Supreme Court, U.S.
FILED
JUN 13 2023
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No: 22A1087

In the Supreme Court of The United States

Brigetta D'Olivio aka Brigetta Alix Anderson, Alix Brigetta
Petitioner,

v.

Hilary Thompson Hutson

Respondent.

On Appeal From Supreme Court Of Texas, Austin, Texas, case no: 22-1155 and Fifth District Court of Appeals, Dallas, Texas, case no: 05-20-00969-cv

APPLICATION TO STAY MANDATE PENDING THE UNITED STATES SUPREME COURT DISPOSITION OF PETITION FOR WRIT OF CERTIORARI

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- Thursday, June 8, 2023, Petitioner filed "Motion To Stay Issuance of Mandate Pending The United States Supreme Court Disposition Of Petition For Writ of Certiorari" in the Fifth District Court of Appeals, Dallas, TX.
- Monday, June 12, 2023, Fifth District Court Of Appeals Issued Order Denying Petitioner's Motion To Stay Pending The United States Supreme Court Disposition Of Petition For Writ of Certiorari".
- Monday, June 12, 2023, Fifth District Court of Appeals Issued Mandate.

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To The Honorable Supreme Court Of The United States:

COMES NOW, Petitioner, Brigetta D'Olivio, ("Petitioner"), files the within "Application To Stay Mandate Pending The United States Supreme Court Disposition of Petition For Writ Of Certiorari" and would show the Court as follows:

INTRODUCTION

Federal Rule of Appellate Procedure 41(d)(2)(A) authorizes a stay of the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court; a stay requires a substantial question to be presented in the petition and good cause for a stay. Upon notice to the Fifth District Court of Appeals that the petition is filed, the stay continues until the Supreme Court's final disposition of the

case. Fed. R. App. P. 41(d)(2)(B). Petitioner intends to file timely a petition for writ of certiorari with the Supreme Court. Sup. Ct. R. 13(1). Accordingly, Petitioner requests a 90-day stay of the mandate pending the filing her petition for a writ of certiorari, with a continuance of the stay to follow official notification that the petition has been filed. Fed. R. App. P. 41(d)(2)(A)-(B). This application demonstrates the requisite substantial question and good cause, and a stay should therefore be granted. The Fifth District Court of Appeals Court issued its decision on July 18, 2022, and the Supreme Court of Texas denied Petitioner's Motion For Rehearing on June 2, 2023. On June 8, 2023, Petitioner filed a "Motion To Stay The Issuance of The Mandate Pending The United State Supreme Court Disposition Of Petition For Writ Of Certiorari" in the Fifth District Court of Appeals, Dallas, Texas. On June 12, 2023, the Fifth District Court of Appeals Denied said motion and issued the mandate, affirming the lower court's final judgment.

BACKGROUND

A. The Trespass To Try Title Action In The 296th District Court in Collin County Texas Arose From The Guardianship Proceeding In Collin County Statutory Probate Court

After Petitioner's late husband, Richard W. Thompson, Jr., ("Decedent"), died, and nine days after Petitioner filed the "Last Will And Testament of Richard Wells Thompson, Jr", dated July 13, 2019, in the Collin County Probate Court, PB1-1381-

2019, "*In The Estate Of Richard W. Thompson, Jr", Deceased*", wherein Petitioner is the sole devisee, which includes the subject property, [1 CR 233-241; 399-402]; [2 CR 361-364],[1] Respondent, Hilary Hutson, ("Respondent"), filed a trespass to try title action in the 296th District Court in Collin County, Texas, wherein she claimed that she had superior title to the subject property vis a vie a Deed Without Warranty, dated May 5, 2018. See [1 CR 16-23; 43-45]. The trespass to try title action arose from the Guardianship Proceeding in the Collin County Probate Court, GA1-0261-2018: "*In the Guardianship of Richard W. Thompson, Jr., An Alleged Incapacitated Person*", [2] which Respondent initiated against Decedent, on December 13, 2018, after Decedent's attorney sent two (2) written demands to Respondent to reconvey the deed to Decedent's home to Decedent's name only. [1 CR 184-208]. [3]

Decedent subsequently filed criminal complaints against Respondent with local

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[1] CR = clerk's record, so that hypothetical "[1 CR 23]" would be clerk's record, volume 1, page 23.

[2] The Guardianship case is currently on appeal in the Fifth District Court of Appeals, (05-22-00768-CV). The following cases also arose from and are related to the Guardianship Proceeding: 1. pending Supreme Court of Texas case, no: 23-0125: "*Brigetta D'Olivio And All Other Occupants*"; and 2. two additional cases pending in the Collin County Probate Court - PB1-1313-2019: "*In Re Custodial Accounts For The Benefit Of Timothy Thompson And Allan Thompson, Plaintiffs, v Hilary Hutson, Individually and In Her Capacity As Former Custodian Of Custodial Accounts f/b/o Timothy C. Thompson And Allan Thompson, Defendant*" and cause number, PB1-1493-2019: "*In Re Custodial Accounts For The Benefit Of Timothy Thompson And Allan Thompson*". All of the related case arose from the Guardianship Proceeding.

In the related case, which is currently pending in the Supreme Court of Texas, (23-0125), Petitioner has posted a supersedeas bond, with a total amount, paid, thus far, being $80,000.00.

[3] On April 17, 2019, Decedent was medically determined not to lack *any* capacity.

and federal law enforcement, [1 CR 290-291; 389-390]; [3 CR 4-5; 64-68; 110], and signed a Sworn Affidavit, wherein he stated, under oath, that he never signed, nor initialed said Deed Without Warranty, dated May 5, 2018, and that said deed was forged. [1 CR 298-300; 399-402]. J. Copeland of the Collin County Probate Court, however, refused to allow Decedent the right to speak and to present evidence regarding the forgery of said Deed Without Warranty and other legal instruments, which Respondent had also forged. [1 CR 287-289; 292-296].

During this time, Decedent was not aware that Respondent was in possession of two (2) additional Deeds Without Warranty, dated May 5, 2018, which also pertained to the subject property and which Respondent filed in the above-referenced pending Probate Proceeding five (5) months after she filed the trespass to try title action in the 296th District Court. [2 CR 87-89; 110-111; 173-200].

B. Procedural Background Of Trespass To Try Title Action In The 296th District Court of Collin County, Texas

After Petitioner filed her Original Answer, [1 CR 24] to Respondent's Petition for trespass to try title, [1 CR 16], Petitioner filed a "Motion To Abate" on the grounds that, because the Collin County Statutory Probate Court has original and exclusive jurisdiction of all matters relating to the pending probate proceeding, and because the Probate Court does not have concurrent jurisdiction with the District Court, the District Court lacked subject matter jurisdiction to adjudicate Respondent's

trespass to try title. [1 CR 128-137; 232-241; 449-462]. A hearing date of December 12, 2019 was set for said motion. [1 CR 138-139].

Two days later, on November 20, 2019, Respondent filed a "Notice of Consideration of Plaintiff's Motion for Traditional and No-Evidence Summary Judgment on Submission", [1 CR 6; 573] with a submission date of December 9, 2019, [1 CR 8], for her motion for traditional and no-evidence summary judgment, dated November 18, 2019. [1 CR 26-122]. In said motion for summary judgment, Respondent submitted, as evidence, one of said three (3) Deed Without Warranty, dated May 5, 2018, [1 CR 43-45];[2 CR 87-89; 110-111], and uncertified pleadings, which originated and were filed in the above-referenced Guardianship Proceeding. [1 CR 26-27; 155-158; 408-413]. Respondent, however, never served Petitioner said motion for summary judgment, dated November 18, 2019, and failed and refused to provide proof of service for said motion for summary judgment after Petitioner repeatedly informed Respondent and the Court, in writing that she had not received said motion for summary judgment. [1 CR 135; 143-147; 155; 164; 504; 531-532]; [2 CR 11-24; 96; 99; 117-118; 130-131; 142-147].

On December 2, 2019, Petitioner timely filed and served her First Amended Answer And Affirmative Defenses and her Response to Respondent's motion for summary judgment, dated November 18, 2019. [1 CR 139-414]. Respondent never

filed a Reply to Petitioner's Response, nor did she file an amended motion for summary judgment after Petitioner filed her First Amended Answer and Affirmative Defenses, [1 CR 139-413]. Because Respondent had filed said motion for summary judgment only eight weeks after Respondent filed her original answer, in her Response to Respondent's motion for summary judgment, Petitioner included a verified and uncontroverted Motion For Continuance, wherein she requested a Continuance in order to be able to conduct discovery, [3 CR 8], and further requested that the Court render a written ruling on said Motion For Continuance. [1 CR 149-160]. The Court refused to hear and consider Petitioner's Motion For Continuance and subsequently granted summary judgment in favor of Respondent without Petitioner having been able to conduct any discovery. In said Response, Petitioner further requested that the Court rule on her pending Motion To Abate before rendering any ruling on Respondent's motion for summary judgment. [1 CR 148-149; 449-462].

On December 9, 2019, Petitioner filed an "Emergency Application For Injunctive Relief", on the same grounds as Petitioner's Motion To Abate and also on the grounds that Respondent had requested the Probate Court to cancel Petitioner's hearing date of December 11, 2019 for Petitioner's Amended Motion To Transfer, [3 CR 10-30], thereby forcing Petitioner to accept a hearing date of January 6, 2020

for her amended motion to transfer. [3 CR 4-60]. At the time Petitioner filed said emergency application for injunctive relief, she requested a hearing date of December 12, 2019, since the hearing for Petitioner's Motion To Abate was already scheduled for said date. [1 CR 138-139]. The Court refused and set the hearing date for December 23, 2019. At the behest of Respondent, the Court cancelled said hearing date, [1 CR 8] and then changed the hearing date to January 14, 2020, only to cancel the January 14, 2020 hearing date - again at the behest of Respondent, wherein the Court set the hearing date for said emergency application to January 22, 2020. [1 CR 9]. The District Court, however, never held the hearing on January 22, 2020, never rescheduled it, and never rendered any ruling on Petitioner's emergency application for injunctive relief. [1CR 446-448; 451; 475; 478]; [2 CR 128-129].

On December 12, 2019, the District Court denied Petitioner's unopposed motion to abate, but then refused to reduce said oral ruling to writing. [1 CR 8; 128-137]. On January 2, 2020, Petitioner filed a Motion To Set Aside the court's denial of Petitioner's Motion To Abate. [3 CR 61-206]. The Court, however, refused to provide a hearing date for Petitioner's Motion To Set Aside and also failed and refused to hear and consider said motion. [1 CR 449-462]; [2 CR 127-128].

On June 12, 2020, Respondent sent Petitioner a "Notice of Consideration On

Submission of Plaintiff's Motion For Traditional And No-Evidence Summary Judgment", dated June 11, 2020, ("Notice, dated June 11, 2020"). [1 CR 533-534]. Because no pleading was included with said Notice, dated June 11, 2020; there was no date of the pleading referenced in said Notice; and there was no application or motion filed, nor order rendered, wherein the submission dated of December 9, 2019, which was filed on November 20, 2019 for Respondent's motion for summary judgment, dated November 18, 2019, was reset, Petitioner sent Respondent four (4) written requests for clarification of said Notice, dated June 11, 2020, as well, as correspondence to the Court regarding said Notice. [1 CR 514-518; 519; 521; 523-525; 531; 538; 540-542]. Respondent, however, refused to respond to Petitioner's requests for clarification, except for stating in a letter, dated July 8, 2020, that "*there is indeed no further response to which I believe you are entitled*". [1 CR 523-525; 538; 540-542].

Throughout this time, Respondent concealed that on June 25, 2020, she had filed a "Renewed Motion For Traditional And No-Evidence Summary Judgment", wherein she made new allegations against Respondent. [1 CR 415]; [2 CR 21-60]. Respondent, however, never served Petitioner said June 25, 2020 "renewed" motion for summary judgment and failed and refused to provide proof of service for said June 25, 2020 "renewed" motion for summary judgment after Petitioner first

became aware of it on August 10, 2020, which was one day before the District Court rendered its final judgment. [1 CR 500-501]; [2 CR 21-60].

C. The District Court Granted Summary Judgment In Favor Of Respondent

On August 11, 2020, the District Court granted summary judgment to Respondent. In said final judgment, it stated, in part, "*The Plaintiff filed Motion for Traditional and No-Evidence Summary Judgment on November 18, 2019, renewing that Motion on June 16, 2020".* [Appellant's Amended Brief, App. A]. Not only is there no "renewed" motion for traditional and no-evidence motion, dated June 16, 2020, filed for the record, [1 CR 10], but like Respondent's motion for summary judgment, dated November 18, 2020, Respondent never served Petitioner said "renewed" motion, dated June 16, 2020. Six (6) weeks *after* the District Court's Order, Respondent admitted, in writing, that she never filed a "renewed" motion for summary judgment on June 16, 2020, that, instead, she filed a "renewed" motion on July 16, 2020. [1 CR 566]; [2 CR 56]. Said July 16, 2020 "renewed" motion for summary judgment, however, was also never filed for the record and nor did Respondent ever serve Petitioner said "renewed" motion for summary judgment, which Respondent stated that she filed on July 16, 2020. [1 CR 10]; [1 CR 21-60]. The *only* pleading Respondent filed on July 16, 2020 was a response to Petitioner's "Amended Emergency Motion For Stay Pending Petition For Writ of Mandamus

And For Temporary Stay Pending Consideration Of Motion", dated July 14, 2020. [2 CR 134; 138-140].

D. The 296th District Court Refused To Hear And Consider Petitioner's Timely Filed Post Trial Motion, ("329b(g) Motion"

On September 9, 2020, Petitioner timely filed a 329b(g) motion in the District Court, wherein she also included newly discovered evidence, which showed that Respondent had fabricated documents, and falsified other documents, which had been previously filed in the Collin County Clerk's office, and which she had submitted in her motion for summary judgment, dated November 18, 2019. [1 CR 446-568]; [2 CR 4-424]. Although Petitioner made more than a dozen written requests for a hearing date, the Court refused to provide a hearing date and refused to hear and consider Petitioner's timely filed post-trial motion. [2 CR 138-139; 389; 408-411; 461-468].

E. The Fifth District Court Of Appeals Affirmed The 296th District Court's Final Judgment.

On July 18, 2022, Fifth District Court of Appeals issued its unpublished Memorandum Opinion, ("Opinion") and judgment, wherein it affirmed the trial court's order. In addition to relying on "facts" not in the record, and in contravention to Rule 47.4 of the Texas Rules Of Appellate Procedure, in its Opinion, the Fifth Court of Appeals made determinations and findings regarding the pleadings, which emanated from the Guardianship Proceeding and which Respondent had submitted

as “evidence’ in her motion for summary judgment, dated November 18, 2019. [1 CR 26-27; 155-158; 408-413], prior to the appeal Briefs for the Guardianship case, (appeal no: 05-22-00768-CV), having been filed. More than six (6) weeks prior to the Fifth District Court of Appeals having issued its Opinion and judgment, Petitioner had perfected the appeal for the Guardianship case. Petitioner’s Notice of Appeal, however, was suppressed and not filed for the record until *after* the Fifth Court of Appeals issued in Opinion and judgment in the trespass to try title case and related case, which is pending before the Supreme Court of Texas. Prior to issuing their Opinions in each of these cases, the Fifth Court of Appeals had actual knowledge that the appeal for the Guardianship case had been perfected. [4]

ARGUMENT

Federal Rule of Appellate Procedure 41(d)(2)(A) authorizes a stay of this Court’s mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. This Court grants a stay of the issuance of a mandate pending application for a writ of certiorari when “the certiorari petition would present a substantial question and . . . there is good cause for a stay.” Fed. R. App. P. 41(d)(2)(A). A petitioner satisfies that standard if there is a “‘reasonable

[4] See Petitioner’s Emergency Motion To Abate, filed in the Fifth District Court Of Appeals on July 27, 2022; Motion For Reconsideration, filed August 1, 2022; Correspondence to Clerk of the Court for the Fifth District Court of Appeals, Lisa Matz, dated August 20, 2022; Motion For Rehearing and Motion En Banc Reconsideration.

probability'" of the Supreme Court granting certiorari and reversing. See *NextWave Personal Commc'ns FCC*, No. 00-1402, 2001 U.S. App. LEXIS 19617, at *4 (D.C. Cir. Aug. 23, 2001)(quoting *Books v. City of Elkhart*, 239 F.3d 826 (7th Cir. 2001)). In other words, as the Supreme Court explained in applying a similar standard, the petitioner "must demonstrate that the issues are debatable among jurists of reason." See *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983).

A stay of the mandate pending a petition for certiorari is warranted under Federal Rule of Appellate Procedure 41(d)(2) because this case presents a substantial question of federal law and the denial of a stay threatens irreparable harm. When the Supreme Court considers similar applications to stay a mandate pending disposition of a petition for certiorari, it considers those factors under a three-part rubric: (1) "a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari"; (2) "a significant possibility of reversal of the lower court's decision"; and (3) "a likelihood that irreparable harm will result if that decision is not stayed." *White v. Florida*, 458 U.S. 1301, 1301 (1982) (Powell, J., in chambers) (citation omitted).

The first two factors—represented in Rule 41 as the "substantial question" requirement—are present here. Having a property interest, Petitioner is entitled to

Constitutional protections through the Fourteenth Amendments' Due Process Clause, which provides: "*nor shall any State deprive any person of life, liberty or property, without due process of law, nor shall any person be denied the equal protection of the laws*". U. S. CONST. amend XIV. At every stage of this case, Petitioner's Constitutional right to Procedural Due Process has been violated, which in turn, violated Petitioner's First Amendment right. Petitioner has been denied the right to Notice, the right to conduct discovery, the right to present evidence and confront adversaries, the right to be heard at a meaningful time and in a meaningful manner, and the right to an impartial tribunal. Petitioner was wholly denied the "fundamental fairness", which the Fourteenth Amendment guarantees, and to which she was entitled. Where the lower court failed in its obligation to pursue a course of legal proceedings according to applicable rules and principles, Petitioner's right to equal protection of the law was also violated. Violations of a party's right to the Constitutional protections, which are guaranteed by the Fourteenth Amendment, and the subsequent arbitrary and capricious rulings, which are not based upon the merits of the case, are compelling reasons for this Court to stay the mandate and to grant a writ of certiorari since the rights of all are dependent on the rights of each being defended and protected.

And the third factor—the balance of the equities—shows Rule 41 "good cause" for a stay. Considering that Respondent has intimated on more than one occasion that she intends to sell the subject property, once the property is sold, Petitioner may never be able to recover the property even if the Supreme Court accepts this case for review and ultimately reverses. Because the Fourteenth Amendment requires due process before one may be deprived of their property, and because of the risk of erroneous deprivation of Petitioner's property interest; and the irreversibility of the harm to Petitioner if the property is sold, there is good cause to stay the mandate. Absent a stay, Petitioner will suffer irreparable harm. That is particularly true where, as here, the State's only post-deprivation process comes in the form of an independent tort action. Seeking redress through a tort suit is apt to be a lengthy and speculative process, which in a situation such as this one will never make Petitioner entirely whole. See *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436–37. Respondent will suffer no offsetting irreparable injury from continuing the status quo pending disposition of Petitioner's petition for writ of certiorari. This application demonstrates the requisite substantial question and good cause, and a stay should therefore be granted.

I. The Grant Of Certiorari Is A Reasonable Probability

This case presents a "substantial question" within the meaning of Federal Rule

of Appellate Procedure 41(d)(2)(A). Violations of the Constitutionally protected right to procedural due process and the subsequent violation of a party's First Amendment right are compelling reasons for the Supreme Court to grant certiorari. Although property interests are not created by the Constitution, where one, such as Petitioner, has a property interest, one is entitled to the Constitutional protections guaranteed by the Fourteenth Amendment. Where property interests are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits, the Due Process Clause of the Fourteenth Amendment obligates States to pursue a course of legal proceedings according to rules and principles that have been established in a system of jurisprudence for the enforcement and protection of private rights. In order to secure equal rights to all citizens, States are required to apply the applicable law fairly and equally through legal process in like cases. Procedural rules exist to subserve the presentation and resolution of cases on their merits. As Rule 1 of the Texas Rules of Civil Procedure states, "[t]he proper objective of rules of civil procedure is to obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law".

A. Did The Lower Court's Ruling, Based On Inadequate Notice of Submission; Failure To Allow Sufficient Response And Respondent's Failure To Serve Petitioner Contravene Petitioner's Right To Due Process And Deprive Petitioner Of A Fair And Impartial Adjudication?

Here the trial court granted Respondent's motion for summary judgment, wherein it stated, in part, "*The Plaintiff filed Motion for Traditional and No-Evidence Summary Judgment on November 18, 2019, renewing that Motion on June 16, 2020*". See [Amended Brief, App. A].

Procedural due process requires that a party be given Notice. Rule 166 of the Texas Rules of Civil Procedure governs motions for summary judgment. Because summary judgment is a harsh remedy, the notice provisions of Rule 166a of the TEX. R. CIV. P., are strictly construed. Rule 166a(c) of the TEX. R. CIV. P., provides, in part: "*... Except on leave of court, with Notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for the hearing*". TX. R. CIV. P. 166a(c). Rule 21a(c) of the TEX. R. CIV. P., provides: "*Whenever a party has a right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period*". TEX. R. CIV. P. 21a(c).

1. Here, the record clearly established that Petitioner was not given adequate notice. Respondent filed her "Notice of Consideration For Plaintiff's Motion For

Traditional And No-Evidence Summary Judgment on Submission" on November 20, 2019, [1 CR 6; 573], wherein a submission date for said motion for summary judgment, dated November 18, 2019, was set for December 9, 2019. [1 CR 8]. Petitioner, thus, failed to meet the minimum 21-day notice provision as prescribed in Rule 166a(c) of the Texas Rules of Civil Procedure. Where Respondent's Notice was filed on November 20, 2019, the earliest date the submission date could be set was December 11, 2019.

2. Respondent never served Petitioner said November 18, 2019 motion for summary Judgment, and failed and refused to provide proof of service after Petitioner repeatedly informed Respondent that she had not received said motion.

3. The "renewed" motion for summary judgment, dated June 16, 2020, which the trial court specifically references in its final order, is not only *not* filed as part of the record in the trial court, but Respondent also never served Petitioner said "renewed" motion for summary judgment, dated June 16, 2020, and failed and refused to provide proof of service for said "renewed" motion, dated June 16, 2020 after Respondent became aware of said motion, for the first time, on August 8, 2020.

4. The "renewed" motion for summary judgment, which Respondent claimed six (6) weeks after the lower court rendered its final judgment, that she filed on July 16, 2020, is also not only not filed as part of the record in the trial court, but

Respondent also never served Petitioner said July 16, 2020 “renewed” motion for summary judgment and nor has she ever provided any proof of service for said “renewed” motion.

5. Although the lower court’s final judgment is not based upon Respondent’s “renewed motion for summary judgment, which she filed on June 25, 2020, and although Respondent has never claimed that the lower court’s final judgment was based upon said June 25, 2020 “renewed” motion for summary judgment, Respondent, nonetheless never served Petitioner said “renewed” motion, dated June 25, 2020, and failed and refused to provide proof of service for said motion after Petitioner first became aware of said motion on August 10, 2020.

For more than a century the central meaning of procedural due process has been clear: "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." *Fuentes v. Shevin*, 407 U.S. 67, 80, 92 S. Ct. 1983, 1994 (1972). See also *Stone v. Federal Deposit Insurance Corporation*, 179 F.3d 1368, 1377 (Fed. Cir. 1999) (explaining that new information is a due process violation when there is a lack of “notice (and the opportunity to respond”).

By rendering final judgment without adequate notice; without service of any of the motions for summary judgment, which Respondent claimed to have filed,

violated Petitioner's procedural due process rights, prejudiced Petitioner's case, and is inconsistent with justice and is an exercise of arbitrary power condemned by the Constitution.

B. Did The Lower Court Violate Petitioner's Right To Due Process When It Refused To Allow Petitioner To Conduct Any Discovery Under The Applicable Rules Of Procedure?

As a pretrial procedure, discovery is part of procedural due process. In Texas, discovery is governed by the Texas Rules of Civil Procedure, which says that parties to a case are entitled to any information, documents and evidence that are relevant, as long as they are not privileged.

The right to present evidence is an essential component of the adversarial system of justice. Discovery improves the chance of the court being able to get at the truth, where, as in this case, facts are contested and forgery is an issue, including of the very document, (Deed Without Warranty, dated May 5, 2018), upon which Respondent claimed she had title to the subject property. Discovery allows a party access to material which could be presented to the court as evidence which may bear on questions of fact which have the potential to influence the proper result of the case. In *Goldberg v Kelly*, 397 U.S. 254, 269 (1970), the Court held that, "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses."

See also *ICC v Louisville & Nashville RR* 227 U.S. 88, 93-94 (1913). Where the "*evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealously," the individual's right to show that it is untrue depends on the rights of confrontation and cross-examination.* See *Greene v. McElroy*, 360 U.S. 474, 496–97 (1959). The Supreme Court has been zealous to protect these rights from erosion. Although the discovery rules are meant to give fairly broad access to information, in this instance, Petitioner was denied the right to conduct *any* discovery.

Despite its obligation to comply with procedural requirements, the trial court failed to follow any legal procedures as it relates to discovery; failed to set a discovery plan, [1 CR 129], as required under Rule 190.1 of the TEX. R. CIV. P; failed to remove Respondent's trespass to try title case from the expedited actions process, [1 CR 17], as required under Rule 169(c)(1)(B) of the TEX. R. CIV. P., failed to reopen discovery under Rule 192.2(c) of the TEX. R. CIV. P., after Petitioner removed the case from the expedited actions process to Level 2 discovery under Rule 190.3 of the TEX. R. CIV. P., [1 CR 408]; denied Petitioner the right to conduct *any* discovery by refusing to hear, consider and rule on Petitioner's uncontroverted Motion For Continuance, and instead, granted Respondent's motion

summary judgment, which Respondent filed without complying with the requisite disclosure requirements and which she filed on the date the discovery period began, [1 CR 24]. TEX.R. CIV. P. 190.3(b)(1) and 194.

Refusing Petitioner the right to conduct discovery violated Petitioner's procedural due process rights, prejudiced Petitioner's case, and is inconsistent with justice and is an exercise of arbitrary power condemned by the Constitution.

C. Did the Lower Court's Failure To Afford Petitioner A Meaningful Opportunity To Be Heard At A Meaningful Time And In A Meaningful Manner, As Mandated By The Constitution, Violate The Principles Of Fundamental Fairness And Justice?

In *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972), the Court described notice and hearing as the "central meaning of procedural due process". See also Martin H. Redish & Lawrence C. Marshall, Adjudicatory Independence and the Values of Procedural Due Process, 95 Yale L.J. 455, 475 (1986) ("The Supreme Court has often stated that the core rights of due process are notice and hearing."). Against this interest of the State, we must balance the individual interest sought to be protected by the Fourteenth Amendment. This is defined by our holding that *"[t]he fundamental requisite of due process of law is the opportunity to be heard." Grannis v. Ordean,* 234 U. S. 385, 234 U. S. 394. See also *Loudermill v. Cleveland Bd. of Educ.*, 721 F.2d 550, 563 (6th Cir.1983), affd, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985). In *Gagnon v. Scarpelli*, 411 U. S. 778, 786

(1973), the Court held that the "'minimum requirements of due process'" include an "opportunity to be heard in person and to present witnesses and documentary evidence".

Rule 329b(g) of the Texas Rules of Civil Procedure. provides, in part: "A motion to modify, correct or reform a judgment (as distinguished from motion to correct the record of a judgment under Rule 316), if filed, shall be filed and determined within the time prescribed by this for a motion for a new trial...". TEX. R. CIV. P. 329b(g).

Where Petitioner timely filed a 329b(g) motion, the trial court was required to determine said motion. Here, the trial court failed and refused to hear and consider said motion. A State cannot provide a process like that in found in Rule 329b(g) of the Texas Rules o Civil Procedure and then arbitrarily refuse to follow the prescribed procedures. Rule 329b(g) was properly invoked through the filing of a Petitioner's 329b(g) motion, but the lower court refused to comply with Rule 329b(g) by failing to determine said motion. By refusing to hear and consider Petitioner's 329b(g) motion, Petitioner was deprived of her Constitutionally protected right to be heard and to present evidence that could have been outcome determinative.

The lower court's failure and refusal to hear and consider Petitioner's post-trial

motion did not start with said post-trial motion, but, instead the lower court's failure and refusal to hear and consider Petitioner's applications and motions pending before it was consistent throughout the lower court proceedings and resulted in a final judgment that was not based upon the merits. By refusing to hear and consider Petitioner's applications and motions pending before it, the lower court not only violated Petitioner's Constitutional right to Due Process – the right to be heard, but it also violated Petitioner's First Amendment right, as well.

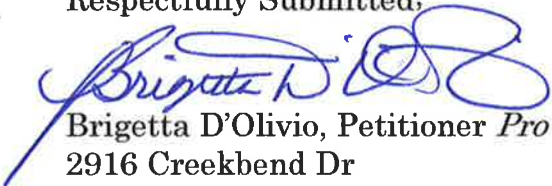
Good Cause Exists To Stay Mandate

Finally, there is "good cause" to stay the mandate. Fed. R. App. P. 41(d)(2)(A). Good cause is established based on the "equities in the case." Knibb, Federal Court of Appeals Manual §34:13, at 924 (6th ed. 2013). The equities here support maintaining the status quo for the few months necessary for the Supreme Court to decide Petitioner's certiorari petition. Absent a stay of the mandate, Respondent no doubt will execute upon the District Court's grant of summary Judgment, Considering that Petitioner is the sole devisee under the "Last Will And Testament of Richard Wells Thompson, Jr.", dated July 13, 2019, which includes subject property, Petitioner is entitled to Constitutional protection. A short delay is necessary to preserve the status quo pending U.S. Supreme Court's disposition of Petitioner's petition for writ of certiorari.

CONCLUSION

There is a reasonable probability that the United States Supreme Court will grant a petition for writ of certiorari in this case, and if it does, there is a significant possibility of reversal. Respondent will suffer no discernible harm if a stay is issued. Absent a stay, it is clear that Petitioner will suffer irreparable harm. Petitioner respectfully requests that the Court grant Petitioner's application for a stay of the mandate pending the filing of petition for writ of certiorari and the United States Supreme Court's disposition of Petitioner's petition for a writ of certiorari.

Respectfully Submitted;



Brigetta D'Olivio, Petitioner *Pro Se*
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bdt2916@gmail.com

No: __________

In the Supreme Court of United States

Brigetta D'Olivio aka Brigetta Alix Anderson, Alix Brigetta

Petitioner,

v.

Hilary Thompson Hutson

Respondent.

SWORN AFFIDAVIT

BEFORE ME, the undersigned, on this day personally appeared Brigetta D'Olivio. Known to me to be the person whose signature is set forth herein. My name is Brigetta D'Olivio. I am over 18 years of age. I am a resident of Collin County, TX and am fully competent to make this Affidavit and do solemnly swear that the facts stated in the foregoing "Application To Stay Mandate Pending United States Supreme Court Disposition Of Petition For Writ Of Certiorari", dated June 13, 2023, are within my personal knowledge and the same are true and correct.

Brigetta D'Olivio
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Plano, TX 75075
214-733-7204
bdt2916@gmail.com

SUBSCRIBED and SWORN to before me, the undersigned, on this 13th day of June 2023, to certify which witness my hand and seal of office.

NOTARY PUBLIC
In and for the State of Texas

No: __________

In the Supreme Court of United States

Brigetta D'Olivio aka Brigetta Alix Anderson, Alix Brigetta

Petitioner,

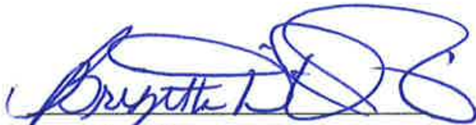
v.

Hilary Thompson Hutson

Respondent.

CERTIFICATE OF CONFERENCE

I, Brigetta D'Olivio, certify that I have conferred, or made a reasonable attempt to confer with lead counsel for Respondent, Bruce D. Cohen, about the merits of, Petitioner's "Application To Stay Mandate Pending The United Stated States Supreme Court Disposition Of Petition For Writ Of Certiorari". On June 13, 2023, I spoke with Mr. Cohen at 1:59pm at 972-955-7661 regarding the above-referenced application and Mr. Cohen opposes.



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Respondent.

CERTIFICATE OF COMPLIANCE

I hereby certify this "Application To Stay Mandate Pending The United Stated States Supreme Court Disposition Of Petition For Writ Of Certiorari", contains 5544 words. This is a computer-generated document created in Microsoft Word, using 12 point typeface for all text, except for footnotes, which are in 10 point typeface. In making this Certificate Of Compliance, I am relying on the word count provided by the software used to prepare the document.

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No: ___________

In the Supreme Court of United States

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Petitioner,

v.

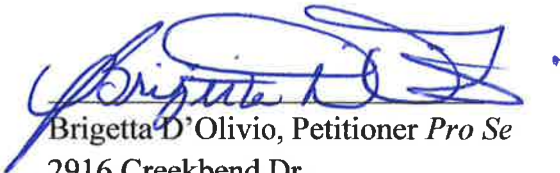
Hilary Thompson Hutson

Respondent.

CERTIFICATE OF SERVICE

I, Brigetta D'Olivio, Petitioner, hereby certify that the following parties required to be served have been served with a copy of "Application To Stay Mandate Pending United States Supreme Court Disposition Of Petition For Writ Of Certiorari", dated June 13, 2023 at the last known address filed with the Court, via FedEx, (tracking no: 7724 3603 3734), this June 13, 2023. Attached hereto is a copy of the FedEx receipt, dated June 13, 2023.

Pravati Capital LLC
Bruce D. Cohen
8117 Preston Rd., Suite 300
Dallas, TX 75225



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ORIGIN ID:DNEA (214) 733-7204
BRIGETTA DOLIVIO

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PLANO, TX 75075
UNITED STATES US

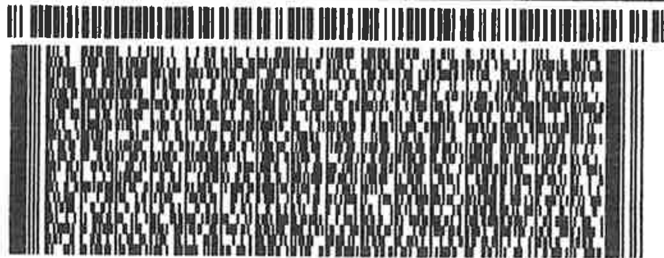
SHIP DATE: 13JUN23
ACTWGT: 1.00 LB
CAD: 252872373/INET4610

BILL SENDER

TO BRUCE DAVID COHEN
PRAVATI CAPITAL, LLC
8117 PRESTON RD. STE. 300

DALLAS TX 75225
(111) 111-1111 REF:
INV:
PO: DEPT:

583J2/29AB/FE2D



WED - 14 JUN 10:30A
PRIORITY OVERNIGHT

TRK# 0201 7724 3603 3734

AD TRLA

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TX-US DFW