

No. 128831

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IN THE  
SUPREME COURT  
OF THE  
STATE OF KANSAS

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STATE OF KANSAS  
Erasmo Mendia  
Plaintiff - Appellant

vs.

City of Wichita;  
Beth Nordick;  
Red Spade Investigations, Inc.;  
Defendants - Appelles

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MOTION OF APPELLANT ERASMO MENDIA

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Appeal From the Court Of Appeals of Kansas denial to  
Appoint Counsel  
Honorable Kim Schroeder, Presiding Judge

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Erasmo Mendia  
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Appellant , pro se

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### Nature of the Case

Are the people who bring their grievances before the Court entitled to have an appointed counsel to assure effective, competent and equal representation as opposing party would have.

### Statement of the Issues

Issue I: The Court cited Brown, 278 Kan. 481-83, 101 P.3d 1201 (2004), which did address the Federal Constitution Sixth Amendment, and forcefully found that Counsel " must be effective and competent " , who can address the Court's " factual and legal bases in their memorandum orders", to assure "due process and Fundamental Fairness ".

Issue II: This Motion rests on the authority of Section 3 Bill of Rights Kansas Constitution " to Petition the government, or any department thereof, for the redress of grievances " -THE SPIRIT AND LETTER OF THE LAW-supported by and in conjunction with Sections 1 and 2 ( equal rights ) and Section 20 "Rights retained by the People".

### Statement of the Facts

On the day of the Summary Motion hearing , 12-19-2024- the judge called on the City's attorney to present their Motion first. The Attorney spoke at length from his paperwork uninterrupted by anyone.

The Court asked me to respond. I started, then immediately was interrupted by the Judge. This happened continually , thereafter the Judge instructed me as to what I could respond too. This treatment in Court to was because I represented myself. After shutting me down, the Judge granted the City's summary judgment motion.

Red Spade was asked to present their Motion. They did without any interruptions from anyone. Then the Court asked me to respond. I did and got in lots more sentences than before. I was interrupted for a length of time as the Judge searched the records for my doctors affidavit that I mentioned. This threw off my whole train of thought. AS a Pro Se I have no training to pick up the pace after intrusions by the Court's interruptions. This wouldn't have happened to a member of the Court's legal monopoly-attorney. Not having an attorney prejudiced me, laboring under a cognitive impairment , in that objections would have been made to the Judge's representation of the facts.

## Arguments and Authorities

Issue I: Was the Brown case cited by the Appeals Court on point and/or relevant to the denial of Motion for appointment of counsel.

The Brown case 278 Kan. 481-83 cited to Cullins v. Crouse, 348 F.2d 887-89 ( 10<sup>th</sup> Cir. 1065 ). That Court stated " no constitutional right to counsel in a civil case found in the Sixth Amendment. A finding was made " that counsel must be effective and competent OTHERWISE, it is just a formality ".

That Cullins case didn't address the vast liberties of Bill of Rights Kansas Constitution, specifically Sec. 3 " To Petition the government, or any department thereof, for the redress of grievances ". Section 1 " equal natural rights including the pursuit of happiness ". Section 2 " equal protection and benefit treatment under the law".

This is the Pro Se Constitutional Right to appointed counsel. Even more so when an attorney can't be found willing to take the case or can't afford their fees, to work the case through the maize of the Court's legal Monopoly, and when there is issue of cognitive impairment That I have alleged. This Constitutional Law on the authority of the common people is the protection when they stand in Court PRO SE faced by the other parties ATTORNEY.

The City and District Courts did appoint counsel in the criminal proceedings based on these issues. The Cullins Court infers the appointment of counsel to proceed into to the civil arena.

If I would have had an appointed counsel at the Summary Judgment hearings , I would not of been subjected to the "scheme" by the other parties. Just after we went off the record I stated " well then I'll wait to get the Journal Entry when you file it" directed to the City. If I would have waited on the City to then file my Notice of Appeal , I would have been bared by statue beyond the time limit. Luckily I was informed of the Journal Entry entered the very next day after the hearings with no compliance to Supreme Court Rule 165. "proof of the scheme". The burden of proof of the Petition was on me and I should have presented first and would have if I had been represented.

Issue II: Section 3 Bill of rights Kansas Constitution is the authority in Kansas for appointment of counsel in Civil cases.

The Voters in approving the Kansas Constitution agreed, we the people's right, to petition the government or any department thereof, for the redress of grievances. This guaranteed access to the Judge , who would search/know the law, applying it to the circumstances of the case, followed by an explanation that can be grasped by the ordinary Kansan.

James Blunt a country Doctor urged states rights ( the people's rights ) by a forward looking State Constitution . Thus evident in the adoption of Kan. Bill of Rights Section 1 and Section 6; Kan. Const. Art 15 sec.6 , sec.9., promoting State sovereignty. The Voters agreed with this intent of State sovereignty, with these progressive ideas embraced for the approval of the Constitution. The rights that many free-staters pioneers, with faces down in muddy fields, must be treated for their sake as sovereign States Rights.

William Brennan called upon state courts to recognize that State Constitutions " are font of individual liberties, their protections often extending beyond those required by the U. S. Supreme Court's interpretation of federal law " and so stated by this Court.

Theses progressive ideas were/are the SPIRIT incorporated in the Kansas Constitution. see Hon. Robert Stone, Kansas laws and their origins, A standard History of Kansas AND KANSANS 949-91 (1918). All of this being the PEOPLES RIGHTS, see WYANDOTTE CONSTITUTIONAL CONVENTION 276-79 (1859), staunch and rigid restraints upon governmental powers in the Kansas democracy..

### Conclusion

For the forgoing reasons, Mr. Erasmo respectfully requests that this Court (1) Appoint Counsel to perfect the appeal in this case. OR (2) Adopt the Pro Se Rights Standard, from Pro Se Rights, guaranteeing the common people's freedom from any form of enslavement to come into the presence of the Court for Justice as found in Section 18 Bill of Rights Kansas Constitution attached; PETITION APPENDIX A.

Respectfully Submitted,

*Erasmo Mendia*  
Erasmo Mendia

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### CERTIFICATE OF SERVICE

I certify that the foregoing will be served via U.S.Mail, postage prepaid to:Nate Johnson, 455 N. Main-Law Dept., Wichita, Kan. 67202 and one copy to Rylee Broyles, 500 N. Market, Wichita, Ks., 67214 on this 25<sup>th</sup> day of April. 2025..

Erasmo Mendia

*Erasmo Mendia*

23CV473

CASE NO. 128,831

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

ERASMO MENDIA,  
*Appellant,*

v.

CITY OF WICHITA,  
BETH NORDICK,  
AND  
RED SPADE INVESTIGATIONS, INC.,  
*Appellees.*

ORDER

We deny Appellant's motion for appointment of counsel. Appellant does not have a constitutional right to counsel in a civil appeal. See *Brown v. State*, 278 Kan. 481, 483, 101 P.3d 1201 (2004).

DATED: April 7, 2025.

FOR THE COURT

*/s/ Kim R. Schroeder*

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KIM R. SCHROEDER, Presiding Judge

From Transcript

1 constitutional challenge. And that's the City of  
2 Lincoln Center case that we cited in our papers.

3 Given the lack of any sort of claim,  
4 particularly one that is in the operative complaint,  
5 the City urges this Court to enter summary judgment in  
6 its favor, along with a summary judgment in favor of  
7 defendant Nordick.

8 I'm happy to answer any questions now, or  
9 if they come up after presentations by plaintiff or  
10 defense counsel.

11 THE COURT: I have none at this time.  
12 Thank you.

13 MR. VIERTHALER-JOHNSON: Thank you.

14 THE COURT: Sir, your response to the  
15 City's motion.

16 MR. MENDIA: Primarily, my complaint  
17 focuses on the language in the nuisance code.

18 THE COURT: No, sir. So at this point,  
19 it's your response to the City of Wichita's motion for  
20 summary judgment. That's the only motion that I'm  
21 hearing right now. We will hear all of them, but this  
22 is -- I'm doing it one at a time, because I want to  
23 keep it very clear what I am addressing. So right  
24 now, it's your response to the City of Wichita's  
25 motion for summary judgment. That's what we're

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1       arguing.

2                   MR. MENDIA: Yeah. And he just now, just  
3 recently -- or just now mentioned whether there was a  
4 constitutional issue in this case. I disagree,  
5 because I think this case is a charge that the  
6 language is unconstitutional and it's discriminatory,  
7 as opposed to what he just said.

8                   The City in -- the City never alleged what  
9 you just heard in any of their responses. But this  
10 clearly, and it was intended and it's clear in the  
11 petition and my motion for summary judgment, that this  
12 is a constitutional claim for deprivation of rights,  
13 for the way the language reads and what it implies.

14                   And as far as the Kansas Tort Claims Act,  
15 I just couldn't see any way of alleging under that.  
16 Instead, I want permission from the Court to recognize  
17 this under the Bill of Rights, Equal Protection, and  
18 Kansas 44-1011, the Kansas Act Against Discrimination  
19 I think covers everything that I have alleged.

20                   THE COURT: So, sir, regarding their  
21 undisputed facts, do you dispute them or do you agree?

22                   MR. MENDIA: I dispute them.

23                   THE COURT: Their undisputed facts on  
24 page 3, numbers 1 through 7?

25                   MR. MENDIA: Well, yes, I do dispute them.

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1 Did you want me to read them?

2 THE COURT: I don't need you to read them.  
3 I can read them myself.

4 Can you please tell me what your dispute  
5 is, and which one you dispute.

6 MR. MENDIA: Well, number one, they have  
7 alleged a slew of violations of constitutional rights.

8 THE COURT: Sir --

9 MR. MENDIA: They were very well aware  
10 that --

11 THE COURT: Sir, I don't think we're  
12 looking at the same document. The document I'm  
13 looking at is the notice of motion and motion for  
14 summary judgment by the defendant City of Wichita and  
15 Beth Nordick, memorandum in support thereof. Which  
16 was filed on June 28th of this year. I'm looking at  
17 page three. On that page they list their undisputed  
18 facts, which is what we take up on motions for summary  
19 judgment. It was seven undisputed facts.

20 Do you have that document?

21 MR. MENDIA: Yes, Your Honor.

22 THE COURT: Okay. Do you dispute any of  
23 those seven facts, sir?

24 MR. MENDIA: Well, number four, I have  
25 appeared in court to answer for my personal

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1 information being on that complaint, not appearing to  
2 answer for anything that the name that they used on  
3 the complaint.

4 THE COURT: Okay. Any other facts you  
5 dispute?

6 MR. MENDIA: Well, three. There was no --  
7 the original paper that I got didn't have an  
8 appearance date listed on there. I think he mentioned  
9 himself.

10 And, of course, you know, I dispute that  
11 nuisance code is valid --

12 THE COURT: Okay. Sir, I'm just asking  
13 numbers one through seven, whether you agree with them  
14 or disagree. You said you had disagreed with three,  
15 that it had a date on it. I'm looking at Exhibit 3,  
16 there is a notice to appear date written down. You  
17 said on four, you appeared, but not to answer the  
18 complaint, but to discuss the name.

19 MR. MENDIA: I think three and four is the  
20 ones that I disagreed with.

21 THE COURT: Okay. All right, sir. Go  
22 ahead.

23 MR. MENDIA: Well, so in addition to me  
24 plainly setting out in my petition that he addressed  
25 the question of constitutionality in their papers,

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1 there was a question arises that whether the laws were  
 2 even lawful. Because there was a notation that  
 3 Chapter 8 was exempt from back in '72 when the City  
 4 adopted the ordinance. So they -- the thing is, the  
 5 City never responded to these two things. Which I  
 6 think gives it a whole different consideration before  
 7 the Court whether that language is constitutional, and  
 8 whether it was even a law, because of the paper that  
 9 they have on their Internet site. And I just want to  
 10 point out that they never addressed these in any of  
 11 their responses at all.

I think that's it.

12  
 13 THE COURT: All right. Thank you, sir.  
 14 Counsel, it's your motion, I'll give you  
 15 the last word.

16 MR. VIERTHALER-JOHNSON: Thank you, Your  
 17 Honor.

18 The disputed material facts don't change  
 19 the outcome of the motion provided by the City here.  
 20 Even if plaintiff appeared initially to contest  
 21 whether the name was correct, just from our argument,  
 22 and the papers demonstrate, that's not a dispute  
 23 material to a constitutional violation in any way.  
 24 And it also kind of suggests this is about the  
 25 application of the nuisance code to plaintiff rather

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1 Red Spade is entitled to judgment as a matter of law  
2 and to be dismissed from this suit.

3 So, Your Honor, that's what we're asking  
4 the Court to do today.

5 THE COURT: Thank you.

6 Sir, your response.

7 MR. MENDIA: Well, I think what she talks  
8 about is really a question for a jury. All that his  
9 affidavit said is that, you know, what his opinion  
10 was. You just heard her opinion about whether I was  
11 injured or not. But, you know, that's not a basis for  
12 was I really actually injured. You saw the video, and  
13 if you look real close and look at my facial  
14 expressions, you can see pain in my face. You could  
15 hear me calling out in pain. You heard that. It's in  
16 the video. So I don't think that's, you know, a  
17 proper element to be disposed of in summary judgment.  
18 That's definitely a question for the jury.

19 My doctor's affidavit would clearly  
20 establish that those interactions were -- the pain of  
21 the injuries that I complained of were going to be  
22 traced to those interactions that happened on that  
23 porch.

24 THE COURT: Was your doctor's affidavit  
25 attached to your response?

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1 MR. MENDIA: Yes, it could be.

2 THE COURT: Counsel, do you have a copy of  
3 the doctor's affidavit?

4 MS. BROYLES: Your Honor, I have a copy of  
5 plaintiff's response to our motion for summary  
6 judgment.

7 THE COURT: I do as well, and I do not  
8 have an affidavit attached to mine.

9 MS. BROYLES: I do not, Your Honor.  
10 Your Honor, there is an affidavit in  
11 plaintiff's reply to defendant's response to  
12 plaintiff's summary judgment motion filed on  
13 October 1st.

14 THE COURT: Was that for the City of  
15 Wichita's case? Which case are you talking about,  
16 counsel?

17 MS. BROYLES: It's in reply in opposition  
18 to defendant Red Spade's response to plaintiff's  
19 motion for summary judgment.

20 THE COURT: I have plaintiff's response,  
21 but I don't have an affidavit attached to the  
22 response.

23 MR. MENDIA: It was there when I filed it.

24 THE COURT: And so where is it attached,  
25 counsel?

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1 MS. BROYLES: May I approach?

2 THE COURT: Yes, please.

3 A reply to defendant's response to  
4 plaintiff's. Okay. So that's in plaintiff's case.

5 What page is that on, counsel?

6 MS. BROYLES: 50.

7 THE COURT: I don't have 50 pages on that  
8 one.

9 MS. BROYLES: I apologize, Your Honor,  
10 it's 65.

11 THE COURT: Okay. Can you just provide me  
12 with a copy, because in all these papers, I'm not  
13 finding it. Let me just review it quickly, and then  
14 I'll give it back to you.

15 MR. MENDIA: That's from the doctor that  
16 treated me at the VA.

17 THE COURT: Yes, sir. I've just read it.  
18 That was attached to your reply to defendant's  
19 response to plaintiff's motion for summary judgment.  
20 I will return that to you, counsel, but I will go  
21 ahead and consider it in this motion that we're  
22 arguing right now.

23 So go ahead, sir.

24 MR. MENDIA: One thing I do want to point  
25 out is that the thing that makes this outstanding is

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# APPENDIX A

**PRO SE RIGHTS**  
**PETITION**

This effort is to assert and have recognized the People's Right to Section 3 Bill of Rights Kansas Constitution and to Sections 1 and 2 equality/justice, when interacting with any government entity and/or in any proceedings where a licensed attorney represents the other party, also when any RIGHTS or BENIFITS ARE INVOLVED in any actions, proceedings, or settlement.

To this effort the People of Kansas agree with the SPIRIT and INTENT of the Law, which the early pioneers ascribed to the written word of the Kansas Constitution, when the vote was made to approve our Constitution.

We herein stipulate to these our rights as PRO SE :

1. We DO NOT give up any Rights to the Court's Legal Monopoly , which we are not part of , nor participate in any adversarial system.
2. Pro Se litigants, Kansas, are not required to follow the same rules of procedure and evidence which are binding on litigants who are represented by counsel.
3. Pro Se litigants are to be given OPTIONS by Judges, court personnel of the normal procedure, Court rules, which statues may apply, in presenting the facts of the case, in any filings and to the Court.
4. No Pro Se Case to be dismissed because of errors of fact,of Law, of court procedures , rules , improperly raised arguments in briefs or in document in preparation for and at Trial.
5. Judges, administrators must piece together scattered sequences of UN-reasoned arguments, truffles ,to maintain a reasonable flow of the case, scour briefs or record to preserve or clarify the position of the pro se.
6. Equality demands being equal before any decision making body, regarding the presence of an opposing party ; to liberal construction of writings ;allegations;arguments; facts as stated; whether properly raised before a decision maker; not to be summarily dismissed without addressing the issues/facts of the case. It is harmless error for a pro se as to in what section in a writing the foregoing are made.
7. Against a Pro Se Memorandum decisions ,details stating, must be made.
8. For a Pro se even the hint of a charge ; evidence ; presented is sufficient to establish the same ;even if there is a misunderstanding of the applicable law ; the meeting of burden to prove; however in-artfully drawn or stated.
9. The Pro Se's substance and intent of the case prevails over the written word labels or laws cited are incorrect barring any dismissals.

10. No dismissal because of allegations of not adequately briefing issues. Judges will bolster arguments for the sake of fundamental fairness, equal justice by to include options for construction of arguments, failure to cite proper authority in support of contentions and all compliance is deemed invoked.

11. Pro se INVOKES Constitutionally granted Due Process in any proceedings ~~supreme over those who have hired into the legal monopoly~~ framework represented by counsel, granted by statute.

12. PRO SE DO NOT WAIVE OR ABANDON ANYTHING FOR ANY FAILURE TO STATE or BRIEF ANY ISSUES ;OR TO RAISE OBJECTIONS.

We set our hand by signing this PETITION:..

PETITION for Pro Se Rights Signatures

Print Name	Sign Name	St. Address	Phone number
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Jonathan Schloer	Jonathan Schloer		

PETITION for Pro Se Rights Signatures

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