

No. 19-7721

IN THE SUPREME COURT OF THE UNITED STATES

Machelle Parsons

Petitioner

V.

Ashton McDaniel, et.'al

Respondents

***ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT***

PETITION FOR REHEARING

Machelle Parsons

***Pro Se* Petitioner**

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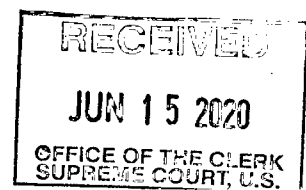
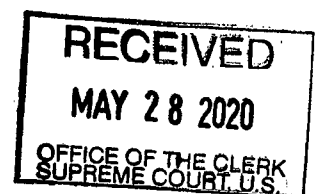


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3. PLAINTIFFS WERE ARGUABLE DEPRIVED OF THEIR RIGHT TO PROCEDURAL DUE PROCESS BECAUSE THE INTENTIONAL USE OF FRAUDULENT EVIDENCE INTO THE PROCEDURES USED BY THE STATE DENIED THEM THE RIGHT TO FUNDAMENTALLY FAIR PROCEDURE BEFORE HAVING CHILD REMOVED MORRIS V. DEARBORN (5TH CIR.)

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RULES

West Virginia rules of procedures for child abuse and neglect proceedings

Rule 2.

- (a) To provide a fair, timely and efficient disposition of cases involving suspected child abuse or neglect.
- (b) To provide for judicial oversight of case planning
- (c) To ensure a coordinated decision making process.
- (d) To reduce unnecessary delays in case management.

Rule 3. Preliminary hearing.(g) preliminary hearing is held within 10 days of petition.

Rule 5. Contemporaneous civil, criminal, and other proceedings. Under no circumstances shall a civil child abuse and neglect be delayed pending the investigation, including but not limited to criminal proceedings.

RULE 16. Emergency custody (1). There is imminute danger to the physical well-being of a child.

RULE 18. (1). Describe the specific misconduct.

RULE 27. Enter adjudication order and finding of fact and conclusions of law within 10 days of hearing.

RULE 59. Purpose- Time standards contained in these rules are intended to ensure that ' Justice Shall Be Administered Without Sale, denial, or delay ' in accordance with Article 111 Section 17 of the WV Constitution.

CODES

WV code. 49-4-601 (b). The Petition shall allege specific conduct including time and place.

WV code 49-4-602 Preliminary hearing must be held within 10 days of emergency custody.

WV code 49-6-9, No child may be removed from a place of residence. As abandoned.

WV code 49-5-101 Confidentiality of records.

MISCELLANEOUS

ARTICLE 111 Section 17 of the WV Constitution Canon 3B (8). Of the code of judicial conduct.

Title 149 section 8 protocol for law enforcement response to child abuse and neglect. 5.3.d1, Law enforcement should conduct the interview of alleged perpetrator as soon as possible when there is sufficient evidence to warrant the interview, or in any case not exceed 72 hours following child interview.

CONSTITUTIONAL AND STATUTORY PROVISIONS

42 U.S.C Chapter 21-Civil Rights

42 U.S.C 1981 Equal Rights Under Law

42 U.S.C 1983- Deprivation of Rights

U.S Constitutional Amendment 1V,V1, and X1111.

I.
PETITION FOR REHEARING

Pursuant to Supreme Court rule 44.2 of the Rules of the Supreme Court of the United States allows petitioners to file for rehearing of the denial of a petition for be writ of certiorari and permits rehearing on the basis of “intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented.”. Rehearing is warranted in this case for the fact that District Court of Southern WV did not weigh the outcome of effects of plaintiffs complaint and no court received a response from defendants or requested a brief in opposition.

REASONS FOR GRANTING REHEARING

- 1. Southern District Court of West Virginia should not have abstained from intervening in plaintiffs state proceeding**

Court issuance of an immediately enforceable judgement that applies state law to deprive the plaintiff of a federal right should constitute state action and thus action” under the color of state law. A child’s emergency removal is a States immediate enforceable judgement. In state proceedings did not give adequate opportunity to raise constitutional claims. First, constitutional challenge is directed primarily at the legality of a child’s seizure and detention in plaintiffs case a fifty

two day period without a hearing. It is clear that because the issue cannot be raised as a defense in the normal course of pending judicial proceedings. Abstention would be inappropriate., The denial of custody pending any hearing regardless of the result of the hearing itself. Younger 438 F.Supp., at 118. Congress can abrogate state sovereign immunity when it acts pursuant to powers delegated to it by any amendment ratified after the eleventh and fourteenth amendment. Explicitly allows congress to enforce its guarantee on the state. (An abuse of discretion occurs when reviewing court has “ a definite and firm conviction that the court below committed a clear error of judgement in the conclusion it reached upon a weighing of the relevant factors.”): Shore v. Federal Exp.Corp.,42 F.3d373 ,380 ((6th Cir.2994) (“An abuse of discretion exists when the reviewing court is firmly convinced that a mistake has been made.”). Abuse of discretion can occur if (1) the court fails to 'actually ... exercise discretion. Deciding instead as if by general rule or even arbitrary;'(2) the court fails to take relevant facts ' constraining its exercise' of discretion into account; or (3) its decision is based on erroneous conclusions of law or fact.” United States v. Robertson, 188 B.R. 364, 365(D.Md. 1995) (citing James v. Jacobson, 6 F. 3d 233,239 (4th Cir. 1993)), or the misapplication of the law to the facts, Abstention is only warranted when state courts can resolve the dispute with full protection of the Constitutional claim. Id, and federal district courts may retain jurisdiction pending a state court determination of proceedings to be brought with reasonable promptness, Id, at 501-02. The Younger Abstention only prevents federal courts from staying or enjoining pending state-court proceeding, except

under special circumstances. Younger 401 U.S at 41. Or granting”declaratory relief” when a prosecution involving the challenged statute is pending in state court at the time the federal suit is initiated , “id, at 41 n.2. not from adjudicating the underlining merits issues once state-court proceeding have concluded. In *Dombrowski v. Pfizer*. Supra the court held that allegations of bad faith prosecution stated claim under 1983 and if allegations proven true then injunction must be granted. A child’s four month separation from his parents could be challenged under substantive due process, sham procedures don’t constitute true Procedural Due process *Brokaw v. Mercer county* (7th Cir. 2000). The first Amendment protects the fundamental right to intimate association which includes the familial association between parents and children. *Doe v. Fayette County Children and Youth Servs.* No 8-825 WL. 4854070 “18-19 (W.D. Pa.Nov 22, 2010) *Belm v. Lorene County Children and Youth*, 172 F. Supp 2nd 575, 585 (M.D Pa. 2010). Although the court may have subject matter jurisdiction to proceed, personal jurisdiction (whether obtained by proper service, a waiver by the respondent , or operation of law) is required for the court to order a specific party to engage in certain actions. The practical effect of an adjudication of a child as abused , neglected , or dependent in a case where personal jurisdiction does not exist over a named respondent is that the court lacks authority to order that named respondent to engage services or comply with conditions the court has the authority to order. Separate from the jurisdictional question , parents and other named respondent’s have constitutional due process rirights

2. **Under the Constitution of the United States of America all Americans have the right to be legally protected from slanderous or libelous reports against them; and the right to be able to seek real retribution for any such violations against their character.**

When a parent's name is entered on a registry of child abusers without having been convicted of the crime of child abuse, it publicly presents this person as though he were a convicted criminal and libeling his character. "Actual malice" was defined in the U.S Supreme Court case decided in 1988, *Hustler v. Falwell*. In that case, the court held that certain statements that would otherwise be defamatory were protected by the First Amendment of the Constitution. Actual malice only occurs when the person making the statement was not true at the time the statement was made or had a reckless disregard for whether it was true or not. A person that has suffered a defamatory statement may sue the person that made the statement under defamation law, which would be called a defamation case. *Duchesne v. Sugarman* 566 F. 2d.817,825 (2nd Cir. 1977). The second circuit held that the right of family to remain together without coercive interference of the awesome power of state encompasses the reciprocal rights of both parents. According to Title 149 Section 8 protocol for law enforcement response to child abuse and neglect 5.3.d1, law enforcement should conduct the interview of alleged perpetrator as soon as possible when there is sufficient evidence to warrant the interview, or in any case to exceed 72 hours following child interview. 5.3.d2 The interview should be recorded at minimum audio

recorded.. See WV code 49-5 -101 ,confidentiality of records. And WV code 49-4-701(k). All adjudicatory hearings held under this article of rules of evidence apply including the rule against written reports based on hearsay. The Civil Rights Act of 1871, now codified as amended at 42 U.S.C 1983, vests federal courts with the power to enjoin a person acting under color of state law from depriving a United States citizen or other person within the nation's jurisdiction of any rights, privileges, or immunities secured by the Constitution and laws of the United States. This injunctive power protects not only rights secured under Constitutional and statutory guarantees of equal protection and civil liberty, but also encompasses claim based on purely statutory violations of federal law. A law enforcement officer is someone acting under the color of law even though he may be misusing his authority *Monroe v. Pape* U.S 167. And prosecution under a patently unconstitutional statute is a Deprivation of Rights "obviously including injunctions".

3. Plaintiffs were arguable deprived of their right to procedural due process because the intentional use of fraudulent evidence into the proceedings used the state denied them the fundamentally fair procedure before having child removed.

Though a court initially had jurisdiction it could lose its jurisdiction through lack of due process Where for example the prior court had no jurisdiction of the parties or the subject matter, the action attaching that judgement may properly be brought in

the federal courts without regard to state law. In *United States v. Shaibu* 920 F.2nd 1423, 1435 (9th Cir.1990). The court said a warrantless search of a house pre se unreasonable and absent exigency or consent, warrantless entry into a home is impermissible under the Fourteenth Amendment. W.Va code 49-6-9 in emergency situations. Any retention of a child or order for retention of a child not complying with the time limits and other requirements specified in this article void by operation of law. Abandoned as in 49-6-9(f). No child shall be removed from their place of residence. Plaintiff minor daughter has attention deficit hyperactive disorder and oppositional defiant disorder, which was known by WV child protective services and the court appointed lawyers. *Brokaw v. Mercer County* (7th Cir. 2000). Child removals are "seizures" under the Fourth Amendment. Seizures is institutional without court order or extant circumstances. Court order obtained based on knowingly false information violates fourth amendment-Just the highlights. Police officers was not entitled to absolute immunity for her role in procurement of court order placing child in custody where there evidence officer spoke with the social worker prior to social worker conversation with the magistrate and there was evidence that described the collaborative work of the two defendants in creating a "plan of action" to deal with the situation. Officer's acts were investigative and involved more than merely carrying out a judicial order *Malik v. Arapahoe City, Department of Social Services*. The separation does not have to be carried out with force for due process to be implicated: instead duress or coercion will be sufficient, such as where a social-services worker threatens to place

the children in foster care if the children are not "voluntary" placed outside of the home with family or friends. *Croft v Westmoreland County Children & Youth Servs.*, 103 F.3d 1123, 1125 (3rd. Cir.(1997).: *Dupuy v. Samuels*, 462 F.Supp .2d 859(N.D.111.2005). *aff'd*, 465 F.3d 757(7th Cir. 2006). When a fraud on the court is shown through clear and convincing evidence to have been committed in an ongoing case, the trial judge has the inherent power to take action in an ongoing case, the trial judge has the inherent power to take action in response to the fraudulent conduct. The judge has a broad discretion to judicial response warranted by the fraud, as may be the entry of default judgment.

CONCLUSION

For the forgoing reasons , this court should grant the petition for rehearing, and request a brief in opposition from defendants,

Respectfully submitted,
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I hereby certify that this petition for rehearing is presented in good faith and not for delay.

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