No. 19-1216

In The

Supreme Court of the United States

LOREDANA ELIZABETH BOTOFAN-MILLER,

Petitioner,

v.

BRETT ROBERT MILLER,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Oregon

PETITION FOR WRIT OF CERTIORARI

LOREDANA ELIZABETH BOTOFAN-MILLER
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Pro Se

QUESTION PRESENTED

Did the State of Oregon courts violate the fourteenth amendment rights of the full legal custodial parent, who was the birth mother, to make decisions concerning the care, custody, and control of her child by removing custody based on such decisions?

PARTIES TO THE PROCEEDING

Petitioner Loredana Elizabeth Botofan-Miller was the Petitioner-Appellant in Oregon Court of Appeals, Respondent on Review in the Supreme Court of the State of Oregon. Respondent Brett Robert Miller was the Respondent-Respondent in Oregon Court of Appeals, Petitioner on Review in the Supreme Court of the State of Oregon.

RELATED CASES

*Loredana Elizabeth Miller and Brett Robert Miller C104720DRA
In the Circuit Court of the State of Oregon
For the County of Washington
General Judgment of Dissolution of Marriage (including child legal custody). Judgment filed July 19, 2011.

*Loredana Elizabeth Botofan-Miller and Brett Robert Miller C104720DRA
In the Circuit Court of the State of Oregon
For the County of Washington
Corrective Supplemental Judgment. Judgment filed January 27, 2016.

*Loredana Elizabeth Botofan-Miller and Brett Robert Miller C104720DRA; A161266
In the Court of Appeals of the State of Oregon
Opinion entered November 1, 2017.

RELATED CASES – Continued

*Loredana Elizabeth Botofan-Miller and Brett Robert Miller
CC C104720DRA; CA A161266; SC S065723
In the Supreme Court of the State of Oregon
Opinion entered August 15, 2019. Motion to Reconsider denied on October 24, 2019. Appellate Judgment filed January 6, 2020.

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PETITION FOR A WRIT OF CERTIORARI

Loredana Elizabeth Botofan-Miller petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of Oregon in this case.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Oregon filed on January 6, 2020 is published and is reproduced in the Appendix at App. 67.

The opinion of the State of Oregon Court of Appeals issued on November 1, 2017 is published and is reproduced in the Appendix at App. 34.

JURISDICTION

The Circuit Court of the State of Oregon for the County of Washington entered judgment on July 19, 2011 awarding sole, legal custody to Petitioner, Loredana Elizabeth Botofan-Miller.

The Circuit Court of the State of Oregon for the County of Washington entered a supplemental judgment on January 27, 2016 removing sole, legal custody from Petitioner, Loredana Elizabeth Botofan-Miller and changing sole, legal custody to Respondent, Brett Robert Miller.

The Court of Appeals of the State of Oregon entered opinion on November 1, 2017. This court reversed

the circuit court's supplemental judgment for change custody, restoring sole, legal custody to Petitioner, Loredana Elizabeth Botofan-Miller.

On August 15, 2019, The Supreme Court of the State of Oregon entered opinion, denied Motion to Reconsider on October 24, 2019, and filed judgment on January 6, 2020. This court reversed the Court of Appeals of the State of Oregon opinion and affirmed the circuit court's supplemental judgment for change of custody.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. XIV.

INTRODUCTION AND STATEMENT OF THE CASE

I, Loredana Botofan-Miller, declare that I am a fit and proper parent, natural birth Mother to child, Silvia Miller, who was unconstitutionally and wrongfully removed from my sole, legal custody by the State of Oregon's Washington County Circuit Court, which was reversed by the Oregon Court of Appeals, and later affirmed by the Oregon Supreme Court. The Oregon Supreme Court stated incorrect information in their opinion, for which evidence did not support. I brought this to the attention of the Oregon Supreme Court in a

Petition for Reconsideration, which they did not grant. I have never been convicted of a crime, abuse, neglect, or any such thing, nor have I never been held in contempt of court but have always followed court orders. Nonetheless, these Oregon courts incorrectly stated that I went against court orders and removed child from my custody, as I will explain below.

Oregon courts also appointed an unqualified custody evaluator, Dr. Charlene Sabin, M.D., and wrongfully stated that Dr. Sabin is a psychologist when, in fact, Dr. Charlene Sabin, M.D., is not, nor has ever been, a licensed psychologist. This custody evaluator fabricated an unsupported theory of, "anxious parenting attachment style," for which she did not assess, nor was she qualified to assess. This is covered in further detail later in this petition.

ARGUMENT/REASONS FOR GRANTING THE PETITION

There is a fundamental right under the Fourteenth Amendment for a parent to oversee the care, custody, and control of a child. *Troxel v. Granville*, 530 U.S. 57 (2000).

The Fourteenth Amendment's Due Process Clause has a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests," *Washington v. Glucksberg*, 521 U.S. 702, 720, including parents' fundamental right to make decisions

concerning the care, custody, and control of their children, see e.g., *Stanley v. Illinois*, 405 U.S. 645, 651. Pp. 63-66.

Parental rights not only are protected under the First and Fourteenth Amendments as fundamental and more important than property rights, but that they are "deemed essential." *Hodgson v. Minnesota*, 497 U.S. 417 (1990).[1] The Court leaves no room for doubt as to the importance and protection of the rights of parents.

I hold the position that the State of Oregon courts usurped my rights when I, mother, was the custodial

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[1] **The family has a privacy interest in the upbringing and education of children and the intimacies of the marital relationship which is protected by the Constitution against undue state interference.** See *Wisconsin v. Yoder*, 7406 U.S. 205 . . . The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition." *Parham*, 442 U.S., at 603, [other citations omitted]. We have long held that **there exists a "private realm of family life which the state cannot enter**." *Prince v. Massachusetts* . . . A natural parent who has demonstrated sufficient commitment to his or her children is thereafter entitled to raise the children free from undue state interference. As Justice White explained in his opinion of the Court in *Stanley v. Illinois*, 405 U.S. 645 (1972) [other cites omitted]: "The court has frequently emphasized the importance of the family. The **rights** to conceive and to **raise one's children have been deemed 'essential**,' *Meyer v. Nebraska*, . . . 'basic civil rights of man,' *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), and '[r]ights far more precious . . . than property rights,' *May v. Anderson*, 345 U.S. 528, 533 (1953) . . . The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, *Meyer v. Nebraska*, supra." [emphasis supplied]

parent in this case, by ordering direction on medical care regarding vaccinations and the modification court further abusing my custodial parental right to seek different medical opinions for the child in regards to eye surgery; to choose the OHP (Oregon Health Plan) approved vision therapy treatments, as referred by the child's pediatrician (TR 298 & TR 315 – VT approved by her insurance, TR 533 – child is on OHP); to join and converse with online support groups of physicians and parents in similar situations (Exhibit 108); to choose the half day kindergarten program option offered by the school; to delay fluoride and dental x-rays for a later appointment, as approved by the child's dentist (Exhibits 9-10); to begin and/or end therapy for the child and make and/or cancel appointments, for which I, as custodial parent, was not required or court-ordered to attend, by using these factors as a means to remove custody thus violating this parent's Fourteenth Amendment right. I petition the Supreme Court of the United States to grant a Writ of Certiorari to review these findings. Notwithstanding I also state that I, mother, complied with the Oregon's trial court's order with regard to vaccination and was never in violation of said order. As per that order, I, mother, did in fact confer with the child's pediatrician, which was followed to ensure compliance. (See Petitioner/Mother's Hearing Memorandum, p. 383 from the case file; TR 258-259; General Judgment of Dissolution, p. 3, #2. Custody and Parenting Plan.)

There is a burden of proof that must be met before removing a parents rights. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) [2]

Oregon's modification court did not find that the custodial parent's choices or style of parenting posed any harm or risk of harm to the child but in fact credited *both* parents for the child doing well, TR 527-528. The courts did not show clear and convincing evidence

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[2] This case involved the Appellate Division of the New York Supreme Court affirming the application of the preponderance of the evidence standard as proper and constitutional in ruling that the parent's rights are permanently terminated. The U.S. Supreme Court, however, vacated the lower Court decision, holding that due process as required under the Fourteenth Amendment in this case required proof by clear and convincing evidence rather than merely a preponderance of the evidence.

The Court, in reaching their decision, made it clear that parents' rights as outlined in *Pierce* and *Meyer* are fundamental and specially protected under the Fourteenth Amendment. The Court began by quoting another Supreme Court case:

> In *Lassiter v. Department of Social Services*, 452 U.S. 18, 37 (1981), it was "not disputed that state intervention to terminate the relationship between a parent and a child must be accomplished by procedures meeting the requisites of the Due Process Clause" . . . The absence of dispute reflected this Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment . . . *Pierce v. Society of Sisters* . . . *Meyer v. Nebraska.*

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 . . . When the state moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures. [emphasis supplied]

that there was any harm or risk or harm to the child, nor that court order(s) were violated by custodial parent (as aforementioned), or that custodial parent had any substantiated mental health issues. In fact, the modification court praised current parental fitness and child well-being, that the child was, "doing well," that the child was not harmed, and that the parents, including mother, "love this child."

> TR 527, lines 23-25; TR 528, lines 13-16; TR 351, lines 13-19; TR 105, lines 18-20; TR 212-TR 213, lines 1-3; TR 226; TR 524 (child doing well); TR 11 (no safety concerns about mother . . . still gets very liberal parenting time – no need for protective measures)

Further evidence is Petitioner's Exhibit 8a, the Director of OHSU's Elks Children's Eye Clinic of Casey Eye Institute and Professor of Ophthalmology and Pediatrics, Daniel J Karr, MD FAAO FAAP, stated no risk of harm in the event surgery were to be postponed,

> "Her examination remains stable and she exhibits a good preservation of stereo/binocular vision," and, "At this point in time there is no immediate rush to perform surgery since she shows no evidence of losing her binocular status."

and a statement by the child's pediatrician at Oregon Pediatrics in Exhibit 14 that the custodial parent was diligent about making and *keeping* appointments for the child.

Nowhere in the history of this case was there ever any findings of harm, risk of harm, or injury to the child.

Attachment Style, Mental Health, Inter-Parental Dynamics

Using the aforementioned factors to link an allegedly harmful parenting attachment style is unsupported, as such parenting attachment style was never even assessed, as stated not only by Dr. Poppleton but also by the modification court and Dr. Sabin. TR 14, lines 6-10; TR 179; TR 180; TR 521; 531-532; TR 227.

Dr. Sabin never assessed attachment theory and, according to the modification court, was not qualified to do an attachment assessment. TR 532, lines 1-2.

The courts erred in referring to Dr. Sabin as a "psychologist." Dr. Sabin's testimony of qualifications states that she is a MD but not a licensed psychologist qualified to make this assessment of the custodial parent. TR 532; TR 17. ORS 675.020 (2). Dr. Sabin testified to her qualifications at TR 16-17; TR 85. Dr. Sabin's professional credentials are as a medical doctor who specializes in pediatrics and has no formal licensing as a Psychologist, which is the primary reason mother procured an experienced licensed Psychologist, Dr. Poppleton, to analyze the evaluator's findings (see p. 2, lines 5-6 of Petitioner's Response & Objection to Respondent's ORCP Rule 68 Statement of Attorney Fees & Costs). TR 85 Landon Poppleton Ph.D. Psychologist

provided his curriculum vitae (Petitioner's exhibit 31) and experience (TR 200-203).

Dr. Poppleton observed that an attachment assessment simply was not done and there should have been an entire analysis into the interparental dynamics TR 239. Dr. Sabin ignored the relationship dynamic and it should have been addressed. TR 240. TR 241. TR 246.

> "There is strong indication in this file right here of Dr. Sabin that those interparental dynamics should've been assessed more thoroughly in terms of pattern, potency and primary perpetrator. And there should have been an entire analysis around that and what the implications are to that to what we have in front of us here in court today and it wasn't done." "Nobody's done that work." "She didn't do the work."

Oregon's modification court offered no explanation to why the expert witness testimony of the Ph.D. Psychologist was not, "well taken."

TR 12 & TR 14 – The attachment theory was Dr. Sabin's hypothesis based on things that weren't supported by evidence and Dr. Sabin didn't offer any alternative hypotheses.

Pre-Divorce Events Mentioned in the Supreme Court of the State of Oregon's Opinion

The court states that, "mother was hospitalized and given antipsychotic medication" and that "mother attributed the psychotic episode to sleep deprivation

and her anxiety about father's extended parenting time." The facts show that mother was never hospitalized but entered the emergency room late in the evening and left the following day but was never admitted to the hospital. Furthermore, the medical providers, not the mother, stated the *brief* and *reactive* episode was due to sleep deprivation and stress of the divorce.

Expert witness doctors testified on mother's behalf (all concur no concerns about mother's mental health):

> See *Petitioner's Motion, Declaration, and Order to Allow Telephonic Appearance; Petitioner's Objection to Respondent's Motions Re Medical Records and Child's Medical Appointments;* and *Petitioner's Trial Memorandum*

At TR 163, Dr. Sabin testified about this pre-divorce episode but Dr. Sabin never spoke to any of the treating doctors or DHS about what had actually taken place. TR 164 – Dr. Sabin failed to acknowledge the events leading up to this, as stated in court documents, such as father harassing mother, videotaping her at a pediatric appointment and questioning mother on some insignificant bruising.

> *See Petitioner's Objection to Respondent's Form of Limited Judgment and Request for Medical Records*

The DHS review concluded there were no concerns or diagnosis about petitioner's mental health and such allegations were unfounded.

> See *Petitioner's Objection to Respondent's Motion re Medical Records and Child's Medical Appointments* –
>
> DHS stated that the protective action was put in place before they could speak to the petitioner (mother). DHS spoke to mother's doctors and then lifted the protective order after no concerns were determined.
>
> See *Petitioner's trial memorandum, dated June 9, 2011* – The concern regarding medical treatment sought by mother was unfounded by DHS and all expert doctors involved. Expert witness doctors, treating doctors of mother testified at trial explaining the ER visit.

Further Analysis

No pathology was found in psychological testing of mother – TR 45.

In lines 5-7 of TR 46, Dr. Sabin states that there wasn't anything in the psychological testing that contributed substantively to her recommendations. This is also evidenced by the fact that there aren't any further exhibits entered which point to any mental health issues with mother.

The history of this case shows the fact that mother has no mental health issues. Dr. Sabin specifies that there is no mental health diagnosis and no clinical elevations in the testing, TR 45.

> (TR 215 – There were things from Dr. Sabin's notes that didn't make it into the report. There were things from Dr. Sabin's file that we tried to enter as evidence and weren't allowed to that could have made a difference in the outcome: Petitioner's Exhibit Index (22, 23, 26, 27 and 28).)

See *Petitioner/Mother's Hearing Memorandum*, Page 2, Showing statements in the custody evaluation are flawed and inaccurate. TR 110-112 – Dr. Sabin didn't interview key experts. Dr. Sabin's findings fail to address threshold analysis for change in circumstance; Pages 3-4 – legal and factual arguments; Pages 7-8 Sabin incorrectly stated that they have appeared in court over immunizations TR 86-88; TR 135-136.

Father's brief mentioning this is incorrect because what he refers to is a settlement conference that only attorneys were attended and a telephone status call that again, only attorneys were present for.

TR 321 – In her attachment theory, Dr. Sabin didn't consider taking into account mother's culture and the ways Eastern European mothers nurture their children for an alternative hypothesis (mother being from Romania originally, now a US citizen).

Oregon's courts have given great weight to Dr. Sabin's findings. However, even with those findings, the Supreme Court of the United States should grant this petition for writ of certiorari in order to determine if Oregon courts violated my parental rights.

CONCLUSION

For the foregoing reasons, the Court should grant a writ of certiorari.

Respectfully submitted,

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