

ORIGINAL

No. 23-6126

IN THE SUPREME COURT OF THE UNITED STATES

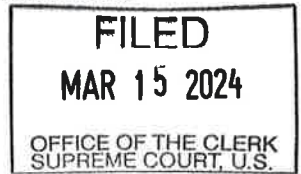
WAYNE ENGLISH,

Petitioner,

V.

PARCEL EXPRESS, INC.,

Respondent.



ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF TEXAS

PETITION FOR REHEARING

WAYNE ENGLISH

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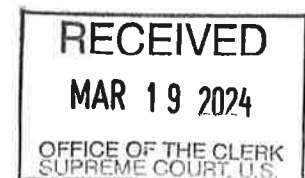


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PETITION FOR REHEARING

Petitioner Wayne English (“English”) submits his petition for rehearing of this Court’s February 20, 2024 Order denying his petition for a writ of certiorari. The notice of the judgment was not mailed by the clerk until February 23, 2024, and not received by Petitioner until February 26, 2024.

REASONS FOR GRANTING REHEARING

This Court’s Rule 44.2 authorizes a petition for rehearing based on “intervening circumstances of a substantial or controlling effect.”

Approximately three weeks ago, the State of Texas came before this Court in oral arguments in *NetChoice, LLC v. Paxton*, Atty. Gen. Texas #22-555 and *Moody v. NetChoice, LLC* #22-277, providing statements that the Texas judiciary must follow and enforce both Texas and Federal laws and the state and Federal Constitutions in support of its citizens. Specifically, Ken Paxton (“Paxton”) provided in his Response to NetChoice’s petition for Certiorari, “For nearly 50 Years, this Court has stated that “statutory or common law may ... extend protection to provide redress against a private corporation or person who seeks to abridge the free expression of others.” *NetChoice v Paxton*, *supra*. In his Questions Presented, Paxton offered that States, consistent with the First

Amendment, can require communications companies to allow users equal and nondiscriminatory access to the platform and that the platform is to provide truthful and factual information to users. *NetChoice v Paxton*, supra, pg. (I).

Throughout the briefs and within the oral arguments presented to this Court on February 26, 2024, Paxton has confirmed that Texas must support, enforce, and follow the laws and Constitution of Texas, and the laws and Constitution of the United States of America. A fortiori, the State of Texas must support, enforce, and follow the 5th and 14th amendments to the U. S. Constitution and Article 1, sections 3a (equality under the law), 15 (right to jury trial), and 19 (due process) of the Texas Constitution.

The Texas judiciary, under the guise of sanctions, has attempted to circumvent the statutory language of the Texas Civil Practice and Remedies Code and the due process rights of English as codified and established in the 5th and 14th amendments and Article 1 of the Texas Constitution.

The Texas Supreme Court in *Nath v. Tex. Children's Hosp.* provided the importance and statutory requirements that parties are entitled to and courts must enforce and follow. "In a civil suit, few areas of trial court discretion implicate a party's due process rights more directly than sanctions." *Nath v.*

Texas Children's Hospital, 446 S.W. 3d 355 (Tex. 2014). “The Civil Practice and remedies Code and our Rules of Civil Procedure allow for pleadings sanctions against parties and attorneys when, among other things, a pleading was filed with an improper purpose or was unlikely to receive evidentiary support. We have held that due process concerns impose additional layers of protection on sanctions awards by requiring, among other things, that the awards be just and not excessive.” *Nath*, supra.

English was charged \$2,500 in sanctions in the justice court and \$4,500 in sanctions in his appeal to the Dallas County Court after filing suit against Parcel Express, Inc., (“Parcel”) for failing to properly handle and transfer his priority mail package to the United States Postal Service for seven days. This lack of prompt action on the part of Parcel made English’s brief to the U. S. Court of Appeals in Philadelphia untimely and forced English to have the brief rebound professionally, a motion for extension of time filed, and the documents to be sent by overnight mail. English filed suit to recover the extra cost that he suffered to submit the brief a second time. Parcel’s motion for sanctions did not overcome the presumption that English’s complaint was made in good faith and that he ample evidentiary support. *Low v. Henry*, 221 S.E.3d 609,614 (Tex. 2007). English’s evidence included: English’s affidavit, a priority mail receipt dated 11/30/18, a

UPSP tracking report dated 12/5/18 showing no movement of the package, a screen shot of an one hour phone call to the USPS customer support center on 12/6/2018, a intranet tracking report signed by the Mesquite Postmaster dated 12/7/18, and a Stamps.com tracking report showing no movement of the package for seven days.

Throughout his case, the Texas judiciary abridged, ignored, and violated English's due process rights. The acts included charging an appeal bond five times the amount required by statute, timely mailed and hand delivered pleadings disappearing, multiply denials of a demand for jury trial, accepting affidavits without personal knowledge, and failure to acknowledge the existence of governmental documents filed to prove the lack of movement of English's mail. The court also denied English's Freedom of Information request to confirm the bias and violation of his due process in the justice court and for ignoring English's screen shot of his one hour and nine minute phone call to the USPS customer support center.

To issue a ruling awarding sanctions under chapter 10 of the Texas Civil Practice and Remedies Code, the court would have to agree that English filed the lawsuit for an improper purpose and without any evidentiary support. Tex. C.

Pract. & Rem. Code 10; *Nath*, supra. “A sanctions award will not withstand appellate scrutiny if the trial court acted without reference to guiding rules and principles to such an extent that its ruling was arbitrary or unreasonable.” *Nath* quoting *Cire v. Cummings*, 134 S.W. Ed 835, 838-39 (Tex. 2004). “A sanctions award that fails to comply with due process constitutes an abuse of discretion because a trial court has no discretion in determining what the law is or applying the law to the facts.” *Nath* quoting *TransAmerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991); *Huie v. DeShazo*, 922 S.W. 2d 920, 927 (Tex. 1996). Texas courts have to “presume pleadings and other papers are filed in good faith.” *GTE Commc’ns Sys. Corp. v. Tanner*, 856 S.W.2d 725, 730 (Tex. 1993). To overcome this presumption of good faith, the party that seeks sanctions has the burden of proof. *Id.* at 731. “We have held that in order to safeguard constitutional due process rights, a sanction must be neither unjust nor excessive.” *Nath*, supra; See also *TransAmerican* at 811.

A trial court “has no ‘discretion’ in determining what the law is or applying” law to facts. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992). “The trial court abused its discretion if it awarded sanctions for baseless pleadings if those pleadings, in fact, have at least some legal or factual basis.” *Pressley v. Casar*, 567 S.W.3d 327 (Tex. 2019). Under the Chapter 10 standard, to deny an award of

sanctions a party needs only to have some factual basis for the claim not evidence that is ultimately admissible.” *Id.* If the party has some evidence as in this case, the trial court abused its discretion in sanctioning English. *Pressley, supra.* (“*Pressley* needs only to have some factual basis for her claim to avoid Chapter 10 sanctions, not evidence that is ultimately admissible. She has some evidence here. The trial court, therefore, abused its discretion in sanctioning *Pressley* for this claim.”).

“We have held that in order to safeguard constitutional due process rights, a sanction must be neither unjust nor excessive.” *Nath, supra.* Historically, awards for groundless pleadings and for due process violations have been reversed on appeal. See *GTE* at 730 (reversing a sanctions award of \$150,000 in attorney’s fees for groundlessness and discovery non-compliance): *Dike v. Peltier Chevrolet, Inc.*, 343 S.W.3d 179,183 (Tex. App.-Houston{14th Dist.} 2007, no.pet.)(reversing a groundless pleading sanction of \$3,500 in attorney’s fees): see also *Emmons v. Purser*, 973 S.W.2d 696, 699 (Tex. App.-Austin 1998, no. pet.) (reversing a groundless pleadings sanctions award of \$3,200).

In violation of State and Federal constitutional protections, the trial court without any legal support or factual basis awarded sanctions against English.

Although it is unclear how the court could overlook English's evidence and determine his claims were wrong, let alone frivolous, the documents were sufficient to prevent sanctions. English did not need to be right or produce enough evidentiary support to prevail on his suit to avoid sanctions. Enough documents were supplied to confirm the allegations and make the claims non-frivolous. Thus, the court abused its discretion in sanctioning English. *Pressley, supra*. The Texas Supreme Court has held that sanctions stemming from the filing of pleadings, as within this case, are afforded due process protections. *Low*, 221 S.W.3d at 619-20.

Excessive sanctions are also afforded state and federal constitutional protections. If the fines and attorney's fees awarded as sanctions are excessive based on the circumstances, they can violate the Excessive Fines clause of the Constitution- Eighth Amendment- and the Excessive Fines clause of the Texas Constitution-Article I, section 13. *Nath, supra*. ("The second prong of the due process analysis under *TransAmerican* considers the proportionality of the punishment relative to the misconduct and warns "just sanctions must not be excessive."").

“Not only should a punishment (i.e., sanctions) fit the crime (i.e., the triggering offense), the sanction imposed should be no more severe than necessary to satisfy its legitimate purposes.” *Id.* Here, English was charged \$2,500 in sanctions in the Justice Court for filing one pleading and for the court holding one hearing, an award clearly excessive on its face.

“The hallmarks of due process for sanctions awards are that they be just and not excessive.” *Nath*, quoting *TransAmerican*, 811 S.W.2d at 917. The state’s actions is the latest roadblock in an agonizing odyssey to restrict, inhibit and quash the ability of litigants to a fair and impartial hearing and the dissemination of rulings and decisions based on the facts and evidence at hand rather than circumventing both the State and Federal Constitutions. Texas, on one hand, under statements made in this Court in *Moody*, claims it must follow state law and the Constitution under the first amendment. On the other hand, Texas wants to ignore other amendments, i.e., fourth, fifth, and fourteenth, and its own State Constitution, i.e., Article I-section 3, 3a, 15, and 19, in assessing fines, sanctions, and penalties.

James Madison, known as the father of the U.S. Constitution and the Bill of Rights, established and codified the right of citizens to due process, equal

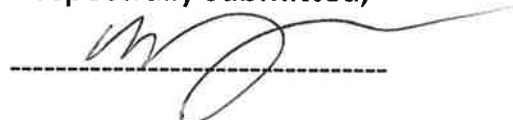
protection, and the right to trial by a jury. “Due process requires that sanctions be just, meaning that there be a direct nexus between the sanction and the sanctionable conduct ...” and the award must not be excessive. *Nath*, supra. Parcel failed to prove English’s allegations were frivolous. Although, English’s claims individually and collectively might have been losing ones, they were not frivolous. Only two entities were responsible for the delivery of English’s priority mail package, the U. S. Postal Service or Parcel. English’s evidence might not have been strong enough to win on the merits, but he submitted some evidence and legal basis for his claims. For that reason, the trial court abused its discretion and violated the due process rights of English for making these non-frivolous arguments, and the court of appeals erred in affirming the sanctions. This Petition for Rehearing should be granted.

CONCLUSION

For the foregoing reasons and those stated in the petition for a writ of certiorari, the Court should grant rehearing, grant the petition for writ of certiorari and review the judgment as unjust and excessive.

Date March 14, 2024

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Wayne English', is written over a horizontal dashed line.

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CERTIFICATE OF COMPLIANCE

The word processing used to write this petition reports its length at 2,132 words including the contents that may be excluded under Rule 33.


Wayne English


CERTIFICATE OF COUNSEL

As pro se. I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.


Wayne English

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading was sent via fax, mail, e-mail, electronic service, or hand delivered to all counsel of record on March 14, 2024.


Wayne English