

23-6040

ORIGINAL

In the Supreme Court of the United States

NO _____

ERNEST BUSTOS,
Petitioner

v.

ENCINO PARK HOME OWNERS ASSOCIATION AND SPECTRM
ASSOCIATION MANAGEMENT LP

Respondents

On Petition for Writ of Certiorari to
The Court Of Appeals Texas San Antonio

PETITION FOR WRIT OF CERTIORARI

FILED

OCT 30 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Court violated Petitioner's protected rights preventing the appeal to move forward failing to compare and evaluate the conduct of the Respondent's false representations ignoring that Respondents' complaint was frivolous show the custodian of record affidavit was fraudulent.

Whether the Court showed bias when dealing with pro se litigant ignoring well establish Supreme Court case law dealing with Pro se litigants violating his constitutional rights under the 14th Amendment Access to courts and Equal Protection Clause and Fifth Amendment Due Process of Law.

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PETITION FOR WRIT OF CERTIORARI

Ernest Bustos (Bustos) respectfully petitions for a writ of certiorari to review the Opinion of Court of Appeals Texas San Antonio.

OPINION BELOW

The Court of Appeals Texas San Antonio Affirmed the trial courts orders garneting the No Evidence Summary Judgement to Encino Park Homeowners Association Petitioner's appeal No. 04-21-00009

JURISDICTION

The Mandate Opinion of the court of appeals was entered on September 28, 2022. Petition for rehearing was denied on October 17th, 2022. Motion for en banc reconsideration was denied on November 02, 2022. Supreme Court of Texas Petition for Review 22-111 denied March 24, 2023 Motion for Rehearing dined June 02, 2023. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1)

This Petition is timely under the Supreme Court Rule 13.5, 22 and 30.2 filed within 60-days of extension of time to file a petition for writ of certiorari.

CONSTITUTIONAL VIOLATIONS

Fourteenth Amendment, right to access to courts, Equal Protection Clause, Fifth Amendment Due Process Pro se litigant's right to fair hearings and impartial tribunal, at a basic level, procedural due process is essentially based on the concept of "fundamental fairness." *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934) As construed by the courts, it includes panel making the final decision over the proceedings be impartial in regards to the matter before them. *McNeil v United*

States, 508 U.S. 106: Moreover, given the clarity of the statutory text, it is certainly not a "trap for the unwary."

STATEMENT OF THE CASE

I

WHETHER THE COURT VIOLATED PETITIONER'S PROTECTED RIGHTS

The Court of Appeals Texas San Antonio failure to fairly review the record compromised the court's impartiality, if had fairly reviewed the Petitioners motions, the merits and the facts in the complaint it would have found that the Petitioner exposed the Respondents' complaint as meritless and frivolous under Tex. Civ. Prac. & Rem. Code Sec. 9.001.(3)(A) and that it should have been stricken under Tex. Civ. Prac. & Rem. Code Sec. 9.012. (e)(1) *The striking of the pleading.* This case is not a dispute over payments, the Court's Opinions relied on the Respondents false representations, further the Court contorted the facts to fit its Opinion.

Further Judge Salinas April 11th 2019 Order vacated the February 12th 2019 No Evidence Summary judgment finding genuine issues of material of fact, however her order was contingent on \$2,500 fees to the Respondent's attorney requested for responding to the motion to vacate. Petitioner filed a motion to vacate challenging Judge Salinas' Order for attorney fees as arbitrary and capricious. Instead of striking of the pleading on her own motion after Petitioner showed the Affidavit was fraudulent, exposing cause of action as meritless and feverous, further attorneys made fraudulent statements concerning returned mail both verbally and in the response to Petitioner's motion to vacate violating standards prescribed in Rule 1.04 of Texas

Disciplinary Rules of Professional Conduct instead Judge Salinas awarded attorney fees to the Respondent's attorney which was clearly arbitrary and capricious outside of the limitations on the court's discretion.

Bocquet v. Herring, 972 SW 2d 19- Tex: Supreme Court 1998

The Declaratory Judgments Act does not require an award of attorney fees to the prevailing party. Rather, it provides that the court "may" award attorney fees. The Statute thus affords the trial court a measure of discretion in deciding whether to award attorney fees or not. *Commissioners Court v. Agan*, 940 S.W.2d 77, 81 (Tex.1997); *Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618, 637-638 (Tex.1996); *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432, 444-446 (Tex.1994); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 398-399 (Tex.1989) *Duncan v. Pogue*, 759 S.W.2d 435, 435-436 (Tex.1988); *Oake v. Collin County*, 692 S.W.2d 454, 455-456 (Tex. 1985).

The Act imposes four limitations on the court's discretion. The first is that fees must be reasonable. In general, "[t]he reasonableness of attorney's fees, the recovery of which is authorized by ... statute, is a question of fact for the jury's determination." *Trevino v. American Nat'l Ins. Co.*, 140 Tex. 500, 168 S.W.2d 656, 660 (1943). *Accord: Stewart Title Guar. Co. v. Aiello*, 941 S.W.2d 68, 73 (Tex.1997); *Snoke v. Republic Underwriters Ins. Co.*, 770 S.W.2d 777, 778 (Tex. 1989) (per curiam); *Great Am. Reserve Ins. Co. v. Britton*, 406 S.W.2d 901, 907 (Tex. 1966); *Gulf Paving Co. v. Lofstedt*, 144 Tex. 17, 188 S.W.2d 155, 160-161 (1945); *Johnson v. Universal Life & Accident Ins. Co.*, 127 Tex. 435, 94 S.W.2d 1145, 1146 (1936). The second limitation, that fees must be necessary, is likewise a fact question. *General Motors Corp. v. Bloyed*, 916 S.W.2d 949, 961 (Tex.1996). There are, of course, factors prescribed by law which guide the determination of whether attorney fees are reasonable and necessary. *Arthur Andersen*, 945 S.W.2d at 818 (quoting Tex. Disciplinary R. Prof. Conduct 1.04, *reprinted in* Tex. Gov't Code., tit. 2, subtit. G app. (STATE BAR RULES, art. X, § 9)).

The Act's other two limitations on attorney fees awards are that they must be equitable and just. Matters of equity are addressed to the trial court's discretion. *Knebel v. Capital Nat'l Bank*, 518 S.W.2d 795, 799 (Tex.1974); *Craddock v. Sunshine Bus Lines, Inc.*, 134 Tex. 388, 133 S.W.2d 124, 126 (1939). So is the responsibility for just decisions. *Murff v. Murff*, 615 S.W.2d 696, 699-700 (Tex.1981); *Carle v. Carle*, 149 Tex. 469, 234 S.W.2d 1002, 1005 (1950).

In sum, then, the Declaratory Judgments Act entrusts attorney fee awards to the trial court's sound discretion, subject to the requirements that any fees awarded be reasonable and necessary, which are matters of fact, and to the

additional requirements that fees be equitable and just, which are matters of law. It is an abuse of discretion for a trial court to rule arbitrarily, unreasonably, or without regard to guiding legal principles, *e.g.*, *Goode v. Shoukfeh*, 943 S.W.2d 441, 446 (Tex.1997), or to rule without supporting evidence, *Beaumont Bank v. Buller*, 806 S.W.2d 223, 226 (Tex.1991). Therefore, in reviewing an attorney fee award under the Act, the court of appeals must determine whether the trial court abused its discretion by awarding fees when there was insufficient evidence that the fees were reasonable and necessary, or when the award was inequitable or unjust. Unreasonable fees cannot be awarded, even if the court believed them just, but the court may conclude that it is not equitable or just to award even reasonable and necessary fees. This multifaceted review involving both evidentiary and discretionary matters is required by the language of the Act.

The Petitioner filed his second appeal requesting the Appellate Court to exercise its discretion to review the merits and the facts to allow the appeal to move forward explaining that he did not receive notice of Judge Noll's order because of confusion when he did he was very ill could not have done anything because he was bed ridden. Further, Petitioner was unaware of the Texas Supreme Court standing co-vid order because the court did not send notice of the standing order to extending time. The Petitioner filed his appeal without a notice of appeal believing that time had passed to file a notice of appeal. The court's Conclusion states it refused exercise discretion because the Petitioner notice of appeal was late even though he had not filed a notice. The court contorted his request for the court to exercise its discretion as notice. However, the Petitioner asked the court to exercise its discretion to review the merits, the facts and the attorney's fraudulent acts to allow the appeal to proceed. The court went on to state that the Petitioner failed to use any of the means available to him to

make his notice of appeal timely, stating “*we will not exercise our discretion to do so*”¹ even challenging his illness stating he did not disclose the cause of his illness in violation of HIPAA. The Petitioner called the court to ask about time to file a Motion For Rehearing en banc the clerk placed him on hold, when the clerk returned the clerk told him that the Judge stated “don’t bother” showing disdain. The Court Opinions showed the appearance of favoritism and impartiality.

The Appellate Court failed to take into consideration the full record when it refused to exercise its discretion to allow both appeals to proceed instead it dismissed the Petitioner’s appeal allowing the vacated summary judgment to stand. All the lower courts accepted the unethical veracity of pleadings allowing the complaint to proceed ignoring the Respondents’ Attorneys false representations, their false statements without addressing them when court should have issued sanctions. Without moving for a criminal complaint for perjury on its own motion, instead the lower courts allowed Spectrum Association Management LP custodian of record perjured affidavit as support to the complaint as true.² The Appellate court ignored the unethical veracity of pleadings and the custodian of record perjured affidavit. Instead the Appellate Court repeated the Respondents’ false representations using them as the basis in both of its Opinions. The Appellate Court ignored the Salinas courts order

¹ *Platsky v. CIA*, 953 F. 2d, 26, 28 (1991). , “*Court errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings.*” “*If the Court feels the document was not properly titled or formatted then it has the duty to assist pro se litigants in modifying their pleadings to enable them to go forward*” between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment.”

² (CR 223 ¶3 line 2) custodian of record Jennifer Nutt (*Defendant has failed and continues to fail to pay these assessments, which are just, due and owing.*)

vacating the summary judgment after Petitioner showed genuine issues of material of fact, instead the court's opinion simply states the lower court granted the Respondent's motion for summary judgement purposely avoiding the Petitioner's allegations. The Petitioner filed a motion to vacate Judge Salinas order on April 18th, 2019 before the 10 day deadline of the court's order awarding attorney's fees. The Motion for New Trial and Motion to Vacate Motions where heard on May 13th 2019 before The Honorable Angelica Jimenez, in the 408th Judicial District Court. Judge Jimenez ruled the court no longer had plenary power denying the motion to vacate the order dated April 11th, 2019 after the Respondents attorney misled the court on the date of the Summary Judgment as February 27th 2019.

The Salinas court reviewed cancelled checks instructing how to apply the payments and a letter instructing how to apply the payments, however the custodians of record affidavit stated that the Petitioner refused to pay HOA assessments and a letter sent to Respondent's offering to settle before the suit was filed. The court question why payments were not applied as directed but did not question the custodians of record affidavit. Further the Respondent's response to the Petitioner's motion to vacate made fraudulent statements about the return of the certified mail sent to the Petitioner stating it had been returned to the attorney it making the point that "was not underived it was refused".

The Petitioner's motion to vacate no evidence summary judgement was victorious; contesting the court's order for attorney's fees didn't change the evidence the court

accepted as genuine issues of material of fact to vacate the February 12th 2019 no evidence summary judgment.

The Fourth Court's Opinions' No. 04-21-00009-CV and 04-19-00311-CV relied on the attorney's fraudulent representations that the certified mail was returned when the record clearly showed it wasn't, the record also shows the February 12th 2019 Summary Judgement vacated. Further, the Respondent's attorney wrote in the reply to Petitioner's motion to vacate that the certified mail was not underived it was refused which was exposed as a fraudulent when Judge Salinas asked for proof the attorney admitted it had not been returned³ yet the foundation of both of the Fourth Court of Appeal Memorandum Opinion state that the summary judgement was issued and the certified mail was returned and a no evidence summary judgement had been issued to the Respondents advancing the Respondent's fraudulent representation which was repeated by the Respondent's attorneys in every lower court. The court of appeals dismissed the first appeal For Want of Jurisdiction because the Petitioner's counterclaim had not been dismissed. The Respondent filed a second fraudulent motion for no evidence summary. Respondent's attorneys represented to Judge Noll's court that a summary had already been issued leading the Noll court refused the same information Judge Salinas reviewed to vacate the No Evidence Summary Judgment

³ (CR 147 ¶17 line 3) *"The certified mail was returned to Plaintiff's attorneys' office and was marked "unclaimed." Importantly, it was not marked "undeliverable." "Rather, in case the Defendant simply chose not to claim the certified mail."* **RR Volume 2 Page 11 line 22 to line 25)** *Mr. Kraus: The actual, I understand the actual document has not been returned to our office yet. (RR Volume 2 Page 11 line 24 to Page 12 - - Page 13 line 1 to 3) Mr. Bustos: There is something in here that I just read that said that it had been returned to the attorney. And I asked him for the return and he said he didn't have it. Now, he admitted that it's not been returned.*

which was a part of the record introduced by the Respondents in their pleading calling the evidence a bunch of papers on the grounds that the Petitioner did not include an affidavit attesting to the evidence, ignoring the Respondents' perjured affidavit. The Petitioner argued that the evidence presented was on the record and was the same evidence presented to vacate the Respondents no evidence summary judgement Judge Noll court refused to allow the Petitioner to attest to the evidence or allow him to repair his challenge to Respondents motion⁴ for No Evidence Summary Judgment; instead the court granted the Respondents motion for no evidence summary without prejudice. If the 4th court of appeals would have reviewed the record fully and fairly it would found the court error and that the Noll court's Order dismissing the Petitioner's counterclaim without prejudice was invalid because the court did not adjudicated on the Petitioner's counterclaim on the merits and the facts failing to follow WILLIAM MCNEIL, PETITIONER v. UNITED STATES 113 S. Ct. 1980, 124 L. Ed. 2d 21, 61 U.S.L.W. 4468. Moreover, given the clarity of the statutory text, it is certainly not a "trap for the unwary." Further noting in the Court's Opinion addresses the fraudulent affidavit of support or fraudulent representations. Fourth Court of Appeals states that Petitioner admitted that he not paid the attorney fees but doesn't address why. Petitioner's refusal to pay \$2500 attorney's fee, the Appellate court ignores the Petitioner's Motion to Vacate the Court's Order. Petitioner's refusal to pay fees does

⁴ *Platsky v. CIA*, 953 F.2d, 26, 28 (1991). , "Court errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings." "If the Court feels the document was not properly titled or formatted then it has the duty to assist pro se litigants in modifying their pleadings to enable them to go forward" between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment."

not change Judge Salinas' finding of issues of material of fact vacating the February 12th 2019 summary judgment. The court violated his protected rights.

Fairness is a basic principle of due process, the complaint lacked substantial ground in fact making the court's order for attorney fees arbitrary and capricious. The courts failed to adhere to well established Supreme Court decisions dealing with Pro se litigants⁵ violating the Equal Protection Clause XIV protecting Petitioner from unreasonable Restraint of access to the courts violating Due Process "No person shall be deprived of life, liberty, or property, without due process of law." *See ITL Int'l, Inc. v. Cafe Soluble, S.A.*, 464 F. App'x 241, 244 (5th Cir. 2012) (unpub.) *Am. Realty Tr., Inc. v. Hamilton Lane Advisors, Inc.*, 115 F. App'x 662, 667 (5th Cir. 2004) (unpub.)). The San Antonio Fourth Court of Appeals refusal to exercise its discretion to allow the appeal to proceed stating the Petitioner failed to use any means available to him to make a timely notice of appeal, even though the court's opinion admits that the Texas Supreme court had issued a stay due to co-vid, the court should not have been surprised that the Petitioner was unaware of the stay. The San Antonio Fourth Court of Appeals failed to review of the merits and the facts raised by the Petitioner failing to exercise its discretion refusing to allow the Petitioners appeal move forward due to a late notice of appeal violating his constitutional rights and well found controlling Supreme Court decisions when dealing with a Pro se litigant.^{6,7} Simply stated the San

⁵ *Maty v. Grasselli Chemical Co.*, 303 U.S. 197 (1938) "*Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end*".

⁶ *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 595, 30 L.Ed.2d 652 (1972). We cannot say with assurance that under the allegations of the *pro se* complaint, which we hold to less stringent

Antonio Fourth Court of Appeals violated the Petitioners Fourteenth Amendment, right to access to courts, Equal Protection Clause, Fifth Amendment Due Process Process Pro se litigant's right to fair hearings and impartial tribunal.

II

WHETHER JUDGES ARE BIAS WHEN DEALING WITH PRO SE LITIGANTS

Conflicts arise when Pro se bring their complaints to court due to conflicting duties when there is an issue in pro se cases they should be decided on the merits and facts following Supreme Court decisions on pro se not on procedural error. The Judge should look at the merits and facts in the complaint as a means to arriving at a fair and just outcome to controversies not raise barriers which prevent the achievement of that end.⁸

The San Antonio Fourth Court and the lower courts in involved in the Petitioner's hearings showed their bias and impartially dealing with a pro se litigant in direct contradiction to well established and controlling Supreme Court's decisions. The constitution requires our justice system to serve as a means of arriving at fair and just settlements of controversies between litigants, however when one of the litigants is pro

standards than formal pleadings drafted by lawyers, it appears ~~§21*521~~ "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U. S. 41, 45-46 (1957). See Dioguardi v. Durning, 139 F. 2d 774 (CA2 1944)

⁷ Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938)

"Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end".

⁸ Platsky v. CIA, 953 F. 2d, 26, 28 (1991). , *"Court errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings."* *"If the Court feels the document was not properly titled or formatted then it has the duty to assist pro se litigants in modifying their pleadings to enable them to go forward"* between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment."

se the court is required by this Court's decisions to assist pro se litigants to enable them to go forward. The Court should not raise barriers which prevent the achievement of that end the importance consists in its effectiveness as a means to accomplish the end of a just judgment. This means that the courts must offer a level playing field with basic principles of fairness which in this case it is clear that the lower court failed to do so.⁹ The Petitioner found information on the internet that Judges refuse to follow Supreme Court decisions which are the laws of the land in favor of attorneys calling the Supreme Court decisions unfair to attorneys. Judges who refuse to recognize Supreme Court decisions instead substitute the decisions with their own desecration not to follow this court's decisions should be removed.

A Judge isn't bestowed with desecration to ignore the law of the land.

REASONS FOR GRANTING THE PETITION

Court of Appeals Texas San Antonio failure to exercise its Desecration failing to evaluate the merits and the facts instead the Court's Opinion only focuses on a late notice of appeal that he did not file. Opinion violates the Pro se Petitioners Fourteenth Amendment rights to equal protection of the law, right to access the courts and due process of law. The Court of Appeals Texas San Antonio erred when it failed to review merits and fact that exposed the Respondent's fraudulent representations to the court resulted in an unjust outcome and violation of the Respondent's right to fair hearings and impartial tribunal, a basic level, procedural due process is essentially

⁹ Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938)

"Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end".

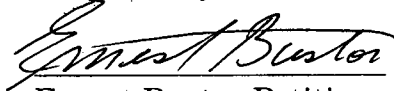
based on the concept of fundamental fairness. Every great society has failed when those in power abuse those who they have power over are witnessing that today. Allowing the Judges to continue to ignore Pro se litigant rights to fair hearings and impartial tribunal is unconscionable and must end.

Simply stated; This Court that can change the Judge's failure to follow well establish case law by enforcing its decisions because so many judges have failed to do so and some showing bias as is the case here.¹⁰

CONCLUSION

For the forgoing reasons, Petitioner request the United States Supreme Court grant the review of Court of Appeals Texas San Antonio asking for the Petition for Writ of Certiorari to be granted.

Respectfully submitted,



Ernest Bustos Petitioner

In Propria Persona

October 30, 2023

¹⁰ *Platsky v. CIA*, 953 F. 2d, 26, 28 (1991). , "Court errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings." "If the Court feels the document was not properly titled or formatted then it has the duty to assist pro se litigants in modifying their pleadings to enable them to go forward" between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment."