

No. 19-1236

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IN THE SUPREME COURT OF THE UNITED STATES

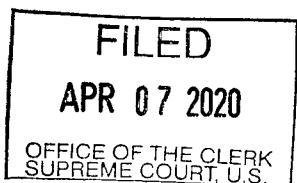
RACHEL J. EVENS – *Petitioner*

vs.

TIMOTHY J. EVENS – *Respondent*

On Petition for a Writ of Certiorari to  
the United States Court of Appeals  
for the Eighth Circuit  
(South Dakota Supreme Court)

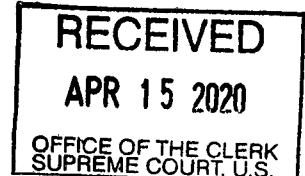
PETITION FOR WRIT OF CERTIORARI



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**Disclaimer:**

I, Rachel Evens, fully admit that I have absolutely no legal background or knowledge, except what I have been forced to learn for my defense through my Court-implemented indigent situation. My only resource is Google. I have completed this petition to the best of my understanding from on-line instructions, and request consideration be given as I am sure your Honorable Justices' will find numerous mistakes in my petition. However, my children and I both deserve justice – even though we are now considered indigent and cannot afford legal representation.



## **I. Questions Presented**

1. What constitutes “Due Process of Law”? Can binding orders be implemented, terminating visitation without any consideration of evidence or a hearing?
  - a. Is a judge is allowed to exclusively accept hearsay testimony from a non-legally trained parenting coordinator as fact; refuse to accept/consider evidence proving the hearsay testimony is false (from the parents and/or law enforcement personnel). Then, amid parental objections, implement the “findings and recommendations” of a licensed clinical social worker “parenting coordinator” into official orders; including the termination of parental rights, without following due process of judicial law (considering evidence, holding a hearing to hear the parties objections or opinions).
2. If the appointment of a non-legally trained, clinical social worker “parenting coordinator” is:
  - a. an unlawful delegation of judicial authority, and
  - b. disregard of complying with the Rules of Evidence; or the appointment of a parenting coordinator is allowable under the United States Constitution and current Federal Statutes, useful in implementing legally binding orders (without judicial involvement or due process of law) of parental responsibilities, parental custody and visitation, medical care, and other significant issues related to minors.

3. Should sanctions only be issued under Federal Rule 11, or should a National Standard be set with sanctions specific to intentional false reporting of child abuse for repeat offenders?

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#### **IV. Petition for Writ of Certiorari**

COMES NOW Rachel Evens (a court-forced, indigent, pro se litigant) on behalf of her four children, herself, and parents across the United States (who find themselves in starkly similar circumstances), and respectfully petitions this Court for a Writ of Certiorari to review the judgement of the South Dakota Supreme Court of Appeals, as this judgement directly contradicts the United States Constitution and previously established case law by other Courts of Appeals.

Judge Connolly has obstructed justice through using his judicial powers of ruling in favor of the wealthy (those who can afford multiple seasoned attorneys) and disregarded the long-held standard that allegations must be substantiated by evidence. It has long been upheld *that all American Citizens* are entitled to the same protection of rights and administration of justice. These American citizens

include minor children who have been involuntarily caught in their guardians' custody disputes. Minor children have the right to be protected from repeated interrogations by law enforcement, searches for physical abuse, and observing their mother being handcuffed and placed inside police cars as investigations occur. When it has repeatedly been demonstrated that a guardian is intentionally making false allegations of child abuse in a custody situation, it should be very easily deduced that this guardian is selfishly using his children as pawns, without any consideration his actions causing traumatic, long-lasting psychological effects on their well-being.

A Federal Standard is requested regarding this issue, due process of law, and parenting coordinators, for it is obvious that due to the frequent and directly similar nature of the stated case law, this exact matter will only continue escalating nationwide in lower courts until a Federal Standard has been set for lower courts to follow.

#### **V. Opinions Below**

The opinion of the highest state court to review the merits of this Petition appears at Appendix A to this petition. The Appeal #29245 was dismissed. The opinion of the South Dakota Supreme Court is unpublished.

#### **VI. Jurisdiction**

Rachel's ORDER DISMISSING APPEAL #29245 from the South Dakota Supreme Court was denied on February 27, 2020 and appears at Appendix C to this petition. Ms. Evens invokes this Court's jurisdiction under 28 U.S.C. §1257, having

timely filed this Petition for a Writ of Certiorari within ninety days of the South Dakota Supreme Court's judgement.

## **VII. Constitutional Provisions Involved**

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Declaration of Independence:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

## **VIII. Statement of the Case**

The parties were married on July 9, 2005. This was the first marriage for Rachel, the second marriage for Timothy. Timothy failed to relay to Rachel that he was already legally married until a few weeks prior to their marriage. Timothy was medically discharged from the Navy after four years with Post-Traumatic Stress Disorder (currently receiving a 50% disability), a police officer for seven years, a fire fighter for fourteen years, and is presently self-employed in carpet cleaning and restoration. Rachel is a Registered Nurse, an Advance Practice

Provider, Certified Nurse Midwife (since 2013), and a Family Nurse Practitioner (since November 2019). Rachel was a full-time student during the timeline of this case, completing her post-graduate certificate in November 2019. Rachel had committed her professional nursing career to working in medically underserved communities and Native American Indian populations.

Rachel was raised in a very traditional, hardworking American farming family. Rachel has absolutely no previous interaction with law enforcement or criminal background. Timothy is a self-proclaimed “womanizer” with many one-night stands; stating in July 2018 that he only cared about having sexual relationships with multiple women, consuming alcohol from a very young age (twelve years); and claims he chose to marry Rachel “because you were hot” and he had never previously met someone with Rachel’s traditional family values. Timothy is fifteen years older than Rachel and only admits to one child (daughter) prior to his marriage to Rachel. Timothy was not involved in his first daughter’s life since 2005. Timothy and Rachel jointly had four children during their marriage (ages 5-12 years), of whom it was found Rachel was the primary caregiver for their entire lives.

Rachel worked away from home as a medical provider for two weeks at a time, with the children accompanying her since birth. Timothy secretly had affairs while Rachel and the children were away from home, being caught in the act on March 17, 2017 by Rachel and house guests. Timothy refused to remain committed to his marital relationship with Rachel, and subsequently Timothy filed for divorce

from Rachel on January 25, 2018. Timothy requested an uncontested divorce, or if that was denied then a divorce under the grounds of “Extreme Cruelty”. Timothy requested the parties’ extensive marital estate and marital business in their entirety.

Timothy admitted on audio in March 2018 that he had not been involved in any of his five children’s lives “for twenty years”. However, under oath, Timothy claimed he was the primary caregiver and requested primary custody of the parties four minor children, claiming Rachel was physically abusive. Pursuant to SDCL §25-4A-11 and South Dakota Standard Guidelines 1.13 Privacy of Residence; A restraining order was entered on January 25, 2018, granting the children to the previous primary caregiver (Rachel), and prohibiting Timothy from entering Rachel’s residence without her permission.

Timothy refused to quit forcing his presence in Rachel’s residence and return to his claimed residence in Havre, Montana. As Timothy also refused to give up his extra-marital affairs, Rachel refused to have intercourse with him. From February 24, 2018 onward Timothy forced sexual contact and intercourse multiple times per day without Rachel’s consent. Timothy began forcing anal penetration without Rachel’s consent to the point that Rachel was physically abused. Rachel was scared for both her life and the safety of her children if she reported Timothy’s abuse. On March 5, 2018 Rachel requested a protection order from the Pennington County Court House. Rachel was given papers to return and sent home.

That night Rachel contacted Pennington County Law Enforcement for advice about enforcing the temporary restraining order which prohibited Timothy from being in her residence. Rachel was informed until she had the Protection Order setting the prohibited distance the law enforcement was unable to enforce the current restraining order (03.05.2018 Pennington County Command Logs [PCCL] #18-060781). Directly after the Courthouse opened on March 6, 2018 Rachel filed her request for a Protection Order, specifically requesting protection for herself and a hearing to determine protection for the children. A temporary order was entered and served upon Timothy, prohibiting all contact between Timothy and Rachel, and the children.

On March 8, 2018 at 07:08am Timothy reported to law enforcement that Rachel was currently “life-threatening” abusing the children. The children were privately examined and interviewed by law enforcement. The children denied all abuse by Rachel and no marks or bruises were found (03.08.2018 PCCL #18-062854).

On March 8, 2018 Rachel and the children returned to Montana for Rachel’s two-week employment stretch. On March 12, 2018 at 09:42am Timothy contacted law enforcement, accusing Rachel of child abuse and neglect. Law enforcement was dispatched, privately interviewed the children, and reported Timothy’s allegations were false. Over the course of the next few days Timothy continued to contact law enforcement and allege abuse (3.12.2018, updated 3.13.2018 Roosevelt County Command Log #CFS18004082; 03.13.2018 PCCL #18-068004)

On March 23, 2018 Judge Connolly denied Rachel's protection order request. Further, despite finding that Timothy had falsely lied under oath claiming he was the primary care-giver; and despite Timothy's past history of false child abuse reporting and not having any evidence to substantiate Timothy's allegations; Judge Connolly granted Timothy primary custody of the children "in the interest of extreme caution". Judge Connolly also granted Timothy possession of Rachel's home, stating it was so the children could remain in their same residence. Rachel was quickly evicted by Timothy that very hour, without being allowed to remove her personal possessions. To this date Timothy has refused Rachel her possessions so Rachel had no resources to obtain money for legal fees.

On March 29, 2018 Timothy refused Rachel visitation, involving law enforcement (03.29.2018 PCCL #18-084731). An emergency order was obtained granting Rachel visitation. Judge Connolly wrote "*Again, I encourage the parties to be reasonable regarding modifying the guidelines to accommodate each other's schedules and unreasonableness may become an issue when the Court determines final custody and visitation.*"

On April 29, 2018 Timothy came to Rachel's temporary residence and alleged domestic violence and physical abuse against Rachel, claiming Rachel "choked" Timothy. Rachel was placed in handcuffs and "restrained" in a police vehicle due to Timothy's allegations; while the children and Timothy could be interrogated and searched for abuse. No marks could be found. Timothy's claims were false. (04.29.2018 PCCL #18-102972).

On May 4, 2018 at 18:18pm, Timothy again alleged domestic violence and physical abuse against Rachel, claiming Rachel twisted his left nipple and punched his left shoulder. An immediate in-depth interview and physical examination by law enforcement occurred and no marks could be found on Timothy (05.04.2018 PCCL #18-103130).

A formal custody evaluation ensued by Mr. Brown, CSW. On both August 14, 2018 and also November 8, 2018, it was found through the custody evaluation that Rachel had been the children's primary caregiver since birth, and that Timothy's allegations of child abuse were false.

Rachel moved back to her family in Montana. Beginning May 27, 2018 Timothy began making multiple accusations that Rachel was "kidnapping" the children. Each time it was found the allegations were false. On September 3, 2018 Timothy met Rachel to exchange the children. The children refused to leave Rachel, Timothy left the scene and alleged to law enforcement that Rachel was kidnapping the children. Again, this was found to be false. Due to these repetitive "kidnapping" allegations, pursuant to Rachel's request, an ORDER was implemented by Judge Connolly stating that all child exchanges would occur at a local law enforcement office.

On October 9, 2018, during an exchange at a local office, T.R.E. (five y/o) independently walked into the police station to object to being forced into returning to South Dakota with Timothy. T.R.E. was then forcefully removed by two officers from clinging on Rachel's vehicle as Rachel tried driving away. Timothy again

blamed Rachel for his son's actions. Also, on October 9, 2018, Rachel was contacted by the Pennington County Investigations and informed that law enforcement was concerned about her safety and believed Timothy had been raping her back in May 2018. A formal investigation ensued (#18-103130).

In March 2018 Judge Connolly ordered Rachel to continue paying bills, stating he would then divide them up during the divorce trial. Rachel then supported three households (Timothy's residence in Havre, Montana that he refused to occupy, Rachel's residence in Rapid City, South Dakota that Timothy and the children were living in, and Rachel's rented residence in Montana). From February 2018 through October 2018 Rachel paid a total of \$85,619 in joint marital expenses and Tim's personal expenses, not including her own living expenses. Timothy received \$176,014 of income between the date of filing on 01.25.2018 and 10.31.2018. Judge Connolly then refused to divide the income and bills like he promised he would. This resulted in Rachel having no resources to obtain an attorney and has been a court-ordered forced indigent litigant. Further, at the divorce trial Timothy was allotted the marital assets and ordered to pay a greatly reduced >\$250,000 equalization payment to Rachel, with no deadline for this payment. As a result, Rachel has been rendered homeless, destitute, and has not received a single penny from Timothy, while Timothy continues to spend almost \$200,000 in attorney fees "prosecuting" Rachel (as formally documented by Timothy's submitted "requests for attorney fees" via multiple motions for Rachel to pay Timothy's fees in both the lower and Supreme Courts).

On November 29, 2018, after a five-day trial of Timothy "prosecuting" Rachel for Extreme Cruelty, Judge Connolly ruled that Rachel was not entitled to a divorce as Rachel had not co-filed for divorce within 30 days of Timothy filing. Timothy's

extensive use of alcohol and intoxication was testified to by both family friends and law enforcement. Timothy used his current criminal investigations of domestic assault and rape in South Dakota and hunting violations in Montana as grounds for establishing extreme cruelty on behalf of Rachel. Timothy submitted no evidence establishing these investigations, but claimed Rachell was at fault. Henceforth, Judge Connolly stated

*“I’ve not heard any – seen any evidence to support any – investigation of an audit or hunting violations or tax evasion or anything like that, or rape or anything”*

and then ruled

*“I find statements about accusing Mr. Evens of certain things that may or may not be true or may or may not be ultimately proven, but I think in taking in the full context of the marriage I find this amounts to extreme cruelty and those include allegations of rape, hunting without a license, tax evasion, so forth”.*

After stating on the record that he had not seen evidence or heard the criminal cases, Judge Connolly entered his Findings of Facts and Conclusions of Law in the civil divorce trial on December 26, 2018, and ruled that Timothy was innocent in all Timothy’s pending criminal charges in two states. Primary custody of the children was granted to Timothy, so that the children could not move back to Montana with Rachel, where they had spent almost ten years of their lives.

Rachel appealed the Findings of Fact and Conclusions of Law in January 2019 as not substantiated or grounded in evidence. Primary custody was also appealed to the South Dakota Supreme Court and is still pending a formal decision.

In January 2019 following the investigation, Pennington County law enforcement requested a warrant for Timothy's arrest for committing domestic violence and rape against Rachel in May 2018 (PCCL Report #18-103130) and permission to prosecute Timothy for rape before a jury. The request for a warrant was denied pending an appeal ruling as Judge Connolly had ruled Timothy was innocent without any information, reviewing the report, or considering any evidence from current law enforcement investigations.

Timothy was prosecuted by the Montana Fish, Wildlife and Parks. On March 18, 2019 in Hill County Justice Court, Montana, Timothy pled guilty of hunting violations (Case No: TK-455-2019-0000242).

On January 6, 2019, Timothy left the children home alone and was unavailable by phone. R.K.E. (11y/o) hurt her knee and required medical care. The children didn't have dinner. Rachel called for a medical assessment of her daughter's injuries as she wanted to go to the hospital and Rachel was 800 miles away. The sheriff verified R.K.E. required medical intervention, although not emergent (PCCL #19-005095). On January 8, 2019, Timothy had yet to take R.K.E. to a provider. When police contacted Timothy, he agreed to make an appointment (PCCL #19-006319).

On February 22, 2019 Timothy refused to take R.K.E. to a provider when she had a fever, difficulty breathing, and said her lungs kept "popping like rice crispies" (PCCL #19-get). Rachel was visiting South Dakota and came at her daughter's request to quickly assess. Rachel insisted on medical intervention.

Timothy retaliated by filing a Trespassing Order prohibiting Rachel from being able to intervene on behalf of her children (PCCL #19-046873).

Ms. Bruckner, a licensed social worker who was just licensed a few months prior, was hand-selected by Timothy to be the parties “Parenting Coordinator”. The ORDER APPOINTING PARENTING COORDINATOR, written and submitted to the Court by Timothy’s counsel, directly violated the provisions set forth in SDCL §25-4-70; §25-4-72; and national Supreme Court rulings as set forth later in this document. This ORDER has never been formally served upon Rachel. Rather, on November 1, 2019 the Clerk of Court provided the ORDER to Rachel following a request from Rapid City Police Officers, who stated that there had to be a formal ORDER appointing the parenting coordinator. As such, Rachel was never granted the opportunity for a timely objection pursuant to SDCL prior to this ORDER being signed.

Without any jurisdiction or authority to enter a new judgement which would change or modify the judgement on appeal, pursuant to extensively quoted South Dakota case law in Reaser v. Reaser, 2004 S.D. 116, ¶28; 688 NW2d 429 and In re Estate of Hoffman, 2002 SD 129, ¶17, 653 NW2d 94, 100, Judge Connolly still signed and implemented this ORDER on March 22, 2019. According to this ORDER, either party had fourteen days to object to any decisions made by Ms. Bruckner. Immediately following her appointment, Ms. Bruckner began submitting

documentation to Judge Connolly, on behalf of Timothy, with serious allegations against Rachel.

On April 11, 2019 Timothy refused to meet Rachel during the court-ordered exchange for Spring Break. Judge Connolly refused to intervene, mandate Timothy give the children to Rachel, or uphold Rachel's visitation.

On April 21, 2019 Timothy refused to meet Rachel during a child exchange; instead trying to claim kidnapping. Per Timothy's attorney's advice, Rachel had to involve law enforcement to require Timothy to come collect the children (PCCL #19-102392).

Rachel has provided 100% of the children's medical care since their birth. Timothy refused to provide basic and preventative medical, dental, optometric, and psychiatric care to the children since receiving interim custody of them in March 2018. Rachel provided all of their medical care in Montana, both during the interim divorce period and afterwards in all of 2018 and 2019. The children received extensive dental work in July and August 2019 – to the point their dentist questioned Rachel about neglect. Their psychiatric counselor was concerned about Timothy not allowing Rachel enough visitation and communication and the detrimental effects it had on the children's mental health. It was advised by their counselor that Rachel's contact with the children increase.

In all, the children received over thirty appointments with their Primary Care Provider, Pulmonary Function, Cardiology, Optometrist, Dentists, and Psychiatric providers during July and August 2019 through Rachel's diligence.

Immediately upon the children's return to South Dakota in August, Timothy subjected the children to his newest "female companion" and her children, having his "companion" spend extensive time alone with Timothy, including overnight stays. (Timothy now denies he was dating). These stays involved Timothy's extensive use of alcohol to the point the children knew Timothy was intoxicated. On August 27, 2019 Timothy refused to meet Rachel when he had pre-arranged for child exchange. Instead Timothy was busy with his newest female companion. (PCCL# 19-253642).

On September 12, 2019 Timothy, Rachel, and Ms. Bruckner had a four-hour meeting to initiate the parenting coordinator process and reach collaborative decisions in key issues. Pursuant to SDCL §25-4-70, Ms. Bruckner did not have authority to make legally binding major decisions regarding either Timothy, Rachel, or the children, or a substantial change in parenting time.

On September 17, 2019 Timothy wrote to Ms. Bruckner "*Rachel should not have our children in her care and custody at all*", and again "*Judge Connolly stated a number of times at the beginning of this divorce case "Out of an abundance of caution" after which he would allow her a hearing to tell her side of the story. Where is the abundance of caution in regards to my children???"*" and yet again, "*I've heard countless stories of people that had supervised visitation*

*and they did FAR LESS than Rachel has".* Timothy continued to make false allegations of life-threatening child abuse against Rachel. Without having a single piece of evidence to validate Timothy's allegations (and after a prior investigation by Mr. Brown had found Timothy to be lying) Ms. Bruckner went ahead with Timothy's allegations and restricted Rachel's involvement in her children's lives.

Timothy objected 100% to the children's established medical providers; demanding new, non-covered providers. On October 24, 2019 Ms. Bruckner provided both parties with a copy of their new "agreement". Ms. Bruckner implemented many decisions which directly contradicted the current Divorce Decree, South Dakota Statutes, South Dakota case law, the United States Supreme Court statutes and case law, and the United States Constitution. These decisions removed Rachel's visitation and joint legal custody decision-making ability of her four children. Rachel objected to many items that had never been "agreed" on, including changing the children's health care providers 100% to brand new, non-covered providers pursuant to Timothy's request, resulting in thousands of dollars in out of pocket expenses. Ms. Bruckner's decisions unilaterally favored Timothy's requests, who continued to push for complete legal removal of Rachel's visitation and communication with the children based on Timothy's repeated allegations of Rachel being abusive. Ms. Bruckner refused to change the agreement.

On October 28, 2019 Rachel filed her timely objection to Ms. Bruckner's "agreement" and requested a hearing to uphold the Divorce Decree rulings currently under appeal. Ms. Bruckner submitted the "agreement" and an "update"

regarding Rachel's "inappropriate behavior" to the Court on November 1, 2019 for official filing.

On November 1, 2019 Timothy removed the children from school early to prohibit Rachel's visitation after this was arranged back in July 2019. Law Enforcement said a judge would have to intervene (PCCL# 19-320298). Rachel left the schools, then when Timothy pulled on the street directly in front of her with all the children in his vehicle, Rachel followed Timothy directly to a Police Station. Timothy called ahead requesting Rachel be arrested as Rachel was "following him all over town" Rachel videoed the drive and proved Timothy was yet again lying to law enforcement. Ms. Bruckner was contacted by police and Ms. Bruckner acknowledged that Rachel was allowed visitation when she visited Rapid City. Then, without any legal authority to do so, Ms. Bruckner refused to let the Police grant Rachel her monthly visitation (PCCL# 19-320317). Rachel requested Judge Connolly to intervene, he refused.

On November 7, 2019 Timothy finally agreed Rachel could see her two youngest boys for a couple hours, but mandated it was during a mental health counseling session, then Timothy refused to come get the boys as he said he would so Timothy could again accuse Rachel of kidnapping. Ms. Bruckner "ordered" Rachel to violate the trespassing notice so Ms. Bruckner and Timothy could have Rachel arrested. Rachel refused and requested Timothy meet her in town as previously arranged. Ms. Bruckner contacted police to report Rachel kidnapping the children. Rachel again requested law enforcement to request Timothy to collect

the children. Timothy initially refused, mandating that Rachel violate his trespassing notice so he could have Rachel arrested, then finally agreed to meet and collect the children (CFS# 19-325941).

Ms. Bruckner then emailed Judge Connolly to terminate Rachel's parental rights. Without verifying any of Ms. Bruckner's allegations to be true, or reviewing Police Reports stating the facts (proving Ms. Bruckner's allegations were false), Judge Connolly denied Rachel's request for a hearing, refused to allow exhibits demonstrating the truth, dismissed Rachel's objections, and upheld Ms. Bruckner's "agreement" as an official order on November 14, 2019, as well as terminated Rachel's parental rights and visitation until further notice. Judge Connolly further wrote "*mother's inappropriate conduct towards Ms. Bruckner and others*". Judge Connolly found Rachel guilty of all Ms. Bruckner and Timothy's allegations without any due process of law or a chance at defending herself.

Rachel immediately objected, pointing out how this ruling was a violation of both the children's and her 14<sup>th</sup> Amendment rights, in addition to numerous US Supreme Court and South Dakota Supreme Court opinions and statutes. On December 10, 2019, following six weeks of Rachel not being allowed to speak or see two of her children, and four weeks of the other two children, "visitation" was reinstated to begin over Christmas break. Judge Connolly refused to revisit Ms. Bruckner's "agreement", refused to allow evidence proving Ms. Bruckner had lied to the Court, and refused Rachel a hearing pursuant to law.

On January 3, 2020 Judge Connolly entered his ORDER from December 10, 2019. Judge Connolly specifically wrote that he refused to sign any Findings of Fact and Conclusions of Law (to justify his refusal in allowing Rachel a due process of law or a hearing and granting Timothy's requests 100%, even though these rulings violated law). On January 9, 2020 Rachel requested a mistrial as she was not allowed to have a hearing to object to Ms. Bruckner's "agreement", which was upheld as an order. Rachel also requested an ORDER TO SHOW CAUSE be issued regarding Timothy's repeated and ongoing refusal to grant Rachel visitation and abide by the Divorce Decree, pursuant to South Dakota §25-4A-5.

On January 20, 2020, Timothy and Ms. Bruckner jointly petitioned for Rachel to be incarcerated for "threatening, intimidation, and denigrating behavior" towards Ms. Bruckner. All of Rachel's interaction with Ms. Bruckner was through written communication, yet no such evidence of this "behavior" was submitted to validate Ms. Bruckner's allegations against Rachel, justifying the request for incarceration<sup>1</sup>.

On January 22, 2020 Rachel's request for a new hearing and ORDER TO SHOW CAUSE were denied. On January 27, 2020 Rachel filed her NOTICE OF APPEAL regarding this stark violation of both statute and law. The South Dakota Supreme Court states "*We review conclusions of law under a de novo standard with*

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<sup>1</sup> On February 6, 2020 Rachel filed a MOTION FOR INVOLUNTARY DISMISSAL of Timothy and Ms. Bruckner's Contempt of Court Action as it did not meet South Dakota statutory and case law protocol. The contempt motion against Rachel was dismissed by the Court on February 9, 2020.

*no deference given to the circuit court” Harksen v. Peska, 2001 SD 75, ¶ 10, 630*

NW2d 98, 101. This official stance on de novo review has been extensively reiterated in almost every officially released opinion since 2001 and is considered the Gold Standard for deciding an appeal by the South Dakota Supreme Court.

On February 27, 2020, Rachel’s Appeal was dismissed on the grounds that the “issues raised are either intermediate in nature and not taken from a final judgement or order”. The South Dakota Supreme Court felt that some of the issues were also under the jurisdiction of the Divorce Decree appeal; arguably if this was true, these orders should have been reversed as this decision meant that Judge Connolly had no jurisdiction to write such an order in the first place.

#### **IX. Reasons for Granting the Writ**

The Declaration of Independence states it is the duty of the American people (Judicial System) to “*alter or abolish*” any law that has become destructive to the American people, and implement new laws for the “*accommodation of large districts of people*”...“*most wholesome and necessary for the public good*”.

The prolific amount of quoted recent Supreme Court decisions from other states contradict the South Dakota Supreme Court’s decision, as every Supreme Court ruled that this is considered a final order which likewise is appealable; this order of Judge Connolly violates the United States Constitution, violates defined due process of law, violates previous United States Supreme Court findings which were reversed as such (although not specifically stating “parenting coordinators”).

No Findings of Fact included in APPEAL #29245 were included in the Divorce Decree APPEAL #28879, as all events occurred after the Divorce Decree was filed on December 26, 2018. Even though the South Dakota Supreme Court found the current orders were “interim”, this exact same scenario and rulings have been issued as final orders by the circuit court judge, and found to be final, so they are appealable (*Gregory v. Gregory*, 2019-Ohio-5210). Further, Timothy has now incurred thousands of dollars in non-covered expenses (when he could have had the children see their covered providers for free) and is requesting payment from Rachel for these non-covered expenses at both Ms. Bruckner and Judge Connolly’s approval.

Because this final ruling by the South Dakota Supreme Court is in such gross disparity with previously established US Supreme Court and other National Court of Appeal opinions, it is clear that the requirement for a National Standard must be made by this United States Supreme Court.

Meanwhile, the children have been effectively and repeatedly forced by Timothy not have a relationship with their mother, participate in activities which directly violate their constitutional rights, and Timothy continues to be rewarded for his refusal of allowing Rachel visitation and false allegations of child abuse by receiving increased custody and legal decision making of the children. Timothy continues to be rewarded for his lying under oath, and the Circuit Court continues to disregard Timothy’s convicted criminal and proven physically abusive past.

The following first two Legal Questions are intertwined with the chosen Supreme Court Case opinions. As such, they should be considered independently, but also cohesively.

### **Due Process of Law**

The United States Constitution, Amendment XIV clearly states:

“nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”.

The United States Supreme Court found that the fundamental requirement of due process in any proceeding is notice

“reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Armstrong v. Manzo, 380 U.S. 545, 550, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965).

In December 2019, The Ohio Supreme Court found that the trial court erred as a matter of law by overruling his [Father’s] objections of the parenting coordinator’s decision, without a de novo hearing, violating his Fourteenth Amendment due-process of law constitutional rights Gregory v. Gregory, 2019-Ohio-5210.

“{¶26} *Due process requires meaningful and independent judicial review of a parenting coordinator’s decision. The lack of an independent review of Swift’s factual findings, and the fact that Swift’s decision was immediately effective and not stayed by Father’s objections, combined to deprive Father of meaningful and independent judicial review of his objections, and therefore deprived him of due process. Because the trial court erred in overruling father’s objection to the parenting coordinator’s decision without a hearing, his sole assignment of error is sustained.*” Id.

“Independent review’ means de novo review” *Barrientos v. Barrientos*, 196 Ohio App.3d 570, 2011-Ohio-5734, 964 N.E.2d 492, ¶4 (3d Dist.).

Thus, when reviewing a magistrate’s decision, the trial court must independently review the record and make its own factual and legal findings.” Id.

If the South Dakota Supreme Court’s decision was correct in that this was an “interim order”, then Judge Connolly had no jurisdiction to issue such an order as:

“An appeal from a judgment or order strips the trial court’s jurisdiction over the subject matter of the judgment or order except as to certain trivial matters; the Supreme Court then has jurisdiction until determination of the appeal.” *Reaser v. Reaser*, 2004 S.D. 116, ¶28; 688 NW2d 429

### **Parenting Coordinator**

South Dakota has already established that a parenting coordinator does not retain any legal authority and the district judge retains exclusive jurisdiction over all custody and support decisions (SDCL §25-4-72)

The United States Supreme Court clearly needs to establish clear boundaries by which a parenting coordinator is to practice by, if at all. While theoretically it is helpful to have a mediator in high-conflict and abusive situations; this position should not be wielded to grant all parental legal and physical custody to a parent without the use of judicial due process of law. Further, if a parenting coordinator is expected to operate in a judicial capacity, then it should be expected that this same parenting coordinator is fully trained and versed in the practice of judicial law, including Rules of Evidence, Hearsay Testimony, Family Court, and held accountable to a board or State Bar for the practice of the same judicial law.

If attorneys, who have to be admitted to judicial process by a State Bar, are not allowed to formulate and implement these decisions without due process of de novo hearings, why should an inferiorly educated social worker, with a highly insufficient education of only forty hours in family court law, be allowed to issue judicial rulings without the established standard of de novo due process of law? Applicable findings of the Honorable Supreme Courts in the United States of America are as follows.

In July 2016, the Supreme Court of Nevada found that the parenting coordinator's authority was limited to resolving non-substantive issues, and the decisions of the parenting coordinator were not immediately effective. *Harrison v. Harrison* (2016), 132 Nev. 564, 573, 376 P.3d 173.

As the New Jersey Superior Court found in *Parish v. Kluger*, 2016; DOCKET No. A-0485-14T2

"If, as plaintiff claimed, defendant was preventing him from exercising parenting time as per the MSA, then he was entitled to a remedy. If, as defendant claimed, plaintiff failed to exercise his parenting time out of disinterest, then the court's decision to not alter parenting time was appropriate. The court should have resolved that dispute. When the court's decision is considered in its entirety, it could be interpreted – as plaintiff has interpreted it – to vest in the parenting coordinator the resolution of the parties' conflicting positions as to why the MSA parenting plan was not working. The court has no authority to delegate its decision making to a parenting coordinator. Further, a trial court has no authority to require parties to "abide by [the parenting coordinator's] recommendations."

In *Bower v. Bournay-Bower*, (2014) 469 Mass. 690, 15 N.E.3d 745, the Massachusetts Supreme Court addressed judicial review of a parenting

coordinator's decision. The court's order provided that the parenting coordinator's decisions were binding unless either party

*"comes to court before the decision is to take effect and obtains a contrary order." Id. at 704. This provision meant that meaningful judicial review was unavailable for any decision of the parenting coordinator that would take effect before the party could obtain review by the trial court. Id. The court held that the trial court lacked authority to appoint the parenting coordinator due in part to the binding nature of the coordinator's decisions and the lack of meaningful judicial review. Id. at 701-706.*

The Superior Court of Pennsylvania found that the appointment of a parenting coordinator has been held to not be an improper delegation of judicial decision-making authority as long as the trial court empowers the parenting coordinator to resolve only ancillary custody disputes, the parties can appeal decisions of the parenting coordinator to the trial court, and the trial court conducts a de novo review (*Yates v. Yates*, 963 A.2d 535, ¶ 13-15 (Pa.Super.2008)).

Again, in 2012 the Superior Court of Pennsylvania found that any objections to a parenting coordinator's "findings" must have a de novo hearing in the lower courts (*A.H. v. C.M.*, 58 A.3d 823, 824 (Pa.Super.2012). *"the mother filed an objection to the parenting coordinator's decision and requested a de novo hearing before the trial court. The superior court found that the trial court's denial of mother's request for a de novo hearing infringed on her due-process rights".* Id. at 827.

The Idaho Supreme Court found in *Hausladen v. Knoche*, 2010; 235 P. 3d 399 "The goal of a parenting coordinator is to empower the parties and minimize conflict in resolving

*parenting disputes. The judicial function of final decision-maker remains with the court and is not delegated through."*

*Hastings v. Rigsbee, 875 So. 2d 772 - Florida: District Court of Appeals, 2nd Dist. 2004* found that "*it is never appropriate for a parenting coordinator to act as a fact-finder or otherwise perform judicial functions*" and subsequently the lower court order that was entered on the hearsay testimony of the coordinator was reversed and remanded.

#### The Court of Appeals of Oregon

"conclude[d] that the trial court plainly erred in denying husband parenting time without making appropriate findings" and reversed the order that erroneously granted parenting coordinator the "authority to deny husband parenting time" *Hickam v. Hickam, 196 P.3d 63 (2008) 223 Court of Appeals of Oregon; 302.*

#### **False Reporting of Child Abuse**

It is a well-known fact that claiming child abuse is the "Silver Bullet" to win primary custody during joint-custody disputes in civil court. The United States Supreme Court is requested to issue a decision and implement a national standard for all fifty (50) states and United States Territories are required to follow. Rachel personally believes that strict sanctions should be imposed across all fifty United States and US Territories, far above what *Federal Rules of Civil Procedure; Rule 11* currently allow. These sanctions should include removal of parental custody with repeat offenders, as happened in *Karen B. v. Clyde M., 151 Misc2d 794, 574 NYS2d 267 (Family Court, Fulton County, 1991)*, aff'd sub nom., *Karen PP v. Clyde QQ, 197*

AD2d 753, 602 NYS2d 709 (3d Dept., 1993). Unfortunately, South Dakota currently has no statutes in place that address falsely reporting child abuse, but South Dakota appears to encourage parents to falsely alleged child abuse in custody disputes by awarding the false reporting parent primary custody of the children!

Again, this is a nationally necessary decision for the following reasons:

“Approximately 29 States and Puerto Rico carry penalties in their civil child protection laws for any person who willfully or intentionally makes a false report of child abuse or neglect<sup>2</sup>. In New York, Ohio, Pennsylvania, and the Virgin Islands, making false reports of child maltreatment is made illegal in criminal sections of State code. Nineteen States and the Virgin Islands classify false reporting as a misdemeanor or similar charge<sup>3</sup>.

In Florida, Illinois, Tennessee, and Texas, false reporting is a felony; while in Arkansas, Indiana, Missouri, and Virginia, second or subsequent offenses are upgraded to felonies. In Michigan, false reporting can be either a misdemeanor or a felony, depending on the seriousness of the alleged abuse in the report. No criminal penalties are imposed in California, Maine, Minnesota, Montana, and Nebraska; however, the immunity from civil or criminal action that is provided to reporters of abuse or neglect is not extended to those who make a false report. In South Carolina, in addition to any criminal penalties, the Department of Social Services may bring civil action against the person to recover the costs of investigation and any proceedings related

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<sup>2</sup> Arizona, Arkansas, California, Colorado, Connecticut, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, and Wyoming.

<sup>3</sup> Arizona, Arkansas, Colorado, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Missouri, New York, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Virginia, Washington, and Wyoming. In Iowa, a person who makes more than three reports regarding the same child victim or the same alleged abuser that are determined to be false or without merit may be subject to criminal charges.

to the investigation. Eleven States, Puerto Rico, and the Virgin Islands specify the penalties for making a false report<sup>4</sup>.

Upon conviction, the reporter can face jail terms ranging from 90 days to 5 years or fines ranging from \$500 to \$5,000. Florida imposes the most severe penalties: In addition to a court sentence of 5 years and \$5,000, the Department of Children and Family Services may fine the reporter up to \$10,000. In six States, the reporter may be civilly liable for any damages caused by the report<sup>5</sup>.” U.S. Department of Health and Human Services, Children’s Bureau; Child Welfare Information Gateway. (2019)<sup>6</sup>

## X. Conclusion

For the foregoing reasons, Ms. Evens respectfully requests this Court issue a Writ of Certiorari to review the judgement of the South Dakota Court of Appeals and establish a Federal Standard clarifying due process of law and by which parenting coordinators must implement in their independent practice, if at all.

Further, Ms. Evens respectfully requests this Court to consider what kind of custody and sanctions a guardian should have, with a documented history of repetitive false allegations of abuse and refusal of visitation.

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<sup>4</sup> Connecticut, Florida, Louisiana, Massachusetts, Michigan, Oklahoma, Rhode Island, South Carolina, Texas, Washington, and Wyoming.

<sup>5</sup> California, Colorado, Idaho, Indiana, Minnesota, and North Dakota

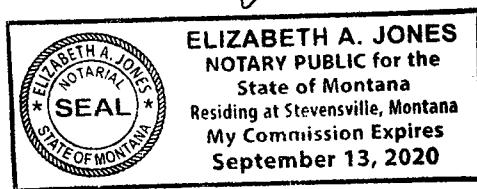
<sup>6</sup> Child Welfare Information Gateway. (2019). *Penalties for failure to report and false reporting of child abuse and neglect*. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau. Retrieved from <https://www.childwelfare.gov/pubPDFs/report.pdf#page=3&view=Penalties%20for%20false%20reporting>

DATED this 4<sup>th</sup> day of April, 2020.

Respectfully submitted,

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