10/22/24

No. 24-491

In the Supreme Court of the United States

BERNICE RUTLAND,

Petitioner,

v.

ROBINSON PROPERTY GROUP, L.L.C., ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

This case presents one of national importance and significance because it conflicts with well-established rules and principles of summary judgement. The decision in this case conflicts with this Court and other Federal Courts. Stare decisis is a fundamental legal principle, clearly established law. *In Celotex Corp. v. Catrett*, 477 U.S. 317, 333 (1986), this court held: "A defendant cannot get summary judgment through a conclusory assertion that the plaintiff does not have evidence to support the complaint. Instead, the defendant must show the absence of evidence in the discovery record." Summary Judgement is governed by Federal Rule of Civil Procedure 56(a). The Questions Presented are:

1. Whether the Fifth Circuits ruling conflicts with this Court's ruling on case law and Summary Judgement, F.R.C.P. 56(a).

2. Whether a District Court can settle a disputed fact as to who rented or owned the Motorized Wheelchair/Scooter and then grant summary judgement to the moving party, based solely on the grounds that the plaintiff only has conclusional allegations, unsupported assertions, and presented only a scintilla of evidence, while the movant, ironically, only listed conclusory allegations, unsupported assertions and presented only a scintilla of evidence and proffered nothing.

3. Whether in summary judgement, does listing five (5) exhibits without arguments, without witnesses with first-hand knowledge, and without statements from other witnesses be considered evidentiary evidence, or would they only become evidentiary evidence when combined with arguments, witnesses with first-hand knowledge, or statements from other witnesses?

PARTIES TO THE PROCEEDING

Petitioner and Plaintiff-Appellant below

- Bernice Rutland

Respondents and Defendants-Appellees below

- Robinson Property Group, L.L.C.
- Ceasars Holdings, Inc., d/b/a Horseshoe Casino, Tunica
- Desert Medical Equipment, d/b/a Desert Medical Equipment, Incorporated
- Cynthia Janie Scott

LIST OF RELATED PROCEEDINGS

Direct Proceedings

U.S. Court of Appeals for the Fifth Circuit

No. 23-60499

Bernice Rutland, *Plaintiff-Appellant,* v.
Robinson Property Group, L.L.C., et al.,
Cynthia Janie Scott, *Defendants-Appellees.*

Date of Final Opinion: April 15, 2024

Date of Rehearing Denial: May 28, 2024

U.S. District Court, Northern District of Mississippi

No. 3:21-CV-234

Bernice Rutland, *Plaintiff,*
v. Robinson Property Group, LLC., et al., *Defendants.*

Date of Order: August 15, 2023

Related Proceedings

Circuit Court of Tunica County, Mississippi

Civil Division Case No. 2021-0111

Case transfer to U.S District Court, Northern District of Mississippi: December 08, 2021

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Bernice Rutland, Pro Se, respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Fifth Circuit to reverse and remand the decision below.

OPINIONS BELOW

The Fifth Circuits' unpublished opinion in Case No. 23-60499, was filed April 15, 2024, App.1a. A Petition for Rehearing was timely filed and denied on May 28, 2024, App.11a. The memorandum opinion of the District Court was filed on August 15, 2023, in Case No. 3:21-CV-234, App.5a. The Judgment of the district court was entered on August 15, 2023, App.9a. A Motion for Extension of time to file a writ of certiorari, application number 24A205 was granted on August 27, 2024, which extended the filing deadline to October 25, 2024, App.12a.

JURISDICTION

The court of appeals entered judgement on April 15, 2024, and denied a timely request for a petition for rehearing on May 28, 2024. On August 27, 2024, Justice Samuel Alito, granted the Petitioners application to extend the time to file a petition for a writ of

certiorari up to and including October 25, 2024. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1359 U.S. Code of Title 28 (Rules of civil procedure for the United States district courts), Rule 56 - Summary Judgment. The standard under F.R.C.P. 56, the moving party, "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the record which it believes demonstrates the absence of a genuine issue of material fact."

Constitutional Amendment- Amendment 7- "The Right to Jury Trial in Civil Affairs." 28 U.S. Code Chapter 121 - Juries; Trial by Jury. 28 U.S. Code § 1861 Declaration of policy. It is the policy of the United States that all litigants in federal courts entitled to trial by jury shall have the right to grand or petit juries selected at random from fair cross section of the community in the district or division wherein the court convenes.

INTRODUCTION

This case raises questions of law, well settled established laws by this Court, that conflict with prior decisions of F.R.C.P., Rule 56, Summary Judgement. This case presents one of national importance and significance because it conflicts with well-established rules and principles of summary judgement. The decision in this case conflicts with this Court and other Federal Courts. Stare decisis is a fundamental legal principle, clearly established law. All litigants, even Pro Se, deserve to have case law applied equally. In *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). This court held; A defendant cannot get summary judgment through a conclusory assertion that the plaintiff does not have evidence to support the complaint. Instead, the defendant must show the absence of evidence in the discovery record.

Defendant, Robinson Properties, skipped discovery and proceeded to summary judgement listing five (5) exhibits that stated, "Robinson relies on the following exhibits in support of its Motion for Summary Judgement. App.18a. However, none of those exhibits were ever argued in the motion for summary judgment, did not provide any witnesses that had firsthand knowledge of those exhibits, and no one that would testify in court or any affidavits that would verify the exhibits and never pointed to any part of the record for evidence. None of those exhibits were about Bernice not having any evidence. Robinson Properties, however, on lines 1-23 did put an exhibit number next to some of the numbers. App.18a-19a.

Then Robinsons brief in support of its motion for summary judgement states: "This court should grant Robinson's Motion for Summary Judgement because plaintiff has failed to produce documentary or testimonial evidence supporting her claims of negligence, negligence entrustment, negligent acts/omissions or negligence per se." "R. 375."

Robinson Properties proffered nothing, only a conclusory assertion that Bernice had no evidence. In *Celotex Corp. v. Catrett*, 477 U.S. 317, 333 (1986). If the moving party has not fully discharged his initial burden of production, its motion for summary judgment must be denied, and the court need not consider whether the moving party has met its ultimate burden of persuasion.

Roberson Properties never pointed to any evidence in the record where Bernice failed to answer any questions. The decision of the district court and the court below would clear a pathway for other defendants to manipulate their way to summary judgement by not doing discovery, depositions or request production of documents.

This case requires this Court to determine whether Robinson Properties satisfied its initial burden of production, whether the district court settled a disputed material fact and whether the district court considered any of Bernices evidence. Bernice provided the district court with enough evidence to defeat summary judgement. Summary judgement was improperly granted and deprived Bernice Rutland of her constitutional right to a jury trial under the 7th amendment.

STATEMENT OF THE CASE

1. Statutory Background

In *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), this court clarified F.R.C.P. Rule 56 in more detail by holding that a defendant cannot get summary judgment through a conclusory assertion that the plaintiff does not have evidence to support the complaint. Instead, the defendant must show the absence of evidence in the discovery records. *Celotex Corp. v. Catrett*, 477 U.S. 317, 328 (1986). JUSTICE WHITE, concurring:

> It is not enough to move for summary judgment without supporting the motion in any way or with a conclusory assertion that the plaintiff has no evidence to prove his case. A plaintiff need not initiate any discovery or reveal his witnesses or evidence unless required to do so under the discovery rules or by court order. Of course, he must respond if required to do so; but he need not also depose his witnesses or obtain their affidavits to defeat a summary judgment motion asserting only that he has failed to produce any support for his case.

It is the defendant's task to negate, if he can, the claim basis for the suit. *Celotex Corp. v. Catrett*, 477 U.S. 317, 328 (1986). Petitioner Celotex does not dispute that if respondent had named a witness to support her claim, summary judgment should not be granted, without Celotex somehow showing that the named witness' testimony raises no genuine issue of material

fact. Tr. of Oral Arg. 43, 45. *Celotex Corp. v. Catrett*, 477 U.S. 317, 328 (1986).

2. Constitutional Background

28 U.S. Code Chapter 121-Juries; Trial by Jury. 28 U.S. Code § 1861 Declaration of policy. It is the policy of the United States that all litigants in federal courts entitled to trial by jury shall have the right to grand or petit juries selected at random from fair cross section of the community in the district or division wherein the court convenes.

The 7th amendment civil trial rights of the constitution,

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, an no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Under the 7th amendment the plaintiff had a right to a trial by jury, and Bernice was denied that right, Bernice Rutland requested a Jury Trial. "R. 79,"

3. Factual Background

Bernice Rutland and her sister-in-law, Brenda Reyna, were patrons at the Horseshoe Casino on September 14, 2019. Horseshoe Casino is operated by Robinson Properties in Robinsonville, MS, Bernice Rutland, while playing one of the slot machines, was abruptly struck and slung several feet behind her original position by a motorized wheelchair/scooter, which was being operated by another patron of the casino. Bernice was injured badly from the impact of

the Motorized Wheelchair/Scooter making contact with the swivel chair and Bernice's leg. The impact slung her to the floor several feet behind her original position. Bernice made every effort to stay on her feet and keep her footing, however, the strike was swift and forceful. Bernice never saw the strike coming, so was basically blindsided.

The Horseshoe casino did not want to do an incident report, however after Bernice and her sister-in-law, Brenda, insisted, they brought a blank report, and filled it out. There were two (2) other witnesses there that had to jump out of the way to keep from being hit. The witnesses approached Brenda Reyna and gave her their names and phone number which was included in the incident report. However, the Casino denied it was their Motorized Wheelchair and made no attempt to stop the patron driving. The patron, Cynthia Scott, had informed Brenda Reyna and the other two (2) witnesses the Wheelchair malfunctioned and it had been rented from the Horseshoe Casino. There is a handwritten letter from Ms. Scott, before her death, Ms. Scott mailed directly through the United States Post Office to the District Court, App.21a-22a

After the incident report was filled out, Bernice was taken to a back room of the Horseshoe casino where she was told, by casino employee, she needed to pull her pants to her knees so they could take a picture of where she was hit. Bernice was surprised, and embarrassed, Bernice said it just happened and it wouldn't be bruised yet, however, after employee insisted, Bernice complied and allowed the casino employee to take pictures Bernice and her sister-in-law, Brenda, were then escorted out of the casino by

the security guard as if we did something wrong. The complaint by Bernice came from this incident.

4. Procedural Background

The complaint alleges that Robinson Properties/ Horseshoe Casino was the owner and occupier of the Motorized Wheelchair. While Robinson Properties admits, "that there exist certain duties for the owners or occupiers of a premises under Mississippi law; however, the answering defendant, Robinson Properties denied that it was the owner or occupier of the premises in question, line 12, "App.28a." Robinson Properties also admitted that it did not attempt to contact the operator of the motorized wheelchair because it was not the owner or the occupier of the premises in question, line 15, "App.28a, 29a." This statement admits negligence by Robinson, and that Robinson was not concerned with the safety of their other invitees. Brenda Reyna, one of the witnesses, made several attempts to point out to the security guard the driver trying to maneuver the motorized wheelchair many times.

The complaint further alleges that Robinson Properties was responsible for the incident, by not properly maintaining the wheelchair in a reasonably safe condition, not giving proper instructions on how to operate the Motorized Wheelchair/Scooter, not providing warning signs inside the casino, and not assigning a specific area where the large Motorized Wheelchair could operate as to not endanger the hundreds of other patrons, like Bernice, who was just sitting and playing slots when hit from behind. Robinson Properties knew or should have known that there were hidden dangers in allowing large Motorized Wheelchairs inside a contained area of their property, mostly pedestrians, where acholic drinks are freely being served to anyone

playing, and no direction as to where to operate. There was no way for Bernice to have seen the danger from behind to have protected herself from being hit.

Bernice stated that with all the security employees and cameras available to the casino, an employee should have been assigned to make sure the wheelchair was operating properly, that no alcoholic drinks are being served to the patrons while allowing them to drive the Motorized Wheelchair inside their property, navigating around hundreds of other patrons that are mostly pedestrians. Robinson Properties owed a duty to Bernice and their other invitees to keep them safe from hidden dangers.

The defendant, Robinson Properties, was originally represented by Goodloe T. Lewis. Mr. Lewis filed Notice of Deposition of Bernice Rutland on April 21, 2022, "R. 213." Bernice also filed a Notice to Depose two (2) of Robinsons employees that were involved with incident report, at the Horseshoe Casino on same day, April 21, 2022, "R. 219,221." On June 06, 2022, a Joint Motion to Substitute Counsel was filed and a Motion to Extend Discovery and Diapositives Motion Deadlines by the current attorney, "R. 235." There were several more Motions to Extend Discovery by Bernice, twice because Robinson employees were not available at the time and once their attorney was not available. "R. 378." Depositions were extended several times for different reasons by both plaintiff and defendants, with the final deadline being May 01, 2023.

While the plaintiff, Bernice Rutland, did deposed the two (2) witnesses, employees of Robinson Properties, Genoise Brooks and Pam Cook. Bernice only found out for the first time at depositions that Robinson Properties had brought the wrong employee with the same

last name to depositions. Robinson Properties knew it was the wrong Ms. Cook. In depositions, the moment Bernices attorney asks Ms. Pam Cook about being part of the investigation, Robinson Properties attorney quickly interrupted and said "It was different, Ms. Cook, just to clarify. It was Christine Cook. It wasn't Pamela Cook. Two Cooks, Two Cooks in the kitchen. "R. 366," Line 5-15.

Robinson Properties purposely left off a key witness, Ms. Christine Cook, who was involved in the incident report and could be seen in the casino surveillance video.

Robinson Properties never followed up by rescheduling the depositions of Bernice or her three (3) witnesses after the entry of the current attorney on June 06, 2022. The witnesses were listed in the complaint from the very start and in the incident report and at summary judgement. "R. 7,88,427" Bernice also had a partially edited, by Robinson Properties, casino surveillance video of the incident, submitted via e-mail from Robinson Properties' first attorney, Mr. Lewis, in discovery. The surveillance video also shows Casino employee taking picture of Bernice after the incident.

Bernice Rutland did answer interrogatories for Robinson Properties' first attorney, Mr. Lewis, as Robinson stated. Bernice provided Robinsons prior attorney with all the information necessary on medical records. However, Bernices attorney of record at the time failed to file with the clerk. Bernice had believed that her former attorney had filed this information with the clerk. It wasn't until her attorney quit and I had to read all the records to do the appeal pro se, that Bernice discovered it was not in the record. While Robinson Properties current attorney admits to receiv-

ing and having those interrogatories of March 4, 2022, in their possession, Robinson Properties claim that there was nothing in the answers from Bernice, however, they never offered to produce those interrogatories as evidence. Bernice did file a motion to supplement the record with the answers to those interrogatories of March 4, 2022, Per FRAP 10(e). If Robinson Properties believed as stated, that there was nothing in the answers, "R. "377", then why did they oppose the Motion to supplement the record.[1]

Robinson Properties had over eleven (11) months from June 06, 2022, the time current attorney appeared and up to the last day of discovery, which was May 01, 2023, and chose not to depose Bernice or her three (3) witnesses and sent one wrong witness that had nothing to do with the incident to be deposed by Bernice.

In summary judgement, Robinson Properties never answered any of plaintiff's complaints, that they owned the Motorized Wheelchair, whether they properly maintain the wheelchair and by whom, also provided no proof or supporting witnesses who had first-hand knowledge about instructions given on how to operate the motorized scooter properly and where, if any, signs were posted to warn invitees of the hidden dangers.

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[1] Bernice file an opposed motion to supplement the record with her interrogatories of March 04, 2022, with the court below, on December 04, 2023. Called the clerk and corrected the deficiencies the next day per the clerk instructions. Almost two weeks later Bernice received the letter, That the court below denied pursuant to 5th Cir. R. 27.4. App.15a.

A. District Court

Robinson Properties submitted records in the motion for summary judgement, App.18a. Robinson Properties, stated, "Robinson relies on the following exhibits in support of its motion for Summary Judgement'" and never made any arguments on these five (5) exhibits to the district court. There was no explanation as to the contents or who will be the witnesses that would have first-hand knowledge of these forms and no affidavits from who will testify on these exhibits. Robinson completely ignored these exhibits, App.18a. However, Robinson Properties did assign exhibit numbers to some lines in 1-25. App.18a, 19a.

Then Robinson Properties proceeds to list only conclusory assertions that Bernice has no evidence, while not pointing to anywhere in the record for proof.

The District Court stated in its Memorandum Opinion that, "It is undisputed that the person driving the scooter, defendant Cynthia Scott, had rented the scooter from Horseshoe". App.6a. This was a disputed material fact. Line 12, App.28a and line 15, App.28a-29a.

Bernice pointed to Ms. Cooks statement in deposition about the wheelchair rented from us, the casino, "R. 417", depositions of Genoise Brooks and Ms. Pam Cook as to no warning signs posted in casino and the three (3) witnesses that Robinson chose not to depose and allowed Bernice to believe up to and through the depositions that we had the right Ms. Cook.

The District Court ruled that Bernice had ample time to gather evidence but her showing on summary judgement consisted of a single sworn statement of general allegations lacking specific detail. However, Brenda Reyna, was a witness, also included a signed

sworn affidavit to the facts in the pleadings. "R. 430". The court also determined that Ms. Rutland provided no medical records and refused medical treatment, however Robinson Properties never pointed out anywhere in the record that Bernice refused medical treatment or refused to present medical records.

Bernice had pointed to the district court the three (3) witnesses that Robinson Properties overlooked, and they deliberately misled plaintiff by sending the wrong witness, (Ms. Pam Cook), to deposition, also a surveillance video submitted by Robinson Properties to Bernice. "R. 427-428" and the depositions. The correct Ms. Cook can be seen in the casino surveillance video; however, Bernice did not know her name.

All the above should have been enough to defeat summary judgement considering Robinson Properties proffered nothing. Robinson Properties only argued that the non-moving party could not prove her case, and she used only conclusory assertions and a scintilla of evidence. Ironically, Robinson Properties Motion for Summary Judgement only listed conclusory assertions and a scintilla of evidence against the non-moving party and was granted summary judgment by the district court.

The ruling of the District Court conflicts with this Court's ruling on Summary Judgement. This court held, "A defendant cannot get summary judgment through a conclusory assertion that the plaintiff does not have evidence to support the complaint. Instead, the defendant must show the absence of evidence in the discovery record." *Celotex Corp. v. Catrett*, 477 U.S. 317, 333 (1986).

B. The Fifth Circuit Decision

Before Weiner, Stewart, and Douglas, Circuit Judges. Per curium. This opinion is not designated for publication. 5th Cir. R. 47.5.

The lower courts determined that Bernice only adduced a single declaration that consist of conclusory assertions, and Rutland fails to offer sufficient evidence as to any claim of the required elements of negligence beyond her conclusional affidavit, and affirmed summary judgement. App.4a

Bernices' arguments to the court below was the same as to the district court in summary judgement, and was never acknowledged. Bernice pointed out to the court below the three (3) witnesses that Robinson Properties overlooked, and Robinson Properties deliberately mislead and sent the wrong witness (Ms. Pam Cook) to deposition conducted by Bernice, line 12, "R.427-428." also overlooked the surveillance video submitted by Robinson Properties to Bernice. Bernice pointed to Ms. Cook statement in deposition about the wheelchair rented from us, the casino, line 17, "R. 428," depositions of Genoise Brooks and Ms. Pam Cook as to no warning signs posted in casino and points to Ms. Scotts' incident report, that the wheelchair malfunctioned. Also, pointed to Ms. Scotts letter mailed directly through the United States Post Office, her handwritten letter to the district court, App.21a-22a, stating that the wheelchair malfunctioned and struck Bernice, plus other medical conditions that prevented her from driving and that she rented motorized wheelchair from Horseshoe casino, (Robinson Properties), and provided two (2) sworn affidavits by Bernice Rutland and Brenda Reyna.

This court held, in *Celotex Corp. v. Cartlett*, 477 U.S. 333 (1986). if the record disclosed that the moving party had overlooked a witness who would provide relevant testimony for the nonmoving party at trial, the court could not find that the moving party had discharged its initial burden of production unless the moving party sought to demonstrate the inadequacy of this witness testimony. Absent such a demonstration, summary judgement would have to be denied on the ground that the moving party had failed to meet its burden of production under summary Fed. R. Civ. P. Rule 56.

REASONS FOR GRANTING THE PETITION

In *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). This court held; "A defendant cannot get summary judgment through a conclusory assertion that the plaintiff does not have evidence to support the complaint. Instead, the defendant must show the absence of evidence in the discovery record".

Under Fed. R. Civ. P, 56, summary judgment may only be granted, "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgement as a matter of law." "[C]ourts may not resolve genuine disputes of fact in favor of the party seeking summary judgment . . . a "judge's function" at summary judgment is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U. S. 249 (1986). Summary judgment is appropriate only if "the

movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. Rule Civ. Proc. 56(a). In making that determination, a court must view the evidence "in the light most favorable to the opposing party." *Adickes v. S. H. Kress & Co.*, 398 U. S. 144, 157 (1970).

[T]he court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence . . . "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 248 (1986).

Although, Robinson Properties argued in its Rebuttal Brief in Support of its Motion for Summary Judgement of June 15, 2023, R.435-437 that, "To this day, Plaintiff has still failed to produce any evidence of damages (or evidence generally) because she has not produced any documents in response to Request for Production, however, Robinson Properties has failed to point out anywhere in the records, that the current attorney of record from June 6, 2022 through May 01, 2023, did a Request for Production, interrogatories or depositions. Robinson Properties current attorney had almost eleven (11) months to depose Bernice and her three (3) witnesses and chose not to. Robinson Properties could have scheduled depositions on the same day Bernice set her deposition, May 01, 2023, since Robinson employees had to be there.

In *Catrett v. Johns-Manville Sales Corp.*, 756 F.2d 181, 184 n.8 (D.C. Cir. 1985) Celotex also complained that Mrs. Catrett failed to answer interrogatories and produce documents sought in discovery. However,

Celotex did not seek sanctions, under Fed. R. Civ. P. 37, for failure to comply with discovery requests but instead sought summary judgment under Fed. R. Civ. P. 56(b). In Bernices case, Robinson Properties current attorney never attempted a Request for Production, interrogatories or depositions and cannot and did not point to anywhere in the record where they did.

This Court overruled, *Tolan v. Cotton*, 134 S.Ct. 1861 (2014), because the court below disregarded competent testimony from a witness who also happened to be the plaintiff, And *Salazar v. Lubbock County Hospital District*, No. 20-10322 (5th Cir. 12/7/2020), because the lower court rejected the plaintiff's testimony about her job performance because it was not corroborated.

However, now 10 and 4 years later respectively, in *Guzman v. Allstate Assurance Co.*, 18 F.4th 157, 160-61 (5th Cir. 2021), The witnesses testified via affidavits as part of Allstate's motion for summary judgment. The district court found the two affidavits to be self-serving and granted summary judgement to Allstate, However, the Fifth Circuit overruled summary judgement of the district court in that case and remanded.

Although the Fifth Circuit states, in *International Shortstop, Inc. v. Rally's*, 939 F.2d 1257, 1263 (5th Cir. 1991). we are guided by the procedural framework of Rule 56 of the Federal Rules of Civil Procedure and two recent Supreme Court cases ironing out its wrinkles. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

Where self-interested affidavits are otherwise competent evidence, they may not be discounted just because they happen to be self-interested. Indeed,

"[e]vidence proffered by one side to . . . defeat a motion for summary judgment will inevitably appear 'self-serving.'" *Dall./Fort Worth Int'l Airport Bd. v. INet Airport Sys., Inc.*, 819 F.3d 245, 253 n.14 (5th Cir. 2016). But self-serving evidence may not be discounted on that basis alone. How much weight to credit self-interested evidence is a question of credibility, which judges may not evaluate at the summary judgment stage. *E.g., Int'l Shortstop, Inc.*, 939 F.2d at 1263(5th Circuit)

Now, in 2024, the Court below ruled that Bernices showing on summary judgement consists of a single sworn statement of general allegations lacking specific detail. However, Bernice and Brenda Reyna, both provided a sworn affidavit, both had gone to the casino together and both had firsthand knowledge of the incident and injuries and signed the sworn affidavit stating, "Bernice Rutland and Brenda Reyna, do hereby swear upon oath that I have read this pleading, and it is true and correct to the best of my knowledge, information and belief. The pleadings were filed with the affidavits attached and were first-hand knowledge. "R.426-430."

While Bernice utilized the discovery process by propounding interrogatories, depositions and productions of documents, and then pointing them out to the district court in summary judgement and the court below on appeal, neither court gave any reasonable inference to the evidence, depositions, video or witnesses that could testify for Bernice. They were never even mentioned in the Order of district court, the Opinion of the court below focus was only as general or conclusory allegations and unsubstantiated assertions. The district Court never ruled that the

defendant, Robinson Properties, had met its burden of production.

Bernice pointed to surveillance video overlooked, the surveillance video submitted by Robinson Properties to Bernice in discovery via email from Robinson Properties first attorney.

In *Boyd v. McNamara*, 74 F.4th 662 (5th Cir. 2023), the 5th circuit stated: "Supreme Court precedent rightly requires us to view video evidence when considering an appeal from the grant of summary judgment. *See Scott v. Harris*, 550 U.S. 372, 381, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007)." *Boyd v. McNamara*, 74 F.4th 662, 666 n.2 (5th Cir. 2023). No one ever even attempted to look at the surveillance video provided by Robinson Properties to Bernice. Bernice was never allowed to give testimony.

With the decision below, my question is, does listing five (5) exhibits without arguments, witnesses with first-hand knowledge, or statements from other witnesses in affidavits be considered evidentiary evidence, or would they only become evidentiary evidence when combined with arguments, witnesses with first-hand knowledge, or statements from other witnesses in affidavits?

For evidentiary purposes, unauthenticated evidence cannot be considered by the trier of fact. Fed. R. Evid. 901. Even moving affidavits should be from witnesses with actual personal knowledge; lack of personal knowledge is fertile ground for reversal. *See, e.g., Dorsey v. Les SaCulottes*, 43 A.D.3d 261 (1st Dept 2007). Defendant has failed to meet its burden under Fed. R. Civil Procedure 56. The only witness listed for the defendant was Genoise Brooks. "ROA".460.

While Robinson Properties states, in its summary judgement, Facts and Procedural History,[2] "While Robinson itself was established in 2005, the company has been deeply involved in the Mississippi economy since Horseshoe Casino opened in 1995. At Horseshoe Casino alone, Robinson employees approximately 1,200 workers. The venue itself consists of 1,023 gaming machines, along with 78 table games and 24 poker games. The attached hotel boasts more than 500 rooms and 300 suites." "R. 375"

This statement has nothing to do with making a place Hazzard Free for invitees. Bernice is one Pro Se litigant but fighting for the thousands of other pro se litigants that came before her, and the thousands that will come after, that will face the same challenges in the future. Bernice Rutland has not been able to find another case like the case below.

This case is not about money, it is about what is right or wrong and whether just one single person, a Pro Se litigant, deserves to have case laws applied to them in the same way as large corporations. Case law offers guidance and is the deciding factor for litigants. It determines whether a plaintiff should even bring a case to court and should be applied to everyone equally.

These circuit judges made a strong but direct statement in 1991; "Summary judgment is a lethal weapon. We must afford prospective victims some protective armor if we expect them to properly defend against it." *International Shortstop, Inc. v. Rally's*, 939 F.2d 1257, 1268 (5th Cir. 1991).

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[2] In the Appelles reply brief, it was in the "Concise Statement of The Case."

However, by the court below disregarding this Court's precedents and the reason why F.R.C.P. Rule 56 was more clarified by this Court, In *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986), this decision removed the "protected armor" and will now create incentives for defendants to skip discovery and courts to deliver unjust outcomes. This Court should step in and protect the integrity of case law and precedent. Defendants should not be rewarded with a grant of summary judgement for skipping the discovery process. The decision below would create unfairness to all the Plaintiffs who do utilize the discovery process like Bernice, while defendant, Robinson Properties skipped.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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