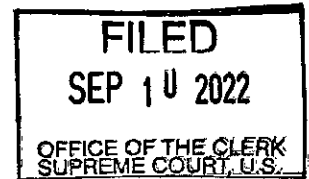


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No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



FREDA J. DAY,

Petitioner,

V.

HARPO PRODUCTIONS, an Illinois Corp.; OWN: OPRAH WINFREY
NETWORK, LLC, a Delaware Corporation; LIONSGATE ENTERTAINMENT
CORPORATION, CRAIG WRIGHT, an individual, OPRAH WINFREY, an
individual,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

1. Throughout the 21st century with a myriad of electronic communications, why shouldn't "use of the internet" be a primary determining factor for proof of access," as it has not been suggested by the courts?
2. In summary judgment cases, if a litigant hasn't been granted due process as a constitutional right during the "discovery stage," and there exists a preponderance of evidence, why shouldn't the court hearing be remanded to that of a jury trial?
3. What should happen if any of the lower courts or superior courts fail to acknowledge "spoliation of evidence" in a federal court case as a matter of law? If there wasn't any sanction or dismissal, should the party at fault submit to a new trial?
4. How will the circuit courts decipher a way for establishing a specific 'rule of thumb' for denoting "substantial similarities" in copyright infringement cases for all courts? Notably, the guidelines in some cases are contingent upon intrinsic/extrinsic factors, and in others, the "ordinary observer test" or expression of ideas.

II. PARTIES TO THE PROCEEDINGS BELOW

Petitioner, Freda J. Day was a plaintiff-counter-defendant appellee in the U.S. Court of Appeals for the Fourth Circuit. Respondents were Harpo Productions, an Illinois Corp.; OWN: Oprah Winfrey Network, LLC, a Delaware Corporation; Lionsgate Entertainment Corporation Craig Wright, an individual, Oprah Winfrey, an individual were defendants-counter-plaintiff-appellants in the U.S. Court of Appeals for the Fourth Circuit.

III. RELATED PROCEEDINGS

The proceedings directly related to this case are: Freda J. Day v. Oprah Winfrey et. al, U. S. Court of Appeals for the Fourth Circuit. The civil copyright case was entered on May 28, 2021. An opinion was filed on June 23, 2022, affirmed for the Defendants. Petition for rehearing en banc denied on July 25, 2022. Day vs. Oprah et. al, No. 0419-3; 3:19-cv-00277-MOC-DCK entered the U.S. District Court for the Western District of North Carolina. Judgment entered May 12, 2021. Notice of appeal filed May 27, 2021.

IV. TABLE OF CONTENTS

I. QUESTIONS PRESENTED	i
II. PARTIES TO THE PROCEEDINGS BELOW.....	ii
III. RELATED PARTIES.....	ii
IV. TABLE OF CONTENTS.....	ii
V. TABLE OF APPENDICES.....	iii
VI. TABLE OF AUTHORITIES	iv
VII. OTHER AUTHORITIES	v

VIII. PETITION FOR WRIT OF CERTIORARI.....	1
IX. OPINIONS.....	1
X. JURISDICTION.....	1
XI. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	vi, 1,2,3
XII. STATEMENT OF THE CASE.....	5
XIII. REASONS FOR GRANTING THE CERTIORARI.....	9
XIV. CONCLUSION.....	32

V. TABLE OF APPENDICES

APPENDIX A	United States Court of Appeals for the Fourth Circuit Rehearing Denied, Filed July 25, 2022: App. A
APPENDIX B	United States Court of Appeals for the Fourth Circuit Opinion, Filed June 23, 2022 App. B
APPENDIX C	United States District Court for the Western District of North Carolina, Opinion, Denied, May 26, 2022. App. C
APPENDIX D	United States District Court for the Western District of North Carolina, Order, Granted, Summary Judgment, May 12, 2021. App. D
APPENDIX E	United States District Court for the Western District of North Carolina,

	Order, Motion to Produce Documents Dec. 28, 2020	App. E
APPENDIX F	United States District Court for the Western District of North Carolina, Order, Motion to Dismiss, Denied Jan, 17, 2020.	App. F
APPENDIX G	Local Rule 40	App. G
APPENDIX H	17 U. S. Code § 105	App. H
APPENDIX I	17 U. S. Code § 501	App. I
APPENDIX J	17 U. S. Code § 503	App. J
APPENDIX K	28 U. S. Code § 1254 (1)	App. K

VI. TABLE OF AUTHORITIES

CASES

Ansehl v. Puritan Pharmaceutical Co., 8 Cir. 62 F. 2d 1315	9
Arnstein v. Porter 154 F. 2d 464, 468 (2d. Cir. 1946)	5
Berlin v. E. C. Productions, Inc. 329 F. 2d 541 (2d Cir.1964)	7
Benay v. Warner Bros. Ent., 607 F.3d 620, 624 (9th Cir. 2010)	12
De Acosta v. Brown, D.C.S.D.N.Y., 50 F. Supp. 615, 1943	13
Denker v. Uhry 830 F. Supp. 722, 729 (S. D. N. Y 1992).....	6
Felderman v. Liggett & Myers Tobacco Co., Supra, 23 F. Supp. 303.....	9
Francesca Gregorini v. Apple Inc., No. 20-55664 (9th Cir. 2022)	12
Garza v. Marine Transp. Lines, Inc. 861 F. 2d 23, 26 (2d Cir. 1988).....	7

Hoehling v. Universal City Studios Inc, 618 F. 2d 972. 977.	5
Irish Rover Entertainment, LLC v. Aaron Sims (C.D. Cal. 2020)	19
Jones v. CBS, Inc. 733 F. Supp. 748, 752.....	18
Klinger v. Conan Doyle Estate, Ltd. 758 F. 3d. 496. (Crt. Of Appeals) 7th Cir. 2014.....	8
Kouf v. Walt Disney Pictures & Television, 16 F.3d 1042, 1045 (9th Cir. 1994))	12
Laureyssens v. Idea Group, Inc. 964 F. 2d at 140.....	18
Mattel, Inc. v. MGA Ent., Inc., 616 F.3d 904, 913-14 (9th Cir. 2000)).....	12
Metro-Goldwyn Mayer, Inc. v. Atlanta Cooperative Productions, Inc. 479 f Supp. 351, 355 (N. D. Ga. 1979).....	7
Nichols v. Universal Pictures Corporation, 43 f. 2d 119 (2d Cir. 1930)	5
Sheldon v. Metro-Goldwyn Pictures 81 F.2d 49 (2d Cir. 1936).....	8, 14
Sid and Marty Krofft Television Productions, Inc. v. McDonald's Corp., 562 F.2d 1157 (9th Cir. 1977).....	18
UIRC-GSA Holdings, Inc. v. William Blair & Co., L.L.C., No. 15-9518, 2017 U.S. Dist. LEXIS 46714 (N.D. Ill. Mar. 29, 2017).....	13
Walker v. Time Life Films, 784 F. 2d at 48.....	9
Walt Disney Productions v. Air Pirates, 581, F. 2d 751 (9th Circuit 1978).....	7, 12
Yeastayer, LLC vs. Kendrick Lamar, [2020].....	11

VII. OTHER AUTHORITIES

Concepción de León <i>Nora Roberts Sues Brazilian Writer That She Says Plagiarized Her Work</i> New York Times (April 24, 2019)	
Chris Freeland, <i>Internet Archives Seeks Judgment In Federal Lawsuit Filed By Publishing Companies</i> , http://blog.archive.org (July 8, 2022)	11
Henry J. Lanzalette, <i>Is Proof of Access Still Required - Proving Copyright Infringement: Using the. Strikingly Similar Doctrine: : An Analysis of the Fourth Circuit's Decision in Bouchat v. Baltimore Ravens, Inc.</i> , <i>Jeffrey S. Moorad Sports L.J.</i> 97 (2002)	9, 10

CONSTITUTIONAL PROVISIONS

U.S.CONST. ARTICLE THREE	2
U.S.CONST. ARTICLE FOUR	2
U.S.CONST. FIFTH AMENDMENT: DUE PROCESS CLAUSE	3, 13
U.S.CONST. FOURTEENTH AMENDMENT	2, 14

STATUTES AND RULES

Fed. R. Civ. P. 2(f)	12, 13
Local Rule 40	12
17 U. S. C. § 105	8
17 U. S. C. § 106 (1)	6
17. U. S. C. § 106 (2)	6
17 U. S. C. § 1254 (1)	1

VIII. PETITION FOR WRIT OF CERTIORARI

I, Freda J. Day, a resident of Charlotte, North Carolina, as a pro-se litigant respectfully petitions this court for a writ of certiorari to review the judgment of the Fourth Circuit Court of Appeals.

IX. OPINIONS

The United States Court of Appeals for the Fourth Circuit's order denying rehearing en banc appears at App. A and is not published. The opinion of the United States Court of Appeals for the Fourth Circuit to review the merits to this petition appears at App.B and is unpublished. The opinion of the United States District Court for the Western District of North Carolina which appears at App. C is unpublished. The order of the United States District Court of the Western District of North Carolina granting summary judgment to the Defendants appears at App. D and is published. The United States District Court of the Western District Court of N. C. that appears at App. E and is unpublished. The opinion of the United States District Court for the Western District that denied motion to the Defendants appears at App. F and is unpublished.

X. JURISDICTION

An untimely petition for rehearing was denied by the United States Court of Appeals for the Fourth CircuitA on July 25, 2022, and a copy of the order denying rehearing appears at Appendix A. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

XI. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION ARTICLE THREE provides Section 1:

The Judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of

the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office. Section 2 : The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

ARTICLE Article IV of the Constitution provides:

Section 2: The privileges and immunities clause of the Constitution requires states to treat residents and nonresidents the same by giving them the same "privileges and immunities. In other words, state law cannot favor in-state residents over citizens of other states. The phrase

"privileges and immunities" appears again in the Fourteenth Amendment, which guaranteed due process and equal protection under the laws for all citizens after the Civil War.

U. S. CONST. FOURTEENTH AMENDMENT provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which should abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law

The Fifth Amendment of the U.S. Constitution provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

INTRODUCTION

Petitioner, Freda J. Day wrote a memoir about her life encounters, as well as, the spiritual path she encountered to overcome those trials and tribulations. Most of these stories resonated around family, friends, and church members. The book originated from the annotated lifestyle of her parents during the early fifties with affluent backgrounds; as they aspired to accumulate

wealth. As the title of the book suggests, “From the Green Leaf to Greener Pastures,” it references the cafe/restaurant owned by the Petitioner’s father called, “Greenleaf”.

Although it was a juxtaposition from past beginnings, it evolves into a modern setting with themes, moods, dialogues and plots that challenge her faith in God. The complaint of copyright infringement was filed in the Western District of North Carolina on June 14, 2019. Petitioner was granted copyright protection in April 3, 2003, and New Age World Publishing (NAWP) filed “all rights reserved” in 2005.

A hearing was promulgated by the Respondents’ for “motion to dismiss” citing a “frivolous” lawsuit. Notably, the *Greenleaf* show was canceled during the summer months once the legal suit had been placed on the docket for a hearing.. Oprah Winfrey stated in several interviews that she had met with Craig Wright, writer/ creator who approached her with the idea for the show. On December 16, 2019, a “motion hearing” was conducted by the U.S. District Court of the Western District of North Carolina.

The attorneys for the Respondents’ statement that, “first, and most important, the law is absolutely clear in the courts and elsewhere that the claim for copyright infringement cannot be used on random similarities, scattered throughout the artist’s work, in which the Petitioner argued that it wasn’t applicable to the filing of the copyright infringement claim.

Also, the Respondents suggested such purported similarities were “inherently subjective and unreliable.” In as much, the Respondents claimed that the “*Greenleaf*” television drama’s subject nature did not align with any one, plot, theme, setting, sequence, or any events throughout the entire series. Therefore the Respondents’ argued that the substantial similarities throughout the book had been cited in the “juggling” of the storyline. Thus, the *Greenleaf* drama wasn’t perpendicular to the ‘expression of ideas’ that was presented in the airing of the show.

In opposition, the Petitioner maintained that there were many scenes in the *Greenleaf* show were often convoluted, take out of context, so that it appeared, manifestly trivial or disregarded as an extreme difference in the show. So if a serial copyright infringer has practiced this violation, notably the writer would have possessed the capability to scatter portions from the artist's works to distort substantial similarities.

Research has shown that over 70% of all dramas, movies, series are based on a book or some other variation of adaptation, as this was observed and applicable in the television drama, "*Greenleaf*".

XII. STATEMENT OF THE CASE

A. Legal Background

Petitioner opposed the summary judgment due to the fact that "copyright infringement" extended throughout the entire book. To prove infringement, one must demonstrate that the Respondents copied Day's work and that they improperly appropriated 'its expression'. *Arnstein v. Porter* 154 F. 2d 464, 468 (2d. Cir. 1946); *Hoehling v. Universal City Studios Inc*, 618 F. 2d 972. 977.

Ordinarily, wrongful appropriation is shown by proving a 'substantial similarity' of copyrightable expression. *Nichols v. Universal Pictures Corp.*, 45 F. 2d, 119, 121 (2d. Cir. 1930). Because substantial similarity is customarily an extremely close question of fact, "summary judgment is usually frowned upon in copyright litigation.

Henceforth, Petitioner in pursuit of a trial by jury, communicated with the Defendants through interrogatories, responses and motions to further sustain the copyright infringement claim against the Respondents. Petitioner provided a preponderance of evidence that

exemplified that the opposing party had failed to show any credibility in their efforts to cooperate with the Petitioner prior to filing the motion for summary judgment in the lawsuit.

First and foremost, the Petitioner sustained a viable cause for bringing forth a claim for copyright infringement by proving two elements: (1) ownership of a valid copyright and (2) that Defendants violated one of the exclusive rights under section 106 of the Copyright Act (e.g., the right to reproduce the copyrighted work in copies or phono records, §106(1), or the right to prepare derivative works, §106(2)).³²

In general, with respect to the first element, the copyright registration certificate served as a “prima facie” element for the Petitioner that a valid case of copyright infringement occurred. With respect to the second element, for claims of violations of the right to reproduce the work, §106(1), the Petitioner must prove “copying of the constituent elements of the work that are original.”

In contrast to all this, the “expression of idea” comes through to the average reader on so many levels” upon reading the book. *Arnstein V. Porter*, 154 F. 2d at 468; and *Denker v. Uhry* 830 F. Supp. 722, 729 (S. D. N. Y 1992)...find that when improper appropriating only is at issue, expert testimony is irrelevant. Petitioner had met the legal mandates that incited this copyright infringement lawsuit against the Respondents, however; was denied the trial by jury that would have been critical to the outcome of the lawsuit.

B. Procedural History and Discovery Response

Petitioner Day was in opposition to the motion of summary judgment holding that it was prematurely designated in lieu of the slated time allotted for the discovery process. Petitioner was not given the opportunity to gather all facts and evidence during the first stage of the ‘discovery process’ which had been extended to April 30, 2021. Summary judgment is

appropriate only if the moving party can show that there are no "genuine issues" as to any material fact and that the moving party is entitled to a judgment as a matter of law.

However, the court must draw all reasonable inferences and resolve all ambiguities in favor of the nonmoving party. *Garza v. Marine Transport Lines, Inc.*, 861 F. 2d 23, 26 (2d Cir. 1988). In addition, the Respondents failed to submit any documents that supported any real evidence that was requested during the discovery stage. Since the Petitioner acknowledged that the Respondents' withheld specific "request for productions" that would have shown that Oprah Winfrey et. al, did in fact gain access to the Petitioner's artist work, i. e., *Walt Disney Productions v. Air Pirates*, 581, F. 2d 751 (9th Circuit 1978); *Berlin v. E. C. Productions, Inc.* 329 F. 2d 541 (2d Cir. 1964).

Petitioner concluded that the Respondents more likely than not did use the artistic works from the book/manuscript online as a derivative to develop the television drama series, "Greenleaf". *Metro-Goldwyn Mayer, Inc. v. Atlanta Cooperative Productions, Inc.* 479 f Supp. 351, 355 (N. D. Ga. 1979). In determining whether two works are substantially similar in protected works, a plaintiff must satisfy both an extrinsic, or objective test and intrinsic or subjective test.

Irrespectively, the Respondents during the first stages of the discovery stages didn't comply with the Petitioner's requests. Whereas Petitioner requested (16) "requests for productions" from the Defendants' attorneys. Petitioner received the same repetitive responses from the moving party, "Defendants further object that the request is vague and ambiguous," or defendants further object that the request seeks information that is not relevant to any party's claim or defense and is not proportional to the needs of the case".

Therefore, the Petitioner requested more time during the discovery process due to the fact that the Respondents' opinions continued to suggest that such purported similarities were "inherently subjective and unreliable. The idea-expression dichotomy reveals a significant role in determining whether a copyrighted work has been infringed.

Upon addressing the matter of copyright infringement, Federal copyright law, 17 U. S. C. § 105, endeavors to strike the proper balance between protecting an author's expression of an idea and encouraging the idea itself. The courts must determine whether there are similarities in expression between two works, and if similarities in expression do exist, whether they cross a threshold of similarity that constitutes copyright infringement.

C. LEGAL STANDARD

Petitioner maintains that Respondents had gained access to the original disk through use of the Internet. In accordance with Day's argument that indicated it was impossible to gain access to all the author's content other than direct online exposure to all the contents of the memoir, "From the Greenleaf to Greener Pastures. *Sheldon vs. Metro Goldwyn Pictures Corp*, 2d Cir. 1936. Although the ideas, abstract, conceptions and similar matter are not protectable, on the other hand it is clear that the manner of treatment, expression, the incidents and details and the sequence of events by which the works are developed are the ideas that are copyrightable elements of the Petitioner's artistic work and should have been protected.

The Petitioner's book is a direct reflection of faith, God, sinners, and Christians dispersed in more than half of its entirety, which was substantially similar to the storyline for the television drama, "*Greenleaf*". *Klinger v. Conan Doyle Estate, Ltd.* 758 F. 3d. 496. (Crt. Of Appeals) 7th Cir. 2014. Therefore, the motion for summary judgment should have been denied. *Jones v. CBS, Inc.* 733 F. Supp. 748, 752.

“While summary judgment may be an appropriate remedy in copyright infringement lawsuits, “such relief will be denied when the question of substantial similarity is which one of reasonable minds could differ.” Walker v. Time Life Films, 784 F. 2d at 48.

The fact that Oprah Winfrey was mentioned in the book escapulates substantial grounds as a reasonable motive for Craig Wright’s strategic move to submit the proposal of the show idea to her. Prior to the airing of the first show on June 21, 2016; Petitioner, Day had submitted a copy of the book by certified mail to the Respondents, at that time, the book has been on the Amazon website since 2005.

The publishers for New Age World Publishing, Drinking Gourd Imprints, had failed to respond in answering what happened to their version that had been duplicated onto the original disk. Day clearly denotes that copyright infringement occurred; although, the Respondents’ opinion implied a one-sided version of the book without any reference to any of the major portions of the book that were identical to the show, “Greenleaf”.

In order to constitute an infringement of the copyright of a book it is not necessary that the whole or even a large portion of the book shall have been copied.. It is sufficient if a material and substantial part shall have been copied, even though it be but a small part of the whole, Henry Holt & Co., Inc. v. USE of Felderman, Liggett & Myers Tobacco Co., supra, 23 F. Supp. 303; West Publishing Co. v. Lawyers' Cooperative Publishing Co., 2 Cir., 79 F. 756; and Ansehl v. Puritan Pharmaceutical Co., 8 Cir. 62 F. 2d 131.

XIII. REASONS FOR GRANTING THE WRIT

Question 1:

This question being relevant since having “access” to the internet, should be considered a major component as proof for establishing copyright infringement. On the contrary with all due

respect, the question of access is a subjective one. Everyone has had access to almost anything since the origin of the Internet. ¹The brief filed in the U. S. District Court against Internet Archive explains how it is advancing the purposes of copyright law by furthering public access to knowledge and facilitating the creation of new creative and scholarly works.

In accordance, there are just a handful of people who lack integrity and prey on the vulnerable. As stated in my complaint, there were an excessive amount of elements that were in the Petitioner's book (even though the "now defunct" publisher recommended, the petitioner excludes those parts from the book), that somehow still appeared in the *Greenleaf* series. The only way the Respondents could have had access to the manuscript was via the publisher placing it online, or the U. S. Library of Congress Copyright Office.

Petitioner infers quote from, " Henry J. Lanzalottie: Is Proof of Access Still Required - Proving Copyright Infringement... . In each circuit striking similarity can be enough to prove copying without other independent evidence of access."

Thus, *access* can be reliant upon the integrity of the parties. When the Petitioner sent the Respondents a copy of her protected works, Petitioner believed these were influential people and this was the Petitioner's only (valid) reason for sending the protected works to Oprah Winfrey and Tyler Perry who are known as business partners.

Now if any of the Respondents believed that Petitioner's book, "From the Green Leaf to Greener Pastures," had something to sell to their audiences; it's human nature that greed and glory would override integrity and to avoid detection, it is also human nature to cover up one's tracks with willful copyright infringement. It's also human nature not to want to be singled out if the Respondents are identified as celebrities and have endless cash, the celebrity infringer is

going to use everything in their power and money to get away with it to avoid public embarrassment.

For the following reasons, the items listed below should be considered prima facie, evidence that the term “access” should be evidenced from a newer ‘test’ perspective.

The Court of Appeals for the Fourth Circuit failed to hold that the Petitioner’s proof of a reasonable possibility of access due to the preponderance of evidence, i.e., as in the case of Bouchat-vs-Baltimore Ravens Inc. (2002), the court decided that there was an “inference of access”. Henceforth, in the two works, “From the Greenleaf to Greener Pastures,” and “Greenleaf,” which were so strikingly similar as to cause an inference of access.

The issue of “access” in my case should have been considered for a ‘jury trial” based upon the “widely disseminated” clause, i.e. Yeasayer, LLC vs. Kendrick Lamar, 2020, since my manuscript was available on the Internet for years by the publishing company that shutdown their business with no forwarding information.

A new material factor or legal master was overlooked. ¹The Honorable Judge Cogburn of the U. S. District Court for the Western District, in his final decision did not single out that he was basing his decision on ‘lack of access,”in fact he only references copyright infringement. ² The District court conveys this discrepancy in the transcript from the hearing on December 16, 2020. ³Nora Roberts won her copyright infringement case proving that several of her books had been plagiarized from “access” on the internet. Nora Roberts sued a romance novelist for copyright infringement for paraphrasing material from 10 of her novels.

¹ MR. THOMAS: Your Honor, I’m not aware of any Fourth Circuit precedent that holds that, and –in other words, the case law that I’m aware of, like the Lanar case, some of the cases cited in our brief, show that access is a stand-alone requirement. THE COURT: Right, I agree. I think it’s stand alone, but I don’t think that you can—I think if you’ve got similarity if it—I’m not aware of a case where it says that if—evidence that the work is very, very similar is some evidence of access. If there is not—if there’s that case, I certainly would like to hear it. I’d like to see it.

² But I’m not aware of that. I’m not aware that there is a case that says that you cannot use the fact that something is substantially similar as circumstantial evidence toward the issue of access. It may not be totally dispositive, but it may or may not be.

³ “A lot of the other writers involved in this, they don’t have the money to fight it,” said Nora Roberts. “I do have the money.”

Petitioner was denied rehearing en banc by the Fourth Circuit Court of Appeals in accordance with Local Rule 40 (c) . The petition was denied as “untimely”. Petitioner did not get to invoke a change in the law regarding “access” that occurred after submission of the Petitioner’s case and was overlooked:

⁴On February 22, 2022 the Ninth Circuit Court reversed and remanded.

<https://cdn.ca9.uscourts.gov/datastore/memoranda/2022/02/22/20-55664.pdf> stated that "reasonable minds could differ on the issue of substantially similar" and it was suggest that a jury could and should be instructed on the "selection and arrangement test" as the selection and arrangement test is to prevent courts from breaking works into such detailed components that you lose what the work is about:

Thereby stating, to state a claim for copyright infringement, a plaintiff must allege, as relevant here, that the defendant “cop[ied] enough of the plaintiff’s expression of those ideas or concepts to render the two works ‘substantially similar.’” Id. at 1117 (quoting *Mattel, Inc. v. MGA Ent., Inc.*, 616 F.3d 904, 913-14 (9th Cir. 2000)). To assess substantial similarity, we use “a two-part analysis consisting of the ‘extrinsic test’ and the ‘intrinsic test.’” Id. at 1118. The extrinsic test, which is “the only test relevant in reviewing the district court’s ruling on a motion to dismiss,” i.d., focuses on articulable similarities between the plot, themes, dialogue, mood, setting, pace, characters, and sequence of events in two works.” *Benay v. Warner Bros. Ent.*, 607 F.3d 620, 624 (9th Cir. 2010) (quoting *Kouf v. Walt Disney Pictures & Television*, 16 F.3d 1042, 1045 (9th Cir. 1994))

The Honorable Dana L. Christensen, United States District Judge for the District of Montana, sitting by designation.

QUESTION 2:

In referencing the “due process” clause of the law as it pertains to the civil procedure for copyright infringement, it is evident that in pursuant to Fed. R. Civ. P. 2(f), the Petitioner was

⁴ FRANCESCA GREGORINI, Plaintiff-Appellant, v. APPLE INC.; M. NIGHT SHYAMALAN, an individual; BLINDING EDGE PICTURES, INC., a Pennsylvania corporation; UNCLE GEORGE PRODUCTIONS, a Pennsylvania corporation; ESCAPE ARTISTS, INC.; DOLPHIN BLACK PRODUCTIONS, a California corporation; TONY BASGALLOP, an individual; ASHWIN RAJAN, an individual; JASON BLUMENTHAL, an individual; TODD BLACK, an individual; STEVE TISCH, an individual, Defendants-Appellees. Because we reverse on the merits, we also necessarily reverse the district court’s award of attorney’s fees.

contacted on June 4, 2020 by telephone to participate and implement procedures designated in the Certification and Report of FED R. Civ. P. 2(f) for the conference and discovery plan in regards to the Petitioner's Complaint. Throughout these civil procedures, Petitioner was prompted to notify the District Courts that the Respondents were unwilling to comply with the Petitioner's (requests for production) for discovery materials that would have been admissible evidence deemed necessary to prove her civil case.

The Respondents filed in Opposition to Petitioner's Motion to Compel Production of Documents. Henceforth in lieu of supposition of information provided by the Respondents, the Petitioner contacted the court after sending an email to the opposing party stating the Fifth Amendment Due Process Clause.

Respectfully, summary judgment at the stage of discovery shouldn't be a juxtaposition for deciding if two works are substantially similar, since all copied ideas, or expressions do not adhere to a precedent, "set in stone" or "standardized language". *UIRC-GSA Holdings, Inc. v. William Blair & Co., L.L.C.*, No. 15-9518, 2017 U.S. Dist. LEXIS 46714 (N.D. Ill. Mar. 29, 2017).

In which, the Court applied Seventh Circuit test for substantial similarity, asking objectively "whether 'the two works share enough unique features to give rise to a breach of the duty not to copy another's work.'" Both the Greenleaf TV series and the book "From the Greenleaf to Greener Pastures," in which some of the title chapters are the same with identical scriptural format.

Petitioner was consistent through motions, proceedings, interrogatories to willfully validate how these expressions have been used as the derivative for the creation of the show, Greenleaf, *De Acosta v. Brown*, D. C. S. D. N.Y., 50 F. Supp. 615, and his findings of fact, are too pointed to justify any other conclusion than that of copying. Although, the ideas, abstract conceptions and similar matters are not protectable, on the other hand, it is clear that the manner of treatment, expression, the incident and details and the sequence of events by which the works

are and developed the idea, are copyrightable element of his work and shall be protected.

Sheldon v. Metro-Goldwyn Pictures 81 F.2d 49 (2d Cir. 1936).

Petitioner retorts to the constitutional guarantee of the right to compelled testimony until the case could have been further vindicated in a fair and impartial jury trial. Petitioner maintained that was violated throughout the “discovery” process stage of the Court procedures. In accordance, the petitioner Fourth Amendments rights had also been in violation of the Petitioner’s constitutional rights.

The Petitioner contends that in the Respondents' due diligence to win their case, they failed to prove that the book nor the manuscript never reached the Respondents during the “discovery process”. These mitigating factors weren’t presented to the Courts; thus, the Respondents were allowed to do as they pleased regarding the discovery process, which wasn’t even fair in the judicial outcome of the case.

After the Respondent’s attorneys became aware that this had been an issue reported to the U. S. District Court of the Western District, the Respondents immediately moved to a motion for summary judgment. The opposing party claimed that copyright cases are particularly susceptible to being decided on summary judgment and should have been routinely granted in copyright cases as a “matter of law”.

Respectfully, in the 21st century, the Petitioner does not find that this action was valid or warranted. Petitioner maintains that the Court is empowered to compare the works at issue to continue to determine if they are substantially similar or if unable, appoint a trial by jury to determine the outcome.

The Judge used a summary of the Petitioner’s book and conveyed it in a derogatory/biased manner, and in Your Honor’s opinion in a way that could influence the reader.

However, when the Honorable Judge summarizes the Respondents' TV drama, he used short sentences referenced by a, b or c and numbers.

The Judge, therefore comes to the conclusion and uses the words in the (3) transcripts from the "Zoom hearings;" in sum, the Book and Greenleaf (Your Honor doesn't use the name of the book; yet, constantly acknowledges the name of the TV series.) Again the Judge is being disingenuous by creating a perceived dichotomy by referring to "the Book" and not its title "From the Greenleaf to Greener Pastures." The Judges does not elaborate on how he came to the above conclusion or if 'Your Honor' read "From The Greenleaf to Greener Pastures" as if the court watched all 12 episodes of the Greenleaf TV show, season 1. Petitioner assumed that would be the function of the jury with guidance from the Judge.

In summary, the Judge does the bidding for the Defendant, Mr. Wright in the footnote where Mr. Wright stated, "he never saw, read or even heard of the book; yet, the book had been available for sale on the internet since before Mr. Wright claims he wrote the series. Mr. Wright admits that he got the names off the internet from the writer, Flannery O'Connor written "in or about" 1965.

Here again the Judge does not elaborate on how Mr. Wright, Defendant, came upon Flannery O'Connor when Mr. Wright has admitted that some of the names which are similar to that of "From the Greenleaf to Greener Pastures". Conclusively, Mr. Wright had in fact got off the internet. Here again, Mr. Wright has taken something from an author such as Flannery O'Connor without her permission because the author has long been deceased.

Question 3:

How is justice, “equal justice,” when either party purposely discloses pertinent information from ‘discovery’ to sway the litigants, judge and jury? ⁵Petitioner should have had a new trial when she submitted this information to the U. S. Court Of Appeals for the Fourth Circuit, inciting “spoliation of evidence” with the substantial documents proving this to the appellate court.

The court’s opinion conflicts with a decision of the U.S. Supreme Court, this court, or another Court of Appeals and the conflict was not addressed. The Respondents held onto the manuscript which originally was mailed to the Respondents on August 13, 2019, and was not introduced during discovery, or even admitted as evidence period as a preamble to the court’s proceedings.

The manuscript held vital information that was registered in the Copyright office that the Plaintiff mentioned all throughout the hearing as pertinent evidence to the novel, “From the Greenleaf to Greener Pastures.” The defendants knowingly had access to the manuscript prior to the hearings held December 16, 2019, and only alluded to the book, which was a clear precedent for “spoliation of evidence. or the case involves one or more questions of exceptional importance. Such as, the Respondents had made a derivative of the book by adaptation and that does not necessarily imply that all the elements are present in the infringement as well as a dilution factor when original content is fashioned into a TV Series.

Timeline of Events for Petitioner’s Missing Manuscript (omitted from the discovery stage).

July 8, 2019..... Respondents requested a copy of manuscript from the LOC (Library of Congress.

August 12, 2019..... It is mailed to Steve Berlowitz (firm of Pryor/Cashman) for Lionsgate Entertainment (Respondents).

March 29, 2020-

Dec. 21, 2021Petitioner requests a copy of her manuscript from the U.S. Library of Congress (LOC). Petitioner’s request is prolonged with numerous

⁵ Typically, the court will instruct the jury that it may (or must) preserve the evidence-had it been preserved-would have been unfavorable to the party who failed to preserve it. In particularly egregious circumstances, the court can dismiss the action (if the plaintiff is guilty of spoliation) or enter a default judgment (if spoliation was committed by the defense).

delays, including that of the office being closed due to Covid. Fifty-two emails/phone calls later to no avail, an employee of the LOC ceases communication with Petitioner.

December 28, 2020..... District Court judge makes an order for Plaintiff to be provided with time to secure the manuscript registered as the Complaint. The District Judge orders that the Petitioner be provided 20 days, within the entry of the Court's order, to have received original copies that were registered with the Copyright Office as Petitioner's evidentiary proof of "substantial similarity." The Copyright office refused to acknowledge this order, so my case was *perjured*.

Feb. 13, 2022.....Petitioner seeks help of the U.S. FOIA for procuring manuscript.

March 11, 2022.....Petitioner speaks with,section head whom was contacted by the FOIA.gov. Another LOC employee informs Petitioner that the manuscript was deemed missing, after it was requested by the Defendants.

June 19, 2022..... Petitioner emailed the LOC section head; asked the employee to investigate if work could have possibly been misfiled with documents affiliated with the Greenleaf TV series. Since it had been over (2) years, and Petitioner's manuscript had still not been located.

June 23, 2022..... The US Court of Appeals for the Fourth Circuit made a decision, after Petitioner had not received not any response or communication to the Petitioner's first, second, third, or fourth addendum to the original informal briefing petitioning for a jury trial.

June 28, 2022..... Plaintiff receives an email from the LOC stating manuscript was found.

QUESTION 4:

Herein, the law is absolutely clear in this Circuit and elsewhere that a claim for copyright infringement cannot be based only on 'what is deemed as random similarities scattered throughout the works; yet; once copying is established, "the copyright holder next must that the copying amounts to an improper appropriation" by demonstrating that substantial similarity to protected material exists between the two works. *Laureyssens v. Idea Group*, 964. F. 2d at 131 (1992), or the case involves one or more questions of exceptional importance. That the Defendants had made a derivative of the book by adaptation and that does not necessarily imply

that all the elements are present in the infringement as well as a dilution factor when original content is fashioned into the Greenleaf TV Series.

While summary judgment may be an appropriate remedy in copyright infringement lawsuits, 'such relief will be denied when the question of 'substantial similarity' is which one of reasonable minds could differ. *Jones v. CBS, Inc.* 733 F. sup. 748, 752; *Laureyssens v. Idea Group, Inc.* 964 F. 2d at 140.

When dramatic works are at issue, this method involves more than the mere quantitative analysis of dissecting the two works and matching the similarities and differences. It also requires the intrinsic test of the response of an ordinary reasonable person, a form of qualitative analysis. *Sid and Marty Krofft Television Productions, Inc. v. McDonald's Corp.*, 562 F.2d 24 1157 (9th Cir. 1977). ⁶Being that the extrinsic and intrinsic test can be more objective than subjective as the industry is constantly changing.

The Second's Circuit test for assessing substantial similarity in a copyright infringement case is the "ordinary observer," test. *Peter Pan Fabrics Inc. v. Marin Weinder* 274 F.2d 487 (2nd Cir. 1960). It can be debated since the Petitioner's case ended up in the Fourth Circuit, which uses the extrinsic/intrinsic test model. *Cavalier v. Random House*, 297 F. 3d 815, 822 (9th Cir. 2002).

It is certainly debatable whether it is better to have clear rules or rather concepts and principles that people can use to regulate their lives. The difficulty with clarity is that rules are often over or under inclusives; whereas, the difficulty with concepts and principles is that they are often ambiguous, and difficult for people to regulate their lives with certainty. Certiorari is warranted to prevent the untenable result that creative works consisting of substantial similarities

⁶ First circuit, Third Circuit, Fifth Circuit and Seventh Circuit follow the ordinary observer test. Circuits that follow the extrinsic/intrinsic test model are Fourth and eighth circuit.

to reasonable minds could be lawful in one jurisdiction, and unlawful in another, depending on which circuit court has to ascertain the meaning of the artist's original works.

Respectfully, the courts held three conference hearings where as the merits of the "ordinary observer test," was not granted by the lower courts of the Circuit court, after all the procedural of discovery, interrogatories, and support for a trial jury was exhausted and denied. The court recognized that there was some copying when the motion to dismiss was denied. Since the defendant was still denying copying and there was sufficient similarity between the works to show copying, there should have been a trial in place to produce testimony of experts to aid in the trier of facts.

Petitioner had submitted affidavits from those of ordinary readers that concluded the artistic works were similar. Especially, since the hearings lasted for three years consisting of sheer rebuttals among the two parties. Petitioner acknowledgment to what occurred in the case prior to summary judgment, and this conclusion of the case that lasted for four years of court procedurals, is identical to that of Irish Rover Entertainment, LLC, -vs-Aaron Sims, Matt Duffer, Ross Duffer, Netflix Inc.; Netflix Streaming Services, Inc., LAPS Entertainment.

Herein, Petitioner submitted pages and pages of spreadsheet comparisons that illustrate how the Respondent's unauthorized derivative works has been a basis for the development of the TV show, *Greenleaf*. The Petitioner has also included similar pictures, designs including backgrounds, used in the artistic concept of the show, which has been apparently overlooked in the courts.

In adherence, if the spreadsheets that had been submitted had been examined under close scrutiny in a trial by jury, there wouldn't have been any question regarding the extrinsic/intrinsic similarities. Listed below are a few of the substantial similarities that incite a preponderance of

evidence that indicates more likely than not, the Respondents did gain access and infringed upon the Petitioner's artistic work used as a derivative for development of the show. Listed below Petitioner has extracted some substantial similarities from the list of (100) similarities depicted as evidence exhibited throughout the court procedures in the U. S. District Court of the Western District.

PLOT & SEQUENCE OF EVENTS

A. (From the Greenleaf to Greener Pastures)

In the first (2) chapters, Freda discloses the close bond between their father and her. He would take her to church every Sunday as early as the age of four. She also writes of her sister's death as she elaborates on her family history, "where she was labeled, "the first give to live". Also she describes wandering through the corn stalks as they search for their grandmother who suspiciously drowns in the pond on their property.

A1. [Greenleaf TV Show]

In the first episode, Grace returns home to her father's estate, in which it is quite evident he is happy for her return. Her mother exhibits a not so pleasant rapport to her daughter's return. But the close bond between her father, the Bishop and her are displayed in the first episode. Grace is there to attend the funeral for the loss of her sister who mysteriously drowns in the pond surrounding the family estate. At the funeral, they gather as a family, and recite Psalm 23, "he maketh me lie down in green pastures.

B. (From the Greenleaf to Greener Pastures)

Ed is a politician running for city councilman. He goes to Washington at around the same time he's preparing for his campaign. He's constantly involved in politics and spends time working as a campaign manager for other candidates.

B1. [Greenleaf TV Show]

At the Greenleaf estate, the family members gather at the dinner table, while Bishop James discusses the senator, Bob Banks running for senator, upon his return from Washington. His opponent is Basie Skanks.

C. (From the Greenleaf to Greener Pastures)

Freda's mother is the matriarch that mistreats their sister, Ethel. The sisters accused their mother of mistreating and isolating her from the rest of the girls.

C1. [Greenleaf TV Show]

In Season 1, Lady Mae is exemplified as the controlling matriarch that has a hostile relationship with her daughter, Grace. She treats her more cruelly than the other sisters in the family. Grace and Mae quarreled about her mother being responsible for giving her sister to their Uncle Mac, which led to her death.

D. (From the Greenleaf to Greener Pastures)

Jasper, and his brother Bunion conducted business transactions that involved gambling or bootlegging whiskey. The decline of Greenleaf, was due to the internal flaws of the Internal Revenue Service that froze all of his cash and property assets.

D1. [Greenleaf TV Show]

The bishop and his brother are being audited for embezzling money and tax evasion. The secretary reveals to her father and brother that they are in need of all income statements, property statements, and investments accounts

E. (From the Greenleaf to Greener Pastures)

Ed is accused of being gay while dating, and the intensity of Freda's suspicions of him being gay, only creates turmoil in their marriage.

E1. [Greenleaf TV Show]

Kevin suspects himself of being attracted to gay men and wants to experiment during the onset of his early marriage.

F. (From the Greenleaf to Greener Pastures)

At the wedding of Freda & Ed, her best friend serenades her with a song by Stevie Wonder, "A Ribbon in the Sky".

F1. [Greenleaf TV Show]

Once Charity and Kevin are married, Kevin serenades her with a song by Stevie Wonder, "Mon Cherie Amour".

G. (From the Greenleaf to Greener Pasture)

The book references a chapter entitled, "A Day in the Life of Job," which reflects a parody of her powerfully challenging bouts of trials and tribulations she overcomes by finding God. Freda has been able to sustain despite all the unrest/turmoil in her daily living.

G1. [Greenleaf TV Show]

Grace turns to God and the church to redeem her faith. She finds herself preaching in the pulpit, in spite of her reluctance, but due to her helplessness. Using the chapter from the "Book of Job," chapter 3, verse 26: I have no peace, no quietness and no rest, only turmoil.

H. (From the Greenleaf to Greener Pastures)

Cousin Bertha loses her life in a house fire.

H1. [Greenleaf TV Show]

Bishop Skank's father is killed in a fire at the church. There is also a setting of the fire to burn down the church.

I. (From the Greenleaf to Greener Pastures)

Married couple- Ed/Freda were constantly living in the dark due to inability to pay light bills. Ed's not finding a suitable job, and the children were deprived as a result of it.

II. [Greenleaf TV Show]

Married couple - downfall of Kerise & Jacob, who are living in a dilapidated home in the dark, because they don't have any money for rewiring. Both are living in crisis with little money. Kerise describes them having to "rob Peter to pay Paul. Kerise urges Jacob to find another job other than on Sunday at Triumph. Jacob defends himself by saying, "he can finally be the provider of the home. She needs patience with the Lord".

K. (From the Greenleaf to Greener Pastures)

Cousin Bertha's lover, Carlos, runs off and marries the minister's daughter.

K1. [Greenleaf TV]

The minister's daughter, Grace runs off to find herself and returns to find her lover, Noah marrying Isabel.

POWER & CORRUPTION

A. (From the Greenleaf to Greener Pastures)

Ed the politician is also selling his own soul to corruption and sin to win as city councilman, then after he loses; he becomes a contender for county councilman. Next his attempts to persevere as a campaign manager. He talks about all he ever knew as an adolescent was his aspiration to fight and protest for the rights of many individuals. He states how he marched/protested so that others could keep their jobs in the county and city. He was a civil rights advocate in high school as the NAACP President, still these people never came through for him at the polls.

A1. [Greenleaf TV Show]

Bishop James describes the incessant greed of Basie Skanks, a pastor aspiring to be a politician. James speaks, "he let the blacks down whom he fought for and didn't fight hard enough for the whites. He ended up vying for a seat at a table that Jesus Christ would have overturned in a fit of rage. In short, in a search for his earthly power, he distanced himself from his race and religion, and I'm guessing his own soul. And he won't be happy until everybody else does the same." He had the same vigor to enter politics.

VISIONARIES

A. (From the Greenleaf to Greener Pastures)

A voodoo doll was mentioned as a symbol of imminent danger or a threat to one's existence, as a trendy demise for the women. They were being sexually abused women, starting with Freda's mother, at any early age of 15, then her own daughter, Ashlee at the age of eight. Freda's sexual harassment on a job with an older man who offered her a job as a bookkeeper.

A1. [Greenleaf TV Show]

In season one of *Greenleaf*, the favorite toy (a Captain America doll) of a dying child was introduced as an omen of a forthcoming catastrophe. This doll was delivered to Grace, to let her

know that his fight for survival had ended with his passing. Faith used her teddy bear as a form of security as she was abused by her father's brother, Mac. Faith talked about a starting a small group for sexual abused victims. Girls were constantly being sexually abused by Uncle Mac.

DIALOGUE

A. (From the Greenleaf to Greener Pastures)

Marcus, the gridiron star athlete is a nominee for the Heisman trophy.

A1. [Greenleaf TV Show]

Jacob tell his wife, "if she lets him go to Vegas, he would give up his "Heisman" trophy. .

B. (From the Greenleaf to Greener Pastures)

In the middle of the book, an entire paragraph on "why bad things happen to good people."

B1. [Greenleaf TV Show]

Lady Mae gives a whole repertoire on "why bad things happen to good people.

C. (From the Greenleaf to Greener Pastures)

"Chapter 25," talks about a storm approaching, "a bad storm, or even a hurricane, referencing Hurricane Hugo, in which the family stayed with Ed's family.

C1. [Greenleaf TV Show]

Lady Mae announces, "a storm is about to befall this family, the kind of storm that takes down trees, and shuts down power, that washes away people and takes the whole house away"

D. (From the Greenleaf to Greener Pastures)

Freda's mother boasted about being asked by Ebony Magazine to appear on their pages. Freda said, "I would love to just be able to grace the pages of Ebony."

D1. [Greenleaf TV Show]

Carlton makes the statement, "those babies are going to be on the cover of something, baby Ebony, baby Essence."

E. (From the Greenleaf to Greener Pastures)

Freda's mom comments, "why didn't you let it (the house) burn down".

E1. [Greenleaf TV Show]

Lady Mae tells Grace, "sometimes it doesn't seem like you're not going to be satisfied until you burn this place down to the ground".

F. (From the Greenleaf to Greener Pastures)

In the book, which is scriptural with each chapter, such as "Time Heals All Wounds; another chapter that references Psalm 23, "my cup runneth over," and "greener pastures" also, "though art with me."

F1. [Greenleaf TV Show]

Episode 1: The dialogue resonating with, "A Time for Healing," and other scriptures which are synonymously repeated throughout the entire show.

SETTING

A. (From the Greenleaf to Greener Pastures)

The first chapter talks about Rhudine's affluent family members residing in a large estate that her rich aunt allowed famous musicians, singers and entertainers to stay while in the city. They were referred to as 'high society' people. Chapter 2 describes the grandfather's huge farm/property that is surrounded by a pond.

A1. [Greenleaf TV Show]

Greenleafs live on a large estate surrounding a pond, supposedly affluent and wealthy is the impression in the first couple of episodes. The family estate shows signs of a grandiose lifestyle, then they face losing financial holdings.

B. (From the Greenleaf to Greener Pastures)

The café/restaurant called the "Greenleaf" ran by Jasper Lawson, patriarch of the family

B1.[Greenleaf TV Show]

A café owned by the Greenleaf family exists in which' Bishop James, the patriarch being the overseer.

THEME

A. (From the Grenleaf to Greener Pastures)

The book discusses the lives of four sisters, in a small rural city, under God's protection. The family reveals secrets of family members and Christian people living in sin. The idea of a generational curse as well as the sins of the father and mother continues as Freda's life is filled with trials and tribulations. She turns to God to turn her life around.

A1. [Greenleaf TV Show]

The Greenleaf family consists of four girls that live in an unscrupulous world with their sprawling Memphis megachurch where scandalous secrets and lies are as numerous as their faith. The Greenleaf family love and care for each other but beneath the surface lies a den of iniquity, greed, adultery, sibling rivalry and conflicting values that threaten to tear them apart at the very core of their faith. Sinners trying to be good Christians.

B. (From the Greenleaf to Greener Pastures)

Freda in her early (20's) is being accused of stealing a car to go see her first love, Ed Davidson.

B1. [Greenleaf TV Show]

Aunt Mavis asks Grace to steal one of her daddy's cars and come over to the tavern/restaurant-club to talk with her.

C. (From the Greenleaf to Greener Pastures)

Fishing is a common theme. Freda writes of how much the family enjoyed Pawleys Island. Ed would often fish on the island. to fish. Deuce's uncessing pleas to get a fishing pole. Freda tells how on their honeymoon, it was relaxing to watch Ed fish.

C1. [Greenleaf TV Show]

Fishing also becomes a common theme. Bishop James discusses him and his brother's love of fishing. Also how they both ate fish wrapped in bacon. Daniele admits how his brother, Mac would teach young girls how to fish while he sexually molested them at the summer camp.

MOOD

D. (From the Greenleaf to Greener Pastures)

The mood is one of mystery, deception, intrigue, hopelessness, and fulfillment after turning to faith in God, life experiences and observations of sinners and Christians who attend church.

D1. [Greenleaf TV Show]

The mood is one of mystery, deception, intrigue, hopelessness, and fulfillment after turning to faith in God, life experiences and observations of sinners and Christians who attend church.

CHARACTERS**FREDA (BOOK)**

She aspires to become a Journalist in high school while working with a video/camera crew in high school. Continues to study Journalism in college. She is a single mom, and has a daughter out of wedlock.

GRACE (GREENLEAF)

A journalist who returns home to long lost love, Jacob. She has a daughter out of wedlock, and is a single mom, and worked as a journalist for 20/20.

ED (BOOK)

He falls in love with Freda. He is described as tall, debonair, with a beard, and mustache. He constantly talks about wanting to practice law.

NOAH (GREENLEAF)

He falls in love with Grace, shown as tall, debonair, with a beard and mustache. He is in law enforcement as a security officer.

JASPER LAWSON/GOD (BOOK)

Freda has a close connection to her father who introduced her to God and her faith. She refers to God as her only father, after her father passes away. Both were devoted to God, church and family.

BISHOP JAMES (GREENLEAF)

Father /Pastor of Grace, who also follows in her father's footsteps to become Pastor of the church. Both are deeply devoted to God, church and family.

HAPPY DAVID NELSON (BOOK)

Freda's childhood friend and confidant.

TRIGGER HAPPY DAVID NELSON (GREENLEAF)

Grace's former church member from the past becomes her close friend and confidant.

ASHLEE (BOOK)

As a rebellious teen throughout the marriage of Ed/Freda. She's sent off to a special school called, "Blythewood Academy" due to her behavior in school.

ZORA (GREENLEAF)

A rebellious teen throughout the marriage of Kerisse/Jacob, sent off to a special school called, "Black Excellence," for acting out despite her wishes not to go.

MR. & MRS. WILLIAMS (BOOK)

An elderly couple that became mentors for Ed/Freda, as they continued to have a troublesome marriage.

MR. & MRS. WILLIAMS (GREENLEAF)

An elderly couple that became mentors for Jacob/Kerisse as they continued to have a troublesome marriage.

MINISTER OF MUSIC (BOOK)

In the original copy, Ed's Davidson friend Michael Knox, as the ministry of music, who was also gay,

MINISTER OF MUSIC (GREENLEAF)

Charity hires Carlos, the gay minister and runs into issues regarding future employment.

XIV. CONCLUSION

For the foregoing reasons, Petitioner Day, respectfully requests that this Court grant a writ of certiorari to review the Order of the Court of Appeals for the Fourth Circuit.

Respectfully submitted,

DATE: September 5, 2022

s/Freda J. Day

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