

ORIGINAL

No. 21-229

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

IN RE SUPERVISED ESTATE OF AL KATZ:

LAWRENCE T. NEWMAN
Petitioner,

v.

ROBERT W. YORK
as Personal Representative,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF INDIANA

PETITION FOR A WRIT OF CERTIORARI

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Lawrence T. Newman, respectfully requests that this Court issue a writ of certiorari to review the judgments of the Indiana Court of Appeals and of the Indiana Supreme Court approving an award of \$167,437.50 in appellate attorney fees against Newman in the absence of Constitutional due process afforded to Newman in all of the legal proceedings leading up to said award and without any findings of specific wrongdoing by Newman relative to the bases for said award.

OPINIONS BELOW

The Order of the trial court dated October 22, 2019, awarding appellate attorney fees is set forth in Appendix A. The Order of the Indiana Court of Appeals dated October 7, 2020, affirming the trial court is set forth in Appendix B. The Order of the Indiana Court of Appeals dated December 7, 2020, denying Newman's Petition for Rehearing is set forth in Appendix C. The Order of the Indiana Supreme Court dated April 20, 2021, denying transfer is set forth in Appendix D.

JURISDICTION

This cause arises from an award of appellate attorney fees against Newman by the trial court, which award was upheld by the Indiana Court of Appeals and by the Indiana Supreme Court.

Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the following Constitutional provisions, the pertinent portions of which are set forth below:

Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

No person shall ... be deprived of life, liberty, or property, without due process of law

U.S. Const. amend. V.

.... 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; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, Section 1.

Excessive bail shall not be required, nor excessive fines imposed,

U.S. Const. amend. VIII

STATEMENT OF THE CASE

On October 22, 2019, the Marion County (Indiana) Superior Court awarded \$167,437.50 in appellate attorney fees against Newman based upon prior Orders of the Indiana Court of Appeals and the

Indiana Supreme Court. This case presents a singular question of the outer limits of a citizen's Constitutional due process and other related Constitutional rights in legal proceedings stretching over years and involving multiple levels of courts, trial, appellate, and state Supreme Court, which courts at all levels repeatedly denied said rights to the citizen, and culminating in a punitive grossly-excessive award of appellate attorney fees resulting from said denials of Constitutional rights.

The events that led to the fee award are as follows.

Petitioner Lawrence Newman ("Newman") is the husband of Dr. Beverly Newman and the son-in-law of Dr. Newman's father, Al Katz, a Holocaust Survivor and domiciliary of Indianapolis, Indiana, since 1947.

In July 2010, at age 90, Al Katz passed away in Florida, and Dr. Newman opened his Estate in the Marion County, Indiana, Probate Court, which appointed her as Personal Representative of the Al Katz Estate in October 2010, and her husband, Lawrence Newman, a licensed attorney in Indiana and Ohio, represented her as Personal Representative.

The Estate was chronically short of liquid assets from its inception because Al Katz had been put into an involuntary professional guardianship in Florida in September 2009, which guardianship consumed almost all of Katz's liquid assets in less than one year's time, and Lawrence Newman, as the

son-in-law of Al Katz, personally paid for many of the ongoing administrative expenses of the Estate, including, *inter alia*, expenses for the upkeep of Al Katz's domiciliary home at 4727 North Ritter Avenue, Indianapolis, Indiana ("Ritter Property"), such as utilities, insurance, maintenance, and property taxes, expenses for the upkeep of Al Katz's Florida condominium, litigation expenses for four damage lawsuits filed by the Estate in Florida against Al Katz's professional guardian, his condominium association, an attorney, and a nursing home.

At the time he paid for Estate administrative expenses, Newman expected that the Estate would, in the future, have sufficient funds to reimburse him for such necessary expenses through, *inter alia*, the sale of the Ritter Property and through the Florida damage lawsuits.

In this respect, on April 27, 2013, Newman filed a motion for reimbursement of Estate administrative expenses in the amount of \$42,284.54.

On August 28, 2013, Newman filed another motion for reimbursement of Estate administrative expenses in the amount of \$2,054.11.

On October 9, 2013, Newman filed a further motion for reimbursement of Estate administrative expenses in the amount of \$1,075.48.

On March 19, 2014, Newman filed his final motion for reimbursement of Estate administrative expenses in the amount of \$5,422.68, and in the aggregate amount of \$50,836.81.

Newman's four administrative expense reimbursement Motions were set for hearing on March 19, 2014, but not heard on said date; reset for hearing on May 2, 2014, but not heard on said date; and the trial court adjourned said May 2, 2014, hearing without ever resetting said hearing and without ever holding a subsequent hearing on Newman's Motions, as documented by the trial court's CCS entry on May 5, 2014:

Administrative Event. Per jacket entry
.... L. Newman in person. Court
adjourns without addressing 5 motions
set for 3/19/14 File Stamp:
05/02/2014.

In fact, the adjourned hearing was never thereafter reset, and Newman's four reimbursement Motions were never heard or otherwise determined by the trial court.

In addition to his four reimbursement Motions, Newman subsequently filed on January 25, 2016, a "Verified Petition for Payment of Estate Attorney Fees" for administrative expenses in the amount of \$52,050.00, in payment for his attorney fees earned while representing Estate Personal Representative Dr. Beverly Newman from the opening of the Estate through Lawrence Newman's withdrawal on February 3, 2012. Said Petition for administrative expenses was never scheduled for hearing or determined by the trial court.

Newman thereafter filed on May 9, 2016, a "Notice to Court of Transfer of Interest of Administrative Expense Claim and Motion for Approval and Payment of Claim" relative to \$1,554.20 paid by the Newmans for 2016 property taxes on the Estate's Ritter Property. Said claim for administrative expenses was similarly never heard or determined by the trial court.

The aggregate amount of Newman's administrative expenses in his six Motions totals \$104,441.01. None of said six Motions was ever heard or otherwise determined by the trial court.

In January 2015, the court appointed Indianapolis attorney Robert York as both the successor Personal Representative and attorney for the Al Katz Estate. In May 2015, over Dr. Beverly Newman's objections, York sought and obtained trial court authorization to dismiss with prejudice the Estate's four Florida damage lawsuits, which dismissals eliminated a significant source of Estate funds available to pay Newman's administrative expense Motions.

In order to effectuate the dismissals of the four Florida lawsuits by the Indiana-sited Estate, York, an attorney licensed in Indiana but never licensed in Florida: (1) falsely registered with the Florida E-Filing Portal as a "self-represented litigant" and (2) personally made four separate filings in various Florida courts on behalf of the Estate through the Florida E-Filing Portal, each of which filings constituted the unlicensed practice of law in Florida

by York, a third degree felony under Fla. Stat. § 454.23.

Although the trial court in the Al Katz Estate proceeding was notified multiple times by Lawrence Newman and by Dr. Beverly Newman of York's illegal repeated felonious unlicensed practice of law in Florida, the Indiana court never reported York to appropriate authorities, sanctioned York, or took any other actions against York.

Further, although annual accountings are required by Indiana estate law, York has never filed a single accounting since being appointed successor Personal Representative in January 2015.

On July 13, 2016, upon motion for disqualification filed by Newman alleging bias and prejudice by the judge, trial court Judge Rosenberg and his supervising judge both recused themselves for cause, and the Indiana Supreme Court thereupon appointed Judge James Joven, a legal colleague of Robert York from the small town of Lawrence, Indiana, as successor judge on July 20, 2016.

Although Judge Rosenberg had never heard or determined any of Newman's six administrative expense Motions, and the trial court's own written record, through its CCS and the specific determinations cited herein, conclusively documented that Newman's Motions had never been heard or determined, Judge Joven beginning upon his appointment and thereafter repeatedly erroneously held that the court had previously denied or dismissed Newman's Motions during Judge Rosenberg's tenure.

In said holdings, Judge Joven never cited to any actual specific court Order that had actually denied or dismissed any of Newman's Motions, notwithstanding:

- (1) Newman's repeated documentation submitted to Judge Joven that no such Order(s) had ever been issued at any time by the court;
- (2) Newman's repeated requests that Judge Joven cite the specific alleged court Orders; and
- (3) that Judge Joven himself had previously listed as unheard on his November 29, 2016, "Order Setting Pretrial Conference" Newman's Motion for administrative expense attorney fees filed on January 25, 2016, in the amount of more than \$50,000.00.

In this respect, Indiana Trial Rule 53.1(C) provides that "a court is deemed to have set a motion for hearing on the date the setting is noted in the Chronological Case Summary, and to have ruled on the date the ruling is noted in the Chronological Case Summary." Judge Joven consistently refused Newman's multiple and repeated requests to set his administrative expense Motions for hearing, even though the court's CCS conclusively established that no hearing on said Motions had ever taken place and that no Order determining any of said Motions had ever been issued by any predecessor judge in the case.

From the time he assumed jurisdiction of the Al Katz Estate proceeding in 2016, Judge Joven refused to even consider hearing any of Newman's subject Motions, leaving Newman without any relief at the trial court level, thus denying Newman his fundamental due process rights to access to the

courts, to redress of grievances, and to consideration of his Motions on their merits at the trial court level.

Beginning in 2017, Newman began his quest to obtain judicial relief and due process at the appellate court level in Indiana.

In 2017, York obtained an Order from the trial court to attempt to consummate a sale of the Ritter Property without consideration of Newman's six unheard administrative expense Motions, which sale would thus have excluded Newman from sharing in the sale proceeds of the last asset of substantial value held by the Estate.

Newman thereafter filed an interlocutory Appeal, challenging the trial court's Order which authorized the distribution of the proceeds of the sale of the Ritter Property without consideration of Newman's six administrative expense Motions that still had never been heard or determined by the trial court. Said interlocutory Appeal was dismissed with prejudice by the Court of Appeals before any briefs had been filed by Order of January 4, 2018, on the basis that Newman had filed an untimely interlocutory Appeal. Because no briefs had been filed in said Appeal before it was dismissed, the appellate court never considered or issued any determinations on the merits of Newman's contention that his Constitutional due process rights had been violated by the trial court through its refusal to hear Newman's six administrative expense Motions before ordering the distribution of the proceeds from the sale of the Ritter Property, preventing Newman from sharing in the proceeds of said sale.

After said Appeal was dismissed as untimely filed, the proposed sale of the Ritter Property did not take place, and the issue Newman had attempted to appeal became moot. Thereafter, in 2018, York notified the trial court of his intent to sell the Ritter Property to a different buyer, from which sales proceeds York again intended to make no distributions to Newman.

On May 31, 2018, Newman filed a Verified Response to York's notification of his intent to sell the Ritter Property without any distributions to Newman, in which Newman stated in pertinent part:

Lawrence Newman submits to this Court that any distributions to the United States of America and to the State of Indiana for their respective tax claims without payment of Lawrence Newman's administrative expense claims will be a violation of probate law and of Lawrence Newman's due process rights under the United States Constitution and the Indiana Constitution, as well as a violation of Lawrence Newman's rights of access to the courts guaranteed by the Indiana Constitution....

As Lawrence Newman further repeatedly notified this Court and as he does so herein, it is necessary that this Court hear and determine Lawrence Newman's six (6) administrative expense

claims prior to any distribution of the sale proceeds of the Ritter Property

Nonetheless, on June 12, 2018, the trial court issued an Order in which the trial court set forth the distributions to be made from the proceeds of the sale of the Ritter Property, which Order did not mention Newman or provide for any payment to Newman for his administrative expense claims. Further, the trial court took no actions to set any of Newman's administrative expense Motions for hearing.

Thus, at the trial court level since 2013, Newman had filed a total of six Motions for payment of administrative expenses seeking to be reimbursed for personal cash advances he made to financially support the Estate of his father-in-law and to be paid for his legal services to the Estate, which administrative expenses have priority under Indiana law.

After Newman had repeatedly sought to have said Motions heard and determined, the trial court culminated five years of inaction on Newman's Motions by ordering the sale of the Estate's Ritter Property without hearing or determining Newman's Motions, so that Newman could not share in the proceeds of the last significant Estate asset.

Newman thereupon appealed said Order for the sale of the Ritter Property to the Indiana Court of Appeals on July 12, 2018, but the court denied Newman's Appeal on the basis that its Order dismissing Newman's prior Appeal for untimeliness, prior to the filing of any briefs or arguments on the

merits, was nonetheless a judgment on the merits of the prior Appeal and thus was *res judicata* as to Newman's subsequent subject Appeal, ruling:

With respect to Newman's argument that the trial court erred in determining that his administrative claims were dismissed or denied, Newman cites the court's August 4, 2017 order in which the trial court stated that it had repeatedly denied Newman's claims for administrative expenses. Newman also cites the trial court's August 28, 2017 order in which the court mentioned it had previously dismissed his claims. However, Newman already sought an interlocutory appeal of these orders under Cause No. 2475 and the appeal was dismissed with prejudice. "It is generally recognized that a dismissal with prejudice is a dismissal on the merits." ,,, As such it is conclusive of the rights of the parties and *res judicata* as to the questions which might have been litigated. *Id.* As we dismissed Newman's appeal with prejudice, we do not disturb the trial court's finding that it had denied Newman's claims for administrative expenses, and this issue is foreclosed for our review.

As part of its Order of dismissal, the Court of Appeals granted appellate attorney fees to York,

which amount would be ultimately determined by the trial court. The Court of Appeals did not give any reasons in its dismissal Order for assessing appellate attorney fees against Newman, which lack of reasons violated Indiana caselaw precedents, which precedents authorized the assessment of appellate attorney fees only in specified circumstances, none of which circumstances were found by the Court of Appeals to apply to Newman, as the Court failed to state any reasons for assessment of attorney fees against Newman. Said failure by the Court to state its reasons violated Newman's Constitutional due process rights, as he was assessed attorney fees without any finding of wrongdoing or misconduct by Newman.

As a result of the actions of the Indiana Court of Appeals, Newman was subject to being punitively charged tens of thousands of dollars of appellate attorney fees for seeking to enforce his Constitutional due process rights to a hearing on the merits for his administrative expense claims that had been repeatedly denied to him at the trial court level.

Newman thereafter filed a Petition To Transfer with the Indiana Supreme Court, seeking justice at the ultimate state court level to enforce his Constitutional due process rights to a hearing on the merits of his administrative expense Motions, access to the courts, and redress of grievances. The Indiana Supreme Court denied transfer, thus, in essence, approving the actions of the lower courts in denying fundamental due process to Newman by failing to afford him a hearing on the merits of his expense claims and by imposing punitive appellate attorney

fees upon Newman without any findings of wrongdoing by Newman and without finding any of the required legal grounds necessary under Indiana law for awarding appellate attorney fees against a party.

As a result of the actions and inactions of the trial court, the Indiana Court of Appeals, and the Indiana Supreme Court decision not to consider the issue on the merits, Newman's six administrative expense Motions remained unheard, undecided, and unpaid.

In separate litigation during the same period of time, Lawrence Newman and his wife sued Al Katz Estate successor Personal Representative and attorney Robert W. York for damages in a lawsuit filed in the Florida courts for wrongful actions taken by York in Florida relative to his administration of the Al Katz Estate, including, *inter alia*, the repeated unlicensed practice of law in Florida by York, who is only licensed in Indiana, by York's filings of four separate documents in the Florida courts on behalf of the Indiana-sited Estate, and York's conspiracy with Florida-licensed opposing counsels to effect the dismissal of four Florida damage lawsuits filed by the Estate prior to York's appointment as successor Personal Representative, pursuant to May 11, 2015, hearing arranged by York in which multiple Florida-licensed attorneys appeared at the behest of York at the six-hour hearing until 9:00 at night, respectively representing their Florida clients against the interests of the Al Katz Estate.

York, who appeared and defended by counsel in the Newmans' Florida litigation against him, months later filed for an injunction in the Indiana Estate proceeding for the Indiana Estate court to enjoin the Newmans from continuing their Florida lawsuit against York. The Indiana court granted the injunction sought by York, and the Newmans ceased litigating against York in their Florida lawsuit, and Lawrence Newman brought an Appeal of the injunction in the Indiana Court of Appeals.

Rather than hear Newman's Appeal on its merits, the Indiana Court of Appeals dismissed it without stating any legal grounds for said dismissal, and further assessed appellate attorney fees against Newman without stating any finding of wrongdoing by Newman or stating of the required legal grounds for an award of appellate attorney fees in Indiana.

After the Court of Appeals denied Newman's Motion for Rehearing, Newman filed a Petition To Transfer in the Indiana Supreme Court. The Supreme Court denied transfer without any stated reason, and imposed further appellate attorney fees against Newman, similarly without any finding of wrongdoing by Newman and without stating any of the required legal and factual findings necessary for an award of appellate attorney fees under Indiana law. See *Ballaban v. Bloomington Jewish Cnty., Inc.*, 982 N.E.2d 329 (Ind.App. 2013) and *Orr v. Turco Mfg. Co., Inc.*, 512 N.E.2d 151 (1987).

On August 7, 2019, York filed a Petition for Determination of Appellate Attorney Fees with the trial court, which hearing was set for September 17,

2019, to determine the dollar amount of attorney fees to be imposed upon Newman in both of his Appeals. In his Petition, York requested an award of appellate attorney fees against Newman in the two Appeals for **453.2 hours at \$375.00 per hour**, totaling **\$169,950.00**.

On September 2, 2019, Newman filed his Verified Response to Robert W. York's "Personal Representative's Verified Petition for Determination of Appellate Attorney Fees" in the trial court, challenging both the amounts charged by York and York's proffered documentation in support of his fee request. In particular, Newman argued that, *inter alia*:

(1) York's requested fees were intolerably inflated, as he requested attorney fees in excess of \$1,000.00 per page for some of his appellate filings;

(2) York's total amount of fees requested of \$169,950.00 far exceeded the total value of the Al Katz Estate, which was approximately an estimated \$10,000.00 at the time York made his charges;

(3) York charged for legal work unrelated to the Estate of Al Katz;

(4) York sought an award of attorney fees of \$169,950.00, which was far in excess of the total financial exposure of the Estate by the administrative expenses Newman sought to be paid in his Appeals of \$104,441.01;

(5) the Affidavit of York's expert witness, Karl Mulvaney, was not verified, was not based upon personal knowledge, and was based upon facially-false factual errors;

(6) York never offered his Appellate Time Records into evidence at the fee hearing, so there was no evidence on the record to support the trial court's

findings regarding York's claimed fees; nevertheless, the trial court falsely stated in its Judgment of Attorney's Fee Award that York's Appellate Time Records had been admitted into evidence.

Newman cited *Hensley v. Eckerhart*, 461 U.S. 424,434 (1983), for the maxim that "Hours that are not properly billed to one's client also are not properly billed to one's adversary." Newman thus argued that an Indiana lawyer cannot ethically charge a client over \$65,000.00 more in appellate attorney fees than the amount of money for which the attorney's client (the Estate) could have been liable had it not defended the Appeal, and over \$150,000.00 more in appellate attorney fees than the Estate was worth.

In this respect, York's requested appellate fees exceeded the financial exposure of the Estate in the subject Appeals - the administrative expenses and fees of Lawrence Newman - by over 60% and York's requested fees exceeded the current value of the Estate by well over 1,700%.

Newman did not appear at the trial court's fee hearing, but rested upon his Verified Response that was submitted to the trial court under oath subject to penalties of perjury.

On October 22, 2019, the trial court issued its Judgment of Appellate Attorneys Fees Award, granting \$167,437.50 in appellate attorney fees to York, which amount subtracted only 6.7 hours of wholly-unrelated legal work from York's requested amount of fees.

Newman appeals the trial court's award of \$167,437.50 in appellate attorney fees to York as a gross violation of Newman's Constitutional rights to due process because said fee award was not only an unconstitutional abuse of power by the trial court, it was based upon and derived from unconstitutional prior actions and inactions by the trial court, the Indiana Court of Appeals, and the Indiana Supreme Court, *inter alia*, denying Newman his Constitutional rights to access to the Courts and to redress of grievances.

REASONS FOR GRANTING THE WRIT

1. The award of extraordinary punitive appellate attorney fees of \$167,437.50 against Newman based upon Newman's Constitutionally-protected assertions of his due process rights to a hearing on the merits violates the Fourteenth Amendment's Due Process Clause and other Constitutional provisions.

This case concerns a first impression issue of the deprivation of due process by the impositions of extraordinary appellate attorney fees as a punishment because of a litigant's repeated Constitutionally-protected attempts at all levels of the state courts to obtain a hearing on issues of substantial property rights.

While this Court has considered many cases dealing with the issue of the right to an award of appellate attorney fees, and while this Court has also considered many cases of due process considerations dealing with issues of sufficiency of notice, timing of

hearings, and the substance of hearings, this case presents the unique circumstance where a litigant is assessed an extraordinary amount of appellate attorney fees (\$167,437.50) because of his Constitutionally-protected efforts over a period of years to obtain his likewise Constitutionally-protected right to present his case on the merits in a hearing in a court of law on property right claims totaling over \$100,000.00., an egregious denial of the fundamental Constitutional rights to due process, access to the courts, and redress of grievances enacted in the Bill of Rights over two centuries ago.

While this Court has multiple times considered the issue of the right to be awarded attorney fees, it has never considered the right not to be assessed attorney fees when such fees were assessed against a party due to his assertion of Constitutionally-protected rights.

Specifically, this Court has considered the issue of the right to an award of attorney fees in numerous cases. See, *inter alia*, *Alyeska Pipeline Service Company v. The Wilderness Society, et al.*, 421 U.S. 240, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975); *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983); *Martin v. Franklin Capital Corp.*, 163 L.Ed.2d 547, 546 U.S. 132, 126 S. Ct. 707 (2005); and *Octane Fitness, LLC v. Icon Health*, 134 S.Ct. 1749, 188 L.Ed.2d 816, 82 USLW 4330 (2014).

None of the above cases considers the issue brought before this Court herein: whether attorney fees can Constitutionally be assessed against a litigant for the litigant's assertion of his own Constitutional

right to a hearing on the merits of his claims, particularly when the courts assessing the attorney fee awards fail to articulate any of the required bases for making such awards of fees.

As recounted above, Newman spent years attempting to obtain a single hearing in the trial court on his six administrative expense claims in the Estate of Al Katz, but the trial court initially refused to even hold a hearing and then afterward repeatedly falsely claimed that such a hearing had already been held and that Newman's subject claims had already been denied or dismissed. The trial court's position was clearly wrong, both factually and legally, as the trial court's own CCS record established conclusively that no such hearing had ever taken place and that likewise, no such denials or dismissals had ever been ordered.

In this respect, Ind. Trial Rule 77(B) provides in pertinent part (emphasis added):

Chronological Case Summary (CCS).
For each case, the clerk of the circuit court shall maintain a sequential record of the judicial events in such proceeding The judge of the case shall cause CCS entries to be made of all judicial events. Notation of judicial events in the CCS shall be made promptly, and shall set forth the date of the event and briefly define any documents, orders, rulings, or judgments filed or entered in the case

.... The CCS is an official record of the trial court

Further, Indiana law provides that: "a court is deemed to have decided on the date the decision is noted in the Chronological Case Summary." Ind. Trial Rule 53.2(C).

As noted above, while trial court Judge Joven insisted for years that Newman's administrative expense Motions had been previously denied or dismissed, Newman thereupon repeatedly asked the trial court to specify the date and content of said purported court Orders, as such Orders did not appear on the trial court's CCS, but Judge Joven never so specified.

Likewise, the Indiana Court of Appeals, in two separate Appeals by Newman, while assessing appellate attorney fees against Newman by adopting the trial court's position that Newman Motions had at some time been denied or dismissed, likewise would not specify any of the purported Orders or actions of the trial court, and assessed fees without stating any wrongdoing by Newman to justify said fee assessments.

Lastly, the Indiana Supreme Court, while denying Newman's Petition To Transfer, nonetheless assessed its own appellate attorney fees against Newman, once again without specifying any wrongdoing by Newman to justify said assessment of fees, and further without comment on the issue of the failures of the Indiana courts at both the trial court and the appellate levels to identify any actual action,

Order, or hearing by the trial court that denied or dismissed Newman's subject Motions for administrative expenses.

The result of these combined actions/inactions by the Indiana courts at all three levels of the state judiciary - trial, appellate, and Supreme Court - was to deny Newman of his Constitutional right to a hearing on the merits of his subject Motions for administrative expenses totaling \$104,441.01, while penalizing Newman for his years' long assertions of his Constitutional right to a hearing by seeking justice from Indiana's appellate courts.

The right to a hearing on the merits in a court for the redress of grievances is inviolate and stretches back centuries in Constitutional law. Over 150 years ago, even prior to the enactment of the Fourteenth Amendment, in *Baldwin v. Hale*, 68 U.S. 223 (1 Wall. 223, 17 L.Ed. 531) (1863), this Court clearly recognized the right of a litigant in American courts to have his case actually heard as established in cases dating back to 1850.

Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defence. *Nations et al. v. Johnson et al.*, 24 How., 203; *Boswell's Lessee v. Otis et al.*, 9 How., 350; *Oakley v. Aspinwall*, 4 Comst., 514.

In the present case, Newman was "condemned in his ... property ... without notice and an

opportunity to make his defence" twice by the Indiana courts - first, by the courts' repeated denials of Newman's right to a hearing on his administrative expense Motions, and second, by imposing \$167,437.50 in appellate attorney fees against Newman without notice of any legal grounds for imposing said penalties against Newman for his acts of seeking justice though his legal right to appeal in Indiana's appellate courts.

In these respects, the Indiana Constitution guarantees Newman the "absolute right to one appeal." Ind. Const. art. VII, §6, but Newman's rights to appeal were denied to him because: (1) the appellate courts refused to confront on the merits the trial court's documented failure to provide Newman with his Constitutionally-protected right to a hearing on the merits; and (2) the Indiana appellate courts punished Newman for asserting his appellate rights by imposing without stated legal cause extraordinary appellate attorney fees.

"[S]ome form of hearing is required before an individual is finally deprived of a property [or liberty] interest," *Mathews v. Eldridge*, 424 U.S. 319,333 (1976), but no hearing was required for Newman before he was deprived of his administrative expense claims.

"Both liberty and property are specifically protected by the Fourteenth Amendment against any state deprivation which does not meet the standards of due process" *Giaccio v. State of Pennsylvania*, 382 U.S. 399 (1966).

In this case, the Indiana courts twice did not "meet the standards of due process" in their imposition of \$167,437.50 in attorney fees against Newman, in their failure to give Newman a hearing and in their imposition of fees upon Newman without any stated legal cause. Said imposition of fees without stated legal cause further impacted Newman's due process rights because he was hamstrung in opposing said fee assessments because he never knew the reason why he was being punished with the massive penalty of \$167,437.50 in appellate attorney fees.

"[F]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights," *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123,170 (1951), but Newman was assessed over \$165,000.00 in appellate attorney fees by multiple Indiana appellate courts without once being notified by said courts of the legal reasons why he was being penalized.

The deprivation of property interests without due process, and the requirement for an actual hearing and decision on the merits of a controversy are cornerstones of this Court's principles and practice, and this Court has explicated the various requirements of due process of law in a myriad of cases over decades of decisionmaking.

Due process has been interpreted by this Court as preventing the states from denying litigants use of established adjudicatory procedures, when such an action would be "the equivalent of denying them an

opportunity to be heard upon their claimed right[s]."
Boddie v. Connecticut, 401 U.S. 371,380 (1971).

The essence of due process is the requirement that "a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it." *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123,171 (1951) (Frankfurter, J., concurring).

In *Marshall v. Jerrico*, 446 U.S. 238 (1980), this Court held:

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decisionmaking process. See *Carey v. Piphus*, 435 U.S. 247, 259-262, 266-267 (1978)

We have employed the same principle in a variety of settings, demonstrating the powerful and independent constitutional interest in fair adjudicative procedure. Indeed, "justice must satisfy the appearance of justice," *Offutt v. United States*, 348 U.S. 11,14, (1954)

At all judicial levels, the State of Indiana has demonstrated that certain persons are not entitled "to an impartial and disinterested tribunal ... [a] requirement of neutrality ... the prevention of unjustified or mistaken deprivation." In the instant case, Newman is a publicly-known adversary of child predators and their enablers, for which actions Robert W. York fired Newman prior to York's appointments as Estate attorney and Personal Representative. It was Newman and his wife who first publicly exposed the serious child abuse occurring at the Indianapolis Jewish Community Center, where numerous convicted predators frequented, including Jared Fogle, having preyed upon children globally as the spokesman for Subway restaurants. Thus, Newman has been targeted for years by the Indiana courts where Robert W. York is well-known.

"It is a violation of due process for a state to enforce a judgment against a party to a proceeding without having given him an opportunity to be heard sometime before final judgment is entered." *Postal Telegraph Cable Co. v. Newport*, 247 U.S. 464,476 (1918).

In the Indiana courts, for Newman, who publicly exposed child abuse at an influential site, the state has proven that it will "enforce a judgment against a party to a proceeding without having given him an opportunity to be heard" and punitively deprive him of hundreds of thousands of dollars without access to the courts or opportunity to redress grievances.

Indeed, the failures of the trial court, the Indiana Court of Appeals, and of the Indiana Supreme Court to afford Newman the most rudimentary aspects of due process are direct affronts to the basic characteristics of due process long established by this Court. The trial court refused to allow Newman to have a hearing on a single one of his six administrative expense Motions. The Court of Appeals compounded the state's deprivation of Newman's due process rights by denying Newman the opportunity for an appeal on the merits, The Indiana Supreme Court further compounded the deprivations of Newman's due process by refusing transfer, thus in essence confirming the lower courts' deprivations of Newman's Constitutional due process rights, but nonetheless imposing additional appellate attorney fees against Newman..

Due process rights are considered as so fundamental that they are guaranteed in multiple clauses in the United States Constitution. See *Christopher v. Harbury*, 536 U.S. 403,415 n.12 (2002) (holding the right to be "grounded in the Article IV Privileges and Immunities Clause, the First Amendment Petition Clause, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection and Due Process Clauses."). See also *id.* at 415 (access to the courts is a "fundamental right" that is a "separate and distinct right to seek judicial relief for some wrong.").

"[T]he Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as

plaintiffs attempting to redress grievances.” *Logan v. Zimmerman Brush Co.*, 455 U.S. 422,429 (1982).

Due process rights are the type of “fundamental rights” that are both “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.” *Washington v. Glucksberg*; 521 U.S. 702,720-21 (1997).

Ultimately, on the foundation of the multiple deprivations of Constitutional due process owed to Newman by the Indiana trial court, Court of Appeals, and Supreme Court, in denying Newman his right to a hearing on the merits of his administrative expense Motions and by the repeated impositions of appellate attorney fees awards without any findings of wrongdoing by Newman and without any of the necessary findings to support said fee awards, the trial court thereafter charged appellate attorney fees against Newman in the exorbitant total amount claimed by York of \$167,437.50. Because the assessment of attorney fees against Newman by the trial court were based upon violations of his Constitutional due process rights as a punishment for Newman’s attempts at three levels of Indiana’s courts to exercise his Constitutional rights to a hearing on the merits of his claims, the award of attorney fees of \$167,437.50, far in excess of the worth of the Estate, was in itself an additional violation of Newman’s Constitutional due process rights.

“For while an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected

statutory or constitutional right.” *United States v. Goodwin*, 357 U.S. 368,372 (1982).

This Court has stated that “some errors are so fundamental and pervasive that they require reversal without regard to the facts and circumstances of the case.” *Young v. U.S. ex rel. Vuitton*, 481 U.S. 787,810 (1987). An error is fundamental if it undermines confidence in the proceeding. *Id.*, at 812-813.

Due to the pervasive and fundamental errors committed in violation of Newman’s Constitutional due process rights by all three levels of Indiana state courts in denying Newman of his right to a hearing on the merits, of denying Newman appeals on the merits, and of imposing an extraordinary punitive penalty of \$167,437.50 against Newman without any findings of wrongdoing and in the absence of any stated legal justification for such a penalty imposed upon Newman because he exercised his Constitutional right to obtain a hearing on the merits, this Court should grant Newman’s Writ of Certiorari and reverse the judgment of attorney fee award by the Indiana courts.

It is small wonder that for decades, crimes against children were covered up by sports organizations headquartered nearby the three levels of courts sited in Indianapolis, crimes so widespread and severe involving thousands of children that made headlines worldwide, crimes covered up by codes of silence imposed by Indianapolis leaders.

2. The imposition by the trial court of \$167,437.50 in appellate attorney fees against Newman upon assessments by the Indiana Court of Appeals and the Indiana Supreme Court, without any necessary findings of wrongdoing by Newman to justify said imposition of appellate attorney fees violates the Eighth Amendment's Excessive Fines Clause, the Fourteenth Amendment's Privileges and Immunities Clause, and the Fourteenth Amendment's Due Process Clause and other Constitutional provisions.

The trial Court's imposition upon Newman of an appellate attorney fee judgment of \$167,437.50 violates the Eighth Amendment's Excessive Fines clause and the excessive fines clause in the Indiana Constitution.

Excessive bail shall not be required, nor
excessive fines imposed,....
U.S. Const. amend. VIII

"The phrase 'nor excessive fines imposed' limits the government's power to extract payments, whether in cash or in kind, as punishment for some offense." *United States v. Bajakajian*, 524 U.S. 321,327-328 (1998). The Fourteenth Amendment incorporates this protection against the states. *Timbs v. Indiana*, 586 U.S. ____ (2019).

Likewise, the trial court's Judgment violates the Indiana Constitution, which provides:

Excessive fines shall not be imposed.
Ind. Const. art I, §16.

Indiana's Supreme Court has held that the Indiana Constitution should be interpreted to impose the same restrictions as the Eighth Amendment. *Norris v. State*, 394 N. E. 2d 144,150 (1979).

"The protection against excessive fines has been a constant shield throughout Anglo-American history: Exorbitant tolls undermine other constitutional liberties Protection against excessive punitive economic sanctions secured by the Clause is, to repeat, both 'fundamental to our scheme of ordered liberty' and 'deeply rooted in this Nation's history and tradition.'" *Timbs v. Indiana*, 586 U.S. ____ (2019).

For all of the reasons stated hereinabove, which are fully incorporated herein, the trial court's Judgment imposing a \$167,437.50 fee award was an "excessive fine" against Newman and violated Newman's federal and state Constitutional rights against excessive fines.

In addition to violating Newman's federal and state Constitutional rights against excessive fines, the trial court's Judgment imposing a \$167,437.50 fee award violated Newman's Constitutional rights under the Privileges or Immunities Clause of the Fourteenth Amendment.

...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States

....
U.S. Const. amend. XIV, §1

"I would hold that the right to be free from excessive fines is one of the 'privileges or immunities' The Constitution of Indiana provides that: ... 'All courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay'" (Article 1, § 12); These provisions of the Constitution are a part of the fundamental law of the state, declared by the people themselves acting in their sovereign capacity. *Ellingham v. Dye* (1913), 178 Ind. 336, 99 N.E. 1, Ann. Cas. 1915C 200. As such they are entitled to strict construction. *Lafayette, Muncie, and Bloomington R.R. Co. and Another v. Geiger* (1870), 34 Ind. 185. It has been said that the language of each provision of the Constitution is to be considered as though every word had been hammered into place. *State ex rel. Hovey v. Noble* (1888), 118 Ind. 350, 353, 21 N.E. 244.

Uniformity in the interpretation and application of the law is the keystone of our system of jurisprudence.... *Id.*, 217 Ind. 93 at 107-112, 26 N.E.2d 399 (Ind. 1940).

When the Fourteenth Amendment was ratified, "the terms 'privileges' and 'immunities' had an established meaning as synonyms for 'rights.'" Those "rights" were the "inalienable rights" of citizens that had been "long recognized," and "the ratifying public understood the Privileges or Immunities Clause to protect constitutionally enumerated rights" against

interference by the States. *Timbs v. Indiana*, 586 U.S. ____ (2019), J. Thomas, concurring, citing *McDonald v. Chicago*, 561 U. S. 742 (2010).

The prohibition on excessive fines is a right that “operates, as a qualification upon powers, actually granted by the people to the government”; without such a “re-strict[ion],” the government’s “exercise or abuse” of its power could be “dangerous to the people.” 3 J. Story, *Commentaries on the Constitution of the United States* §1858, pp. 718–719 (1833).

The attention given to abusive fines at the time of the Fourteenth Amendment, along with the ubiquity of state excessive-fines provisions, demonstrate that the public continued to understand the prohibition on excessive fines to be a fundamental right of American citizenship. *Timbs v. Indiana*, 586 U.S. ____ (2019), J. Thomas, concurring.

Because Newman’s right to be free from “excessive fines” is a fundamental right under the U.S. Constitution and is one of the “privileges or immunities” guaranteed to Newman by the Fourteenth Amendment, for all of the reasons stated herein above, which are fully incorporated herein, the trial court’s Judgment violated Newman’s Constitutional rights under the Fourteenth Amendment’s “Privileges or Immunities Clause.”

The trial court further deprived Newman of his Constitutional rights by imposing \$167,437.50 in appellate attorney fees without any stated legal justification by the appellate courts that had awarded

the penalty because Newman had asserted his both his federal and state Constitutional rights to a hearing and his Indiana state Constitutional right to a substantive appeal on the merits.

The Indiana Constitution guarantees Newman the "absolute right to one appeal." Ind. Const. art. VII, §6.

Our courts are the bulwark, the final authority which guarantees to every individual his right to breathe free, to prosper and be secure within the framework of a constitutional government. *State ex rel. Fifer*, 234 Ind. at 181-82, 125 N.E.2d at 714. *Noble County Council v. State ex rel. Fifer*, 234 Ind. 172, 180, 125 N.E.2d 709, 713 (1955).

Notwithstanding Newman's state Constitutional "absolute" right to an appeal and his right to "prosper and be secure within the framework of a constitutional government," the Indiana Court of Appeals dismissed Newman's first subject Appeal without any stated legal justification for said dismissal and denied Newman's second Appeal based upon a previous untimely interlocutory Appeal by Newman on a separate legal issue that had been dismissed "with prejudice," even though the only basis for said dismissal was its untimeliness as an interlocutory Appeal, even though the parties had never filed briefs or submitted arguments on the merits, and even though the Court of Appeals never made a decision on the merits of the aborted Appeal.

In construing the Indiana Constitution, we look to "the language of the text in the context of the

history surrounding its drafting and ratification, the purpose and structure of our constitution, and case law interpreting the specific provisions." The "first line of inquiry in any constitutional case" is the text of the constitution itself. *State v. Monfort*, 723 N.E.2d 407,409-10 (Ind. 2000).

By dismissing Newman's prior time-barred interlocutory Appeal "with prejudice," the Court of Appeals violated Newman's Constitutional "absolute right to one appeal" under the Indiana Constitution and Newman's due process rights under the Indiana and federal Constitutions.

Under Indiana law, even though Newman's prior Appeal may have been filed too late to perfect an interlocutory Appeal, Newman still retained the right to file an Appeal at the conclusion of the case on the same legal issue; thus, the Court of Appeals' dismissal of the time-barred interlocutory Appeal "with prejudice" was not only in error, it served to deny Newman his due process rights. See *Kindred v. Townsend*, 4 N.E.3d 793 (Ind.Ct.App. 2014), in which the court held:

...our supreme court has held that "[a] claimed error in an interlocutory order is not waived for failure to take an interlocutory appeal but may be raised on appeal from the final judgment." *Bojrab v. Bojrab*, 810 N.E.2d 1008, 1014 (Ind. 2004) (citing *Georgos v. Jackson*, 790 N.E.2d 448, 452 (Ind. 2003)). Thus, the Kindreds may attack the trial court's interlocutory orders on appeal from the

final judgment. See *id.* But we hold that they have forfeited their right to an *interlocutory* appeal by failing to timely appeal the trial court's entry of the preliminary injunction.

The Court of Appeals' Order dismissing Newman's untimely interlocutory Appeal with prejudice, which decision the Court of Appeals referenced as the *res judicata* basis for denying Newman an Appeal on its merits in his second Appeal, unconstitutionally denied Newman his inviolate right to an Appeal as guaranteed by the Indiana Constitution. In its Order in *Warren v. Indiana Telephone Co.*, 217 Ind. 93, 26 N.E.2d 399 (Ind. 1940), the Indiana Supreme Court recognized:

In Newman's case, "All courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law" does not apply; for Newman has publicly sought to prevent injury done to children, for which he has been glaringly denied "remedy by due course of law." Indiana stands as a bastion of protection for child predators and deprivations of child advocates.

In sum, the Indiana Court of Appeals twice denied Newman his state Constitutional right to an appeal on their merits concerning the Indiana courts' prior denials of his Constitutional due process rights to a hearing on the merits of his administrative expense claims, and then severely punished Newman with multiple fines of appellate attorney fees

ostensibly because he had sought to enforce his Constitutional rights to a hearing and to substantive Appeals.

"For while an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right." *United States v. Goodwin*, 357 U.S. 368,372 (1982).

The trial court's penal award of \$167,437.50 in attorney fees against Newman was intended to and caused him to be "**punished for exercising a protected „constitutional right,**" which punishment was in itself a violation of Newman's Constitutional rights to be free from such governmental oppression.

The trial court's \$167,437.50 appellate fee award against Newman was clearly punitive on several bases. First, said amount is an extraordinary sum for a single attorney to charge for two Appeals, averaging to over \$80,000.00 in appellate fees per Appeal, when the appellate attorney was also the trial attorney, and therefore was fully informed about the case below in preparing the Appeals.

Second, York's requested fees were intolerably inflated, as he requested attorney fees in excess of \$1,000.00 per page for many of his appellate filings.

Third, the \$167,437.50 in fees awarded to York far exceeded the total value of the Al Katz Estate, which was an estimated \$10,000.00 at the time York made his charges.

Fourth, the \$167,437.50 in attorney fees awarded was far in excess of the \$104,441.01 sought by Newman in his Appeals.

Fifth, York never offered his Appellate Time Records into evidence at the fee hearing, so there was no evidence on the record to support the trial court's findings regarding York's claimed fees; nevertheless, the trial court falsely stated in its Judgment of Attorney's Fee Award that York's Appellate Time Records had been admitted into evidence and awarded \$167,437.50 in fees completely unsupported by evidence.

Importantly, since January 2015, six-and-a-half years ago, York has never filed an Estate accounting, and Judge James Joven has denied Newman's request for same.

The problem of disproportionate awards of attorney fees dates back nearly two centuries, as exemplified in the *Remarks of Senator Bradbury*, Cong. Globe App., 32d Cong., 2d Sess., 207 (1853) (emphasis added):

It is not only the officers of the courts, but the suitors also, that are affected by the present unequal, extravagant, and often oppressive system. 'The abuses that have grown up in the taxation of attorneys' fees which the losing party has been compelled to pay in civil suits, have been a matter of serious complaint in some cases those costs have been swelled to an amount exceedingly oppressive to suitors, and

altogether disproportionate to the magnitude and importance of the causes in which they are taxed, or the labor bestowed.

In the 21st century, the problem of assessment of attorney fees in the absence of findings has recently been recognized by the U.S. Supreme Court (emphasis added):

Hence, a plaintiff should not be assessed his opponent's attorney's fees unless a court finds that his claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so. *Martin v. Franklin Capital Corp.*, 546 U.S. 132 (2005).

In Newman's case, no appellate court assessing attorney fees ever found that Newman's subject Appeals were "frivolous, unreasonable, or groundless" or brought "in bad faith" as grounds for imposing said sanction, thus clearly violating Newman's due process rights.

The refusal to supply readily available evidentiary support for a conclusion strongly suggests that the conclusion is, well, unsupported. See, e.g., *Interstate Circuit, Inc. v. United States*, 306 U. S. 208, 226 (1939) *Biesteck v. Berryhill*, 587 U. S. ____ (2019), Justice Gorsuch, dissenting.

This Court ruled in *Hensley v. Eckerhart*, 461 U.S. 424,433 (1976):

Although the trial court must ultimately calculate the amount of reasonable attorney's fees, the prevailing party has the burden of proving that the amount requested is reasonable.

By any legitimate standard, the \$167,437.50 assessed against Newman, far in excess of the amount of expenses sought by Newman, far in excess of the value of the Estate, billed at a rate of \$1,000.00 per page, and unsupported by admissible evidence, was not "reasonable."

For a frank appraisal summing up the types of unsupported determinations against Newman in the proceedings in all levels of the Indiana courts culminating the fee award of \$167,437.50, all of which determinations violated Newman's due process rights as discussed herein, see *Zelman v. Zelman*, 175 So.3d 871 (Fla.Dist.Ct.App. 2015): "We note that the judgment here was infected by legal hocus pocus, containing findings so unsupported by the record as to be clearly erroneous."

CONCLUSION

In this case of first impression and in the interest of the public good, the Petition for Writ of Certiorari should be granted to correct the "fundamental and pervasive" errors of the Indiana trial court, the Indiana Court of Appeals, and the Indiana Supreme Court, all of whose factually and legally-unsupported decisions against Newman

culminated in the trial court's imposition of the punitive award of \$167,437.50 in attorney fees against Newman, all of which decisions so substantially violated Newman's Constitutional due process rights as to compel the complete reversal of the attorney fee award.

Respectfully submitted,

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