No. 23-_____

In The
Supreme Court of the United States

EVA ANNA CZYZ,

Petitioner-Appellant,

v.

ANDREW ROMAN NIECZYPEROWICZ,

Respondent-Appellee.

On Petition to the Texas State Supreme Court, *Czyz v. Nieczyperowicz*, Record No. 24-0107 (Tex. 2024), *on appeal from Nieczyperowicz v. Nieczyperowicz*, Cause No. 2020-05703 (245th Dist.-Harris Cy. 2023), *aff'd* Record No. 14-23-00695-CV (14th Ct. App. 2024)

Application for Discretionary Leave to Exceed Page Limits

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TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF THE SUPREME COURT AND ACTING CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT

Literature and theatre are replete with tales of love involving those who may have "loved. . . well, but not wisely", William Shakespeare, *Othello*, Act V, scene ii. (1603). "For good cause, the Court or a Justice may grant leave to file a document in excess of the word limits, but application for such leave is not favored", and "[a]n application to exceed word limits shall comply with Rule 22 and must be received by the Clerk at least 15 days before the fling date of the document in question, except in the most extraordinary circumstances." S.Ct.R. 33(1)(d).

Under the controlling rule, "[a]n application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the sought relief." S.Ct.R. 22(1). "The original and two copies of any application addressed to an individual Justice shall be prepared as required by Rule 33.2, and shall be accompanied by proof of service as required by Rule 29." S.Ct.R. 22(2). "An application shall be addressed to the Justice allotted to the Circuit from which the case arises." *Id.* Accordingly, this matter conforming to a "proceeding in this Court in which the constitutionality of any statute of a State is drawn into question," therefore, "the initial document filed in this Court shall recite that 28 U. S. C. § 2403(b) may apply and shall be served on the Attorney General of that State", S.Ct.R. 29(4)(c).

Judicial Notice

At any time, "pursuant to Federal Rule of Evidence 201, courts may take judicial notice of "matters of public record," but not of facts that may be "subject

to reasonable dispute". *U.S. v. Corinthian Colleges*, 655 F.3d 984 (9th Cir. 2011) (citing *Lee v. City of Los Angeles*, 250 F.3d 668 (9th Cir. 2001)). Hence, while it is reversible error 'to admit or exclude evidence only if we find that the district court has abused its discretion,'" *U.S. v. Baldwin*, 418 F.3d 575 (6th Cir. 2005) (quoting *Pressman v. Franklin Nat'l Bank*, 384 F.3d 182 (6th Cir. 2004), defined as where a lower court had "relie[d] on clearly erroneous findings of fact, . . . improperly applies the law, or . . . employs an erroneous legal standard," *Id.* (quoting *U.S. v. Cline*, 362 F.3d 343 (6th Cir. 2004), or "only if we are 'firmly convinced of a mistake that affects substantial rights and amounts to more than harmless error'", *Id.* (quoting *Pressman*, 384 F.3d at 182), generally, "evidence is admissible so long as the evidence is relevant and probative". *Id.* (citing *Crown Cork Seal Co. v. Morton Pharm., Inc.*, 417 F.2d 921 (6th Cir. 1969).

Profile Evidence

"Federal Rule of Evidence 404(a) states that '[e]vidence of a person's character . . . is not admissible for the purpose of proving action in conformity therewith on a particular occasion," unless the evidence involves 'a pertinent trait of character of the alleged victim of the crime [and is] offered by the accused' or involves the 'a pertinent trait of character' of the accused himself', *Id.* (citing *Ibid.*), after which the door is open and subject to challenge. "The latter form of evidence must be 'offered by an accused, or by the prosecution to rebut the same." *Id.* (quoting *Ibid.*) And, generally, "[i]n keeping with this rule, '[c]ourts have condemned the use of profiles as substantive evidence of guilt.'" *Id.* (quoting *U.S. v. Long*, 328 F.3d 655 (D.C. Cir. 2003) (citation omitted)). *A priori*, "[p]rofile evidence is properly admissible, however, when it is introduced 'to demonstrate

why the defendant was stopped for investigation, to rebut inferences raised by the defendant's testimony, or to show *modus operandi.*'" *Id.* (quoting *U.S. v. Ward*, 134 F.3d 373 (6th Cir. 1998) (unpublished) (citations omitted)). *See also U.S. v. Sokolow*, 490 U.S. 1 (1989).

The gravamen of the matter raised on appeal involves Appellee's attempts to obtain judicial review of a dissolution of marriage, in accordance with Tex. Fam. Code § 6.001, in which Appellant contends that he had failed to perfect his appeal through timely payment of the Notice of Appeal fee, finding even the Court of Appeals noting, for record, months after a September Final Divorce Decree, that $205.00 ha[d] not been paid", noting that there was "[n]o evidence that appellant is excused. . . from paying costs", nor had any statement therefor "been filed", Order, December 19, 2023 (citing Tex. R. App. P. 5), treating others simulated, including Appellant, a woman, situated in disparate treatment, referring "to deliberate discrimination in the terms or conditions of employment . . . on account of race, national origin, or gender." *Munoz v. Orr*, 200 F.3d 291 (5th Cir. 2000). Appellee had contended that, attributing fault upon the Trial Court, that, "[b]y awarding. . . [his former wife] a disproportionate share of the community estate, the trial court [had] abused its discretion because it awarded. . . [his former wife] an unequal distribution of the community estate despite the divorce being granted on the grounds of insupportability and the evidence not showing a need for the trial court to award an unequal distribution of the community estate." Nieczyperowicz Appellate Brief, pp. 19-20 (citing *Kaftousian v. Rezaeipanah*, 511 S.W.3d 618 (Tex. App.—El Paso 2015, no pet.)).

Premeditation and Spoliation

Appellee had made all aware, "I'm moving back to Poland." Transcript, p. 47, July 25, 2023, and, had, in corroboration, emailed to Appellant an e-book, Elżbieta Baumgartner, *Powrót do Polski* (2022), detailing his plans, a complete playbook, written in Polish, and followed to the letter, suggesting "deliberation and premeditation", and "psychiatric evidence relating to the defendant's mental capacity to act willfully and deliberately and with premeditation [i]s admissible." *State v. Breakiron*, 108 N.J. 591 (N.J. 1987). Confirming Appellee's intention, social media content appears to suggest that he had, by mid-September 2023, relocated to Poland, with welcoming messages from his Facebook friends. Andrew Nieczyperowicz, "This content isn't available right now." September 10, 2023, https://www.facebook.com/share/p/j4JCWqJh1Kqs6kCW/ (accessed June 2, 2024)[1]. However, after an exhibit, drawing reference to this post had been used in the appeals court and an identity theft report to the IRS, the post was made "private", and "[w]hoever corruptly. . . (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2)otherwise

[1] Post, with reply message from Halina Książęk, saying "Witam Cię Braciszku w Polske" (Welcome to Poland, Brother), changed to "private" after being used as an exhibit in stolen identity report to IRS. In *Allied Concrete Co. v. Lester*, 285 Va. 295 (Va. 2013), the "trial court ruled that Lester's misrepresentations 'related solely to the issue of damages and were mitigated, to the extent appropriate, by an adverse jury instruction, thus, they do not affect the validity of the verdict as to liability.'" In *Gatto v. United Air Lines, Inc.*, Civil Action No.: 10-cv-1090-ES-SCM, 7 (D.N.J. Mar. 25, 2013), the court ruled that, where a Facebook post had been deleted, the factors of "(1) the evidence was within the party's control; (2) there was an actual suppression or withholding of evidence; (3) the evidence was destroyed or withheld was relevant to the claims or defenses; and (4) it was reasonably foreseeable that the evidence would be discoverable", *Id.* citing *Mosaid Technologies v. Samsung Electronics*, 348 F.Supp.2d 332 (D.N.J. 2004); *Brewer v. Quaker State Oil Refining Co.*, 72 F.3d 326 (3d Cir. 1995); *Veloso v. Western Bedding Supply Co.*, 281 F.Supp.2d 743 (D.N.J. 2003); *Scott v. IBM Corp.*, 196 F.R.D. 223 (D.N.J. 2000)), there was sufficient evidence to support an inference of spoliation.

obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both." 18 U.S.C. § 1512(c).

Forgery and Fraud

On April 5, 2024, after receiving notification that her federal tax return had been rejected under IND-511-01, indicating that "the primary taxpayer is already listed as Spouse on a previously filed return with filing status Married Filing Separately", Staff, "Help Center: IRS Reject Codes - Married Filing Separately," *Tax Act*, https://www.taxact.com/support/21699/2019/irs-reject-codes-married-filing-separately (accessed June 2, 2024), Appellant had filed, on April 7, 2024, an IRS Form 14039, *Identity Theft Affidavit*, along with her IRS Form 1040, awaiting adjudication, which resulted in an award of her refund May 23, 2024, implicating Appellant, *inter alia*, in a violation of 18 U.S.C. § 510.

In addition, Appellant has reported to law enforcement and documented events related to the divorce settlement, including a conversion, *Pipes v. Hemingway*, 358 S.W.3d 438 (Tex. App. 2012) (citing *Waisath v. Lack's Stores, Inc.*, 474 S.W.2d 444 (Tex.1971)), involving the escrow account refund from Flagstar Bank, FSB, Escrow Number: FAH23008110, in the amount of in the amount of $2,692.45, that had been sent to an address that was on file, but changed by Appellee on August 28, 2023, immediately after the sale of the Marital Homestead, for delivery to a friend of Appellee, , *i.e.* Krystna Keller, who resides at 780 Barnaby Place, Wheeling, Illinois 60090. A copy of the check confirms that Number 0006132344, dated September 1, 2023, had been deposited at Chase Bank, with endorsements by a name conforming to at least a likeness of Appellee's

name, but also containing a forged signature for "Ewa", not "Eva", "Nieczyperowicz", not "Czyz", implicating violations of involving identity theft, Tex. Penal Code § 32.51(a)(1)(c), fraudulent possession, Tex. Penal Code § 32.51(b)(1), and "[a]n offense under this section is. . . a state jail felony if the number of items obtained, possessed, transferred, or used is less than five", Tex. Penal Code § 32.51(c)(1), in addition to conspiracy under Tex. Penal Code § 15.02, and "[a]n offense under this section is one category lower than the most serious felony that is the object of the conspiracy, and if the most serious felony that is the object of the conspiracy is a state jail felony, the offense is a Class A misdemeanor." Tex. Penal Code § 15.02(d).

"Other crimes evidence, although generally inadmissible, is admissible for certain purposes", and "[o]ne of those purposes is to prove *modus operandi* or 'method of working.'" *People v. Hall*, 186 Ill. App. 3d 123 (Ill. App. Ct. 1989) (quoting *People v. Kimbrough*, 138 Ill. App.3d 481 (1985)). "The term refers to a pattern of criminal behavior so distinct that separate offenses are recognized as the work of the same person." *Id.* "This inference arises when both crimes share peculiar and distinctive features not shared by most offenses of the same type and which, therefore, earmark the offenses as one person's handiwork"; "[h]owever, it is unnecessary that the offenses be identical." *Id.* (citing *Ibid.*).

In *modus operandi*, it is of at least probative value that Appellee had similarly secured for himself the a refund of the security deposit for rental of the Marital Homestead, a sum of $4,000.00 from community property, distributed *via* Zelle, Transaction No. 18328767425, returning the moneys to Appellee from TEI Holdings, 401K Trust, the investor/purchaser.

Generally, "property conveyed to one spouse during a marriage is presumed to be community property unless that presumption be displaced by a different or contrary presumption that would show that the property so conveyed was in fact, separate property." Kyles v. Kyles, 832 S.W.2d 194 (Tex. App. 1992). "Although a spouse has the right to dispose of community property under his or her control under Tex. Family Code Ann. § 5.22 (Vernon 1973), he may not dispose of his spouse's interest in community funds if actual or constructive fraud exists", and, "[w]ithout specific proof of fraudulent intent, Texas courts nevertheless have set aside any gift of community funds as a constructive fraud on the other spouse if the gift is capricious, excessive or arbitrary." Id. (citing Givens v. Girard Life Insurance Co., 480 S.W.2d 421 (Tex. Civ. App. — Dallas 1972, writ ref'd n.r.e.).

Upon information and belief, as early as May 2023, Appellee had been in the process of liquidating "[a]ll household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment", which had been the subject of division of the Marital Estate in the Final Divorce Decree and awarded to Appellant; however, the sale of the Marital Homestead on August 14, 2023, with a payoff balance of only $135,147.36, had effectively transferred this personal property to the investor, selected by Appellee, apparently as early as December 2021, two years prior to the Order to Compel the Sale, and without tender of consideration therefor, and the limitations period for a conversion claim begins to run at the time of the unlawful taking." *Pipes*, 358 S.W.3d at 438 (citing *Autry v. Dearman*, 933 S.W.2d 182 (Tex. App.-Houston [14th Dist.] 1996, *writ denied*)).

Appellant has averred that the Sales Contract had indicia to support a *prima facie* case of forgery and fraud, rendering the sale void. "[O]nce conspiracy

has been established, the government need show only 'slight evidence' that a particular person was a member of the conspiracy", *U.S. v. Elliott*, 571 F.2d 880 (5th Cir. 1978) (quoting *U.S. v. Morado*, 454 F.2d 167 (5th Cir. 1972)).

Evidence of Flight

"[E]vidence of . . . flight. . . [is] admissible even if offered solely to prove his consciousness of guilt as to that predicate act." *U.S. v. Pungitore*, 910 F.2d 1084 (3d Cir. 1990); *see also U.S. v. Climico*, No. S2 11 CR. 974-08 CM, 2014 WL 4230320, at *1–7 (S.D.N.Y. Aug. 7, 2014)[7]; Sherry Gaba, "Understanding Fight, Flight, Freeze and the Fawn Response," *Psychology Today*, August 22, 2020[8]. While Counsel for Appellee had attempted to shift fault to Appellant's counsel and the "disbursement of funds", Nieczyperowicz Motion for Extension on Appellate Fee Deadline, October 13, 2023, ignoring any retainer funds held in escrow, or simply billing their client, they acknowledged that he is "a retiree living in Poland," Appellant's Brief, p. 20, (citing RR 9:22-10:1), and had indicated that Appellant had gone incommunicado as early as September 13, 2023, as related to Appellant's former counsel, in relation to signing the Divorce Decree, which remains unsigned.

Upon information and belief, Appellant, who had conspicuously announced his arrival in Poland, and sharing Christmas greetings, posing as Santa, Andrew Nieczyperowicz, "Profile," *Facebook*, December 4, 2023, https://www.facebook.com/share/uAEi2cReqwEZMueA/, framed with a wallpaper picture of his Jeep Wrangler, Andrew Nieczyperowicz, "Wallpaper," *Facebook*, January 28, 2023, had changed his profile name on Facebook from "Andrew Nieczyperowicz", to his Polish name, "Andrzej Nieczyperowicz", only after

Appellant had abruptly ceased posting on this social media platform, with a post, depicting a man upset, walking away in the direction of a sign, for a cocktail bar, with the phrase "bo mnie świnia zdenerwowal" (because the pig upset me), Andrew Nieczyperowicz, "bo mnie świnia zdenerwowal," *Facebook*, April 24, 2024, https://www.facebook.com/share/oMinFQRAr26RgKYC/ , just two days after the Notice from the Appeals Court, advising that the "case is scheduled for submission without oral argument on the briefs and record on Wednesday, June 5, 2024." Notice, April 22, 2024 (Hassan J., Poissant, J. and Wilson, J.).

Yet, suddenly emerging on LinkedIn, a profile with no profile picture emerged for Andrzej Nieczyperowicz, identified as the Geschäftsführer, or manager/managing director, at A&B Renovierungen, in Weinheim, Baden-Württemberg, Deutschland, Andrzej Nieczyperowicz, "Profile," *LinkedIn*, https://de.linkedin.com/in/andrzej-nieczyperowicz-121750b0 (accessed June 2, 2024), a company launched in 2006, but which has either a brand new website, or at least one still under construction, Staff, "About Us," A & B Renovations, https://ab-renovierungen.com/ueber-uns/ (accessed June 2, 2024), with an Andrzej Nieczyperowicz who is much younger than Appellee and clearly not Appellee, and possibly merely "a cunning trick designed to deceive the adversary to obtain friendly advantage", perhaps a part of "an offensive action involving contact with the adversary conducted for the purpose of deceiving the adversary as to the location and/or time of the actual main offensive action." Joint Publication 3-13.4, *Military Deception*, January 26, 2012.

Good Cause

In discretionary appeal, "[t]o be, or not to be: that is the question", William Shakespeare, *Hamlet*, Act III, scene i (1603), and such is "the stuff of which fairy tales are made." Peter Morgan, *Royal Wedding Homily*, July 1981. Yet, even the Archbishop of Canterbury had acknowledged on that auspicious occasion that "fairy tales usually end at this point with the simple phrase: 'They lived happily ever after'", while conceding that "[t]his is not the Christian view", for, perhaps in *fides quarens intellectum*, "[o]ur faith sees the wedding day not as the place of arrival but the place where the adventure really begins." *Id.*

In a "more perfect union", Abraham Lincoln, *Gettysburg Address*, November 19, 1863, "[o]ur *Constitution* was made only for a moral and religious People", deemed to be "wholly inadequate to the government of any other". John Adams, *Address to Massachusetts Militia*, October 11, 1798. And a time may "come when they will not endure sound doctrine; but after their own lusts shall they heap to themselves teachers, having itching ears", when "they shall turn away their ears from the truth, and shall be turned unto fables", *2 Timothy* 4:3-4 (KJV), whilst, in the matter raised on discretionary appeal, "we see through a glass, darkly; but then face to face", *1 Corinthians* 1312 (KJV). Still, "[a] lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the. . . attorney has the responsibility and duty to correct what he knows to be false and elicit the truth", *Com. v. Manigo*, 2010 WL 468084 (Va.Cir.Ct. 2010), for "[t]he ultimate purpose of the judicial process is to determine the truth", *Caldor, Inc. v. Bowden*, 330 Md. 632 (1993).

Yet, "[w]e who are seeking truth and not victory, whether right or wrong, have no reason to turn our eyes from any source of light which presents itself, and least of all from a source so high and so respectable as the decision of the supreme court of the United States." *U.S. v. Burr*, 25 F. Cas. 55 (C.C.D. Va. 1807). In "a short and plain statement of the claim showing that the pleader is entitled to relief", Fed.R.Civ.P. 8(a)(2), "[i]t is emphatically the duty of the Judicial Department to say what the law is." *Marbury v. Madison*, 5 U.S. 137 (1803).

Due process, in syllogistic express is merely "the process that is due," *T.P. Mining, Inc.*, 8 FMSHRC 687 (1986), and "there is no rational basis. . . to treat needy citizens living anywhere in the United States so differently from others", for, "[t]o hold otherwise. . . is irrational and antithetical to the very nature of . . . the equal protection of citizens guaranteed by the *Constitution*." *U.S. v. Vaello Madero,* 596 U.S. 159 (2022) (Sotomayor, J. dissenting). "The fundamental requisite of due process of law is the *opportunity* to be heard", and *Grannis v. Ordean*, 234 U.S. 385 (1914) (emphasis added), and some jurisdictions have "repeatedly admonished the circuit courts for 'short-circuiting' litigation at the demurrer stage", *Ewing v. Superior Air Parts, Inc.*, 93 Va. Cir. 181 (2016), suggesting that that opportunity afforded must contemplate something more, such that that should occur "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545 (1965). In the matter raised on discretionary review, that was not the case.

While one party in suit averred to a court that, "[o]n October 26, 2021," his wife had "filed her Original Petition for Divorce[] and requested an unequal share of the community estate", the record establishes in fact that the first attempt to

commence this dissolution of marriage had begun on September 7, 2017, *Nieczyperowicz v. Nieczyperowicz*, Case No. 2017-58540 (245th District Court 2017), almost seven years ago, and still counting. Moreover, under the laws of Texas, "property conveyed to one spouse during a marriage is presumed to be community property unless that presumption be displaced by a different or contrary presumption that would show that the property so conveyed was in fact, separate property." *Kyles v. Kyles*, 832 S.W.2d 194 (Tex. App. 1992).

"Although a spouse has the right to dispose of community property under his or her control under Tex. Family Code Ann. § 5.22 (Vernon 1973), he may not dispose of his spouse's interest in community funds if actual or constructive fraud exists", and, "[w]ithout specific proof of fraudulent intent, Texas courts nevertheless have set aside any gift of community funds as a constructive fraud on the other spouse if the gift is capricious, excessive or arbitrary." *Id.* (citing *Givens v. Girard Life Insurance Co.*, 480 S.W.2d 421 (Tex. Civ. App. — Dallas *1972, writ ref'd n.r.e.*). And, of record, as noted in the Petition for Certiorari, by more than a preponderance of evidence, the Marital Homestead had been sold to an "investor" that had been selected by the husband over two years before the Trial Court had issued an order to compel the sale, and an investor that had admitted that it markets its services for properties that "need repairs, title work or other work of that sort", and had warned the general public that "there are some people who are just not suited for an investment sale", specifically referencing "a house in a beautiful neighborhood or a house that's in perfect condition", because then "the best way to get money for your house is to put it on the whole, full listing service to hire a professional realtor to list it, show it and market it and get top

dollar." Big State Home Buyers, "Why You Shouldn't Sell To An Investor - Big State Home Buyers Tips," *YouTube*, July 16, 2015, https://youtu.be/jjEvTXbxQ6Y?si=ZkveLIoHhbp1zpRA (accessed March 24, 2024), transforming this sale to at least an anomalous departure from that investor's business operating model. Yet not even the courts had asked a question.

"Whether 'tis nobler in the mind to suffer the slings and arrows of outrageous fortune, or to take arms against a sea of troubles, and by opposing end them", William Shakespeare, *Hamlet, supra*, are the mythically philosophical ponderings of poets, but in the present matter, raised in discretionary appeal, was found an immigrant woman, separated by oceans from her family and friends, lured to this land of promise by words of love and affection, who had even found allegations of spousal abuse in domestic violence insufficient to provide a grant of relief from the courts in a marriage began in 2006, followed by proceedings brought in dissolution of that marital union spanning half the time to which she had been legally joined to her former spouse, a case now before the highest court in the land, seeking justice, granted in discretion.

Generally, an exception may be granted where a "party shows excusable neglect or good cause." *Jackson v. U.S.*, 1:10-cv-4\1:00-cr-23 (E.D. Tenn. Aug. 1, 2011) (citing Fed.R.App.P 4(a)(5); *Becker v. Montgomery*, 532 U.S. 757, n. 2 (2001). "Good cause will be found where forces beyond the control of the appellant prevented her from filing a timely notice of appeal. *Mirpuri v. ACT Mfg., Inc.*, 212 F.3d 624, 630 (1st Cir. 2000)." *Nicholson v. City of Warren*, 467 F.3d 525, 526 (6th Cir. 2006).

Call of Duty

While "[a] nonprecedential order is one that. . . does not add significantly to the body of. . . case law", and "[p]arties may cite nonprecedential orders, but such orders have no precedential value", such that "judges are not required to follow or distinguish them in any future decisions", while "a precedential decision issued as an Opinion and Order has been identified. . . as significantly contributing to. . . case law", *Oglesby v. U.S.P.S.*, Docket Number DC-0752-20-0387-I-1 (MSPB May 10, 2022) (citing 5 C.F.R. § 1201.117(c)), the authority in exercise of inherent powers, is often rather limited to "the extraordinary circumstances where bad faith or abuse can form a basis for doing so." *Hensley v. Alcon Labs., Inc.*, 277 F.3d 535 (4th Cir.2002) (citing *Chambers v. Nasco, Inc.*, 501 U.S. 32 (1991)).

And yet, "'[a]ll power may be abused if placed in unworthy hands'", but "'[t]he courts cannot prevent abuse of power, but can sometimes correct it.'" *U.S. v. Chalk*, 441 F.2d 1277 (4th Cir. 1971) (quoting *Luther v. Borden*, 48 U.S. (7 How.) (1849)). "The term 'moral turpitude' refers to behavior 'that shocks the public conscience as being inherently base, vile, or depraved'," *Uribe v. Sessions*, 855 F.3d 622 (4th Cir. 2017) (citations omitted). Moreover, "conduct deliberately intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level," rebutting even a claim in defense of sovereign immunity. *Cty. of Sacramento v. Lewis*, 523 U.S. 833 (1998). And a "court may grant relief under its inherent equity power if, because of the fraud of his opponent, the aggrieved party was prevented from presenting his claim or defense to the court. *Aheroni v. Maxwell*, 205 Cal.App.3d 284 (1988)

(citing *In re Marriage of Stevenoti*, 154 Cal.App.3d 1051 (1984); *DeMello v. Souza*, 36 Cal.App.3d 79 (1973).

"Two essential conditions are found in a classic case in equity which seeks to set aside a judgment: first, the judgment is one entered against a party by default under circumstances which prevented him from presenting his case; second, these circumstances result from extrinsic fraud practiced by the other party or his attorney." *Id.* (citing *Otani v. Kisling*, 219 Cal.App.2d 438 (1963)). "The vital question is 'whether the successful party has by inequitable conduct, either direct or insidious in nature, lulled the other party into a state of false security, thus causing the latter to refrain from appearing in court or asserting legal rights.'" *Id.* (quoting *Colich v. United Concrete Pipe Corp.*, 145 Cal.App.2d 102 (1956).

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory" including the rights " to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property *as is enjoyed by white citizens*, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other". 42 U.S.C. § 1981(a) (emphasis added). "To state a claim under the *Equal Protection Clause*, a § 1983 plaintiff must allege that a state actor intentionally discriminated against the plaintiff because of membership in a protected class", and, to state a claim of retaliation claim under 42 U.S.C. § 1983, a plaintiff must established that: "'(1) the plaintiff engaged in constitutionally protected. . . activity, (2) the defendant took an action that adversely affected that protected activity, and (3) there was a causal relationship between the plaintiff's

protected activity and the defendant's conduct." *Roncales v. County of Henrico*, Civil Action No. 3:19cv234 (E.D.Va. March 3, 2021) (citing *Booker v. S.C. Dep't of Corr* , 855 F.3d 533 (4th Cir. 2017); *Suarez Corp. Indus. v. McGraw* , 202 F.3d 676 (4th Cir. 2000) (accord)).

"At common law a judgment *non obstante veredicto* would be allowed only when the plea confessed a cause of action and set up matters in avoidance which were insufficient, although found true, to constitute either a defense or a bar to the action", *Baxter v. Irvin*, 73 S.E. 882 (N.C. 1912) (citations omitted), but "the motion for such a judgment must, of course, be made after verdict, and the practice in such cases is very restricted." *Id.* (citations omitted). "The motion will not be granted unless it appears from the plea and the verdict, and not from the evidence, that the plaintiff is entitled to the judgment." *Id.* "An order is *void ab initio* if entered. . . in the absence of jurisdiction of the subject matter or over the parties, if the character of the order is such that the. . . [issuer] had no power to render it, or if the mode of procedure used. . . was one that the. . . [issuer] 'could not lawfully adopt.'" *Singh v. Mooney*, 261 Va. 48 (2001) (internal citations omitted). Further still, "[a]n order may also be 'voidable' if it contains reversible error". *Kelley v. Stamos*, 285 Va. 68 (2013) (citations omitted).

"The trial court has 'not only the power but the duty to vacate the inadvertent entry of a void judgment at any time'", *Thomas v. Miller*, 906 S.W.2d 260 (Tex. App. 1995) (citations omitted), because "[a]n order is void when a court has no power or jurisdiction to render it." *Id.* (citations omitted). Moreover, "[i]t is the duty of the appellate court to review the case *de novo* upon both the law and

the evidence, giving due deference to the trial court's assessment of the credibility of the witnesses". *In re Marriage of Powers*, 527 S.W.2d 949 (Mo. Ct. App. 1975). "Where administrative action has raised serious constitutional problems, the Court has assumed that. . . [the legislature] or the. . . [the executive] intended to afford those affected by the action the traditional safeguards of due process." *Greene v. McElroy*, 360 U.S. 474 (1959) (citations omitted), and "[t]hese cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication or without the most explicit action by the Nation's lawmakers, even in areas where it is possible that the Constitution presents no inhibition." *Id.*

"[T]he word 'jurisdiction' means different things in different contexts"; "[i]n one context, it may mean the authority to do a particular thing"; while, "[i]n another, it may mean the power of the court to entertain an action of a particular subject matter", and "[t]hese are very different uses. " *Taliaferro v. Taliaferro*, 186 Ariz. 221, 223 (Ariz. 1996). "[A] void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final." *United Student Aid Funds, Inc. v. Espinosa,* 559 U.S. 260 (2010). "The list of such infirmities is exceedingly short; otherwise, Rule 60(b)(4)'s exception to finality would swallow the rule." *Id.*

***Pro Se* Litigants**

"Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision", *State v. Parker*, 315 N.C. 249 (1985), Yet, "the great run of *pro se* cases," find that "the issues are faintly articulated and often only dimly perceived", *Gordon v. Leeke,* 574 F.2d 1147 (1978). WStill, "[w]hile the failure to

comply with the appellate rules subjects an appeal to dismissal, *Steingress v. Steingress*, 350 N.C. 64, 511 S.E.2d 298 (1999), this Court may suspend or vary the requirements of the rules to 'prevent manifest injustice,' N.C.R. App. P. 2, or 'as a matter of appellate grace.'" *Viar v. N.C. Department of Transportation*, 162 N.C. App. 362 (N.C. Ct. App. 2004) (quoting *Enterprises, Inc. v. Equipment Co.*, 300 N.C. 286 (1980)).

In *Shook v. County of Buncombe*, 125 N.C. App. 284 (1997), an "appellant's brief presented 'a number of interwoven and complicated issues, amidst a record on appeal of three volumes and seven hundred and sixty-seven (767) pages'" and that "Court explained that such circumstances highlight why our appellate rules are a necessity", for when "presented with an appeal such as the instant one, the rules are not merely ritualistic formalisms, but are essential to our ability to ascertain the merits of an appeal", and they serve to "promote fairness by alerting both the Court and appellee to the specific errors appellant ascribes to the court below." *Id.*

Courts, in discretion, have granted exceptions to the formal pleading rules, where an appellant had "merely cited to portions of the Commission's Opinion without setting forth a basis for error", as well as in instance where, "[a]lthough defendant in this case did not technically follow the rules by failing to list specific page numbers where exceptions could be found in the record and did not set out these exceptions in the brief, we do not find these omissions so egregious as to invoke dismissal". *Symons Corp. v. Insurance Co. of North America*, 94 N.C. App. 541 (1989).

Manifest Injustice

Especially as to an unrepresented litigant, as describes the class of litigants akin to Petitioner-Appellant, courts, generally, will "not permit technical pleading requirements to defeat the vindication of any constitutional rights which the plaintiff alleges, however inartfully, to have been infringed." *Canty v. City of Richmond, Va., Police Dept.*, 383 F.Supp. 1396 (E.D.Va.1974), *aff'd*, 526 F.2d 587 (4 Cir. 1975), *cert. denied*, 423 U.S. 1062 (1976). And, in *Viar*, the Court had found that the "[p]laintiff ha[d] presented a compelling appeal warranting reversal, the merits of which were orally argued before this Court" and had held that "[d]ismissal of such appeal for technical appellate rules violations would amount to a manifest injustice." *Viar*, 162 N.C. App. at 362.

This, by analogy, would be that case. As detailed in the Petition for Certiorari, although a "[c]ontested divorces usually take over a year to finalize—although simple divorces can be completed in as little as three months", and "[d]ivorce comes at a big cost, with couples spending an average of $7,000 to dissolve their union", Christy Bieber & Adam Ramirez, "Forbes Advisor: Revealing Divorce Statistics In 2024," *Forbes*, January 8, 2024 (citations omitted), even the Trial Court had acknowledged of Petitioner-Appellant, divorced from known reality, "If you've done this three times – you've filed this divorce three times." Transcript, p. 7, May 15, 2023)[2].

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[2] *Nieczyperowicz v. Nieczyperowicz*, No. 2020-77320 (312th District Court 2020) was filed on December 2, 2020 by Hershel P. Cashin on behalf of Czyz, while Pitre Siomara Ramirez, Esq., retained counsel for Czyz, had filed the initial action for dissolution of marriage, in the matter, *Nieczyperowicz v. Nieczyperowicz*, Case No. 2017-58540 (245th District Court 2017), on September 7, 2017, while Czyz and Nieczyperowicz "were married on November 27, 2006", Appellant's Brief, p. 10, (citing RR 9:22-10:1).

Typically, "[d]ivorce comes at a big cost, with couples spending an average of $7,000 to dissolve their union", Christy Bieber & Adam Ramirez, "Forbes Advisor: Revealing Divorce Statistics In 2024," *Forbes*, January 8, 2024 (citations omitted), yet, as averred in the Petition for Certiorari, attorney of record, James M. Evans, Esq., at Laura Dale & Associates, P.C., in Houston, Texas had held her responsible for an invoice for legal services, demanding $22,298.34, including the responsibility to replenish the exhausted $12,500.00 retainer, computed "in an amount not less than the amount determined by multiplying eight (8) hours per day by the attorney's hourly rate as provided herein for the number of trial days estimated by the Firm", Eva A. Nieczyperowicz & James M. Evans, "Employment Agreement Family Law, after only the first full month of representation, and including 12.75 hours billed by a paralegal, Evodije Fornelius, amounting to $3,187.50, apparently triggering a requirement for explanation, noting how this paralegal had "completed a review of your case pleadings" and indicating that she would "work on setting a hearing on the *Motion to Appear in Court Remotely*", in regards to the Motion to Compel Sale. (emphasis added)

Disparate Treatment

"If a picture paints a thousand words", Barry Manilow & Marty Panzer, *If* (1971), the Court of Appeals docket reflects a total of four motions denied, a Petition for Review, disposed by Supreme Court, a Motion to Strike, a Motion to Reconsider and the matter raised on discretionary review, a Motion Regarding Informalities in the Record, described as an unpermitted substantive argument, despite raising a procedural defect, precluding the reviewing court from

establishing jurisdiction, and all dispositive motions had been filed by one party, the Applicant.

Yet, the official record still reflects that on February 26, 2024, the former husband's "brief was received and filed, ORAL ARGUMENT REQUESTED", indicating that attorneys in Houston for a party who had returned to Poland had expressed a desire for a former spouse, an unrepresented litigant, who had been abandoned by her retained counsel, immediately after an appeal had been filed, albeit not requesting leave of court to withdraw until two months had lapsed, to travel from her place current residence in the Commonwealth of Virginia to deliver oral argument, arguably, at least, a request admitting that their pleadings were not self-explanatory, and, considering the totality of the circumstances, betraying a motive of bad faith.

Similarly, the official record still reflects that on February 26, 2024, on March 27, 2024, an unrepresented litigant, the former wife's "brief was received and filed, ORAL ARGUMENT WAIVED", for which a "reply brief, if any, will be due twenty (20) days" found no reply issued, and, although a court victory for the wife, with a decision due out on June 5, 2024, requiring no oral arguments, no entry in the record reflects any other pleading in which her request and been duly considered and granted.

On the contrary, as to the former husband, the official record still reflects a total of five dispositive motions granted, including a Motion for Extension of Appellate Fee Deadline, filed on October 13, 2023, and granted not until November 15, 2024, by which time no payment had yet been tendered, and implicitly requesting an exception to the rule that directs "[a] party who cannot afford

payment of court costs" to "file the *Statement of Inability to Afford Payment of Court Costs. . .*", Tex. R. Civ. P. 145, Tex. R. App. P. 20.1(b)(1).

A Reviewing "Court will not disturb factual determinations unless 'they are 'plainly wrong or without evidence to support [them]'", *Cedeno v. For Every Body, LLC*, No. 1842-22-4 (Va. Ct. App. Apr. 23, 2024) (citations omitted). "[W]hether a trial court's determination as to '[h]ow the governing legal standard applies to those presumptively correct facts . . . is a question of law entitled to no deference on appeal.'" *Id.* (citations omitted). "Where the segregation is inadvertent and without the assistance or collusion of school authorities, and is *not caused by any 'state action'*, but rather by social, economic and other determinants, it will be referred to as '*de facto*' herein." *DeFunis v. Odegaard*, 82 Wn. 2d 11, 27 n.10 (Wash. 1973) (citations omitted). Yet just this transaction is clearly distinguishable from the procedure his wife had followed, in the Trial Court, with the legal effect that "party is not required to pay costs in the appellate court *unless the trial court overruled* the party's claim of indigence in an order that complies with Texas Rule of Civil Procedure 145." Tex. R. App. P. 20.1(b)(1), but to which she had, again, been subjected again, when filing a petition for discretionary review, regarding a filing fee of $155.00, not granted, despite being unemployed and without any income, only later to be denied that review, the predicate events for the current discretionary application and discretionary petition. There the Court of Appeals had found excusable neglect, or "good cause", where a firm that works on retainer had refused to tender a modest filing fee of only $205.00 on a claim that proceeds from the sale of the Marital Homestead had not yet been released and shifting the burden to his former spouse's retained attorney, who had already unofficially

withdrawn as her attorney. Yet, the husband had found sufficient discretionary finances to relocate to Poland, Transcript, p. 47, July 25, 2023, as well as to purchase a brand new car. *Id.*[3]

Similarly, the official record still reflects a total of five dispositive motions granted, including a Motion to Extend Time to File Brief, filed and granted on January 25, 2024, on a claim of good cause, or excusable neglect, where the husband had claimed, regarding a brief on appeal of a Final Divorce Decree published on September 19, 2023, had been disrupted by an ice storm on January 19, 2024, requiring an additional 30 days to complete. Yet a reasonable trier of fact would conclude that the "proffered explanation is unworthy of credence". *Texas Dept. of Comm. Affairs v. Burdine*, 450 U.S. 248 (1981).

CONCLUSION

WHEREFORE, for the reasons stated in this application, Applicant respectfully requests a grant of leave to exceed page limits, for good cause, in accordance with S.Ct.R. 33(1)(d), and, in equity, such relief as this Court may deem required to ensure the administration of justice. *In re White*, No. 2:07CV342, 2013 WL 5295652, at *1–71 (E.D. Va. Sept. 13, 2013).

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[3] "And just -- so it's faster, too, Judge. He's made a claim that the Jeep Wrangler is separate property. I have no idea why." *Id.*