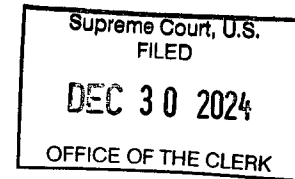


25-509

No. 24A548



SUPREME COURT OF THE UNITED STATES

Jana Shepherd,

Petitioner,

v.

Helen Painter & Co., Catherine Taylor, Amy
DeForest, Younger Ranch, LLC, Scott Real Estate,
Inc., and Shila Manley,

Respondents.

On Petition for Writ of Certiorari to the
Seventh Court of Appeals of Texas

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Pro Se

Jana Shepherd

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Questions Presented

Did the Trial Court violate the Appellant's constitutional right to a jury trial by denying the request for a jury trial, despite the Appellant's timely request and payment, in a case involving serious claims of fraud, breach of fiduciary duty, and collusion, without ever holding a trial?

Did the Trial Court's failure to follow proper procedures—like not giving proper notice, granting summary judgment despite strong evidence, and displaying potential bias—violate the Appellant's right to due process under the Fourteenth Amendment?

Did the Trial Court wrongly award excessive and unreasonable attorney fees to the Defendants, including to a party who didn't even file a counterclaim, in violation of legal standards that require fees to be fair and justified?

Do the Defendants' actions—such as misusing the Appellant's title policy to rush a sale to another buyer—amount to fraud, collusion, and a breach of trust that should reverse the summary judgment?

Given the serious constitutional and procedural mistakes made by the lower courts, does the Texas Supreme Court's denial of review make it necessary for this Court to step in and address these critical constitutional issues?

IDENTITY OF PARTIES AND COUNSEL

The following constitutes a list of all parties to the trial court's final judgment and the names and addresses of all trial and appellate counsel:

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JANA SHEPHERD
Pro Se
Petitioner/Appellant
[REDACTED]

Respondents:

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2. Catherine Taylor,
3. Amy Deforest,
4. Younger Ranch, LLC,
5. Scott Real Estate,
6. Shila Manley

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Appeal.

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I. Petition for Writ of Certiorari

Jana Shepherd, Petitioner, respectfully petitions this Court for a writ of certiorari to review the judgment of the Texas Court of Appeals and the refusal of the Texas Supreme Court to grant review in a case involving substantial violations of constitutional rights under the Seventh and Fourteenth Amendments to the United States Constitution. This petition seeks review of critical errors by the lower courts, including the improper denial of a jury trial, the granting of summary judgment despite the presence of material factual disputes, procedural irregularities that deprived Petitioner of due process, and the awarding of excessive and unreasonable attorney fees.

Petitioner's case raises fundamental questions about the protection of constitutional rights, judicial impartiality, and the proper application of procedural safeguards in civil litigation. Petitioner asserts that these issues are of national significance, as they implicate the integrity of the judiciary and the rights of litigants to a fair and impartial hearing. Petitioner therefore respectfully seeks this Court's intervention to address these substantial legal and constitutional questions and to ensure that justice is served.

II. Opinions Below

The decision of the Texas Court of Appeals affirming the Trial Court's order for grant of summary judgment dated September 18, 2022, and dismissal for want of prosecution dated September 02, 2021, is available as **Appendices B** and **A**, respectively. The opinion of the Texas Court of Appeals for Shepherd v. Helen Painter & Co., et al., No. 07-22-00314-CV (Tex. App.—Amarillo, September 15, 2022) dated December 1, 2023, is available as **Appendix C**. The Texas Supreme Court denied Petitioner's request for review on August 30, 2024, without issuing a written opinion, which is available as **Appendix D**.

The Trial Court's orders granting summary judgment, dismissing Petitioner's claims for want of prosecution, and awarding attorney fees to Respondents are not published but are included in the record (Appendices) below.

III. Jurisdiction

Petitioner Jana Shepherd's petition for review to the Texas Supreme Court was denied on August 30, 2024. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(a), as the case involves final judgments from the highest court of a state where substantial federal constitutional issues are presented, including violations of the Seventh and Fourteenth Amendments to the United States Constitution.

The original deadline for filing this petition for a writ of certiorari was November 30, 2024. However, pursuant to an order of this Court granting a 30-day extension, the deadline was extended to December 30, 2024. This petition is, therefore, timely filed in accordance with Supreme Court Rule 13.5 and the granted extension. Jurisdiction is properly invoked to address significant constitutional and procedural errors warranting federal review.

IV. Constitutional Provisions Involved

United States Constitution, Amendment VII:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

United States Constitution, Amendment XIV:

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 shall 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 laws.

V. Statement of the Case

1. Nature of the Dispute: Real Estate Purchase, Breach of Contract, and Alleged Fraud/Collusion

This case involves a real estate transaction in Texas where the Petitioner sought to purchase land owned by Younger Ranch, LLC. The sale was facilitated by a dual agent, Amy DeForest of Helen Painter & Co., who represented both the buyer and the seller. The dispute centers on the Petitioner's assertion that she agreed to purchase the property as a cash transaction, waiving any contingencies tied to the sale of another property, and provided proof of funds to close. Despite these efforts, the property was relisted, and the transaction was completed with a new buyer who offered a higher price.

The Petitioner alleges that the Respondents engaged in fraudulent and collusive conduct to remove her from the transaction. Notably, the Respondents relisted the property before providing the Petitioner with the executed contract, contrary to their fiduciary duties. The Petitioner further asserts that the Respondents used her title insurance policy to expedite the closing for the subsequent buyer, an act she contends is illegal and constitutes fraud.

The Petitioner argues that the dual agent's conduct breached fiduciary duties established under Texas law, particularly the duty of loyalty, disclosure, and care owed to her as a client. The agent's actions allegedly prioritized personal financial gain over the Petitioner's interests. These breaches, coupled with the Respondents' refusal to provide essential closing documents, such as a property address, resulted in the Petitioner being excluded from the transaction unjustly.

The Petitioner was prepared and financially able to close on the property, but her ability to do so was impeded by the Respondents' failure to provide the necessary property address. The Petitioner had expressed her readiness to proceed with the transaction and even waived contingencies to ensure the deal could move forward. However, despite her efforts, the Respondents' withholding of this critical information prevented her from completing the purchase, effectively obstructing her right to fulfill her contractual obligations. This delay not only caused her financial harm but also underscores the Respondents' disregard for their duties, contributing to the procedural and substantive issues at the heart of this case.

Moreover, the Petitioner invested substantial resources in preparation for the transaction, including consulting fees, design plans, and site preparations, totaling over \$20,000. The loss of the transaction caused her significant financial and emotional harm. The Petitioner contends that she was fully prepared to close the sale and complied with all contractual obligations, including providing proof of funds upon request.

The Petitioner has amassed substantial evidence supporting her claims, including 847 pages of evidence documents subpoenaed from the Texas Real Estate Commission (TREC) and the title company. This evidence allegedly demonstrates clear instances of fraud, collusion, and misconduct by the Respondents and their agents. Despite this, the trial court dismissed the case on summary judgment on September 18, 2022, disregarding the evidence and denying the Petitioner a fair opportunity to present her claims.

The Petitioner further contends that the trial court's actions violated her constitutional rights, particularly her Seventh Amendment right to a jury trial. She had paid for and formally requested a jury trial, but the court refused to

allow her case to proceed to trial. Additionally, she alleges violations of her Fourteenth Amendment due process rights, as the court failed to provide her with adequate hearings or opportunities to present her case.

The Petitioner now seeks relief from this Court to remedy the violations of her constitutional rights and to ensure that her claims receive a fair trial. She asserts that the lower courts' actions and rulings effectively deprived her of justice and enabled fraudulent conduct to go unaddressed.

2. Trial Court Proceedings: Summary Judgment, Procedural Irregularities, Denial of Motions

The trial court proceedings were marred by procedural irregularities that denied the Petitioner a fair opportunity to present her claims. Initially, the trial court denied the Respondents' motion for summary judgment in 2020, citing the existence of genuine issues of material fact. However, after the Petitioner's attorney withdrew from the case due to illness, the Respondents refiled the same motion for summary judgment in 2021, which the court inexplicably granted despite no substantive change in the evidence presented.

The Petitioner's attempts to secure new counsel were hindered by delays in obtaining her case files from her former attorney, who was hospitalized. Despite these circumstances, the court refused to grant her adequate continuances, forcing her to proceed pro se. The court also ignored her motions to reinstate and modify the judgment, failing to set them for proper hearings as required under Texas Rules of Civil Procedure 165a.

At a hearing ostensibly scheduled to consider the Petitioner's evidence, the trial court allowed the Respondents to present their case first, focusing on their motion for attorney fees. The court awarded the Respondents over \$140,000 in attorney fees before hearing any evidence

from the Petitioner. This sequence of events effectively rendered the hearing on the Petitioner's evidence moot and demonstrated a clear bias in favor of the Respondents.

The trial court also dismissed the Petitioner's case for want of prosecution on September 02, 2021, despite the record showing that delays were primarily caused by the Respondents' refusal to cooperate in scheduling depositions and providing essential documents. The Petitioner had communicated her availability for depositions and requested alternate dates when conflicts arose, but the Respondents failed to respond or reschedule. The court overlooked this evidence and dismissed the Petitioner's claims without adequately addressing her explanations.

The Petitioner alleges that the trial court demonstrated bias throughout the proceedings, favoring the Respondents in procedural rulings and evidentiary considerations. She contends that the Respondents' attorneys had connections to the judge, contributing to an unfair trial environment. The court's repeated refusal to hear the Petitioner's motions or allow her to present her evidence exemplifies this bias.

The Petitioner's motion to reinstate was dismissed without a hearing, in direct violation of procedural rules requiring notice and an opportunity to be heard. Similarly, the court failed to provide adequate notice or conduct a hearing before dismissing her case for want of prosecution on September 02, 2021. These procedural errors deprived the Petitioner of her right to due process and contributed to the miscarriage of justice.

The trial court's actions not only disregarded the Petitioner's substantial evidence of fraud and collusion but also violated her constitutional rights. The Petitioner argues that the court's conduct denied her the opportunity for a fair

trial and amounted to judicial misconduct that warrants review by this Court.

3. Appellate Review: Errors by the Court of Appeals and Texas Supreme Court's Refusal to Review

On appeal, the Texas Court of Appeals affirmed the trial court's rulings on December 1, 2023, failing to address the significant procedural and constitutional violations raised by the Petitioner. The appellate court upheld the dismissal of the Petitioner's claims via summary judgment, disregarding the substantial evidence she presented and the procedural irregularities that characterized the trial court proceedings.

The appellate court's opinion focused narrowly on procedural technicalities, neglecting the substantive issues of fraud, collusion, and breach of fiduciary duty raised by the Petitioner. The court failed to acknowledge the trial court's bias or its refusal to hear the Petitioner's motions and evidence. This omission effectively validated the trial court's actions, perpetuating the denial of justice.

The appellate court also affirmed the trial court's award of attorney fees to the Respondents, despite the excessive amounts awarded and the lack of proper documentation supporting the reasonableness of these fees. The court ignored the fact that some Respondents who had not filed counterclaims for attorney fees were nonetheless granted substantial awards. This contravenes established legal principles governing fee awards, as articulated in Hensley v. Eckerhart, 461 U.S. 424 (1983).

The appellate court further failed to address the Petitioner's argument that the trial court violated her Seventh Amendment right to a jury trial. The Petitioner had paid for and formally requested a jury trial but was denied

the opportunity to present her case to a jury. This constitutional violation was left unexamined, leaving a critical legal question unresolved.

Additionally, the appellate court disregarded the Petitioner's evidence demonstrating that delays in the proceedings were caused primarily by the Respondents. The Petitioner provided emails and correspondence showing her attempts to schedule depositions and prosecute her case, but the appellate court upheld the trial court's dismissal for want of prosecution without addressing these facts.

The appellate court's refusal to critically examine the trial court's conduct undermines the integrity of the judicial process. By affirming rulings that violated the Petitioner's constitutional and procedural rights, the appellate court contributed to the injustice she experienced.

Finally, the Texas Supreme Court declined to review the case on August 30, 2024, leaving the constitutional and procedural issues unaddressed. The Petitioner now seeks relief from this Court to remedy these violations and ensure that her claims are heard in a fair and impartial trial.

VI. REASONS FOR GRANTING THE WRIT

- A. **To ensure the protection of due process and jury trial rights, this Court should address the constitutional questions raised in this case that have nationwide implications**

The Seventh Amendment to the United States Constitution guarantees the right to a trial by jury in civil cases, ensuring that disputes involving material facts are adjudicated by a jury of one's peers. The Petitioner paid for a jury trial and presented substantial evidence, yet she was denied her right to present her case to a jury. Instead, her case was summarily dismissed by the trial court on September 18, 2022, depriving her of the constitutionally guaranteed opportunity to have her evidence weighed by a jury. This action violates the principle that the resolution of factual disputes lies within the purview of a jury, as articulated in Chauffeurs, Teamsters & Helpers Local No. 391 v. Terry, 494 U.S. 558, 564–65 (1990).

The Fourteenth Amendment ensures that no person is deprived of life, liberty, or property without due process of law. In the Petitioner's case, procedural safeguards fundamental to due process, such as adequate notice and a fair opportunity to present her case, were absent. Her motion to reinstate was dismissed without a hearing, and her evidence of fraud and collusion — spanning over 847 pages — was disregarded. Denying her the opportunity to present this evidence in a meaningful way contravenes established due process principles under Mathews v. Eldridge, 424 U.S. 319, 333 (1976).

The trial court's grant of summary judgment on September 18, 2022, without proper consideration of material evidence, undermines the standard articulated in Celotex Corp. v. Catrett, 477 U.S. 317, 322–23 (1986). The presence of genuine disputes of material fact — such as

allegations of fraud, collusion, and fiduciary breaches — precludes summary judgment. The lower court's actions erode the constitutional right to have these disputes resolved by a jury.

Petitioner's case illustrates systemic issues with judicial practices that marginalize litigants, particularly pro se parties, by disregarding procedural safeguards. This Court has long emphasized that pro se litigants are entitled to the same procedural protections as represented parties. The trial court's failure to grant a hearing on her motion to reinstate and its prioritization of Respondents' motions reflect a troubling bias against pro se litigants. This undermines the constitutional principle of equal protection under the law, as upheld in Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248–49 (1986).

Furthermore, the lower courts' actions raise concerns about the erosion of public confidence in the judiciary. A system that allows judges to disregard procedural safeguards and constitutional rights risks creating a perception of injustice. This Court has emphasized the importance of maintaining public trust in the judiciary as an impartial and fair arbiter of disputes. See Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 876–87 (2009).

Petitioner's case highlights the dangers of courts bypassing due process under the guise of procedural efficiency. The denial of her right to a jury trial and the dismissal of her claims through summary judgment without proper analysis of her evidence undermine the fundamental principles of justice and fairness. A decision by this Court to grant certiorari will reaffirm the importance of these constitutional protections and ensure their consistent application nationwide.

The trial court's actions in awarding attorney fees on September 18, 2022, without a trial or opportunity for Petitioner to contest them also violated her due process

rights. The imposition of substantial attorney fees — totaling over \$140,000 — without considering the reasonableness or necessity of these fees raises significant concerns about judicial overreach and abuse of discretion. See Hensley v. Eckerhart, 461 U.S. 424, 433–34 (1983) (holding that attorney fees must be reasonable and supported by sufficient evidence).

Finally, this case presents an opportunity for this Court to clarify the standards for summary judgment and due process in cases involving allegations of judicial bias and procedural irregularities. Ensuring that litigants have access to fair proceedings, irrespective of their representation status, is vital to upholding constitutional rights and public confidence in the judiciary.

B. To correct misapplications of legal standards and procedural irregularities, this Court should address the errors in the lower courts that led to unfair outcomes

The trial court's grant of summary judgment in favor of Respondents was improper and contrary to the legal standards governing such motions. Summary judgment is only appropriate when there is no genuine dispute of material fact, and the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322–23 (1986). Petitioner presented over 847 pages of evidence demonstrating fraud, collusion, and breach of fiduciary duties by the Respondents. These issues constituted genuine disputes of material fact that required resolution by a jury.

The appellate court compounded this error by affirming the trial court's decision without adequately addressing the sufficiency of Petitioner's evidence. The appellate court failed to recognize that the evidence presented by Petitioner, including documentation of

fraudulent use of her title policy and collusion among the Respondents, directly contradicted the grounds for summary judgment. This oversight violates the principle that courts must view the evidence in the light most favorable to the non-moving party, as established in Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

The dismissal for want of prosecution on September 02, 2021 was also procedurally flawed. Rule 165a of the Texas Rules of Civil Procedure requires notice and an opportunity to be heard before dismissing a case for want of prosecution. Petitioner was not provided with adequate notice or a meaningful hearing before her case was dismissed. This procedural deficiency constitutes a violation of due process, as articulated in Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 84–85 (1988).

The trial court's failure to hear Petitioner's motion to reinstate further exemplifies the procedural irregularities in this case. Rule 165a(3) mandates that courts conduct a hearing on motions to reinstate to ensure that dismissals are not the result of accident or mistake. Petitioner's motion to reinstate was denied without a hearing, depriving her of the opportunity to present evidence and arguments in support of her claims.

The appellate court failed to address the trial court's procedural errors, including the dismissal of Petitioner's motion to reinstate without a hearing. By ignoring these errors, the appellate court undermined the procedural safeguards designed to protect litigants' rights and ensure fair adjudication.

The trial court's prioritization of Respondents' motions over Petitioner's earlier-filed motions further demonstrates procedural bias. For example, the trial court heard and granted Respondents' motion for attorney fees before considering Petitioner's motion to reinstate,

effectively rendering her motion moot. This practice violates the principle of procedural fairness and the requirement that courts treat all parties equally.

The improper dismissal of Petitioner's claims and the denial of her motions without hearings highlight systemic issues with judicial procedures that disproportionately disadvantage pro se litigants. This Court's intervention is necessary to address these systemic issues and ensure that lower courts adhere to constitutional and procedural standards.

The imposition of excessive attorney fees without a trial or opportunity for Petitioner to contest them further illustrates the unfairness of the proceedings. The fees awarded—totaling over \$140,000—were not supported by sufficient evidence or subjected to scrutiny for reasonableness, as required under Hensley v. Eckerhart, 461 U.S. 424, 433–34 (1983).

Petitioner's case demonstrates the consequences of courts disregarding procedural safeguards and constitutional rights. This Court's review is essential to correct the errors in the lower courts and to ensure that litigants receive fair and impartial treatment in judicial proceedings.

C. To preserve public confidence in the judiciary, this Court should address the significant allegations of judicial bias raised in this case

Judicial impartiality is a fundamental principle of the American legal system. Petitioner has presented credible allegations of judicial bias, citing the trial judge's connections to Respondents' attorneys and the judge's repeated procedural rulings favoring Respondents. These allegations raise serious concerns about the integrity of the proceedings and the impartiality of the judiciary. See

Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 876–87 (2009) (holding that judicial bias violates the Due Process Clause of the Fourteenth Amendment).

The trial judge's actions, including dismissing Petitioner's claims without a trial and awarding attorney fees without allowing her to contest them, reflect a pattern of favoritism toward Respondents. The judge's failure to consider Petitioner's evidence of fraud and collusion further supports the appearance of bias.

The denial of Petitioner's motion to recuse the trial judge underscores the challenges faced by litigants in seeking redress for judicial bias. The refusal to recuse despite credible allegations of partiality deprives litigants of their right to a fair and impartial tribunal, as guaranteed under Tumey v. Ohio, 273 U.S. 510, 523 (1927).

The appellate court's failure to address Petitioner's allegations of bias compounds the injustice. By dismissing these allegations without adequate consideration, the appellate court failed to fulfill its role as a check on judicial misconduct.

Public confidence in the judiciary depends on the perception that courts are impartial and fair. Judicial bias not only harms individual litigants but also undermines the integrity of the judicial system as a whole. This Court has emphasized the importance of preserving public trust in the judiciary, as articulated in Liteky v. United States, 510 U.S. 540, 555–56 (1994).

The procedural irregularities in Petitioner's case, including the prioritization of Respondents' motions and the denial of her motions without hearings, reinforce the perception of bias. These actions raise questions about the trial judge's impartiality and the fairness of the proceedings.

Petitioner's case highlights the need for clear standards and effective mechanisms to address allegations of judicial bias. This Court's intervention is necessary to ensure that litigants receive fair treatment and that judicial proceedings are free from partiality.

Judicial misconduct that undermines fairness and impartiality requires corrective action to preserve the rule of law. By granting certiorari, this Court can reaffirm the principles of judicial impartiality and due process, ensuring that lower courts uphold these fundamental rights.

Finally, this case underscores the importance of robust oversight mechanisms to address judicial bias and procedural irregularities. The appellate court's failure to address these issues highlights the need for this Court's intervention to safeguard constitutional rights and public confidence in the judiciary.

VII. ARGUMENT

A. Violation of the Seventh Amendment: Denial of a Jury Trial Despite Payment and Requests

The Seventh Amendment to the United States Constitution preserves the right to a jury trial in civil cases, stating unequivocally, “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.” This constitutional guarantee underscores the principle that disputes over facts are to be resolved by impartial jurors rather than judges. Petitioner’s case involves factual disputes of fraud, collusion, and breaches of fiduciary duty—matters that demand resolution by a jury. By denying Petitioner the jury trial she paid for and requested, the trial court violated her Seventh Amendment rights and deprived her of a critical procedural safeguard.

This Court has consistently held that the right to a jury trial is fundamental and must not be infringed upon by judicial expediency. In Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 501 (1959), the Court emphasized that “the right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal jurisprudence which is protected by the Seventh Amendment.” Despite these clear precedents, the trial court dismissed Petitioner’s claims through summary judgment, ignoring the extensive evidentiary disputes that warranted jury deliberation.

Petitioner’s case presented substantial evidence, including over 847 pages of evidence documentation, demonstrating allegations of fraud and collusion. These claims, central to her case, raise factual issues that are not appropriately decided by a judge acting alone. As this Court noted in Dimick v. Schiedt, 293 U.S. 474, 485 (1935), “Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and

jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.”

The trial court’s actions in granting summary judgment directly undermined the jury’s role as the arbiter of factual disputes. Fraud claims, in particular, often hinge on questions of intent, knowledge, and credibility—issues uniquely suited for a jury. In Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986), this Court highlighted that “credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.”

By summarily dismissing Petitioner’s case without allowing her the opportunity to present her claims to a jury, the trial court disregarded both constitutional protections and the procedural requirements under Rule 38(a) of the Federal Rules of Civil Procedure, which affirms the right to a jury trial where it has been demanded. The procedural irregularities in this case not only violated Petitioner’s constitutional rights but also undermined public confidence in the judicial system’s fairness and impartiality.

The trial court’s justification for denying a jury trial was both procedurally and substantively flawed. Petitioner had explicitly paid for a jury trial and demonstrated the existence of genuine disputes of material fact. This Court has repeatedly held that summary judgment is improper where the non-moving party has presented sufficient evidence to raise a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Yet, the trial court failed to apply these principles, effectively denying Petitioner the jury trial she was entitled to under the Constitution.

Furthermore, the appellate court’s affirmation of the trial court’s actions compounded the constitutional violation. Instead of rectifying the trial court’s error, the appellate court disregarded Petitioner’s arguments regarding her

right to a jury trial, choosing instead to uphold a procedurally improper summary judgment. This decision demonstrates a profound misunderstanding of the Seventh Amendment's protections and the procedural safeguards necessary to uphold them.

The Seventh Amendment's historical significance underscores the gravity of the trial court's error. As early as Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 447 (1830), this Court recognized the jury trial as "a vital and indispensable part of our system of justice." Denying Petitioner this fundamental right is not only a procedural error but also a substantive miscarriage of justice that warrants this Court's intervention.

This Court's intervention is necessary to address the trial court's disregard for the Seventh Amendment's protections and to clarify the legal standards applicable in cases where jury trials are improperly denied. Petitioner's case presents a unique opportunity for this Court to reaffirm the principle that litigants are entitled to have their factual disputes resolved by a jury, particularly when the disputes involve allegations of fraud and collusion.

By granting certiorari, this Court can correct the injustice inflicted upon Petitioner and reinforce the foundational principle that the right to a jury trial in civil cases is sacrosanct. This Court must ensure that litigants like Petitioner are afforded their constitutional rights and the opportunity to have their claims heard by an impartial jury.

B. Due Process Violations: Procedural Irregularities in Dismissals and Summary Judgments

The Due Process Clause of the Fourteenth Amendment guarantees that no individual shall be deprived

of “life, liberty, or property, without due process of law.” This fundamental protection requires both substantive and procedural fairness in judicial proceedings. Petitioner’s case was marred by procedural irregularities that violated her due process rights, including the improper granting of summary judgment, biased judicial conduct, and the denial of her right to contest attorney fees.

The trial court’s handling of summary judgment motions exemplified a lack of procedural fairness. Summary judgment was granted based on the same motion that had been denied a year earlier, without any material changes in the evidentiary record. This decision ignored the procedural safeguards established under Rule 56 of the Federal Rules of Civil Procedure, which mandates that courts carefully review the evidence and resolve all doubts in favor of the non-moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

Petitioner’s inability to access critical case files due to her attorney’s hospitalization further underscores the due process violations in this case. The trial court’s refusal to grant a continuance to accommodate these unforeseen circumstances reflects a disregard for the principle that litigants must be given a fair opportunity to present their case. Foman v. Davis, 371 U.S. 178, 182 (1962), emphasizes that procedural rules should be applied in a manner that facilitates, rather than obstructs, the pursuit of justice.

The trial court’s actions in allowing the Defendants to present their motion for summary judgment and attorney fees before hearing Petitioner’s evidence further highlight the procedural inequities. This sequence of events deprived Petitioner of a meaningful opportunity to contest the Defendants’ claims and to present her evidence of fraud and collusion. Such actions are inconsistent with the principles of fairness and impartiality that are central to due process.

The trial court's bias against Petitioner is evident in its repeated prioritization of the Defendants' motions over her substantive claims. This bias not only undermined the fairness of the proceedings but also violated the principle that litigants are entitled to an impartial tribunal. Tumey v. Ohio, 273 U.S. 510, 523 (1927), establishes that even the appearance of judicial bias is sufficient to constitute a due process violation.

The denial of Petitioner's motion to contest attorney fees without a hearing further compounded the procedural irregularities. The trial court awarded over \$140,000 in attorney fees to the Defendants without providing Petitioner the opportunity to challenge the reasonableness or necessity of these fees. This decision violated her right to procedural due process, as recognized in Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 85 (1988), which requires that litigants be given notice and an opportunity to be heard before being deprived of property.

The appellate court's failure to address these procedural violations reflects a broader disregard for Petitioner's due process rights. By affirming the trial court's decisions without scrutinizing the procedural flaws, the appellate court effectively sanctioned the denial of Petitioner's right to a fair hearing.

The procedural irregularities in this case also include the trial court's refusal to set hearings for Petitioner's motions, including her motion for reinstatement. Rule 165a of the Texas Rules of Civil Procedure requires courts to conduct hearings on motions to reinstate, yet the trial court ignored this mandate, depriving Petitioner of her right to be heard.

The cumulative effect of these procedural violations is a denial of justice that undermines public confidence in the judicial system. This Court's intervention is necessary to

rectify the due process violations in Petitioner's case and to reaffirm the principle that litigants are entitled to fair and impartial proceedings.

By granting certiorari, this Court can address the systemic issues of procedural irregularities and judicial bias that have plagued Petitioner's case. This Court's guidance is essential to ensure that all litigants are afforded the procedural protections guaranteed under the Fourteenth Amendment.

**C. Improper Granting of Summary Judgment:
Failure to Consider Extensive Evidence of
Fraud and Collusion**

The trial court's decision to grant summary judgment in favor of the Defendants represents a profound departure from the standards established under Rule 56 of the Federal Rules of Civil Procedure. Summary judgment is only appropriate where there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). Petitioner presented over 847 pages of evidence documenting allegations of fraud and collusion, yet the trial court dismissed her claims without allowing them to be evaluated in a trial setting, thus violating these established principles.

Central to Petitioner's claims is the allegation that the Defendants engaged in fraudulent and collusive actions to exclude her from a property transaction in which she was a ready, willing, and able buyer. This evidence includes documented communications, subpoenaed materials from the Texas Real Estate Commission (TREC), and title company records. Fraud claims inherently involve questions of intent, reliance, and causation—matters that cannot be resolved through summary judgment because they require the factfinder to assess the credibility of witnesses and weigh

conflicting evidence. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

The trial court's decision disregarded precedent that demands careful scrutiny of evidence in cases involving fraud. In Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150-51 (2000), this Court held that courts must not weigh the evidence or judge the credibility of witnesses when considering a motion for summary judgment. Instead, courts must resolve all ambiguities and draw all reasonable inferences in favor of the non-moving party. Petitioner's evidence, including documentation of the Defendants' use of her title policy to expedite another buyer's transaction, directly supports her claims of fraud and raises material questions of fact that should have precluded summary judgment.

The trial court's reliance on procedural technicalities to dismiss Petitioner's claims further underscores the improper nature of its decision. For example, the court granted summary judgment based on the alleged insufficiency of evidence, yet much of Petitioner's evidence was unavailable at the time due to her former attorney's hospitalization and delay in returning case files. This lack of access to critical documents was beyond Petitioner's control and should have been considered as a valid justification for any procedural delays. Foman v. Davis, 371 U.S. 178, 182 (1962), establishes that procedural rules should be applied flexibly to ensure justice, especially when delays are attributable to unforeseen circumstances.

Additionally, the court's failure to adequately consider evidence subpoenaed from TREC and the title company highlights a critical procedural oversight. This evidence, which included admissions by Defendants and third parties confirming Petitioner's readiness to close the transaction as a cash buyer, directly contradicted the Defendants' assertions and demonstrated the existence of

genuine factual disputes. Courts have consistently held that summary judgment is inappropriate where evidence on record supports competing inferences. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

The trial court's actions in granting summary judgment based on the same motion it had denied a year earlier raise additional questions of procedural fairness. The court offered no explanation for this reversal, creating an appearance of inconsistency and bias. Judicial decisions must be grounded in clear reasoning and adherence to legal standards to maintain public confidence in the judiciary. Walker v. Birmingham, 388 U.S. 307, 320 (1967), emphasizes that courts must act transparently to uphold the integrity of judicial proceedings.

The appellate court's failure to address these procedural and substantive errors compounds the injustice. By affirming the trial court's decision without scrutinizing its flawed reasoning, the appellate court effectively sanctioned the improper granting of summary judgment. This decision undermines the principle that courts must resolve factual disputes through trial, not pretrial motions. Scott v. Harris, 550 U.S. 372, 380 (2007), highlights the importance of trial proceedings in resolving contested issues of material fact.

Fraud claims are uniquely ill-suited to resolution through summary judgment because they often involve subjective intent and complex factual scenarios. As this Court recognized in United States v. Gaudin, 515 U.S. 506, 512 (1995), questions of intent and credibility are quintessentially within the province of the jury. By dismissing Petitioner's fraud claims without trial, the trial court deprived her of the opportunity to present her case to a jury as guaranteed by the Seventh Amendment.

The trial court's disregard for evidence also violated Petitioner's due process rights under the Fourteenth Amendment. Procedural fairness requires courts to give litigants a full and fair opportunity to present their case. Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 85 (1988), reaffirms that litigants must be given notice and an opportunity to be heard before their claims are dismissed. Petitioner was denied this opportunity when the trial court summarily dismissed her claims without considering her substantial evidentiary submissions.

This Court's intervention is necessary to address the trial court's improper use of summary judgment to dispose of Petitioner's claims. By granting certiorari, this Court can clarify the standards for resolving fraud claims and ensure that litigants are afforded their constitutional right to a jury trial in cases involving genuine disputes of material fact.

D. Excessive and Improper Attorney Fees: Fees Awarded Without Counterclaims or Adequate Scrutiny

The trial court's award of over \$140,000 in attorney fees to the Defendants, including fees to parties who had not filed counterclaims, constitutes a glaring abuse of discretion and a violation of established legal standards. Attorney fees must be reasonable and necessary, as mandated by Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). In this case, the trial court failed to evaluate the reasonableness of the fees or require the Defendants to substantiate their claims with detailed evidence, resulting in an excessive and unjustified award.

The fees awarded in this case far exceed what could reasonably be considered necessary given the procedural history. This was a case resolved through summary judgment without depositions, discovery, or trial. The Defendants' attorneys filed routine motions and engaged in

minimal substantive work, yet they were awarded fees totaling \$88,706.60 to Helen Painter & Co., \$30,872.00 to Scott Real Estate, Inc., and \$6,237.50 to Younger Ranch. Such excessive fees are inconsistent with the principle that fee awards must reflect the actual work performed. Garcia v. Gomez, 319 S.W.3d 638, 642 (Tex. 2010).

Notably, the trial court awarded attorney fees to Younger Ranch, despite the fact that it had not filed a counterclaim for fees. This action violates the principle that attorney fees cannot be awarded absent a specific statutory or contractual basis. Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 247 (1975), makes clear that fee awards must be authorized by statute or contract, and courts cannot impose fees sua sponte.

The Defendants' failure to provide detailed billing records further undermines the validity of the fee award. Courts have repeatedly held that vague or conclusory billing statements are insufficient to support an award of attorney fees. La. Power & Light Co. v. Kellstrom, 50 F.3d 319, 326 (5th Cir. 1995). In this case, the Defendants' submissions lacked specificity regarding the time expended, the nature of the work performed, and its necessity. Such deficiencies render the award arbitrary and unsupported by the record.

The trial court also failed to apply the lodestar method, a well-established framework for determining reasonable attorney fees. The lodestar method requires courts to calculate fees based on the reasonable hourly rate multiplied by the hours reasonably expended, with adjustments for relevant factors. Perdue v. Kenny A. ex rel. Winn, 559 U.S. 542, 546 (2010). The trial court's failure to engage in this analysis constitutes a procedural error that warrants reversal.

The excessive nature of the fees is further evidenced by the disparity in amounts awarded to different

Defendants. For example, the fees awarded to Helen Painter & Co. were nearly three times higher than those awarded to Scott Real Estate, Inc., despite the fact that both parties engaged in similar litigation activities. This disparity suggests that the fees were not grounded in an objective assessment of the work performed.

The appellate court's affirmation of these fees compounds the error. By failing to scrutinize the reasonableness of the award, the appellate court abdicated its duty to ensure that attorney fees are consistent with the principles of equity and fairness. This Court has emphasized the importance of appellate review in cases involving excessive fee awards. Evans v. Jeff D., 475 U.S. 717, 734 (1986), highlights the appellate court's role in ensuring that fee awards are "reasonable in light of the circumstances of the case."

Petitioner's inability to contest the attorney fees due to procedural irregularities further underscores the denial of her due process rights. The trial court awarded fees before Petitioner could present evidence or arguments challenging their reasonableness. This action violated her right to be heard and her opportunity to challenge the deprivation of property. Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 85 (1988).

The excessive fee award in this case undermines public confidence in the fairness and impartiality of judicial proceedings. Fee awards that are disproportionate to the work performed create an appearance of bias and discourage litigants from pursuing valid claims out of fear of financial ruin. This Court's intervention is necessary to establish clear guidelines for determining reasonable fees and to rectify the injustice inflicted upon Petitioner.

By granting certiorari, this Court can address the procedural and substantive errors underlying the fee award

in this case and ensure that litigants are protected from excessive and unwarranted financial burdens.

VIII. CONCLUSION

In conclusion, this case represents a fundamental miscarriage of justice, rooted in procedural errors, judicial oversight, and violations of constitutional rights. The Petitioner, despite her diligent efforts to pursue her claims, has been systematically denied her right to a fair trial, to have her evidence considered, and to challenge the egregious actions of the Defendants. The trial court's grant of summary judgment on September 18, 2022, dismissal for want of prosecution on September 02, 2021, and award of excessive attorney fees collectively illustrate a disregard for due process, the Seventh Amendment, and the principle of impartiality that is foundational to the American legal system. This Honorable Court is urged to intervene to rectify these errors and restore the Petitioner's right to her day in court.

The denial of the Petitioner's Seventh Amendment right to a jury trial is a glaring violation that undermines public confidence in the judiciary's ability to safeguard constitutional rights. The Petitioner's payment for a jury trial and her unrelenting effort to bring her case before a jury were disregarded in favor of expedient procedural dismissals. This denial, coupled with the trial court's failure to evaluate the Petitioner's extensive evidence of fraud, collusion, and breach of fiduciary duty, has deprived her of the opportunity to have her claims evaluated on their merits. A jury trial is not merely a procedural formality; it is a cornerstone of justice that allows litigants to present their case in a manner that ensures impartiality, transparency, and accountability.

Furthermore, the procedural irregularities in this case highlight a troubling pattern of inequity and judicial bias. The trial court's repeated refusal to hear the Petitioner's motions, its preference for addressing the Defendants' motions first, and the dismissal of the case

without adequate notice or hearing constitute violations of procedural fairness and due process. These actions have not only prejudiced the Petitioner's ability to present her case but have also emboldened the Defendants, who have benefited from a judicial process skewed in their favor. The principle of equal access to justice demands that this Court address these procedural deficiencies to uphold the integrity of the judicial system.

The award of excessive attorney fees further compounds the injustice suffered by the Petitioner. The trial court failed to apply the requisite standards for determining the reasonableness and necessity of such fees and improperly awarded fees to parties who had not filed counterclaims. The excessive nature of these fees is evident when contrasted with the limited complexity of the case and the absence of substantive proceedings, such as depositions or trials. The appellate court's failure to rectify this issue underscores the need for this Honorable Court to intervene to prevent the perpetuation of this financial burden on the Petitioner.

For these reasons, the Petitioner respectfully requests this Honorable Court to reverse the summary judgment, the dismissal for want of prosecution, and the award of attorney fees. The Petitioner further prays that this Court remand the case for a jury trial, thereby restoring her constitutional rights and ensuring that justice is served. Such relief is not only warranted by the specific facts of this case but is also essential to affirm the principles of due process, equal treatment, and the rule of law that are the bedrock of the American legal system. By granting this petition, this Court will reaffirm its commitment to justice, fairness, and the protection of constitutional rights.

IX. RELIEFS SOUGHT

The Petitioner respectfully requests that this Honorable Court grant the petition for a writ of certiorari to address the substantial constitutional and procedural violations in this case and issue the following reliefs:

- a. **Reverse the Summary Judgment Granted in Favor of the Defendants:** The trial court's improper grant of summary judgment disregarded the extensive evidence presented by the Petitioner, including over 847 pages of evidence documentation substantiating allegations of fraud, collusion, and breaches of fiduciary duty. This procedural error deprived the Petitioner of her Seventh Amendment right to a jury trial and her opportunity to have her claims adjudicated on their merits. The intervention of this Court is essential to correct this error and to reinforce the constitutional guarantee of a fair trial by jury.
- b. **Reverse the Dismissal for Want of Prosecution:** The trial court's dismissal of the Petitioner's claims for want of prosecution was procedurally flawed and substantively unjust. Despite extraordinary challenges, such as the withdrawal of her attorney and delays in retrieving critical case files, the Petitioner demonstrated diligent efforts to prosecute her case, including filing motions and complying with procedural requirements. The trial court failed to provide adequate notice or conduct a proper hearing as required under Rule 165a of the Texas Rules of Civil Procedure and due process principles. This Court should reverse the dismissal to ensure that the Petitioner's case is properly evaluated on its merits.

- c. **Vacate the Award of Attorney Fees:** The trial court improperly awarded over \$140,000 in attorney fees to the Defendants, including fees to parties who did not file counterclaims, in violation of established legal principles requiring a statutory or contractual basis for such awards. The excessive and unsupported nature of the fee award, combined with the lack of analysis regarding its reasonableness or necessity, demonstrates a clear abuse of discretion. This Court should vacate the attorney fee award to prevent the perpetuation of unjust financial burdens on the Petitioner.
- d. **Remand the Case for a Jury Trial:** Given the significant constitutional and procedural errors, this Court should remand the case to the trial court for a jury trial. The Petitioner was wrongfully denied the jury trial she requested and paid for, contrary to her Seventh Amendment rights. Considering the substantial evidence of fraud, collusion, and procedural irregularities, a jury trial is necessary to fairly adjudicate the Petitioner's claims and ensure that issues of intent, reliance, and credibility are properly resolved.

WHEREFORE, the Petitioner respectfully prays that this Honorable Court grant the petition for a writ of certiorari, the judgment of attorney fees on Petitioner be dismissed, the petitioner be allowed to have a jury trial which she paid for, to reverse the lower court rulings, and provide additional relief as this Court deems just and proper.

Respectfully submitted,

JANA SHEPHERD, Pro Se



X. APPENDICES SEPARATELY BOUND