support of the verdict. The evidence supporting the verdict is to be weighed along with the other evidence in the case, including that which is contrary to the verdict. *Id.*

Petitioner provided controverting testimony that she had no bad faith in filing her pleadings. (1 R.R. 45-47). Yet, this does not appear in the court of appeals' analysis as part of the weighing of the all the evidence. The court of appeals failed to demonstrate in its opinion that it considered the entire record. Its analysis shows that it only considered respondent's arguments that petitioner's pleadings were groundless, brought in bad faith or with intent to harass, improper conduct, and not petitioner's testimony. *Estate of Pharris*, No. 10-17-002600-CV, 2019 WL 3047118 (Tex.App.-Waco July 3, 2019), Unreported, at 8.

Sanctions orders are reviewed on an abuse of discretion standard of review. *Bennett v. Grant*, 525 S.W.3d 642 (Tex.2017). Under the abuse of discretion standard, the reviewing court must examine the entire record to determine whether the trial court acted in an unreasonable or arbitrary manner. *Daniels v. Indem. Ins. Co. of N. Am.*, 345 S.W.3d 736, 741 (Tex.App.-Dallas 2011, no pet.).

First, a direct relationship must exist between the offensive conduct, the offender, and the sanction imposed. The court of appeals incorrectly stated the test by omitting the offender as an element of the test. *Estate of Pharris*, No. 10-17-002600-CV, 2019 WL 3047118 (Tex.App.-Waco July 3, 2019), Unreported, at 6.

Second a sanction must not be excessive, which means it should be no more severe than necessary to satisfy its legitimate purpose. *Petroleum Solutions, Inc. v. Head*, 454 S.W.3d 482, 489 (Tex.2014).

The burden of proof for imposing sanctions under Rule 13 requires a showing that an instrument was not only groundless, but that it was signed with an improper purpose. Tex.R.Civ.P. 13; *see Nath v. Tex. Children's Hosp.*, 446 S.W.3d 355, 362-363 (Tex.2014) (Rule 13 does not permit sanctions based on groundlessness alone.).

In contrast, sanctions may be imposed under Chapter 10 when a suit is filed for an improper purpose, even though it is not groundless. *Nath v. Tex. Children's Hosp.*, 446 S.W.3d 335, 369 (Tex.2014).

Sanctions awarded under Tex. Civ. Prac. & Rem. Code §9.001 et seq. also deal with frivolous pleadings in cases involving damages. Sanctions under Tex. Civ. Proc. Rule 91a provides for the dismissal of causes of action of action that have no basis in law or fact on motion and without evidence. Furthermore, Texas courts have inherent power to sanction litigants or attorneys whose abusive conduct affects the core functions of the judiciary, which are: hearing evidence, deciding issues of fact and law, and entering and enforcing judgments.

None of these standards of practice were violated by petitioner, nor do these sanctions apply to petitioner's filings in the case at bar. None of the pleadings that petitioner filed were groundless, frivolous or in bad faith. Petitioner provided controverting testimony that she had no bad faith in filing her pleadings. (1 R.R. 45-47). None of the pleadings filed by petitioner damaged the estate, and respondent failed to prove that the estate was damaged.

The motions to substitute and withdraw are statutorily permitted pursuant to Tex. Civ. Proc. Rule 10, if there are professional considerations that require termination of representation. If this were not the case, then the motions to withdraw filed by attorneys David Munson and Jeff Davis are also sanctionable and arguably, damage the estate. (1 C.R. 35, 36-39, 40-41, 49-52, 76-77). Yet, the court of appeals concluded that "Roux filed multiple groundless pleadings in bad faith," without identifying which pleadings it was referring to, and proceeded to conclude that there is a direct relationship between the improper conduct and the sanctions imposed." *Estate of Pharris*, No. 10-17-002600-CV, 2019 WL 3047118 (Tex.App.-Waco July 3, 2019), Unreported, at 8.

The application for payment of burial expenses is not a groundless, frivolous or bad faith pleading. It is authorized by Texas Estates Code § 355.102, and the same application was filed by respondent Pharris on October 27, 2016 (1 C.R. 56-57), prior to petitioner's application, and by creditor Wayne Knorr, on February 22, 2017, after petitioner's application (1 C.R. 139).

Although respondent testified that he is board certified in estate planning and probate and litigates estate and trust cases exclusively since 1997 (1 C.R. 16), he also testified that he had to figure out what an application for burial means, a pleading that is provided by Texas Estates Code §152.001. (1 R.R.28, 31).

The remaining pleadings that petitioner filed was her application for payment of attorney's fees and an authenticated unsecured claim for money. (1 C.R. 71-75). Although respondent claims that petitioner's application and claim are groundless, frivolous and in bad faith, the evidence in the record indicates that:

(1) Jennifer Pharris filed a pleading objecting to payment of respondent's attorney's fees, raising the issue of forfeiture of respondent's attorney's fees, and requested the removal of respondent as administrator (1 C.R. 81, 83). Clearly, there were allegations by other parties involved in this estate concerning respondent's performance as administrator.

(2) the claim for burial expenses is a priority claim and should be paid first pursuant to TEC 355.102. However, respondent rejected this claim (1. C.R. 53, 54) yet paid other lower ranking claims prior to Knorr's claim, including claims for attorney's fees. (1 C.R. 11, 23, 24, 25, 28, 44).

Part of respondent's job as administrator of the estate is to consider claims presented and/or filed to determine whether they have merit and should be paid, or whether they should be rejected. However, Texas Estates Code § 355.052 provides that the failure of a personal representative to timely allow or reject a claim under Section 355.051 constitutes a rejection of the claim. Therefore, respondent Ford was not required to take any action whatsoever regarding my application and claim for attorney's fees.

Attorney fees are recoverable when the court finds that the personal representative has failed to comply with some statutory duty. Tex. Estates Code § 351.003. *In re Estate of Hawkins*, 187 S.W.3d 182, 185 (Tex. App.-Fort Worth 2006, no pet.) (Costs and attorney's fees can be awarded for the neglect of any duty imposed upon the representative of an estate at any time.).

A review of the entire record indicates that it is apparent from the face of the record that respondent Ford failed to comply with the statutory duty of paying the

Class 1 priority claim of funeral expenses and expenses of decedent's last illness. (1 C.R. 56-57, 139). Mr. Knorr's claim had to be paid prior to the payment of any other claims, including petitioner's claim for attorney's fees.

A review of the entire record indicates that it is apparent from the face of the record that respondent Ford should not have been awarded sanctions for attorney's fees for doing research on my background as an attorney is not, and should not be a basis for compensating him for time for his attorney's fees. (1 R.R. 21, 22). It is manifestly unjust for the trial court to do so. *Pope v. Moore*, 711 S.W.2d 622, 624 (Tex.1986); *Pool*, 715 S.W.2d at 635; *In Re King's Estate*, 244 S.W.2d 660, 661 (1951).

Admittedly, petitioner asserted her claim against the estate, and it should have been asserted against the respondents Ford and Pharris, pursuant to Texas Estates Code § 351.003 and breach of contract theory.

However, Tex. Civ. Rule 39(a) requires that if an necessary or indispensable party has not been so joined, the court shall order that he be made a party." *See Longoria v. Exxon Mobil Corp.*, 255 S.W.3d 174, 180 (Tex.App.-San Antonio 2008, pet. denied); *Pierce v. Blalack*, 535 S.W.3d 35 (Tex.App.-Texarkana 2017). A review of the entire trial court record shows that there is no such order by the trial court in the record.

Based upon the foregoing argument, the court of appeals failed to analyze this case's entire record, including the law, arguments, facts and evidence, and therefore, arbitrarily refused to exercise its fact-finding jurisdiction, as it is required to do. *Daniels*, 345 S.W.3d at 741. The court of appeals should have remanded this case back to the trial court for a new trial.

In further support of this argument, petitioner shows that the court of appeals concluded that the record evidence does not demonstrate that she complied with section 351.003 of the Texas Estates Code. *Estate of Pharris*, No. 10-17-002600-CV, 2019 WL 3047118 (Tex.App.-Waco July 3, 2019), Unreported, at 7. Texas Estates Code § 351.003 makes the personal representative liable for reasonable attorney's fees in (1) removing a personal representative or (2) obtaining compliance with a statutory duty that the personal representative has neglected. Petitioner filed the application for burial expenses in an attempting to get respondent Ford to do what he had neglected to do, an action that is based in law pursuant to Texas Estate Code § 355.102.

In reaching its conclusion, the court of appeals erroneously focused on whether petitioner acted in an unreasonable or arbitrary manner and then concluded that the trial court acted reasonably by only considering respondent's arguments. *Estate of Pharris*, No. 10-17-002600-CV, 2019 WL 3047118 (Tex.App.-Waco July 3, 2019), Unreported, at 8. However, the record and evidence are contrary to the trial court's findings that there was no legal or factual basis for the pleadings that petitioner filed, or that they were filed in bad faith. (1 C.R. 176).

The court of appeals concluded that "Roux did not have authority to file [the application for burial expenses] on behalf of Knorr." *Estate of Pharris*, No. 10-17-002600-CV, 2019 WL 3047118 (Tex.App.-Waco July 3, 2019), Unreported, at 8. Such a conclusion is directly contrary to the law and facts of this case. Petitioner filed her claim for attorney's fees first, and then filed the application for burial expenses. (1 C.R.61, 104). By filing her claim for attorney's fees, petitioner was a person interested

in decedent's estate because she had a claim against decedent's estate at when she filed the application for burial expenses. See Texas Estates Code § 22.018.

Although the court of appeals stated that it considered the entire record, it concluded that the award of attorney's fees, not sanctions, was not excessive, and therefore, not an abuse of discretion by the trial court. *Estate of Pharris*, No. 10-17-002600-CV, 2019 WL 3047118 (Tex.App.-Waco July 3, 2019), Unreported, at 8. However, the trial court judgment indicates that at least part of the awarded attorney's fees are really sanctions.

Yet there is no analysis or discussion of petitioner's testimony by the court o appeals that every pleading that she filed with this case and before this Court was made in good faith, grounded in statute -- statutory authority and jurisprudential authority to the best of my knowledge, and researched to the best of her ability, and that the motion for sanctions is without merit (1 R.R. 46, 47). This indicates that the court of appeals did not consider this evidence, as there is nothing in the court of appeals opinion that indicates it did.

The second prong of the test in reviewing sanctions order is that a sanction must not be excessive. This means the sanction should be no more severe than necessary to satisfy its legitimate purpose. *Petroleum Solutions, Inc. v. Head*, 454 S.W.3d 482, 489 (Tex.2014). Thus, the sanction should be visited on the correct person, and be no more severe than necessary to achieve the purpose of the governing statute or rule.

A trial court is ordinarily required to explain that it considered lesser sanctions before imposing "death penalty" sanctions by dismissing a case. *Gilbert v. Moseley*,

453 S.W.3d 480, 486-488 (Tex.App.-Texarkana 2014, no pet.). Yet there is no such explanation in the reporter's record, nor the clerk's record. In fact, the trial judge expressly stated that his imposition of sanctions was just a slap on the wrist, and that he intends to report petitioner to the State Bar (1 R.R. 62, 63). Such language indicates that the trial judge considered greater sanctions, not lesser sanctions, and that he was more severe than necessary to satisfy the legitimate purpose of deterring conduct. A simple dismissal of my application would have been the appropriate sanction, in light of the legal theory that dismissal is the "death penalty." *Gilbert*, 453 S.W.3d 486-488. In fact, there is no order by the trial court dismissing petitioner's fee application, nor any of the pleadings that petitioner filed in the trial court. In fact, petitioner's fee application is still pending in the trial court.

The majority of appellate courts held that sanction orders must be reversed when the order lacks specificity. *Guerra v. L&F Distribs.*, LLC, 521 S.W.3d 878, 889 (Tex.App.-San Antonio 2017, no pet. h.); *Sell v. Peters Fine Art, Ltd.*, 390 S.W.3d 622, 624-625 (Tex.App.-Dallas 2012, no pet.); *Barkhausen v. Craycom, Inc.*, 178 S.W.3d 413, 419 (Tex.App.-Houston [1st Dist.] 2005, pet. denied); *Thomas v. Thomas*, 917 S.W.2d 425, 432 (Tex.App.-Waco 1996, no writ); *Gorman v. Gorman*, 966 S.W.2d 858, 867-868 (Tex.App.-Houston [1st Dist.] 1998, pet. denied); *Friedman and Assocs., P.C. v. Beltline Rd.*, 861 S.W.2d 1, 3 (Tex.App.-Dallas 1993, writ dism'd by agr.) (court cannot avoid the clear directive of the rule by gratuitously making findings in separately filed findings of fact after a sanction order is entered and in effect).

To preserve a complaint for appeal based on the trial court's failure to specify the particulars constituting good cause for sanctions, a party must file an appropriate

motion or objection in the trial court. *Mobley v. Mobley*, 506 S.W.3d 87, 94-95 (Tex.Ap.-Texarkana 2016, no pet. h.). Although petitioner attempted to file her motion prior to hearing, and at the court hearing at the bench, with no objection from respondent, the court refused such filing, thereby preventing. (1 R.R. 14). However, petitioner did object to the sanctions amount (1 R.R. 44, 46, 53).

In conclusion, based upon the foregoing arguments, the Texas Tenth Court of Appeals failed to (1) properly make a *Pool* determination involving a factual sufficiency review; and (2) failed to properly review the trial court proceedings under an abuse of discretion standard of review.

II. There Exists An Intervening Change In Controlling Law That Warrants Reconsideration By The Court Of Appeals

In Texas, as in the federal courts, each party generally must pay its own way in attorney's fees. *See Perdue v. Kenney A. ex rel. Winn*, 559 U.S. 542, 550 (2010); *Ashford Partners, Ltd. v. ECO Res., Inc.*, 401 S.W.3d 35, 41 (Tex.2012) This is known as the *American Rule. Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 252-53 (2010); *In re Nat'l Lloyds Ins. Co.*, 532 S.W.3d 794, 809 (Tex.2017) (orig. proceeding).

When fee-shifting is authorized, whether by statute or contract, the party seeking a fee award must prove the reasonableness and necessity of the requested attorney's fees. *Kinsel v. Lindsey*, 526 S.W.3d 411, 427 (Tex.2017).

On June 21, 2019, the Texas Supreme Court decided the case of *Nath v. Texas Children's Hospital and Baylor College of Medicine*, 576 S.W.3d 707 (Tex.2019) (hereinafter "Nath II") held that "in order to shift attorney's fees to Nath as sanction for frivolous claims, the hospital and college has to show that fees incurred in

defending claims were reasonable. The Texas Supreme Court further reasoned that "[b]efore a court may exercise its discretion to shift attorney's fees as a sanction, there must be some evidence of reasonableness because without such proof a trial court cannot determine that the sanction is 'no more severe than necessary' to fairly compensate the prevailing party." *PR Invs. & Specialty Retailers, Inc. v. State*, 251 S.W.3d 472, 480 (Tex.2008).

The Nath II court reversed the court of appeals' judgment affirming the sanctions award and, without hearing oral argument, remanded the case to the trial court for further proceedings in light of *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469 (Tex.2019); *Nath*, 576 S.W.3d at 710. *See also* Tex. R. App. P. 59.1.

In *Rohrmoos*, the court explained that the lodestar method created in *El Apple, I, Ltd. v. Olivas, 370 S.W.3d 757 (Tex.2012)* applies for determining the reasonableness and necessity of attorney's fees in a fee-shifting situation, and requires a two-step process. The first step is that the fact finder must determine the reasonable hours spent by counsel in the case and a reasonable hourly rate for such work. Then the fact finder must multiply the number of such hours by the applicable rate, the product of which is the base fee or lodestar. The second step is that the fact finder may adjust the base lodestar up or down, if relevant factors indicate an adjustment is necessary to reach a reasonable fee in the case. *Rohrmoos*, 578 S.W.3d at 497-498.

The Texas Supreme Court delivered its opinion in *Rohrmoos* on April 26, 2019. The Texas Tenth Court of Appeals delivered its opinion in *Estate of Pharris, Deceased*

on July 3, 2019. Yet, the court of appeals failed to analyze the trial court's judgment according to the rules of law and standards required by *Rohrmoos* in determining the reasonableness and necessity of the sanction in the form of attorney's fees that it assessed against petitioner. The decision in *Rohrmoos* is an intervening change in controlling law that warrants reconsideration by the court of appeals.

III. The Texas Tenth Court of Appeal's decision affects an important federal question and creates a substantial conflict with relevant decisions of the U.S. Supreme Court and Circuit courts such that certiorari is necessary to correct this error

In *Goodyear Tire & Rubber Co. V. Haeger*, 137 S. Ct. 1178 (2017), this Court determined that federal courts possess the authority, not conferred by rule or statute, to fashion an appropriate sanction for conduct which abuses the judicial process, e.g., assessment of attorney's fees that requires a party that has acted in bad faith to reimburse legal fees and costs incurred by the other side. *Mine Workers v. Bagwell*, 512 U.S. 821, 826–830 (1994).

> This Court has made clear that such a sanction, when imposed pursuant to civil procedures, must be compensatory rather than punitive in nature. *See Mine Workers v. Bagwell*, 512 U.S. 821, 826–830, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994) (distinguishing compensatory from punitive sanctions and specifying the procedures needed to impose each kind).4 In other words, the fee award may go no further than to redress the wronged party "for losses sustained"; it may not impose an additional amount as punishment for the sanctioned party's misbehavior. *Id.*, at 829, 114 S.Ct. 2552 (quoting *United States v. Mine Workers*, 330 U.S. 258, 304, 67 S.Ct. 677, 91 L.Ed. 884 (1947)). To level that kind of separate penalty, a court would need to provide procedural guarantees applicable in criminal cases, such as a "beyond a reasonable doubt" standard of proof. See id., at 826, 832–834, 838–839, 114 S.Ct. 2552. When (as in this case) those criminal-type protections are missing, a court's shifting of fees is limited to reimbursing the victim.

The record indicates that the trial court imposed an additional sanction of $2,500.00 upon petitioner "to deter such conduct in the future." Because this sanction is imposed against petitioner for punitive purposes, and are therefore, of a criminal-type nature, petitioner should have been afforded criminal-type protections, such as "beyond a reasonable doubt" standard of proof" as it relates to this sanction. *Mine Workers v. Bagwell*, 512 U.S. 826, 832-834, 838-839 (1994). However, such due process protection was missing in petitioner's case. Furthermore, no such due process analysis was performed by the Tenth Court of Appeals in its review of the trial court's judgment.

This causal connection is appropriately framed as a but-for test: The complaining party may recover "only the portion of his fees that he would not have paid but for" the misconduct. *Fox v. Vice*, 563 U.S. 826, 836, (2011); *see Paroline v. United States*, 134 S.Ct. 1710, 1722 (2014) ("The traditional way to prove that one event was a factual cause of another is to show that the latter would not have occurred 'but for' the former").

Pursuant to the Fifth Amendment and the Fourteenth Amendment of the U.S. Constitution, the State of Texas has a legal obligation to provide due process protections to all of its citizens. Arguing further, the due process clauses of these amendments have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures.

Since the Texas Supreme Court has denied petitioner's petition for review, petitioner has no further recourse for review of the trial court's decision nor the Texas Tenth Court of Appeals, other than this petition for writ of certiorari.

The Texas Tenth Court of Appeals' decision and the trial court's decision in the case at bar has created uncertainty and procedural incongruity. Both the Texas Supreme Court and its lower courts have fundamentally rejected its own precedence and the precedence of the United States Supreme Court. In *Kimble v. Marvel Enterprises*, 135 S.Ct. 2401, 2408 (2015) the United States Supreme Court confirmed and reiterated its position on stare decisis by stating,

> Overruling precedent is never a small matter. Stare decisis--- in English, the idea that today's Court should stand by yesterday's decisions--- is "a foundation stone of the rule of law." *Michigan v. Bay Mills Indian Community*, 572 U.S. ——, ——, 134 S.Ct. 2024, 2036, 188 L.Ed.2d 1071 (2014). Application of that doctrine, although "not an inexorable command," is the "preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827–828, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991). It also reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation.

"The existence of a square conflict is the surest ground for the writ; whatever other reason may be influential this one will be decisive." Frankfurter and Hart, *The Business of the Supreme Court at October Term*, 1933, 48 Harvard L. Rev. 238, 268 (1934). *Chemical Waste Management Inc. v. Hunt*, 504 U.S. 334, 339 (1992) (because of the important of the federal question and the likelihood that it had been decided in a way conflicting with applicable decisions

of this Court, the Supreme Court granted certiorari); *Ward v. Illinois*, 431 U.S. 767, 770-771 (1977) (certiorari granted to resolve a conflict with a decision of a three-judge District Court for the Northern District of Illinois and the Supreme Court decision in *Miller v. California*, 413 U.S. 15 (1973).

Absent review by the U.S. Supreme Court, the trial court's decision and the Texas' Tenth Court of Appeals' decision will create deleterious precedent that flouts the rules of law created by Texas state statutes and by both state and federal jurisprudence, and will lead to further division in both state and federal law, and unjust results.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Date: November 23, 2020

Respectfully submitted,

/s/ Kathy E. Roux

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APPENDIX

TABLE OF CONTENTS

APPENDIX A

No. 14,170

IN THE ESTATE OF	§	IN THE COUNTY COURT
	§	
MIRIAM MAE PHARRIS,	§	OF
	§	
DECEASED	§	HILL COUNTY, TEXAS

ORDER FOR SANCTIONS

The Court, having heard and considered the Motion for Sanctions filed herein by Don D. Ford III ("Administrator"), Dependent Administrator of the Estate of Miriam Mae Pharris, Deceased, requesting that the Court sanction Kathy Roux ("Roux"), and after consideration of the pleadings, the evidence, and the arguments of counsel, is of the opinion that the Motion should be GRANTED.

The Court therefore FINDS that Roux filed pleadings and motions without factual basis. The Court further FINDS that Roux filed pleadings and motions without legal basis. The Court further FINDS that Roux filed pleadings and motions in bad faith.

The Court further FINDS that a sanction of $6,800.00 in attorney's fees the Administrator incurred in responding to Roux's filings and in bringing this Motion, and that such amount is just and not excessive.

The Court further FINDS that an additional sanction of $2,500.00 is proper and necessary to deter such conduct in the future, and that such amount is just and not excessive.

It is therefore ORDERED that the Motion for Sanctions is hereby GRANTED.

It is further ORDERED that Administrator is hereby awarded reasonable and necessary attorney's fees, assessed against Roux, in the amount of $6,800.00 incurred in responding to Roux's filings and in bringing this Motion, to be paid within 30 days of this Order. Chasity Perry

It is further ORDERED that Roux is hereby sanctioned in the amount of $2,500.00 to be paid to the Administrator within 30 days of this Order

SIGNED on May 4, 2017.

JUDGE PRESIDING

Respectfully submitted,

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FILED
NICOLE TANNER, COUNTY CLERK
HILL COUNTY, TEXAS
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APPENDIX B

COURT OF APPEALS
TENTH DISTRICT OF TEXAS

July 3, 2019

No. 10-17-00260-CV

ESTATE OF MIRIAM MAE PHARRIS, DECEASED

From the County Court
Hill County, Texas
Trial Court No. 14,170

JUDGMENT

This Court has reviewed the briefs of the parties and the record in this proceeding as relevant to the issues raised and finds no reversible error is presented. Accordingly, the trial court's judgment signed on May 4, 2017 is affirmed.

It is further ordered that Dennis Pharris and Don D. Ford III dependent administrator of the estate of Miriam Mae Pharris are awarded judgment against Kathy Roux for Dennis Pharris and Don D. Ford III's dependent administrator of the estate of Miriam Mae Pharris, appellate costs that were paid, if any, by Dennis Pharris and Don D. Ford III dependent administrator of the estate of Miriam Mae Pharris; and all unpaid appellate court costs, if any, are taxed against Kathy Roux.

A copy of this judgment will be certified by the Clerk of this Court and delivered to the trial court clerk for enforcement.

PER CURIAM

SHARRI ROESSLER, CLERK

By: Kim Wernet
Kim Wernet, Deputy Clerk

IN THE
TENTH COURT OF APPEALS

No. 10-17-00260-CV

ESTATE OF MIRIAM MAE PHARRIS, DECEASED

From the County Court
Hill County, Texas
Trial Court No. 14,170

MEMORANDUM OPINION

In eight issues, appellant, Kathy Roux, challenges various decisions made by the trial court in favor of appellees, Dennis Pharris and Don D. Ford III dependent administrator of the estate of Miriam Mae Pharris, pertaining to the estate of Pharris. Because we cannot conclude that the trial court abused its discretion in this matter, we affirm.

I. BACKGROUND

Roux filed several motions to substitute as counsel for Dennis Pharris, an alleged beneficiary of the Pharris estate, with the latest motion signed by all relevant parties and filed on September 1, 2016. The trial court granted Roux's motion on September 2, 2016,

thereby substituting Roux as Dennis's counsel. On September 12, 2016, Roux filed a motion to withdraw as counsel for Dennis. The trial court granted Roux's motion to withdraw on September 13, 2016.

Thereafter, on December 5, 2016, Roux filed an application for payment of attorney's fees, asserting that "she has rendered necessary and reasonable legal services on behalf of the Estate of MIRIAM MAE PHARRIS, Deceased . . . ." Accordingly, Roux requested $5,063.47 in attorney's fees from the estate.

On December 6, 2016, Ford, as dependent administrator of the estate, filed an objection to Roux's application for attorney's fees, arguing, among other things, that Roux did not provide legal services on behalf of the estate; rather, she provided legal services for Dennis, a person allegedly interested in the estate. As such, Ford contended that Roux should seek compensation from Dennis, not the estate.

Roux responded to Ford's objection, noting that she is entitled to attorney's fees from the estate under section 351.003 of the Estates Code and section 37.009 of the Civil Practice and Remedies Code because she was representing Dennis in his attempt to secure the removal of Ford as administrator of the estate. *See* TEX. ESTATES CODE ANN. § 351.003 (West 2014); *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 37.009 (West 2015). On December 16, 2016, Roux also filed an "Application for Emergency Intervention Regarding Funeral and Burial Expenses," arguing that emergency intervention of the trial court is necessary because the decedent's funeral and burial expenses were paid by

Wayne Knorr, who was not reimbursed by Ford as administrator of the estate. Roux sought $15,026 from the estate to reimburse Knorr, as well as her attorney's fees.[1]

On March 24, 2017, Ford, as dependent administrator of the estate, filed a motion for sanctions against Roux for bringing numerous frivolous pleadings in this case. Ford argued that Roux filed her application for attorney's fees on her own behalf, not on behalf of Dennis, and that she did not render necessary and reasonable legal services on behalf of the estate. Ford also argued that Roux is not entitled to any attorney's fees because she never filed any pleading seeking relief under section 351.003 of the Estates Code or a declaratory judgment under section 37.009 of the Civil Practice and Remedies Code. *See* TEX. ESTATES CODE ANN. § 351.003; *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 37.009. Finally, Ford asserted that Roux's application for emergency intervention was improper because she did not enter an appearance on behalf of Knorr or purport to represent him in this proceeding. In fact, Kara Pratt represented Knorr in presenting his claim. Given the foregoing, Ford sought $2,500 in sanctions and $7,500 in attorney's fees under Texas Rules of Civil Procedure 10 and 13, as well as sections 9.011, 10.001, and 10.002 of the Civil Practice and Remedies Code. *See* TEX. R. CIV. P. 10, 13; *see also* TEX. CIV. PRAC. & REM. CODE ANN. §§ 9.011, 10.001-.002 (West 2017).

[1] In fact, on February 22, 2017, Knorr filed an authenticated unsecured claim against the estate for $11,215.04 paid for funeral expenses for the decedent. On February 27, 2017, Ford filed a memorandum of allowance of unsecured claim, stating that Knorr's $11,215.04 claim against the estate is allowed in its entirety. The trial court approved Knorr's $11,215.04 claim against the estate as a Class 1 claim against the estate, to be paid out of the funds belonging to the estate, on February 28, 2017.

After a hearing, the trial court entered an order of sanctions against Roux on May 4, 2017. In its sanctions order, the trial court granted Ford's motion and found that "a sanction of $6,800 in attorney's fees that the Administrator incurred in responding to Roux's filings and in bringing this Motion, and that such amount is just and not excessive" and that an additional sanction of $2,500 is "proper and necessary to deter such conduct in the future, and that such amount is just and not excessive." This appeal followed.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In her seventh issue, Roux contends that the trial court's failure to give her notice of findings of fact and conclusions of law prejudiced her and caused her harm. We disagree.

On May 4, 2017, the trial court entered its sanctions order in this case. Roux filed her request for findings of fact and conclusions of law eight days later on May 11, 2017. *See* TEX. R. CIV. P. 296 (noting that a request for findings of fact and conclusions of law should be filed within twenty days after the judgment is signed). Roux's request for findings of fact and conclusions of law contains a "REJECTED" stamp where the trial court was supposed to sign.

In light of the "REJECTED" stamp, Roux filed an amended request for findings of fact and conclusions of law on May 24, 2017. On the same day, the trial court filed a letter with the District Clerk acknowledging Roux's request for findings of fact and conclusions

of law and directing Ford to draft proposed findings of fact and conclusions of law "so that the Court may review, possibly adopt[,] or add to the same." Ford filed proposed findings of fact and conclusions of law on June 7, 2017, which were not adopted or signed by the trial court.

Because the trial court had not yet entered findings of fact and conclusions of law, Roux filed a notice of past due findings of fact and conclusions of law on June 12, 2017. Thereafter, on August 2, 2017, Roux filed her notice of appeal in this case. On October 12, 2017, the trial court entered its findings of fact and conclusions of law. *See id.* at R. 297 ("The court shall file its findings of fact and conclusions of law within twenty days after a timely request is made."). Roux filed her appellant's brief on March 23, 2018, after obtaining a copy of the Clerk's Record on February 15, 2018.

The Rules of Civil Procedure do not preclude a trial court from issuing belated findings. *See Robles v. Robles*, 965 S.W.2d 605, 610 (Tex. App.—Houston [1st Dist.] 1998, pet. denied); *see also United Heritage Corp. v. Black Sea Invs., Ltd.*, No. 10-03-00139-CV, 2005 Tex. App. LEXIS 1280, at *13 (Tex. App.—Waco Feb. 16, 2005, no pet.) (mem. op.).

> Unless they can show injury, litigants have no remedy if a trial court files untimely findings. . . . Injury may be in one of two forms: (1) the litigant was unable to request additional findings, or (2) the litigant was prevented from presenting his appeal. . . . If injury is shown, the appellate court may abate the appeal so as to give the appellant the opportunity to request additional or amended findings in accordance with the rules.

Robles, 965 S.W.2d at 610; *see Beard v. Beard*, 49 S.W.3d 40, 52 (Tex. App.—Waco 2001, pet. denied) (noting that a party suffers an injury from a refusal to file findings of fact and

conclusions of law "when the circumstances of the case require her to guess the reason or reasons the court ruled against her"). A trial court may file additional findings even after it loses plenary power to affect the judgment. *Robles*, 965 S.W.2d at 611. The failure to request additional findings and conclusions constitutes a waiver on appeal of the trial court's lack of such findings and conclusions. *Id.*

Based on our review of the record, we are not convinced that Roux suffered harm by the untimely entry of findings of fact and conclusions of law in this case. First, the findings of fact and conclusions of law articulate the reasons for the trial court's sanctions order, thereby undermining any argument that Roux would have to guess the reason or reasons the court ruled against her. *See Beard*, 49 S.W.3d at 52. Additionally, Roux admitted that she discovered the untimely findings of fact and conclusions of law when she requested the Clerk's Record on February 15, 2018. She had more than a month to prepare her brief in this matter, which negates any argument that she was unable to adequately present her case to this Court. *See Horizon Props. Corp. v. Martinez*, 513 S.W.2d 264, 266 (Tex. Civ. App.—El Paso 1974, writ ref'd n.r.e.) ("In any event, the law is well settled that reversible error is not presented where the findings of fact and conclusions of law are signed and filed in time to be included in the transcript on appeal and the appellant is not prevented from making a proper presentation of his case on appeal . . . .").

To the extent the Roux asserts that she was harmed by an inability to request additional findings of fact and conclusions of law, we note that, when she obtained the Clerk's Record and discovered the findings of fact and conclusions of law, Roux did not request that this Court abate the appeal and remand the case to the trial court with instructions to prepare additional findings of fact and conclusions of law. The failure of Roux to take this action waives any complaint about her inability to request additional findings of fact and conclusions of law. *See Robles*, 965 S.W.2d at 611. Accordingly, we overrule Roux's seventh issue.

III. ROUX'S APPLICATION FOR ATTORNEY'S FEES AND HER PURPORTED ENTITLEMENT TO A DEFAULT JUDGMENT

In her first, fourth, fifth, and sixth issues, Roux complains about the trial court's decisions regarding attorney's fees and her purported entitlement to a default judgment on her application for attorney's fees. Roux contends that the trial court abused its discretion by denying her application for attorney's fees, failing to award attorney's fees for her filing an application for funeral and burial expenses, and failing to render a default judgment in her favor.

a. Default Judgment

In her fourth issue, Roux complains that the trial court should have entered a default judgment in her favor as to her application for attorney's fees because Ford failed to file an answer in response to her application. We disagree.

Roux did not move for entry of judgment on her application for attorney's fees, nor did she file a mandamus in this Court complaining about the trial court's failure to enter a default judgment. *See In re Mesa Petroleum Partners, LP*, 538 S.W.3d 153, 157 (Tex. App.—El Paso 2017, orig. proceeding) ("Consequently, mandamus relief is available if a trial court has failed to enter judgment within a reasonable time."). The failure to move for judgment or call the motion for judgment to the attention of the trial court waives the issue. *See Tex-Wash Enters., Inc. v. Robna, Inc.*, 488 S.W.2d 504, 505 (Tex. Civ. App.—Waco 1972, writ ref'd n.r.e.) ("The record fails to show that appellants' motion for judgment was ever called to the attention of the trial court or acted upon by it. In this state of the record, nothing relating to the motion is presented for review."). We therefore conclude that Roux waived this complaint by failing to move for default judgment on her application for attorney's fees. We overrule Roux's fourth issue.

b. Roux's Application for Attorney's Fees

In her first and fifth issues, Roux asserts that the trial court abused its discretion by denying her application for attorney's fees because the trial court never signed an order denying her application.

Judgment is rendered when the trial court officially announces its decision in open court or by written memorandum filed with the clerk. *S&A Rest. Corp. v. Leal*, 892 S.W.2d 855, 857 (Tex. 1995). An intent to render judgment in the future does not satisfy this test. *Id.* at 858. The words spoken or written by the trial court must evince a present, as

opposed to a future, act that effectively decides the issues before the court. *Id.* Put differently, "the trial court must clearly indicate the intent to render judgment at the time the words are expressed." *Id.* Once a judgment is rendered by oral pronouncement, entry of a written judgment is purely a ministerial act. *Dunn v. Dunn*, 439 S.W.2d 830, 832 (Tex. 1969) (concluding that an oral rendition of divorce constituted a final judgment even though the order was not signed until after the spouse died).

At the hearing on Roux's application for attorney's fees and Ford's motion for sanctions, Roux asked "the Court to review my application and my itemized billing statement and allow me those fees that the Court determines were necessary and reasonable in my representation of Mr. Pharris, in terms of pursuing the elite services he hired me for." At the conclusion of the hearing, the trial court pronounced the following:

> —003—001—003 obviously, as you've cited, is not going to apply to you. You don't get relief under that, in this scenario, because there's been no filing removing the administrator, much less has anyone proved the administrator has neglected his duty or had this Court order that he's neglected his duty, so we're going to deny your attorney's fees under that.
>
> As for a declaratory action, same thing. There's nothing for us to act on, so, Ms. Roux, this Court is not going to grant you the relief you seek and we'll find in favor of the administrator of the estate of Miriam Mae Pharris.

As shown above, the trial court did not express any reservations about the ruling on Roux's application for attorney's fees, nor did it make any statements about delaying the ruling pending further consideration or updates from the parties or give any indication that the ruling was being withheld at the time. The trial court's language was

clear and constituted a present, active rendition of judgment denying Roux's application for attorney's fees. *See S&A Rest. Corp.*, 892 S.W.2d at 857-58.

Moreover, even if we were to accept Roux's argument that the trial court's language contemplated a future action, we note that Roux has failed to move for judgment on her application for attorney's fees, which, as stated earlier, waives her complaint about the trial court's failure to rule. *See Tex-Wash Enters., Inc.*, 488 S.W.2d at 505. Furthermore, Roux has not filed a mandamus petition in this Court seeking to compel the trial court to rule on her application for attorney's fees. *See In re Mesa Petroleum Partners, LP*, 538 S.W.3d at 157. Accordingly, we cannot say that the trial court abused its discretion by purportedly failing to rule on Roux's application for attorney's fees. As such, we overrule Roux's first and fifth issues.

c. Roux's Application for Funeral and Burial Expenses

In her sixth issue, Roux asserts that the trial court abused its discretion by failing to award her attorney's fees for her filing an application for funeral and burial expenses. For two reasons, we find that this argument lacks merit.

First, there is no indication in this record that Roux presented this filing to the trial court or set this pleading for a hearing. Indeed, on March 31, 2017, the trial court entered an order at Roux's urging stating that the trial court would consider Roux's application for attorney's fees at a hearing conducted on May 2, 2017. There was no mention of Roux's application for funeral and burial expenses. Thus, the record does not

demonstrate that the trial court considered this pleading. *See In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding) (stating that a trial judge has a reasonable time to perform the ministerial duty of considering and ruling on a motion properly filed and before the judge; however, that duty does not arise until the movant has brought the motion to the trial judge's attention); *see also In re Comeaux*, No. 10-10-00243-CV, 2010 Tex. App. LEXIS 7758, at *6 (Tex. App.—Waco Sept. 22, 2010, orig. proceeding) ("The mere filing of a pleading or letter with the clerk does not impute knowledge to the trial court." (internal citation omitted)).

Second, the record reflects that Roux filed this application purportedly on Knorr's behalf, despite the fact that Roux never represented Knorr. In fact, he was represented by a different attorney at the time—Kara Pratt. Because she never had authority to represent Knorr's interests, and because she did not obtain an order from the trial court regarding funeral and burial expenses, Roux may not recover attorney's fees she incurred purportedly prosecuting Knorr's claims. *See* TEX. ESTATES CODE ANN. § 152.051(1) (West 2014) (authorizing reasonable and necessary attorney's fees for the attorney who obtains an order regarding funeral and burial expenses); *see also Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 310 (Tex. 2006) (noting that a prevailing party cannot recover attorney's fees unless permitted by statute or contract). We overrule Roux's sixth issue.

IV. THE TRIAL COURT'S SANCTIONS ORDER

In her second and third issues, Roux challenges the trial court's sanction order. Specifically, she argues that the trial court abused its discretion by awarding Ford $6,800 in attorney's fees and sanctions against her in the amount of $2,500 to deter future groundless filings.

a. Applicable Sanctions Law

> A trial court has the inherent power to impose sanctions against an attorney and that power is derived, in part, from Article II of the Texas Constitution. TEX. CONST. art. II, § 1 (recognizing that each branch of government—Legislative, Executive, and Judicial—has certain powers "properly attached" to that branch). In that regard, it has long been held that a trial court has the "inherent power" to sanction bad faith conduct of an attorney committed during the course of pending litigation that interferes with the effective administration of justice or the preservation of the court's dignity and integrity. *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398 (Tex. 1979); *Onwuteaka v. Gill*, 908 S.W.2d 276, 280 (Tex. App.—Houston [1st Dist.] 1995, no writ). As the Texas Supreme Court noted in *Public Utility Com. v. Cofer*, 754 S.W.2d 121, 124 (Tex. 1988), "[w]e can say without hesitation that in our adversary system, a court has not only the power but the *duty* to insure that judicial proceedings remain truly adversary in nature." (Emphasis in original). Courts may not, however, invoke this inherent power "without some evidence and factual findings that the conduct complained of significantly interfered with the court's legitimate exercise of one of its traditional core functions." *Howell v. Tex. Workers' Comp. Comm'n*, 143 S.W.3d 416, 447 (Tex. App.—Austin 2004, pet. denied) (citing *Kennedy v. Kennedy*, 125 S.W.3d 14, 19 (Tex. App.—Austin 2002, pet. denied)). Therefore, the court's "inherent power to sanction exists only to the extent necessary to deter, alleviate, and counteract bad faith abuse of the judicial process" affecting a core function of the court. *Onwuteaka*, 908 S.W.2d at 280.
>
> In applying that standard, an appellate court reviews a trial court's imposition of sanctions under an abuse of discretion standard. *See Cire v. Cummings*, 134 S.W.3d 835, 838-39 (Tex. 2004) (reinstating the trial court's

sanctions order, finding that order was not an abuse of discretion); *In re Bennett*, 960 S.W.2d 35, 40 (Tex. 1997) (same). *See also Low v. Henry*, 221 S.W.3d 609, 621-22 (Tex. 2007) (affirming the trial court's imposition of sanctions pursuant to section 10.001(3) of the Texas Civil Practice and Remedies Code but finding an abuse of discretion in not more specifically identifying a sufficient basis to support the amount of sanctions); *Lawrence v. Kohl*, 853 S.W.2d 697, 700-01 (Tex. App.—Houston [1st Dist.] 1993, no writ) (finding imposition of sanctions to be neither arbitrary or unreasonable in light of the circumstances). Under this standard, a trial court does not abuse its discretion in levying sanctions if some evidence supports its decision. *Unifund CCR Partners v. Villa*, 299 S.W.3d 92, 97 (Tex. 2009).

Under an abuse of discretion standard, "an appellate court may reverse the trial court's ruling only if the trial court acted without reference to any guiding rules and principles, such that its ruling is arbitrary and unreasonable." *Low*, 221 S.W.3d at 614 (citing *Cire*, 134 S.W.3d at 838-39); *Am. Flood Research, Inc. v. Jones*, 192 S.W.3d 581, 582 (Tex. 2006); *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985)). In deciding whether the trial court abused its discretion, we are cautioned to "bear in mind that the mere fact that a trial judge may decide a matter within his discretionary authority in a different manner than an appellate judge in a similar circumstance does not demonstrate that an abuse of discretion has occurred." *City of Dallas v. Ormsby*, 904 S.W.2d 707, 710 (Tex. App.—Amarillo 1995, writ denied).

When evaluating the propriety of a sanctions order, an appellate court must also remain mindful that a sanctions order involves two separate judicial decisions: (1) whether to impose a sanction and (2) what sanction to impose. *TransAmerican Nat'l Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991). Therefore, in conducting our review of a sanctions order, we must conduct a two-part analysis by determining whether: (1) there is a direct relationship between the offensive conduct and the sanction imposed and (2) the sanction imposed is reasonable and not excessive. *Id.*

In other words, any sanction imposed should be directly related to offensive conduct, be no more severe than required to satisfy legitimate purposes, and the "punishment should fit the crime." *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 849 (Tex. 1992). This means that a trial court must consider less stringent sanctions first to determine whether lesser sanctions

> will fully promote compliance, deterrence, and discourage further abuse. *Id.*; *In re J.V.G.*, No. 09-06-00015-CV, 2007 Tex. App. LEXIS 5426, at *11 (Tex. App.—Beaumont July 12, 2007, no pet.) (mem. op.) (holding that "the fact that sanctionable conduct does not bear the label . . . of having 'interfered with the core functions of the trial court,' does not indicate an abuse of discretion so long as the record indicates a direct relationship between the improper conduct and the sanction imposed, and that a lesser sanction would have been insufficient to serve its punitive function").
>
> Findings of fact and conclusions of law from a sanctions hearing are not the same as those contemplated by Rules 296 and 297 of the Rules of Civil Procedure; *United States Fidelity & Guaranty Co. v. Rossa*, 830 S.W.2d 668, 672 (Tex. App.—Waco 1992, writ denied), and such findings should not be given the same weight as findings made under those rules. *Goff v. Branch*, 821 S.W.2d 732, 738 (Tex. App.—San Antonio 1992, writ denied). During an appellate review, the entire record, including the evidence, arguments of counsel, written discovery on file, and the circumstances surrounding the party's sanctionable conduct, must be examined. *Rossa*, 830 S.W.2d at 672; *Abcon Paving, Inc. v. Crissup*, 820 S.W.2d 951, 954 (Tex. App.—Fort Worth 1991, no writ). Thus, we are not limited solely to a review of the "sufficiency of the evidence" to support the findings made or implied; rather, we make an independent inquiry of the entire record to determine whether the court abused its discretion in imposing the sanction in question. *See Rossa*, 830 S.W.2d at 672. *See also Otis Elevator v. Parmelee*, 850 S.W.2d 179, 181 (Tex. 1993); *Chrysler Corp.*, 841 S.W.2d at 852-53.

Brewer v. Lennox Hearth Prods., LLC, 546 S.W.3d 866, 874-76 (Tex. App.—Amarillo 2018, pet. filed).

b. Applicable Attorney's Fees Law

An appellate court reviews a trial court's decision on the award of attorney's fees for an abuse of discretion. *Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998). "Whether to award attorney's fees, and to which party, is a decision that is solely within the trial court's discretion and will not be reversed absent a clear abuse of that discretion."

Sammons v. Elder, 940 S.W.2d 276, 284 (Tex. App.—Waco 1997, writ denied). "The test for an abuse of discretion is not whether, in the opinion of the reviewing court, the facts present an appropriate case for the trial court's action, but 'whether the court acted without reference to any guiding rules and principles.'" *Cire*, 134 S.W.3d at 838-39 (quoting *Downer*, 701 S.W.2d at 241).

c. Discussion

As noted earlier, Ford sought $2,500 in sanctions and $7,500 in attorney's fees under Texas Rules of Civil Procedure 10 and 13, as well as sections 9.011, 10.001, and 10.002 of the Civil Practice and Remedies Code. *See* TEX. R. CIV. P. 10, 13; *see also* TEX. CIV. PRAC. & REM. CODE ANN. §§ 9.011, 10.001-.002. The trial court granted Ford's motion for sanctions and awarded $2,500 in sanctions and $6,800 in attorney's fees without specifying a particular rule or statute.

Chapter 10 of the Civil Practice and Remedies Code allows sanctions for filing a pleading or motion "for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation." TEX. CIV. PRAC. & REM. CODE ANN. § 10.001(1), .004. Texas Rule of Civil Procedure 13 provides that a court may impose sanctions upon a determination that a pleading or motion is groundless and brought in bad faith or groundless and brought for the purpose of harassment. TEX. R. CIV. P. 13. For violations of Rule 13, we look to Rule 215 for appropriate sanctions. *See id.* Rules 215.2(b)(8) and 215.3, as well as Chapter 10 of the Civil Practice and Remedies

Code, all specify attorney's fees and reasonable expenses caused by the improper conduct as an appropriate sanction. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 10.004(c)(3); TEX. R. CIV. P. 13 (incorporating the sanctions available under Rules 215.2(b)(8) and 215.3).

Reviewing the entire record, we conclude that there is ample evidence to support a sanction against Roux under Chapter 10 of the Civil Practice and Remedies Code and Rule 13. The evidence showed that Roux filed a notice of appearance indicating that she represented Dennis Pharris, not the estate. Less than two weeks later, Roux filed a motion to withdraw as counsel for Dennis. Nevertheless, Roux submitted an application for attorney's fees, requesting that the estate reimburse her for legal services rendered to Dennis. Because Roux did not represent either the estate or the administrator for the estate, and because the record evidence does not demonstrate that she complied with section 351.003 of the Estates Code, Roux was not entitled to reimbursement for her attorney's fees from the estate. *See* TEX. ESTATES CODE ANN. § 351.003. As such, it was reasonable for the trial court to conclude that Roux's application for attorney's fees was a groundless filing brought in bad faith under both Chapter 10 of the Civil Practice and Remedies Code and Rule 13 and caused the estate to suffer damages. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 10.001(1); TEX. R. CIV. P. 13 (noting that "[g]roundless" for purposes of Rule 13 "means no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law"); *see also Zeifman v. Nowlin*, 322 S.W.3d 804, 811 (Tex. App.—Austin 2010, no pet.) (affirming sanctions under Rule 13

where the trial court found that a pleading had no basis and lacked evidentiary support); *R.M. Dudley Constr. Co. v. Dawson*, 258 S.W.3d 694, 708 (Tex. App.—Waco 2008, pet. denied) (stating that "[t]he trial court uses an objective standard to determine if a pleading was groundless: did the party and counsel make a reasonable inquiry into the legal and factual basis of the claim" and that "the trial court must examine the facts available to the litigant and the circumstances existing when the litigant filed the pleading").

Additionally, we also recognize that Roux filed an application for funeral and burial expenses on behalf of Knorr—someone whom she did not represent. Roux did not have authority to file this pleading on behalf of Knorr, who was represented by another attorney. As such, the trial court could have also reasonably concluded that this pleading was groundless and brought in bad faith under both Chapter 10 of the Civil Practice and Remedies Code and Rule 13 and caused the estate to suffer damages. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 10.001(1); TEX. R. CIV. P. 13; *see also Zeifman*, 322 S.W.3d at 811; *R.M. Dudley Constr. Co.*, 258 S.W.3d at 708.

Having concluded that the evidence supports the imposition of a sanction, we turn to a determination of whether the sanction awarded was appropriate or just. *See Am. Flood Research, Inc.*, 192 S.W.3d at 583; *see also TransAmerican Natural Gas Corp.*, 811 S.W.2d at 917. Applying the two-part test articulated by the Texas Supreme Court, we must first determine whether there is a direct relationship between the sanctionable conduct and

the sanction imposed. *See Am. Flood Research, Inc.*, 192 S.W.3d at 583; *see also TransAmerican Natural Gas Corp.*, 811 S.W.2d at 917. As stated above, the evidence shows that Roux filed multiple groundless pleadings in bad faith. The sanctions of attorney's fees and reasonable expenses are directed against the filing of groundless, bad-faith pleadings and are an appropriate sanction under Chapter 10 and Rules 13 and 215.3. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 10.004; TEX. R. CIV. P. 10, 215.3; *see also Am. Flood Research, Inc.*, 192 S.W.3d at 584. Accordingly, we conclude that there is a direct relationship between the improper conduct and the sanctions imposed. *See Am. Flood Research, Inc.*, 192 S.W.3d at 584.

We next consider whether the amount of the sanctions was excessive. In the instant case, Ford sought $2,500 in sanctions and $7,500 in attorney's fees. At the hearing on Roux's application for attorney's fees and Ford's motion for sanctions, Ford, who is board certified in estate planning and probate and has practiced in this area of the law for nineteen years at the time of the hearing, testified regarding the attorney's fees incurred by the estate to litigate Roux's groundless pleadings. Ford specifically noted, without objection, that the estate incurred $6,800 in reasonable and necessary attorney's fees for responding to Roux's pleadings, as well as filing the motion for sanctions, and that the fees were based on those customarily charged in Hill County, Texas, for similar legal services. On cross-examination, Ford itemized the work done and the number of hours spent on each task.

Considering the entire record, we cannot say that the trial court's award of $6,800 in attorney's fees was excessive. *See Werley v. Cannon*, 344 S.W.3d 527, 534-35 (Tex. App.—El Paso 2011, no pet.) (concluding that a sanction of $12,600 was not excessive where the evidence showed a party had incurred that amount in attorney's fees); *see also Wein v. Sherman*, No. 03-10-00499-CV, 2013 Tex. App. LEXIS 10666, at *30 (Tex. App.—Austin Aug. 23, 2013, no pet.) (mem. op.) (concluding that a sanction of $100,000 in attorney's fees was not excessive when the evidence showed a party has incurred $117,007.60 in reasonable and necessary attorney's fees and expenses). Accordingly, we conclude that the trial court's award of $6,800 in attorney's fees in the form of sanctions was not an abuse of discretion. *See Bocquet*, 972 S.W.2d at 21; *see also Wein*, 2013 Tex. App. LEXIS 10666, at *30. We overrule Roux's second issue.

Roux also challenges the $2,500 sanctions award. Without objection, Ford testified that a $2,500 sanction is not excessive and is a reasonably-tailored sanction to deter subsequent groundless filings. Roux did not challenge this amount on cross-examination. Additionally, the trial court noted the following:

> At this time, the Court awards attorney's fees in the amount of $6,800 to the Estate of Miriam Mae Pharris, and let me say when I say the sanctions of $2,500 I'm now going to award is just a slap on the wrist.
>
> Ms. Roux, your actions in this case have led me to seriously question your responsibilities towards the ethical practice of law in the State of Texas. Quite frankly, I feel that I am obliged, as the judge of this court, to report your actions, especially at a possibility of representation of more than one party in this estate, to the State Bar of Texas. That being said, judgment awarded in favor of the estate.

The legitimate purpose of sanctions includes the goal of securing compliance. *See Chrysler Corp.*, 841 S.W.2d at 849; *see also Wein*, 2013 Tex. App. LEXIS 10666, at *34. The trial court reasonably determined that the $2,500 in sanction would operate to ensure compliance in terms of deterring Roux from filing additional groundless pleadings in this matter. Thus, there is some evidence that the sanctions award of $2,500 was directly related to the sanctionable conduct and was not excessive. *See Am. Flood Research, Inc.*, 192 S.W.3d at 583; *see also TransAmerican Natural Gas Corp.*, 811 S.W.2d at 917. Therefore, we reject Roux's arguments that the trial court assessed a monetary sanction without reference to guiding principles or without considering less severe sanctions. *See Zeifman*, 322 S.W.3d at 811. We overrule Roux's third issue.

V. SUPERSEDEAS BOND

In her eighth issue, Roux contends that the trial court abused its discretion by requiring her to post a supersedeas bond in this case. Specifically, Roux argues that the attorney's fees awarded by the trial court should not be considered in determining the amount of the supersedeas bond because they are neither compensatory damages, nor costs.

A judgment debtor is entitled to supersede and defer payment of the judgment while pursuing an appeal. *See Miga v. Jensen*, 299 S.W.3d 98, 100 (Tex. 2009). Texas Rule of Appellate Procedure 24.4 authorizes an appellate court to engage in a limited supersedeas review. *See* TEX. R. APP. P. 24.4. On any party's motion, we may review: (1)

the sufficiency or excessiveness of the amount of security; (2) the sureties on a bond; (3) the type of security; (4) the determination whether to permit suspension of enforcement; and (5) the trial court's exercise of discretion in ordering the amount and type of security. *Id.* at R. 24.4(a). We may require the amount of a bond be increased or decreased and that another bond be provided and approved by the trial court clerk. *Id.* at R. 24.4(d). Additionally, we may also require other changes in the trial-court order and remand for entry of findings of fact or for the taking of evidence. *Id.*

We review trial-court rulings pursuant to Rule 24.4 under an abuse-of-discretion standard. *See EnviroPower, L.L.C. v. Bear, Stearns & Co.*, 265 S.W.3d 1, 2 (Tex. App.—Houston [1st Dist.] 2008, pet. denied). A trial court abuses its discretion when it renders an arbitrary and unreasonable decision lacking support in the facts or circumstances of the case, or when it acts in an arbitrary or unreasonable manner without reference to guiding rules or principles. *See Samlowski v. Wooten*, 332 S.W.3d 404, 410 (Tex. 2011) (citing *Goode v. Shoukfeh*, 943 S.W.2d 441, 446 (Tex. 1997); *Mercedes-Benz Credit Corp. v. Rhyne*, 925 S.W.2d 664, 666 (Tex. 1996)). The trial court has no discretion in determining what the law is or applying the law to the facts; therefore, a clear failure to analyze or apply the law correctly is an abuse of discretion. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding); *see Shook v. Walden*, 304 S.W.3d 910, 916 (Tex. App.—Austin 2010, no pet.) (stating that where the trial court's determination regarding the amount of security turns on a question of fact, the determination is reviewed for abuse of discretion,

and where the determination turns on a question of law, the determination is reviewed de novo).

In her notice of appeal, Roux indicated that she sought to appeal the trial court's May 4, 2017 order denying her application for attorney's fees, granting sanctions against Roux, and awarding attorney's fees to Ford. Nowhere in her notice of appeal does she indicate an intent to appeal the trial court's order setting the amount to supersede the judgment. Moreover, the record does not contain a motion contemplated by Rule 24.4 filed by Roux challenging the amount of the supersedeas bond. *See* TEX. R. APP. P. 24.4(a). As such, Roux has not preserved this complaint for appellate review. *See id.*

And even if she had preserved this issue for appellate review, we cannot say that Roux has been harmed. In the instant case, the trial court set the amount to supersede the judgment at $2,500, which corresponds with the $2,500 sanctions award. Regardless, the record does not reflect that Roux has posted this bond, nor has the estate sought to enforce the trial-court judgment. We therefore cannot conclude that Roux has satisfied her burden by demonstrating that the trial court abused its discretion by setting the amount of the supersedeas bond at $2,500.[2] *See id.*; *see also EnviroPower, L.L.C.*, 265 S.W.3d at 2. Accordingly, we overrule Roux's eighth issue.

[2] Indeed, in her appellant's brief, the entirety of Roux's argument that the $2,500 supersedeas bond is excessive is as follows: "Even the amount set by the court of $2,500.00 as a supersedeas bond is harmful because." Roux did not complete this argument. Furthermore, the remainder of her argument in this issue challenges the usage of attorney's fees in the calculation of the supersedeas bond—something the trial court did not do.

VI. CONCLUSION

Having overruled all of Roux's issues on appeal, we affirm the judgment of the trial court.

JOHN E. NEILL
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill
Affirmed
Opinion delivered and filed July 3, 2019
[CV06]

APPENDIX C

IN THE
TENTH COURT OF APPEALS

No. 10-17-00260-CV

ESTATE OF MIRIAM MAE PHARRIS, DECEASED

From the County Court
Hill County, Texas
Trial Court No. 14,170

ORDER

On July 3, 2019, this Court issued its judgment and memorandum opinion in this matter. Later, we granted appellant, Kathy Roux, an extension of time to file her motion for rehearing. Subsequently, on August 20, 2019, appellant filed her motion for rehearing and for en banc reconsideration. We denied this motion on August 23, 2019. However, just prior to our denial of appellant's motion for rehearing, appellant filed a motion to amend her motion for rehearing and for en banc reconsideration. In light of appellant's motion to amend, we: (1) withdrew our August 23, 2019 denial of appellant's motion for rehearing and for en banc reconsideration; (2) granted appellant's motion to amend; and

(3) in accordance with appellant's request, ordered appellant to file her amended motion for rehearing and for en banc reconsideration within ten days of August 30, 2019.

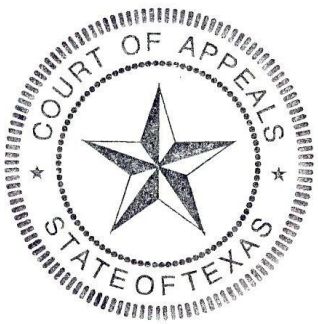
Although this Court granted appellant's motion to amend, and despite indicating that she would, appellant did not file an amended motion for rehearing and for en banc reconsideration. Thereafter, on October 25, 2019, this Court issued the mandate in this matter.

In response to the issuance of the mandate in this matter, appellant has filed several motions. First, appellant requests leave to file a motion to stay the prematurely-issued mandate. Second, appellant seeks to stay the prematurely-issued mandate. Third, appellant requests a ruling on her original motion for rehearing and for en banc reconsideration that was filed on August 20, 2019.

After review, we withdraw our mandate issued on October 25, 2019 in this matter. We also deny appellant's original motion for rehearing and for en banc reconsideration filed on August 20, 2019. In light of the foregoing, we dismiss appellant's remaining requests as moot.

PER CURIAM

Before Chief Justice Gray,
Justice Davis, and
Justice Neill
Order issued and filed November 20, 2019
Do not publish
[CV06]
[RWR]



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APPENDIX D

RE: Case No. 20-0009 DATE: 4/17/2020
COA #: 10-17-00260-CV TC#: 14,170
STYLE: ESTATE OF MIRIAM MAE PHARRIS

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

NITA WHITENER
CLERK, TENTH COURT OF APPEALS
MCLENNAN COUNTY COURTHOUSE, RM 415
501 WASHINGTON AVENUE
WACO, TX 76701
* DELIVERED VIA E-MAIL *

FILE COPY

APPENDIX E

RE: Case No. 20-0009 DATE: 6/26/2020
COA #: 10-17-00260-CV TC#: 14,170
STYLE: ESTATE OF MIRIAM MAE PHARRIS

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

NITA WHITENER
CLERK, TENTH COURT OF APPEALS
MCLENNAN COUNTY COURTHOUSE, RM 415
501 WASHINGTON AVENUE
WACO, TX 76701
* DELIVERED VIA E-MAIL *

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APPENDIX F

RE: Case No. 20-0009 DATE: 7/17/2020
COA #: 10-17-00260-CV TC#: 14,170
STYLE: IN RE ESTATE OF MIRIAM MAE PHARRIS

Today the Supreme Court of Texas denied Petitioner's Motion to Stay Mandate in the above-referenced case.

NITA WHITENER
CLERK, TENTH COURT OF APPEALS
MCLENNAN COUNTY COURTHOUSE, RM 415
501 WASHINGTON AVENUE
WACO, TX 76701
* DELIVERED VIA E-MAIL *