No. 25A73

SUPREME COURT OF THE UNITED STATES

David Lynn,

Petitioner,

vs.

Ronald Ferguson

Respondent.

On Petition for a Writ of Certiorari

from the Texas Supreme Court

REQUEST FOR EMERGENCY STAY

Petitioner; David Lynn

1220 Indian Run #323

Carrollton TX 75010

469-323-1751

gutter.restore@hotmail.com

Respondent; Ronald Ferguson

6608 Swanee

Watauga TX 76148

APPLICATION FOR EMERGENCY STAY FROM THE UNITED STATES SUPREME COURT,

Now comes David Lynn who hereby requests the court grant an emergency stay from the trail Court judgment and further proceedings till the Writ of Certiorari is heard, or sent back to the state Supreme Court for opinion. Petitioner has a more than fair chance of success of the writ

being Granted as in TX a party performing repairs or any form of work on a home has a **guarantee right under the TX Constitution for payment, known as a TX Constitutional lien.**

This lien is automatic, self- enacting, self-creating and requires no act or action by the contractor to create it. It is automatically created upon completion.

> Section 37 of Article 16 of the Texas Constitution provides:
>
> "Mechanics, artisans, and material men, of every class, shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor, and the Legislature shall provide by law for the speedy and efficient enforcement of said liens."

The constitutional lien has been a guarantee in TX for over 125 yr. A state right specifically outlined in the TX Constitution, w/ 125 years of case law supporting it. And this is the only case in history were it was removed w/ written order by a judge.

Therefore it is without question a Right granted under a constitution that was removed incorrectly, and without question will be overturned. There is no other ruling that can be done. The TX appellate courts basically just denied review on a technical error, without addressing the constitutional question.

> ***Strang v pray 89 Tex 525, 35 SW 1054 1896)***
>
> This lien not, depending on the statute, **the statute can not affix to it conditions of forfeiture. So far as the statute gives a lien to persons not included in the terms of the Constitution, their rights are dependent on compliance with the statute; but, as between the parties, no compliance with the statutory requirements is necessary to fix the lien given by the Constitution**, and the lien is not lost by a failure to record the contract and bill of particulars as required by law.
>
> ***defects claimed cannot void a constitutional lien,"***
>
> **the statute can not affix to it conditions of forfeiture If the Legislature had, or should declare that such persons should have no such lien, such act of the Legislature would be of no effect, and the lien could still be foreclosed because the right under the Constitution is paramount to any legislative act.**

A constitutional right that is removed by written order has to be restored.

The Writ of Certiorari is the constitutional violation, and a civil rights violation for due process and equal protection, and procedural due process based on a simple home repair lien case. Petitioner Lynn was hired by the homeowner to do emergency repair to the home. Upon completion of the repairs the Homeowner Ferguson refused payment for the repairs.

The refusal was not based in any act or effort by petitioner or quality, or failure issue; but was claimed to be because the homeowner had an agreement with a 3rd party to pay for the repair. Petitioner had no agreement with the 3rd party and it was never discussed prior to the repair being requested, done and completed.

The Homeowner agreed to the repairs, was present when they were done, agreed to the specifics and cost, prior to the work being done, and upon completion approved the work.

The homeowner and the 3rd party are the 2 parties of which the issue is, The 3rd party refused payment, the homeowner also refused to pay for the repairs. Petitioner was left unpaid for work performed and material provided on a *no money down* repair.

All the petitioner could do is exactly what was done, record the lien in the county property record to protect himself. At the completion of the repair a worker standing on a person's front porch, the worker is basically powerless, when payment is refused what can be done? Petitioner could not take any form of 'action' at that time without being at fault. You cannot force payment.

Now the petitioner Lynn is a contractor looking at 18 months in jail for contempt simply because he disproved the plaintiffs' claims and exposed the bias and errors by the trial judge. The Writ of Certiorari clearly shows the bias and personal relationship of plaintiff counsel and the trial judge.

In short the liens were filed; the plaintiff contacted the 3rd party for payment, the 3rd party used its attorney to file to remove the liens.

Plaintiff attorney did not file suit to remove the liens thru the normal random court assignment in the clerk's office, but hand selected a court with which he has a personal relationship, with both the judge and that specific court clerk. Hand filed it in that court did e-file but did not e-file petitioner notice of the suit. Elected mysteriously to do it by certified mail, created a certified mail tracking number thru a postal meter, BUT NEVER deposited the actual item in the mail for delivery. (See tracking)

Civil suit ensued as laid out in the writ of cert. The judge signed an order removing 2 different types of liens on filed by the petitioner under the TX property code, and the lien automatically created by the TX constitution. Now as stated in 125 yrs never has a lien created by the constitution been removed, **as a trial court cannot issue orders removing constitutional**

rights. To allow a trial court **the power to remove rights under constitutions will wreak havoc on the system;** because where would it stop?

In the order removing the liens the judge granted attorney fees for the plaintiff. Now in TX law that is clearly forbidden by statute. Quiet title cases are not allow attorney fees, including quiet title cases disguise as other suits types. In this case it wasn't, it was clearly stated a quiet title suit.

Tony Gullo Motors I, LP v. Chapa, 212 SW 3d 299 - Tex: Supreme Court 2006

For more than a century, Texas law has not allowed recovery of attorney's fees unless authorized by statute or contract. This rule is so venerable and 311*311 ubiquitous in American courts it is known as "the American Rule." Absent a contract or statute, trial courts do not have inherent authority to require a losing party to pay the prevailing party's fees.

Florey v. Estate of McConnell, 212 SW 3d 439 - Tex: Court of Appeals, 3rd Dist. 2006

Florey is correct that attorney's fees are not recoverable in a suit to quiet title, as that action is traditionally known. A suit to quiet title is equitable in nature and the principal issue in such suits is "the existence of a cloud on the title that equity will remove." *Bell v. Ott, 606 S.W.2d 942, 952 (Tex.Civ.App.-Waco 1980, writ ref'd n.r.e.).* The suit to quiet title "enable[s] the holder of the feeblest equity to remove from his way to legal title any unlawful hindrance having the appearance of better right." *Id.* (quoting *Thomson v. Locke, 66 Tex. 383, 1 S.W. 112, 115 (1886)).* **Attorney's fees are not recoverable in such actions. *Sadler v. Duvall,* 815 S.W.2d 285, 293-94 (Tex.App.-Texarkana 1991, writ denied) (in suits to quiet title, attorney's fees not recoverable either under chapter 38, civil practice and remedies code, or as component of actual damages).**

Cadle Co. v. Ortiz, 227 SW 3d 831 - Tex: Court of Appeals, 13th Dist. 2007

." TEX. CIV. PRAC. & REM.CODE ANN. § 37.004. **The recovery of attorneys' fees under a trespass to try title is barred because it is not provided for by the property code.** Martin, 133 S.W.3d at 264. In contrast, the DJA specifically allows for recovery of attorneys' fees. TEX. CIV. PRAC. & REM.CODE ANN. § 37.009. The Texas Supreme Court requires courts to distinguish between the two types of actions, **holding that a party may not seek attorneys' fees by artfully pleading a trespass to try title action under the DJA. Martin**, 133 S.W.3d at 267.

Southwest Guar. Trust Co. v. Hardy Road 13.4 Joint Venture, 981 SW 2d 951 - Tex: Court of Appe

To recover damages for slander of title to real property, the plaintiff must first allege and prove loss of a specific sale. *E.g., Ellis,* 656 S.W.2d at 905. This is because the land's market or intrinsic value is normally not affected by the slander. *See id.* at 906 (Spears, J., concurring). **Barring such proof, the plaintiff may not recover any damages, whether litigation expenses, interest, taxes, or otherwise.** *Texas Am. Corp. v. Woodbridge Joint Venture,* 809 S.W.2d 299, 304 **(Tex.App.-Fort Worth 1991, writ denied).**[5]

Attorney's fees are not available in a suit to quiet title or to remove cloud on title. *Sadler v. Duvall,* 815 S.W.2d 285, 293-94 (Tex.App.-Texarkana 1991, writ denied). Therefore, the declaratory judgment

act will not supplant a suit to quiet title by allowing attorney's fees under these circumstances. *See* Barfield v. Holland, 844 S.W.2d 759, 771 (Tex.App.-Tyler 1992, writ denied)

Now the trial court did all of this because petitioner was forced to represent himself pro-se, not because of indigence, but simple could not afford a $35,000.00 retainer for a 4 yr lawsuit. The court assumed a pro-se construction worker would never know, or be able to argue against its actions an orders, just ignored the pro-se arguments and signed every order plaintiff attorney presented.

After the suit the plaintiff filed post judgement discovery on the attorney fees. First that is not allowed under TX law; attorney fees are not considered judgment and do not require bonds or subject to discovery.

In re Longview Energy Co., 464 SW 3d 353 - Tex: Supreme Court 2015

Chief Justice Hecht delivered the opinion of the Court.

If the trial court did not calculate the $95.5 million the way the court at first explained, then the number seems to have been pulled from thin air. Longview offers no explanation for what the figure represents. Longview argues that the award is nevertheless remedial and therefore compensatory. We cannot conclude that the award is compensatory when it cannot be explained. **Furthermore, Longview does not explain how the award can be considered damages. In *In re Nalle Plastics Family Ltd. Partnership,* we held that attorney fees are not compensatory damages under Section 52.006(a)(1) and Rule 24(a)(1).[29] As we explained:**

While attorney's fees for the prosecution or defense of a claim may be compensatory in that they help make a claimant whole, they are not, and have never been, damages. Not every amount, even if compensatory, can be considered damages. Like attorney's fees, court costs make a claimant whole, as does pre-judgment interest. **Yet it is clear that neither costs nor interest qualify as compensatory damages**. Otherwise, there would be no need to list those amounts separately in the supersedeas bond statute.[30]

Explained or unexplained, compensatory or not, the award bears no resemblance to any recognized form of damages.

In no sense **can the monetary award in Longview's judgment be said to be compensatory damages, and Huff was not required to post security for those amounts**. Section 52.006(a)(2) and Rule 24.2(a)(1) require security for interest, but only on compensatory damages.[36] The only other amount for which security must be given is costs, which are $66,645.00. **We agree with the court of appeals that Huff was entitled to reversal of the trial court's security order. We disagree that Huff was required to post security in the amount it did**

2nd the discovery is outrageous as outlined in the Writ of Cert. And TX law has a Very Specific way attorney fees are to be collected or requested. Discovery is not allowed. There is no provision, rule, are statute that allows post judgement discovery on non-judgment fees.

> CIVIL PRACTICE AND REMEDIES CODE
> TITLE 2. TRIAL, JUDGMENT, AND APPEAL
> SUBTITLE C. JUDGMENTS
>
> CHAPTER 38. ATTORNEY'S FEES
>
> Sec. 38.001. RECOVERY OF ATTORNEY'S FEES. (a) In this section, "organization" has the meaning assigned by Section 1.002, Business Organizations Code.
>
> Sec. 38.0015. RECOVERY OF ATTORNEY'S FEES AS COMPENSATORY DAMAGES. (a) A person may recover reasonable attorney's fees from an individual, corporation, or other entity from which recovery is permitted under Section 38.001 as compensatory damages for breach of a construction contract as defined by Section 130.001.
>
> **(b) This section may not be construed to create or imply a private cause of action or independent basis to recover attorney's fees.**
>
> **Sec. 38.002. PROCEDURE FOR RECOVERY OF ATTORNEY'S FEES**. To recover attorney's fees under this chapter:
>
> (1) the claimant must be represented by an attorney;
>
> (2) **the claimant must present the claim to the opposing party or to a duly authorized agent of the opposing party; and**
>
> **(3) payment for the just amount owed must not have been tendered before the expiration of the 30th day after the claim is presented.**

Now the discovery is even more far-fetched, the judge signed an order compelling the petitioner turn over the following:

> From:
> **Rehear writ of mandamus #25-125**
>
> ***Pg 23***

This is a sampling of request to turn over: Not only is it burdensome but is not entitled to it.

41. **All traveler's checks owned by Defendant(s).**
42. **All ATM and debit cards used by Defendant(s).**
43. **All of Defendant's phone bills for the past two years.**
44. **Defendant's passport.**
45. Documents reflecting Defendant's ownership of any internet domain names.
46. Documents reflecting Defendant's ownership of any web site.
47. All patent applications ever submitted by or on behalf of Defendant(s).
48. All copyright applications ever submitted by or on behalf of Defendant(s).
49. All trademark applications ever submitted by
50. **Every computer owned by Defendant(s).**

No Party in discovery is entitled **to TAKE POSSESSION of a person's atm cards,,, their passport**,,,, phone records and **especially not entitled to take possession of a party's computer**.!

> **4. If you are now or have ever been married, then state, with respect to each marriage: name of spouse, date of marriage, date of divorce (if applicable), and present address of spouse.**
>
> **5. If you have any children, then as to each child state: name, date of birth, residence, address, and name and address of school attended or employer.**

No plaintiff is entitled to ex spouse information, family members, etc. or adult children's home address, address of school attended or their employer.

That is for the sole purpose of harassment, to contact them at home and work to try and harass and embarrass the defendant while harassing persons who are not subject to this suit.

> 17. **If you own any electronic devices including, without limitation, televisions, home theater systems, stereo systems, game systems, computers (both desktop and notebook), monitors printers, etc.,** then identify each such device by brand, model, serial number, and description (e.g."42-inch digital television"\or "all-in-one printer").
> 18. Identify by title **every DVD that you own.**
> 19. Identify by title and artist every music **CD that you own.**
> 20. Identify by title every gaming software **DVD that you own.**

Now these requests were never even looked at by the trial judge, the court just signed the order presented.

Now this is why the stay is needed, it is clear the writ of Writ of Certiorari most likely would be granted on the Constitutional right removed alone, AS that is self-explanatory.

The compel order on the fees on the right removal in question, was answered by petitioner. Petitioner followed the T.R.C.P. and answered the discovery per the rules requirement. The plaintiff (again attorney vs pro-se) did not get the computers and harassing request it wanted.

Plaintiff attorney filed motions for contemp. The trail court Judge being embarrassed by the errors and repeated showing in documents by a pro-se, and in discussion with plaintiff counsel at the prior compel hearing believes she can jail petitioner for contempt for 18 months the max, and I quote *"maybe that will shut him up"*

> *'Applicants must prove that they will suffer significant and irreversible harm if the stay is not granted'*

There can be no **greater harm than imprisonment** for doing a repair and not being paid for it, but somehow the Trial court has deemed the laborer that did the repair the criminal and plans on jailing him?

Petitioner is being sentence to jail for a fraudulent contempt charge and is facing 18 months in jail simply because he documented the trial courts errors in detail and caused undue embarrassment. The court openly stated it was going to shut him up, and this conduct cannot be allowed.

Odd issue in this entire case, is at no time did the trial court, or appellate court, has ever made an Inquiry as to why no payment was ever made. And by what right do plaintiffs believe they could refuse payment and then challenge legitimate liens. It is no different than a Justice on this court being refused its paycheck, you can't go to bookkeeping and 'ring someone's neck', you are forced to following the legal procedures laid out in the law; in this instance recording a lien as required.

The order removing the liens and attorney fees was appealed, only one opinion was ever issued and it **was an outline of a claimed technical error and dismissal of the appeal**. As the writ will show that technical error was unfounded, and the reply brief showed were it was error and showed the technical requirement it claimed was missing by pg and paragraph.

Ever other appellate procedure was meet with "review denied'. So even if the technical error had existed it would have not lead to the appeal being dismissed, the liberal standard rulings in both state and federal case law would have protected the appeal from dismissal.

Wheeler v. Green, 157 SW 3d 439 - Tex: Supreme Court 2005

> **We certainly agree that pro se litigants are not exempt from the rules of procedure. Mansfield State Bank v. Cohn, 573 S.W.2d 181, 184-85 (Tex.1978).** Having two sets of rules — a strict set for attorneys and a lenient set for pro se parties — might encourage litigants to discard their valuable right to the advice and assistance of counsel. **But when a rule itself turns on an actor's state of mind (as these do here), application may require a different result when the actor is not a lawyer. Recognizing that Sandra did not know what any lawyer would, does not create a separate rule, but recognizes the differences the rule itself contains.**

Wilson v. State, 955 SW 2d 693 - Tex: Court of Appeals, 10th Dist. 1997

> **In summary, the pro se response need not comply with the rules of in order to be considered. Rather, the response should identify for the court those issues which the indigent appellant believes the court should consider in deciding whether the case presents any meritorious issues. Henry, 948 S.W.2d at**

Estelle v. Gamble, 429 US 97 - Supreme Court 1976

> proceeded *pro se,* his complaint **"must be held to less stringent standards than formal pleadings drafted by lawyers," as the Supreme Court has reaffirmed since *Twombly. See Erickson v. Pardus, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007) (per curiam).*** *Iqbal* incorporated the *Twombly* pleading standard and *Twombly* did not alter courts'

> treatment of *pro se* filings; accordingly, **we continue to construe *pro se* filings liberally when evaluating them under *Iqbal*.**[7] While the standard is higher, our "obligation" remains, **"where the petitioner is *pro se*, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt."** ***Bretz v. Kelman*, 773 F.2d 1026, 1027 n. 1 (9th Cir. 1985) (en banc)**.

The issue in this case was the sheer volume of errors by the trial judge, the discovery above on attorney fees is a perfect example; *turn over your personal computer??* These are errors the trial judge is embarrassed by, and tired of seeing documented; so as shows; plans on sentencing a defendant to jail **for no crime other than being right. This court cannot allow a known false imprisonment.**

The court has it scheduled the 1st week of august 2025, as petitioner was told to get its affairs in order. ??? This cannot be allowed to stand. The petitioner is literally being attacked by a trial judge because the petitioner was able to see the errors and appeal, **instead of being the dumb pro-se the court expected.**

A stay must be granted, till either the Writ of Certiorari is heard or as requested the issue is sent back to the TX Supreme Court for an opinion on the constitutional issue.

There can be no greater harm than to be imprisoned for performing work as request, being refused payment, then having the liens manipulated by an attorney and judge with a personal relationship.

PRAYER

Petitioner prays the stay is granted awaiting the Writ or the Constitutional Issue is sent back to the TX Supreme Court.

Imprisonment itself is inexcusable in this instance, the loss of everything that is owned, bills forfeited, homes loss, etc. from false imprisonment is unconscionable and reprehensible.

Respectfully submitted,

David Lynn _____

Date: 7-8-25

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

PETITIONER

David Lynn

VS.

RESPONDENT

Ronald Ferguson

PROOF OF SERVICE

I do swear or declare that on this date, 7-8-2025 as required by Supreme Court Rule 29 I have served the PETITION FOR A WRIT OF CERTIORARI , and REQUEST FOR EMERGENCY STAY on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Ronald Ferguson
6608 Swanee

Watauga TX 76148

And attorney of record

Michael S Newman Attorney at Law, PLLC

8813 N. Tarrant Pkwy., Ste. 252

North Richland Hills, TX 76182-8461

Tx Supreme Court

Physical Location
Supreme Court of Texas
Supreme Court Building
201 W. 14th Street, Room 104
Austin, Texas 78701

Mailing Address

Supreme Court of Texas
PO Box 12248
Austin, Texas 78711

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

Executed on: 7-8-2025

David Lynn 

Additional material from this filing is available in the Clerk's Office.