

No. _____

In The
SUPREME COURT OF THE UNITED STATES

DARRYL HEFFNER,
Trust Beneficiary,
Plaintiff – Appellant – Petitioner –
Petitioner,

v.

TIMOTHY HEFFNER,
First-named Trustee, et al.,
Respondents – Appellees – Respondents –
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE
SECOND DISTRICT OF TEXAS

**ORIGINAL PETITION FOR A WRIT OF CERTIORARI
WITH APPENDIX A**

DARRYL HEFFNER
389 FM 902
Gainesville, Texas 76240
heffner.da61@gmail.com

Questions Presented

Appellate Jurisdiction – Refusal to exercise

1. Is expungement tantamount to dismissal?
[“What/When is ‘final?’ ”]

Trial Jurisdiction – Refusal to exercise

2. Was it error to dismiss on the pleadings?

Trial Jurisdiction – Final Distribution

3. Was it error to expunge Denton Lis Pendens?
4. Was it error to expunge Gainesville homestead Lis Pendens?

Actions speak louder than words

- 4.1. Did Gambit 1 (the May 19 documents) fail?
Was it abusive to exclude Ex. 27 (Ex. 28)?
- 4.2. Did Gambit 2 (Ex. 65, Nov./Dec. 2020) fail?
Was it abusive to exclude Ex. 65?
- 4.3. Did Gambit 3 (Exs. 80-84) (Ex. 65 reprise, May, 2022) fail? Is it abusive to exclude Ex. 80 (on appeal)?

Trial Jurisdiction – Non-judicial Decision-making

5. Was it error to order post-dismissal Mediation?

Trial Jurisdiction – Discovery

Facially Defective Deposition Notice

- 6.1. Was it error to order the Deposition?

Post-dismissal

- 6.2. Was it error to order post-dismissal Discovery?

Discretion – Trial [Merger]

7. Was it abusive to deny Temp. Inj.?
8. Was it error to deny Sum. Judgments?

Transcript rate/cost issue

9. Was it abusive to allow the charged Transcript rate?

Trial Jurisdiction – “Fair and Impartial forum” – Necessary Recusal

10. Is HAVERKAMP necessarily Recused?

Parties to 2d.CoA Proceeding

Appellant

DARRYL HEFFNER (Surviving spouse, 40 (39)
years)
pro se

Appellees

TIMOTHY HEFFNER (Eldest son)
(First-named Trustee)

By: PAUL F. WRIGHT
(Board Certified Expert)
THE WRIGHT FIRM, LLP
Campbell Center II
8150 N. Central Expwy, Suite 775
Dallas, TX 75206
paul@thewrightlawyers.com

MATTHEW HEFFNER (Youngest son)
(Second-named Trustee)

By: CHARLES E. BEACHLEY III
(Board Certified Expert)
BeachleySmithLaw PLLC
~~250 North Mill Street, Suite 1~~
~~Lewisville, TX 75057~~
~~4425 Plano Parkway, Unit 1403~~
~~Carrollton, Texas 75010~~
405 State Highway 121, Ste A250
Lewisville, Texas 75067
beachley@beachleypllc.com

JONATHAN HEFFNER (middle son)
(Third-named Trustee)

By: CHRISTOPHER B. HENRY
MINOR & JESTER, P.C.
502 West Oak Street, Suite 200
P.O. Box 280
Denton, TX 76202
chenry@minorandjester.com

On appeal, originally the above, then *all* by:

KATHERINE ELRICH
COBB MARTINEZ WOODWARD
1700 Pacific Avenue, Suite 3100
Dallas, TX 75201
kelrich@cobbmartinez.com

Directly Related Proceedings

Trial level

235th DISTRICT COURT, COOKE COUNTY,
TEXAS (HAVERKAMP)

No. CV21-00248

HEFFNER v. HEFFNER, et al.

Dismissed (under disguise of expunging Lis
Pendens): Apr. 25, 2022

Appellate level

Court of Appeals
Second Appellate District of Texas at Fort Worth
(Seal: STATE OF TEXAS)

No. 02-22-00149-CV

Heffner v. Heffner, et al.

D.W.O.J.: Apr. 13, 2023

**State Court of Last Resort – Discretionary
Review**

SUPREME COURT OF TEXAS

No. 23-0378

HEFFNER v. HEFFNER

Denied: Aug. 25, 2023 [+90: Nov. [23] 24, 2023]

Parallel Probate (Disqualification) Case

**(latest) State Court of Last Resort –
Discretionary Review**

SUPREME COURT OF TEXAS

No. 23-0449

IN RE HEFFNER

[Case style encapsulates the dispute. This “*in rem* only” case style, asserted by 2d.CoA, as well, is not the *in personam* within *in rem* case style asserted in the Petition, or on appeal, or found/used in appealed (trial) dismissal order.]

Denied: Sept. 29, 2023 [+90: Dec. 28, 2023; *cf.* Prin. Brief, cvr. (2d.CoA – No. 02-21-00419-CV)]

(Pet. for Cert. in process. *Very* similar “What/When is ‘final?’” issue as here. Different context.)

Petition

Citations below

None.

Jurisdiction

- (i) D.W.O.J.
No. 02-22-00149-CV
Apr. 13, 2023
- (ii) Extension.
S.Ct.Tex. No. 23-0378
Denied: Aug. 25, 2023 (+90: Nov. [23] 24)
- (iii) Rule 12.5.
N/A
- (iv) Statutes, Jurisdiction.
28 U.S.C. §§ 1257(a), 2101(c).
- (v) Statutory challenges.
N/A

Statement of the Case

Federal Questions

- Denial of access (trial, appellate)
- Due Process – “Final” rulings are reviewed at law, not in equity
- STATE reneged statutory right to self-help maintenance of *status quo* (Lis Pendens)
- *Jus tertii* Standing to protect Deceased’s right to contract (Trust, mortgage)
- Excessive Transcript rates
- Illegal Discovery (moot, in part?)
- Compelled consent (mediation)
- Compelled commerce (“representation”)
- Unfair, biased trial forum

Pleadings

Two agreements: Trust, mortgage. Two properties: Gainesville homestead, Denton.

Disqualification

All named fiduciaries claim personal ownership in the Gainesville homestead, the trust *res* to be distributed exclusively to Beneficiary.

The incurable family discord has been nothing but exacerbated by the litigation harassment, including the very opening (WRIGHT), *and continuing* (BEACHLEY), "You're going to jail!"

Disqualified ==> hence, "would-be."

11th-hour effort to rewrite Sharon's Plan

Lung cancer and morphine.

Early May, 2020, Sharon's prognosis was two weeks to two months. Stage 4 metastatic lung cancer from uterine cancer. MATTHEW, the paramedic, gave the morphine injections.

"Brown family drama."

About a week in, daughter-in-law (TIMOTHY's controlling wife) inquired into Sharon's estate documents. Finding no distribution to TIMOTHY, she instigated the next family drama chapter, to this effect: "Oh! Can't distribute homestead to Beneficiary. Medicare/Medicaid ('M/M') will take it all! Gotta distribute to the boys, instead."

No one, not sons, in-law, or attorneys, ever asked whether Sharon had ever even applied; they all simply left the reservation with this factless position.

Neither Record (Trust, Probate) contains even an M/M application much less claim.

M/M made no appearance in Probate. The Inventory, fraudulent for other reasons, breathes not one word of any M/M proceeds or claim.

Gambit 1 – May 19.

Daughter-in-law, scrivener-drafted documents in hand, emceed the May 19, in-home, Notarized sand-bagging. Daughter-in-law had unilaterally contacted Sharon's Estate Plan attorney ("**scrivener**"), who never talked with Sharon about daughter-in-law's proposed rewrite. Three documents: (1) Ex. 24, amending the Trust, (2) Ex. 25, "selling" homestead, Trust to Sharon, (3) Ex. 26, "selling" homestead, Sharon to would-be fiduciaries.

Not one penny ever changed hands. Probate Inventory totally silent regarding any account receivable for any \$448,000 amount.

Sharon's rescission – May 20.

Ex. 27 (28). Via her a.m. May 20 SMS ("text") message to scrivener, Sharon rescinded the May 19 documents and self-assessed as lacking capacity.

Two weeks in, Sharon passed – late p.m. May 21; officially, early a.m. May 22.

Gambit 2 – Nov./Dec.

Accepting Sharon's rescission and conceding Sharon's lack of capacity, scrivener didn't advise would-be fiduciaries to file those rescinded deeds but rather to try again to hoodwink "consent." Would-be fiduciaries, scrivener-drafted document in hand, presented Beneficiary with Ex. 65, the "Family Settlement Agreement." It declares repudiation of trust and demands that Beneficiary disclaim, and that via a two-part transaction: (a) quite hidden,

homestead to Beneficiary, per the Trust as originally drafted; (b) homestead to would-be fiduciaries. MATTHEW left in a frustrated huff; Beneficiary opted reading it rather than signing it blindly.

Interlude.

Under different counsel, would-be fiduciaries filed the rescinded deeds after activating Probate, i.e., a year after Sharon passed. Suits filed; both dismissed.

Gambit 3 – May (2022).

BEACHLEY, during his post-dismissal Deposition, reasserted Ex. 65. Exs. 80-84 (2d.CoA).

Multi-State Morphine-Capacity Analysis.

The Analysis establishes this starting place:

- Morphine patients are “in” and “out.”
- The patients know this.
- All who interact with the patients know this.

The controlling facts are immutable. *Cf. Lozman* (2013); flip-side result.

Gambit 1 failed. How do we know? Gambits 2, 3 exist. Gambit 2 failed (Gambit 3 exists). Gambit 3 failed (Ex. 65 remains unsigned; BEACHLEY didn’t order that Transcript (Ex. 80); litigation persists).

Key, (twice-proposed) Ex. 65 concedes Sharon’s self-assessed lack of capacity.

Thus, the Gambit 1 (May 19) documents are null and void; they changed nothing.

MATTHEW's repudiated mortgage

Scrivener-drafted deed kluges two transactions (Trust to Sharon; Sharon to Matthew) into one document (similarly, Ex. 65). Mortgage initiated during Sharon's marriage. MATTHEW, burdened to overcome "community" presumption, has gone silent regarding his checks – Is payee "Sharon, Mom," as she treated them, or "Sharon, Trustee?" After down payment, taking possession, making improvements, and 27 payments, MATTHEW repudiated his mortgage immediately upon Sharon's passing. Probate Inventory fraudulently makes zero mention of MATTHEW's mortgage (\$129,200 still due).

Argument

1. Is expungement tantamount to dismissal?

What's left to litigate? Beneficiary pled two agreements: Trust (Gainesville), mortgage (Denton). For HAVERKAMP to conclude no ownership interest is for her first to set aside both agreements. Expungement finalizes distribution of each property.

2. Was it error to dismiss on the pleadings?

STATE didn't follow its own rules: TEX.R.CIV.P. 91a.1 (motion), 91a.2 (same), 91a.3(a) (timing), 91a.6 (witnesses are unavailable).

3. Was it error to expunge Denton Lis Pendens?

Movant (TIMOTHY) lacks standing to request expungement. No interest, at all, whatsoever.

HAVERKAMP treated attorney argument as irrebuttable evidence and shifted the burden.

Mortgage is community property. Per *Sharon's* estate plan (Will: All to Trust(ee)), all land goes exclusively to Beneficiary.

4. Was it error to expunge Gainesville homestead Lis Pendens?

See 3, supra. No standing. TIMOTHY's sole possible interest is "legal." But, since he's Disqualified, he doesn't even have that.

In the entire history of multi-state jurisprudence, it's rare, unique, for the morphine patient to self-assess regarding capacity. Sharon self-assessed, a.m. May 20, as lacking capacity regarding May 19.

4.1. Did Gambit 1 (the May 19 documents) fail? Was it abusive to exclude Ex. 27 (Ex. 28)?

Sharon rescinded and self-assessed as lacking capacity. Moreover, the mere existence of Gambits 2, 3 self-proves Gambit 1 failed.

4.2. Did Gambit 2 (Ex. 65, Nov./Dec. 2020) fail? Was it abusive to exclude Ex. 65?

The mere existence of Gambit 3 self-proves Gambit 2 failed. Ex. 65 remains unsigned.

4.3. Did Gambit 3 (Exs. 80-84) (Ex. 65 reprise, May, 2022) fail? Is it abusive to exclude Ex. 80 (on appeal)?

Material to the Morphine-Capacity Analysis is

the conduct of the 11th-hour wanna-be beneficiaries. Post-dismissal, they reasserted Ex. 65.

5. Was it error to order post-dismissal Mediation?

Beneficiary never consented. *Cf. Volt Information Sciences, Inc.*

Beneficiary attended the Deposition.

6.1. Was it error to order the Deposition?

BEACHLEY's Notice is facially defective; Beneficiary objected of Record. (Moot?)

6.2. Was it error to order post-dismissal Discovery?

See 6.1. Moreover, post-dismissal, where's the fact-finding proceeding?

7. Was it abusive to deny Temp. Inj.?

Upon Rendering, or where *Lis Pendens* is reinstated, this is moot.

Temp. Inj. maintains *status quo* pending final resolution. Since the only party *with* a direct interest in each property is Beneficiary, he was/is more than fully entitled to protection of his ownership interests.

8. Was it error to deny Sum. Judgments?

And how! Each is Disqualified, for all the reasons existing even up to that point.

9. Was it abusive to allow the charged Transcript rate?

Given electronic filing, hard copy overhead is no longer even conscionable to include. (Moreover, Beneficiary still had to obtain a Transcript copy (.pdf) from the appellate court.)

The real rub is the 30-day (or faster) rate with 180-, 210-, 240-day delivery. Covid or no Covid, 30-day delivery *rates* necessitate 30-day *delivery*. “Starting when?” is the next issue (from the date requested or the date money is paid?), and can the whole (over-) *estimate* be compelled paid up front?

Non-delivery for non-payment is one thing; non-production is completely another.

10. Is HAVERKAMP necessarily Recused?

Compelled commerce and denied access concurrently throughout, because Beneficiary is *pro se*.

Dismissed, in plain defiance of the clearly stated Rules, disguised by additional post-dismissal orders (mediation, Discovery) intending to seduce Beneficiary into missing the appeal deadline.

(Accepted attorney argument as irrebuttable evidence; shifted evidentiary burden; didn’t admit anciently admissible evidence; baselessly, wantonly, set aside both agreements (and distributed both properties) first thing out of the chute.)

From the bench, advised Respondent’s attorney how to proceed against Beneficiary specifically.

These overtly negate the very notion of “fair and impartial forum.” *Liljeberg*; *Liteky*; *Sao Paulo Brazil* (see also *Potashnick*, 609 F.2d at 1111); *Caperton*, 556 U.S. at 876; *Lavoie*; *Ward*; *Mayberry*; *Murchison*; *Tumey*.

Relief Requested

Vacate, Render (constructive trust), and Remand, instructing that HAVERKAMP not participate.

- A. Grant this petition.
- B. Vacate 2d.CoA's ruling(s).
- C. Vacate all HAVERKAMPS's rulings.
- D. Confirm that expungement left nothing to litigate.
- E. Confirm that mediation requires unanimous consent.
- F. Confirm that Discovery applies only to active, fact-finding phases.
- H. Confirm that Transcript rates must match actual delivery of both "product" and timing; the request date controls; delay is not financially rewarded.
- J. Order all three Respondents Disqualified.
- K. Order MATTHEW to deliver the Denton property (debt-free) to Beneficiary.
- L. Order TIMOTHY, MATTHEW, and JONATHAN to deliver the Gainesville homestead property (debt-free) to Beneficiary.
- M. Award costs.

N. Remand for remaining issues of rent due and property tax reimbursement, with instructions that HAVERKAMP shall not participate.

Respectfully submitted,

A handwritten signature in cursive script that reads "Darryl Heffner". The signature is written in dark ink and has a long, sweeping horizontal line extending to the right.

/s/ Darryl Heffner
DARRYL HEFFNER

Appendix A
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Appendix A

Rule 14.1(i)(i)—Appellate ruling

D.W.O.J. – 2023 Apr. 13.

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[Note: No filestamped version Served.]

[SEAL – THE STATE OF TEXAS]

**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-22-00149-CV

Darryl Heffner, Appellant

v.

Timothy Heffner, Matthew Heffner, and
Jonathan Heffner, Appellees

[Note: Small caps omitted]

On Appeal from the 235th District Court
Cooke County, Texas
Trial Court No. CV21-00248

Before Sudderth, C.J.; Kerr and Birdwell, JJ.
Memorandum Opinion by Chief Justice Sudderth

MEMORANDUM OPINION

Appellant Darryl Heffner attempts to appeal from three trial court orders: two orders expunging notices of lis pendens and one scheduling order. Appellees Timothy Heffner, Matthew Heffner, and Jonathan Heffner have moved to dismiss this appeal for want of jurisdiction. Appellant has filed a response to the dismissal motion.

Generally, appeals may be taken only from final judgments or appealable interlocutory orders. *In re Guardianship of Jones*, 629 S.W.3d 921, 924 (Tex. 2021); *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). Orders expunging notices of lis pendens are neither final nor subject to interlocutory appeal. *Smith v. Schwartz*, No. 02-15-00146-CV, 2015 WL 3645862, at *1 (Tex. App.—Fort Worth June 11, 2015, no pet.) (per curiam) (mem. op.). The same is true of scheduling orders; they are neither final nor subject to interlocutory appeal. *P.K. v. S.B.*, No. 02-19-00141-CV, 2019 WL 3756210, at *1 n.1 (Tex. App.—Fort Worth Aug. 8, 2019, no pet.) (per curiam) (mem. op.); *Thomas v. Pugliese*, No. 02-17-00407-CV, 2017 WL 6616243, at *1 (Tex. App.—Fort Worth Dec. 21, 2017, no pet.) (per curiam) (mem. op.).

Nonetheless, Appellant opposes Appellees' motion to dismiss this appeal. He asserts that "[e]xpungement is tantamount to dismissal" of his case. Although Appellant's legal rationale is unclear, from what we can gather, Appellant contends that expunging the two notices of lis pendens reflected "[t]he trial [court's] perspective [3] that he has no ownership interest in either property" and thus

implicitly resolved Appellant's claims against him.¹

This is not the case. A notice of lis pendens does not adjudicate the property's ownership; it merely "broadcasts 'to the world' the existence of ongoing litigation regarding ownership of the property." *Sommers for Ala. & Dunlavy, Ltd. v. Sandcastle Homes, Inc.*, 521 S.W.3d 749, 753 (Tex. 2017) (quoting Tex. Prop. Code Ann. 13.004(a)). For much the same reason, expunging the "broadcast[]" is not a "fullblown adverse judgment on the merits." *Id.* at 753-57 (rejecting intermediate court's interpretation of expungement's effect on notice of lis pendens). Expungement "restor[es] the chain of title free of the record notice of [the] potential claim of interest" but does not leave the "persons claiming an interest in [the] property ... in a worse position for having filed a [later-expunged] lis pendens . . . than had they not filed one." *Id.* at 756-57.

There are numerous grounds for expunging a notice of lis pendens that have nothing to do with the merits of the property-related dispute. *See, e.g.*, Tex. Prop. Code Ann. § 12.0071 (c)(3) (requiring expungement if "the person who filed the notice for record did not serve a copy of the notice on each party [statutorily] entitled to a copy"); *In re Collins*, 172 S.W.3d 287, 293 (Tex. App.—Fort Worth 2005, orig. [4] proceeding) (noting that "the suit on which the lis pendens is based must claim a direct interest in real property, not a collateral one").

¹ Appellant further contends that the trial court's failure to set a trial date in the scheduling order evidenced its recognition that the expungements resolved all pending issues.

Here, the trial court expunged the notices because it determined that “the pleading on which the notice[s were] based d[id] not contain a real property claim.” Tex. Prop. Code Ann. § 12.0071(c)(1). The trial court could rule on this issue without resolving the merits of Appellant’s various trust-related claims—claims which include, inter alia, breach of fiduciary duty and disqualification of Appellees as trustees. The same is true for the scheduling order; the trial court could schedule discovery deadlines without finally resolving the merits of the case. Nothing in the three challenged orders (1) “actually dispose[d] of every pending claim and party” or (2) “clearly and unequivocally state[d] that it finally dispose[d] of all claims and parties.” *Patel v. Nations Renovations, LLC*, No. 21-0643, 2023 WL 1871558, at *3 (Tex. Feb. 10, 2023) (quoting *Jones*, 629 S.W.3d at 924); *Lehmann*, 39 S.W.3d at 205. In fact, the scheduling order reflects the opposite: that pending parties and claims remain. Otherwise, there would be no reason to schedule discovery, deadlines. [5]

Because there is neither a final order nor an appealable interlocutory order, we grant Appellees’ motion and dismiss this case for want of jurisdiction. *See* Tex. R. App. P. 42.3(a), 43.2(f).

/s/ Bonnie Sudderth

Bonnie Sudderth
Chief Justice

Delivered: April 13, 2023

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[Note: No filestamped version Served.]

[SEAL – THE STATE OF TEXAS]

**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-22-00149-CV

Darryl Heffner §

§

v.

§

Timothy Heffner, Matthew §
Heffner, and Jonathan Heffner,
Appellees

[Note: Small caps omitted]

§ On Appeal from the 235th District Court

§ of Cooke County (CV21-00248)

§ April 13, 2023

§ Memorandum Opinion by Chief Justice
Sudderth

JUDGMENT

This court has considered the record on appeal in this case and holds that the appeal should be dismissed. It is ordered that the appeal is dismissed for want of jurisdiction.

SECOND DISTRICT COURT OF APPEALS

By /s/ Bonnie Sudderth
Chief Justice Bonnie Sudderth

Rule 14.1(i)(ii)—Additional Orders

SUPREME COURT OF TEXAS.

PETITION FOR REVIEW – DENIED – 2023 AUG. 25.

FILE COPY

RE: Case No. 23-0378 DATE: 8/25/2023
COA #: 02-22-00149-CV TC#: CV21-00248
STYLE: HEFFNER V. HEFFNER

Today the Supreme Court of Texas denied the petition for review in the above-referenced case. The Motion to Exceed Word Count is granted.

MR. DARRYL HEFFNER
* DELIVERED VIA E-MAIL & POSTAL *

STATE OF TEXAS d/b/a 2d.CoA.

**MOTION FOR EMERGENCY RELIEF – DENIED –
2022 MAY 16.**

FILE COPY

[SEAL – THE STATE OF TEXAS]

**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-22-00149-CV

Darryl Heffner, Appellant

v.

Timothy Heffner, Matthew Heffner, and
Jonathan Heffner, Appellees
[Note: Small caps omitted]

On Appeal from the 235th District Court
Cooke County, Texas
Trial Court No. CV21-00248

ORDER

We have considered “Beneficiary’s Motion for
Emergency Relief.”

The motion is **DENIED**.

We direct the clerk of this court to send a notice of
this order to the appellant and the attorneys of

A-7

record for appellee.

Dated May 16, 2022.

Per Curiam

**MOTION FOR ABATEMENT REGARDING
TRANSCRIPT – GRANTED – 2022 OCT. 10.**

FILE COPY

[Ruling mentioned for completeness.]

**(FIRST) MOTION TO SUPPLEMENT – DENIED –
2022 NOV. 14.**

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[SEAL – THE STATE OF TEXAS]

**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-22-00149-CV

Darryl Heffner, Appellant

v.

A-8

Timothy Heffner, Matthew Heffner, and
Jonathan Heffner, Appellees
[Note: Small caps omitted]

On Appeal from the 235th District Court
Cooke County, Texas
Trial Court No. CV21-00248

ORDER

We have considered appellant's "Beneficiary's
(First) Motion to Supplement."

The motion is **DENIED**.

We direct the clerk of this court to send a notice of
this order to the appellant and the attorneys of
record.

Dated November 14, 2022.

Per Curiam

**MOTION FOR LENIENCE REGARDING WORD
COUNT – PRINCIPAL BRIEF – DENIED – 2023 MAR.
23.**

FILE COPY

[SEAL – THE STATE OF TEXAS]

**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-22-00149-CV

Darryl Heffner, Appellant

v.

Timothy Heffner, Matthew Heffner, and
Jonathan Heffner, Appellees
[Note: Small caps omitted]

On Appeal from the 235th District Court
Cooke County, Texas
Trial Court No. CV21-00248

ORDER

We have considered “Beneficiary’s Motion for
Lenience Regarding Word Count - Principal Brief.”

The motion for lenience to exceed the word count
is **DENIED**.

Appellant’s brief tendered on March 3, 2023, is
ORDERED returned unfiled.

Appellant’s brief that complies with Tex. R. App.
P. 9.4(i)(2)(B) is ordered due **Thursday, March 23,
2023**. [+ 2]

We direct the clerk of this court to send a notice of
this order to the appellant and attorneys of record.

Dated March 8, 2023.

Per Curiam

**SCHEDULING ORDER VIA LETTER – 2023 MAR.
24.**

FILE COPY

[SEAL – THE STATE OF TEXAS]

**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
TIM CURRY CRIMINAL JUSTICE CENTER
401 W. BELKNAP, SUITE 9000
FORT WORTH, TEXAS 76196-0211
TEL: (817) 884-1900
FAX: (817) 884-1932
www.txcourts.gov/2ndcoa**

**CHIEF JUSTICE
BONNIE SUDDERTH**

**CLERK
DEBRA SPISAK**

**JUSTICES
ELIZABETH KERR
J. WADE BIRDWELL
DABNEY BASSEL
DANA WOMACK
MIKE WALLACH
BRIAN WALKER**

**CHIEF STAFF ATTORNEY
LISA M. WEST
GENERAL COUNSEL
CLARISSA HODGES**

March 24, 2023

**[lt. col.]
Paul F. Wright
The Wright Firm, L.L.P.
8150 N. Central Expy., Ste. 775
Dallas, TX 75206-1841
* DELIVERED VIA E-MAIL ***

Charles E. Beachley III
BeachleySmithLaw PLLC
4425 Plano Pkwy., Ste. 1403
Carroilton, TX 75010-5036
* DELIVERED VIA E-MAIL *

Christopher B. Henry
Minor & Jester, P.C.
502 W. Oak St., Suite 200
Denton, TX 76201
* DELIVERED VIA E-MAIL *

[rt. col.]
Darryl Heffner
* DELIVERED VIA E-MAIL *

Katherine K. Elrich
Cobb Martinez Woodward PLLC
1700 Pacific Ave., Ste. 3100
Dallas, TX 75201
* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 02-22-00149-CV
Trial Court Case Number: CV21-00248

Style: Darryl Heffner
v.
Timothy Heffner, Matthew Heffner, and
Jonathan Heffner

The appellant's brief has been filed under the
date of Thursday, March 23, 2023 in the above
referenced cause.

The appellees' brief is due **Monday, April 24, 2023.** [1 2]

FILE COPY

02-22-00149-CV
March 24, 2023
Page 2

You will be notified when a submission date has been set.

Respectfully yours,

DEBRA SPISAK, CLERK
/s/ Debra Spisak

By: Karen Brown, Deputy Clerk

**SECOND MOTION TO SUPPLEMENT – DENIED –
2023 APR. 6.**

FILE COPY

[SEAL – THE STATE OF TEXAS]

**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-22-00149-CV

Darryl Heffner, Appellant

v.

Timothy Heffner, Matthew Heffner, and
Jonathan Heffner, Appellees
[Note: Small caps omitted]

On Appeal from the 235th District Court
Cooke County, Texas
Trial Court No. CV21-00248

ORDER

We have considered appellant's "Beneficiary's
Second Motion to Supplement" and "Beneficiary's
Second Motion to Supplement-Errata."

The motions are **DENIED**.

We direct the clerk of this court to send a notice of
this order to the appellant and the attorneys of
record.

Dated April 6, 2023.

Per Curiam

235th DISTRICT COURT.

EXPUNGEMENT – LIS PENDENS – GAINESVILLE
HOMESTEAD – 2022 APR. 25 (5:15 P.M.).

FILED IN DISTRICT COURT
COOKE COUNTY, TEXAS
2022 APR 25 PM 5: 15
DIST CLERK-MARCI A GILBERT
BY: /s/ Janice Breuer (?)
DEPUTY

CAUSE NO. CV2100248

DARRYL HEFFNER,	§
	§
Beneficiary,	§
	§
Petitioner,	§
	§
V.	§
	§
TIMOTHY ("TIM") HEFFNER,	§
	§
First-named Trustee,	§
	§
MATTHEW HEFFNER,	§
	§
Second-named Trustee, and	§
	§
JONATHAN HEFFNER,	§
	§
Third-named Trustee,	§
	§
Respondents.	§

IN THE DISTRICT COURT

235th JUDICIAL DISTRICT

COOKE COUNTY, TEXAS

ORDER ON MOTION TO EXPUNGE

On this day the Court considered Respondent Timothy Heffner's Motion to Expunge Lis Pendens.

The real property affected by this Order is as follows:

SITUATED in the State of Texas and County of Cooke, being part of the F.H. Stroud Survey, Abstract No. 951, being part of a called 11.43 acre tract and a 7.19 acre tract as recorded in Volume

987, Page 219 of the Deed Records of Cooke County, Texas, said premises being more particularly described as follows:

BEGINNING at a ½ inch iron rod found marking the northwest corner of said premises and a 7.19 acre tract;

ORDER ON MOTION TO EXPUNGE LIS
PENDENS ON COOKE COUNTY PROPERTY
CAUSE NO. CV21-00248 Page 1 of 2

[RoA p.] 901

[1 2]

THENCE with the north line of said premises, North 88°52'05" East, 683.09 feet to a capped iron rod set marking northeast corner of said premises;

THENCE with the east line of said premises, South 00°17'18" East, 391.55 feet to a capped iron rod set marking an internal corner of said premises;

THENCE with the north line of said premises, North 88°52'05" East, 116.49 feet to a found fence corner post marking the most easterly northeast corner of said premises;

THENCE with the east line of said premises, South 00°17'18" East, 614.34 feet to a capped iron rod set marking the southeast corner of said premises and being in the north right-of-way line of F.M. 902;

THENCE with the south line of said premises and said road, South 87°39'53" West, 800.00 feet to a

capped iron rod set marking the southwest corner of said premises;

THENCE departing said road and with the west Line of said premises, North 00°17'18" West, 1,022.69 feet to the place of beginning and containing 17.569 acres of land.

And more commonly known as 389 FM 902, Gainesville, Texas 76240.

After considering the evidence and hearing the arguments of counsel, it appears to the Court the Motion should be **GRANTED**.

IT IS THEREFORE ORDERED that the notice of lis pendens filed on the above real property located at 389 FM 902, Gainesville, Texas 76240 is expunged.

SIGNED on the 25 of April, 2022.

/s/ Janelle M Haverkamp
JUDGE PRESIDING

ORDER ON MOTION TO EXPUNGE LIS
PENDENS ON COOKE COUNTY PROPERTY
CAUSE NO. CV21-0 0248 Page 2 of 2

[RoA p.] 902

EXPUNGEMENT – LIS PENDENS – DENTON – 2022
APR. 25 (5:16 P.M.).

FILED IN DISTRICT COURT
COOKE COUNTY, TEXAS
2022 APR 25 PM 5: 16
DIST CLERK-MARCI A GILBERT
BY: /s/ Janice Breuer (?)
DEPUTY

CAUSE NO. CV2100248

DARRYL HEFFNER,	§
	§
Beneficiary,	§
	§
Petitioner,	§
	§
V.	§
	§
TIMOTHY (“TIM”) HEFFNER,	§
	§
First-named Trustee,	§
	§
MATTHEW HEFFNER,	§
	§
Second-named Trustee, and	§
	§
JONATHAN HEFFNER,	§
	§
Third-named Trustee,	§
	§
Respondents.	§

ORDER ON MOTION TO EXPUNGE
LIS PENDENS ON COOKE COUNTY PROPERTY

On this day the Court considered Respondent Timothy Heffner's Motion to Expunge Lis Pendens.

The real property affected by this Order is as follows:

LOT 19, BLOCK 5 SNIDER ADDITION,
SECTION TWO, AN ADDITION TO THE CITY OF
DENTON, DENTON COUNTY, TEXAS,
ACCORDING TO MAP OR PLAT THEREOF

RECORDED IN CABINET D, PAGE(S) 114, OF
THE MAP AND/OR PLAT RECORDS; TOGETHER
WITH THE CERTIFICATE OF CORRECTION
RECORDED IN VOLUME 1708, PAGE 515,
ORIGINAL PUBLIC RECORDS OF DENTON
COUNTY, TEXAS;

ORDER ON MOTION TO EXPUNGE LIS
PENDENS ON DENTON COUNTY PROPERTY
CAUSE NO. CV21-00248 Page 1 of 2

[RoA p.] 899

[2]

And more commonly known as 3345 Evers
Parkway, Denton, Denton County, Texas 76207.

After considering the evidence and hearing the
arguments of counsel, it appears to the Court the
Motion should be **GRANTED**.

IT IS THEREFORE ORDERED that the notice
of lis pendens filed on the above real-property located
at 3345 Evers Parkway, Denton, Denton County,
Texas 76207 is expunged.

SIGNED on the 25 of April, 2022.

/s/ Janelle M Haverkamp
JUDGE PRESIDING

ORDER ON MOTION TO EXPUNGE LIS
PENDENS ON DENTON COUNTY PROPERTY
CAUSE NO. CV21-00248 Page 2 of 2

[RoA p.] 900

A-21

ORDER FOR SECOND SCHEDULING CONFERENCE
– 2022 APR. 25 (4:57 PM). (*But cf.* Transcript seq.)

FILED IN DISTRICT COURT
COOKE COUNTY, TEXAS
2022 APR 25 PM 4: 57
DIST CLERK-MARCI A GILBERT
BY: /s/ Cody Shires
DEPUTY

Cause No. CV21-00248

DARRYL HEFFNER, <i>Beneficiary,</i>	§
<i>Petitioner,</i>	§
	§
v.	§
	§
TIMOTHY (“TIM”) HEFFNER, <i>First-</i>	§
<i>named Trustee</i>	§
	§
MATTHEW HEFFNER, <i>Second-</i>	§
<i>named Trustee</i>	§
	§
JONATHAN HEFFNER, <i>Third-</i>	§
<i>named Trustee,</i>	§
	§
<i>Respondents.</i>	§

§	IN THE 235 TH JUDICIAL
§	
§	
§	
§	
§	

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§
§

DISTRICT COURT OF

COOKE COUNTY, TEXAS

ORDER FOR SECOND
SCHEDULING CONFERENCE

ON THIS the 25 day of April,
2022, this matter came on for First Scheduling
Conference and came the Plaintiff by attorney
and came the Defendants by attorney, and the
Court having been advised as to the parties'
requests for deadlines and MEDIATION,
orders as follows:

Each party may send one set of Interro[-]
gatories and one Request for Production at
such a time that the responses will be
available before mediation;

*^Defendants shall take the deposition of
Plaintiff on 5/16/22 at 9:00 AM at location
previously noticed. Fairfield Inn + Suits
Gainesville, TX, 1300 I-35 [;]*

Plaintiff may take 0 depositions, prior to
mediation;

Defendants may take 2 depositions, prior
to mediation;

Mediation shall be completed on or before the 1st day of June, 2022; with Judge L. Dee Shipman [;]

The report to the Court on whether or not mediation has been successful is due on the 10th day of June, 2022 [;]

If mediation is not successful, then it will be the Order of the Court that:

1. That all discovery be completed by all parties by October 15, 2022 [;]

ORDER FOR SECOND SCHEDULING
CONFERENCE - Page 1 of 2

[RoA p.] 897

[2]

2. That all required supplemental information be furnished and all experts designated with copies of written reports or opinions submitted on the part of

Plaintiff by August 15, 2022, and on the part of the

Defendants by August 30, 2022.

3. That all additional parties be impleaded or joined

on or before 30 days prior to the Second Scheduling Conference.

4. That this cause is set for a Second Scheduling Conference on the

20th day of October, 2022, at 3:30 p.m.

5. Both Plaintiff and Defendants appear at the Second Scheduling Conference with authority to settle the litigation. Parties or their attorneys shall prepare and file with the Court a MEMORANDUM OF SETTLEMENT. This shall be a brief one page summary of past offers and demands and outline the parties' positions and terms for concluding this matter.

6. All pending Motions, Special Exceptions or other matters that have been pending a sufficient length of time under the Rules of Civil Procedure will be heard at the Second Scheduling Conference;

7. Failure of a litigant or attorney to appear at the Second Scheduling Conference may result in the Court ruling against the non-appearing litigant on all pending motions and may result in setting of future dates as requested by the appearing litigant or attorney.

/s/ Janelle M Haverkamp
JUDGE PRESIDING

[lt. col.]

/s/ D Heffner

RECEIPT ACKNOWLEDGED:

ATTORNEY for PLAINTIFF

[rt. col.]

/s/ P [something] W
ATTORNEY for DEFENDANTS *(Timothy)*

/s/ C [scrawl] B?
Attorney for Defendant *(Matthew)*

/s/ Chris Henry
Attorney for Defendant *(Jonathan)*

ORDER FOR SECOND SCHEDULING
CONFERENCE - Page 2 of 2

[RoA p.] 898

COURT'S DOCKET NOTES – 2022 APR. 25.

Court's Docket Notes

Cause No. *CV21-00248*

Darryl Heffner v. Timothy Heffner, Matthew Heffner,
Jonathan Heffner

Plaintiff

Defendant

Date

4 - 25 - 2022 1st Scheduling Conference held

_____ *Court granted Motion to Expunge*
Lis Pendens

_____ *Contempt - [^ Denied] Ct.*
rescheduled Deposition

[RoA p.] 916

ORDER [REGARDING TRANSCRIPT DISPUTE] –
2022 NOV. 2.

FILED IN DISTRICT COURT
COOKE COUNTY, TEXAS
2022 NOV -2 PM 4: 58
DIST CLERK-MARCI A GILBERT
BY: /s/ Janice Breuer (?)
DEPUTY

Cause No. CV21-00248

DARRYL HEFFNER, <i>Petitioner</i>	§
	§
v.	§
	§
TIMOTHY (“TIM”) HEFFNER,	§
MATTHEW HEFFNER, and	§
JONATHAN HEFFNER, <i>Respondents.</i>	§

§	IN THE 235 TH JUDICIAL
§	
§	
§	DISTRICT COURT OF
§	
§	
§	COOKE COUNTY, TEXAS

ORDER

On this day came on to be considered, without an evidentiary hearing, the disagreement between Appellant and the court reporter concerning the cost of preparing the requested record. The Court finds

that the estimate of Four Hundred Sixty-Three dollars (\$463.00) quoted by the court reporter to the Appellant is a reasonable fee for a PDF record of the April 25, 2022 Hearing.

IT IS THEREFORE, ORDERED that Appellant pay the reporter's estimated fee of Four Hundred Sixty-Three dollars (\$463.00) to prepare the reporter's record.

Signed and entered this 2nd day of November, 2022.

/s/ Janelle M Haverkamp
JUDGE PRESIDING

Rule 14.1(i)(iii)—Rehearing

None.

Rule 14.1(i)(iv)—Judgment of different date

None at trial or on appeal.

Rule 14.1(i)(v)—Statutes and Rules

TEX. FAM. CODE § 3.003.

- (a) Property possessed by either spouse during or on dissolution of marriage is presumed to be community property.
- (b) The degree of proof necessary to establish that property is separate property is clear and convincing evidence.

TEX. PROP. CODE § 12.007.

- (a) After the plaintiff's statement in an eminent domain proceeding is filed or during the pendency of an action involving title to real property, the establishment of an interest in real property, or the enforcement of an encumbrance against real property, a party to the action who is seeking affirmative relief may file for record with the county clerk of each county where a part of the property is located a notice that the action is pending.
- (b) The party filing a lis pendens or the party's agent or attorney shall sign the lis pendens, which must state:
 - (1) the style and number, if any, of the proceeding;
 - (2) the court in which the proceeding is pending;
 - (3) the names of the parties;
 - (4) the kind of proceeding; and
 - (5) a description of the property affected.

- (c) The county clerk shall record the notice in a lis pendens record. The clerk shall index the record in a direct and reverse index under the name of each party to the proceeding.
- (d) Not later than the third day after the date a person files a notice for record under this section, the person must serve a copy of the notice on each party to the action who has an interest in the real property affected by the notice.

TEX. PROP. CODE § 12.0071.

- (a) A party to an action in connection with which a notice of lis pendens has been filed may:
 - (1) apply to the court to expunge the notice; and
 - (2) file evidence, including declarations, with the motion to expunge the notice.
- (b) The court may:
 - (1) permit evidence on the motion to be received in the form of oral testimony; and
 - (2) make any orders the court considers just to provide for discovery by a party affected by the motion.
- (c) The court shall order the notice of lis pendens expunged if the court determines that:
 - (1) the pleading on which the notice is based does not contain a real property claim;
 - (2) the claimant fails to establish by a preponderance of the evidence the probable validity of the real property claim; or
 - (3) the person who filed the notice for record did

not serve a copy of the notice on each party entitled to a copy under Section 12.007(d).

- (d) Notice of a motion to expunge under Subsection (a) must be served on each affected party on or before the 20th day before the date of the hearing on the motion.
- (e) The court shall rule on the motion for expunction based on the affidavits and counteraffidavits on file and on any other proof the court allows.
- (f) After a certified copy of an order expunging a notice of lis pendens has been recorded:
 - (1) the notice of lis pendens and any information derived or that could be derived from the notice:
 - (A) does not:
 - (i) constitute constructive or actual notice of any matter contained in the notice or of any matter relating to the action in connection with which the notice was filed;
 - (ii) create any duty of inquiry in a person with respect to the property described in the notice; or
 - (iii) affect the validity of a conveyance to a purchaser for value or of a mortgage to a lender for value; and
 - (B) is not enforceable against a purchaser or lender described by Paragraph (A)(iii), regardless of whether the purchaser or lender

knew of the lis pendens action; and

(2) an interest in the real property may be transferred or encumbered free of all matters asserted or disclosed in the notice and all claims or other matters asserted or disclosed in the action in connection with which the notice was filed.

(g) The court in its discretion may require that the party prevailing in the expunction hearing submit an undertaking to the court in an amount determined by the court.

TEX. R. CIV. P. 91a.

Rule 91a. Dismissal of Baseless Causes of Action

91a.1 Motion and Grounds.

Except in a case brought under the Family Code or a case governed by Chapter 14 of the Texas Civil Practice and Remedies Code, a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. A cause of action has no basis in fact if no reasonable person could believe the facts pleaded.

91a.2 Contents of Motion.

A motion to dismiss must state that it is made pursuant to this rule, must identify each cause of

action to which it is addressed, and must state specifically the reasons the cause of action has no basis in law, no basis in fact, or both.

91a.3 Time for Motion and Ruling.

A motion to dismiss must be:

- (a) filed within 60 days after the first pleading containing the challenged cause of action is served on the movant;
- (b) filed at least 21 days before the motion is heard; and
- (c) granted or denied within 45 days after the motion is filed.

91a.4 Time for Response.

Any response to the motion must be filed no later than 7 days before the date of the hearing.

91a.5 Effect of Nonsuit or Amendment; Withdrawal of Motion.

- (a) The court may not rule on a motion to dismiss if, at least 3 days before the date of the hearing, the respondent files a nonsuit of the challenged cause of action, or the movant files a withdrawal of the motion.
- (b) If the respondent amends the challenged cause of action at least 3 days before the date of the hearing, the movant may, before the date of the hearing, file a withdrawal of the motion or an amended motion directed to the amended cause of action.
- (c) Except by agreement of the parties, the court

must rule on a motion unless it has been withdrawn or the cause of action has been nonsuited in accordance with (a) or (b). In ruling on the motion, the court must not consider a nonsuit or amendment not filed as permitted by paragraphs (a) or (b).

- (d) An amended motion filed in accordance with (b) restarts the time periods in this rule.

91a.6 Hearing; No Evidence Considered.

Each party is entitled to at least 14 days' notice of the hearing on the motion to dismiss. The court may, but is not required to, conduct an oral hearing on the motion. Except as required by 91a.7, the court may not consider evidence in ruling on the motion and must decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59.

91a.7 Award of Costs and Attorney Fees.

Except in an action by or against a governmental entity or a public official acting in his or her official capacity or under color of law, the court may award the prevailing party on the motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court. Any award of costs or fees must be based on evidence.

91a.8 Effect on Venue and Personal Jurisdiction.

This rule is not an exception to the pleading requirements of Rules 86 and 120a, but a party does not, by filing a motion to dismiss pursuant to this

rule or obtaining a ruling on it, waive a special appearance or a motion to transfer venue. By filing a motion to dismiss, a party submits to the court's jurisdiction only in proceedings on the motion and is bound by the court's ruling, including an award of attorney fees and costs against the party.

91a.9 Dismissal Procedure Cumulative.

This rule is in addition to, and does not supersede or affect, other procedures that authorize dismissal.

Rule 14.1(i)(vi)—Additional Essential Materials

Trial activity has continued during this appeal.

Ex. 27.

[Reprinted, because the Record is practically illegible.]

Text (SMS) message to Tiffany Wright, Attorney, of
May 20, 2020, 8:48 AM

Hello Tiffany, this is Sharon
Heffner, you did a conference call
yesterday that was to discuss
options for my property. I am
weak with cancer and my mind is
not sharp. It was never my
intention to change my estate
[but] only to hear options. Please
do not file the paperwork. Please
call me as soon as possible.
Thank you[.]

RoA.291. *See also* RoA.294, Ex. 28 (showing Tiffany
Wright's auto-transcribed return phone message).

Ex. 65.

[All hand-written edits are in TIMOTHY's handwriting.]

FAMILY SETTLEMENT AGREEMENT

The parties to this Family Settlement Agreement (the "Agreement") are JONATHAN RICHARD HEFFNER, MATTHEW WILLIAM HEFFNER, TIMOTHY ALAN HEFFNER (individually and as successor trustee of the SHARON K. HEFFNER SEPARATE PROPERTY REVOCABLE LIVING TRUST) and DARRYL ARTHUR HEFFNER (community surviving spouse of SHARON KAYE KARNES HEFFNER, Deceased).

SHARON KAYE KARNES HEFFNER created a revocable living trust dated August 8, 2013, as amended on May 19, 2020, the SHARON K. HEFFNER SEPARATE PROPERTY REVOCABLE LIVING TRUST (the "Trust"). TIMOTHY ALAN HEFFNER is successor trustee following Sharon's death on May 22, 2020.

The Trust owns Sharon's separate property homestead located at 389 FM 902, Gainesville, Texas (the "Homestead"). DARRYL ARTHUR HEFFNER has been exercising his homestead rights in the Homestead since Sharon's death, and the Trust became irrevocable at that time.

The parties by exercising this Agreement agree to the following:

1) DARRYL ARTHUR HEFFNER gives up, relinquishes and forever releases any and all claims he may have or have had whether homestead rights or otherwise in and to the Homestead.

2) DARRYL ARTHUR HEFFNER gives up, relinquishes and forever releases any and all claims he may have or have had against JONATHAN RICHARD HEFFNER, MATTHEW WILLIAM HEFFNER, TIMOTHY ALAN HEFFNER, each individually and against TIMOTHY ALAN HEFFNER as Trustee of the Trust, and against Sharon's estate.

3) MATTHEW WILLIAM HEFFNER will immediately upon execution of this Agreement by all parties execute a Special Warranty Deed granting that certain real property located at 3345 Evers Parkway, Denton, Texas 76207 (the "Evers Parkway Home") outright and free of trust to DARRYL ARTHUR HEFFNER as consideration for DARRYL ARTHUR HEFFNER's relinquishment of all claims as set forth herein.

4) DAVIDGE & WRIGHT, L.P. will hold the Deed in trust pending DARRYL ARTHUR HEFFNER'S relocation from the Homestead to the Evers Parkway Home, and upon said relocation will file the Deed after payment of the filing fees by the Trust.

5) TIMOTHY ALAN HEFFNER as Trustee will immediately upon execution this Agreement execute a Special Warranty Deed transferring

title of the Homestead from the Trust to JONATHAN RICHARD HEFFNER, MATTHEW WILLIAM HEFFNER and TIMOTHY ALAN HEFFNER, individually, with the Trust paying for the filing fees.

6) DARRYL ARTHUR HEFFNER will relocate from the Homestead to the Evers Parkway Home on or before ~~November 30~~ ^ *December 31st*, 2020. In the event that DARRYL [1 2] ARTHUR HEFFNER fails to relocate by such date, the Deed will be automatically null and void and DARRYL ARTHUR HEFFNER will immediately be solely responsible for all of his duties as a life estate holder in the Homestead, including but not limited to maintenance, upkeep, utilities and real property taxes.

7) DARRYL ARTHUR HEFFNER is aware and accepts that there is currently a renter in the Evers Parkway Property.

8) ~~TIMOTHY ALAN HEFFNER as trustee of the Trust~~, ^ *Darryl Heffner* agrees to pay for any and all eviction proceedings desired or required following execution of this Agreement, using Trust funds and agrees to relocate to that property even if the renter remains on the date of Relocation.

9) *Darryl Heffner* will receive all rent and other amounts due from the renter until such renter vacates the Evers Parkway Property. Signed to be effective the _____, November 2020.

TIMOTHY ALAN HEFFNER

STATE OF TEXAS §

COUNTY OF _____ §

SWORN TO AND SUBSCRIBED BEFORE
ME on this the ____ day of _____, 2020 by
TIMOTHY ALAN HEFFNER, to certify which
witness my hand and seal of office.

Notary Public, State of Texas [1 4]

DARRYL ARTHUR HEFFNER

STATE OF TEXAS §

COUNTY OF _____ §

SWORN TO AND SUBSCRIBED BEFORE
ME on this the ____ day of _____, 2020 by
DARRYL ARTHUR HEFFNER, to certify which
witness my hand and seal of office.

Notary Public, State of Texas

No. _____

In The
SUPREME COURT OF THE UNITED STATES

DARRYL HEFFNER,
Trust Beneficiary,
Plaintiff – Appellant – Petitioner –
Petitioner,

v.

TIMOTHY HEFFNER,
First-named Trustee, et al.,
Respondents – Appellees – Respondents –
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE
SECOND DISTRICT OF TEXAS

**CERTIFICATE OF COMPLIANCE FOR THE
ORIGINAL PETITION FOR A WRIT OF CERTIORARI**

By my signature below, per Rule 33.1(h), I certify
that this “five-page” petition for certiorari complies
with the word count limitations of Rules 14.1(c) and
33.1(g)(i), which limit is 1,500 words, including
footnotes.

Body of petition:	1,498.
Footnotes:	<u>0.</u>
Total words:	1,498.



/s/ Darryl Heffner
DARRYL HEFFNER

No. _____

In The
SUPREME COURT OF THE UNITED STATES

DARRYL HEFFNER,
Trust Beneficiary,
Plaintiff – Appellant – Petitioner –
Petitioner,

v.

TIMOTHY HEFFNER,
First-named Trustee, et al.,
Respondents – Appellees – Respondents –
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE
SECOND DISTRICT OF TEXAS

CERTIFICATE OF SERVICE FOR
ORIGINAL PETITION FOR A WRIT OF CERTIORARI
WITH APPENDIX A

By my signature below, per Rule 29.5(c), I certify, pursuant to 28 U.S.C.
§ 1746, that on or about the 19th day of December, 2023, I have served a true and
correct hard copy of this Original Petition for a Writ of Certiorari with Appendix A
and of this Certificate of Service by certified mail, 3-day (or faster) delivery service,
or delivery in person, as follows:

KATHERINE ELRICH
COBB MARTINEZ WOODWARD
1700 Pacific Avenue, Suite 3100
Dallas, TX 75201
kelrich@cobbmartinez.com
(all three Appellees/Respondents)
(3 booklets) (Priority Mail)

CHARLES E. BEACHLEY III
BeachleySmithLaw PLLC
~~250 North Mill Street, Suite 1~~
~~Lewisville, TX 75057~~
~~4425 Plano Parkway, Unit 1403~~
~~Carrollton, Texas 75010~~
405 State Highway 121, Ste A250
Lewisville, Texas 75067
beachley@beachleypllc.com
(MATTHEW HEFFNER)
(3 booklets) (Priority Mail)

PAUL F. WRIGHT
THE WRIGHT FIRM, LLP
Campbell Center II
8150 N. Central Expwy, Suite 775
Dallas, TX 75206
paul@thewrightlawyers.com
(TIMOTHY HEFFNER)
(3 booklets) (Priority Mail)

CHRISTOPHER B. HENRY
MINOR & JESTER, P.C.
502 West Oak Street, Suite 200
P.O. Box 280
Denton, TX 76202
chenry@minorandjester.com
(JONATHAN HEFFNER)
(3 booklets) (Priority Mail)

Kept in the loop – First Class Mail

SECOND COURT OF APPEALS
via its/their C.J. (and panel author)
Hon. BONNIE SUDDERTH
Tim Curry Crim. Justice Center
401 W. Belknap, Suite 9000
Fort Worth, TX 76196-0211
bonnie.sudderth@txcourts.gov
(1 booklet)

Hon. J. HAVERKAMP
235th District Court (Cooke County)
101 South Dixon Street, Rm. 207
Gainesville, TX 76240
janelle.haverkamp@co.cooke.tx.us
(1 booklet)



/s/ Darryl Heffner
DARRYL HEFFNER

November 14, 2023
Darryl Heffner
389 FM 902
Gainesville, Texas 76240
heffner.da61@gmail.com

Hon. SCOTT S. HARRIS, Clerk
SUPREME COURT OF THE UNITED STATES
1 First Street, N.E.
Washington, DC 20543

Via Priority Mail

Re: New filing
DARRYL HEFFNER, Beneficiary v. TIMOTHY HEFFNER, First-named
Trustee, et al.

Dear Mr. Harris:

Two related cases: Trust case (this one); Probate case (due end of Dec.; to be submitted earlier if at all possible). Same parties. Same facts for threshold Disqualification in each. Trust case exists to enforce two agreements: Trust, mortgage; Probate case, to assert Disqualification.

“Finality” at trial is the threshold focus of each. Denial of access (trial/appeal), thus fundamental Due Process, compels both Petitions.

Trust case. Texas’s Judicial Branch rests on its effective “finality” exception – “finality” caused by (errant) expungement of *lis pendens* is reviewed in equity. This form-over-substance exception can’t stand; “finality” is always reviewed at law, not in equity. “At law” access has been denied. “What/When is ‘final?’”

Probate case. Apparently, *in personam* within *in rem* is a new concept in Texas. While Texas policy very closely tracks national policy (multiple final rulings; need to avoid backtracking), Texas hasn’t applied either policy. The result is denial of access, plus the damage (wrongful appointment) is done by the time the state system “allows” the appeal. “What/When is ‘final?’”

Enclosed are the proof print version of the Trust case with its Appendix, a Certificate of Compliance, and the filing fee.

Respectfully submitted,



/s/ Darryl Heffner
DARRYL HEFFNER

Encls.



