No. 21-897

In the Supreme Court of the United States

BRIAN BENSON AND JOHN BENSON,

Petitioners,

v.

ANN KEMSKE AND JON KEMSKE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

JOHN BENSON
PETITIONER PRO SE
12200 MARION LANE WEST #5309
MINNETONKA, MN 55305
(651) 324-1255
1.JOHN.BENSON@GMAIL.COM

BRIAN BENSON
PETITIONER PRO SE
3372 REED WAY
PRIOR LAKE, MN 55372
(651) 587-1986
BRIANJ.BENSON@YAHOO.COM

DECEMBER 6, 2021

QUESTIONS PRESENTED

1. Whether pro se litigants in civil cases in federal court are entitled under the due process clause to have their pleadings liberally construed by the courts, and were denied by the District Court to Petitioners.

2. Whether it is reversable error when a Federal Judge dismisses a case in its entirety upon a motion to dismiss the entire complaint for *res judicata* that only applies to one count of the amended complaint for fraud and conversion, thereby denying due process and equal protection under the Fourteenth Amendment to be heard on the original action for a Declaratory Judgment that was also included in the amended complaint.

3. Whether in an action in equity to quiet title to mineral acres in North Dakota that a subsequent *res judicata* argument applies to that equitable action with the argument that fraud should have been raised in the title action even though the North Dakota statutes on quiet title actions specifically only allows money damages for improvements to property. Not any other counter claims or cross claims for monetary damages.

4. Whether the abject failure of both the state and federal courts to provide due process to the Bensons is a chilling example of the failure of the Judicial system to provide fundamental rights for all pro se litigants across the country compelling the U.S. Supreme Court to address this national problem in the failing of the judiciary to provide due process and equal protection.

PARTIES TO THE PROCEEDINGS

Petitioners

- Brian Benson
- John Benson

Respondents

- Ann Kemske
- Jon Kemske

LIST OF PROCEEDINGS

United States Court of Appeals for the Eighth Circuit

No. 20-2943

John Benson; Brian Benson, *Plaintiffs-Appellants v.* Family Tree Corporation, Inc.; Desert Partners IV, L.P., *Defendants*; Ann Kemske; Jon Kemske, *Defendants-Appellees*; Brigham Oil & Gas, LP; Oasis Petroleum Incorporated, *Defendants*; Jodee Lawler; Carolyn Probst; Judge Robin Schmidt, *Movants*

Date of Final Opinion: September 7, 2021

United States District Court, District of Minnesota

Civil File No. 17-3839 (MJD/DTS)

John Benson and Brian Benson, *Plaintiffs v.* Ann Kemske and Jon Kemske, *Defendants*

Date of Final Order: August 18, 2020

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PETITION FOR A WRIT OF CERTIORARI

Brian Benson and John Benson pro se co-plaintiffs petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit, dated September 7, 2021, is included below at App.1a. The final order of the United States District Court for the District Court of Minnesota, dated August 18, 2020 is included below at App.12a.

JURISDICTION

The Eighth Circuit's entered judgment on September 7, 2021. (App.1a).

This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A. Introduction

This lawsuit commenced in McKenzie County District Court in the State of North Dakota. A quiet title action was brought by two oil companies seeking to quiet title in 160 acres of mineral rights originally conveyed by Elmer A, Benson to his five grandchildren; Edward Benson, John Benson, Louise Benson (Kack), Geri Benson, and Ann Pflueger (Kemske). Elmer Benson conveyed 50,000 acres as an undivided interest of 20% to each grandchild of mineral rights in 30 counties located in North Dakota and Montana in two deeds containing many legal descriptions.

During the pending lawsuit over the 160 acres, John Benson brought an action in the Minneapolis Federal District Court for a Declaratory Judgment on the 50,000 mineral acres seeking a Judgment that the mineral acres were granted and conveyed as undivided interests and could not be divided and conveyed separately without the consent of all the undivided property owners excepting therefrom family members.

Ann Kemske and Jon Kemske, conveyed some mineral acres to Thomas Benson, Elmer Benson's son and John Benson's father for $100,000 in 1990. Thomas Benson subsequently conveyed the subject matter 160 acres to John Bensons and Brian Benson his grandson petitioners in this action. However, Thomas Benson forgot to record the deed to John and Brian Benson, and Ann Kemskey sold her 20% interest in the 160 acres a second time to an oil company who

in turn sold part of that interest to another oil company the same day.

The oil companies sought to quiet title as good faith purchasers for value under the North Dakota Century Code governing quiet title cases. They claimed they did not know of the conveyance from Ann Kemske to Thomas Benson before she conveyed the same interest to them and therefore were entitled to be the title owners of the property.

B. Court Proceedings

John Benson had filed the Federal action in Minneapolis pending before the title was settled in North Dakota, and upon the oil companies prevailing in North Dakota state district court action amended his complaint in Minneapolis Federal Court to include an action for fraud and conversion against the Kemskes. Kemske's attorney David McLaughlin stipulated to the amended Complaint that included punitive damages for conversion of the mineral acres.

However, the Kemskes failed to file an answer to the amended complaint for over 5 months. Therefore, John and Brian Benson filed a motion for default for failure to answer the amended complaint in compliance with the Federal Rules of Civil Procedure. In the meantime, Kemskes filed a motion to dismiss the complaint by reason of *res judicata* claiming Bensons should have filed for fraud in a cross claim against Kemskes the North Dakota Equity Quiet Title case. Bensons filed a memorandum in opposition and the Magistrate Judge David Schultz filed and Order and Recommendation to deny Kemskes motion and continue with the amended complaint including the count for fraud and conversion. Kemskes filed an objection.

Three days before the hearing on Bensons motion for default for failure for Kemskes to answer the amended complaint Judge Miles Davis granted Kemskes motion disagreeing with Magistrate Judge Schultz finding *res judicata* applied. Bensons filed Rule 59(e) motion to Alter or Amend the Judgment and Judge Michael J. Davis. Sr denied their motion.

Bensons filed an appeal to the 8th circuit court of appeals where the 8th circuit upheld Judge Davis's Judgment in the District Court.

REASONS FOR GRANTING THE PETITION

I. QUESTIONS 1 AND 2. THIS COURT'S INTERVENTION IS NECESSARY TO RESOLVE A CONFLICT AMONG THE FEDERAL COURT CIRCUITS REGARDING THE CIRCUMSTANCES UNDER WHICH THEY TREAT PRO SE LITIGANTS ON PROCEDURAL DUE PROCESS.

Pro se litigants desperately need to be to be shown deference by the Courts by the courts consistently in all U.S District Courts to felicitate the efficient and proper and fair administration of justice. Had Judge Davis done this he would not have dismissed Benson's amended complaint. Pro se litigants deserve, of course, the minimum due process rights to which all other litigants are entitled. The most significant of these rights is an opportunity to be heard "granted at a meaningful time and in a meaningful manner." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437 (1982), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

This has been called upon and the topic of law review articles to have all U. S. Federal Courts treat pro se litigants the same as per the following, from Julie M. Bradlow, *Procedural Due Process Rights of Pro Se Civil Litigants,* UNIVERSITY OF CHICAGO LAW REVIEW: Vol. 55: Iss. 2, Article 13, 659 (1980).

> *Toward a Due Process Standard for Leniency.* "In summary, pro se litigants in civil cases in federal court are entitled under the due process clause to have their pleadings liberally construed by the courts under the *Haines v. Kerner* standard. Thereafter, the same Eldridge factors used to reach this conclusion-the balancing of the values of private interests and procedural reform against the value of the government's interest in preserving the status quo-should be applied on a case-by-case basis to determine what further process is due. For the most part, things should go on as they did before: many cases still will be dismissed, a very few will have counsel appointed to represent the pro se litigant therein, and others will end up somewhere in between. Treatment of these other cases will include lenient application of all procedural rules whenever it is in the interest of due process to do so; forcing strict compliance with subsequent court procedures is inconsistent with a liberal construction of pleadings at the beginning of an action. It also will include the adoption of general rules-comparable to the Haines standard for review of pleadings-protecting the pro se civil litigant whenever the benefit of accord-

> ing such rules outweighs their cost under Eldridge.
>
> What should change, however, is the spirit in which some courts construe these complaints. Regarding Haines as a particular product of a more generally applicable constitutional rule should encourage courts to reconsider the scope of their responsibilities. Courts should use the *Haines* standard, and not the Faretta standard, as the touchstone for evaluating procedural due process rights of civil pro se litigants. The background justification for the Faretta approach in criminal cases, the sixth amendment right to counsel, does not apply in civil cases.
>
> Many pro se civil complaints will, as is proper, still be dismissed. On the other hand, the pro se civil litigant's lack of knowledge will retain its rightful place as a "shield" for him, and not become a "sword" for the court to use to deter him from suing or to defeat him in court if he does sue. A willingness to treat pro se litigants benevolently can alleviate a potentially unfair procedural system. In short, the Faretta approach, whereby pro se status implies no reprieve from with procedural requirements," 2 while justified in criminal cases, should not be used to determine (or terminate) the procedural due process rights of civil pro se litigants"

Bradlow at 682-683.

The Supreme Court has mentioned in dicta in the criminal context that pro se status does not mean

that a litigant is free to ignore relevant rules of procedural and substantive law. This position is justifiable in criminal cases on constitutional grounds. It is not, however, justifiable in civil cases, where many litigants appear pro se not because they prefer to do so, but because they cannot afford counsel. Modern procedural due process jurisprudence requires, at the very least, that courts should give the pro se civil litigant a liberal construction of his pleadings. The court should then determine what further process is due, based on the individual facts and circumstances of the case. In short, in civil cases, there sometimes may be a "license not to comply" with pro procedural requirements." *Id.* at 863. In all fairness John Benson had experience practicing law for approximately ten years up until 1987 but is 69 years old and no experience with the new legal process for over 30 years, whereas Brian Benson has had none.

In the present case Judge Michael J. Davis. Sr dismissed the entire amended complaint based solely on a dispute over fraud on 160 acres of the 50,000 acres. Clearly, he did not recall this was the not the only count in the complaint. Judge Davis sidestepped the remainder of the 50,000 acres and stated that only the 160 acres was argued by the Bensons in their memorandum in opposition to Kemskes motion to dismiss on *res judicata* grounds. Bensons were focused upon the fraud and conversion claim as those were the only claims subject to *res judicata* from the North Dakota Quiet Title litigation.

The original complaint for a declaratory judgment covering all 50,000 acres in 30 counties in Montana and North Dakota and was 50 pages long with 89 pages of exhibits. Judge Davis was hand delivered a

copy bound in a leather-bound binder and appeared in a court hearing with said binder.

Bensons filed a Rule 59(e) motion to Alter or Amend the judgment to inform Judge Davis of his overlooking of the entire complaint. Benson's motion was denied in questionable legal reasoning. Herein lies the problem with deference shown to pro se litigants. Judge Davis reasoned that Bensons should have argued in their memorandum of law in opposition to dismiss the complaint based upon *res judicata* that there was a second argument Benson's should have made therein *i.e.*, a remaining declaratory Judgment count. This strikes to the heart of the issue of Courts application under the due process clause to have their pleadings liberally construed by the courts under the *Haines v. Kerner* standard. *Haines v. Kerner*m, 404 U.S. 519 (1972)

Bensons understand in the Federal Courts the Magistrate Judge handles 95% of the caseload and understand all the issues in great detail. Judge Michael J. Davis. Sr clearly did not read the amended complaint as he would have found that the amended complaint clearly commenced and stated on page 4 paragraph 11; "Plaintiff repeats, reiterates and realleges each and every allegation of the original complaint and exhibits as set forth therein verbatim and fully at length and incorporates by reverence all preceding allegations as if stated herein."

Notwithstanding the argument that pro se litigants' pleadings should liberally construed by the courts, all litigants should be able to expect the presiding judge in a case to know what causes of action are pending before the court in the complaint, and not dismiss the entire complaint with causes of

action still pending before the court. This is a clear denial of due process guaranteed by the 5th and 14th amendments to our constitution.

II. QUESTION 3.

The defendants in a quiet title action are not permitted to counter claim or cross claim for damages but for property improvements. This case is for property right in mineral rights so no land dirt to make improvements upon. A defendant may set forth the defendant's right in the property as a counterclaim and may demand affirmative relief against the plaintiff and co-defendant, and in such case the defendant also may set forth a counterclaim and recovery from a plaintiff or a co-defendant for permanent improvements made by the defendant. N.D.C.C. § 13-17-08. Likewise damages for fraud are not allowed in quiet title equity cases. Therefore, *res judicata* should not apply when a party may not legally make a claim upon which relief may be granted by the court. It does simply not make any sense. Furthermore, until such time the title to the property in question had been determined by the court, the Bensons had not suffered any damages. Had they won the quiet title case there would be no cause of action for a loss. It has long been established in law that for a case in damages the plaintiff must have suffered and identifiable loss which can be measured in damages for the claim to be made.

Bensons could not even file a cross claim against Kemskes for the $35,000 the oil companies paid them for the Benson's mineral rights as not allowed in the North Dakota statutes as a cause of action in a quiet title case.

Magistrate Judge David T. Schultz aptly described this case on pages 9 and 10 in his recommendation. "Shortly before the trial, in the North Dakota case, on August 18, 2017, John Benson filed this action naming the Kemskes, Family Tree Corporation, Inc., Desert Partners IV, L.P., Brigham Oil & Gas, L.P., and Oasis Petroleum Inc. as defendants. Benson's original complaint alleged four counts: Count 1 sought a declaration under the federal Declaratory Judgments Act, 28 U.S.C. § 2201, and Minnesota Declaratory Judgments Act, Minn. Stat. §§ 555.01-.16, that because the original Quitclaim Deeds created an undivided interest, none of the five Benson grandchildren could sell any of their interests without the consent of the other four grandchildren or by Thomas Benson as Power of Attorney (Compl. ¶¶ 84-85.); Count 2 sought supplementary relief, based on the declaratory judgment, for a money judgment against Oasis to release to John Benson and Brian Benson any money held in suspense related to the Subject Mineral Interest based on his allegation that he and Brian Benson were the legal owners of the Subject Mineral Interest (Compl. ¶ 106.)

The judgment in the state action quieted title to the mineral rights as between the oil companies and Benson. That judgment was expressly and exclusively premised on the finding that the oil companies were good-faith purchasers for value from the Kemskes in 2010. A money judgment in this case finding that the Kemskes defrauded Benson or converted his property will in no way impugn or disturb the North Dakota judgment. The North Dakota courts simply found that, notwithstanding the 1990 deed from the Kemskes to Thomas Benson, the oil companies had title to the

mineral rights because they had no notice—actual or constructive—of it. The Bensons' damage theory in this case assumes the validity of the quiet-title judgment—by effectively deeding the mineral rights to the oil Companies in 2010, the Kemskes committed fraud and conversion. There is nothing inconsistent between the Bensons' damages claim here and the North Dakota judgment."

Judge David A. Schultz went further in finding that *res judicata* does not apply to the Federal court action. *See* page 15. "Nor have any of the parties cited any case to this Court suggesting that the Bensons' fraud and conversion claims were required to be litigated in the quiet-title action brought by the oil companies. In fact, such a result would seem illogical. The quiet-title action determines who has title to the mineral rights. Unless and until it is determined that the oil companies have title to those rights, the Bensons' claims for damages are, at best, inchoate. The Bensons' damage claims only come home to roost if and when the oil companies prevail in the quiet-title action. For this same reason, this case does not meet the fourth element of *res judicata*, the identity of the causes of action. The cause of action in the quiet-title case was to determine who now owned title to the mineral rights. The Bensons' fraud and conversion claims are distinctly different. This action litigates whether the Kemskes' conduct in 2010 was wrongful and caused harm to the Bensons. For these reasons the doctrine of *res judicata* does not apply to bar the current action for damages against the Kemskes. Counts I and II may properly proceed."

The Kemskes claim that *res judicata* applies to this case is premised on the fact that the Bensons

knew of the fraud during the North Dakota quiet Title litigation. Michael J. Davis. Sr agreed, however Judge Davis was not at the settlement conference conducted by Magistrate Judge David A. Shultz on 3/19/2019 at 09:30 AM in Courtroom 9E (MPLS) wherein Kemskes maintained there was no fraud by them in the transaction long after the North Dakota case had been decided! Kemskes claimed they intended to convey an easement over the property owner, not convey mineral rights. However this was nonsense because the Kemskes never owned and land, only mineral rights. The other point John Benson made was why would Kemskes convey anything to Thomas Benson to give the actual land owner easement rights? The point is if Michael J. Davis. Sr had been there he would have known Kemskes were arguing there was no fraud and yet claiming for *res judicata* purposes the Bensons should have known of the non-existent fraud.

Kemskes argued in their Appellees response brief to the 8th Circuit Court of Appeals that they in fact committed fraud that Bensons should have been aware of during the Quiet Title action in North Dakota. The merits of Benson's claims of fraud and conversion are not in doubt!

Clearly the two Federal Judges in Minneapolis Federal Court have opposite opinions on the issue of *res judicata* applying herein. The North Dakota statute is clear, however the case law on *res judicata* applying to a quiet title action is unclear at best. One thing is true which is that if the North Dakota law on quiet cases does not allow counterclaims or cross claims in damages for fraud and conversion if *res judicata* applies, then a person losing property has no legal remedy! This cannot be the case as since the time of

the Great Magna Carta of 1215; freemen may not be deprived of liberty or property without due process of law.

> NO Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the land. We will sell to no man, we will not deny or defer to any man either Justice or Right.

Magna Carta, XXIX.

Petitioners Bensons implore to settle this matter of national importance in the many oil cases by clarifying the North Dakota law and directing all Federal Courts to take notice to avoid any further injustice. There may very well be billions lost by thousands of mineral owners due to this unsettled issue in law. Most of them pro se litigants or people who gave up due to attorney costs to defend their property rights they didn't fully understand.

III. QUESTION 4.

The litigation over the subject 160 acres of mineral rights commenced in North Dakota where the mineral acres are located. Benson's feel compelled to impart to this court the egregious treatment by that court to pro se litigants. Not only were they deprived of due process protections, the judge, Robin A. Schmidt actually cancelled a hearing on cross motions for a summary judgment, then 3 days later granted a summary judgment for the oil companies without a hearing having been held! Her Judgement

awarded 100% of the mineral rights to the oil companies not only the 20% ownership in litigation. Therefore, all the Benson grandchildren who were being paid oil and gas royalties from the wells lost their ownership in the mineral acres and thus any future royalty payments. Had John Benson not had this judgment reversed essentially the oil companies would have "legally stolen" the entire property. *See Desert Partners IV, L.P. v. Benson*, 855 N.W. 2d 608, 614 (N.D. 2014).

This begs the question what possessed Judge Robin Schmitt the temerity to believe she could get away with this. The answer is simple and is directly related to the subject matter herein. *i.e.*, pro se litigants don't matter. Bensons are not implying that Judge Schmidt was in the back pocket of the oil companies, or the local law firm, however he subsequent actions makes it unreasonable for anyone of a sound mind to hold a different opinion, or at least highly suspicious of the same.

At this time all District Court notices of appeal to the North Supreme Court were required to be filed in the District Court. The District Court would forward the notice to the North Dakota Supreme Court.

In this case, John Benson filed a notice to the District Court via electronic notice, fax, and USPS as instructed by the North Dakota Supreme Court Guide for pro se litigants. The website instructed that the notice MUST be delivered to the District Court in one of these manners. John Benson faxed, emailed and sent via USPS. Judge Schmidt's clerk of Court informed the North Dakota Supreme court clerk that his notice of appeal was not timely delivered. In a discussion with the Chief Clerk of the North Dakota Supreme Court, the District County clerk and Benson

were instructed to file affidavits with the Court via email to explain their respective positions on a timely delivered notice of appeal. The clerk from McKenzie County filed an affidavit stating that Benson's notice arrived late. Benson then called the Supreme Court Clerk and offered the Clerk in McKenzie County to amend redact modify or otherwise state her affidavit as he had proof the affidavit was perjury. The Supreme Court Clerk just reply "send it in". Benson produced a tracking record from USPS showing the notice arrived at the courthouse at 9:30 am 9 days before the McKenzie County Clerk had sworn to.

Bensons are of the opinion that Judge Robin Schmidt first ruled against them as they were pro se litigants, and of course if a litigant cannot afford an attorney to impose and answer to the complaint, they certainly could not afford attorney fees for an appeal to the Supreme Court. So why not grant a summary judgment against a pro se litigant, it would never be contested!

The truth of the matter is that John Benson was inclined to just let this injustice go because it was only 160 acres of 50,000 acres. This is why he waited so long to file the notice of appeal. However, having been raised on a farm operated by his grandfather and father, he became concerned that the many farmers and ranchers that were helpless to anything about the injustice of losing their properties to the oil companies with friendly judges paving the way he felt obligated to fight because he could change the unjust treatment of many less fortunate people across the country.

Of course, the North Dakota Supreme Court reversed the Judgment and in a note to the opinion

said that the judgment described more of the property than was being litigated over, *i.e.* a 20% interest.

The Court should also be aware that the North Dakota Supreme Court required both sides to the litigation to brief the issue of the delivery of the notice of appeal. This issue was heard first as if not timely made the Court did not have the jurisdiction to even hear the issue of a summary judgement without a hearing.

On this issue the Court was also tough on John Benson as a pro se litigant. One Justice inquired if Benson was aware that he must know the rules of appellate procedure to appear, and why he believed he did not have to follow their rules that required notice of appeals to be electronically filed through odyssey electronic filing.

Benson replied that the Supreme Court guide to appeals said as a pro se litigant he MUST file in a certain manner and did all three. The Justice said that was just a guide and he needed to follow the rules. Benson then explained to use the odyssey electronic filing system he first had to pass the North Dakota Bar, then successfully complete a two-week course to be certified to use Odyssey which was impossible to do in 60 days. Clearly not showing any deference to pro se litigants!

The Court remanded back to the district court for a hearing on the motions and again Judge Robin Schmidt awarded a summary Judgment. Benson appealed a second time based upon there was not finding of fact to support the judgment and the Supreme Court reversed Judge Schmidt a second time

and remanded back for a trial. *See Desert Partners IV, L.P. v. Benson*, 875 N.W. 2d 510, 512-13 (N.D. 2016).

Before the trial Benson made a motion to stay the proceedings because the Supreme Court Clerk refused to file a brief submitted by Kanske's attorney David Mclaughlin and advised him he needed to apply for *pro hac vice* admission to North Dakota before he could appear in a North Dakota Court. Judge Schmidt took the motion under advisement and did not issue an order until 24 hours before the trial knowing Benson could not get a plane there on such short notice and would have to drive 13 hours to arrive on time for the trial. This was obviously considered by Benson as a set up to hold a trial in his absence. Benson had been suffering several medical issues and had informed the court his physician advised he was not able to attend a trial and defend himself.

Lidia Moralas the Hennepin County District Court Clerk overseeing 62 judges schedules, is a friend of John Benson and drove him all night arriving in Watford City, the small town where the District Court trial was to be held. All parties were shocked to see Benson present as they assumed he would not make it there. Judge Robin Schmidt also admitted attorney David McLaughlin to practice law before the Court that morning. McLaughlin didn't know until Plaintiffs' Counsel, Nicholas Grant informed him walking into court. Although his clients were defendants in the lawsuit McLaughlin and Grant were working in concert to help plaintiffs win. McLaughlin brought along a partner in his firm who was licensed to practice in North Dakota, not knowing Judge Schmidt would admit him.

This begs the question why would a judge admit lawyer she knew had been practicing law in her court, a misdemeanor crime, finding him in good standing with the bar. Furthermore an attorney (David McLaughlin) sending bills across state lines billing a client for work he is not licensed to do is guilty of Federal Mail Fraud. John Benson believed if you want to hold a kangaroo court at least you need all the litigants represented by counsel, excepting the contesting defendant of course!

Benson produced a letter from his doctor showing he had hypertension at a dangerous level and was under medication including Percocet, and he would not be able to defend himself at the trial. Judge Robin Schmidt became furious and made disparaging comments to Benson also calling him an obstructionist. Nicholas Grant the local attorney who Judge Schmidt appeared to be taking directions from in all the proceedings instructed the Judge he did not want to proceeded to a trial that likely would be overturned for reversable error. Judge Robin Schmidt had a red face and said a new trial date would be sent by her clerk and spun around fast leaving the bench obviously vey mad he plan to nail Benson for having her reversed twice and exposing to the Supreme Court she granted a summary judgement without holding a hearing.

Benson was still ill before and in the ER at 9 PM the night before the trial with medical issues as well as a heart murmur just discovered by an urgent care physician 5 hours earlier. On the eve of trial, John Benson through an intermediary. Lidia Morales claimed he was hospitalized and unable to proceed with the trial. Although the Court was so informed Judge Schmidt held the trial in his absence and finally

nailed him once again awarding a judgment to the oil companies. Benson appealed, but the North Dakota Supreme Court was not inclined to overrule the Judge Schmidt's finding of facts, which decision was affirmed by the North Dakota Supreme Court. 921 N.W. 2d at 448.

Edward Benson a grandchild and John Benson's brother joined the lawsuit imposing an answer although not named as a defendant, after learning that Judge Robin Schmidt had awarded a judgment of his 20% mineral interest to the oil companies. He filed an affidavit of prejudice against Judge Robin Schmidt and demanded her to be removed from the case fearing she would take away his mineral interest again. A junior judge under Judge Robin Schmidt rejected his demand.

One great thing occurred due to this case in North Dakota. After the first case at the Supreme Court regarding notice of appeal, the 130 year old rule was changed to all notices of appeal to be sent directly to the Supreme Court not the District Court where unscrupulous judges and clerks could stop the Supreme Court from having jurisdiction from even hearing unjust Court decisions.

Bensons do not claim this treatment has anything to do with the merits of their case, however, feel it is important the Court be aware of the abusive manner in which pro se litigants are treated in this country, and does support the need for this court to offer consistent protections.

All the state and Federal courts have self help centers with online forms and guides for pro se litigants to give they easy access to the courts. The

trend is to encourage pro se litigants providing open access to the courts. They should be commended for these extraordinary efforts. These efforts present the perception of the public that the judiciary if friendly to pro se litigants.

Unfortunately, in practice this appears not to be true. Pro se litigants find themselves in court being looked down upon by judges for not proceeding as usual in oral argument and to the letter pleadings under the rules, taking up valuable time of the court. The consequence is a disillusioned public and perception that the courts do not welcome them as pro se litigants. The public perception of the courts being fair and just is what gives all the court's decisions and judgment credibility.

The recent perception seems to be heading in the direction that the Court is dominated by political beliefs most recently aligned with the Republican party. It appears that the Republican values support the wealthy class and show little empathy for the less fortunate whom cannot afford attorneys to represent them. If that perception is that it doesn't depend upon the justice you deserve under the constitution rather than the justice you can afford, this country is headed in the wrong direction.

This court has the opportunity to be proactive and change this trend in perception by seizing it with vigor and resolve employing direct actions.

CONCLUSION AND PRAYER FOR RELIEF

Elected officials have represented the will of the American people, but the Supreme Court has always reflected our soul and our conscience.

On the face of this honorable court's building are inscribed, "Equal Justice Under Law" Bensons respectfully request this applies to all self-represented litigants appearing pro se as you are the only court that has the authority and power to do so. Bensons request you grant their Petition and hear the case with a decision to vacate/ reverse the 8th Circuit's decision to uphold the District Court's Judgment.

If Justice truly lives in the halls of the Great Court and in your hearts and minds as Justices and as individuals you will grant this Petition. Granting the Petition would show we the people of the United States without Attorneys much needed relief by giving guidance to all courts in the treatment of pro se litigants as people who have the right to be heard in a fair manner. But for any other reason, the Court should grant the Petition to demonstrate that we the people matter and will be heard; not only the corporations legally construed to be "people". The we the people who live, breathe, and vote.

Respectfully submitted,

JOHN BENSON
PETITIONER PRO SE
12200 MARION LANE WEST #5309
MINNETONKA, MN 55305
(651) 324-1255
1.JOHN.BENSON@GMAIL.COM

BRIAN BENSON
PETITIONER PRO SE
3372 REED WAY
PRIOR LAKE, MN 55372
(651) 587-1986
BRIANJ.BENSON@YAHOO.COM

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