No. 18-7953

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Matthew and Samantha Peterson — PETITIONER
(Your Name)

vs.

Rebecca W. Ross, Senior Assistant Attorney General for the Division of Children, Youth, and Families, et. al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The New Hampshire Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Matthew and Samantha Peterson
(Your Name)

892 Cedar Street Apartment 2
(Address)

Manchester, New Hampshire 03103
(City, State, Zip Code)

(603) 341-9148
(Phone Number)

QUESTION(S) PRESENTED

I) Is it unconstitutional for the State Appellate Court to uphold a trial court's decision that did not find the facts in dispute nor make any findings as to whether or not Mr. Peterson and Mrs. Peterson corrected the instances of neglect?

II) Is it unconstitutional for the State Appellate Court to uphold and rely on evidence and testimony that is either missing or incomplete when terminating parental rights?

III) Is it unconstitutional for the State Appellate Court to uphold a trial court's decision to force a parent to choose between employment and having his rights terminated to his children or unemployment without state assistance to assist his wife and having his children returned?

IV) Is it unconstitutional for the State Appellate Court to uphold a trial court decision stating, "Mr. and Mrs. Peterson are in capable of caring for more then two children on a full time basis.", without any specific finding for this allegation?

V) Is it unconstitutional in finding that it was in the children's best interest to terminate Matthew Peterson's parental rights?

VI) Is it unconstitutional for the State Appellate Court to uphold purported instances of neglect involving two different children not a party to the termination proceedings?

VII) Is it unconstitutional, by way of the Full Faith and Credit Clause of the United States Constitution, for a State agency to enter into a judicial decree with the parents and then not adhere to the decree?

VIII) Is it unconstitutional for the State Appellate Court to end a child's right to associate with their family members and sibling who are not parties to this action?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Elizabeth Panie, Esquire, CASA of New Hampshire

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was August 10, 2018. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

169-C:3 .

XIX. "Neglected child" means a child:
(a) Who has been abandoned by his or her parents, guardian, or custodian; or
(b) Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, when it is established that the child's health has suffered or is likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian, or custodian; or
(c) Whose parents, guardian or custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity;
Provided, that no child who is, in good faith, under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be a neglected child under this chapter.

NH RSA 169-C:7 (2017)

I. A proceeding under this chapter is originated by any person filing a petition, with a judge or clerk in the judicial district in which the child is found or resides, alleging neglect or abuse of a child.

IL The petition shall be entitled "In the Matter of_____, and shall be verified under oath by the petitioner.

III. To be legally sufficient, the petition shall set forth the facts alleged to constitute abuse or neglect, and the statutory grounds upon which the petition is based.

IV. In addition, the petition shall also include, to the extent known:
(a) The name, birth date, and address of the child.
(b) The name and address of any custodial parent.
(c) The name and address of any other individual or agency having custody of the child.
(d) The name of any non-custodial parent.
(e) The name of any household member who is subject to the order.

RSA 169-C:13 (2017)

The petitioner has the burden to prove the allegations in support ofthe petition by a preponderance of the evidence.

NH RSA 169-C:21 (2017)

I. If facts sufficient to sustain the petition are established under RSA 169-C:18, the court shall enter a final order in writing finding that the child

has been abused or neglected.

IL The order of the court shall include conditions the parents shall meet before the child is returned home. The order shall also include a specific plan which shall include, but not be limited to, the services the child placing agency will provide to the child and family. Prior to the issuance of a final order, the child placing agency shall submit its recommendation for the plan, which the court may use in whole or in part.

NH RSA 170-C:1 (2017)

The purpose of this chapter is to provide for the involuntary termination of the parent-child relationship by a judicial process which will safeguard the rights and interests of all parties concerned and when it is in the best interest of the child. Implicit in this chapter is the philosophy that whenever possible family life should be strengthened and preserved, and that the parent-child relationship is to be terminated only when the adoption of that child may be contemplated.

NH RSA 170-C:5, III (2017)

The parents, subsequent to a finding of child neglect or abuse under RSA 169-C, have failed to correct the conditions leading to such a finding within 12 months of the finding despite reasonable efforts under the direction of the district court to rectify the conditions.

NH RSA 170-C:6 (2017)

The petition for the termination of the parent-child relationship shall include, to the best information or belief of the petitioner:

I. The name and place of residence of the petitioner.
II. The name, sex, date and place of birth, and residence of the child.
III. The basis for the court's jurisdiction.
IV. The relationship of the petitioner to the child, or the fact that no relationship exists.
V. The names, addresses, and dates of birth of the parents.
VI. When the child's parent is a minor, the names and addresses of said minor's parents or guardian of the person.
VII. The names and addresses of the person having legal custody or guardianship of the person or acting in loco parentis to the child or the organization or authorized agency having legal custody or providing care for the child.
VIII. The grounds on which termination of the parent-child relationship is sought.
IX. The names of the authorized agency to whom or to which legal

custody or guardianship of the person of the child may be transferred.

NH RSA 170-C:10 (2017)

Cases under this chapter shall be heard by the court sitting without a jury. The hearing may be conducted in an informal manner and may be adjourned from time to time. The general public and any member of the news media shall be excluded, and only such persons admitted whose presence is requested by any person entitled to notice under RSA 170-C:7 or as the judge shall find to have a direct interest in the case or in the work of the court; provided that persons so admitted shall not disclose any information secured at the hearing which would identify an individual child or parent who is involved in the hearing. The court may require the presence of witnesses deemed necessary to the disposition of the petition. When termination of the parent-child relationship is sought, the parent shall be notified at the same time notice is given pursuant to RSA 170-C:7 of his or her right to counsel, and if counsel is requested and the parent is financially unable to employ counsel, counsel shall be provided by the court and shall be paid for by the judicial council in accordance with RSA 170-C:13, III. The court's finding with respect to grounds for termination shall be based upon proof beyond a reasonable doubt, provided that relevant and material information of any nature, including that contained in reports, studies or examinations, may be admitted and relied upon to the extent of its probative value. When information contained in a report, study or examination is admitted in evidence, the person making such a report, study or examination shall be subject to both direct and cross-examination if he or she is residing or working within the state, or if he or she is otherwise reasonably available.

NH RSA 170-C:11, I (2017)

I. Every order of the court terminating the parent-child relationship or transferring legal custody or guardianship of the person of the child shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the court's jurisdiction.

STATEMENT OF THE CASE

Mr. and Mrs. Peterson have six children:

Athens (DOB: September 3, 2009)

Penelope (DOB: April 1, 2011)

Athena (DOB: November 18, 2012)

Apollo (DOB: January 1, 2014)

Aria (DOB: April 13, 2015)

Clio (DOB: April 17, 2016)

On April 18, 2014, Division of Children, Youth and Families (DCYF) filed Petitions for Neglect against the Peterson's children, Athens, Penelope, Athena, and Apollo. DCYF alleged the children "*are neglected children in that they are without proper parental care or control, subsistence, education as required by law, or other care or control necessary for their physical, mental or emotional health ...*"

On April 21, 2014, a 24-hour protective custody hearing is scheduled. The trial court ordered that Athens, Penelope, Athena, and Apollo are to remain in out-of-home placement.

Following a finding of "true" at the Adjudicatory Hearing, the trial court issued Dispositional Orders that identified specific plans that the Petersons had to fulfill in order to correct the conditions that led to the finding of neglect.

Specifically, Mr. and Mrs. Peterson had to do the following:

1. Learn and demonstrate parenting skills that provide their children with a nurturing home environment that promotes healthy child development.

2. Ensure their children are provided a home free of physical abuse and domestic violence.

3. Provide their children with developmentally appropriate supervision and care.

4. Ensure their children's medical, dental, mental health and developmental needs are met.

5. Provide for the basic needs of their children including food, shelter, and clothing.

6. Attend all parenting opportunities with their children.

7. Ensure their children attend school on a consistent basis.

8. Obtain appropriate mental health treatment if recommended by a mental health professional.

9. Work cooperatively with treatment providers and team members.

On October 9, 2015, there was a Permanency Hearing where Athens, Penelope, Athena, and Apollo are ordered to return to Mr. and Mrs. Peterson no later than June 1, 2016. In response to the order, DCYF recommends returning the children one at a time with 2 to 3 weeks between each child. That never happened. Penelope, Athena, and Apollo returned all at once to Mr. and Mrs. Peterson's care on June 10,2016. The reason that DCYF did this is still unknown to this day. Athens never had the chance for reunification.

On June 16, 2016, Penelope, Athena, Apollo, Aria and Clio, suffered removal from the Peterson's care because DCYF filed two Petitions for Neglect on Aria and Clio alleging that Mrs. Peterson left Clio in a car and that Penelope bit Aria.

Aria and Clio returned to the Peterson's care in September 2016 and the matter involving them closed on March 17, 2017. Athens, Penelope, Athena, and Apollo never returned to Mr. and Mrs. Peterson's care.

On December 20, 2016, DCYF filed Petitions for Termination of Parental Rights over Athens, Penelope, Athena, and Apollo, alleging that the Petersons failed to correct the conditions of neglect under RSA 169-C. Pursuant to the trial court's order on Termination of Parental rights, Mr. and Mrs. Peterson's parental rights of Athens, Penelope, Athena, and Apollo were terminated. The state appeal followed.

On August 10, 2018, the State Supreme Court upheld the termination of both parents.

Matthew and Samantha Peterson are now seeking review in this Court.

REASONS FOR GRANTING THE PETITION

The reason our case is ripe for a review on a writ of certiorari by this Court, is the State Supreme Court upheld a district court order, terminating parental rights, because the father was employed and the mother is disabled. I genuinely believe that unless this Court reviews this issue, it sets a dangerous precedent with unknown consequences that could devastate parents in this country forever.

The crux of this case is a father that received zero help from a State agency after his children were removed because his spouse had an untreated mental illness at the time. The dangerous part, that needs review, is a District court judge issued an ultimatum to the father to stay home unemployed or lose his children. I CHOSE NOT TO STAY HOME.

We live in an ownership society where parents raise their children to work hard and respect the value of employment. Children hear that when they grow up they can have a career. What happened to me and my family, is hearing a judge say that since you did not stay home unemployed, you lost your kids. What's more, that judge never formally terminated our rights to our children; he only terminated our rights on a part-time basis.

For this reason, as a parent and a father, is if this Court let's this issue stand without review, it will allow the whim of a judge to issue edicts in the future that will infringe on parents rights even further then this.

If left unchecked by this Court, it forces parents down a road that begins to make them subservient, first to the judge, and eventually to the government.

Mr. and Mrs. Peterson apologize to this Court that the district court and the State Supreme Court created such an issue that goes against the American values of which this country is founded.

First, the issue we would ask this Court to review is the trial court's order, which is completely silent regarding Mr. Peterson. The State Appellate Court stated that it relied on "*subsidiary findings*" from the trial court. If the trial court were completely silent, it would make sense that considering a lower courts order to terminate would not have any subsidiary findings as the State Appellate Court "assumed." Moreover, would lack any legal reason to terminate either of the Peterson's rights.

In the state of New Hampshire, the trial court must enter findings as to whether Mr. Peterson corrected the conditions that lead to the finding of neglect. DCYF did not prove beyond a reasonable doubt that Mr. Peterson failed to correct the conditions that led to the finding of neglect involving Athens, Penelope, Athena, and Apollo. The trial court did not make any findings as to Mr. Peterson's failure to remedy those issues identified in the Final Dispositional Order. The State Appellate Court upheld this. Conversely, the trial court and the State Appellate Court relied on allegations contained in Petitions for Neglect involving Aria and Clio only, whose cases were resolved in their entirety. This is an error of law.

Finally, the trial court ruled and the State Appellate Court upheld an error of law in finding that DCYF provided the Peterson's with reasonable efforts to reunify with Athens, Penelope, Athena, and Apollo. To the contrary, DCYF tried everything to prevent reunification. The trial court abused its discretion when it found that it was in Athens, Penelope, Athena, and Apollo's best interest to terminate Mr. and Mrs. Peterson's parental rights.

The trial court must complete a two-step process when issuing its decision on a Termination of Parental Rights Petition. The State Supreme Court explained this in In re: Shannon M, 146 N.H. 22, 27-28 (2001):

> *"In considering a petition to terminate parental rights, the probate court performs a two-step analysis. First, it must find one of the statutory grounds for termination; thereafter, it must determine whether termination would be in the best interest of the child. Because parental rights are fundamental under the New Hampshire Constitution, the party seeking to terminate parental rights must prove the statutory ground for termination beyond a reasonable doubt. After finding that one of the statutory grounds for termination has been proven beyond a reasonable doubt, the court must consider whether it is in the child's best interest to terminate the parental rights of the parent in question. The conclusion of what is in the child's best interest is not an*

evidentiary fact, however, and is not required to be established by the standard of beyond a reasonable doubt. Rather, the conclusion concerns which of the possible alternative dispositional orders is the most desirable, under a standard giving priority to the assumed interest of the child."

RSA 170-C: 5 provides statutory grounds upon which a Petition for Termination of Parental Rights can be filed. In this case, as statutory grounds for termination, DCYF alleges that Mr. Peterson failed to correct the conditions of neglect that led to the removal of Athens, Athena, Penelope and Apollo as defined in RSA 170-C: 5, III.

In order to satisfy step one, DCYF must prove the statutory grounds beyond a reasonable doubt. DCYF has not done so here. The trial court's order does not discuss a single condition identified in the Dispositional Order that Mr. Peterson and Mrs. Peterson did not satisfy.

The purpose of a Dispositional Hearing is to review a social study submitted by DCYF and identify a specific plan that outlines what parents or guardians must do to correct the conditions that led to the finding of neglect. (See RSA 169-C: 19).

Following the Dispositional Hearing and pursuant to RSA 169-C:21, the trial court issued a Final Dispositional Order that included conditions the parents had to meet before Athens, Athena, Penelope and Apollo are returned. If the parents do not correct the conditions that led to the finding of neglect within twelve months, parental rights can be terminated. (See RSA 170-C: 5, III.)

The Dispositional Order required the parents to do the following to correct the conditions that led to the finding of neglect of Athens, Athena, Penelope and Apollo:

1. Learn and demonstrate parenting skills that provide his children with a nurturing home environment that promotes healthy child development.

2. Ensure his children are provided a home free of physical abuse and domestic violence.

3. Ensure his children's medical, dental, mental health and developmental needs are met.

4. Provide his children with developmentally appropriate supervision

and care.

5. Provide for the basic needs of his children including food, shelter, and clothing.
6. Attend all parenting opportunities with the children.
7. Ensure the children attend school on a regular basis.
8. Obtain appropriate mental health treatment if recommended by a mental health professional.
9. Work cooperatively with treatment providers and team members.

DCYF did not prove beyond a reasonable doubt that Mr. Peterson did not meet the remedial efforts required in numbers one through nine of the Dispositional Orders - the orders that instructed the Petersons what they must do to correct the conditions that led to the finding of neglect.

As the trial court acknowledged in its order, "*Mr. and Mrs. Peterson do object to certain findings of the Court during the regular Review Hearings on whether they were in full, substantial or partial compliance of the Court's Dispositional Order.*" Yet the trial court's order is completely silent as to Mr. Peterson's non-compliance with the Dispositional Orders. This is clear evidence that DCYF did not meet its burden.

It is also an error of law when the trial court ignored the Dispositional Orders and failed to provide any findings of Mr. Peterson's failure to correct conditions of neglect relating to Athens, Athena, Penelope and Apollo. This is improper because the trial court must make specific findings upon which the grounds for termination can be based. ("*If termination is ordered, the court is statutorily obligated to recite 'the findings upon which [its] order is based.*' RSA 170-C: 11, I." In re Taryn D., 141 N.H. 376, 378 (1996)). This did not occur in our case. The Petersons lost their four children or more specifically Mr. Peterson lost his four children without the trial court finding any legal reason. This is why we are seeking review in this Court regarding this issue.

The next issue for this Court to review is the missing testimony from the second day of the termination hearing held on June 7, 2017. Included is a copy of the transcript that became used as evidence by the State Supreme Court in the Peterson's appeal of the termination decision by the District Court. It is clear that due to the recorder being off, no one can remember the exact testimony that is missing. Enclosed for this Court to review are the attorneys' responses of brief memorandum to the State Supreme Court regarding this matter.

It is for the reason stated above that the record is inaccurate and incomplete. In addition, the State Supreme Court relied on two reports that were misapprehended. In the first report from Home Base, the Supreme Court gave this quote: *"In August 2015, the father witnessed two of the children engaged in sexualized play, told them to stop, but failed to separate them."*

In the next report from RTT Associates, they gave this quote: "he struggled to form an emotional bond with his children, which made it difficult for him to effectively parent them in a nurturing way...the father's stress increased "as his parenting time increased and the possibility of the children returning to the home became a reality." Both reports do not have these statements at all. A copy of the reports is included for review, as well as, documentation regarding the transcript. (See Home Base Incident report dated August 19, 2015, RTT Therapy Evaluation, E-mails explaining the correct interpretation for the evaluation.)

We are asking this Court upon review of this issue and if proven to exercise discretion and apply if necessary Federal Rule of Evidence 103(e) as it did in Puckett V. The United States (07-9712) and to strike the State Supreme Court opinion, given the due process implications this issue has involving the Peterson children regarding missing evidence from the transcript and the two reports that were misquoted and relied upon.

The next issue is the State Appellate Court upholding the trial court decision to terminate the parental rights of Mr. Peterson to the children for choosing employment. The trial court stated, *"It is also clear that Mr. Peterson has made the decision that working is more of a priority than making sure that Mrs. Peterson has his help in caring for the children."* (See Order on Termination 657-2017-TR-0001,0002,0003,0004,0005,0006,0007, and 0008)

The ultimatum in this case and bears a striking resemblance to an ultimatum given in Croft v. Westmorland County Children and Youth Services 95-3528.

In Croft v.Westmoreland County Children and Youth Services 95-3528, the caseworker directed the father by ultimatum: *"...: unless he left his home and separated himself from his daughter until the investigation was complete, she would take Chynna physically from the home that night and place her in foster care. ...Considered in light of the circumstances surrounding the ultimatum, "Danovsky's conduct was an arbitrary abuse of government power."*

The trial court made the same type of ultimatum here: *"It is also clear that Mr. Peterson has made the decision that working is more of a priority than making sure that Mrs. Peterson has his help in caring for the children."* It is my understanding that the State Appellate Court upheld this. Even if we were to assume the logic of the trial court, and this statement where not an abuse of power, If I were to stay home full time, I would not be able to receive any form of State assistance. I would not be eligible due to the 20-hour mandatory work requirement of an able-bodied person. (See attached Notice of Decision.)

Assuming the trial court's position on becoming unemployed is correct, I would have to sacrifice a part of my Fourteenth Amendment Right in receiving compensation to acquire property and provide for my family; in exchange, to keep the other part of my Fourteenth Amendment Right with the liberty to raise the children as my wife and I see fit. There is a New Hampshire case In re: Bill F. No. 99-465 (N.H.) that says:

"[a] fundamentally unfair adjudicatory procedure is one . . . that gives a party a significant advantage or places a party in a position of prejudice or allows a party to reap the benefit of his own behavior in placing his opponent at an unmerited and misleading disadvantage."

Since I did not choose to stay home, the court took my right away to the custody, care and control of my children. It is also unconstitutional at the state level. The New Hampshire Constitution states:

"Part 1 Art.] 2. [Natural Rights.] All men have certain natural, essential, and inherent rights among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin."

The court could have rectified the entire situation at the Dispositional Hearing by providing daycare but failed to do so. (See RSA 169: C-19 (I) (c). When this case started, I was not receiving assistance and working at least 100 hours a week to support my family. During the case, I reduced my work hours to accommodate my wife's needs and to comply with the request of the state. In the end, I was, and still working only 20 hours a week with no nights, weekends, overtime or holidays. The schedule was quite helpful for my wife, but not for the Division or the court. We feel this makes Mrs. Peterson and me subservient to the government.

It is illogical to think that upon approval of State help, I would have sufficient means to care for my family. According to the implication in the trial courts order, I could never work or if I did face losing my children. I kept working and the trial court kept its promise! This also infringes upon my and my wife's right as parents to parent, because kids do what they see their parents do. Therefore, if the children see their father not working, the message our children see is to let the government take care of you. This also gives the example to our children to be subservient to government rather then letting the parent teach the children how to take care of themselves.

The Fourteenth Amendment requires states not to "deprive any person of life, liberty, or property, without due process of law." The Due Process Clause, as its known, is a wellspring of rights. First, it is the source of Procedural Due Process rights and the rights of negative and positive liberties. In other words, if the government threatens a person's life, liberty, or property, including by the courts, that person is entitled to some measure of procedural process.

It is for this reason that we are seeking review in this Court on this above issue.

The next issue is the State Appellate Court upholding a trial court decision stating, *"Mr. and Mrs. Peterson are "In capable of caring for more then two children on a full time basis."* Aria and Clio are in Mr. and Mrs. Peterson care and have been during the pendency of the concluded and unrelated Petition for Abuse/Neglect cases. The notion that Mr. and Mrs. Peterson can only be acceptable parents to two children full time and not six is unfounded and vague.

The concept of not having more then two children full time is sighted from an early State Supreme Court ruling that was quoted in our case In re Angel N., 141 N.H. 158, 162 (1996) *(stating that one who can adequately parent one child is not equally and automatically capable of parenting another child).* The distinction between Angel N. and our case is, in Angel N. the parents rights got terminated, in our case our rights did not get terminated. The case was already settled and the kids were returned, with the exception of Athens. In Angel N., the children were never returned home.

The trial court judge admits that in fact we can parent six children, just not full time. Then, in the next breath, he terminates our rights, never alluding to what would lead the average person to believe that on one hand, their rights are terminated and on the other hand, they are not, and if they are not, which two children did the judge refer. The older two? The middle two? The younger two? Is he referring to the children whose case is closed?

What is even more surprising is the State Appellate Court somehow upheld *"The trial court found that the parents "are incapable of caring for more then two children on a full-time basis."* Even if we were to assume that the trial court order was not vague, it infringes upon our rights as parents to Aria and Clio because it is unknown as to whether both courts were alluding to visitation for a later date or not with the older four children. It calls into question the infringement on Aria and Clio's Eighth Amendment Right. It is cruel and unusual because, until review by this Court, it also leaves the relationship with their four siblings in the balance.

We are seeking review on this issue.

Not only did the trial court fail to act in the best interests of the older four children, it also infringed upon the Fourteenth Amendment rights of Aria, Clio and their parents. (See March 2017 Post Permanency Order with Supplemental Report.) The trial court returned Aria and Clio to Mr. and Mrs. Peterson after a few months; two children that at the time were age 1 year and 5 months. Their case closed with no objection.

One of the determining factors for the trial court and the State Supreme Court to agree and uphold the decision of termination was the neglect case with Aria and Clio, a closed case. Because developmentally appropriate supervision was the hallmark of DCYF's argument, the trial court, DCYF, and

CASA had no objection in returning Aria and Clio to us, children that required the most supervision from us due to the young age of each child.

Yet, the trial court found it was in the best interest of four children, ages 8, 6, 5, and 3 years, to end the parent-child relationship, causing all six children to end contact with each other. We have intact parental rights to two young children requiring the maximum supervision, yet our parental rights are terminated to four older children that do not need maximum supervision. In re: BILL F. 99-465 September 28, 2000 says:

"We have little doubt that the Due Process Clause would be offended if a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest."

In speaking on the subject of "best interest of the child," New Hampshire has an RSA saying:

"169-C: 23 Standard for Return of Child in Placement. *–*
In the absence of a guardianship of the person of the minor, governed by the terms of RSA 463, before a child in out-of-home placement is returned to the custody of his or her parents, the parent or parents shall demonstrate to the court that:
I. They are in compliance with the outstanding ***dispositional*** *court order;*
II. The child will not be endangered in the manner adjudicated on the initial petition, if returned home;
III. Return of custody is in the best interests of the child. Upon showing the ability to provide proper parental care, it shall be presumed that a return of custody is in the child's best interests".

The oldest of the four children, who was never returned, not endangered, and not present on the day of the June 16, 2016 incident that caused the second removal and ultimately this appeal.

The trial court and the State Supreme Court not exercising its discretion leave this issue for review by this Court. All six children were removed by the same judge, court, lawyers and guardian ad litem, who in turn returned two children. The matter involving the older four children was already decided, they where to return home on June 1, 2016 (see order on Permanency 657-2014-JV-0012, 13, 14, 15, 16, 17, and 19). If that is not a conflict, it at least makes the argument for this Court to vacate the termination of the older four because of Res Judica.

To define "supervision", one would believe that the State of New Hampshire, more specifically DCYF, would have a definition upon which to reference when looking through New Hampshire's RSAs. (See RSA 169-C: 3 Definitions.) A close study of 169-C: 3 do not have a specific definition for "supervision." There is an argument to say that the word "supervision" is in

the definitions, but only within the definitions of other terms. The closet to "supervision" being defined is the terms "legal supervision" and "protective supervision," which do not involve parents.

With no clear definition for "supervision", there is only the Division and the trial court to look to for such a definition. To rely on two government entities for their meaning of "supervision", there is most certainly going to be vague and subjective interpretations.

Next, is if it is unconstitutional in finding that it was in the children's best interest to terminate Mr. and Mrs. Peterson's parental rights.

Assuming that DCYF proved beyond a reasonable doubt that Mr. Peterson failed to correct the conditions that led to the finding of neglect, it is still not in the children's best interest to terminate Mr. and Mrs. Peterson's parental rights.

As explained in In re Shannon M, "*after the trial court finds one of the statutory grounds for termination, it must also determine whether termination is in the child's best interest. This is not an evidentiary fact, but a conclusion made after considering the alternative dispositional orders, in this case reunification.*"

The trial court found termination was in Athens, Athena, Penelope, and Apollo's best interest. This decision was an abuse of discretion, inconsonant with the testimony and findings of the trial court. First, the trial court found that "*Mr. and Mrs. Peterson love their children.*" Secondly, Aria and Clio are in Mr. Peterson's care and have been so during the pendency of the concluded and unrelated Petition for Neglect cases. The notion that Mr. and Mrs. Peterson can only be an acceptable parent to two children and not six is unfounded.

Finally, "*[i]mplicit in [RSA 170-C] is the philosophy that whenever possible family life should be strengthened and preserved, and that the parent-child relationship is to be terminated only when the adoption of that child may be contemplated.*" RSA 170- C: 1.

The trial court heard testimony from DCYF that Athens, Athena, Penelope and Apollo will not be adopted together should the trial court terminate Mr. Peterson's parental rights. At the time of the Termination Hearing, Apollo's foster family was willing to adopt him; it was unknown if Athens, Athena, and Penelope were going to be adopted together, as a potential family had not been identified for any of the children.

Further, termination of Mr. and Mrs. Peterson's parental rights means that

Athens, Athena, Penelope, and Apollo not only be separated from each other, but will also be separated from their biological siblings, Aria and Clio as well. For these reasons, the trial court abused its discretion and disregarded the philosophy identified in RSA 170-C:1 when it determined that termination of Mr. and Mrs. Peterson's parental rights was in Athens, Athena, Penelope and Apollo's best interest. The State Appellate Court upheld this.

Termination of Mr. and Mrs. Peterson's parental rights means that Athens, Athena, Penelope, and Apollo will be separated from each other, and be separated from their other biological siblings, Aria and Clio, their grandfather, and three older siblings, Ryan age 24, Cassandra age 22, and Sage age 20. All 10 children have strong bonds that are unique among each individual child.

The last time Athens, Athena and Apollo saw their grandfather was January 2015, during a specially planned supervised visit. This specially planned visit was the first and thus far, the only time Athena and Apollo have met and interacted with their grandfather. Penelope did not see her grandfather at the visit, so for her the last time was in 2011.

As mentioned previously, their three older siblings saw them when each child was an infant and had regular contact before DCYF involvement. Sage had contact with the four children back in late 2016 early 2017, and tried to be an intervener. These children will never have the opportunity to build and grow bonds with extended family whose love cannot be shared and expressed.
For these reasons, the trial court abused its discretion and disregarded the philosophy identified in RSA 170 -C: 1 when it determined that termination of Mr. and Mrs. Peterson's parental rights was in Athens, Athena, Penelope and Apollo's best interest. In re: Bill F. 99-465 N.H. states:

"The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures."

To the contrary, of best interest, Athens has been in seven foster placements since 2014, with the most recent placement occurring in September 2017. Penelope and Athena have been in two foster placements together. In the second placement, the foster mother reported that she no longer wanted to be a pre-adoptive home for the girls.

As of March 2018, DCYF was still in search of an adoptive family that would take the girls. After 2 to 3 years of being in the same home together,

Penelope and Athena may end up in different homes if DCYF does not recruit one home for them. (See Post-Permanency Order March 2018 and Supplemental Report.) Since this process began, all four children have emotional issues. (See Post-Permanency Order March 2018 and Supplemental Report.)

Penelope has increased emotional issues due to dyspraxia. People with dyspraxia experience issues with coordination and movement. Dyspraxia is referred to as, "motor learning disability." A person with dyspraxia has difficulties with carrying out smooth, coordinated movements, language issues, and at times a degree of difficulty with thought and perception. Developmental verbal dyspraxia (DVD), also known as childhood apraxia of speech (CAS) and developmental apraxia of speech (DAS); is an inability to utilize motor planning to perform movements necessary for speech during a child's language learning process.

It must be noted that the State Appellate Court upheld one of Mr. Peterson's arguments, "that termination will separate the children from the two younger siblings." The court went on to say, "However, with the exception of the brief reunification, the children have not lived with those siblings." In light of that statement, it is the position of the petitioners that the State Appellate Court gives the appearance that the Fourteenth Amendment is only a transient right given and dictated to my wife and I by the government.

It is for all of the above reasons that letting the termination stand are not in their best interest.

The trial court cannot rely on neglect petitions involving children that are not subjects of the termination proceedings. DCYF filed four Petitions for Neglect over Athens, Athena, Penelope and Apollo on April 21, 2014 pursuant to RSA 169-C. Four Petitions are required because RSA 169-C: 7 require a single petition to identify a single child, not multiple children or all siblings. Each child is assigned a separate case number, and DCYF *"has the burden to prove the allegations in support of the petition by a preponderance of the evidence."* RSA 169-C: 13.

RSA 169-C does not allow the trial court to infer that because one child is found to be neglected; all siblings of that child are neglected as well. The Petitions for Neglect are lengthy and include an eight-page police report. As summarized by DCYF, *"[t]he concerns were for the conditions of the children, conditions of the room they were living in and lack of supervision."* The neglectful conditions alleged by DCYF were the same for each child.

Following the Adjudicatory Hearing and a subsequent *de novo* appeal heard on July 1, 2015, the Hillsborough Superior Court found that Mr. Peterson neglected Athens, Athena, Penelope and Apollo. Aria, Mr. Peterson's fifth child, was not the subject of the Adjudicatory Hearing and remained in Mr. Peterson's custody.

On or about December 20, 2016, DCYF filed four Petitions for Termination

of Parental Rights over Athens, Athena, Penelope, and Apollo. Similar to the Petition for Neglect, the Petition for Termination of Parental Rights must identify the "*[t]he name, sex, date and place of birth, and residence of the child.*" RSA 170-C: 6, II.

In addition to identifying a single child, the Petition must *"identify the grounds on which termination is sought"*. RSA 170-C: 6, VIII. Here, DCYF alleged that Mr. Peterson failed to correct the conditions that lead to the neglect finding for the child that is the subject of the petition. (See RSA 170-C: 5, III.)

Mr. Peterson does not dispute that the trial court is able to consider all relevant and material evidence (see RSA 170-C:10), but the evidence relied upon to terminate Mr. Peterson's rights is from cases brought involving Clio and Aria that were fully resolved and closed prior to the Final Hearing on Termination of Parental Rights.

Further, Mr. Peterson did not fail to supervise Clio and Aria, or any of his other children, nor did he make work a priority over assisting Mrs. Peterson in caring for the children. Conversely, he was appropriately caring for Apollo, Penelope, and Aria when Mrs. Peterson left Clio in the car and he was complying with unrelated court orders when Aria was bitten.

Even if the trial court considers neglect that did not occur to Athens, Athena, Penelope, or Apollo, it is an error of law in terminating Mr. Peterson's parental rights, relying on incidents that did not involve any wrongdoing by Mr. Peterson or the children named in the Petitions to Terminate Parental Rights.

The next issue is whether it is unconstitutional for the State Appellate Court to uphold purported instances of neglect involving two different children not a party to the termination proceedings.

Following the Final Hearing on Termination of Parental Rights, the trial court terminated Mr. Peterson's rights when it found that he *"failed to correct the conditions of neglect that led to the removal of [Athens, Athena, Penelope and Apollo]."*

In issuing its decision, the trial court did not recite a single finding whereby Mr. Peterson failed to fulfill the requirements identified in the Dispositional Order (discussed above) as they relate to Athens, Athena, Penelope and Apollo. Rather, the trial court relied on June 2016 incidents when Mrs. Peterson left Clio in a car unattended (Mr. Peterson was home watching Apollo, Penelope, Athena and Aria) and when Aria

received bite marks by an older sibling (Mr. Peterson was performing court ordered community service, in which Mrs. Peterson promptly and appropriately brought her to the emergency room.) Both of these incidents caused the filing of separate Neglect Petitions for Aria and Clio.

The medical reports regarding the bites are referred to as *"bruises"*. In addition, the medical reports point out that other then the *"bruises"*, the child seemed to be in good health. The mother, according to observation, performed a visual check of the child. Aria appeared to have no broken skin or blood. Immediately, Mrs. Peterson called Mr. Peterson to come home at once. While he was at work, Mr. Peterson called for an ambulance. When emergency personnel arrive, it was told to the mother that Aria appears to have what looks like *"hickies"* and other then offering to take Aria to the hospital, there really was nothing else they could medically provide. The State Supreme Court in 1992 spoke on a case involving a child inflicted with bruises. In re Ethan H, No. 90-533,135 N.H. 681 (1992), stating: *"The respondent presented substantial evidence that Ethan, although bruised, was not harmed."* (See also "BRUISES "THE MEDICAL LITERATURE OF CHILD ABUSE: AN ANNOTATED BIBLIOGRAPHY MAY 2007 EDITION Page 38 to42 " Google as it is written above the list of bruising is pretty extensive and inconclusive)

Shortly after this, all of the children were removed and once again, both parents were found to have "neglected" Aria and Clio when they were removed, and then shortly retuned home after this.

Definition of a "Neglected child" **in New Hampshire is found in 169-C:3, XIX** "means: *a) Who has been abandoned by his or her parents, guardian, or custodian; or*
(b) Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, when it is established that the child's health has suffered or is likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian, or custodian;

Additionally, a *de novo* hearing in regards to Aria being alone in a bassinette (no removal took place) was held in New Hampshire Superior Court. The Superior reversed the finding in favor of Mrs. Peterson. (See In re: Aria Peterson 2016-J-001) The New Hampshire Supreme Court used this event as one of the deciding factors in upholding the termination. However, after the *de novo* hearing took place that Mrs. Peterson won and had the neglect finding reversed in regards to this issue, is to expose her to double jeopardy.

The New Hampshire State Constitution states in:

"[Art.] 16. [Former Jeopardy: Jury Trial in Capital Cases.] No subject shall be liable to be tried, after an acquittal, for the same crime or offense. Nor shall the Legislature make any law that shall subject any person to a capital punishment, (excepting for the government of the army and navy, and the militia in actual service) without trial by jury."

We are seeking review by this Court as to whether this is federally unconstitutional and goes against the Fifth Amendment of the United States Constitution and the New Hampshire State Constitution. The district court entered a finding of neglect, and then went to an appeal to the State Superior Court in which she won the de novo via stipulated facts. Mrs. Peterson had to answer the same charge during the termination proceedings and the appeal to the State Supreme Court, and then in turn, subjected Mrs. Peterson to answer the same charge of neglect a second time for the older four children, even though she won the de novo for Aria, as one of the means to terminate her rights.

Even if Mrs. Peterson answering the same charge twice at the State Appellate Court level was not unconstitutional, the court denied hearing the matter. The court "...considered the briefs of the respondents, the mother and the father of A. P., P. P., A. P., A. P. (children), the memorandum of law of the petitioner, the New Hampshire Division for Children, Youth and Families (DCYF), and the record submitted upon appeal, we conclude that oral argument is unnecessary in this case.". (See New Hampshire Supreme Court Order 2017-0662 In re A. P.; In re P. P.; In re A. P.; In re A. P.)

In regards to Mr. Peterson and allegations against his wife involving Aria and Clio, in the State of New Hampshire there is a case In re: Doe, 123 NH 634- NH: Supreme Court 1983 that says:

"We also note that termination of one spouse's parental rights does not require termination of the rights of the other. See In re Irene W., 121 N.H. at 125, 427 A.2d at 26. Because of the fundamental liberty interest threatened whenever the State seeks to sever parent-child relationships permanently, we will not sanction imputing one parent's conduct to terminate the other parent's rights, merely because of the marital relationship. Before both parents' rights can be terminated based on the conduct of only one parent, the record must show that no other arrangement is feasible, such as supervised visitation by the parent for whom the record does not independently support termination until such time as that parent can ensure that the home is safe for the children."

Seventeen years later, the State Supreme Court issued an opinion in a case

No. 99-465 In re: Bill F. September 28, 2000 that spoke again to the issue of separate petitions for the parents:

"If a parent is found, either by adjudication or stipulation, to have abused or neglected a child, the district court has the power to award custody of the child to the other parent."

Outside of the constitutional issues mentioned for review to this Court, the district court order was completely silent regarding Mr. Peterson. Additionally, most of the State Supreme Court order relies heavily on speculation and assumption, neither of which have anything to do with the law. For example, on page two of the order, it states, *"the visits were "chaotic," and the parent aides **believed** that, if the visits were not supervised, the children would be at risk of serious harm."*

The next issue, by way of the Full Faith and Credit Clause of the United States Constitution, is a State agency entering into a judicial decree with the parents and not adhering to the decree.

RSA 170-C: 5, III requires DCYF to make reasonable efforts to assist Mr. and Mrs.
Peterson in rectifying the conditions that led to the finding of neglect. In re CM, 166 N.H. 764, 779 (2014) says:

"In determining whether DCYF has made reasonable efforts to assist a parent in correcting the conditions that led to a finding of abuse or neglect, the court must consider whether it provided services that were 'accessible, available and appropriate."

In this matter, DCYF failed to provide services that were accessible, available and appropriate when the district court ordered DCYF to reunify Athens, Athena, Penelope and Apollo with their parents. On October 9, 2015, the trial court ordered DCYF to reunify the children no later than June 1, 2016.

DCYF was disappointed because this went against their recommendation, but they acquiesced. DCYF and Home Base advised that it would be best to stretch the children's return so Mr. and Mrs. Peterson, who did not have their children in over one year, become overwhelmed. As the trial court found, DCYF ignored its own recommendation and returned Apollo, Athena, and Penelope all at once and ten days late.

In response to the October 9, 2015 order, DCYF slowly began to increase the visits between Mr. and Mrs. Peterson and their children. When this increase started to occur, Mr. and Mrs. Peterson did not have the support of DCYF, who did everything it could to set the Peterson's up to, fail and

prevent reunification. It would not allow Athens to move in with Mr. and Mrs. Peterson in January/February 2016 despite the fact that he was switching schools anyway.

DCYF also forbid Mr. and Mrs. Peterson to have overnight parenting time with their children from October 9, 2015 through the weekend of April 15, 2016. This is a coincidence considering the 12-month mark was quickly approaching within a month. (See Adjudicatory Notice)

DCYF finally decided Mr. and Mrs. Peterson could have overnight parenting time on the weekend of April 15, 2016, which DCYF knew was to be the same weekend Mrs. Peterson was to give birth to Clio (DOB April 17, 2016). In response to this concern, DCYF told Mr. Peterson to figure out a solution.

DCYF also ignored recommendations from Penelope's doctor, who advocated that she receive significant preparation, transition and support when reunifying with her family. This was necessary due to Penelope's behavioral issues brought on by her dyspraxia disability, which includes a habit of biting as exhibited while she was in DCYF's custody. DCYF did not provide any support beyond what they were already providing when it came time to reunify Penelope with Mr. and Mrs. Peterson. DCYF's failure to provide support surrounding Penelope's reunification caused Penelope to act out and bite Aria, resulting in a 24-Hour Protective Custody Hearing and the filing of the Petitions to Terminate Parental Rights.

During the life of the case, there were numerous visitation issues. DCYF contracted with a transportation provider that did not perform consistent, reliable service for the children. The employees for this DCYF- approved transportation provider were late in dropping off the children, reducing an already short visit even shorter. The logistical issues involved the employees having communication barriers in giving and receiving important information from their supervisors and DCYF. The foster parents also interfered with the visits in failing to provide 24-hour notice to the parents if a child was going to be absent or late. There is documentation in the visit notes and a motion from Mrs. Peterson's attorney to the district court. Even the mention of contempt did not motivate DCYF to correct the issue.
The documentation will be available for this Court's review.

Mr. and Mrs. Peterson were required in the Dispositional order to attend and participate in mental health counseling, of which DCYF would pay for 12 counseling sessions per year. Mr. and Mrs. Peterson did attend and participate in mental health counseling. There were issues with payment

of these sessions as it relates to Mr. Peterson. The therapist and DCYF were in disagreement with payment of sessions. To this day, Mr. Peterson has an outstanding balance that DCYF will not pay for. Mrs. Peterson had all her counseling paid for with State Medicaid, until State Medicaid found her no longer eligible for coverage. This resulted in over a years worth of DCYF mandated counseling sessions not being paid for, leaving an outstanding balance of over $5,000.00. However, meaningful progress was occurring with Mrs. Peterson until the therapist, for non-payment terminated, the therapist-client relationship.

For these reasons, DCYF sabotaged the Petersons by failing to provide services that were accessible, available and appropriate as required by RSA 170-C:5, III.

We are asking this Court to review as to whether the issues regarding services that were not provided to the parents falls within the Full Faith and Credit Clause of the United States Constitution, which states:

"The Full Faith and Credit Clause has been applied to orders of protection, for which the clause was invoked by the Violence Against Women Act, and child support, for which the enforcement of the clause was spelled out in the Federal Full Faith and Credit for Child Support Orders."

"Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

CONCLUSION

Vacate the New Hampshire Supreme Court order # 2017 0622

And the state district order

Respectfully submitted,

Date