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 REHEARING

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February 5, 2025
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PETITION FOR REHEARING

Petitioner, Bernice Rutland, respectfully petitions for a rehearing of this Court's Order of January 13, 2025, denying the Petition for a Writ of Certiorari.

REASONS FOR GRANTING REHEARING

This Court's Rule 44.2 authorizes a petition for a rehearing based on intervening circumstances of a substantial effect. Bernice Rutland's Writ of Certiorari explained why review from this Court is necessary, mainly because the decision of the district court and the court below clearly conflicts with the three (3) controlling cases ruled on by this Court on Summary Judgement. *Celotex Corp. v. Catrett*, 477 U.S. 317, 333 (1986); *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970), and *Anderson v Liberty Lobby, Inc.*, 477 U.S. 249 (1986).

Summary judgement was improperly granted when the district court settled a disputed material fact and deprived Bernice Rutland of her constitutional right to a jury trial under the Seventh Amendment. Bernice believes that it's possible that she has not explained well enough and is respectfully asking this Court to consider this rehearing and take a second look at the Petition for a Writ of Certiorari.

A relevant case is the Petition of *Sintia Dines Nivar Santana*, Petitioner v. *Merrick B. Garland*, Attorney General was granted Certiorari and remanded on the issues of, "what standard of proof applies."

While Bernice's petition is not an immigration case, it did raised three (3) questions, one which was of a similar issue asking, would exhibits only become evidentiary evidence when combined with arguments, witnesses and affidavits of witnesses with first-hand knowledge, under the Fed. Rules of Evidence for summary judgement, however, it was denied on the same day January 13, 2025, that *Id. Sintia* was granted.

Bernice raised the questions, what are the requirements for proof of evidentiary evidence in summary judgement, the constitutional right to trial by jury after the District Court settled a disputed material fact for the movant at the summary judgement stage and movant deliberately left off a key witness and proffered only a scintilla list that Bernice had no evidence. Robinson Property proffered nothing, made no discovery, no depositions and no witnesses or affidavits from witnesses that had first-hand knowledge and was granted summary judgement without having to meet its burden of production. The court file consisted of only the pleadings, briefs or arguments of counsel for Robinson Property, which would have been insufficient for granting summary judgement.

The case below should have been decided on case law that has previously been decided by this Court, 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. Robinson Property never pointed to any part of the record and couldn't have because they never deposed Bernices or any of her witnesses. *In Adickes v.*

S. H. Kress & Co., 398 U.S. 144 (1970), A party seeking summary judgment on the basis that no evidence supports a claim must negate all the possible inferences by which a jury could find in favor of the opponent. Robinson Property failed to negate any of the possible inferences.

The decision of the court below failure to adhere to the standard of FRCP 56, "disputes of material fact," deprived Bernice, the non-moving party, of a jury trial guaranteed by the Seventh Amendment. The District Court settled disputed material facts and ignored this Court's decision, settled law, in the three (3) major cases that are relied on for summary judgement. The issues raised here are exceptionally important and conflict with the decisions of this Court on summary judgement.

The courts in Mississippi's are granting summary judgement without the movant having met its burden of production. The case below is not just one isolated case, it is however one that has made it this far because it was done Pro Se. Most ordinary citizens like myself do not have the resources to spend the thousands of dollars it costs to pay an attorney to appeal, so summary judgment becomes lethal for the average litigant. The fact that Bernice has two cases within a 3-4-year period, the case below and 2022-CA-00720-COA where the Mississippi Court of Appeals affirmed the chancery court that granted summary judgement to the movant without the movant having met its initial burden of production would indicate more than one isolated incident. Also, some opinions are unpublished and some never get to the appellate stage because of the cost. Unless this Court intervenes and gives guidance to Mississippi Courts this will continue, and erroneous

decisions and manifest injustices will continue making a case lethal before it even starts for litigants. Bernice respectfully believes that summary judgement was erroneously granted, and the courts are using summary judgement[1] to clear caseloads which denies litigants the right to a jury trial under the Seventh Amendment.

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).

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,

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[1] *See* Suja A. Thomas, *Why Summary Judgement Is Unconstitutional*, 93 VA. L. REV. 139 (2007) and John Bronsteen, *Against Summary Judgement*, 75 GEO. WASH. L. REV. 522 (2007).

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.

In the case below the district court stated in its Memorandum Opinion at summary judgement that, "It is undisputed that the person driving the scooter, defendant Cynthia Scott, had rented the scooter from Horseshoe." However, this was NOT Robinson Property's belief, Robinson denied it was their scooter. However, Cynthia Scott's handwritten letter and the two witnesses, casino employees, in depositions stated that it was rented from Horseshoe Casino. This should have been a jury question and not for the district court to decide. The district court did not apply the proper legal standard as per Rule 56 Summary Judgment, *In Anderson v Liberty Lobby, Inc.*, 477 U.S. 249 (1986).

This case requires this Court to determine whether Robinson Property satisfied its initial burden of production, whether the district court settled a disputed material fact and whether the district court considered any of Bernice's evidence. Bernice did discovery,

admissions and depositions on two (2) casino employees and had three (3) witnesses and two affidavits from herself and a witness with first-hand knowledge and a surveillance video from Robinson which should have provided the district court with enough evidence including the handwritten letter from Cynthia Scott, to defeat summary judgement and go to trial.

The courts below should honor precedent, stare decisis is the foundational concept in the legal system without it we have no direction. For Robinson Property to have been granted summary judgement without any evidence and without making discovery is a manifest injustice and goes against case law previously decided by this Court.

CONCLUSION

For reasons stated above and in the Petition for Writ of Certiorari, the Court should grant rehearing, grant the Petition for Writ of Certiorari and review the judgement below based on the three controlling cases on summary judgement or reverse and remand for a jury trial.

Respectfully submitted,

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February 5, 2025

RULE 44.2 CERTIFICATE

I, BERNICE RUTLAND, petitioner pro se, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1. This petition for rehearing is presented in good faith and not for delay.

2. The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

/s/ Bernice Rutland
Petitioner

Executed on February 5, 2025

SUPREME COURT
PRESS

CERTIFICATE OF WORD COUNT

No. 24-491

Bernice Rutland,

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v.

Robinson Property Group, L.L.C., et al.,

Respondents.

STATE OF MASSACHUSETTS)
COUNTY OF NORFOLK) SS.:

Being duly sworn, I depose and say:

1. That I am over the age of 18 years and am not a party to this action. I am an employee of the Supreme Court Press, the preparer of the document, with mailing address at 1089 Commonwealth Avenue, Suite 283, Boston, MA 02215.

2. That, as required by Supreme Court Rule 33.1(h), I certify that the BERNICE RUTLAND PETITION FOR REHEARING contains 1485 words, including the parts of the brief that are required or exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Lucas DeDeus

February 5, 2025

SCP Tracking: Bernice Rutland-P.O. Box 396-Cover Tan

CERTIFICATE OF SERVICE

No. 24-491

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STATE OF MASSACHUSETTS)
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1. That I am over the age of 18 years and am not a party to this action. I am an employee of the Supreme Court Press, the preparer of the document, with mailing address at 1089 Commonwealth Avenue, Suite 283, Boston, MA 02215.

2. On the undersigned date, I served the parties in the above captioned matter with the BERNICE RUTLAND PETITION FOR REHEARING, by both email and by mailing three (3) true and correct copies of the same by USPS Priority mail, prepaid for delivery to the following addresses which the filing party avers covers all parties required to be served.

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