

294th No. 22-00105

No. 12-23-00282-CV

In the Twelfth Court of Appeals  
Tyler, Texas



Udo Birnbaum,  
*Appellant,*

v.

CSD Van Zandt, LLC,  
*Appellee.*

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**Motion to Reconsider**

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UDO BIRNBAUM, an 87 year old having to be without a lawyer, asks this Appeals Court to reconsider its Ruling that everything in the 294th District Court was done right.

But they took my 42 year 150 acre homestead, without letting me have a trial, and allowing me show to a jury exactly how it was all fraud.

What was done by the Van Zandt Court was not right.

**1.**

**Information Required by  
Rule 10.5, TEX. R. APP. P.**

The following information supports this request:

- (i) Appellant's Brief was filed on February 20, 2024. Appellee's Brief was on April 15, 2024. Appellant's Reply was on May 6, 2024.
- (ii) Opinion affirming issued May 31, 2024.
- (iii) Appellant submits this request to reconsider.

## **Facts Explaining this Motion to Reconsider**

AT THE RISK of appearing presumptuous, but gentlemen, have you no shame?

### **Facts to Reconsider**

This case is the poster child of the abuse of the judicial process – an 87 year old handicapped robbed of his 42 year 150 acre homestead by blatantly unlawful process without right to trial or ever even a hearing.

Such by summarily “taking”, by a process called summary judgment, such process available only for when there are no issues needing to go to a jury, i.e. that there is only an issue of law – an issue for a judge, and not also an issue of facts – for a jury to determine.

Plaintiff / Appellee argued to this Court that I had “waived” my right to a jury by not countering with evidence raising an “issue of fact”, when I had presented TWO (2) notarized DEEDS showing that title to the 150 acres never entered the estates Plaintiff claimed as their chain of title coming out of, and Plaintiff never presenting, indeed never even identifying their supposed chain of deeds.

Plaintiff / Appellee claimed *Hughes v. 21st Mortg. Corp.*, (2022 Tex. App. LEXIS 7303), as the justification for the trial court having done as it did, and asking for this Court to bless what the trial court had done. Such determination now supposedly having been done by this Appeals Court by what is called determination *de novo* – i.e. a fresh and anew independent determination.

But *Hughes* makes it clear what this Appeals Court should have done, and what the trial court should have done, and that neither did.

### **Required Due Process per *Hughes***

Per *Hughes v. 21st Mortg. Corp.*, (2022 Tex. App. LEXIS 7303),  
emphasis added:

**“We review summary judgments de novo**, taking as true evidence favorable to the nonmovant and indulging reasonable inferences and resolving doubts in the nonmovant's favor.

"To recover in a trespass to try title action, the plaintiff must recover **upon the strength of his own title**.

"[s]ummary judgments must stand on their own merits" and that **on appeal, "movant still bears the burden of showing that there is no genuine issue of material fact** and that the movant is entitled to judgment as a matter of law").

Plaintiff/ Appellee's Brief utterly failed to even address the matter of its initial BURDEN, as did Plaintiff's Motion for Summary Judgment in the trial court, as did the trial court in its Order on Motion for Summary Judgment, as did this Appeals Court in its Opinion, upon its supposed determination *de novo*, instead this Appeals Court blithely and blatantly just “pasting” – i.e. in social media parlance – “liking” - the perpetrators painting of the facts.

Lipstick on a pig.

### **“finger finger on the wall” : Daniel 5.5**

Quick reference to the News shows that America is quickly devolving into a third world justice system – with real estate deed fraud rampant – but in this case under color of law - by using the justice system itself as the cudgel.

Cannot this Appeals Court SEE, what is plainly in front of your noses, that there indeed exist no DEEDS onto any of the THREE (3) separate supposed “grantors” onto CSD Van Zandt LLC, conveyance of title in Texas solely upon DEEDS. *Smith v. Davis*, No. 12-12-00169-CV, 2013 WL 2424266 (Tex.App.—Tyler 2013, no pet.)

The Lord will straighten you gentlemen out. After that maybe another Napoleon, or a Hitler, but something is going to happen. Maybe not another Great Flood, maybe just Great Global Boiling, or another Pandemic, maybe already here as a Stupid virus that spreads via Facebook, Google, Windows 11, the electric grid, or corrupt Appeals Courts.

### **Prayer**

May God have mercy on America and our collective stupidity.

And again, at the risk of appearing presumptuous, but Gentlemen, have you no shame?



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### **Certificate of Service**

Today June 7, 2024, Regular Mail, to Gregory Smith, Smith Legal PLLC, 110 N. College Ave., Suite 1120, Tyler, TX 75702.

Also email attach to [greg@smithlegaltx.com](mailto:greg@smithlegaltx.com)

Today June 7, 2024, Regular Mail, to Corey R. Kellam, Flowers Davis PLLC, 1021 ESE Loop 323, Suite 200, Tyler, Texas 75701.

Also email attach to [crk@flowersdavis.com](mailto:crk@flowersdavis.com)

Today June 7, 2024, CMRR 7022 2410 0002 2355 4265, to Twelfth Court of Appeals, 1517 W. Front Street Suite 354, Tyler, Texas 75702