

No. _____

In The
Supreme Court Of The United States

Alan Overton

Petitioner,
v.

Tennessee Department of Children's Services

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO
THE TENNESSEE COURT OF APPEALS**

PETITION FOR WRIT OF CERTIORARI

Alan Overton
Petitioner, Pro Se
4230 Vercelli Ln
Knoxville, TN 37938
865-216-4940

QUESTIONS PRESENTED

Substantive Due Process limits the state's authority to deprive individuals of fundamental rights. The Tennessee courts in this case failed to conduct a substantive due process strict scrutiny analysis before depriving a parent of constitutionally protected fundamental rights.

The question presented is:

Does the court order and underlying state action which prohibits all contact between the father and his children violate substantive due process under the facts of this case. The Tennessee courts failed to conduct a substantive due process strict scrutiny analysis of the state action which deprived the father of constitutionally protected fundamental rights.

LIST OF PARTIES

The Petitioner is Alan Overton and the Respondents are the Tennessee Department of Children's Services and Trisha Jane Overton.

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The opinion of the Tennessee Court of Appeals (No. E2017-01605-COA-R3-JV - Filed June 13, 2018) is reproduced at Petitioner's Appendix page 1a. The Tennessee Court of Appeals Order On Petition For Rehearing (June 27, 2018) is reproduced at Petitioner's Appendix page 37a. The Tennessee Supreme Court Order Denying Application For Appeal (October 10, 2018) is reproduced at Petitioner's Appendix page 42a. The Petitioner's Petition For Rehearing is reproduced at Petitioner's Appendix page 43a. The Court of Appeals denied the Petition For Rehearing while addressing the substantive due process issues in the order instead of the opinion. The Tennessee Supreme Court summarily denied the application for permission to appeal.

JURISDICTIONAL STATEMENT

The Supreme Court of Tennessee entered its order denying the application for appeal on October 10, 2018. The Supreme Court of Tennessee's order denying the application for appeal qualifies as a final judgment or decree. This petition is filed within 90 days of the filing of the order denying the application for permission to appeal, as required by Rule 13 of the Rules of the Supreme Court. Therefore, jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Section One of the Fourteenth Amendment to the United States Constitution provides in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

1. This case involves the denial of a petition to vacate or modify a court order that prohibits all contact between a father and his children. The father has parental rights and pays child support every month. The children are now 9 years old and 11 years old. The father is currently 62 years old.
2. The initial order was entered by the Knox County Fourth Circuit Court in January, 2014. That order was appealed through the Tennessee appellate courts and a petition for writ of certiorari was filed with the U.S. Supreme Court (No. 15-184).
3. The allegation in the initial case was that the primary caregiving father inappropriately touched the genital area of his then three year old daughter.
4. The initial allegation was made by the mother within the context of a divorce and child custody dispute. The mother made the allegation to the Tennessee Department of Children's Services (DCS) within hours of the father telling the mother that he

was going to proceed with the divorce and schedule divorce mediation. The initial allegation was rejected by DCS as normal parenting activities. The DCS Intake Summary stated "With the info given, there is nothing in this referral that states the father has done anything inappropriate with this child."

5. The mother who made the initial allegation is the niece of the local congressman and the niece of the local state senator.

6. A subsequent report was made to DCS by a social worker hired by the mother. The subsequent report, which initiated the DCS investigation, was based on essentially the same facts as the first report. (Initial Transcript of Proceedings (R.), 294, 447; R. Exhibit #13; Petitioner's initial Appellant's Court of Appeals Brief pages 16, 20).

7. DCS filed a petition for a restraining order to prohibit all contact between the father and his children alleging that the statements of the three year old daughter were disclosures of inappropriate touching of the genital area by the father.

8. The reported out of court statements of the three year old daughter were the primary evidence relied upon by the state to support their allegation. There was no evidence of inappropriate behavior by the father.

9. The father was a primary caregiver to the

daughter and frequently touched the genital area of his daughter in the normal course of parenting. (Petitioner's initial Appellant's Court of Appeals Brief, pages 7-8, 62, 89, 101- 103, 106); (R. 235, 394, 407, 627, 714, 759, 766, 829; Ex 4, 388, 394).

10. There is nothing that the daughter said that describes any event which cannot reasonably be construed to be normal caretaker activities by a primary caregiving parent. The only time that the child was asked why the father touched her genital area was during the forensic interview. The child said that her father "poked" and "rubbed" her "putty" because the child's butt was dry and her father put lotion on it. The child said that the mother and her little sister were there when it happened. (Petitioner's initial Appellant's Court of Appeals Brief, pages 23, 26, 57-58, 62, 80-81, 105); (R. 192, 304, 968-969; Ex. 4, 361; Ex. 9A, 19, 21, 25). The child's statements clearly show that she was disclosing normal parenting activities and was not disclosing inappropriate touching.

11. Sexual abuse of 3 year old children is rare. U.S. Government statistics show that the rate of sexual abuse of preschool children is 00.087%. (Petitioner's initial Appellant's Court of Appeals Brief page 81); (R. 984).

12. The initial trial court's order demonstrates that the trial judge was very confused and did not understand the evidence that was presented at trial.

The trial court's order seriously misstates the facts of the case. In fact, the evidence in the record shows that it is impossible that the child's statements are a disclosure of abuse as concluded by the trial court. (Petitioner's initial Appellant's Court of Appeals Brief, Issues 9 and 10; pages 94, 103-104); (R. 165, 418, 660-663, 870, 880, 885-888; Ex. 10, Ex. 11A, 19).

13. The initial trial judge's order failed to recognize that the child very clearly and unequivocally explained to the forensic interviewer that the reason her father "poked" and "rubbed" her "putty" was because her butt was dry and her father put lotion on her.

14. All the expert witnesses in this case agreed that normal parenting activity was a plausible explanation for the child's statements. Ms. Buturff, the social worker, and Dr. William Bernet, a nationally recognized expert in child and forensic psychiatry, both agreed that normal parenting activity by the father was a plausible explanation for the child's statements. (Petitioner's initial Appellant's Court of Appeals Brief, pages 62, 102-103); (R. 191, 980-984).

15. There was no abuse, and there is no evidence that the father did anything inappropriate in this case. The mother said that she never saw the father touch his daughters in any inappropriate way. The mother said the father's character was opposite of somebody who would abuse his daughters. The

mother said "I mean just so many of his characteristics to me are mind boggling of somebody who could be touching his daughter." (Petitioner's initial Appellant's Court of Appeals Brief, pages 21, 107); (R. Ex. 11A, 22).

16. The child's behaviors were normal according to the expert witnesses in this case. (Petitioner's initial Appellant's Court of Appeals Brief, pages 60, 73); (R. 207-208, 982-985).

17. There is no medical evidence of abuse. (Petitioner's initial Appellant's Court of Appeals Brief, pages 104-105); (R. Ex. 4, 336, 362, 373, 379).

18. The father passed a FBI protocol polygraph examination administered by a retired FBI polygraph examiner which confirmed that the father did not inappropriately touch his daughter. (Petitioner's initial Appellant's Court of Appeals Brief, Issue 6, page 74; R. Respondent's Motion To Admit Respondent Alan Overton's Polygraph Results Showing No Deception Indicated).

19. The case was investigated by the Knox County District Attorney General's Office. The District Attorney General's Office concluded that there was no evidence of abuse. The District Attorney General's Office sent a letter to DCS stating that they were not going to pursue criminal charges against the father because there was no evidence of abuse. The District Attorney General's Office cited

the child's statement that the reason that her father rubbed her bottom was to apply lotion.

20. The Court of Appeals was very ineffective in their review of the initial trial court's decision.

21. The petition to vacate or modify the initial court order cited new evidence and a change in circumstances as the basis to vacate or modify the initial court order.

22. The father passed a psychological evaluation which showed that the father was a low risk to sexually abuse anybody.

23. The Court Appointed Special Advocate assigned to represent the children conducted an investigation and recommended that normal visitation be reestablished for the father and his children.

24. Counseling notes show that the children miss their father and want to be with their father.

25. The trial court discredited the testimony of the psychological evaluator and the Court Appointed Special Advocate in denying the petition to vacate or modify the initial order.

26. The trial court did not comply with the requirements of substantive due process when making its decision to deny the petition to vacate or

modify the initial order which prohibits all contact between the father and his children and deprives the father and children of constitutionally protected fundamental rights. The substantive due process issue was specifically raised before the trial court in a motion to alter or amend judgment.

27. The Court of Appeals failed to conduct a substantive due process strict scrutiny analysis when reviewing the trial court's decision. The substantive due process issue was presented to the Court of Appeals as Issue 1. See the Court of Appeals Opinion, Appendix, page 1a, and the Court of Appeals order denying the petition for rehearing, Appendix, page 37a.

28. The Tennessee Supreme Court declined to review the case.

REASONS FOR GRANTING THE WRIT

**THE DECISION BELOW IS INCORRECT
AND IS IN CONFLICT WITH THIS
COURT'S PRIOR OPINIONS.**

The court order and underlying state action which prohibits all contact between the father and his children violates substantive due process under the facts of this case. The Tennessee courts failed to conduct a

**substantive due process strict scrutiny analysis
of the state action which deprived the father of
constitutionally protected fundamental rights.**

The Court Order And Underlying State Action Which
Prohibits All Contact Between The Father And His
Children Violates Substantive Due Process.

1. The court order and underlying state action which prohibits all contact between the father and his children is a continuing violation of fundamental rights and substantive due process.

The Court Of Appeals Failed To Properly Evaluate
The Substantive Due Process Issue.

2. The Tennessee Court of Appeals failed to properly evaluate the requirements of substantive due process when reviewing this case. State action by legislative, executive, or judicial authorities is subject to substantive due process analysis and limitations. See *Shelley v. Kramer*, 334 U.S. 1, 14 (1948). State actions which deprive an individual of fundamental rights are subject to a strict scrutiny analysis. *Reno v. Flores*, 507 U.S. 292, 301-302, 113 S.Ct. 1439, 1447, 123 L.Ed.2d 1 (1993).

3. The Court of Appeals purported to analyze the substantive due process issues in terms of inappropriate executive actions. The Court of Appeals did not specify what executive actions it was

referring to in its analysis.¹

4. Petitioner's Court of Appeals Brief set forth and analyzed the statutes cited by DCS as the statutory authority for the DCS petition for a restraining order which resulted in the court order that prohibits all contact between the father and the children. Petitioner's Court of Appeals Brief also analyzed the statutes relied upon by the trial court to deny the petition to vacate or modify the court order that prohibits all contact between the father and the children.

1. a. It may be that DCS's actions violated procedural and substantive due process by shockingly ignoring the requirements of law in their investigation and administrative process that led to the petition for a restraining order. DCS's many violations of law included unlawfully conducting the investigation in clear violation of Tennessee statutes which required DCS to transfer the investigation to a specially qualified Child Protective Investigation Team. The investigation was instead conducted by a DCS "investigator" who just weeks earlier was working as a bartender for Cotton Eyed Joe's singles bar and who was so poorly trained that he thought the decision to indicate the father was to based on just his opinion. The Appellant's brief in the initial appeal set out numerous violations of law and due process by DCS. The Court of Appeals declined to address those issues in the initial appeal.

b. Multiple judges were recused in this case to mitigate the possibility of improper influence because the mother is the niece of the local Congressman and the local state senator. It may be a violation of procedural and substantive due process if the mother's attorney did in fact conduct improper ex parte communications with the trial judge in order to affect the outcome of the case. (Petition To Vacate Or Modify Order, pages 10-12.)

5. The Court of Appeals failed to conduct a strict scrutiny analysis to determine if judicial or legislative action violated substantive due process in this case. State statutes can violate substantive due process either on their face or as applied in a particular case. See *Shelley v. Kramer*, 334 U.S. 1, 14 (1948); *Chicago v Morales*, 527 U.S. 41, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999).

Substantive Due Process Limits The State's Power To Deprive Individuals Of Due Process Rights.

6. The U.S. Constitution and the Tennessee Constitution limit the state's power to regulate certain activities. Substantive Due Process issues raise the question of whether the state is acting within the scope of the limited power that was granted to the state government by the people.

7. If the state deprives an individual of a liberty right protected under the Due Process Clause, then a substantive due process analysis is required.

8. To justify any deprivation of a fundamental right substantive due process requires the state to prove that there is a compelling state interest, that the state action is narrowly tailored to achieve the compelling state interest, and that the state action is the least restrictive means available to achieve the compelling state interest. *Reno v. Flores*, 507 U.S. 292, 301-302, 113 S.Ct. 1439, 1447, 123 L.Ed.2d 1

(1993); *Washington v. Glucksburg*, 521 U.S. 702, 719-721 (1997).

9. A legitimate state interest is not sufficient to deprive an individual of a fundamental right. A substantial state interest is not sufficient to deprive an individual of a fundamental right. Only a compelling state interest is sufficient to empower a state to deprive an individual of a fundamental right and even then the state is limited to using only the least restrictive means available to achieve the compelling state interest. See *Zablocki v. Redhail*, 434 U.S. 374, 389 (1978).

10. The substantive due process analysis in this case raises the following questions:

a. The first question is whether there is a compelling state interest in this case. Exactly what is the compelling state interest in this case?

b. The second question is whether the court order which prohibits all contact between the father and the children is a state action narrowly tailored to achieve any compelling state interest.

c. The third question is whether the court order which prohibits all contact between the father and the children is the least restrictive means available to achieve any compelling state interest.

11. It is the state's burden to prove each and every element of this strict scrutiny analysis. See *Bowers v. Hardwick*, 478 U.S. 186, 189 (1986); *Zablocki v. Redhail*, 434 U.S. 374, 389 (1978). The trial court,

however, erroneously thought that the court must find by clear and convincing evidence that there is no risk of harm to the children before the court could modify the existing order to allow contact between the father and the children. The trial court then wrongfully placed that burden of proof onto the father instead of the state.

12. There is no compelling state interest that warrants prohibiting all contact between a natural parent and their children except in extremely rare circumstances where risk of serious harm to the children is unavoidable.

13. The court order which prohibits all contact between the father and the children is not a state action narrowly tailored to achieve any compelling state interest.

14. The court order which prohibits all contact between the father and the children is not the least restrictive means available to achieve any compelling state interest that may exist in this case. There is no legitimate reason to prohibit all contact between the father and the children.

Parent - Child Relationships Protected As A Fundamental Right.

15. Parent – Child relationships are protected as a fundamental constitutional right under the U.S. Constitution and the Tennessee Constitution.

Substantive due process requires that state infringement on fundamental rights be narrowly tailored to serve a compelling state interest. *Reno v. Flores*, 507 U.S. 292, 301-302, 113 S.Ct. 1439, 1447, 123 L.Ed.2d 1 (1993); *Washington v. Glucksburg*, 521 U.S. 702, 719-721 (1997). A parent has a constitutionally protected fundamental liberty interest in the companionship and society of his or her child.

16. The no contact provision in the current order that prohibits all contact between the father and the children violates the fundamental constitutional rights of both the father and the children. Parents have a fundamental due process right to care for and raise their children, and children enjoy the corresponding familial right to be raised and nurtured by their parents. *Troxel v. Granville*, 530 U.S. 57, 65-66, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000); *Brokaw v. Mercer County*, 235 F.3d 1000, 1018-19 (7th Cir.2000) (citing cases and tracing the development of the familial rights). Parents and children both have a fundamental constitutional right to maintain familial relations. There is a fundamental liberty interest in the privacy and the integrity of families. See *Smith v. Organization of Foster Families*, 431 U.S. 816, 842-845, 97 S.Ct. 2094, 2108-2110, 53 L.Ed.2d 14 (1977); *Blackburn v. Blackburn*, 249 Ga. 689, 693(2), 292 S.E.2d 821 (1982); *In the Interest of M. S.*, 178 Ga.App. 380, 381, 343 S.E.2d 152 (1986). Parents have an interest in the care, custody, companionship, and

management of their children. *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212-1213, 31 L.Ed.2d 551 (1972); *Blackburn, supra*.

Statutes Applied.

17. The trial court in this case either applied existing statutory authority or acted without any legal authority to prohibit all contact between the father and the children. In either case, the deprivation of fundamental rights is subject to strict scrutiny to determine if the no contact provision violates substantive due process.

TCA §37-1-152. Injunctive relief.

18. The DCS petition for a restraining order relied upon TCA §37-1-152 as statutory authority for an order to prohibit all contact between the father and the children.

19. TCA §37-1-152 provided for a no contact order under some circumstances when the DCS petition was filed in 2011. TCA §37-1-152(c) stated:

(c) On application of the department or the child protection team as defined in part 6 of this chapter, the court may make a no contact order for the removal of a suspected perpetrator of child sexual abuse from the home where the child resides and from all further contact with the child, if

the court finds that there is probable cause to believe that such person committed an act of child sexual abuse as defined in part 6 of this chapter. Such an order does not relieve such person from the person's legal duty to provide financial support for the person's family. The court may imprison any person violating such an order for up to one (1) year for contempt of court, or the court may fashion such other remedy as it finds appropriate for the protection of the child.

20. In 2016, in apparent recognition that a no contact order deprives parents and children of fundamental constitutional rights and causes severe emotional harm to the children, the Tennessee legislature repealed TCA §37-1-152 in its entirety and replaced it with the following:

37-1-152. Injunctive relief.

At the commencement or during the pendency of any matter, or as part of its dispositional order, the court may, on application of a party or on its own motion, grant injunctive relief upon such terms as the court may deem proper.

21. The specific statutory authority for a no contact order was removed by the legislature.

22. Any injunctive relief imposed by the trial court pursuant to TCA §37-1-152 that deprives an individual of fundamental rights is subject to a strict scrutiny analysis. AS APPLIED by the trial court in this case TCA §37-1-152 violates substantive due process. The no contact order deprives both the father and the children of constitutionally protected fundamental rights.

23. There is no compelling state interest in this case that justifies prohibiting all contact between the father and the children.

24. The no contact order is not a state action narrowly tailored to achieve any compelling state interest.

25. The no contact order which prohibits all contact between the father and the children is not the least restrictive means available to achieve any compelling state interest that may exist in this case.

TCA §37-1-130. Dependent or neglected child – Disposition.

26. The DCS petition for a restraining order also cited TCA §37-1-130 as statutory authority for a restraining order. TCA §37-1-130 does not provide any statutory authority to prohibit all contact between a parent and a child. TCA §37-1-130 limits returning physical custody of a child to a person under some circumstances. Application of TCA §37-

1-130 may deprive parents and children of fundamental rights depending upon the facts of the case. If TCA §37-1-130 deprives a parent or a child of any fundamental rights, then AS APPLIED TCA §37-1-130 is subject to a strict scrutiny analysis.

27. TCA §37-1-130 states:

37-1-130. Dependent or neglected child – Disposition.

(c) No child who has been found to be a victim of severe child abuse shall be returned to the custody or residence of any person who engaged in or knowingly failed to protect the child from the brutality or abuse unless the court finds on the basis of clear and convincing evidence that the child will be provided a safe home free from further such brutality and abuse. The court shall file written findings of fact that are the basis of its conclusions on that issue within thirty (30) days of the close of the hearing or, if an appeal or petition for certiorari is filed, within five (5) days thereafter, excluding Sundays. No such child shall be returned to such custody on the basis of the court's order until five (5) days after entry of the order without the consent of the department and the petitioner.

TCA §36-6-301. Visitation.

28. The trial court relied upon TCA §36-6-301 to maintain the no contact order. It is questionable whether Title 36 even applies to this case. Title 36 is entitled Domestic Relations. Title 36, Chapter 6 deals with child custody and visitation within a domestic relations context. This is not a domestic relations case. TCA §36-6-301 ostensibly has no application to a no contact order issued as a result of a DCS petition for a restraining order.

29. TCA §36-6-301 specifically allows a court in a custody case to require supervised visitation or prohibit visitation under some circumstances. TCA §36-6-301 does not authorize a no contact order which prohibits all contact between the parent and the children. A no contact order is a much broader and more destructive deprivation of fundamental rights than is a limitation on visitation.

30. Deprivations of fundamental rights by a state are subject to a strict scrutiny analysis. If TCA §36-6-301 is interpreted to allow a no contact order or to limit visitation more than is absolutely necessary to achieve a compelling state interest, then AS APPLIED TCA §36-6-301 violates substantive due process.

31. TCA §36-6-301 states:

36-6-301. Visitation.

After making an award of custody, the court shall, upon request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a parent-child relationship unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health. In granting any such rights of visitation, the court shall designate in which parent's home each minor child shall reside on given days of the year, including provisions for holidays, birthdays of family members, vacations and other special occasions. If the court finds that the noncustodial parent has physically or emotionally abused the child, the court may require that visitation be supervised or prohibited until such abuse has ceased or until there is no reasonable likelihood that such abuse will recur. The court may not order the department of children's services to provide supervision of visitation pursuant to this section except in cases where the department is the petitioner or intervening petitioner in a case in which the custody or guardianship of a child is at issue.

32. A no contact order is not the least restrictive means available to achieve any compelling state interest that may exist in this case.

Tennessee Constitution.

33. Substantive due process rights are protected by the 14th Amendment to the U.S. Constitution and also by the Tennessee Constitution's Bill of Rights.

34. The state constitution is the instrument used by the people to create a state government and to grant limited powers to that state government.

35. Article I of the Tennessee Constitution recognizes that the governmental power of the state is inherent in the people and not in the state government.

36. The power of the state government is limited by the Declaration of Rights that is set forth in Article I of the Constitution.

37. The current Tennessee Constitution was ratified by the people in 1870.

38. Article I, Section 8 of the Tennessee Constitution protects the individual's right to life, liberty, and property.

39. The rights listed in Article I, Section 8 of the Tennessee Constitution must be interpreted in light of the common law and the tradition of individual rights that existed in Tennessee at the time the Constitution was ratified.

40. Article XI, Section 16 of the Tennessee Constitution states that everything in the Bill of Rights is excepted out of the general powers of the government and shall forever remain inviolate.

41. In 1870, the existing law supported parental rights and parental authority over their children and limited state interference.

42. According to the Tennessee Supreme Court in *In re Kaliyah S.* there were no specific procedures for termination of parental rights in Tennessee prior to 1977. The court stated:

Prior to 1977, the primary way to involuntarily terminate the parental rights of a biological parent was to prove that the child had been abandoned. See Tenn. Code Ann. § 36-110 (1977); id. § 37-203(a)(2) (1977). Adjudicating a child to have been "abandoned" amounted to a substitute for the biological parent's consent to adoption. There were no specific procedures for termination of the parental rights of a biological parent. See id. § 36-102(5)(1), (2) (1977); id. § 37-246 (1977).

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43. Today the state of Tennessee routinely

interferes with parental rights in civil matters when there is no abandonment and there is no evidence of misconduct sufficient to convict a parent of a criminal offense. The state inflicts what amounts to cruel and unusual punishment upon children and parents and does so without providing the protections afforded by the right to a jury trial and proof beyond a reasonable doubt.

44. Exactly when and how did the people of Tennessee grant to the state government of Tennessee the power to deny fundamental parental rights without even requiring a jury trial and proof beyond a reasonable doubt? The apparent answer is that the people never granted that power to the state government.

45. A no contact order which prohibits all contact between a parent and their children violates the guarantees of individual rights set forth in the Tennessee Constitution's Bill of Rights.

46. The Bill of Rights is to be interpreted in accordance with the common law and traditions that existed in Tennessee in 1870. The individual liberties protected by the Bill of Rights in 1870 exist today in exactly the same form and require exactly the same standard of due process before the state can lawfully deprive an individual of a constitutionally protected right. Any state action or statute that violates the Tennessee Constitution's Bill of Rights as it was interpreted in 1870 is invalid

as a state action which is beyond the scope of authority that was granted to the state government by the people.

Conclusion.

47. The Court of Appeals failed to properly review this case. The Court of Appeals did not conduct a strict scrutiny analysis to determine if the state action in this case violates substantive due process. A strict scrutiny analysis is required when an individual is deprived of fundamental rights by state action.

48. The trial court either applied existing statutory authority or acted without any legal authority to deprive the father and the children of constitutionally protected fundamental rights. In either case, the deprivation of fundamental rights is subject to strict scrutiny to determine if the no contact provision violates substantive due process.

49. If the trial court acted without any legal authority then the no contact order is unlawful and invalid.

50. If the trial court relied upon statutory authority to impose or maintain the no contact order, then AS APPLIED those statutes violate substantive due process.

51. The clear and convincing evidence burden

imposed by the trial court on the father is in direct contradiction of the requirements of substantive due process which require the STATE to prove that there is a compelling state interest, that the state action is narrowly tailored to achieve the compelling state interest, and that the state action is the least restrictive means available to achieve the compelling state interest. Reno v. Flores, 507 U.S. 292, 301-302, 113 S.Ct. 1439, 1447, 123 L.Ed.2d 1 (1993); Washington v. Glucksburg, 521 U.S. 702, 719-721 (1997).

52. A no contact order that prohibits all contact between the father and the children is not the least restrictive means available to achieve any compelling state interest that may exist in this case.

CONCLUSION

53. The Court should grant the petition for writ of certiorari.

Respectfully submitted,

Alan Overton
Petitioner, Pro Se
4230 Vercelli Ln
Knoxville, TN 37938
865-216-4940

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