

Supreme Court, U.S.  
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**In the Supreme Court of The United States**

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Brigetta D'Olivio and All Other Occupants

*Applicant,*

v.

Hilary Thompson Hutson

*Respondent.*

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On Appeal From The Fifth District Court Of Appeals, Dallas Texas  
Case No: 05-20-01118-CV

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On Application For Stay

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**EMERGENCY APPLICATION TO STAY THE MANDATE  
OF THE FIFTH DISTRICT COURT OF APPEALS  
PENDING THE FILING AND DISPOSITION OF  
A PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

The lower court so far departed from in its obligation to pursue a course of legal proceedings according to applicable rules and principles for like cases, that such a departure violated Applicant's right to due process and equal protection of the law under the Fourteenth Amendment to the U.S. Constitution, thereby also violating Applicant's First Amendment rights. Where the Fifth District Court of Appeals sanctioned such a departure by the lower court, the Fifth District Court of Appeals' Opinion is so clearly wrong as to call for an exercise of this Court's supervising power.

1. Did the lower court violate Applicant's right to due process and equal protection of the law under the Fourteenth Amendment by:

a. Hearing and deciding the case when it lacked subject matter jurisdiction under Texas Government Code §27.031(b)(4) and under §1022.005(a) & (b); §32.005(a) of the Texas Estates Code?

b. When the District Court's final judgment upon which Respondent predicated her suit to evict, and upon which the lower court relied, was rendered without the District Court having subject matter jurisdiction to hear the trespass to try title case and to render its final judgment under Texas Est. Code §1022.001(a); §1022.002(c) & (d); §1022.005; §1022.006; §32.005(a) & (b); §32.007, and the Texas Constitution Article V, §8;

c. When it failed to conduct the mandatory trial de novo as required under Article V, §1 of the Texas Constitution and Rule 510.10(c) of the Texas Rules of Civil Procedure; and

d. When Applicant was deprived of adequate Notice as required under Texas Property Code §24.005 and §24.005(g).

2. In rendering its final judgment, did the lower court violate Applicant's right

to due process and equal protection of the law under the Fourteenth Amendment when the issue of the subject property is a matter in the Probate Proceeding pending in the Collin County Statutory Probate Court; where Applicant made demand for a jury trial under Article V, §10 of the Texas Constitution, and where said Demand For A Jury Trial is filed in the pending Probate Proceeding?

## PARTIES TO THE PROCEEDING

The parties to the proceeding are as follows:

Applicant is Brigetta D'Olivio. She was the Defendant in the County Court At Law 2, Collin County Texas, and the Appellant in the Fifth District Court of Appeals, Dallas, Texas. Inclusive of the \$20,000.00 supersedeas bond, which the county court ordered, and which Applicant paid by cashiers' check in lieu of a bond, Applicant has, thus far, paid a total of \$82,000.00, (\$62,000.00 for the \$2,000.00 per month "*in lieu of rent*", which the County Court also ordered).

Respondent is Hilary T. Hutson. She was the Plaintiff in the County Court At Law 2, Collin County Texas, and the Appellee in the Fifth District Court of Appeals, Dallas, Texas.

## RELATED PROCEEDINGS

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

1. “*Brigetta D’Olivio aka Brigetta Alix Anderson, Alix Brigetta, Defendant/Applicant, v. Hilary T. Hutson, Plaintiff/Respondent*”  
Fifth District Court Appeals, Dallas, TX, No: 05-20-00969-CV  
Renewed Application For Stay Of Mandate of Fifth District Court Of Appeals  
currently pending before The Honorable Clarence Thomas, (22A1087)
2. “*In The Estate Of Richard W. Thompson, Jr*”, *Deceased*  
No: PB1-1381-2019, pending in the Collin County Statutory Probate Court,  
Collin County, Texas.
3. “*In The Guardianship Of Richard W. Thompson, Jr., An Alleged Incapacitated Person*”  
No: 05-22-00768-CV, pending in the Fifth District Court Of Appeals, Dallas,  
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## OPINIONS BELOW

The Fifth District Court of Appeals, Dallas, TX, issued its Memorandum Opinion and judgement on July 28, 2022, wherein it affirmed the lower court's final judgment. Its Memorandum Opinion and judgment is reproduced at [Appendix A]. The Memorandum Opinion is not published. On September 21, 2022, the Fifth District Court of Appeals denied Motion For Rehearing, and is reproduced at [Appendix B], and on December 28, 2022, denied Motion For Reconsideration, and is reproduced at [Appendix C].

The County Court At Law 2, Collin County, TX, issued its Final Judgment on December 31, 2020, wherein it granted Respondent forcible entry and detainer, and is reproduced at [Appendix D].

The Supreme Court of Texas declined to hear the merits of the case and denied Petition For Review on April 28, 2023, and is reproduced at [Appendix E]. On July 7, 2023, the Supreme Court of Texas denied Motion For Rehearing, and is reproduced at [Appendix F], and on July 13, 2023, denied Motion For En Banc Reconsideration, and is reproduced at [Appendix G].

Applicant filed a request to Stay the issuance of the Fifth District Court Of Appeals' mandate on July 14, 2023, and is reproduced at [Appendix H].

The Fifth District Court of Appeals, Dallas, TX issued its Order, denying Applicant's request to stay issuance of the mandate on June 12, 2023 and is reproduced at [Appendix I].

## JURISDICTION

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

To The Honorable Samuel Alito, Associate Justice Of The Supreme Court Of The United States:

Applicant, Brigetta D'Olivio, ("Applicant") moves pursuant to 28 U.S.C. §2101(f) and Rules 22 and 23 of the Rules of this Court for an order of this Court staying the mandate of the Fifth District Court Of Appeals pending the filing of a Petition for a Writ of Certiorari to review the Fifth District Court of Appeals' Memorandum Opinion, which was rendered on July 28, 2022, [Appendix A] and the lower court's final judgment, which was rendered on December 31, 2022, [Appendix D].

The Panel Opinion affirmed the lower court's final judgment, wherein the lower court granted Respondent Forcible Entry And Detainer. Disregarding Applicant's objections, in its final judgment, the lower court Ordered Applicant to file a \$20,000.00 supersedeas bond, and despite the undisputed fact that Applicant's title to the subject property is derived from her late husband, Richard W. Thompson's Will, which is filed in the Collin County Statutory Probate Court; that there was never a landlord-tenant relationship between Applicant and Respondent; and that Respondent never made any kind of claim for rent or money judgment, in its final judgment, the lower court further Ordered Applicant to pay \$2,000.00 per month "*in lieu of rent*". As per the lower court's final judgment, Applicant has, thus far, paid a total of \$82,000.00, [Appendix Q, R], which exceeds the lower court's

jurisdictional limits under §27.031(a)(1) of the Texas Government Code. TEX.

GOV'T CODE §27.031(a)(1).

Respondent expressly predicated her suit to evict on the final judgment in the related trespass to try title case, which the District Court rendered on August 11, 2020, [Appendix J; M] (US Sup Ct. No: 22A1087).<sup>1</sup> In the District Court's final judgment, it stated, in part, "*the Plaintiff is GRANTED summary judgment as to Forcible Detainer Eviction and may proceed in Justice of the Peace Court enforce to enforce her rights thereunder*". [Appendix J]. Because the justice court has original jurisdiction over eviction cases under section 27.031(a)(2) of the Texas Government Code; Rule 510.3(b) of the Texas Rules Of Civil Procedure; and section 24.004 of the Texas Property Code, the District Court lacked the subject matter jurisdiction to Grant "forcible detainer eviction" to Respondent. TEX. GOV'T CODE §27.031(a)(2); TEX. CONST. Art. V, §8; TEX. R. CIV. P., 510.3(b); TEX. PROP. CODE §24.004,

As evidenced by the District Court's final judgment, [Appendix J], the trespass to try title case arose from the Guardianship Proceeding, which Respondent filed in the Collin County Statutory Probate Court on December 13, 2018.<sup>2</sup> [Appendix J, L]

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<sup>1</sup> Applicant's "Renewed Application To The Hon. Clarence Thomas To Stay The Mandate Of The Fifth District Court Of Appeals Pending The Filing Of A Petition For A Writ Of Certiorari" is currently pending in this Court. [Appendix M].

<sup>2</sup> "*In The Guardianship of Richard W. Thompson, Jr., An Alleged Incapacitated Person*", (Fifth Dist. Ct. Appeals, Dallas TX, No: 05-22-00768-CV) is pending.

Respondent filed the trespass to try title case in the District Court on August 28, 2019. The Guardianship case, however, was not settled and closed until May 5, 2022, [Appendix K, L].<sup>3</sup>

Because the Collin County Statutory Probate Court has original and exclusive jurisdiction of all guardianship proceedings, and all matters related to the guardianship proceedings until they are settled and closed under §1022.001(a); §1022.002(c) & (d); §1022.005(a) & (b) of the Texas Estates Code, and because the Collin County Statutory Probate Court does not have concurrent jurisdiction with the District Court under §1022.006 of the Texas Estates Code, the District Court lacked the subject matter jurisdiction to hear the trespass to try title case and to render its final judgment, but did so over Applicant's repeated pleas to the jurisdiction. TEX. EST. CODE §1022.001(a); §1022.002(c)&(d); 1022.005(a)&(b); 1022.006; TEX. CONST. Art. V, §8, [Appendix N]. *In re CC & M Garza Ranches, Ltd Partnership*, 409 S.W. 3d 106, 109 (Tex. App. – Houston [1<sup>st</sup> Dist] 2013, no pet.); *In re Guardianship of Soberanes*, No. 04-02-00119-CV, 2002 Tex. App. WL 31863704 (San Antonio, December 24, 2002, no pet. h.) ("*jurisdiction attached when the application [for guardianship] is filed. This is especially true under the*

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<sup>3</sup> Applicant was never notified of, nor served said Guardianship Order, dated May 5, 2022 and did not become aware of said Order until May 31, 2022, whereupon Applicant filed a Notice of Appeal on June 6, 2022.

*circumstances presented here, where the temporary Guardian submitted herself and the Ward to the court's jurisdiction...”).*

Likewise, because the Guardianship Proceeding was not settled and closed at the time the lower court rendered its final judgment; the subject property and title thereto was a matter related to the Guardianship Proceeding; and because Collin County has a Statutory Probate Court, the lower court, (county court at law) also lacked the subject matter jurisdiction to hear and render its final judgment under sections 1022.002(c) & (d); and 1022.005(a) & (b) of the Texas Estates Code, but also did so over Applicant's repeated pleas to the jurisdiction. See also TEX. GOV'T CODE §25.0451(b), (*“Collin County has one statutory probate court, the Probate Court No. 1 of Collin County”*) [Appendix N].

As further evidenced by the District Court's final judgment, [Appendix J], the trespass to try title action was also a matter related to the Probate Proceeding pending in the Collin County Statutory Probate Court, <sup>4</sup> wherein Applicant's late husband, Richard W. Thompson, Jr.'s, (“Decedent”), Will was filed prior to Respondent having filed the trespass to try title case in the District Court, and wherein Applicant is the sole devisee of the subject property under said Will. As evidenced by the third Agreement For Legal Services, (“Agreement”), which Respondent signed more than five (5) weeks prior to filing the trespass to try title

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<sup>4</sup> *“In The Estate Of Richard W. Thompson, Jr., Deceased”, (No: PB1-1381-2019).*

case in the District Court, Respondent knew at the time she filed said trespass to try title case in the District Court that the subject property was related to the Probate Proceeding pending the Collin County Statutory Probate Court. In said Agreement, it stated, in part: “*Hilary Respondent (“Client”) hereby employs Leu & Peirce, PLLC, (“Attorney”) to provide legal services in connection with the probate of the Estate of Richard W. Thompson, Jr, the Custodial Accounts, the real property located at 2916 Creekbend Drive, Plano, Texas 75075, and all other related matters*”, [Appendix O].

Where the Collin County Statutory Probate Court has original and exclusive jurisdiction of all probate proceedings and all matters related to probate proceedings under §32.005(a) of the Texas Estates Code, and where the Collin County Statutory Probate Court does not have concurrent jurisdiction with the District Court under §32.007 of the Texas Estates Code, the District Court was further deprived of the subject matter jurisdiction to hear the trespass to try title case and to render its final judgment, but did so over Applicant’s repeated pleas to the jurisdiction. TEX. EST. CODE. §32.005(a); §32.007. [Appendix N].

At the time the lower court rendered its final judgment, [Appendix D], the issue of the forgery of the three (3) Deeds Without Warranty to the subject property, upon which Respondent and the lower court also relied, was not resolved, despite an



Order To Abate having been issued specifically for this reason. Because the issue of the forgery of said three Deeds Without Warranty was not resolved and Decedent's Will, wherein Applicant is the sole devisee of the subject property thereunder, were so intertwined with the issue of possession that the right to possession could not be determined without first determining title, the lower court further lacked the subject-matter jurisdiction to hear said eviction case and to render its final judgment under §27.031(b)(4) of the Texas Government Code, but did so over Applicant's repeated pleas to the jurisdiction. TEX. GOVT CODE §27.031(b)(4); TEX. EST. CODE §32.005(a). *Falcon v Ensignia*, 976 S.W. 2d 336, 338 (Tex. App. 1988, no pet.) (“*If the question of title is so integrally linked to the issue of possession that possession may not be determined without first determining title, justice courts and county courts are without jurisdiction to make any determinations regarding title. Once specific evidence of a title dispute is presented, an issue regarding the justice court's jurisdiction is raised*”); *Haith v Drake*, 596 S.W. 2d 194, 1995 (Tex. Civ. App. – Houston [1<sup>st</sup> Dist.] 1980 writ ref'd n.r.e.) (“*where the right to immediate possession necessarily requires resolution of a title dispute, the justice court has no jurisdiction to enter a judgment and may be enjoined from doing so*”).

The lower court rendered its final judgment without conducting a trial de novo as

required under Article V, §16 of the Texas Constitution and Rule 510.10(c) of the Texas Rules Of Civil Procedure, [Appendix N], and instead affirmed the justice court's final judgment immediately after having denied Applicant's pleas to the jurisdiction. Prior to rendering its final judgment, Respondent's attorney requested the lower court to affirm the justice court's judgment of forcible entry and detainer. In said request, Respondent's attorney stated in part, "*we are entitled to affirmation -- or to a judgment in our favor affirming the award that Judge Missildine granted*". During a subsequent hearing, Respondent's attorney confirmed that the lower court had affirmed the justice court's final judgment, wherein he stated, "*If you'll recall on December 18th, we had a hearing regarding an appeal of an eviction emanating from JP court. Judge Missildine had entered the order of eviction. It was appealed to this court and affirmed*".

The lower court rendered its final judgment without conducting a trial de novo as required under Article V, §16 of the Texas Constitution, [*In all appeals from the Justice Court, there shall be a trial de novo in the County Court.*'], and Rule 510.10(c) of the Texas Rules Of Civil Procedure, ("*The case must be tried de novo in the county court. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial*"). *Bender Bros. v P.H. Lockett*, 64 Tex. 566 (Tex. 1885)(The Supreme Court of Texas holding that when an appeal is taken from

the justice court's judgment, the justice court's judgment is vacate, and even if a plaintiff recovered in the justice court, he derives no benefit from that fact in the trial de novo, but rather must prove his case in the trial de novo).

Instead of conducting the required trial de novo, the lower court affirmed the justice court's final judgment immediately after having denied Applicant's pleas to the jurisdiction. By not conducting a trial de novo, Applicant was deprived of her right to present evidence and to call witnesses; to confront and cross-examine Respondent and to probe the infirmities of Respondent's evidence, if she had testified. Applicant was deprived of the right to be heard at a meaningful time and in a meaningful manner before a court having jurisdiction over the matter, and the right to an impartial tribunal.

The questions at this preliminary stage are, thus, straight forward:

(1) Did the lower court violate Applicant's Constitutional right to due process and equal protection of the law under the Fourteenth Amendment by:

a. Hearing and deciding the case when it lacked subject matter jurisdiction under §27.031(b)(4) of the Texas Government Code §27.031(b)(4) and under §1022.005(a) & (b); §32.005(a) of the Texas Estates Code.

b. When the District Court's final judgment upon which Respondent predicated her suit to evict, and upon which the lower court relied, was rendered without the

District Court having subject matter jurisdiction to hear the trespass to try title case and to render its final judgment under Texas Est. Code §1022.001(a); §1022.002(c) & (d); §1022.005; §1022.006; §32.005(a) & (b); §32.007, and the Texas Constitution Article V, §8;

c. When it failed to conduct the mandatory trial de novo as required under Article V, §16 of the Texas Constitution and Rule 510.10(c) of the Texas Rules of Civil Procedure; and

d. When Applicant was deprived of adequate Notice as required under Texas Property Code §24.005 and §24.005(g).

(2) In rendering its final judgment, did the lower court violate Applicant's right to due process and equal protection of the law when the issue of the subject property is a matter in the Probate Proceeding pending in the Collin County Statutory Probate Court; where Applicant made demand for a jury trial under Article V, §10 of the Texas Constitution, and where said Demand For A Jury Trial is filed in the pending Probate Proceeding?

In *Goldberg v Kelly*, 397 U.S. 254, 269 (1970), the Court held that, "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." See also *ICC v Louisville & Nashville RR* 227 U.S. 88, 93-94 (1913). Where the "evidence

consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy,” the individual’s right to show that it is untrue depends on the rights of confrontation and cross-examination. *Greene v. McElroy*, 360 U.S. 474, 496–97 (1959). The Supreme Court has been zealous to protect these rights from erosion. A judgment may not be rendered in violation of constitutional protections. Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interests, before he is affected by any judicial decision on the question. *Earle v McVeigh*, 91 US 503, 23 L Ed 398.

Indeed, the constitutional protections to which Applicant is entitled are enshrined in the Fourteenth Amendment to the U.S. Constitution, which provides, in part: “*nor shall any State deprive any person of life, liberty or property, without due process of law, nor shall any person be denied the equal protection of the laws*”. U. S. CONST. amend XIV.

There is also a fair prospect the Court will reverse the judgment below if review is granted. The lower court in this case and the related trespass to try title case in the District Court, never should have reached the issues because they each lacked subject matter jurisdiction. It's clear that the jurisdictional issues were clearly and positively presented to the lower court in this case and in the related District Court

case. It is also clear that, not only did Respondent intentionally disregard jurisdiction, [Appendix O], but that the lower court and the related District Court in the trespass to try title case, blatantly and defiantly disregarded their lack of subject matter jurisdiction and rendered judgments for which they had no authority to render.

Finally, there are no countervailing reasons to alter the status quo during the certiorari stage. There is already a supersedeas bond in place and regular \$2,000.00 per month payments, which have totaled \$82,000.00, thus far. [Appendix, Q, R] Considering that Respondent has intimated on more than one occasion that she intends to sell the subject property, once the property is sold, Applicant may never be able to recover the property even if this Court accepts this case for review and ultimately reverses. Respondent's intimation to sell the subject property was echoed by the judge in the lower court, wherein he stated, in part, "*If the deeds are found to be forged and Ms. Respondent decides to sell the property in the meantime, you can file suit against her where you can sue for damages*". Said statement by the lower not only constitutes judicial admission that the issue of the forgery of said three Deeds Without Warranty to the subject property was not resolved, but it showed that the lower court lacked the jurisdiction to render its final judgment under Texas Government Code §27.031(b)(4). *Yarbrough v Household Fin. Corp*, 111, 455 S.W.

3d 277, 278 (Tex. App. Houston [14th Dist.] 2015, no pet)(“*a prerequisite to determining the immediate right of possession will be [the] resolution of [Yarbrough’s] title dispute concerning forgery of deed of trust*”). By echoing Respondent’s repeated intimations that she intends to sell the subject property and then Applicant “*can file suit against her where you can sue for damages*“ is not ensuring that Applicant’s right to due process was protected before it deprived Applicant of her property interest. Because the Fourteenth Amendment requires due process before one may be deprived of their property, and because of the risk of erroneous deprivation of Applicant’s property interest, and the irreversibility of the harm to Applicant if the property is sold, there is good cause to stay the mandate.

For these reasons, Applicant respectfully asks this Court to stay issuance of the Fifth District Court of Appeals mandate pending the filing and disposition of Applicant’s petition for certiorari. Additionally, because the mandate will normally issue on July 23, 2023 under Rule 18.1 of the Texas Rules Of Appellate Procedure, , Applicant respectfully also asks this to Court administratively stay issuance of the mandate pending disposition of this Application. <sup>5</sup>

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<sup>5</sup> Respondent has not filed any Response in the Fifth District Court of Appeals’ to Applicant’s request to stay the issuance of the mandate.

## STATEMENT OF THE CASE

### The Eviction Case In The County Court And The Related Trespass To Try Title Case In The District Court Arose From The Guardianship Proceeding In The Collin County Statutory Probate Court

The lower court case and the related District Court <sup>6</sup> case arose from the Guardianship Proceeding, which Respondent initiated on December 13, 2018, after having received two written demands from Applicant's late husband, Richard W. Thompson, Jr.'s, ("Decedent") <sup>7</sup>, attorney to reconvey the deed to Decedent's home to Decedent's name only. [Appendix J, L, M]; [1 CR 358-366], Said Deed Without Warranty pertained to Decedent's home, [1 CR 170-172]. Respondent filed said Deed Without Warranty in the Guardianship Proceeding. Decedent contested said Deed Without Warranty, throughout the Guardianship Proceeding; signed a Sworn Affidavit, wherein he stated, under oath, that he never signed, nor initialed said Deed Without Warranty and that said Deed was forged. [1 CR 160-162; 164; 166-168; 296; 298-299]. During this time, Decedent also filed criminal complaints against Respondent with local and federal law enforcement regarding the forgery of said Deed Without Warranty, (and other legal instruments, which Respondent also

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<sup>6</sup> (US Sup. Ct. No: 22A1087). A Renewed Application To Stay The Mandate of the Fifth District Court Of Appeals is currently pending before the Honorable Clarence Thomas. Applicant renewed her Application after the incorrect record was sent up to this Court from the Texas Supreme Court, rather than the Fifth District Court Of Appeals. The Texas Supreme Court had declined to hear the merits of the case. [See Appendix E, F, G].

<sup>7</sup> Decedent was subsequently medically determined not to lack any capacity.



forged). [1 CR 358-366; 373-374]. During the Guardianship Proceeding, Decedent was refused the right to speak and to present evidence of Respondent's forgery of said Deed Without Warranty and other legal instruments, [1 CR 170-172; 369-371]. Throughout the Guardianship Proceeding, Decedent was not aware that Respondent was in possession of two (2) additional forged Deeds Without Warranty, which also pertained to the subject property, [1 CR 174-176; 178-179]. Although each of said three Deeds Without Warranty contained the same *notary* date of May 5, 2018, [1 CR 170-172; 174-176; 178-179], one of said three Deeds Without Warranty was also dated May 5, 2020, which is more than ten months after Decedent had passed away. [1 CR 178-179]. Respondent subsequently filed one of said three Deeds Without Warranty in the trespass to try title case in the District Court, [1 CR 160-162; 170-172] and two of said three Deeds Without Warranty, [1 CR 170-172; 174-176] in the pending Probate Proceeding in the Collin County Statutory Probate Court,<sup>8</sup> wherein Decedent's 'Last Will And Testament of Richard Wells Thompson, Jr.', dated July 13, 2019 is filed and wherein Applicant is the sole devisee to the subject property under said Will, [1 CR 298-299; 300-311; 313-316].

Where the Collin County Statutory Court refused Decedent his right to be speak and to be heard during the Guardianship Proceeding, since Respondent filed the

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<sup>8</sup> PB1-1381-2019: "*In The Estate Of Richard W. Thompson, Jr., Deceased*",

trespass to try title case in the District Court, and throughout the three and half years that the lower court case and the related District Court case wound its way through the lower courts, the Collin County Statutory Probate Court has refused to hear and consider Applicant's motions and applications, which are properly before the Court, and has failed and refused to provide the name and contact information for the Official Court Reporter and/or Deputy Court Reporter in the Guardianship Proceeding from which the cases in the lower court and the District Court arose, [Appendix P].<sup>9</sup>

The Guardianship Proceeding In The Collin County Statutory Probate Court  
Did Not Settle And Close Until May 5, 2022

At the time Respondent filed the trespass to try title case in the District Court on August 28, 2019, and at the time the lower court rendered its final judgment on December 31, 2020, the Guardianship Proceeding was not settled and closed. Said Guardianship Proceeding was not settled and closed until May 5, 2022.<sup>10</sup>

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<sup>9</sup> During the Guardianship Proceeding, a transcript entitled, "Agreement", was produced on May 15, 2019 and signed by a one, Susan Jane Lindley, ("Lindley"), as the "Official Deputy Court Reporter In And For The Collin County Probate Court". Lindley subsequently stated in writing that she never subbed in the Collin County Probate Court. Records, which are currently before the Texas Judicial Branch Certification Commission, (JBCC), shows that on the date, to which said transcript pertained, Lindley was actually the Court Reporter for the Auxiliary Court, and therefore, could not have been the court reporter for the Collin County Probate Court on said date. Said records also show that Lindley was never the Deputy Court Reporter In And For The Collin County Statutory Probate Court.

Applicant's Notice Of Appeal For The Guardianship Case Was Not Inscribed Into The Record In The Fifth District Court Of Appeals Until After The Fifth District Court Of Appeals Affirmed The County Court And District Court's Final Judgments

On June 6, 2022, Applicant filed a Notice of Appeal in the Guardianship case in Collin County Statutory Probate Court. [Appendix K].

On June 9, 2022, said Notice of Appeal was inscribed into the record in the Collin County Statutory Probate Court. [Appendix K, at 6].

Although Applicant's Notice of Appeal for the Guardianship case was filed sixty (60) days *before* the Fifth District Court of Appeals' issued its Memorandum Opinion in this lower court case, and more than six (6) weeks before the Fifth District Court of Appeals issued its Memorandum Opinion in the related District Court case, (trespass to try title), Applicant's Notice of Appeal, [Appendix K], was suppressed and was not inscribed into the record in the Fifth District Court of Appeals until after the Fifth District Court of Appeals issued its Memorandum Opinions in the lower court case, [Appendix A], and the related trespass to try title case, wherein the Fifth District Court of Appeals affirmed each of said final judgments, [Appendix D, J]. Applicant's Notice of Appeal, dated June 6, 2022, was not inscribed into the record at the Fifth District Court Of Appeals until August 4,

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<sup>10</sup> Applicant was never notified of, nor served said Order, dated May 5, 2022 and did not become aware of said Order until May 31, 2022.

2022. [Appendix K, at 7].<sup>11</sup>

In its Memorandum Opinion in the lower court case and the related District Court case, the Fifth District Court of Appeals made determinations and findings on pleadings, which originated in and were filed in the Guardianship case, and which Respondent had filed in the lower court case and related District Court case, and which she relied upon in her Response Briefs in the Fifth District Court of Appeals. At the time the Fifth District Court of Appeals issued its Memorandum Opinions and judgments for the lower court case and the related District Court case, it did so without the appeal briefs for the Guardianship appeal having been filed and without the issues having been settled. TEX. R. APP. 47.4.

Applicant Repeatedly Raised Issue of The Lower Court's And District Court's  
Lack Of Subject Matter Jurisdiction

Throughout the lower court proceedings, Applicant repeatedly raised the issue of the lower court and related District Court's lack of subject matter jurisdiction under Texas Estates Code §1022.001(a); §1022.002(c) & (d); §1022.005; §1022.006; §32.005(a) & (b); §32.007; Texas Constitution Article V, §8; and §27.031(b)(4) of the Texas Government Code. [1 38-96; 97-111; 121-129; 246-343; 358-375; 376-431; 572-678]; [3 CR 21-69]; [1 RR, *generally*]. The lower court and the District Court

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<sup>11</sup> Fifth District Court of Appeals No: 05-22-0768-CV: "*In The Guardianship Of Richard W. Thompson, Jr., An Alleged Incapacitated Person*",



disregarded their lack of subject matter jurisdiction and ultimately rendered their respective final judgments. [Appendix D, J].

Respondent Did Not Provide Adequate Notice To Applicant

On August 12, 2020, the District Court mailed Notice of its appealable final Judgment, dated August 11, 2020, in the trespass to try title case, [1 CR 192-193].

On the same day, August 12, 2020, Respondent mailed Applicant a Notice To Vacate, the subject property “*on or before August 15, 2020*”. In said Notice to Vacate, (“Notice”), Respondent stated that the manner of service for said Notice was “*By Certified Mail Return, Return Receipt Requested And U.S. Mail*”. In said Notice To Vacate, however, there was no certified mail number listed. [1 CR 17].

At 8:25am on August 16, 2020, Respondent filed a Petition For Suit To Evict, (“Petition”) in the Justice Court, [1 CR 24]. In said Petition, Respondent stated, “*Such notice was delivered on 8/12/2020*”, [1 CR 16].

Respondent filed said suit to evict before Applicant received said Notice To Vacate. [1 CR 17].

On September 3, 2020, Respondent filed what she purported to be a certified mail delivery receipt, which was dated August 14, 2020. Said receipt was not signed by Applicant; the “signature” on said receipt was the initials “JS”. Said initials are not that of Applicant, nor anyone else at the subject property. On said receipt, it

states that the certified mail for which said receipt represented was:  
420750759514806631860225508568. [1 CR 18]; [Appendix S]. Had said receipt with said certified number actually represented delivery of *any* document, then the certified mail number would be traceable. Said certified number for said receipt, however, is not traceable and comes back as “*status not available*”, and without any tracking history. [Appendix S].<sup>12</sup>

Where Respondent claimed that she sent said Notice to Vacate “*By Certified Mail Return, Return Receipt Requested And U.S. Mail*”, Respondent did not produce the receipt, which Respondent would have received, wherein a postal plug with the date of said “certified mail” would have been affixed thereto. Nor did Respondent produce a copy of the “green card”, which is customary when “return receipt” is “requested”.

Although Respondent stated in her Notice To Vacate that she sent said Notice via certified mail and “U.S. Mail”, [1 CR 17], Applicant never received said Notice via certified mail and did not receive the Notice, which was sent via regular mail until August 17, 2020, to which Applicant testified to in the justice court.

Respondent Expressly Predicated Her Petition For Suit To Evict On  
The District Court’s Final Judgment In The Trespass To Try Title Case

Respondent expressly predicated her Petition For Suit To Evict, (“Petition”), on

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<sup>12</sup> Said same “certified receipt” was subsequently submitted as the “certified receipt” for another document. The only difference was the certified number and the date. See [Appendix S].

the District Court's August 11, 2020 final judgment in the trespass to try title case. In said Petition, Respondent stated, "*Defendant has been adjudicated a squatter in Respondent v D 'Olivio, Collin Dist. Court, No. 296-04855-2019 dated August 11, 2020 (Trespass To Try Title)*". [1 CR 16; 25]; [1 RR 5-6]. Nowhere in the District Court's final judgment, however, does it even mention the word "squatter", [Appendix J].

Nowhere in said Petition did Respondent claim that Applicant was a tenant of any kind; that there was any type of lease agreement; nor that Applicant owed any money for rent, damages, etc. [1 CR 16; 382-383; 429-430].

An Order To Abate Was Issued So That The Issue Of Forgery Of The Three Deeds Without Warranty To The Subject Property Could Be Resolved

During the hearing on September 10, 2020, Applicant produced said three (3) Deeds Without Warranty to the subject property, [1 CR 38-96; 170-172; 174-176; 178-179], as well as Decedent's Sworn Affidavit regarding the forgery of said Deed Without Warranty. [1 CR 160-162; 269-272]. During said hearing on September 10, 2020, Respondent did not deny that she forged each of said three (3) Deeds Without Warranty and nor did she proffer any proof that each of said three Deeds Without Warranty were not forged. In fact, Respondent remained silent throughout said hearing and did not testify at all.

Upon reviewing said three (3) Deeds Without Warranty, J. Missildine of the



Justice Court signed an Order To Abate on September 10, 2020, [1 CR 37], pending the resolution of the issue of forgery of said three (3) Deeds Without Warranty by the District Court, wherein Applicant's post-trial motion ("329b(g) Motion"), was pending, [1 CR 38-96], and wherein the issue of the forgery of said three (3) Deed Without Warranty was addressed.

In the interim, Respondent's attorney, Bruce D. Cohen, ("Cohen") and District Court Coordinator, Charla Kiser, secretly contacted the Justice Court to reinstate the justice court proceeding under the pretense that the District Court case was closed. [1 CR 111-113]. At the time Respondent's attorney and Kaiser secretly contact the justice court, Respondent's attorney knew that the Order To Abate would continue to pend until the District Court resolved the issue of the forgery of said three Deeds Without Warranty. [1 CR 114-116]. Respondent's attorney was further aware that the District Court's plenary power had not expired, and would not expire until 11:59pm on November 24, 2020, and therefore, the case was not closed. Two (2) days after having received said ex-parte communication from Cohen and Kiser, the Justice Court reinstated the case and set the trial for November 11, 2020, [1 CR 118]; [1 RR, at 10; 15-18]. On November 11, 2020, the Justice Court

granted Forcible Entry And Detainer to Respondent. [1 CR 225].<sup>13</sup>

On November 16, 2020, Applicant timely paid the appeal bond and appealed the judgement of the Justice Court to the County Court at Law, [1 CR 227-228; 230-231; 238], wherein, what was supposed to be a trial de novo, was set for December 18, 2020.

Respondent's Request To Affirm The Justice Court's  
Forcible Entry And Detainer Judgment

At the beginning of the proceedings on December 18, 2020, Respondent's attorney, Bruce D. Cohen, ("Cohen")<sup>14</sup> reaffirmed that Respondent's suit to evict was predicated on the District Court's final judgment, wherein the District Court, not only specifically referenced the uncertified pleadings, which Respondent filed in the District Court and which originated in and were filed in the Guardianship Proceeding, but also wherein the District Court "Granted Forcible Detainer". [Appendix J]; [1 CR 348]; [1 RR, at 3, lines 15-21]. Respondent's attorney further reiterated that J. Missildine of the justice court had granted Respondent "Forcible Entry And Detainer", [ 1 RR, at 5-6], then went on to state, "*... we are entitled to affirmation -- or to a judgment in our favor affirming the award that Judge*

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<sup>13</sup> Although Applicant was aware of the previous emails, which Kaiser sent as she was cc'd in said emails, Applicant did not become aware of said ex-parte communications by Cohen and Kaiser to the Justice Court until after the Justice Court had signed said Forcible Entry And Detainer Judgment. Said emails were included in the records, which Applicant requested immediately after the Justice Court's judgment. [1 CR 226].

<sup>14</sup> Applicant refers to Respondent's attorney because Applicant remained totally silent throughout the proceeding, while her attorney did all the talking.

*Missildine granted*'. See [1 RR, at 6, lines 8-12].

The County Court Did Not Conduct The Required Trial De Novo

Instead of conducting the required trial de novo, the lower court affirmed the justice court's final judgment immediately after having denied Applicant's repeated pleas to the jurisdiction. [1 RR, at 6, lines 10-12, at 19-20, lines 6-8]; [2 RR, at 8-9, lines 23-25; 1-2]. Despite the fact, that Respondent carried the burden, there was not a single question from the court to Respondent regarding *any* issue of fact and nor did her attorney put Respondent under direct examination. In fact, Respondent remained silent and did not testify at all, and nor did she produce a single witness. See [1 RR, *generally*]. Applicant was, thus, denied the opportunity to confront and Cross examine Respondent; to test the truthfulness, accuracy or completeness of any testimony she would have given on the issues, facts and evidence, and to probe and expose Respondent's infirmities on the issue, facts and evidence. By failing to conduct the required trial de novo, Applicant was further deprived of the opportunity to call witnesses; to present evidence and to be heard on the issues, facts and evidence.

Immediately after the court denied Applicant's repeated pleas to the jurisdiction, the judge asked Respondent's attorney: "*Mr. Cohen, did the Justice of the Peace issue an eviction in this case?*" Cohen replied, "*Yes, your Honor, the Court*

*did'* [1 RR, at 19, lines 6-8]. When the judge asked Applicant if she had anything further to say, Applicant reiterated the courts' lack of subject matter jurisdiction, and reiterated her request to dismiss the case for lack of jurisdiction. [1 RR, at 19, lines 9-21]. The judge ignored her request, and asked Respondent's attorney if the plaintiff rests. Before stating, "*The plaintiff rests*", [1 RR, at 20, lines 2-3], Cohen reminded the judge of the documents, which were referred to earlier and then reminded the judge of the justice court's order, wherein he stated, "*the judgment of 11 November is also noted for the record*". [1 RR, at 19, lines 24-25; at 20, lines 1-2]; [1 CR 225]. When the judge asked if Applicant rested, Applicant reiterated her pleas to the jurisdiction, wherein she stated, "*Except to say that the order on August 11, 2020, is void, out of Judge Roach's district court. The order on November 11th, 2020, out of JP court, 3-1 JP court, Judge Missildine is also void and, again, the Court lacks subject matter jurisdiction to hear this case or to proceed with an eviction when title has not been resolved*". [1 RR, at 20, lines 5-11]. The judge continued to disregard Applicant's jurisdictional pleas and then stated, "*Court finds in favor of Plaintiff ... Court awards possession of the property to Plaintiff. Eviction to take place by 5 o'clock p.m. on the 28th of December, 2020*" and set a supersedeas bond of \$20,000.00 and further ordered Applicant to pay \$2,000.00 per month "in lieu of rent". [1 RR, at 20, lines 24-25; at 21, lines 12-14]. The judge, however, would

not reduce his oral ruling to writing until two weeks later on December 31, 2020,<sup>15</sup> but did not notify, nor serve Applicant said final judgment until January 4, 2021. [1 CR 376-386; 413-423; 437-439-442 446]; [1 RR, *generally*]; [Appendix D].

### REASONS FOR GRANTING THE STAY

“To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay. In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). Applicants meet this test.

The first two factors-represented in Rule 41 as the "substantial question" requirement-are present here. Having a property interest, D'Olivio is entitled to Constitutional protections through the Fourteenth Amendments' Due Process Clause, which provides: "nor shall any State deprive any person of life, liberty or property, without due process of law, nor shall any person be denied the equal

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<sup>15</sup> Due to the lower court's refusal to set a hearing for Applicant's emergency motion regarding the supersedeas bond and \$2,000.00 per month payments "in lieu of rent" and the her request for a written ruling, Applicant filed Notice of Appeal with the Fifth District Court of Appeals on December 28, 2020, and then filed an Amended Notice of Appeal after Applicant was served the lower court's final judgement, dated December 31, 2020, on January 4, 2021.

protection of the laws". U.S. CONST. amend XIV. Applicants Constitutional right to Procedural Due Process has been violated. Applicant has been denied the right to adequate Notice, the right to present evidence, to cross examine Respondent and to produce witnesses; the right to be heard at a meaningful time and in a meaningful manner before a court having jurisdiction over the matter, and the right to an impartial tribunal. Applicant was wholly denied the "fundamental fairness", which the Fourteenth Amendment guarantees, and to which she was entitled. Where the lower court so far departed from its obligation to pursue a course of legal proceedings according to applicable rules and principles for like cases, such that Applicant's Constitutional protections, which are guaranteed by the Fourteenth Amendment were violated, and wherein the final judgment was not only rendered without the lower court's authority to render a judgment, but was arbitrary and capricious and not based upon the merits of the case, is a compelling reason and the sort of rulings that the Supreme Court frequently reviews. Where the Fifth District Court of Appeals sanctioned such a departure by the lower court, the Fifth District Court of Appeals' Opinion is so clearly wrong as to call for an exercise of this Court's supervising power.

The right to procedural due process is of public interest since the rights of all are dependent on the rights of each being defended and protected. The denial of

procedural due process can lead to unfair and arbitrary and capricious decisions, which can result, as is the case here, in the erroneous deprivation of one's property interests. The denial of procedural due process adversely affects societal order by undermining the public confidence in the fairness and impartiality of the legal system. An ordered society, one that fosters fairness and justice, requires procedural compliance and equal application of the law. The importance of assuring procedural compliance and equal application of the law cannot be over-emphasized. The lack or absence of procedural compliance not only violates the most fundamental constitutional rights of a party to have a fair and impartial proceeding, but it also nurtures corruption and decay of the long cherished traditions of American jurisprudence, and indeed, the Constitutional protections afforded all citizens.

And the third factor-the balance of the equities-shows Rule 41 "good cause" for a stay. Considering that Respondent has intimated on more than one occasion that she intends to sell the subject property, once the property is sold, Applicant may never be able to recover the property even if this Court accepts this case for review and ultimately reverses. Because the Fourteenth Amendment requires due process before one may be deprived of their property, and because of the risk of erroneous deprivation of Applicant's property interest; and because of the

irreversibility of the harm to Applicant if the property is sold, there is good cause to stay the issuance of the mandate until the Supreme Court has had the opportunity to pass on this case. Absent a stay, Applicant suffer irreparable harm. That is particularly true where, as here, the State's only post-deprivation process comes in the form of an independent tort action. Seeking redress through a tort suit is apt to be a lengthy and speculative process, which in a situation such as this one will never make Applicant entirely whole. See *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436-37. Respondent will suffer no offsetting irreparable injury from continuing the status quo pending disposition of Applicant's petition for writ of certiorari. This motion demonstrates the requisite substantial question and good cause, and a stay should therefore be granted.

#### **I. The Grant Of Certiorari Is A Reasonable Probability**

This case presents a "substantial question" within the meaning of Federal Rule of Appellate Procedure 41(d)(2)(A). Violations of the Constitutionally protected right to procedural due process is a compelling reason for the Supreme Court to grant certiorari. Where Applicant has a property interest, and where she is, thus, entitled to constitutional protection, Applicant's property interest is not created by the Constitution. Rather, property interests are created and their dimensions are defined by existing rules or understandings that stem from an independent source



such as state law-rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. Due process obligates States to pursue a course of legal proceedings according to rules and principles that have been established in a system of jurisprudence for the enforcement and protection of private rights. In order to secure equal rights to all citizens, States are required to apply the applicable law fairly and equally through legal process, something the lower court here did not do.

A court's departure from recognized and established requirements of law, which has the effect of depriving one of his or her constitutional rights, is excess of jurisdiction. In *Thompson v. Whitman* (1873) 18 Wall 457, 21 l ED 897, the US Supreme Court held that want of jurisdiction may be shown either as to the subject matter or the person, or, in proceedings *in rem*, as to the thing.

Section 1022.001(a) of the TEX. ESTATES CODE provides: "(a) All guardianship proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the guardianship proceeding as specified in Section 1021.001 for that type of court". TEX. EST. CODE §1022.001(a).

Section 1022.002(c) & (d) of the Texas Estates Code provides: "(c) In a county in which there is a statutory probate court, the statutory probate court has original

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

Section 1022.005 of the Texas Estates Code provides: "(a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all guardianship proceedings, regardless of whether contested or uncontested.

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

Section 1022.006 of the Texas Estates Code provides: "A statutory probate court has concurrent jurisdiction with the district court in: (1) a personal injury, survival, or wrongful death action by or against a person in the person's capacity as

a guardian; and with the guardian is not an interested person in the guardianship.

TEX. EST. CODE §1022.006. See also TEX. EST. CODE §32.005(a); §32.007.

Chapter 24 of the Texas Property Code authorizes a suit for forcible detainer to obtain possession of real property from *a tenant* who refuses to surrender possession. See TEX. PROP. CODE 24. Jurisdiction to hear a forcible-detainer action lies in the justice court of the precinct where the property is located. *Id.* §24.004(a). The exclusive issue in a forcible-detainer action is the right to actual possession of the premises. *Marshall v. Hous. Auth. of San Antonio*, 198 S.W.3d 782, 785 (Tex. 2006). A justice court, and a county court on appeal however, have no jurisdiction to adjudicate title to land. TEX. GOV'T CODE § 27.031(b).

Here, Respondent expressly predicated her petition for suit to evict on the 296<sup>th</sup> District Court's final judgment in the trespass to try title action, which arose from the Guardianship Proceeding in the Collin County Statutory Probate Court, but which did not settle and close until May 5, 2022. In its final judgment, the District Court made specific reference to, and relied upon, pleadings and documents which Respondent submitted in the trespass to try title case, but which originated, and were filed in the Guardianship Proceeding. Because said trespass to try title case arose from, and was a matter related to the Guardianship Proceeding, and because the Guardianship Proceeding was not settled and closed at the time Respondent

brought said case, and where the Collin County Statutory Probate Court did not have concurrent jurisdiction with the District Court under section 1022.006 of the TEX. EST CODE, the District Court lacked the subject matter jurisdiction to adjudicate said trespass to try title action, thereby, resulting in a final judgment, which is not only void as a matter of law, but which erroneously deprived Applicant of her property interest, thereby violating Applicant's constitutional right to due process and equal protection of the law under the Fourteenth Amendment to the US Constitution. See also TEX. EST. CODE §§1022.001(a); 1022.002(c) & (d) and 1022.005(a) & (b).

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

confers exclusive jurisdiction on Statutory Probate Courts over actions related to guardianship proceedings.

In its final judgment, the District Court also makes specific reference to ‘The Last Will And Testament Of Richard Wells Thompson Jr’, dated July 13, 2019, wherein Applicant is the sole devisee of the subject property. Because the Collin County Statutory Probate Court does not have concurrent jurisdiction with the District Court under §32.007 of the TEX. EST. CODE, and because, as said Will, dated July 13, 2019, shows, the subject property is a matter related to the pending Probate Proceeding, and where the probate court has exclusive jurisdiction of all matters relating to the pending probate proceeding as prescribed by §32.005(a) of the TEX. EST. CODE, the District Court continued to lack subject matter jurisdiction to adjudicate the trespass to try title action.

In *King v Deutsche Bank Nat'l Trust Co.*, 472 S.W. 3d 848 (Tex. App. 2015), the First Court of Appeals held that the “language in §1022.005 of the Texas Estates Code vested the statutory probate court with exclusive jurisdiction over claims that the statute defined as matters related to a guardianship proceeding”. In its holding, the Court concluded that “by giving the statutory probate court exclusive jurisdiction over all claims related to a guardianship proceeding, the Legislature necessarily deprived all other courts of the power to adjudicate those claims”, and that the provision of the Estates Code [§1022.005] at issue in *In re CC & M Garza*

*Ranches, Ltd Partnership*, was virtually identical to the provision at issue in *King*, [§32.005(a)]. Following the rationale in *In re CC & M Garza Ranches, Ltd Partnership*, the Court held that section 32.005(a) of the Estates Code likewise confers the statutory probate court with exclusive jurisdiction over the case and that because the statutory probate court has exclusive jurisdiction over the parties' claims, the trial court lacked subject-matter jurisdiction over the case. In citing *In re CC & M Garza Ranches, Ltd Partnership...*, the Court in *King* stated that only the statutory probate court had the power to decide such claims, and an order or judgment issued by another court pertaining to those claims would be void. The judgment from the District Court was vacated and rendered judgment dismissing the case for want of subject-matter jurisdiction. See also *Celestine v Dep't of Family & Protective Servs.*, 321 S.W. 222, 230, (Tex. App – Houston [1<sup>st</sup> Dist] 2010, no pet)([W]hen one court has ...exclusive jurisdiction over a matter, any order or judgment issued by another court pertaining to the same matter is void"). As this Court has held, "Without jurisdiction the court cannot proceed at all in any cause; it may not assume jurisdiction for the purpose of deciding the merits of the case". *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431, 127 S.Ct. 1184, 1191 (2007)).

Where Respondent expressly predicated her suit to evict on the District Court's final judgment, and where the District Court lacked the subject matter jurisdiction, the justice court and the county court on appeal could not assume jurisdiction where

jurisdiction did not exist. By disregarding its lack of jurisdiction, and by rendering its final judgment, the county court not only violated §27.031(b)(4) of Texas Government Code, but it also violated Applicant's constitutional right to due process and equal protection of the law under the Fourteenth Amendment to the US Constitution by erroneously depriving Applicant of her property interest.

Pursuant to section 24.005 of the TEX. PROP. CODE, Respondent was required to provide a minimum of three (3) Notice To Vacate. Pursuant to section 24.005(g) of the TEX. PROP. CODE, the notice period is calculated from the day the Notice is received. Here, Respondent mailed a Notice To Vacate on August 12, 2020, with a demand to vacate "on or before August 15, 2020". Respondent submitted a purported mail receipt, which did not contain Applicant's signature and which was dated August 14, 2020. Applicant received said Notice To Vacate on August 17, 2020. Based upon Respondent's purported mail receipt, the earliest that Respondent could file a petition for suit to evict would have been August 17, 2020. Based upon the actual date that Applicant received said Notice To Vacate, the earliest that Respondent could file her petition for suit to evict would be August 20, 2020. Respondent filed her petition for suit to evict at 8:35am on August 16, 2020, thereby violating Applicant's right to due process by providing inadequate

Notice as prescribed by §24.005 and §24.005(g) of the TEX. GOVT CODE.

The county court was constitutionally and statutorily required to hold a trial de novo upon appeal from the justice court. *“In all appeals from Justice's Court there shall be a trial de novo in the County Court”*. TEX. CONST. art. 5, §16 . *“The case must be tried de novo in the county court. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial”*. TEX. R. CIV. P. 510.10(c). Despite the fact, that Respondent carried the burden, there was not a single question from the court to Respondent regarding any issue of fact. In fact, Respondent did not testify at all, and nor did she produce a single witness. Where the county court immediately rendered judgment in favor of Respondent upon the county court's denial of Applicant's plea to the jurisdiction, Applicant was denied the opportunity and her right to be heard by being denied the right to confront and cross examine Respondent to test the truthfulness, accuracy or completeness of any testimony she would have given on the issues, facts and evidence, and to probe and expose Respondent's infirmities on the issue, facts and evidence. Where the county court failed to follow any of legal procedures required in eviction cases under Chapter 24 of the TEX. PROP. CODE, and by failing to conduct a trial de novo, the county court violated Applicant her right to due process and



equal protection of the law, and violated the principal of fundamental fairness and justice. These

## II. Good Cause Exists To Stay Issuance Of The Mandate

Finally, there is “good cause” to stay the issuance of this Court’s mandate. Fed. R. App. P. 41(d)(2)(A). Good cause is established based on the “equities in the case.” Knibb, Federal Court of Appeals Manual §34:13, at 924 (6th ed. 2013). The equities here support maintaining the status quo for the few months necessary for the Supreme Court to decide Applicant’s certiorari petition. Absent a stay of the mandate, Respondent no doubt will execute upon the County Court’s final judgment. Once the property is sold, Applicant may never be able to recover the property even if the Supreme Court accepts this case for review and ultimately reverses. A short delay is necessary to preserve the status quo pending U.S. Supreme Court’s disposition of Applicant’s petition for writ of certiorari.

## CONCLUSION

There is a reasonable probability that the United States Supreme Court will grant a petition for writ of certiorari in this case, and if it does, there is a significant possibility of reversal. Respondent will suffer no discernible harm if a stay is issued. Absent a stay, it is clear that Applicant will suffer irreparable harm. Applicant

respectfully requests that the Court grant Applicants's motion for a stay of the  
mandate pending the filing of petition for writ of certiorari and the United States  
Supreme Court's disposition of Applicant's petition for a writ of certiorari.

Respectfully Submitted;



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

Dated: July 17, 2023

No: \_\_\_\_\_

**In the Supreme Court of United States**

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Brigetta D'Olivio And All Other Occupants,  
*Applicant,*

v.

Hilary Thompson Hutson  
*Respondent.*

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**SWORN AFFIDAVIT**


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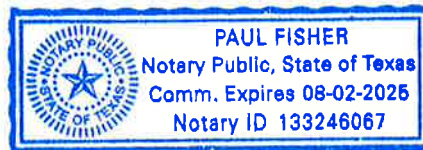
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**BEFORE ME**, the undersigned, on this day personally appeared Brigetta D'Olivio. Known to me to be the person whose signature is set forth herein. My name is Brigetta D'Olivio. I am over 18 years of age. I am a resident of Collin County, TX and am fully competent to make this Affidavit and do solemnly swear that the facts stated in the foregoing "Emergency Application To Stay The Mandate Of The Fifth District Court of Appeals Pending The Filing And Disposition Of Petition For Writ Of Certiorari", dated July 17, 2023, are within my personal knowledge and the same are true and correct.

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

**SUBSCRIBED and SWORN** to before me,  
the undersigned, on this 17<sup>th</sup> day of July 2023,  
to certify which witness my hand and seal of office.

  
**NOTARY PUBLIC**  
In and for the State of Texas



No: \_\_\_\_\_

**In the Supreme Court of United States**

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Brigetta D'Olivio And All Other Occupants,  
*Applicant,*

v.

Hilary Thompson Hutson  
*Respondent.*

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**CERTIFICATE OF SERVICE**

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I, Brigetta D'Olivio, Applicant, hereby certify that the following parties required to be served have been served with a copy of "Emergency Application To Stay The Mandate Of The Fifth District Court of Appeals Pending The Filing And Disposition Of Petition For Writ Of Certiorari", dated July 17, 2023, at the last known address filed with the Court, via FedEx, this July 17, 2023. Attached hereto is a copy of the FedEx receipt, dated July 17, 2023.

Pravati Capital LLC  
Bruce D. Cohen  
8117 Preston Rd., Suite 300  
Dallas, TX 75225

20 (20)



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

ORIGIN ID: DNEA (214) 733-7204  
BRIGETTA DOLIVIO

2916 CREEKBEND DR.

PLANO, TX 75075  
UNITED STATES US

SHIP DATE: 20JUL23  
ACTWGT: 1.00 LB  
CAD: 252872373/NET4640

BILL SENDER

TO **BRUCE DAVID COHEN**  
**PRAVATI CAPITAL, LLC**  
**8117 PRESTON RD. STE. 300**

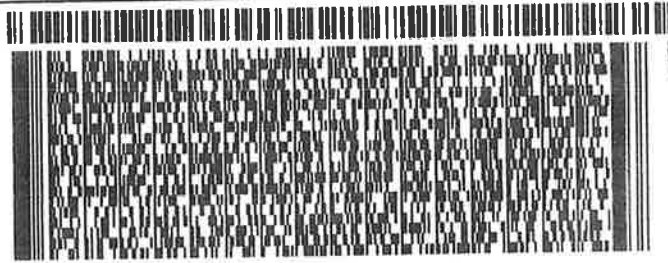
**DALLAS TX 75225**

(111) 111-1111

REF:

INV:  
PO:

DEPT:



**FedEx**  
Express



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**FRI - 21 JUL 10:30A**  
**PRIORITY OVERNIGHT**

TRK# **7728 0256 9694**  
0201

**AD TRLA**

**75225**  
**TX-US DFW**

