

Supreme Court, U.S.
FILED
DEC - 5 2023
OFFICE OF THE CLERK

No. 23A621

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

**APPLICATION FOR STAY
OF CONTINUING TRIAL COURT ACTIVITY
WITH APPENDIX**

TO THE HONORABLE JUSTICE ASSIGNED TO USCA5 (TEXAS):

COMES NOW Petitioner, DARRYL HEFFNER, Beneficiary, who applies for
a Stay of all continuing trial activity in the 235th DISTRICT COURT, COOKE
COUNTY, TEXAS, Judge HAVERKAMP Presiding, as follows:

Application for Stay

Beneficiary requests that this Court order a stay of all continuing trial
activity pending resolution of this Court's discretionary review.

RECEIVED
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SUPREME COURT, U.S.

Discussion

Requests for Stay below.

Chronologically, Beneficiary first requested stay relief in the appellate court.

In rather blatant violation of trial court authority during the direct appeal, BEACHLEY requested, *and the 235th granted / set*, a hearing date to move forward in the trial court. Therefore, Beneficiary requested Stay of Mandate.

2d.CoA entered no ruling on that motion; they simply issued the Mandate.

Beneficiary filed his Motion for Withdrawal of Mandate; denied (2d.CoA).

Beneficiary also submitted a Motion for Stay with S.Ct.Tex., which Court declined even to file it, asserting “finality” of their ruling denying review.

BEACHLEY has again moved forward in the 235th, with full, unbridled trial court support. The trial court set that hearing two days before Beneficiary’s 90-day deadline in this Court.

In addition to now setting a trial date, HAVERKAMP’s recent orders include denial of Beneficiary’s Motion for Stay and the granting of BEACHLEY’s (for “Mathew Henry,” an unknown, non-party to this proceeding) Discovery request to enter in upon property openly confessed to be Beneficiary’s (“Plaintiff’s”) in that very Discovery request. Note also (Certificate of Conference) that neither of the other two parties Respondent offered any objection to BEACHLEY’s characterization that Beneficiary owns the Gainesville homestead property. The date set for that entry is

Dec. 28, and, while not stated as such in the order, Beneficiary understands from that hearing that “entry” intends to include *into his home*, as well.

The Problem.

Because Beneficiary appealed a final ruling, the notion of “more” trial (fact-finding) activity during review is inconsistent. *Cf. Lozman* (2013).

Moreover, since that final ruling was (egregiously) errant as to who actually owns what, per *Sharon’s* active Estate Plan documents, namely both her Trust and Last Will, as further confessed not only by Respondents’ Gambits 2 and 3 but also now by the (their) Discovery request for entry onto and into Beneficiary’s (“Plaintiff’s”) property, it follows that no party Respondent has any need or business, at the present, entering onto Beneficiary’s property, at all, much less *into his home*, for any purpose.

In the future, after Rendering (constructive trust), and after Remand is ordered for purposes of determining TIMOTHY’s rent due amount, as well as the Respondents’ collective obligation to reimburse Beneficiary for the property taxes he’s paid (sans the homestead exemption) while the “official” ownership has been in their names, personally, *then* entry of their appraiser(s) for the sole purpose of determining fair rental value of the barn-dominium is fully expected. Key, that activity will involve nothing about entry *into* Beneficiary’s home.

Conclusion

Given that what's pending before this Court is an active review matter on direct appeal, further trial court, i.e., fact-finding, activity is inconsistent, at best.

Request for Relief

Therefore, Petitioner / Beneficiary requests that this Court order stayed all trial activity in the 235th DISTRICT COURT, COOKE COUNTY, TEXAS, pending final resolution of this Court's review of this case (these two parallel cases).

Respectfully submitted,

A handwritten signature in cursive script that reads "Darryl Heffner". The signature is written in black ink and is followed by a horizontal line extending to the right.

/s/ Darryl Heffner
DARRYL HEFFNER

§ 1746 DECLARATION – DARRYL HEFFNER

Per 28 U.S.C. § 1746, under penalty of perjury under the laws of the United States, I, DARRYL HEFFNER, depose and declare (or certify, verify, or state), that I am at least 21 years of age, that I am competent to make this Affidavit / Declaration, that I have personal knowledge of these facts, and that these facts are true and correct.

The facts asserted in this Application for Stay of Continuing Trial Court Activity are true and correct.

The Exhibits in the accompanying Appendix are true and correct copies of the documents filed (or submitted for filing) into the respective courts and of the rulings or other official court documents received by me in the normal course of this litigation.

Further, Declarant sayeth not.

Executed on the 5th day of December, 2023



/s/ Darryl Heffner
DARRYL HEFFNER, Declarant

Appendix – Application for Stay of Continuing Trial Activity

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2d.CoA

| | |
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235th Dist. Ct.

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

No. 02-22-00149-CV

DARRYL HEFFNER, Appellant

§ On Appeal from the 235th District
Court

v.

§ of Cooke County (CV21-00248)

§ April 13, 2023

TIMOTHY HEFFNER, MATTHEW
HEFFNER, AND JONATHAN HEFFNER,
Appellees

§ 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



**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**

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

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 “full-blown 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.

¹Appellant 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.

proceeding) (noting that “the suit on which the lis pendens is based must claim a direct interest in real property, not a collateral one”).

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.

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

No Oral Argument Requested

Case No. 02-22-00149-CV

In The
COURT OF APPEALS
SECOND DISTRICT OF TEXAS

DARRYL HEFFNER, Beneficiary
v.
**TIMOTHY HEFFNER, First-named Trustee,
MATTHEW HEFFNER, Second-named Trustee, AND
JONATHAN HEFFNER, Third-named Trustee**

On Direct Appeal from

DARRYL HEFFNER, Beneficiary
v.
**TIMOTHY HEFFNER, First-named Trustee,
MATTHEW HEFFNER, Second-named Trustee, AND
JONATHAN HEFFNER, Third-named Trustee**

HON. JANELLE M. HAVERKAMP, Judge Presiding
235TH DISTRICT COURT, COOKE COUNTY, TEXAS
No. CV21-00248

BENEFICIARY'S MOTION TO STAY MANDATE

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

Identity of Parties and Counsel

Appellant

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

Appellees

- TIMOTHY HEFFNER
- MATTHEW HEFFNER
- JONATHAN HEFFNER

by:

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

Kept in the loop:

- Hon. J. HAVERKAMP
Cooke County Court At Law
101 South Dixon Street, Rm. 207
Gainesville, TX 76240
janelle.haverkamp@co.cooke.tx.us

Motion to Stay Mandate

Beneficiary moves that Mandate be stayed pending exhaustion of review.

Discussion

Trial court activity

Attached are BEACHLEY's motion, Beneficiary's response, and the court coordinator's Notice. Also attached is Beneficiary's *Roell* Notice and his Motion for Extension regarding his Petition for Review (S.Ct.Tex. 23-0378).

No Mandate

Since Beneficiary has no experience with how 2d.CoA works with the continuity of the review effort, Beneficiary formally requests this relief.

Relief Requested

Beneficiary requests that Mandate be stayed pending exhaustion of review.

Respectfully submitted,

/s/ Darryl Heffner
DARRYL HEFFNER
389 FM 902
Gainesville, Texas 76240
heffner.da61@gmail.com

Certificate of Compliance

If there's an applicable standard, by my signature below, I certify that the font for the body and the footnotes is at least 14-point Arial (headings) or 14-point Times New Roman (text), and that the word count of this motion is as follows:

Motion 84.

/s/ Darryl Heffner
DARRYL HEFFNER

Certificate of Conference

By my signature below, I certify that I have conferred, by means of delivery of this entire motion, with its attachments, by email, on Wednesday, May 24, 2023, around noon (local time) on the following:

KATHERINE ELRICH
COBB MARTINEZ WOODWARD
kelrich@cobbmartinez.com

The response received before filing the motion on Thursday, May 25, is very well received. *See* attached documents, which are true and correct copies of that Conference.

/s/ Darryl Heffner
DARRYL HEFFNER

Certificate of Electronic Service

By my signature below, I certify that on this the 25th day of May, 2023, I have Served a copy of this Motion with its attachments on the following via efileing:


KATHERINE ELRICH
COBB MARTINEZ WOODWARD
1700 Pacific Avenue, Suite 3100
Dallas, TX 75201
kelrich@cobbmartinez.com
(TIMOTHY HEFFNER,
MATTHEW HEFFNER,
JONATHAN HEFFNER)

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

/s/ Darryl Heffner
DARRYL HEFFNER

Rule 165a, Texas Rules of Civil Procedure, A case may be dismissed for want of prosecution on failure of any party seeking affirmative relief to appear for any hearing or trial of which the party had notice.

BeachleySmithLaw PLLC
24425 Plano Parkway, Unit 1403
Carrollton, Texas 75010




Charles E Beachley III
Attorney for: Matthew Heffner
Bar no: 01945300
Phone: (972) 538-0358
Fax: (972) 538-0359
Email: beachley@beachleypllc.com

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was this day served on all parties in accordance with the Texas Rules of Civil Procedure.

Date: May 22, 2023



Charles E. Beachley III

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Charles Beachley
Bar No. 1945300
attorney@beachleypllc.com
Envelope ID: 75868019
Filing Code Description: Motion (No Fee)
Filing Description: Motion for New Scheduling Order
Status as of 5/22/2023 1:42 PM CST

Associated Case Party: TIMOTHY ("TIM")HEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---------------|-----------|------------------------------|----------------------|--------|
| Paul F.Wright | | paul@thewrightlawyers.com | 5/22/2023 1:35:08 PM | SENT |
| Kara Tyler | | kara@thewrightlawyers.com | 5/22/2023 1:35:08 PM | SENT |
| Frances Seman | | frances@thewrightlawyers.com | 5/22/2023 1:35:08 PM | SENT |

Associated Case Party: MATTHEWHEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|------------------|-----------|---------------------------|----------------------|--------|
| Charles Beachley | | beachley@beachleypllc.com | 5/22/2023 1:35:08 PM | SENT |
| Lauren Smith | | lauren@beachleypllc.com | 5/22/2023 1:35:08 PM | SENT |

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|----------------|-----------|----------------------------|----------------------|--------|
| Darryl Heffner | | heffner.da61@gmail.com | 5/22/2023 1:35:08 PM | SENT |
| TERESA WARD | | teresa.ward@co.cooke.tx.us | 5/22/2023 1:35:08 PM | SENT |

Associated Case Party: JONATHANHEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------------|-----------|----------------------------|----------------------|--------|
| Shannon Jones | | sjones@minorandjester.com | 5/22/2023 1:35:08 PM | SENT |
| Dianne Landry | | dlandry@minorandjester.com | 5/22/2023 1:35:08 PM | SENT |
| Christopher BHenry | | chenry@minorandjester.com | 5/22/2023 1:35:08 PM | SENT |

No. CV21-00248

| | | |
|---------------------------|---|-------------------------|
| DARRYL HEFFNER, | § | In The |
| | § | |
| Beneficiary, | § | |
| | § | DISTRICT COURT |
| Petitioner, | § | |
| | § | |
| v. | § | 235th JUDICIAL DISTRICT |
| | § | |
| TIMOTHY (“TIM”) HEFFNER, | § | |
| | § | COOKE COUNTY, TEXAS |
| First-named Trustee, | § | |
| | § | |
| MATTHEW HEFFNER, | § | |
| | § | |
| Second-named Trustee, and | § | |
| | § | |
| JONATHAN HEFFNER, | § | |
| | § | |
| Third-named Trustee, | § | |
| | § | |
| Respondents. | § | |

**PLAINTIFF’S RESPONSE TO MATTHEW’S
(BEACHLEY’S) MOTION FOR NEW SCHEDULING ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner, DARRYL HEFFNER, Beneficiary, who responds to BEACHLEY’s next motion as follows:

Response

This case is still on appeal. The current deadline for the Petition for Review is next Monday, the 29th. As of today, in fact within the past hour, Beneficiary has

motion. Should there be any remand to the trial court, I expect one of the first things the court would do *sua sponte* is something along this line. Therefore, there's a very material question as to why there's any sense of need to file such a motion, at all. Hence, other than running up MATTHEW's bill, it's impossible to reach any other conclusion than BEACHLEY's (thus MATTHEW's) continuing intent to harass via litigation.

Further, Affiant (Declarant) sayeth not.

Executed in CITY OF GAINESVILLE, COUNTY OF COOKE, STATE OF TEXAS, on this the 22d day of May, 2023

/s/ Darryl Heffner
DARRYL HEFFNER, Affiant (Declarant)

Certificate of Electronic Service

By my signature below, I certify that on this the 22d day of May, 2022, I have Served this Response on Respondents via electronic means as follows:

CHARLES E. BEACHLEY III
BeachleySmithLaw PLLC
250 North Mill Street, Suite 1
Lewisville, TX 75057
beachley@beachleypllc.com
(MATTHEW HEFFNER)

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)

/s/ Darryl Heffner
DARRYL HEFFNER

Unsworn Declaration Under Penalty of Perjury Regarding Service

STATE OF TEXAS §
 § ss. KNOW ALL MEN BY THESE PRESENTS
COUNTY OF COOKE §

My name is DARRYL HEFFNER. I was born in 1957, and my address is

shown in the signature block.

I am at least 21 years of age, and I am competent to make this Affidavit (Declaration). I have personal knowledge of the facts asserted in this Declaration of Service, and I declare (or certify, verify, or state) under penalty of perjury under the laws of the State of Texas, that the facts so asserted are true and correct.

On this the 22d day of May, 2023, I have Served a true and correct copy of this Response by electronic means as follows:

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

Further, Affiant (Declarant) sayeth not.

Executed in CITY OF GAINESVILLE, COUNTY OF COOKE, STATE OF TEXAS,
on this the 22d day of May, 2023

/s/ Darryl Heffner
DARRYL HEFFNER, Affiant (Declarant)

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 75889028

Filing Code Description: Answer/Response

Filing Description: Answer/Response - to BEACHLEY's Mot. New Sched. Ord.

Status as of 5/23/2023 8:03 AM CST

Associated Case Party: MATTHEWHEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|------------------|-----------|---------------------------|----------------------|--------|
| Charles Beachley | | beachley@beachleypllc.com | 5/22/2023 5:50:54 PM | SENT |
| Lauren Smith | | lauren@beachleypllc.com | 5/22/2023 5:50:54 PM | SENT |

Associated Case Party: TIMOTHY ("TIM")HEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---------------|-----------|------------------------------|----------------------|--------|
| Paul F.Wright | | paul@thewrightlawyers.com | 5/22/2023 5:50:54 PM | SENT |
| Frances Seman | | frances@thewrightlawyers.com | 5/22/2023 5:50:54 PM | SENT |

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|----------------|-----------|------------------------|----------------------|--------|
| Darryl Heffner | | heffner.da61@gmail.com | 5/22/2023 5:50:54 PM | SENT |

Associated Case Party: JONATHANHEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------------|-----------|----------------------------|----------------------|--------|
| Shannon Jones | | sjones@minorandjester.com | 5/22/2023 5:50:54 PM | SENT |
| Dianne Landry | | dlandry@minorandjester.com | 5/22/2023 5:50:54 PM | SENT |
| Christopher BHenry | | chenry@minorandjester.com | 5/22/2023 5:50:54 PM | SENT |

235TH JUDICIAL DISTRICT COURT
101 S. DIXON ST.
COOKE COUNTY COURTHOUSE
COOKE COUNTY, TEXAS
GAINESVILLE, TX 76240
940-668-5401

NOTICE OF SETTING

May 23, 2023

Date of Setting: July 6, 2023
Time of Setting: 3:30 p.m.
Type of Setting: Second Scheduling Conference
Cause No: CV21-00248
Style of Case: Darryl Heffner v. Timothy Heffner, Matthew Heffner and Jonathan Heffner

Attorneys or Interested Parties:

Mr. Darryl Heffner, heffner.da61@gmail.com
Mr. Paul F. Wright, paul@thewrightlawyers.com
Mr. Charles E. Beachley III, beachley@beachleypllc.com
Mr. Christopher B. Henry, chenry@minorandjester.com


Kristin Martin
District Court Coordinator

**YOUR ATTENDANCE IS REQUIRED UNLESS A WRITTEN MOTION
FOR CONTINUANCE IS GRANTED.**

I am at least 21 years of age, and I am competent to make this Affidavit (Declaration). I have personal knowledge of the facts asserted in this Declaration of Service, and I declare (or certify, verify, or state) under penalty of perjury under the laws of the State of Texas, that the facts so asserted are true and correct.

On this the 24th day of May, 2023, I have Served a true and correct copy of this *Roell* Notice by electronic means as follows:

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

Further, Affiant (Declarant) sayeth not.

Executed in CITY OF GAINESVILLE, COUNTY OF COOKE, STATE OF TEXAS,
on this the 24th day of May, 2023

/s/ Darryl Heffner
DARRYL HEFFNER, Affiant (Declarant)

Subject: RE: No. 02-22-00149-CV Heffner v. Heffner, et al. (Trust case)
From: Rose Stewart <Rose.Stewart@txcourts.gov>
Date: 5/24/2023, 9:35 AM
To: Darryl Heffner <heffner.da61@gmail.com>

Mandate is set to issue on 6-22-23 - 70 days after the opinion issued on 4-13-23.

-----Original Message-----

From: Darryl Heffner <heffner.da61@gmail.com>
Sent: Tuesday, May 23, 2023 4:15 PM
To: Rose Stewart <Rose.Stewart@txcourts.gov>
Subject: No. 02-22-00149-CV Heffner v. Heffner, et al. (Trust case)

CAUTION: This email originated from outside of the Texas Judicial Branch email system.
DO NOT click links or open attachments unless you expect them from the sender and know the
content is safe.

May 23, 2023

Ms. ROSE M. STEWART, Deputy Clerk
Second Court of Appeals

Dear Ms. Stewart:

Has 2d.CoA issued a Mandate that I just haven't received yet?

Please see attached.

Sincerely,

/s/ Darryl Heffner
DARRYL HEFFNER

235TH JUDICIAL DISTRICT COURT
101 S. DIXON ST.
COOKE COUNTY COURTHOUSE
COOKE COUNTY, TEXAS
GAINESVILLE, TX 76240
940-668-5401

NOTICE OF SETTING

May 23, 2023

Date of Setting: July 6, 2023
Time of Setting: 3:30 p.m.
Type of Setting: Second Scheduling Conference
Cause No: CV21-00248
Style of Case: Darryl Heffner v. Timothy Heffner, Matthew Heffner and Jonathan Heffner

Attorneys or Interested Parties:

Mr. Darryl Heffner, heffner.da61@gmail.com
Mr. Paul F. Wright, paul@thewrightlawyers.com
Mr. Charles E. Beachley III, beachley@beachleypllc.com
Mr. Christopher B. Henry, chenry@minorandjester.com


Kristin Martin
District Court Coordinator

**YOUR ATTENDANCE IS REQUIRED UNLESS A WRITTEN MOTION
FOR CONTINUANCE IS GRANTED.**

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 75956286
Filing Code Description: Notice
Filing Description: Notice -- Roell Notice
Status as of 5/24/2023 12:23 PM CST

Associated Case Party: MATTHEWHEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|------------------|-----------|---------------------------|-----------------------|--------|
| Charles Beachley | | beachley@beachleypllc.com | 5/24/2023 11:57:19 AM | SENT |
| Lauren Smith | | lauren@beachleypllc.com | 5/24/2023 11:57:19 AM | SENT |

Associated Case Party: TIMOTHY ("TIM")HEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---------------|-----------|------------------------------|-----------------------|--------|
| Paul F.Wright | | paul@thewrightlawyers.com | 5/24/2023 11:57:19 AM | SENT |
| Frances Seman | | frances@thewrightlawyers.com | 5/24/2023 11:57:19 AM | SENT |

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|----------------|-----------|------------------------|-----------------------|--------|
| Darryl Heffner | | heffner.da61@gmail.com | 5/24/2023 11:57:19 AM | SENT |

Associated Case Party: JONATHANHEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------------|-----------|----------------------------|-----------------------|--------|
| Shannon Jones | | sjones@minorandjester.com | 5/24/2023 11:57:19 AM | SENT |
| Dianne Landry | | dlandry@minorandjester.com | 5/24/2023 11:57:19 AM | SENT |
| Christopher RHenry | | chenry@minorandjester.com | 5/24/2023 11:57:19 AM | SENT |

No Oral Argument Requested

Case No. 23 - _____

In The
SUPREME COURT OF TEXAS

DARRYL HEFFNER, Beneficiary,
Plaintiff – Appellant – Petitioner,

v.

TIMOTHY HEFFNER, First-named Trustee,
MATTHEW HEFFNER, Second-named Trustee, AND
JONATHAN HEFFNER, Third-named Trustee,
Respondents – Appellees – Respondents.

On Petition for Review from 2d.CoA (Fort Worth)
No. 02-22-00149-CV
D.W.O.J. – April 13, 2023 [+45: May (28) 29, 2023]

From effective Dismissal at trial

HON. JANELLE M. HAVERKAMP, Judge Presiding
235TH DISTRICT COURT, COOKE COUNTY, TEXAS
No. CV21-00248

**BENEFICIARY'S (Petitioner's) MOTION FOR EXTENSION
(PET. REVIEW)**

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

Identity of Parties and Counsel

Parties to Trial Court Judgment with Names and Addresses of Trial and Appellate Counsel

Plaintiff

DARRYL HEFFNER (surviving
spouse, father)
389 FM 902
Gainesville, Texas 76240
heffner.da61@gmail.com
Pro se

Respondents

- 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
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, *all* by:

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

■ **Kept in the loop:**

- 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

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

Motion for Extension

Beneficiary (Petitioner) requests an initial extension regarding submission of his Petition for Review.

Discussion

Present Status

Dismissed, W.O.J., April 13.

Current Pet. due date: +45 – May (28) 29, 2023 (next week).

Issues for Review.

Several, the threshold one being appellate jurisdiction. HAVERKAMP (235th Dist. Ct.) “jump shifted,” first thing out of the chute, from threshold Disqualification to final distribution, by distributing both parcels of land, namely the Denton property (the immediately prior homestead) and the Gainesville homestead, to the “takers” of those properties. Per *Sharon*’s intent, as plainly documented, both properties are Beneficiary’s, solely and exclusively. That final distribution happened by HAVERKAMP’s expunging both Lis Pendens Notices Beneficiary had filed to maintain status quo pending final resolution.

Regarding appellate jurisdiction, while Lis Pendens is the self-help means for maintaining status quo, thus the self-help equivalent of Temp. Inj. relief,

expungement should *always* qualify as at least interlocutory. Here, though, expungement amounts to wholesale dismissal of Beneficiary’s entire case. The “takers” remain free to alienate and to debt-burden both properties, as if it were actually theirs. That relegates Beneficiary to a mere damages claim, and since property is unique, there is no adequate damages claim. While the alternative view is “Judgment on the Pleadings,” that, too, is a final, appealable order.

2d.CoA processed this appeal in the normal course. The Transcript, which cost too much (an additional Issue), was *finally* produced and filed, but not until after Beneficiary was compelled to abate to get that Transcript cost ruled on at trial. Beneficiary has briefed the appeal.

Would-be fiduciaries contend that expungement isn’t an appealable order. They moved to dismiss. Beneficiary responded. 2d.CoA dismissed.

Need for this initial extension

This Trust case and the related Probate case are quite closely tied together. A material part of the Disqualification case asserted in the *Probate* case arises from the abuses and fiduciary duty breaches regarding the Trust, and contributing to Disqualification in both cases are facts of Record in the Probate case. For ultimate ease of analysis, Beneficiary has gone to considerable effort to have the same Exhibits with the same numbers for each Record.

The would-be fiduciaries have obtained Record supplementation in the *Probate* case, the most recent of which is from April 25 (or thereabout).

Beneficiary thought he had articulated his standing request of the 2d.CoA to send him .pdf versions of these supplements as they arrived. Apparently not. As 2d.CoA has issued its Submission Notice (for early June), Beneficiary has reviewed his records and found that this latest supplement to the *Probate* Record has yet to be delivered to (Served on) him.

One of the working issues is the Probate Inventory. The disqualified but approved fiduciary, TIMOTHY, failed to account for MATTHEW's outstanding balance on the mortgage (community property) for the purchase of the Denton property, some \$129,200 in amount (two years (27 months) performance on a 10-11 year purchase agreement, which MATTHEW repudiated "the instant" Sharon passed). This is one of three very material absences in that Inventory, all three of which absences self-support Beneficiary's position, whether subtly or directly. To make as accurate a presentation here of all Issues for this *Trust* case, Beneficiary needs to know what is the latest in the status of the falsification of the Probate estate Inventory by those two would-be fiduciaries and their attorneys of Record.

Conclusion

The current due date for the Petition for Review regarding the *Trust* case (22-149) is a week from today. Beneficiary has emailed the Clerk for 2d.CoA this morning regarding that latest supplement in the *Probate* case (21-419). (Yes, these are interestingly similar case numbers, and 2d.CoA has confused itself (just once) due to this similarity). Beneficiary requests this initial extension for purposes of obtaining the would-be fiduciaries' latest RoA supplementation in the *Probate* case and solidifying the whole of the presentation of this *Trust* case, which is *wholly* resolvable on this Record as a matter of law.

Relief Requested

Beneficiary requests an initial extension for filing his Petition for Review in this case, the *Trust* case.

Respectfully submitted,

/s/ Darryl Heffner
DARRYL HEFFNER
389 FM 902
Gainesville, Texas 76240
heffner.da61@gmail.com

Certificate of Electronic Service

By my signature below, I certify that on this the 22d day of May, 2023, I have Served a copy of this Motion on the following via efileing:

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

Kept in the loop

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

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

/s/ Darryl Heffner
DARRYL HEFFNER

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below:

Envelope ID: 75885270

Filing Code Description: Motion for Extension of Time

Filing Description: Motion for Extension of Time -- Orig. filing Pet. Review

Status as of 5/23/2023 7:48 AM CST

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|----------------------------|-----------|----------------------------------|----------------------|--------|
| DARRYL HEFFNER | | heffner.da61@gmail.com | 5/22/2023 4:42:38 PM | SENT |
| Bonnie Sudderth | | bonnie.sudderth@txcourts.gov | 5/22/2023 4:42:38 PM | SENT |
| Janelle Haverkamp | | janelle.haverkamp@co.cooke.tx.us | 5/22/2023 4:42:38 PM | SENT |
| Katherine Christine Elrich | 24007158 | kelrich@cobbmartinez.com | 5/22/2023 4:42:38 PM | SENT |

Subject: RE: 2d.CoA -- FOR CERT CONF first -- M/Stay Mandate
From: Katherine Elrich <KElrich@cobbmartinez.com>
Date: 5/24/2023, 10:49 PM
To: Darryl Heffner <heffner.da61@gmail.com>
CC: Lynn Ehemann <LEhemann@cobbmartinez.com>

Good evening, Darryl,

I apologize for the delay in responding today. I've had meetings and other deadlines to meet today. As for this motion, I am not understanding the need for this motion since I believe you filed a motion for extension of time to file your petition for review in the Texas Supreme Court. I don't believe mandate issues until after the Texas Supreme Court process has been completed. Tex. R. App. P. 18.1.

Thank you,
Katherine

CMW

Katherine Elrich
Cobb Martinez Woodward PLLC
1700 Pacific Avenue, Suite 3100
Dallas, Texas 75201
(214) 220-5237 direct
(214) 220-5299 fax
kelrich@cobbmartinez.com
www.cobbmartinez.com

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From: Darryl Heffner <heffner.da61@gmail.com>
Sent: Wednesday, May 24, 2023 12:11 PM
To: Katherine Elrich <KElrich@cobbmartinez.com>
Cc: Lynn Ehemann <LEhemann@cobbmartinez.com>
Subject: 2d.CoA -- FOR CERT CONF first -- M/Stay Mandate

May 24, 2023 -- 12:10 PM

Ms. Elrich

This is for purposes of Conference.

Sincerely,

/s/ Darryl Heffner
DARRYL HEFFNER

May 25, 2023

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

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

Via Email Only

Re: No. 02-22-00149-CV, HEFFNER v. HEFFNER, et al. (The Trust Case)
Conference regarding my M/Stay Mandate

Dear Ms. Elrich:

There are times of year that do seem to be inordinately more active than others, and we're definitely into that as the typical academic year concludes. We're all raised in it, and so it's how our schedules end up being planned, "by everyone," whether consciously or subconsciously. Plus, we've got Memorial Day coming up. I had hoped that a 24-hour period and inclusion of your support staff would accommodate what is presumed a busy time, generally. Thanks for having / taking a minute for this matter.

As for why this motion, on the one hand, your point is well-made and well-received. Yes, TRAP 18.1 seems facially clear, doesn't it?

To illustrate the point of what's clear, this started with a five-page letter addressing just a handful of the matters that have been perfectly clear to me and yet not clear to anyone else, so far. That traipse through history, though, might distract from the focus at hand. Plus, since we're seeing at least this one matter the same way, it's at least a start.

That said, I'm proceeding with this motion. Where Rule 18.1 is clear to *us*, it's plainly not clear to *your client*. While your information to me is well-intended, well-informed, well-stated, and well-received, I'm compelled to seek this relief to address BEACHLEY's (MATTHEW's) *next* overt act of litigation

Ms. Katherine Elrich

May 25, 2023

Page 2

harassment. Thus, one more time, what's plainly clear to me isn't clear to this "Board Certified Expert" *or* to the 235th. Since these "Board Certified Experts" have "had their way with me" from Day One, in *both* trial courts *and* in 2d.CoA, what, really, *should* be my perspective and what's clear and to whom?

It may or may not be fair to burden you with controlling BEACHLEY, but I expect you'll agree with me that MATTHEW *is* your responsibility, and so I trust that you'll see, whether already or in the near future, that while you and I talk about clarity, your client is out filing baseless non-sense. That is, for me, a difficult dichotomy to square.

Moreover, what's clear to you and to me isn't clear to 235th personnel, either. The 235th has no more respect for Rule 18.1 than BEACHLEY (MATTHEW, your client) has.

Part of keeping this conversation door wide open is taking occasional views into some level of reality. Here, you're simply talking to the wrong person. One translation of "Rule 18.1 is clear," is this: "Oh, you don't need to continue to protect yourself against my client. The Rules take care of this." Since the law hasn't protected Sharon's Estate Plan, thus me or my property, from your client(s), at all, so far, you can picture my response to that concept.

One person you need to be talking to about what's clear about Rule 18.1 is BEACHLEY, since he's still very much out of control in the matter, generally. Perhaps additional people who might benefit from hearing a recitation of Rule 18.1 from you are the personnel with the 235th. But, ultimately, the person you *need* to talk to is *your client*. How is it that your client is acting so contrary to what is so clear to you? Since your client can't control himself, and since you can't control him, either, he's asking to be disciplined by 3d parties, here, 2d.CoA (should they see fit).

2d.CoA is more than capable of either granting it, in an effort not only to encourage you to keep your clients and their agents under control but also to exert supervision that is so self-evidently still necessary regarding 235th, at least with this case (I don't know about "generally"), or else 2d.CoA may simply continue to encourage your clients, their trial counsel, and the trial court to maintain their enhanced levels of litigation harassment, an apparent job *requirement* for would-

Ms. Katherine Elrich

May 25, 2023

Page 3

be fiduciaries in Cooke County, and deny it as moot, reciting Rule 18.1.

Yes, Rule 18.1 is clear. It's one thing that we see the same way. So, this is at least a start down that path.

Respectfully submitted,

/s/ Darryl Heffner
DARRYL HEFFNER



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

MANDATE

THE STATE OF TEXAS

To the 235th District Court of Cooke County, Greetings:

On April 13, 2023, the Court of Appeals for the Second District of Texas dismissed the appeal in the following case:

Darryl Heffner v. Timothy Heffner, Matthew Heffner, and Jonathan Heffner,
No. 02-22-00149-CV (CV21-00248).

The Court of Appeals entered the following judgment or order:

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.

Accordingly, we command you to observe the order of the Court of Appeals.

BY ORDER OF THE COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS, with the seal thereof annexed, at the City of Fort Worth, on October 27, 2023.



DEBRA SPISAK, CLERK

Debra Spisak

No Oral Argument Requested

Case No. 02-22-00149-CV

In The
COURT OF APPEALS
SECOND DISTRICT OF TEXAS

DARRYL HEFFNER, Beneficiary
v.
**TIMOTHY HEFFNER, First-named Trustee,
MATTHEW HEFFNER, Second-named Trustee, AND
JONATHAN HEFFNER, Third-named Trustee**

On Direct Appeal from

DARRYL HEFFNER, Beneficiary
v.
**TIMOTHY HEFFNER, First-named Trustee,
MATTHEW HEFFNER, Second-named Trustee, AND
JONATHAN HEFFNER, Third-named Trustee**

HON. JANELLE M. HAVERKAMP, Judge Presiding
235TH DISTRICT COURT, COOKE COUNTY, TEXAS
No. CV21-00248

BENEFICIARY'S MOTION TO WITHDRAW MANDATE

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

Identity of Parties and Counsel

Appellant

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

Appellees

- TIMOTHY HEFFNER
- MATTHEW HEFFNER
- JONATHAN HEFFNER

by:

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

Kept in the loop:

- Hon. J. HAVERKAMP
Cooke County Court At Law
101 South Dixon Street, Rm. 207
Gainesville, TX 76240
janelle.haverkamp@co.cooke.tx.us

Motion to Withdraw Mandate

Beneficiary moves that Mandate be withdrawn pending exhaustion of review.

Discussion

Trial court activity

BEACHLEY has activated his billing system, once again. Here at the end of Beneficiary's time period for getting his Petition for Cert. submitted in Washington, BEACHLEY is compelling Beneficiary to file a slew of motions.

Mandate and Withdrawal

The issuance of Mandate, despite Beneficiary's Notice of his intent to exhaust review process, in support of his Motion for Stay, was a tad precipitous.

Conclusion

The decent and proper status is to withdraw Mandate pending Beneficiary's exhaustion of direct review of this issue of "finality." Beneficiary concludes and contends that once "finality" is reached, "how" or "why" "finality" was reached is secondary to the fact of "finality." "How" or "why," while the focus of review, is analyzed "at law" not "in equity." "Denial of access" is an ancient federal question, and Beneficiary promptly gave full Notice of his intent to pursue this.

Executed in CITY OF GAINESVILLE, COUNTY OF COOKE, STATE OF TEXAS, on this the 6th day of November, 2023

/s/ Darryl Heffner
DARRYL HEFFNER, Affiant (Declarant)

Certificate of Compliance

If there's an applicable standard, by my signature below, I certify that the font for the body and the footnotes is at least 14-point Arial (headings) or 14-point Times New Roman (text), and that the word count of this motion is as follows:

Motion 171.

/s/ Darryl Heffner
DARRYL HEFFNER

Certificate of Conference

By my signature below, I certify the following Conference:

On 10/30/2023 11:44 AM, Chuck Beachley wrote:

[To: Counsel and Darryl Heffner]

I have been attempting to file the attached, but have received the message "Failure Reason:-1- One or more errors occurred during GetCase:[=1] Unknown error"

I will continue to try to file. All parties are being sent a copy of this email with attachment.

[email footer]

by appointment only

BeachleySmithLaw PLLC

405 State Highway 121, Ste A250

Lewisville, Texas 75067

(972) 538-0358 FAX (972) 538-0359

(817) 554-8220 FAX (817) 554-8221

beachley@beachleypllc.com

www.beachleypllc.com Law Offices of Charles E. Beachley III PLLC

Board Certified: Civil Trial Law Board Certified: Family Law

Fellow Member: College of the State Bar of Texas

Sustaining Life Fellow: Texas Bar Foundation

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From: Darryl Heffner <heffner.da61@gmail.com>

Sent: Monday, October 30, 2023 2:03 PM

To: Chuck Beachley <Beachley@BeachleyPLLC.com>; Paul F. Wright <paul@thewrightlawyers.com>; Christopher Henry <chenry@minorandjester.com>

Cc: Katherine Elrich <KElrich@cobbmartinez.com>

Subject: Re: Heffner CV21-00248

October 30, 2023

Counsel:

This is my request for Conference for a Motion for Stay pending final review in Washington.

/s/ Darryl Heffner
DARRYL HEFFNER

Automatic reply: Heffner CV21-00248 - SCHEDULING CONFERENCE
HEARING DATES - (Clicked Send too early)

Date: Mon, 30 Oct 2023 18:55:58 +0000
From: Katherine Elrich <KElrich@cobbmartinez.com>
To: Darryl Heffner <heffner.da61@gmail.com>

Thank you for your email. I am out of the office today and will respond to your email as soon as possible.

Have a great day!

Katherine Elrich
Cobb Martinez Woodward PLLC
1700 Pacific Avenue, Suite 3100
Dallas, Texas 75201
(214) 220-5237 direct
(214) 220-5287 fax
kelrich@cobbmartinez.com
www.cobbmartinez.com

On 10/30/2023 5:54 PM, Chuck Beachley wrote:

Mr. Darryl Hefner, when and where did you file that Motion? I don't think I have received a copy.

[same email footer]

From: Darryl Heffner <heffner.da61@gmail.com>
Sent: Tuesday, October 31, 2023 11:37 AM
To: Chuck Beachley <Beachley@BeachleyPLLC.com>
Cc: Katherine Elrich <KElrich@cobbmartinez.com>; Paul F. Wright
<paul@thcwrightlawyers.com>; Christopher Henry
<chenry@minorandjester.com>
Subject: Re: Heffner CV21-00248

October 31, 2023

CHARLES BEACHLEY
BEACHLEY, PLLC

Mr. Beachley:

[You're] right. Didn't attach a motion, purposefully. Should have mentioned that overtly. The question is, in particular to you, *do I need to?*

You have failed to conference me on both trial motions presented during this appeal. Had you conferenced me, this conference and motion might be unnecessary.

/s/ Darryl Heffner
DARRYL HEFFNER

Subject: RE: Heffner CV21-00248
Date: Wed, 1 Nov 2023 19:19:37 +0000
From: Chuck Beachley <Beachley@BeachleyPLLC.com>
To: Darryl Heffner <heffner.da61@gmail.com>
CC: Katherine Elrich <KElrich@cobbmartinez.com>, Paul F. Wright
<paul@thewrightlawyers.com>, Christopher Henry
<chenry@minorandjester.com>

I'm sorry, Mr. Heffner, I am not permitted to give you legal advice. Specifically, you have asked if you have to have at least a draft Motion before we confer on the merits of the Motion. I have to refer you back to your own counsel for that. Have a nice day.

/s/ Darryl Heffner
DARRYL HEFFNER

Certificate of Electronic Service

By my signature below, I certify that on this the 6th day of November, 2023, I have Served a copy of this Motion with its attachments on the following via efilings:

KATHERINE ELRICH
COBB MARTINEZ WOODWARD
1700 Pacific Avenue, Suite 3100
Dallas, TX 75201
kelrich@cobbmartinez.com
(TIMOTHY HEFFNER,
MATTHEW HEFFNER,
JONATHAN HEFFNER)

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

/s/ Darryl Heffner
DARRYL HEFFNER



**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**

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

ORDER

We have considered appellant "Beneficiary's Motion to Withdraw Mandate."

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 13, 2023.

Per Curiam

Panel: Sudderth, C.J.; Kerr and Birdwell, JJ.

No Oral Argument Requested

Case No. 23 - 0378

In The
SUPREME COURT OF TEXAS

DARRYL HEFFNER, Beneficiary,
Plaintiff – Appellant – Petitioner,

v.

TIMOTHY HEFFNER, First-named Trustee,
MATTHEW HEFFNER, Second-named Trustee, AND
JONATHAN HEFFNER, Third-named Trustee,
Respondents – Appellees – Respondents.

On Petition for Review from 2d.CoA (Fort Worth)
No. 02-22-00149-CV
D.W.O.J. – April 13, 2023 [+45: May (28) 29, 2023]

From effective Dismissal at trial

HON. JANELLE M. HAVERKAMP, Judge Presiding
235TH DISTRICT COURT, COOKE COUNTY, TEXAS
No. CV21-00248

**BENEFICIARY'S MOTION FOR STAY
OF ALL TRIAL ACTIVITY**

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

Identity of Parties and Counsel

Parties to Trial Court Judgment with Names and Addresses of Trial and Appellate Counsel

Plaintiff

DARRYL HEFFNER (surviving
spouse, father)
389 FM 902
Gainesville, Texas 76240
heffner.da61@gmail.com
Pro se

Respondents

- 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~~
[Beneficiary recalls no address update;
see Conference for details.]
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, *all* by:

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

■ **Kept in the loop:**

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

Motion for Stay of All Trial Activity

Beneficiary (Petitioner) requests stay of all trial activity pending exhaustion of review.

Discussion

Trial and Appellate activity

Phase 1. In the trial court, BEACHLEY activated his billing system even before the Mandate. Most disappointingly there is that the trial court had no more respect for their lack of jurisdiction than BEACHLEY.

That activity compelled Beneficiary to file his Motion to Stay Mandate in 2d.CoA, which Beneficiary supplemented with his Notice of his intent to exhaust review in this matter. That deadline is zooming up rapidly.

Mandate. By issuing their Mandate, 2d.CoA has overruled Beneficiary's Motion for Stay of that. Judicial Notice is requested. (Due to a malware incident, attaching documents is more than difficult at the moment.)

Phase 2. In the trial court, BEACHLEY has again activated his billing system. *See* the Conference section, *infra*, for the details of that exchange. In sum, BEACHLEY is compelling Beneficiary to draft and file a slew of motions during the last remaining time period on the present filing deadline in Washington.

This motion is verified in order that it be acted on *ex parte*.

Conclusion

The decent and proper status is to stay all trial court activity pending exhaustion of direct review of this issue of “finality.” Beneficiary concludes and contends that once “finality” is reached, “how” or “why” “finality” was reached is secondary to the fact of “finality.” “How” or “why,” while the focus of review, is analyzed “at law” not “in equity.” Since “denial of access” is an ancient federal question, Beneficiary is in process of completing that Petition for Cert., as he promptly gave full Notice (2d.CoA) of his intent to do.

Relief Requested

Beneficiary requests stay of all trial court activity pending exhaustion of review.

Respectfully submitted,

/s/ Darryl Heffner
DARRYL HEFFNER
389 FM 902
Gainesville, Texas 76240
heffner.da61@gmail.com

Certificate of Compliance

If there's an applicable standard, by my signature below, I certify that the font for the body and the footnotes is at least 14-point Arial (headings) or 14-point Times New Roman (text), and that the word count of this motion is as follows:

Motion 293.

/s/ Darryl Heffner
DARRYL HEFFNER

Certificate of Conference

By my signature below, I certify the following Conference:

On 10/30/2023 11:44 AM, Chuck Beachley wrote:

[To: Counsel and Darryl Heffner]

I have been attempting to file the attached, but have received the message "Failure Reason:-1- One or more errors occurred during GetCase:[=1] Unknown error"

I will continue to try to file. All parties are being sent a copy of this email with attachment.

[email footer]
by appointment only
BeachleySmithLaw PLLC
405 State Highway 121, Ste A250
Lewisville, Texas 75067
(972) 538-0358 FAX (972) 538-0359
(817) 554-8220 FAX (817) 554-8221
beachley@beachleypllc.com

www.beachleypllc.com Law Offices of Charles E. Beachley III PLLC
Board Certified: Civil Trial Law Board Certified: Family Law
Fellow Member: College of the State Bar of Texas
Sustaining Life Fellow: Texas Bar Foundation

NOTICE: The information contained in this message and any attachments is intended only for the use of the individual or entity to which it is addressed and may contain information that is PRIVILEGED, CONFIDENTIAL, AND/OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If you are not the intended recipient, you are prohibited from copying, distributing, or using the information. Please contact the sender immediately by return email and delete the original message from your system. Unless expressly otherwise stated, this message is not to be construed as an electronic signature.

From: Darryl Heffner <heffner.da61@gmail.com>
Sent: Monday, October 30, 2023 2:03 PM
To: Chuck Beachley <Beachley@BeachleyPLLC.com>; Paul F. Wright <paul@thewrightlawyers.com>; Christopher Henry <chenry@minorandjester.com>
Cc: Katherine Elrich <KElrich@cobbmartinez.com>

Subject: Re: Heffner CV21-00248

October 30, 2023

Counsel:

This is my request for Conference for a Motion for Stay pending final review in Washington.

/s/ Darryl Heffner
DARRYL HEFFNER

Mot. Stay – All trial activity (DARRYL HEFFNER, Beneficiary)

5

Automatic reply: Heffner CV21-00248 - SCHEDULING CONFERENCE
HEARING DATES - (Clicked Send too early)

Date: Mon, 30 Oct 2023 18:55:58 +0000
From: Katherine Elrich <KElrich@cobbmartinez.com>
To: Darryl Heffner <heffner.da61@gmail.com>

Thank you for your email. I am out of the office today and will respond to your email as soon as possible.

Have a great day!

Katherine Elrich
Cobb Martinez Woodward PLLC
1700 Pacific Avenue, Suite 3100
Dallas, Texas 75201
(214) 220-5237 direct
(214) 220-5287 fax
kelrich@cobbmartinez.com
www.cobbmartinez.com

On 10/30/2023 5:54 PM, Chuck Beachley wrote:

Mr. Darryl Hefner, when and where did you file that Motion? I don't think I have received a copy.

[same email footer]

From: Darryl Heffner <heffner.da61@gmail.com>
Sent: Tuesday, October 31, 2023 11:37 AM
To: Chuck Beachley <Beachley@BeachleyPLLC.com>
Cc: Katherine Elrich <KElrich@cobbmartinez.com>; Paul F. Wright
<paul@thewrightlawyers.com>; Christopher Henry
<chenry@minorandjester.com>
Subject: Re: Heffner CV21-00248

October 31, 2023

CHARLES BEACHLEY
BEACHLEY, PLLC

Mr. Beachley:

[You're] right. Didn't attach a motion, purposefully. Should have mentioned that overtly. The question is, in particular to you, *do I need to?*

You have failed to conference me on both trial motions presented during this appeal. Had you conferenced me, this conference and motion might be unnecessary.

/s/ Darryl Heffner
DARRYL HEFFNER

Subject: RE: Heffner CV21-00248
Date: Wed, 1 Nov 2023 19:19:37 +0000
From: Chuck Beachley <Beachley@BeachleyPLLC.com>
To: Darryl Heffner <heffner.da61@gmail.com>
CC: Katherine Elrich <KElrich@cobbmartinez.com>, Paul F. Wright
<paul@thewrightlawyers.com>, Christopher Henry
<chenry@minorandjester.com>

Mot. Stay – All trial activity (DARRYL HEFFNER, Beneficiary)

7

I'm sorry, Mr. Heffner, I am not permitted to give you legal advice. Specifically, you have asked if you have to have at least a draft Motion before we confer on the merits of the Motion. I have to refer you back to your own counsel for that. Have a nice day.

/s/ Darryl Heffner
DARRYL HEFFNER

Certificate of Electronic Service

By my signature below, I certify that on this the 6th day of November, 2023, I have Served a copy of this Motion on the following via efilng:

KATHERINE ELRICH
COBB MARTINEZ WOODWARD
1700 Pacific Avenue, Suite 3100
Dallas, TX 75201
kelrich@cobbmartinez.com
(TIMOTHY HEFFNER,
MATTHEW HEFFNER,
JONATHAN HEFFNER)

Kept in the loop

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

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

/s/ Darryl Heffner
DARRYL HEFFNER

Filing Details

Submission Id: 81320B09
 Submission Date and Time: 11/06/23 09:25 AM
 Submission Status: Returned for Correction
 Filing Acceptance Date and Time:
 Clerk Notes:
 Rejected Reason: Your Petition for Review was denied. The case is closed and the decision of the Supreme Court of Texas is final.
 Filing Comments:

Case Information

Case Title:
 Location: Supreme Court Client ID:
 Court: Supreme Court Attorney:
 Case Category: Civil - Other Civil Filer: Darryl A Heffner
 Case Type: Civil Payment Account: Darryl A Heffner
 Case Number: 23-0378

Parties

| Party Type | Name | Attorney |
|------------|------------------|----------|
| Petitioner | DARRYL HEFFNER | |
| Respondent | TIMOTHY HEFFNER | |
| Respondent | MATTHEW HEFFNER | |
| Respondent | JONATHAN HEFFNER | |

Filing

| Filing Code | Document | Type |
|-----------------------------|---|---|
| Motion for Emergency Relief | Document Name mStay Trial Activity.pdf | Type Lead Document Security Public eFile & eServe |

Court Services Requested

Firm Service Contacts

| Name | Email Address |
|----------------|------------------------|
| DARRYL HEFFNER | heffner.da61@gmail.com |

Filing eService Recipients

| Status Code | Name | Email | Served | Opened |
|-------------|---------------------------|----------------------------------|-----------------------|--------|
| Sent | Katherine Kristine Elrich | kelrich@cobbmartinez.com | 11/06/23 09:26 AM CST | |
| Sent | Bonnie Sudderth | bonnie.sudderth@bcourts.gov | 11/06/23 09:26 AM CST | |
| Sent | Janelle Haverkamp | janelle.haverkamp@co.cooke.tx.us | 11/06/23 09:26 AM CST | |

Fax Service

| Name | Number | Pages | Status | Last Delivery Attempt | Response |
|------|--------|-------|--------|-----------------------|----------|
|------|--------|-------|--------|-----------------------|----------|



Fees Breakdown

Court Fees

Motion for Emergency Relief
 Filing Fee \$0.00

Total Fee For This Filing \$0.00

Submission Fees

eFiling Manager Convenience Fee \$1.00
 FileTime Service Fee \$2.99
 Sales Tax on FileTime Fee \$0.25

Total Submission Fees \$4.24

Total Fees for this Submission \$4.24

Billing Slip Details

For billing ease we provide you this billing scenario for the filings in your case.

Credit Card Information Breakdown

Your credit card statement will show:

Pleading
 Jurisdiction (TXEFILE) \$0.00
 eFiling Manager (Tyler (TX) file Conv Fee) \$0.00

There are no fees to be paid for this submission.

Billing Time and Date:

CAUSE NO. CV21-00248

DARRYL HEFFNER § IN THE DISTRICT COURT
VS. § 235th JUDICIAL DISTRICT
TIMOTHY HEFFNER, MATTHEW §
HEFFNER AND JONATHAN HEFFNER § OF COOKE COUNTY, TEXAS

DEFENDANT'S REQUEST FOR ENTRY ON PLAINTIFF'S PROPERTY

As provided in Rule 196.7, Texas Rules of Civil Procedure, Defendant, Matthew Heffner, serves this request on Plaintiff Darryl Heffner.

1. Defendant requests permission to enter Plaintiff's real property located at 389 FM 902, Gainesville, Texas 76240 to appraise, inspect, measure, survey, photograph, test and sample the property.

2. Requested time and place for the entry is December 28, 2023 10:00 a.m..

3. A licensed appraiser is the person who will appraise, inspect, measure, survey, photograph, test and sample the property.

4. The manner, conditions, and scope by which the licensed appraiser will appraise, inspect, measure, survey and photograph the property include observation and inspection but expressly EXCLUDE ANY DESTRUCTIVE TESTING.

5. The desired means, manner, and procedure by which the licensed appraiser shall test and sample the property include observation and inspection but expressly EXCLUDE ANY DESTRUCTIVE TESTING.

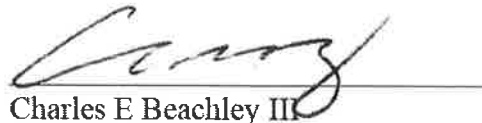
6. The purpose of this entry upon real property is to evaluate and appraise the subject residential real estate, part of the property concerned in the above styled and numbered cause and in No. PR-1799, Estate of Heffner, County Court at Law, Cooke County, Texas.

7. **Request for Setting:** Mr. Darryl Heffner did not respond to this Request and therefore is presumed to oppose. Movant therefore requests the Court set hearing on whether the Court

will order Mr. Darryl Heffner to cooperate in the requested entry. Since we already have a setting for November 22, perhaps this matter could be heard then.

Respectfully submitted,

BeachleySmithLaw, PLLC
405 State Highway 121, Ste. A250
Lewisville, Texas 75067

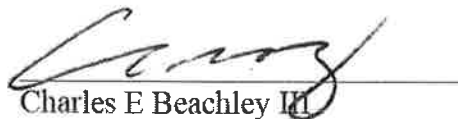


Charles E Beachley III
Attorney for Matthew Heffner
Bar # 01945300
Office Phone: (972) 538-0358
Fax: (972) 538-0359
Email: beachley@beachleypllc.com

Certificate of Conference

I certify that Plaintiff (pro se) Darryl Heffner and counsel for Defendants Timothy Heffner and Jonathan Heffner were sent a draft of this Request Wednesday, November 8, 2023, with a request each let me know if he agrees or opposes. Mr. Wright and Mr. Henry respond they do not object; Mr. Darryl Heffner has not responded.

Date: November 10, 2023.



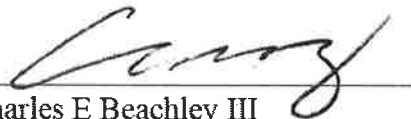
Certificate of Service

I certify that a true copy of this document was served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the following on November 10, 2023.

Christopher B. Henry by electronic filing manager at chenry@minorandjester.com.

Paul F. Wright by electronic filing manager at paul@thewrightlawyers.com.

Darryl Heffner by electronic filing manager at heffner.da61@gmail.com.


Charles E Beachley III
Attorney for Matthew Heffner

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Charles Beachley
Bar No. 1945300
attorney@beachleypllc.com
Envelope ID: 81524091
Filing Code Description: Motion (No Fee)
Filing Description: Request for Entry Upon Real Property
Status as of 11/13/2023 10:18 AM CST

Associated Case Party: TIMOTHY ("TIM")HEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---------------|-----------|------------------------------|-----------------------|--------|
| Paul F.Wright | | paul@thewrightlawyers.com | 11/10/2023 1:29:08 PM | SENT |
| KELSEY GOINS | | kelseyg@thewrightlawyers.com | 11/10/2023 1:29:08 PM | SENT |
| Frances Seman | | frances@thewrightlawyers.com | 11/10/2023 1:29:08 PM | SENT |

Associated Case Party: MATTHEWHEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|------------------|-----------|---------------------------|-----------------------|--------|
| Charles Beachley | | beachley@beachleypllc.com | 11/10/2023 1:29:08 PM | SENT |

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|----------------|-----------|----------------------------|-----------------------|--------|
| Darryl Heffner | | heffner.da61@gmail.com | 11/10/2023 1:29:08 PM | SENT |
| TERESA WARD | | teresa.ward@co.cooke.tx.us | 11/10/2023 1:29:08 PM | SENT |

Associated Case Party: JONATHANHEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------------|-----------|----------------------------|-----------------------|--------|
| Shannon Jones | | sjones@minorandjester.com | 11/10/2023 1:29:08 PM | SENT |
| Dianne Landry | | dlandry@minorandjester.com | 11/10/2023 1:29:08 PM | SENT |
| Christopher BHenry | | chenry@minorandjester.com | 11/10/2023 1:29:08 PM | SENT |

CAUSE NO. CV21-00248

DARRYL HEFFNER § **IN THE DISTRICT COURT**
§
VS. § **235th JUDICIAL DISTRICT**
§
TIMOTHY HEFFNER, MATTHEW §
HEFFNER AND JONATHAN HEFFNER § **OF COOKE COUNTY, TEXAS**

ORDER SETTING HEARING

Defendant/Counterplaintiff Mathhew Henry's Request for Entry on Real Property is hereby set for hearing at 11:00 a.m. November 22, 2023, along with the Scheduling Conference, in the Courtroom of the 235th Judicial District Court, Cooke County, Texas.

SIGNED this 15 day of November, 2023.



JUDGE PRESIDING

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Charles Beachley
Bar No. 1945300
attorney@beachleypllc.com
Envelope ID: 81611131
Filing Code Description: Proposed Order
Filing Description: Order Setting Hearing
Status as of 11/16/2023 9:10 AM CST

Associated Case Party: TIMOTHY ("TIM")HEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---------------|-----------|------------------------------|------------------------|--------|
| Paul F.Wright | | paul@thewrightlawyers.com | 11/14/2023 11:07:11 AM | SENT |
| KELSEY GOINS | | kelseyg@thewrightlawyers.com | 11/14/2023 11:07:11 AM | SENT |
| Frances Seman | | frances@thewrightlawyers.com | 11/14/2023 11:07:11 AM | SENT |

Associated Case Party: MATTHEWHEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|------------------|-----------|---------------------------|------------------------|--------|
| Charles Beachley | | beachley@beachleypllc.com | 11/14/2023 11:07:11 AM | SENT |
| Lauren Smith | | lauren@beachleypllc.com | 11/14/2023 11:07:11 AM | SENT |

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|----------------|-----------|----------------------------|------------------------|--------|
| Darryl Heffner | | heffner.da61@gmail.com | 11/14/2023 11:07:11 AM | SENT |
| TERESA WARD | | teresa.ward@co.cooke.tx.us | 11/14/2023 11:07:11 AM | SENT |

Associated Case Party: JONATHANHEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------------|-----------|----------------------------|------------------------|--------|
| Shannon Jones | | sjones@minorandjester.com | 11/14/2023 11:07:11 AM | SENT |
| Dianne Landry | | dlandry@minorandjester.com | 11/14/2023 11:07:11 AM | SENT |
| Christopher BHenry | | chenry@minorandjester.com | 11/14/2023 11:07:11 AM | SENT |

No. CV21-00248

| | | |
|---------------------------|---|-------------------------|
| DARRYL HEFFNER, | § | In The |
| | § | |
| Beneficiary, | § | |
| | § | DISTRICT COURT |
| Petitioner, | § | |
| | § | |
| v. | § | 235th JUDICIAL DISTRICT |
| | § | |
| TIMOTHY ("TIM") HEFFNER, | § | |
| | § | COOKE COUNTY, TEXAS |
| First-named Trustee, | § | |
| | § | |
| MATTHEW HEFFNER, | § | |
| | § | |
| Second-named Trustee, and | § | |
| | § | |
| JONATHAN HEFFNER, | § | |
| | § | |
| Third-named Trustee, | § | |
| | § | |
| Respondents. | § | |

**PLAINTIFF'S RESPONSE TO MATTHEW'S
(BEACHLEY'S) DISCOVERY**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner, DARRYL HEFFNER, Beneficiary, who responds to BEACHLEY's pending Discovery activity as follows:

Response

The Discovery requested should be denied.

Discussion

This case is still under review. The current deadline for the Petition for Certiorari is this Friday, the 24th. *See* Beneficiary's Motion for Stay Pending Exhaustion of Review.

Beneficiary has no idea who "Math hew Henry" is, but there's no "Math hew Henry" that's a party to this matter.

BEACHLEY refers (facially incompetently) to the parallel Probate matter. That proceeding, as well, isn't completed in review, either.

And, the most outstanding reason why this particular effort at Discovery should be denied (without prejudice, of course) is this. Complete with "no objection" from either other party Respondent, the reference throughout is to "Plaintiff's property." One more time, all three parties Respondent confess, judicially, that this property is, in fact, Beneficiary's. Therefore, they confess having zero basis for even thinking about entry onto the property for any purpose in the present time period.

Request for Relief

Beneficiary requests that BEACHLEY's Discovery request, set for hearing on Nov. 22 (this Wednesday), be denied.

Respectfully submitted,

/s/ Darryl Heffner
DARRYL HEFFNER
389 FM 902
Gainesville, Texas 76240
heffner.da61@gmail.com

Unsworn Declaration Under Penalty of Perjury

STATE OF TEXAS §
 ss. KNOW ALL MEN BY THESE PRESENTS
COUNTY OF COOKE §

My name is DARRYL HEFFNER. I was born in 1957, and my address is shown in the signature block.

I am at least 21 years of age, and I am competent to make this Affidavit (Declaration). I have personal knowledge of the facts asserted in this Affidavit / Declaration, and I declare (or certify, verify, or state) under penalty of perjury under the laws of the State of Texas, that the facts so asserted are true and correct.

The facts asserted in this Response are true and correct.

Further, Affiant (Declarant) sayeth not.

Executed in CITY OF GAINESVILLE, COUNTY OF COOKE, STATE OF TEXAS, on this the 22d day of November, 2023

/s/ Darryl Heffner
DARRYL HEFFNER, Affiant (Declarant)

Certificate of Electronic Service

By my signature below, I certify that on this the 20th day of November, 2023, I have Served this Response on Respondents via electronic means as follows:

CHARLES E. BEACHLEY III
BeachleySmithLaw PLLC
250 North Mill Street, Suite 1
Lewisville, TX 75057
beachley@beachleypllc.com
(MATTHEW HEFFNER)

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)

/s/ Darryl Heffner
DARRYL HEFFNER

Unsworn Declaration Under Penalty of Perjury Regarding Service

STATE OF TEXAS §
 ss. KNOW ALL MEN BY THESE PRESENTS
COUNTY OF COOKE §

My name is DARRYL HEFFNER. I was born in 1957, and my address is shown in the signature block.

I am at least 21 years of age, and I am competent to make this Affidavit (Declaration). I have personal knowledge of the facts asserted in this Declaration of Service, and I declare (or certify, verify, or state) under penalty of perjury under the laws of the State of Texas, that the facts so asserted are true and correct.

On this the 20th day of November, 2023, I have Served a true and correct copy of this Response by electronic means as follows:

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

Further, Affiant (Declarant) sayeth not.

Executed in CITY OF GAINESVILLE, COUNTY OF COOKE, STATE OF TEXAS, on this the 20th day of November, 2023

/s/ Darryl Heffner
DARRYL HEFFNER, Affiant (Declarant)

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 81812378

Filing Code Description: Answer/Response

Filing Description: Answer/Response -- to "Mathew Henry's" Discovery request

Status as of 11/20/2023 1:37 PM CST

Associated Case Party: MATTHEWHEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|------------------|-----------|---------------------------|------------------------|--------|
| Charles Beachley | | beachley@beachleypllc.com | 11/20/2023 11:50:22 AM | SENT |
| Lauren Smith | | lauren@beachleypllc.com | 11/20/2023 11:50:22 AM | SENT |

Associated Case Party: TIMOTHY ("TIM")HEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|----------------|-----------|------------------------------|------------------------|--------|
| Paul F. Wright | | paul@thewrightlawyers.com | 11/20/2023 11:50:22 AM | SENT |
| KELSEY GOINS | | kelseyg@thewrightlawyers.com | 11/20/2023 11:50:22 AM | SENT |
| Frances Seman | | frances@thewrightlawyers.com | 11/20/2023 11:50:22 AM | SENT |

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|----------------|-----------|------------------------|------------------------|--------|
| Darryl Heffner | | heffner.da61@gmail.com | 11/20/2023 11:50:22 AM | SENT |

Associated Case Party: JONATHANHEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------------|-----------|----------------------------|------------------------|--------|
| Shannon Jones | | sjones@minorandjester.com | 11/20/2023 11:50:22 AM | SENT |
| Dianne Landry | | dlandry@minorandjester.com | 11/20/2023 11:50:22 AM | SENT |
| Christopher BHenry | | chenry@minorandjester.com | 11/20/2023 11:50:22 AM | SENT |

CAUSE NO. CV21-00248

FILED IN DISTRICT COURT
COOKE COUNTY, TEXAS

2023 NOV 22 AM 11:48

DARRYL HEFFNER

VS.

TIMOTHY HEFFNER, MATTHEW
HEFFNER AND JONATHAN HEFFNER

§
§
§
§
§
§

IN THE DISTRICT COURT

DIST. CLERK MARCI A GILBERT

235th JUDICIAL DISTRICT

Walterscheid
DEPUTY.

OF COOKE COUNTY, TEXAS

ORDER ON REQUEST FOR ENTRY ON PROPERTY

On this day the Motion for Entry on Property filed by Defendants in this cause came on for consideration by the Court.

After consideration of the pleadings, evidence, and arguments of counsel, the Court finds that the Motion should be and hereby is:

GRANTED. Plaintiff is **ORDERED** to provide Defendants with access to the real property located at 389 FM 902, Gainesville, Texas 76240 on

December 28, 2023 at 10am to 2 pm. Defendants may bring an appraiser and may photograph the property. Defendants shall not remove or damage any of the property

DENIED

SIGNED on

November 22, 2023

[Signature]
JUDGE PRESIDING

No. CV21-00248

| | | |
|---------------------------|---|-------------------------|
| DARRYL HEFFNER, | § | In The |
| Beneficiary, | § | |
| Petitioner, | § | DISTRICT COURT |
| v. | § | 235th JUDICIAL DISTRICT |
| TIMOTHY (“TIM”) HEFFNER, | § | |
| First-named Trustee, | § | COOKE COUNTY, TEXAS |
| MATTHEW HEFFNER, | § | |
| Second-named Trustee, and | § | |
| JONATHAN HEFFNER, | § | |
| Third-named Trustee, | § | |
| Respondents. | § | |

**PLAINTIFF’S MOTION FOR STAY
PENDING EXHAUSTION OF REVIEW**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner, DARRYL HEFFNER, Beneficiary, who moves for a stay as follows:

Motion for Stay pending exhaustion of Review

Beneficiary requests a stay of all trial court activity pending exhaustion of the presently active appeal.

/s/ Darryl Heffner
DARRYL HEFFNER, Affiant (Declarant)

Certificate of Conference

By my signature below, I certify the following Conference:

On 10/30/2023 11:44 AM, Chuck Beachley wrote:

[To: Counsel and Darryl Heffner]

I have been attempting to file the attached, but have received the message "Failure Reason:-1- One or more errors occurred during GetCase:[=1] Unknown error"

I will continue to try to file. All parties are being sent a copy of this email with attachment.

[email footer]
by appointment only
BeachleySmithLaw PLLC
405 State Highway 121, Ste A250
Lewisville, Texas 75067
(972) 538-0358 FAX (972) 538-0359
(817) 554-8220 FAX (817) 554-8221
beachley@beachleypllc.com

www.beachleypllc.com Law Offices of Charles E. Beachley III PLLC
Board Certified: Civil Trial Law Board Certified: Family Law
Fellow Member: College of the State Bar of Texas
Sustaining Life Fellow: Texas Bar Foundation

NOTICE: The information contained in this message and any attachments is intended only for the use of the individual or entity to which it is addressed and may contain information that is PRIVILEGED, CONFIDENTIAL, AND/OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If you are not the intended recipient, you are prohibited from copying, distributing, or using the information. Please contact the sender immediately by return email and delete the original message from your system. Unless expressly otherwise stated, this message is not to be construed as an electronic signature.

From: Darryl Heffner <heffner.da61@gmail.com>
Sent: Monday, October 30, 2023 2:03 PM
To: Chuck Beachley <Beachley@BeachleyPLLC.com>; Paul F. Wright
<paul@thewrightlawyers.com>; Christopher Henry <chenry@minorandjester.com>
Cc: Katherine Elrich <KElrich@cobbmartinez.com>

Subject: Re: Heffner CV21-00248

October 30, 2023

Counsel:

This is my request for Conference for a Motion for Stay pending final review in Washington.

/s/ Darryl Heffner
DARRYL HEFFNER

Automatic reply: Heffner CV21-00248 - SCHEDULING CONFERENCE HEARING DATES - (Clicked Send too early)
Date: Mon, 30 Oct 2023 18:55:58 +0000
From: Katherine Elrich <KElrich@cobbmartinez.com>
To: Darryl Heffner <heffner.da61@gmail.com>

Thank you for your email. I am out of the office today and will respond to your email as soon as possible.

Have a great day!

Katherine Elrich
Cobb Martinez Woodward PLLC
1700 Pacific Avenue, Suite 3100
Dallas, Texas 75201
(214) 220-5237 direct
(214) 220-5287 fax
kelrich@cobbmartinez.com
www.cobbmartinez.com

On 10/30/2023 5:54 PM, Chuck Beachley wrote:

Mr. Darryl Heffner, when and where did you file that Motion? I don't think I have received a copy.

[same email footer]

From: Darryl Heffner <heffner.da61@gmail.com>
Sent: Tuesday, October 31, 2023 11:37 AM
To: Chuck Beachley <Beachley@BeachleyPLLC.com>
Cc: Katherine Elrich <KElrich@cobbmartinez.com>; Paul F. Wright <paul@thewrightlawyers.com>; Christopher Henry <chenry@minorandjester.com>
Subject: Re: Heffner CV21-00248

October 31, 2023

CHARLES BEACHLEY
BEACHLEY, PLLC

Mr. Beachley:

[You're] right. Didn't attach a motion, purposefully. Should have mentioned that overtly. The question is, in particular to you, *do I need to?*

You have failed to conference me on both trial motions presented during this appeal. Had you conferenced me, this conference and motion might be unnecessary.

/s/ Darryl Heffner
DARRYL HEFFNER

Subject: RE: Heffner CV21-00248
Date: Wed, 1 Nov 2023 19:19:37 +0000
From: Chuck Beachley <Beachley@BeachleyPLLC.com>
To: Darryl Heffner <heffner.da61@gmail.com>
CC: Katherine Elrich <KElrich@cobbmartinez.com>, Paul F. Wright <paul@thewrightlawyers.com>, Christopher Henry <chenry@minorandjester.com>

Service, and I declare (or certify, verify, or state) under penalty of perjury under the laws of the State of Texas, that the facts so asserted are true and correct.

On this the 6th day of November, 2023, I have Served a true and correct copy of this motion, with its Exhibits, by electronic means as follows:

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

Further, Affiant (Declarant) sayeth not.

Executed in CITY OF GAINESVILLE, COUNTY OF COOKE, STATE OF TEXAS,
on this the 6th day of November, 2022

/s/ Darryl Heffner
DARRYL HEFFNER, Affiant (Declarant)

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 81328925

Filing Code Description: Motion (No Fee)

Filing Description: Motion -- for Stay pending Exhaustion of Review

Status as of 11/6/2023 12:26 PM CST

Associated Case Party: MATTHEWHEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|------------------|-----------|---------------------------|-----------------------|--------|
| Charles Beachley | | beachley@beachleypllc.com | 11/6/2023 11:07:51 AM | SENT |
| Lauren Smith | | lauren@beachleypllc.com | 11/6/2023 11:07:51 AM | SENT |

Associated Case Party: TIMOTHY ("TIM")HEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|----------------|-----------|-------------------------------|-----------------------|--------|
| Paul F. Wright | | paul@thewrightlawyers.com | 11/6/2023 11:07:51 AM | SENT |
| KELSEY GOINS | | kelseygo@thewrightlawyers.com | 11/6/2023 11:07:51 AM | SENT |
| Frances Seman | | frances@thewrightlawyers.com | 11/6/2023 11:07:51 AM | SENT |

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|----------------|-----------|------------------------|-----------------------|--------|
| Darryl Heffner | | heffner.da61@gmail.com | 11/6/2023 11:07:51 AM | SENT |

Associated Case Party: JONATHANHEFFNER

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------------|-----------|----------------------------|-----------------------|--------|
| Shannon Jones | | sjones@minorandjester.com | 11/6/2023 11:07:51 AM | SENT |
| Dianne Landry | | dlandry@minorandjester.com | 11/6/2023 11:07:51 AM | SENT |
| Christopher BHenry | | chenry@minorandjester.com | 11/6/2023 11:07:51 AM | SENT |

Transcript is expected to convey / document these concepts:

COURT: Mr. Heffner, do you think that you, as a *pro se*, can send paperwork [down] to the Supreme Court of the United States and think they're just going to accept it [your paperwork] regarding your little case?

BENEFICIARY: Yes.

COURT: [No] Mr. Heffner, I can assure you, you do not have a case before the Supreme Court of the United States.

[Motion for Stay denied]

2023 NOV 22 PM 12:03

DARRYL HEFFNER, *Beneficiary, Petitioner,*
v.
TIMOTHY ("TIM") HEFFNER, *First-Named Trustee*
MATTHEW HEFFNER, *Second-Named Trustee*
JONATHAN HEFFNER, *Third-Named Trustee,*
Respondents.

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IN THE 235TH JUDICIAL A GILBERT

BY: W. Waterhouse
DEPUTY

DISTRICT COURT OF

COOKE COUNTY, TEXAS

~~ORDER FOR PRETRIAL CONFERENCE~~
ORDER SETTING TRIAL

ON this the 22nd day of November 2023, the Court having determined that a ~~Pretrial Conference~~ ^{Trial} needs to be scheduled in this cause, enters the following orders:

1. IT IS ORDERED that this cause is set for ^{Bench} Trial on the 2nd day of February, 2024, at 9:00 A.M., and that an ~~Announcement Docket~~ will be held on the _____ day of _____ at _____ M., and all attorneys of record must appear at the Announcement Docket;

2. IT IS ORDERED that ~~Final Pretrial in this cause is set for the _____ day of _____~~ ^{the Parties shall mediate with Judge LD. Shipman before February 2, 2024}

3. THE PRETRIAL CONFERENCE SET BY THIS ORDER WILL NOT BE PASSED OR CONTINUED BY LETTER OR TELEPHONE, BUT ONLY UPON PROPER MOTION FOR CONTINUANCE DULY AND TIMELY FILED AND PRESENTED WITH SUPPORTING EVIDENCE.

4. Each party shall appear by the attorney who is to conduct the Trial, or, upon permission of the Court first obtained, by co-counsel with full knowledge of the case and full authority to bind the client in all things before the Court.

5. The Pretrial Conference and hearings will be conducted under Rules 166-175, T.R.C.P., inclusive, as amended, and all the Court's Local Rules, for the purpose of considering all matters, for simplifying issues and expediting Trial or other disposition.

14. BOTH PLAINTIFF AND DEFENDANTS SHALL FILE A LIST OF WITNESSES, WHICH THEY EXPECT TO CALL AT TRIAL, BOTH EXPERT AND NON-EXPERTS, INCLUDING THE WITNESSES' ADDRESSES, AT THE PRETRIAL CONFERENCE, AS PROVIDED BY RULE 166.

15. No additional motions or pleadings are permitted after the dates herein specified, or the date of the Pretrial Conference, whichever is earlier, except upon written leave of the Court first obtained.

16. Upon satisfactory completion of Pretrial Conference the Court will enter such orders as the case may require for Trial or further procedures as indicated.

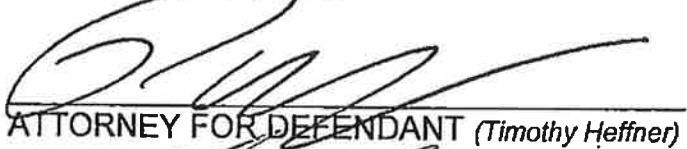
17. YOUR ATTENDANCE IS REQUIRED UNLESS A WRITTEN MOTION FOR CONTINUANCE IS GRANTED.

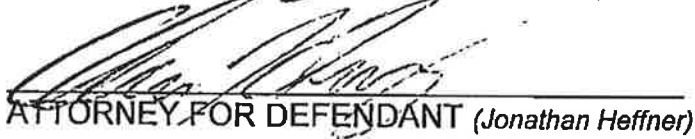
SIGNED this the 22 day of November 2023.

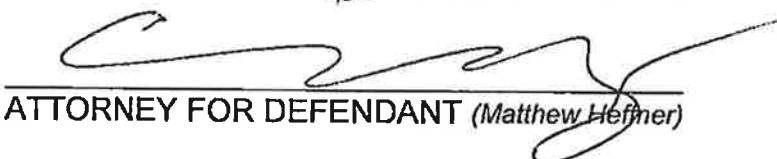

JANELLE M. AVERKAMP
JUDGE PRESIDING

RECEIPT ACKNOWLEDGED:


"I do not consent"
ATTORNEY FOR PLAINTIFF


ATTORNEY FOR DEFENDANT (Timothy Heffner)


ATTORNEY FOR DEFENDANT (Jonathan Heffner)


ATTORNEY FOR DEFENDANT (Matthew Heffner)

December 4, 2023, 11:53 a.m. (Central), SMS (i.e., text message)
From: beachley@beachleypllc.com

“Consent cannot be compelled.” I ran a search in FastCase on this phrase, and none of the 5 cases shown were Texas cases. It is axiomatic that true consent cannot be compelled, and consent given under duress may be voidable in certain circumstances. More important, however, is that, while one can be compelled to mediate (suit up, show up, pay up), one cannot be compelled to settle. Perhaps Mr. Darryl Heffner is operating under a fundamental misconception about mediation.

“Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. (b) A mediator may not impose his own judgment on the issues for that of the parties.” Sec. 154.023, Texas Civil Practice & Remedies Code[.]

Neither my client (Mr. Matthew Heffner) nor my [sic] opponent (Mr. Darryl Heffner) is being charged for this response.

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
APPLICATION FOR STAY
OF CONTINUING TRIAL COURT ACTIVITY
WITH APPENDIX**

By my signature below, per Rule 29.5(c), I certify, pursuant to 28 U.S.C. § 1746, that on or about the 5th day of December, 2023, I have served a true and correct copy of this Application with its Appendix and this Certificate of Service by means of .pdf files on a writable CD-R, 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)

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)

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

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)

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

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



/s/ Darryl Heffner
DARRYL HEFFNER