No: 23-350

ORIGINAL

In the Supreme Court of The United States

Brigetta D'Olivio aka Brigetta Alix Anderson, Alix Brigetta

Applicant,

v.

Hilary Thompson Hutson

Respondent.

On Petition For Writ of Certiorari to the
Fifth District Court of Appeals, Dallas, TX
Case No: 05-20-00969-CV

PETITION FOR WRIT OF CERTIORARI

Brigetta D'Olivio
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Plano, TX 75075
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Petitioner *Pro Se*

QUESTIONS PRESENTED

1. Did the lower court violate Petitioner's right to due process and equal protection of the law under the Fourteenth Amendment to the U.S. Constitution:

a. By hearing and deciding the case when it lacked subject matter jurisdiction under §§1022.001(a); 1022.002(c)&(d); 1022.005(a)&(b); and 32.005(a) of the Texas Estates Code; and Art. V, §8 of the Texas Constitution;

b. By issuing Forcible Detainer when it lacked jurisdiction under §27.031(a)(2) of the Texas Government Code; §24.004 of the Texas Property Code; and Rule 510.3 of the Texas Rules of Civil Procedure;

c. By granting summary judgment to Respondent when Petitioner was deprived of adequate Notice and when Respondent failed and refused to serve Petitioner *any* motion for summary judgment as required under Rules 166a(c); 166a(i) of the Texas Rules of Civil Procedure;

d. By denying Petitioner the right to conduct *any* discovery prior to rendering its final judgment and by rendering its final judgment prior to Respondent having complied with the disclosure requirements under Rule 194.1 of the Texas Rules of Civil Procedure.

e. By refusing to provide hearing dates and to hear and consider Petitioner's pleadings, which were properly before the Court.

2. Where the lower court so far departed from in its obligation to pursue a course of legal proceedings according to applicable rules and principles for like cases, and where the Fifth District Court of Appeals sanctioned such a departure by the lower court, the Fifth District Court of Appeals' Opinion is so clearly wrong as to call for an exercise of this Court's supervising power.

PARTIES TO THE PROCEEDING

The parties to the proceeding are as follows:

Petitioner is Brigetta D'Olivio. She was the Defendant in the 296th District Court of Collin County, Texas and the Appellant in the Fifth District Court of Appeals, Dallas, Texas.

Respondent is Hilary T. Hutson. She was the Plaintiff in the 296th District Court of Collin County, Texas and the Appellee in the Fifth District Court of Appeals, Dallas, Texas.

RELATED PROCEEDINGS

This case and the related cases arose from the Guardianship Proceeding listed below.

1. "*Hilary Thompson Hutson v Brigetta D'Olivio And All Other Occupants*", (002-02704-2020), Judgment entered on January 4, 2021. (US Sup. Ct. No: 23A99 pending).

2. "*In the Guardianship of Richard W. Thompson, Jr., An Alleged Incapacitated Person*", No: GA1-0261-2018, Judgment entered May 5, 2022. Pending in the Fifth District Court of Appeals, Dallas, TX, (05-22-00768-CV).

3. "*In The Estate Of Richard W. Thompson, Jr", Deceased*", PB1-1381-2019, (Collin County Statutory Probate Court, Collin County, Texas), pending.

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CONSTITUTIONAL PROVISIONS AND STATUTES

Constitutional Provisions:

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CONSTITUTIONAL PROVISIONS AND STATUTES CONTINUED

Texas Rules of Appellate Procedure

Texas Rules of Civil Procedure

Texas Code of Judicial Conduct

OPINIONS BELOW

The Fifth District Court of Appeals, Dallas, TX is the highest state court to review the merits and its Memorandum Opinion, which is not published, is reproduced at [Appendix A]. The 296th District Court of Collin County TX is reproduced at [Appendix D] and is not published.

JURISDICTION

The Fifth District Court of Appeals issued its Memorandum Opinion and judgement on July 18, 2022 and is reproduced at [Appendix A]. The Fifth District Court of Appeals denied Petitioner's timely filed motion for rehearing on September 13, 2022, and is reproduced at [Appendix B], and on November 22, 2022, the Fifth District Court of Appeals denied Petitioner's Motion For Reconsideration and is reproduced at [Appendix C].

The Supreme Court of Texas declined to hear the merits of the case and denied Petitioner's timely filed Petition For Review on March 24, 2023, and is reproduced at [Appendix E]. On June 2, 2023, the Supreme Court of Texas denied Petitioner's timely filed Motion For Rehearing, and is reproduced at [Appendix F].

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

TEXAS CONSTITUTION

Article 1, §19 – Deprivation of Life, Liberty, Property, Etc By Due Course Of Law

"No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land".

Article 5, §8 - Jurisdiction Of District Courts

"District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, *except* in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body. District Court judges shall have the power to issue writs necessary to enforce their jurisdiction..."

TEXAS GOVERNMENT CODE

Section 27.031(a)(2) In addition to the jurisdiction and powers provided by the constitution and other law, the justice court has original jurisdiction of...(2) cases of forcible entry and detainer...".

Section 25.0451(b) - Collin County has one statutory probate court, the Probate Court No. 1 of Collin County

TEXAS ESTATES CODE

Section 1022.002 Original Jurisdiction For Guardianship Proceedings

(c) In a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of guardianship proceedings.

(d) From the filing of the application for the appointment of a guardian of the estate or person, or both, until the guardianship is settled and closed under this chapter, the administration of the estate of a minor or other incapacitated person is one proceeding for purposes of jurisdiction and is a proceeding in rem.

Section 1022.005 - Exclusive Jurisdiction Of Guardianship Proceeding In County With Statutory Probate Court

(a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all guardianship proceedings, regardless of whether contested or uncontested.

(b) A cause of action related to a guardianship proceeding of which the statutory probate court has exclusive jurisdiction as provided by Subsection (a) must be brought in the statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 1022.006 or with the jurisdiction of any other court...". [Appendix K, at].

Section 32.001 – General Jurisdiction

(a) All probate proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the probate proceeding as specified in Section 31.002 for that type of court.

Section 32.005 - Exclusive Jurisdiction of Probate Proceeding in County With Statutory Probate

(a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all probate proceedings, regardless of whether contested or uncontested. A cause of action related to the probate proceeding must

be brought in a statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 32.007 or with the jurisdiction of any other court...", [Appendix K]

TEXAS RULES OF CIVIL PROCEDURE

Rule 166a(c) - "The motion for summary judgment shall state the specific grounds therefor. 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 hearing...". [Appendix K].

Rule 190.1 – Discovery Control Plan [Appendix K].

"Every case must be governed by a discovery control plan as provided in this Rule. A plaintiff must allege in the first numbered paragraph of the original petition whether discovery is intended to be conducted under Level 1, 2, or 3 of this Rule".

Rule 169(a) & (b) - Expedited Actions [Appendix K].

Rule 169(c)(1)(A) & (B) - Removal From Expedited Process [Appendix K].

Rule 169(2) - Pleading Removes Suit From Expedited Process [Appendix K].

Rule 169(3) - If a suit is removed from the expedited actions process, the court must reopen discovery under Rule 190.2(c). [Appendix K].

Rule 190.2(c) - Reopening Discovery [Appendix K].

Rule 190.3(a)(b) - Discovery Control Plan - By Rule (Level 2)

Rule 190.3 (1) Discovery period. All discovery must be conducted during the discovery period, which begins when the initial disclosures are due and continues until:

(A) 30 days before the date set for trial, in cases under the Family Code; or

(B) in other cases, the earlier of

(i) 30 days before the date set for trial, or

(ii) nine months after the initial disclosures are due..." . [Appendix K].

Rule 194.1(a) - Duty To Disclose; Production [Appendix K].

Rule 194.2(a) - Initial Disclosures [Appendix K].

Rule 329b(g) - "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 rule for a motion for new trial..." [Appendix K, at].

TEXAS CODE OF JUDICIAL CONDUCT

Canon 3(B)(1) "A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

Canon 3(B)(8) – "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law..."

STATEMENT OF THE CASE

I. The Lower Court Case Arose From The Guardianship Proceeding In The Collin County Statutory Probate Court

The nature of the lower court case is a trespass to try title case, wherein Respondent claimed that she had title to the subject property, (2916 Creekbend Dr., Plano, TX), via a Deed Without Warranty, dated May 5, 2018. [1 CR 16-23; 43-45]. The lower court case arose from the Guardianship Proceeding in the Collin County Statutory Probate Court, "*In the Guardianship of Richard W. Thompson, Jr., An Alleged Incapacitated Person*", wherein Respondent first filed said Deed Without Warranty. [1] [Appendix H]. Respondent initiated the Guardianship Proceeding on December 13, 2018, less than a week after the attorney for Petitioner's late husband, Richard W. Thompson Jr., ("Decedent") sent two written demands to Respondent to reconvey the deed to Decedent's home to Decedent's name only. [1 CR 43-45; 193-197; 290-291].

Decedent subsequently filed criminal complaints against Respondent with local

[1] Although Respondent alleged that Decedent was an "incapacitated person" in her application for temporary and permanent guardianship, Decedent was medically determined not to lack any capacity.

and federal law enforcement regarding the forgery of said Deed Without Warranty, dated May 5, 2018, [1 CR 199-199; 287-291; 292-300; 396; 399-402]; [3 CR 4-5; 64-68; 110], and signed a Sworn Affidavit on February 7, 2019 wherein he stated, under oath, that he never signed, nor initialed said Deed Without Warranty, and that said Deed Without Warranty was forged. [1 CR 298-300].

Throughout the Guardianship Proceeding, Decedent was not aware that Respondent was in possession of two additional Deeds Without Warranty; each of which also pertained to the subject property and each of which also contained the same notary date of May 5, 2018 and the identical forged "signature" of Decedent as the Deed Without Warranty for which Decedent signed said Sworn Affidavit. [1 CR 298-300]; [2 CR 87-89; 110-111; 173-200]. One of said two additional Deeds Without Warranty was also dated May 5, 2020, which was ten months after Decedent had died. [2 CR 110-111].

Although, at that time, Decedent and Petitioner were unaware that Respondent was in possession of said two additional Deeds Without Warranty, [2 CR 87-89; 110-111], in post-trial pleadings, Respondent admitted that Decedent's Sworn Affidavit, dated February 7, 2019, [1 CR 298-300], was "*evidence of forgery*" of said Deeds Without Warranty, [1 CR 43-45]. In said post-trial pleadings, Respondent stated, in part, "*Her [Petitioner] only evidence of forgery of a document recorded with the*

Collin County Clerk, and properly notarized by a Texas notary, appears to be documents that the Decedent executed ... Including an affidavit of February 7, 2019'. [1 CR 565].

A. The Guardianship Proceeding Did Not Settle And Close Until May 5, 2022

At the time Respondent filed the trespass to try title case in the District Court on August 28, 2019, [1 CR 16-23], and at the time the lower court rendered its final judgment on August 11, 2020, [Appendix D], the Guardianship Proceeding was not settled and closed, and did not settle and close until May 5, 2022, [Appendix G]. [2] Tex. Est. Code §1022.005(a) &(b).

II. The Lower Court Case Is A Matter Related To The Probate Proceeding Pending In The Collin County Statutory Probate Court

Two days after Decedent died and six (6) weeks before Respondent filed the trespass to try title case in the District Court, Respondent acknowledged, in writing, that the subject property, (2916 Creekbend Dr., Plano, TX), was part of Decedent's Estate, and was, thus, a matter over which the Collin County Statutory Probate Court had exclusive jurisdiction under §32.005(a) of the Texas Estates

[2] Petitioner was never notified of, nor served said Order, dated May 5, 2022 and did not become aware of said order until May 31, 2022. See [Appendix G].

Code. Respondent made said acknowledgment when she signed her third Agreement For Legal Services, ("Agreement"), with the law firm, which represented her in the Guardianship Proceeding. On p. 1, par. 1 of said Agreement, it states, in part:

"Hilary Hutson ("Client") hereby employs Leu & Peirce, PLLC ("Attorney") to provide legal services in connection with the probate of the Estate of Richard W. Thompson, Jr, the Custodial Accounts, the real property located at 2916 Creekbend Drive, Plano, Texas 75075, and all other related matters". [Appendix J].

On August 19, 2019, Petitioner filed the "*Last Will And Testament Of Richard Wells Thompson, Jr.*", dated July 13, 2019, ("Will"), in the Collin County Statutory Probate Court. Under said Will, Petitioner is the sole distributee, legatee and devisee, which includes the subject property. [1 CR 232-241; 399-402]; [2 CR 361-364]. Tex. Est. Code §101.001(a)(1). Nine days later, on August 28, 2019, Respondent filed the trespass to try title case in the District Court, which she based upon said Deed Without Warranty, [1 CR 16-23; 43-45; 298-300], and wherein she expressly relied upon pleadings, which originated, and were filed in the Guardianship Proceeding.

On January 2, 2020 and January 3, 2020, Respondent filed two of said three Deeds Without Warranty, in the pending Probate Proceeding in the Collin County

Statutory Probate Court. [1 CR 43-45]; [2 CR 87-89].

Where the Collin County Statutory Probate Court refused to allow Decedent to speak and to be heard during the Guardianship Proceeding, [1 CR 287-289; 292-300], throughout the three and half years that the lower court case and the related case (U.S. Sup. Ct. No: 23A99), wound its way through the lower courts, the Collin County Statutory Probate Court has refused to hear and consider Petitioner's multiple motions and applications, which are properly before the Court.

III. The Lower Court Failed And Refused To Hear And Consider Petitioner's Applications And Motions, Which Were Properly Before The Court

Because the lower court case arose from the Guardianship Proceeding, and because the lower court case was also a matter related to the pending Probate Proceeding, Petitioner filed motions in the lower court on the grounds that the lower court lacked the subject matter jurisdiction to adjudicate Respondent's trespass to try title case under §1022.002(c) & (d); §1022.005(a)& (b); and §32.005(a) of the Texas Estates Code and Art. 5, §8 of the Tex. Const. Except for Petitioner's Motion To Abate, which Petitioner filed on November 18, 2019, and in contravention of Canon 3(B)(1) and 3(B)(2) of the Texas Code of Judicial Conduct, the lower court failed and refused to hear and consider Petitioner's motions and emergency applications prior to rendering its final judgment, and also failed and refused to

hear and consider Petitioner's timely-filed post-trial motions. At the time Petitioner filed said Motion To Abate, there were no scheduling orders issued, nor pending, including as it related to discovery; there had not been any procedurally substantive actions taken by either party or the court, and nor had there been any rulings or orders by the lower court on any substantive matters. [1 CR 123-127; 232-241; 446-462]. On the same date that Petitioner filed said Motion To Abate in the lower court, she had also filed a Motion To Transfer in the pending Probate Proceeding wherein she sought to transfer and consolidate the trespass to try title action with the Probate Proceeding pending in the Collin County Statutory Probate Court. A hearing date for Petitioner's Motion To Transfer in the Probate Court was set for December 11, 2019, [3 CR 10-30], while a hearing date for Petitioner's Motion To Abate in the lower court was set for December 12, 2019. [1 CR 138-139]. Two days prior to the December 11, 2019 hearing date for Petitioner's motion to transfer, however, the Probate Court cancelled said hearing at the request of Respondent, thereby causing Petitioner to accept a hearing date of January 6, 2020 for said motion to transfer. [3 CR 4-60]. Petitioner subsequently filed an "Emergency Application For Injunctive Relief", in the lower court on December 9, 2019 based on the same grounds as Petitioner's Motion To Abate and also on the fact that the hearing date for Petitioner's motion to transfer had been changed from December

11, 2019 to January 6, 2020. 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 lower court refused and set the hearing date for December 23, 2019. At the behest of Respondent, the lower court cancelled said December 23, 2019 hearing date, [1 CR 8] and then changed the hearing date for Petitioner's emergency application to January 14, 2020, only to cancel the January 14, 2020 hearing date - *again at the behest of Respondent*, wherein the lower court then set the hearing date for said emergency application to January 22, 2020 – forty-four days after Petitioner filed said emergency application for injunctive relief. [1 CR 9]. The lower court, however, never held the hearing for said emergency application on January 22, 2020, never rescheduled it, and never rendered any ruling on said emergency application. [1CR 446-448; 451; 475; 478]; [2 CR 128-129].

In the interim, and prior to the Probate Court having heard Petitioner's Motion To Transfer, the lower court denied Petitioner's unopposed motion to abate during the hearing for said motion on December 12, 2019, but then refused to reduce said oral ruling to writing. [1 CR 8; 128-137; 148-149; 160; 449-462].

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]. Despite Petitioner's repeated requests

for a hearing date for said motion to set aside, the lower court refused to provide a hearing date and failed and refused to hear and consider said motion. [1 CR 449-462]; [2 CR 127-128].

On September 9, 2020, Petitioner timely filed a post-trial motion, wherein she reiterated the lower court's lack of subject matter jurisdiction to hear and decide the case under §1022.002(c) & (d); §1022.005(a)& (b); and §32.005(a) of the Texas Estates Code, and wherein she requested that the court vacate its final judgment on the grounds that it lacked the authority to render any ruling. In said post trial motion, Petitioner also included newly discovered evidence, which showed that documents, which Respondent had submitted as "evidence" in her motion for summary judgment, dated November 18, 2019, were also fabricated, [2 CR 200-215], while other documents, which had been previously filed in the Collin County Clerk's office, and which Respondent also submitted as "evidence" in her motion for summary judgment, were falsified. [1 CR 446-568]; and [2 CR 4-424].

Although Petitioner made more than a dozen written requests for a hearing date, and in contravention of Rule 329b(g) of the Texas Rules of Civil Procedure, the lower court refused to provide a hearing date and refused to hear and consider Petitioner's post-trial motion. [2 CR 138-139; 389; 408-411; 461-468]; [Appendix K].

Petitioner further filed motions to correct and amend the reporter's record in the

lower court on the grounds that the reporter's record did not comport to the Uniform Format Manual For Reporters Record; exhibits, which were presented during the only hearing on December 12, 2019, were not attributed to the correct party; statements made during hearing were altered; the master index was incorrect and other transcripts, which were part of the reporter's record did not pertain to the lower court case and contained conflicting dates and incorrect cause numbers, etc. Although Petitioner repeatedly requested a hearing date for her motions to correct and amend reporter's record, and in contravention of Rule 34.6(2)(3) of the Texas Rules of Appellate Procedure, [3] the lower court failed and refused to hold a hearing on the reporter's record.

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[3] Rule 34.6 of the Texas Rules of Appellate Procedure provides: *"(2) Correction of Inaccuracies by Trial Court. If the parties cannot agree on whether or how to correct the reporter's record so that the text accurately discloses what occurred in the trial court and the exhibits are accurate, the trial court must - after notice and hearing - settle the dispute. If the court finds any inaccuracy, it must order the court reporter to conform the reporter's record (including text and any exhibits) to what occurred in the trial court, and to file certified corrections in the appellate court.(3) Correction After Filing in Appellate Court. If the dispute arises after the reporter's record has been filed in the appellate court, that court may submit the dispute to the trial court for resolution. The trial court must then proceed as under subparagraph (e)(2)".*

IV. Respondent Never Served Petitioner The "Motion For Traditional And No-Evidence Summary Judgment", dated November 18, 2019

Two days after Petitioner filed her motion to abate, [1 CR 123-137], Respondent filed a "*Notice of Consideration of Plaintiff's Motion For Traditional and No-Evidence Summary Judgment on Submission*". [Appendix I]; [1 CR 6; 8; 573]. In said Notice, dated November 20, 2019, a submission date of December 9, 2019 was set for Respondent's "Motion For Traditional and No-Evidence Summary Judgment", which Respondent claimed to have filed on November 18, 2019. [1 CR 26-122; 128-137].

Respondent, however, never served Petitioner said motion for summary judgment, dated November 18, 2019, and despite the fact that Petitioner repeatedly informed Respondent and the Court, in writing, that she had not received said motion for summary judgment, Respondent failed and refused to provide proof of service for said motion for summary judgment. [1 CR 129-131; 135; 143-147; 155; 164; 504; 531-532]; [2 CR 11-24; 96; 99; 117-118; 130-131; 142-147].

In said motion for summary judgment, dated November 18, 2019, Respondent submitted, as evidence, said Deed Without Warranty, which she had filed in the Guardianship Proceeding, [1 CR 43-45; 298-300], as well as, numerous other uncertified pleadings, which originated in and were filed in the Guardianship

Proceeding, [1 CR 26-27; 155-158; 408-413].

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, however, never filed an amended motion for summary judgment and nor did she file any Reply to Petitioner's Response.

V. Respondent Concealed And Never Served Petitioner The "Renewed Motion For Traditional And No-Evidence Summary Judgment", dated June 25, 2020

On June 16, 2020, Petitioner received a "Notice of Consideration On Submission of Plaintiff's Motion For Traditional And No-Evidence Summary Judgment", dated June 11, 2020, wherein a submission date of July 16, 2020 was set for a pleading, which was not included with said Notice and wherein the date of said pleading was not stated. [1 CR 533-534]. Upon receiving said Notice, dated June 11, 2020, Petitioner sent multiple correspondence to Respondent and the court requesting clarification of said Notice and the undated motion for summary judgment, which was referenced in said Notice, but which was not included with said Notice. [1 CR 514-518; 519; 521; 523-525; 531; 538; 540-542].

Except for one letter, dated July 8, 2020, wherein Respondent's attorney, Bruce Cohen, stated to Petitioner, "*there is indeed no further response to which I believe*

you are entitled". [1 CR 523-525; 538; 540-542], Respondent refused to respond to Petitioner's written requests for clarification regarding, said June 11, 2020 Notice. At the time Respondent's attorney sent said letter to Petitioner on July 8, 2020, Respondent concealed that on June 25, 2020, she had filed a "Renewed Motion For Traditional And No-Evidence Summary Judgment". [2 CR 21-60]. Like Respondent's motion for summary judgment, dated November 18, 2019, Respondent never served Petitioner said June 25, 2020 "renewed" motion for summary judgment. Respondent further failed and refused to provide proof of service for said June 25, 2020 motion after Petitioner become aware, for the first time, of said June 25, 2020 "renewed" motion for summary judgment on August 10, 2020, which was one day before the lower court rendered its final judgment. [2 CR 21-60]. Although said June 25, 2020 motion for summary judgment included the word "renewed", said motion was not a "renewed" motion, but rather a *new* motion for summary judgment, wherein Respondent made new allegations against Petitioner that she had not made in her motion for summary judgment, dated November 18, 2019. [1 CR 26-122; 415; 500-501].

VI. The Lower Court's Final Judgment

On August 11, 2020, the lower court rendered its final judgment, wherein it granted summary judgment for Respondent based upon a June 16, 2020 "*Renewed*

Motion For Traditional And No-Evidence Summary Judgment", which was never inscribed into the record and never served. [1 CR 10; 491-492]; [Appendix D]. On September 18, 2020, which was six weeks *after* the lower court issued its final judgment and during the time in which Petitioner's post-trial motion was pending, [1 CR 446-568]; [2 CR 4-424], Respondent admitted that she never filed a "*Renewed Motion For Traditional And No-Evidence Summary Judgment*" on June 16, 2020, and instead claimed that she filed a "*Renewed Motion For Traditional And No-Evidence Summary Judgment*" on July 16, 2020. [1 CR 566]. Like said June 16, 2020 renewed motion for summary judgment, however, not only did Respondent not serve Petitioner any July 16, 2020 renewed motion for summary judgment, but there is also no July 16, 2020 "*Renewed Motion For Traditional And No-Evidence Summary Judgment*" filed for the record. [1 CR 6-12]. In its final judgement, the motion for traditional and no-evidence summary judgment, which the lower court claimed was "renewed" on June 16, 2020 was Respondent's motion for traditional and no-evidence summary judgment, which Respondent claimed to have filed on November 18, 2019. [1 CR 26-122]. Where the submission date of December 9, 2019 for Respondent's November 18, 2019 motion for summary judgment, however, had already passed, [Appendix I], there were also no motions, applications, nor orders filed, nor served, to renew said November 18, 2019 motion

for summary judgment, nor to reset said December 9, 2019 submission date. [Appendix I]; [1 CR 6; 8; 26-122; 139-414; 573].

In its final judgment, the lower court also relied upon, and made determinations of uncertified pleadings, which originated and were filed in the Guardianship Proceeding, and which Respondent had relied upon and submitted as "evidence" in her November 18, 2019 motion for summary judgment. [1 CR 26-27; 155-158; 408-413]; [Appendix D].

In its final judgment, and in contravention of §27.031(a)(2) of the Texas Government Code; §24.004 of the Texas Property Code; Art. 5, §8 of the Texas Constitution; and Rule 510.3 of the Texas Rules of Civil Procedure, the lower court further Ordered Forcible Detainer. [Appendix D].

VII. The Lower Court Denied Petitioner The Right To Conduct Any Discovery Prior To Rendering It Final Judgment

In her Response to Respondent's November 18, 2019 motion for summary judgment, which Respondent filed on the date the discovery period began, [1 CR 26], Petitioner included a verified Motion For Continuance, wherein she requested a Continuance in order to be able to conduct discovery and further requested that the lower court render a written ruling on said Motion For Continuance prior to rendering any ruling on Respondent's motion for summary judgment. [1 CR 149-

160]. The lower court refused to hear and consider Petitioner's uncontroverted Motion For Continuance, and instead, granted Respondent's motion summary judgment, without Petitioner being able to conduct any discovery and without Respondent having complied with the requisite disclosure requirements of Texas Rules Of Civil Procedure 190.3(b)(1); 192.2(a); 194. [Appendix K]; [1 CR 148-149; 449-462].

VIII. The Fifth District Court of Appeals Affirmed The Lower Court's Final Judgment

On July 18, 2022, Fifth District Court of Appeals issued its Memorandum Opinion, ("Opinion") and judgment, wherein it affirmed the trial court's order. Said Opinion is not published. [Appendix A]. Prior to issuing is Opinion, the Fifth District Court of Appeals denied Petitioner's motions to order the trial court to hold a hearing on the reporter's record. [4]

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[4] The following pleadings were filed in the Fifth District Court of Appeals in relation to Petitioner's requests to have the reporter's record corrected and amended: "Appellant's Emergency Motion To Order Trial Court To Conduct Hearing And Motion For Permission To File Supplemental Brief", filed September 9, 2021; "Appellant's Emergency Motion To Compel Court Reporter, Jan Dugger, To Comply With Order To File Corrected Reporter's Record And Motion To Extend Time To File Appellant's Amended Brief", filed August 3, 2021; Court Reporter's Correspondence To The 5th Court of Appeals, filed August 5, 2021;

More than six (6) weeks prior to the Fifth District Court of Appeals having issued its Opinion, Petitioner had perfected the appeal for the Guardianship case, "*In The Guardianship Of Richard W. Thompson, Jr., An Alleged incapacitated Person*", (5th Court of Appeals Case No: 05-22-00768-CV). On June 6, 2022, Petitioner filed the Notice of Appeal in the Collin County Statutory Probate Court. Said Notice of Appeal was inscribed into the record in the Probate Court on June 9, 2022, but was suppressed and not inscribed into the record with the Fifth District Court of Appeals until August 4, 2022, which was *after* the Fifth Court of Appeals issued its Opinion and judgment in this case and the related case, (U.S. Sup. Ct. No: 23A99). [Appendix G]. Prior to the appeal Briefs for the Guardianship case having been filed and the issues being settled, and thus, in contravention of Rule 47.4 of the Texas Rules of Appellate Procedure, in its Opinion, the Fifth District Court of Appeals further made determinations and finding on pleadings and documents, which originated and were filed in the Guardianship Proceeding and which

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"Appellant's Reply To Court Reporter's Response", filed August 9, 2021; "Appellant's Motion To Compel And Emergency Motion To Extend Time To File Amended Brief", filed April 19, 2021, p. 3, Tab A, "Amended Motion To Correct And Amended Reporter's Record"; and "Appellant Challenges Reporter's Record", filed April 8, 2021.

Respondent had submitted as "evidence' in her motion for summary judgment, dated November 18, 2019, [1 CR 26-27; 155-158; 408-413], and to which the lower court expressly referenced in its final judgment. In further contravention of Rule 47.4 of the Texas Rules of Appellate Procedure, in its Opinion, the Fifth District Court of Appeals also made determinations and findings of issues, pleadings and "facts", which are *pending* in Probate Proceeding in the Collin County Statutory Probate Court, "*In Estate Of Richard W. Thompson, Jr., Deceased*", and which are also, thus, not settled.

REASONS FOR GRANTING CERTIORARI

Respondent's trespass to try title case in lower court never should have reached the issues because the lower court lacked subject matter jurisdiction. It's clear that the jurisdictional issues were clearly and positively presented to the lower court. It is also clear that, not only did Respondent intentionally disregard jurisdiction by filing the case in the District Court as opposed to the Collin County Statutory Probate Court, [Appendix J], but that the lower court blatantly and defiantly disregarded its lack of subject matter jurisdiction and rendered judgment for which it had no authority to render. Due process 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, something the lower court here did not do. A court's departure from recognized and established requirements of law, which has the effect of depriving one of his or her constitutional rights, is excess of jursidiction. In *Thompson v. Whitman* (1873) 18 Wall 457, 21 l ED 897, the US Supreme Court held that want of jurisdiction may be shown either as to the subject matter or the person, or, in proceedings *in rem,* as to the thing.

Article 5, §8 of the Texas Constitution provides:

"District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, *except* in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body. District Court judges shall have the power to issue writs necessary to enforce their jurisdiction...".

Here the Texas Estates Code has original and exclusive jurisdiction of all matters related to a guardianship and probate case. Section 1022.001(a) of the TEX. ESTATES CODE provides:

" (a) All guardianship proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the guardianship proceeding as specified in

Section 1021.001 for that type of court". TEX. EST. CODE §1022.001(a).

Section 1022.002(c) & (d) of the Texas Estates Code provides:

"(c) In a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of guardianship proceedings. (d) From the filing of the application for the appointment of a guardian of the estate or person, or both, until the guardianship is settled and closed under this chapter, the administration of the estate of a minor or other incapacitated person is one proceeding for purposes of jurisdiction and is a proceeding in rem". TEX. EST. CODE §1022.002(c) & (d).

Section 1022.005 of the Texas Estates Code provides:

"(a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all guardianship proceedings, regardless of whether contested or uncontested.

(b) A cause of action related to a guardianship proceeding of which the statutory probate court has exclusive jurisdiction as provided by Subsection (a) must be brought in the statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 1022.006 or with the jurisdiction of any other court. TEX. EST. CODE §1022.005(a) & (b), and TEX. GOV'T CODE §25.0451(b). [Appendix K].

Section 1022.006 of the Texas Estates Code provides:

"A statutory probate court has concurrent jurisdiction with the district court in:

(1) a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a guardian; and with the guardian is not an interested person in the guardianship. TEX. EST. CODE §1022.006. See also TEX. EST. CODE §32.005(a); §32.007. [Appendix K].

In its final judgment, the lower court made specific reference to, and relied upon, pleadings and documents which Respondent submitted in the trespass to try title case, but which originated, and were filed in the Guardianship Proceeding. [Appendix D]. Because said trespass to try title case arose from, and was a matter related to the Guardianship Proceeding, and because the Guardianship Proceeding was not settled and closed at the time Respondent brought said case, and where the Collin County Statutory Probate Court did not have concurrent jurisdiction with the District Court under section 1022.006 of the TEX. EST CODE, the District Court lacked the subject matter jurisdiction to adjudicate said trespass to try title action, thereby, resulting in a final judgment, which is not only void as a matter of law, but which erroneously deprived Petitioner of her property interest, thereby violating Petitioner's constitutional right to due process and equal protection of the law under the Fourteenth Amendment to the US Constitution. See also TEX. EST. CODE

§§1022.001(a); 1022.002(c) & (d) and 1022.005(a) & (b).

When Respondent filed her application for guardianship, she submitted herself to the Collin County Statutory Probate Court's jurisdiction, which has exclusive jurisdiction over all claims, including the matter of the subject property and title thereto. In *In re Guardianship of Soberanes*, the Court of Appeals held that "jurisdiction attached when the application [for guardianship] is filed", No. 04-02-00119-CV, 2002 Tex. App. WL 31863704 (San Antonio, December 24, 2002, no pet. h.). The Court further stated, "*this is especially true under the circumstances presented here, where the temporary Guardian submitted herself and the Ward to the court's jurisdiction...*". See also *In re CC & M Garza Ranches, Ltd Partnership*, 409 S.W. 3d 106, 109 (Tex. App. – Houston [1st Dist] 2013, no pet.), wherein the Court held that the Texas Estates Code pertaining to guardianship proceedings confers exclusive jurisdiction on Statutory Probate Courts over actions related to guardianship proceedings.

In its final judgment, the lower court also makes specific reference to 'The Last Will And Testament Of Richard Wells Thompson Jr', dated July 13, 2019, [1 CR 232-241; 399-402]; wherein Petitioner is the sole devisee of the subject property. Because the Collin County Statutory Probate Court does not have concurrent jurisdiction with the District Court under §32.007 of the TEX. EST.

CODE, and because, as said Will, dated July 13, 2019, shows, the subject property is a matter related to the pending Probate Proceeding, and where the probate court has exclusive jurisdiction of all matters relating to the pending probate proceeding as prescribed by §32.005(a) of the TEX. EST. CODE, [Appendix K], the District Court continued to lack subject matter jurisdiction to adjudicate the trespass to try title action.

In *King v Deutsche Bank Nat'l Trust Co.*, 472 S.W. 3d 848 (Tex. App. 2015), the First Court of Appeals held that the "language in §1022.005 of the Texas Estates Code vested the statutory probate court with exclusive jurisdiction over claims that the statute defined as matters related to a guardianship proceeding". In its holding, the Court concluded that "by giving the statutory probate court exclusive jurisdiction over all claims related to a guardianship proceeding, the Legislature necessarily deprived all other courts of the power to adjudicate those claims", and that the provision of the Estates Code [§1022.005] at issue in *In re CC & M Garza Ranches, Ltd Partnership*, was virtually identical to the provision at issue in *King*, [§32.005(a)]. Following the rationale in *In re CC & M Garza Ranches, Ltd Partnership*, the Court held that section 32.005(a) of the Estates Code likewise confers the statutory probate court with exclusive jurisdiction over the case and that because the statutory probate court has exclusive jurisdiction over the parties' claims, the trial court lacked subject-matter jurisdiction over the case. In citing *In*

re CC & M Garza Ranches, Ltd Partnership..., the Court in *King* stated that only the statutory probate court had the power to decide such claims, and an order or judgment issued by another court pertaining to those claims would be void. The judgment from the District Court was vacated and rendered judgment dismissing the case for want of subject-matter jurisdiction. See also *Celestine v Dep't of Family & Protective Servs.*, 321 S.W. 222, 230, (Tex. App – Houston [1st Dist] 2010, no pet)([W]hen one court has ...exclusive jurisdiction over a matter, any order or judgment issued by another court pertaining to the same matter is void"). As this Court has held, "*Without jurisdiction the court cannot proceed at all in any cause; it may not assume jurisdiction for the purpose of deciding the merits of the case*". *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431, 127 S.Ct. 1184, 1191 (2007)).

The lower court also exceeded its jurisdiction when it Ordered Forcible Detainer in its final judgment. [Appendix D]. Section 27.031(a)(2) of the Texas Government Code; section 24.004 of the Texas Property Code and Rule 510.3 of the Texas Rules of Civil Procedure all provide that the justice court has original jurisdiction of all eviction cases. By Ordering Forcible Detainer in its final judgment, the lower court not only violated said statutes, but it also violated Article 5, §8 of the Texas Constitution provides that "District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, *except*

in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body...". 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").

Here the lower 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*". [Appendix D]. Because the lower court decided Respondent's trespass to try title case by a motion for summary judgment, the trial court was required to comply with the rules governing motions for summary judgment. 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).

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,[Appendix I], [1 CR 6; 8; 573], wherein a submission date for said motion for summary judgment, dated November 18, 2019, was set for December 9, 2019. Where Rule 166a(c) of the Texas Rules of Civil Procedure required Respondent to provide a *minimum* 21 day notice. Where Respondent's Notice was filed on November 20, 2019, the earliest date the submission date could be set was December 11, 2019. Notice, however, is not strictly limited to the Notice of Submission, but also required Respondent to serve Petitioner the motion for summary judgment. Here, 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.

The June 16, 2020 "renewed" motion for summary judgment, upon which the lower court based its final judgment, was not only *not* filed as part of the record in the trial court, but six (6) weeks after the lower court issued its final judgment, Respondent also admitted that she never filed a "renewed" motion for summary judgment on June 16, 2020. Where Respondent then claimed to have filed a "renewed" motion for summary judgment, on July 16, 2020, not only did Respondent never serve Petitioner said July 16, 2020 "renewed" motion for summary judgment, but the record also shows that a "renewed" motion for summary judgment was never filed on July 16, 2020.

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 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 facts are contested. 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. 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.

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. Despite its obligation to comply with procedural requirements, the lower court failed to follow any legal procedures as it relates to discovery.

Rule 190.1 of the Texas Rules of Civil Procedure provides, in part: "*Every case must be governed by a discovery control plan as provided in this Rule. A plaintiff must allege in the first numbered paragraph of the original petition whether discovery is intended to be conducted under Level 1,2, or 3 of this Rule...*" TEX. R. CIV. P. 190.1.

Rule 169 of the Texas Rules of Civil Procedure provides, in part: "(a) *The expedited actions process in this rule applies to a suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating $250,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs... (c) Removal from Process. (1) A court must remove a suit from the expedited actions process:(A) on motion and a showing of good cause by any party; or (B) if any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by (a)...(3) If a suit is removed from the expedited actions process, the court must reopen discovery under Rule 190.2(c).* TEX. R. CIV. P., 169.

Rule 190.2(c) of the Texas Rules of Civil Procedure provides: "*If a suit is removed from the expedited actions process in Rule 169 or, in a divorce, the filing of a pleading renders this subdivision no longer applicable, the discovery period reopens, and discovery must be completed within the limitations in Rules 190.3 or 190.4, which ever is applicable. Any person previously deposed may be redeposed. On a motion of any party, the court should continue the trial date if necessary to permit completion of discovery*". TEX. R. CIV. P. 190.2(c).

Rule 190.3 of the Teas Rules of Civil Procedure provides, in part: " *Unless a suit*

is governed by a discovery control plan under Rules 190.2 or 190.4, discovery must be conducted in accordance with this subdivision.(b)Limitations. Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations: (1)Discovery period. All discovery must be conducted during the discovery period, which begins when the initial disclosures are due and continues until:(A) 30 days before the date set for trial, in cases under the Family Code; or (B) in other cases, the earlier of(i) 30 days before the date set for trial, or (ii) nine months after the initial disclosures are due". TEX. R. CIV.P. 190.3

Prior to issuing its final judgment, the lower court failed to set a discovery plan, [1 CR 123-124; 129], as required under Rules 190.1 and 190.3 of the Texas Rules of Civil Procedure; [Appendix K]; 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 Texas Rules of Civil Procedure, [Appendix K]; and failed to reopen discovery under Rule 190.2(c) of the Texas Rules of Civil Procedure after Petitioner removed the case from the expedited actions process to Level 2 discovery under Rule 190.3 of the Texas Rules of Civil Procedure, [1 CR 408].

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".

Canon 3 of the Texas Code of Judicial Conduct provides, in part:

Canon 3(A) – "*...The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply*":

Canon 3(B)(1) "*A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate*".

Canon 3(B)(8) – "*A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law*".

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 of 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, and Petitioner's multiple other applications and motions before the court, not only did said failure and refusal violate Rule 329b(g) of the Texas Rules of Civil Procedure, it also violated the judicial requirements under Canon 3(A); 3(B)(1) and 3(B)(8) of the Texas Code of Judicial Conduct. Petitioner was denied the opportunity and her right to be heard by being denied the right to confront and cross examine Respondent to test the truthfulness, accuracy or completeness of any testimony she would have given on the issues, facts and evidence, and to probe and expose Respondent's infirmities on the issue, facts and

evidence. Petitioner was deprived of her Constitutionally protected right to be heard

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, confront adversaries, the right to be heard at a meaningful time and meaningful manner, and the right to an impartial tribunal. Petitioner was 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 due process, and the subsequent arbitrary and capricious rulings, which are not based upon the merits of the case, are compelling reasons for this Court grant a writ of certiorari since the rights of all are dependent on the rights of each being defended and protected. The absence or denial of procedural due process not only leads to an unfair trial and arbitrary and

capricious decisions that are not based upon the merits of the case, but it also adversely affects societal order by undermining public confidence in the fairness and impartiality of the legal system. An ordered society, one that fosters fairness and justice, requires procedural compliance and equal application of the law. The importance of assuring procedural compliance and equal application of the law cannot be over-emphasized. The lack or absence of procedural compliance not only violates the most fundamental constitutional right of a party to have a fair and impartial proceeding, but it also nurtures corruption and decay of the long-cherished traditions of American jurisprudence, and indeed, the Constitutional protections afforded all citizens. Where the lower court so far departed from the accepted and usual course of judicial proceedings, and where the Fifth District Court of Appeals sanctioned such a departure by the lower court, the Fifth District Court of Appeals' Opinion is so clearly wrong as to call for an exercise of this Court's supervising power.

CONCLUSION

Petitioner, Brigetta D'Olivio, respectfully requests that this Court grant her petition for writ of certiorari.

Respectfully Submitted;

Brigetta D'Olivio

Dated: August 28, 2023

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 "PETITION FOR WRIT OF CERTIORARI", dated August 28 2023, are within my personal knowledge and the same are true and correct.

Brigetta D'Olivio
2916 Creekbend Dr
Plano, TX 75075
214-733-7204
bdt2916@gmail.com

SUBSCRIBED and SWORN to before me, the undersigned, on this 28th day of August 2023, to certify which witness my hand and seal of office.

NOTARY PUBLIC
In and for the State of Texas

PAUL FISHER
Notary Public, State of Texas
Comm. Expires 08-02-2025
Notary ID 133246067