

NO. 19-6457

IN THE

SUPREME COURT OF THE UNITED STATES

DENLEY BISHOP

PETITIONER

VS

STATE OF TEXAS CHILDREN PROTECTION SERVICES COOKE COUNTY, TEXAS

RESPONDENT

(IN THE INTEREST OF D.B. AND G.B. CHILDREN)

ON PETITION FOR A WRIT OF CERTIORARI

BEFORE JUDGEMENT TO THE TEXAS SUPREME COURT

ON APPEAL FROM CAUSE NO: 02-18-00015-CV

SECOND DISTRICT OF TEXAS

FORT WORTH

MOTION FOR REINSTATEMENT AN RECONSIDERATION OF CASE; PETITION FOR REHEARING
OF DENIAL OF WRIT OF CERTIORARI

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STATUTES, RULES AND REGULATIONS

127 S. Ct. 2618 (2007)

**NEW TEXAS LAWS REGARDING FAMILY CODE OF HOMESCHOOLING,
DOMESTIC VIOLENCE AND CPS REMOVAL OF CHILDREN**

ACT 2017, 85R.S. CH. 317 85 SESSION 317 SECTION (12,14,19)

TEXAS FAMILY CODE 6.4.1

US CONSTITUTION FIRST ADMENDMENT RIGHT; Seventh Admendment;

**SECTION 1983 FEDERAL CIVIL RIGHTS UCCJEA ACT Uniform Child Custody
Jurisdiction Act ICWA INDIAN CHILD WELFARE ACT**

II. STANDARD OF REVIEW

The Questions Presented in this case are too important to leave unsettled with an affirmance, since the issues here involve religious freedom and parental rights, and fraud on the court, suppression of evidence, jurisdiction of states involving UCCJEA and misconduct of the courts and must be reviewed in the interest of justice. While a rehearing is rare in most cases, this case is extremely rare since a judge and five attorneys do not usually work in cohorts together to suppress evidence about jurisdiction. Reconsideration under law is proper according to Rule 44 and Rehearing's where there is a new law, "intervening change of controlling law," and there is "availability of new evidence." The new law updated by the Texas Family Code now makes it illegal to terminated parental rights due to homeschooling or the fault of the other parent. The Plaintiff's rights where terminated due to the fault of the other parent, her rights where terminated due to a failure to protect from the other parent. Furthermore, there was no jurisdiction due to the new evidence just entered. The attorney for the department Mark Zuniga stated that he in never knew that the parents where from Oklahoma since they suppressed evidence about Oklahoma. This in turn is illegal and possibly criminal. This new evidence makes it imperative that this court reopen this case for review, since CPS's general council said this is very serious. There was an abatement hearing ordered to explain the misconduct by the trial court but the judge and the attorney still continued the misconduct. Since, the prior writ of certatioi was filed the judge has been investigated by the JQC and the administrative judge. The administrative judge now requests a motion to set aside the termination to be filed, since the department testified that they have no idea why they terminated the Petitioner's rights.

III RECONSIDERATION IS MANDATED BECAUSE THE COURT DENIED THE WRIT OF CERTIORARI WITHOUT REVIEWING THE FRAUD ON THE COURT AND THE OBSTRUCTION OF JUSTICE

Reconsideration under Rules of Procedure 44 state that it is proper to request a rehearing when new evidence is supported, there is “availability of new evidence,” and there could be a serious miscarriage of justice if this court does not review this case.

IV. THE COURT SHOULD RECONSIDER ITS DECISION ON LEAVE TO REPLEAD AS AGAINST CPS FOR ADDITIONAL REASONS

- A. Plaintiff’s will allege that they were denied a fair trial since key evidence of jurisdiction was intentionally suppressed by their attorney and the judge, proving they had no jurisdiction to terminate their rights, proving the order is void. Or the US Supreme Court may find that the case should have been reverse and remanded to Oklahoma, but the Texas court intentionally hid this from the higher court. However, whatever they decided it is imperative that this court review this case and correct this horrible injustice that is in violation of the UCCJEA laws.**

The department argued that the only reason they removed the Plaintiff’s children is because she is a Christian. This was in violation of her religious freedom; every parent has a right to raise their own children without the fear of the government removing their children due to them being a Christian. Of course, we do not live in China. If this honorable court does not grant the motion for reconsideration there could be serious consequences for parents who are trying to raise their children in their faith. The US Supreme Court has granted Petitions for Rehearing when the interest of justice is at stake. If the current case is so unfair and gross misconduct of the court has happened it is important for this court to review this case and possibly vacate the prior

orders. The U.S. Supreme Court is mandated to intervene in cases of severe injustice so that a petition for rehearing was granted in the case United States v. Ohio Power Co 353 U.S. 98 (1957) The denying of the certiorari was vacated after the U.S. Supreme Court ruled that the miscarriage of justice was so great that it was warranted to overturn the denial in the interest of justice. It shows how far the justice system has come since then. Fraud on the court is a very serious offense and the US Supreme court should grant Certiorari due to fraud in the interest of preserving justice. See Herring v. USA, this case was reviewed after the question presented to the court was whether officials committed the crime of perjury and fraud on the court. They argued fraud, misrepresentation and misconduct of the parties caused the case to be vacated. The only difference in these two cases is that in the case at par there was no reason to lie in favor of secrecy for the protection of the government the state of Texas lied so they would not have to return the children to Oklahoma. They do not have that option the UCCJEA states that they must get the permission of the home state first. Instead the state of Texas tried to cover up the fact that the children were from Oklahoma so no one would know. First, they lied to the judge then the judge lied to the appeals court after that. In the current case before the US Supreme Court Carolyn Florimonte v. Borough of Dalton, the Petitioner presented the question of fraud on the court and the dangerous precedent for all that come after. The US Supreme Court is currently reviewing this case also. Rule 60 from the Federal Rules of Civil Procedure states that the court may set aside a judgement due to fraud on the court. It is imperative that this court review this order to see if there is a possible fraud committed by the district court. Also, there were four motions filed to recuse the judge since this writ has been filed and she refused to rule on any of them. It was ignored, in violation of Texas Government Code Chapter 29 states: Sec. 29.055.

(a) the judge shall: (1) recuse himself; or (2) **request the regional presiding judge to assign a judge to hear the motion.**

“make no further orders and take no further action” Tex. R. Civ. P. 18a(d).

Failure to comply with the rule renders any actions void. Brousseau, 28 S.W.3d at 238

Courts must make inquiries “when someone desires to discharge his court-appointed counsel,” Nelson, 274 So.2d at 258. “The mere expression of a desire to discharge appointed counsel” demands investigation Marti v. State, 756 So.2d 224. So, just recently the administrative judge had a hearing on the motion to recuse the judge. He determined that there needed to be a motion to set aside the order of termination. So, the district judge immediately signed adoption papers so the Plaintiff would not have a chance to file the motion to set aside the termination.

Therefore, it is highly recommended that this court review this case for possible misconduct. A grant of review is mandated since fraud on the court compromises the integrity of the justice system. Fraud on the court: “withheld material evidence from being admitted on your behalf.” Court procedures that are “fair on their faces” but administered “with an evil eye or a heavy hand” violates the equal protection clause of the Fourteenth Amendment. Yick Wo v. Hopkins, 118 US 356.

Fraud on the Court “the judicial machinery has been tainted, an attorney, officer of the court, is involved in the perpetration of fraud or makes a material misrepresentation to the court.”(definitions.uslegal.com) Mr. Oney withheld material evidence from the COA to divert the outcome. Texas Rule 3.03(a) states that lawyer must not lie to the court. This is grounds for disbarment. This lawyer can be charged with numerous offenses, perjury, spoilage of evidence, obstruction of justice and he can be sanctioned both in court and via professional responsibilities. Alcora v. Texas, 355 US 28 The case was reversed due to the plaintiff’s attorney withholding evidence and knowingly allowing false testimony to be admitted. Bulloch v. US, ruled fraud on

the court “is where a member of the court causes functions of the court to be directly corrupted.”

763 F2d 115

The attorney committed **spoilage of evidence**. Intentional wrong doing by an attorney working in a collaborative manner with others in the court is an obstruction of justice. The Petitioner’s attorney withheld evidence and “tampered with the fair administration of justice”. Ann Kaczmarek, assistant attorney general withheld evidence needed to free over 21,000 convictions resulting in 98.5% of the cases dismissed. (Prosecutors withholding evidence, Washington Post, October 4, 2017) **“Fraud sentiently set in motion some scheme calculated to interfere with the judicial system’s ability impartially to adjudicate by improperly influencing the trier of fact or unfairly hampering the presentation of the party’s defense.”** **Aoude v. Mobil Oil Corp., 892 F.2d 1115.** This case is very similar to the **US v. Nixon** case where the government officials intentionally altered or suppressed evidence to divert the outcome of a matter. See **U.S. v. Nixon, 418 US 683**. And, it was imperative that the US Supreme court address this issue once the Washington Post exposed the fraud.

There also should be a higher standard given than this especially in parental right cases. The proceedings should be strictly scrutinized in favor of the parent. **Holick v. Smith, 685 S.W.2d 18; Lewelling v. Lewelling, 796 S.W.2d 164. Spangler v. Texas Dept.962 S.W.2d 253, 256 In re S.A.P., 169 S.W.3d 685 Termination "divests for all time the parent of all legal rights. The courts caution judges considering termination cases." Wiley v. Spratlan, 543 S.W.2d 349**

The fourteenth amendment right and Article I, Section 19 of the Texas Constitution, states “none shall be deprived of life, except by the due process” **Prokopuk v Offenhauser, 801 S.W. 2d, 583**

A higher standard of review applies to fundamental rights of U.S. Supreme Court, the absolute Constitutional right of parents to actually *BE* parents.” **Santosky v. Kramer, 455 U.S. 745**

- B. **Plaintiff’s constitutional rights of freedom of religion where violated at the time of the removal due to one reason, her religious beliefs, thus violating her**

Fourteenth Amendment due process rights thus her constitutional rights and her Civil Rights

The Plaintiff was told that her children were removed for one reason because she is a Christian. It is imperative for this court to review this case since it involves a violation of parent's religious freedom. If this court does not review this case it could be a precedent case for other cases that involve parent's rights to raise their children in their faith without the fear of government intervention into their family. The government is to be totally neutral on religion. The court ruled that the government can not hold anyone responsible for their religious beliefs. See. Engel v. Vitale, 370 U.S. 421 (1962) A New York State law required public schools to open each day with the Pledge of Allegiance and a nondenominational prayer in which the students recognized their dependence upon God. The law allowed students to absent themselves from this activity if they found it objectionable. A parent sued on behalf of his child, arguing that the law violated the Establishment Clause of the First Amendment, as made applicable to the states through the Due Process Clause of the Fourteenth Amendment. What example would this court be setting if it did not stop the government from taking children for one reason, they are Christian or bible verses. It is horrendous for the state to remove children for one reason because they are Christians. This case is of such interest for the Supreme Court because it may set fear into the hearts of so many parents that are Christian too. This case is similar to the Yoder v. Wisconsin case where the US Supreme court found it unconstitutional to remove children from parents simple due to their religious beliefs. Wisconsin v. Yoder, 406 U.S. 205 (1972) The court must rehear this case since it is of great important to the religious freedom of so many parents. Wisconsin v. Yoder, 406 U.S.

205 (1972) In this case the state came against the family for raising their children in the Amish faith. The children were removed by the state for their religious beliefs. The final ruling in this case is stated "Under the Free Exercise Clause of the First Amendment, a state law requiring that children attend school past eighth grade violates the parents' constitutional right to direct the religious upbringing of their children." No matter what we see as odd to the beliefs of the Amish the state can not violate their religious freedoms. The court found

"Respondents defended on the ground that the application of the compulsory-attendance law violated their rights under the First and Fourteenth Amendments. The trial testimony showed that respondents believed, in accordance with the tenets of Old Order Amish communities generally, that their children's attendance at high school, public or private, was contrary to the Amish religion and way of life. They believed that by sending their children to high school, they would not only expose themselves to the danger of the censure of the church community, but, as found by the county court, also endanger their own salvation and that of their children. The State stipulated that respondents' religious beliefs were sincere." In the same way the Petitioner's Religious Beliefs were sincere.

C. Plaintiff's due process rights were violated when the Texas Supreme Court denied the Plaintiff's Motion for Appointment of Council since the prior attorney committed fraud and suppressed evidence from the court regarding jurisdiction in conflict with other Texas Supreme Court Case Laws. This called into question the subsequent decisions of the Supreme Court that stated that the Petitioner is intitled to court appointed council until the disposition of the entire case all the way to the Supreme Court level.

The Plaintiff's right to counsel extended all the way to the Supreme Court level.

However, after requesting court appointed counsel to be reappointed due to the fraud by the court appointed attorney the Texas Supreme Court did nothing but it is imperative for this court to review this case so they can determine that there is a conflict in two recent court cases at the Texas Supreme Court and the case at par. Quoting the case and how it clearly represents the case at par; “ The Texas Supreme Court ruled that cases involving a state initiated parental rights case there is a statutory right to counsel that extends no just to the Court of Appeals, but also to the discretionary appeal of the Supreme Court of Texas. A parent has a right to court appointed counsel throughout the whole case according to NCCRC, the National Coalition for Civil Right to Counsel. The Texas Supreme Court recently upheld this right in a recent case. See *In the Interest of P.M.* 520 S.W. 3d 24 (Tex. 2016). Texas was the second state to determine this right after Washington State. So, it is imperative that the U.S. Supreme Court remand the case back to the Texas Supreme Court to review this mistake also. The high court examined Tex. Family Code 107.016(2) and determined that this right includes counsel at the Supreme Court level too. It goes on to say the at the court of appeals may be better able to grant the motion for an attorney to withdraw, they still extend the right to the Supreme Court. What is even more odd is that for the case at par the Appeals Court did not grant the motion to withdraw the attorney but the Texas Supreme Court did, but failed to appoint another one. In the case *In the Interest of P.M.* 520 S.W. 3d 24 the Supreme court did direct the district court to appoint another attorney for the Plaintiff. It maybe imperative for this court to review this case to clear up this issue. The Plaintiff is promised the right to be appointed substituted counsel when her's has committed misconduct. “The court must appoint a substitute attorney.” Nelson 274 So.2d 259; 756 So.2d at 229 **Counsel may not be forced on the defendant Id. at 834, 95 S.Ct. at 2540.** The Sixth

Amendment **guarantees an independent constitutional right of self-representation** Faretta v. California, 422 U.S. 806

In re AR, the court granted the motion to withdraw **with good cause**. In Re Daniels, 138 S.W.3d31 the court erred when denying the attorneys motion to withdraw. Tex. Disciplinary R. Prof'l Conduct 1.15. Removal is mandated during an investigation with the Bar (2RR, Apr12, 2018 p47).

The Petitioner was prevented from properly presenting her case, granting a reversible error.
TRAP 44.1. Reversible Error

(2) prevented the appellant from properly presenting the case to the court of appeals.

D. Whether the Federal Courts can intervene in Family law matters when the Plaintiff's constitutional rights are violated. In the recent case of Obergeell v. Hodges, 135 S. Ct. 1039 the courts ruled they can intervene in cases that involve constitutional issues. In the case at par, the Plaintiff's constitutional rights were violated due to the violations of her religious freedom and thus her Civil Rights were violated too. This may cause this court to review this based on the new law that has changed the ability of the Federal courts to review these cases.

This case is similar to the cases that the US Supreme Court is review for Constitutional violations in regards to family law cases. In Obergeell v. Hodges the U.S. Supreme Court found it unconstitutional to deny same sex couples the right to marry. And, now the Federal courts maybe able to intervene in family law matters. It is imperative that this court review this case to make it clear whether Federal courts can intervene in family law cases now. This case has widened the jurisdiction of the courts in family law matters.

CONCLUSION

In conclusion, it is of great national importance for this court to review this case since there are extremely significant issues regarding freedom of religion and parental rights, fraud on the court, obstruction of justice and it would be in the interest of justice for this court to remand the case to the proper court.