

21-7212

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

FEB 22 2022

OFFICE OF THE CLERK

KECIA PORTER, PETITIONER

V.

QUEEN CUNNINGHAM, RESPONDENT

On Petition for Writ of Certiorari  
To The Illinois Appellant/Supreme Court

PETITION FOR WRIT OF CERTIORARI

Kecia Porter

Pro Se

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## Questions Presented for Review

**Introductory Statement Question 1:** The question on appeal was one of law not procedural error. The State court failed to adjudicate the claim on the merits, as there is no review of **755ILCS 45/2-10** in the **Appellant Court's Summary Order**; thereby violating the Petitioners 5<sup>th</sup> and 14<sup>th</sup> rights to Due process and Equal protections under the law.

1. **Whether** the Petitioners 5<sup>th</sup> and 14<sup>th</sup> Amend. Rights were violated when the reviewing courts denied review on the merits of the case as the Petitioner argued a question of law, *De Novo* **"The court's interpretation of the statute is *clearly erroneous*."** determination that the court only needs to find (A) the principle lacked capacity to control or revoke agency **without subsection (B)** a agent's action or inaction threatens "substantial harm" to the principal pursuant **755ILCS 45/2-10** to revoke POA(Power of Attorney).

**Introductory Statement Question2:** The appellee's petition in the lower court claimed in 2018 Hardison lacked competency, without certification; there was no evidence or "cause of action." Violating Petitioner's due process and equal protection rights

2. Whether the trial court then violated Petitioner's right to due process when the Illinois Supreme court already *"precludes claims of incapacity as retroactive "* thereby, the appellee's petition to revoke POA is moot.

**Introductory Statement Question 3:** Is the Appellant Court allowed to "rephrase" the issues on appeal, evidence and or "cause of action" in an attempt to answer for an appellee who failed to file a brief or does this prejudice the Petitioner's ability to receive

a fair review, thereby violating the 5<sup>th</sup> and 14<sup>th</sup> amendments rights.

**3. Whether**

**an Appellant Court** interfered in the appeals process; is prejudicial and a violation of Petitioner's due process and 14<sup>th</sup> equal protection.

**Introductory Statement Question4:** The Petitioner paid for a partial transcript of proceedings and filed a docketing statement to reflect the request for the transcript but, the clerk failed to include it in the record on appeal, the thereby violating the Petitioner's right to due process. The higher court rejected choice of placing the transcript in the Appendix of the brief.

- 4. Whether the** Petitioners 5<sup>th</sup> and 14<sup>th</sup> Amendment rights to Due process and Equal protections when the request and payment for a partial transcript of the proceedings and notice had been given to all parties but, the clerk of the Court failed to add the transcript to the record thereby harmed the Petitioner's chance of reversal.

**Introductory Statement Question5:** Where an appellee has not filed a brief in the reviewing court, the appeal may be reversed without consideration of the cause on its merits but, the higher court answered for the Appellee, violating Petitioners right to due process and equal protection.

- 5. Whether the** Petitioner's 5<sup>th</sup> and 14<sup>th</sup> amendment rights were violated when the higher court failed to reverse or review the case on its merits as court may accept as true the statement of facts when the Appellee failed to participate in the appeals process.

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## Table of Authorities

### Statutes

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### LIST OF PARTIES

] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- Attorney Charles Rose  
1958 Aberdeen court, suite 2, Sycamore, IL.60178

### RELATED CASES

~~No directly cases -~~

Hardison, R  
Guardianship of Disable  
2020 P000044

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from state courts: Illinois Appellant and Illinois Supreme Court(s)  
The opinion of the highest state court to review the merits appears at  
Appendix to the petition and, ☒ is unpublished.  
The opinion of the court appears at Appendix  
to the petition and is ☒ is unpublished.

**Jurisdiction**

☒ For cases from state courts:  
The date on which the highest state court decided my case was November 24,2021  
A copy of that decision appears at Appendix D  
☒ A timely petition for rehearing was thereafter denied on the following date: July  
23,2021 and a copy of the order denying rehearing appears at Appendix B  
The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## Constitutional and Statutory Provisions Involved

**Fifth Amendment:** *No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor 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; nor shall private property be taken for public use, without just compensation.*

**Fourteenth Amendment:** *All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.*

**755ILCS 45/2-10:** (755 ILCS 45/2-10)Sec. 2-10. Agency-court relationship.

(a) Upon petition by any interested person (including the agent), with such notice to interested persons as the court directs and a finding by the court that the principal lacks either the capacity to control or the capacity to revoke the agency, the court may construe a power of attorney, review the agent's conduct, and grant appropriate relief including compensatory damages. (b) If the court finds that the agent is not acting for the benefit of the principal in accordance with the terms of the agency or that the agent's action or inaction has caused or threatens substantial harm to the principal's person or property in a manner not authorized or intended by the principal, the court may order a guardian of the principal's person or estate to exercise any powers of the principal under the agency, including the power to



revoke the agency, or may enter such other orders without appointment of a guardian as the court deems necessary to provide for the best interests of the principal.(c) If the court finds that the agency requires interpretation, the court may construe the agency and instruct the agent, but the court may not amend the agency.(d) If the court finds that the agent has not acted for the benefit of the principal in accordance with the terms of the agency and the Illinois Power of Attorney Act, or that the agent's action caused or threatened substantial harm to the principal's person or property in a manner not authorized or intended by the principal, then the agent shall not be authorized to pay or be reimbursed from the estate of the principal the attorneys' fees and costs of the agent in defending a proceeding brought pursuant to this Section.(e) Upon a finding that the agent's action has caused substantial harm to the principal's person or property, the court may assess against the agent ...attorney's fees to a prevailing party ...as defined in Section 2 of the Adult Protective Services Act, ... State Long Term Care Ombudsman...or a governmental agency having regulatory authority to protect the welfare of the principal.

## Statement of the Case

May 6, Appellee, Cunningham filed emergency petition for Guardianship of Hardison, a disabled adult(C6-7,Record) and a petition for temporary and plenary Guardianship of the person and estate(C9-11,Rec'd); the petition (s) was not served on Appellant, Porter. Porter held uncontested POA Agent for Hardison. May 7,2020 Attorney Rose file an appearance and counter-petition for Guardianship of estate and of Hardison on behalf of Mr. Elliott, these petition (s) were not served on Porter. May 8,2020 the court ordered the release of Hardison to Cunningham from the nursing facility and temporary Guardianship to expire in 60days (C30-31, Rec'd). July 2, 2020 the GAL filed her report with the court which the court sealed and impounded. Porter was never served copy of report (SEC Rec'd C4, C25-35). July 7,2020 Cunningham filed a Petition to Revoke POA and Review agents Conduct pursuant to 755 ILCS 45/2-10 (C48-51, Rec'd). The Petition alleged, (C48,#3, Rec'd)... *July 14,2019 Rosita's sibling had her execute a Power of Attorney... On information and belief, Kecia was aware of the Neuro-psych evaluation at the time she had Rosita execute that document.* That 2018 evaluation, was 2 years prior, that physician did not certify Hardison lacked capacity but finding were contrary; a diagnosis is not consistent with "*profound dementia*" but, consistent with *ICD10, F68.1fictitious disorder (SecC5,pg1, Rec'd). (SEC C6, para4, Comments): "she cooks, cleans, and pays her bills...in the absence of difficulties with activities of daily living, would not indicate dementia.* The evaluation suggested, diagnoses of "fictious disorder and malingering" disorders.

Porter was not served a copy of the "2018 Neurology Report" until filing her appeal. October of 2019, Hardison was diagnosed by her treating physician, Dr. Lipson, with early onset Alzheimer's, a licensed neurologist (SEC, C13 Assessment, line4-5, Rec'd). Dr. Lipson's report dated May 2019. (C113#4Rec'd)...she had already appointed Kecia Porter as her Power of Attorney ...had capacity to do so. The petition to Revoke POA held by Porter offered no "proof" or evidence of agent misconduct and no evidence was presented at trial. This too was corroborated by respondent, attorney Rose's Motion in support of Porter's Motion to Reconsider (C114#8Rec'd): ...counter-petitioner is in agreement with Kecia Porter's allegations in her Motion that there is no evidence or testimony establishing that she was not at all times acting in the best interests of the principle.... counter-petitioner, respectfully requests this court... Grant Kecia Porter Motion to Reconsider and Reverse court's ruling and deny Ms.. Cunningham's Petition to Revoke Power of Attorney as to Ms. Porter. On July 28, 2020 trial, no evidence physical or testimony of any financial, property or physical abuse of Hardison by Porter was presented to the court. There was absolutely no testimony of any "harm, substantial harm" of Porter to Hardison as required in subsection B pursuant to 755 ILCS 45/2-10. The judge announced he has "broad discretion" to revoke POA after finding Hardison lacked the capacity. Porter's POA was revoked. Porter filed a timely Motion to Reconsider, October 2, 2020 Porter's Motion to Reconsider was denied. The court's reasoning was mirrored and repeated "verbatim" recorded and transcribed during the Motion to Reconsider; finding that subsection B under 755 ILCS 45/2-5 need not

apply to revoke. Porter filed a timely appeal to the Illinois Appellant Court, requested and paid for partial transcripts of the Motion to Reconsider, filed a timely Docketing statement showing transcripts requested and sent copies to all parties involved in the case. Appellant included a copy of the transcripts in the Appendix of her Brief, as the clerk had not included any transcripts into the record on appeal. No Appellee brief was filed. The Appellant Court summary Order pg3para4: *The record on appeal does not contain any report of proceedings, so we cannot evaluate respondent's arguments... Footnote: In the appendix to her brief, respondent included a copy of the transcript of the trial court's ruling on her motion to reconsider. However, that is not a proper way to supplement the record on appeal.* Porter's argument on appeal is one of law, i.e, the Illinois Statute 755 ILCS 45/2-10. July 6,2021 The Appellant Court affirmed the lower court's decision. The summary order does not include any findings based on review of the merits of the case. Porter filed a timely request for Rehearing; asking for "leave to supplement" the record with trial transcripts or for the higher court to review the trial transcripts themselves and review the case on its merits. July 23,2021 the request was denied. Porter filed a Petition for Leave to Appeal to the Illinois Supreme Court citing, violations of due process and equal protections, review of case on the merits. The request was denied on November 24,2021 without written decision, *mandate of the court will issue to the Appellant Court on 12/29/2021..* Porter now makes this request to grant this Petition for Certiorari to Appeal to the United states Supreme Court.

## Reasons for Granting the Petition

I am asking the court to grant certiorari so that an injustice done can be corrected. Denying this request will gravely impact other families who embark on a private decision to appoint a Power of Attorney of one's own choosing while having the decisional capacity to do so. The purpose of an appointment of a POA for healthcare and or financial and real estate is so that the wishes of the principle can be fulfilled in the event their ability to reason has deteriorated. As the poor and indigent age, the only thing that they have left is the ability to make their own decisions. How can the United States say it stands for justice for all if this "unreasonable determination" made by the trial court is upheld and remains undisturbed when it "*is an invasion of the privacy that is implicit in a free society*". This is a simple matter before this Supreme Court. The lower court erroneously decided, pursuant to *755 ILCS 45/2-10*, "clearly written," that states, a court must include a finding under subsection B, without discretion; A finding of "substantial harm" or threat to the principle with "credible evidence", in order to revoke POA. The statute cannot exist without subsection B and "a finding of *substantial harm*." Other cases that also reject the courts, "interpretation of the statute or a lack evidence of "harm" that were contrary to the statute were later overturned: *Guardianship and Conservatorship of Amelia Hartwig, 11 Neb. App., N.W.2d, 4-04-10216 Estate of MARY ROSE DOYLE(2005), Estate of Beetler, 2017 IL App (3d), Supreme Court of Illinois 121241 Est. of Doris Shelton, Ruth Ann Alford vs. Rodney I. Shelton*. "A showing of abuse and or the threat of harm of the principle by the agent with evidence of violation of subsection B is considered contrary to the statute. The lower court's decision to revoke POA in order to appoint Cunningham guardian is contrary to the statute. The court here ruled that having already named agency prior to incapacity of the principle is considered a priority over a petition to appoint a guardian and or conservator. *In the Matter of Erma Z. Oliva, Incapacitated/ Disabled. John Oliva, Jr., R.W. Shakelford and Martha pollard, Limited Guardian and Conservator for Erma Z. Oliva*: The appellate court noted that Missouri law required the

appointment desired by an incapacitated person (prior to incapacity). The trial court erroneously allowed Cunningham to petition the court on the premise that Hardison was incapacitated since 2018, contrary to the Order of the Supreme Court of Illinois in this case: *Supreme Court of Illinois 121241 Est. of Doris Shelton, Ruth Ann Alford vs. Rodney I. Shelton*, Held: ...*Claims of incapacity are not retroactive. Reversed.* The Illinois Supreme Courts precludes "retroactive claims" of incompetency. (App. Court summary): ...according to the petition, Hardison lacked capacity to give respondent power of attorney. The decision by the lower court not only impacts and affects my life, it also impacts and affects the life of Hardison, "that is an invasion of the privacy that is implicit in a free society". If this decision stands it gives room for other judge's and other courts to "Reinterpret" statutes where plain language is written. This will eventually lead to an influx of appeals. This "misapplication" of this statute will have long lasting affects on families who make private life or after life decisions. I made promises to Hardison that I intended to keep but, the courts have made it impossible for those promises to be fulfilled. Her disease succeeds in taking the very best parts of her. When she asks where I am, she will not get a response rooted in truth. I implore this court not to allow another court to randomly destroy a promise made. Look at the statute and the lack of evidence of any wrongdoing. My claims are validated by Attorney Rose's own Motion to Reconsider that is part of the record. This court's review of the record will take a stand for justice for the poor and indigent but, more importantly you will send a message to Illinois that they must enforce their own statutes, laws and by laws as they should apply to all, even those who are petitioners and attorneys and no judge is above what is written, plainly written in the law. *Griffin v. Illinois, 351 U. S. 12; the decision of the Court of Criminal Appeals wholly denies any right of appeal to this impoverished petitioner, which the Fourteenth Amendment forbids...* Here a transcript stood in the way of justice and the truth, in the judges own words. Porter an indigent Pro Se litigant, requested, paid for a partial transcript of Motion proceedings however, the clerk never made this part of the record. Porter unknowingly placed the transcripts in the Appendix of her Brief. The court

suggested that this "no proper way to supplement the record on appeal." This became the focus for the Appellant Court to deny the Appellant's appeal, however, other court ruling is contrary to this as they allow "leave to supplement" the record on appeal: Rule 900.2(f)(2) *Appellant Review for Florida: If the court finds the record is incomplete, it shall direct a party to supply the omitted parts of the record. No proceeding shall be determined, because of an incomplete record, until an opportunity to supplement the record has been given.* But, upon a petition for Rehearing, the court denied Leave to supplement the record. The court should not ignore or penalize Pro Se litigant for "improper placement of transcripts" or the clerks inability to "properly provide transcripts already paid for" in the record on appeal. This should not negate the responsibility of the court" for a fair assessment of the case in the name of justice. If the higher court feels the deficiency is the need for a "complete record of proceedings," rejecting the notion that a case may not proceed without a transcript, the court should allow appellant the right to supplement the record. Supreme Court already rejects the notion that a case may not proceed on review without a transcript, especially if that argument is one of law. Therefore, this court should find that any transcript of the court proceedings is 100% acceptable, even if it is unknowingly placed in the Appendix of a Brief. This case was not reviewed on its merits. This is contrary to other cases: *Maynard v. Parker* (1977), Ill. App. 3d, *Woodfield Ford, Inc. v. Akins Ford Corp.*, NE 2d Ill: App. Court, 1st Dist. (1979), *Chicago City BK. & Trust CO. v. Wilson*, NE 2d, Ill: Appellate Court, 1st Dist. (1980). I urge the court to allow a paid copy of transcripts of proceedings outside of criminal cases, when the court is requiring it and or the Appellant is indigent. In the name of "equal opportunity," just as in criminal cases, there should be reduced or free copy of the proceedings without destinations or hesitation. These are most compelling reasons for this court to exercise discretionary jurisdiction because if the statute is clearly written, no ambiguity and not subject to interpretation, then a court is in clear violation of Due Process, Equal Protection and interruption of life, liberty and the pursuit of happiness. This court keeps a watchful eye on other courts therefore, should grant this Petition for Certiorari.

**In Conclusion:** No one should be denied due process or equal protection because they are Pro Se and indigent. The statute, *755 ILCS 45/2-10* is clear and must include subsection B. Although, this Appellant paid for partial transcripts the clerk of the court failed to add them to the record. The Appellant received not review on the merits. The U.S. Supreme Court along with other courts, allow a case to proceed on its merits. Respectfully, this Appellant asks this court to grant this Petition for Certiorari

Kecia Porter/Appellant

Date: 2/22/2022

*Kecia Porter / petitioner*