

No. 19-7738

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IN THE
SUPREME COURT OF THE UNITED STATES

H. K. V.,
PETITIONER

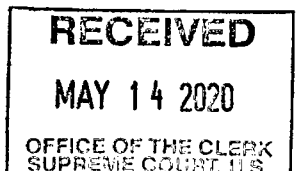
V.S.

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,
ET AL.
RESPONDENT (S)

ON PETITION FOR WRIT OF CERTIORARI TO THE
SECOND DISTRICT COURT OF APPEAL OF FLORIDA

PETITIONER'S REPLY BRIEF TO RESPONDENT'S
(GAL) BRIEF IN OPPOSITION TO PETITIONER'S
PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The petitioner adopts the questions presented listed in the former briefs.

JURISDICTION

Jurisdiction is invoked under 28 U.S.C. 1252.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section one of the Fourteenth Amendment to the United States Constitution provides that no "State deprive any person of life, liberty, or property, without due process of law. . . ."

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STATEMENT OF CASE

Petitioner adopts the statements of the case presented in the former briefs.

This reply brief is filed in response to the Guardian ad Litem's Brief in Opposition to the Petition for writ of Certiorari.

It appears on the face of the record that the Guardian ad Litem has mislabeled cases 19-1138 and 19-1139 in their briefs in opposition.

REPLY

In reply to the Guardian ad Litem's (GAL) brief in opposition, the parent notes that each time the issues below were raised, the lower courts denied it based on a procedural reason, and the issues have not been squarely addressed or decided on the merits, despite the parent's multiple attempts to raise it pro se. Thus, the parent believes there is a good faith basis to bring the issues to this Court's attention for review, as the termination and adoption order that is barred by law is a manifest injustice requiring relaxation of the finality of any prior decisions.

The parent recognizes that although all points of law that have been adjudicated become the law of the case, the court has the power to reconsider and correct erroneous rulings notwithstanding that such rulings have become the law of the case where reliance on the previous decision would result in a manifest injustice. See Zolache v. State, 687 So. 2d 298 (Fla. 4th DCA 1997); Young v. State, 939 So. 2d 263 (Fla. 4th DCA 2006); Ross v. State, 901 So. 2d 253 (Fla. 4th DCA 2005). At present, it would be fundamentally unfair for the parent to continue to be without his child (parental rights), and his child remaining in illegal/unlawful custody due to the subsequent adoption that occurred after the illegal/unlawful termination.

The parent also recognizes that although parents are generally precluded from raising identical issues in successive post termination proceedings that were previously denied on the merits, an exception to the rule exists when a manifest injustice can be determined from the face of the record. See Eason v. State, 932 So. 2d 465 (Fla. 1st DCA 2006); State v. McBride, 848 So. 2d 287 (Fla. 2003). The parent further notes that res judicata

and the law of case doctrines will not be invoked when it would defeat the ends of justice, and collateral estoppel will not be invoked when it would result in a manifest injustice. See, McBride at 291; Smith v. State, 946 So. 2d 1078 (Fla. 1st DCA 2006).

In the present case, the parent contends that his issue has not been addressed or denied on the merits; however, even if the court so finds, the parent asserts a manifest injustice has occurred permitting the parent to raise a similar, or even an identical, issue in a successive post termination petition/motion because the termination and subsequent adoption utterly fails to meet the statutory prerequisite to warrant such and is against the intent of the Florida Legislature. Moreover, a sentence is "illegal" when a court imposes "any sentence that does not conform to the requirements of the law." State, v. Mancino, 714 So. 2d 429 (Fla. 1998); Carter v. State, 786 So. 2d 1173 (Fla. 2001). The claims of illegality must be apparent on the face of the record and the motion must expressly state so and direct the Court's attention to specific portions of said record. See Mancino, at 433; Baker v. State, 741 So. 2d 1167 (Fla. 1st DCA 1998). See also, Verrin v. State, 8 So. 3d 395 (Fla. 1st DCA 2009).

Thus, the trial court has jurisdiction and an inherent authority to issue the writ to correct a manifest injustice. See, Haager v. State, 36 So. 3d 883 (Fla. 2nd DCA 2010) (to prevent a manifest injustice and a denial of due process, post conviction relief may be afforded even to a litigant raising a successive claim); Lago v. State, 975 So. 2d 613 (Fla. 3rd DCA 2008) (where a manifest injustice in sentencing has occurred, it is the responsibility of the court to correct that injustice, if it can); Figueroa v. State, 84 So. 3d 1158 (Fla. 2nd DCA 2012).

The termination order is not valid. Procedural technicalities should not bar relief where it is due, as state habeas relief should be readily available to correct any manifest injustice whatsoever. O.R.T.'s future with her biological family, which is legally mandated to serve any child's best interest where respectively due, is clearly uncertain due to the miscarriage of justice that resulted by the State's misapplication of law, whether it be a constitutional or procedural issue in nature. In DCF v. J.J.E., 953 So. 2d 659, (Fla. 5th DCA 2007), which the GAL failed to cite, a parent obtained relief regardless of any time limitation due to the illegal custody of his child. The provisions laid out in Florida Rule of Juvenile Procedure 8.270(b)(4) has zero time limitations in order to institute any sort of litigation disputing the legality of a child's restraint/custody to any order whatsoever that shall be rendered void for any proper legal grounds litigated. In addition, and to make matters fair, this rule should also apply regardless of any adoption judgment via state habeas corpus per Florida Rule of Civil Procedure 1.630. Here, the State is held responsible for the illegal/unlawful severance of the parent-child relationship, not vice versa.

The actions taken by the state, and its fault for the misapplication/misapprehension of law, has caused the legal/lawful relationship between the parent and his child to be illegally/unlawfully severed. The parent's substantial litigation is entirely justified for these reasons, and this Court has ruled that the relationship between a parent/family and their child(ren) is far more precious than any property right, and that the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment, and is unanimous of the view that few consequences of

judicial action are so grave as the severance of natural family ties. See *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) and *Troxel v. Granville*, 530 U.S. _____, 120 S. Ct. _____, 147 L. Ed. 2d 49 (2000) [No. 9-9-138] in 'Separate Opinion' II. (P. 9, 2LED20). See also Argument 4 of the Habeas Petition, Pages 229-44, wherein that argument is entirely dedicated to constitutional provisions from the very beginning of this case.

O.R.T., the child in this case, should not continue to suffer due to the State's "inability" to afford the parent to be heard in the lower court on his merits which are entirely and legally sound in order to capture his child's best interest, and to release the child from illegal restraint. The adoption judgment is the only argument the Guardian ad Litem rests on, otherwise, it is likely that the trial court would have addressed the substance of the parent's claim on its merits and not deny/dismiss his petition/motion on a procedural basis as what occurred here. The parent and child in this case should not be at an irrevocable loss of each other, and they should also not be without remedy simply because the parent filed his habeas petition/motion for extraordinary relief approximately four months after the adoption occurred. A mere span of four months is insignificant in comparison to what his child may suffer up until the point that she reaches the age of majority and beyond. O.R.T. will still only be six years of age when her father is released from his incarceration without supervision, and roughly only 33% of the child's minority would have passed by that time.

It is clear beyond doubt that this case has not

been properly disposed of per Florida law. Therefore, this case is of exceptional importance before this Supreme Court today. I strongly encourage this Court to focus on the fact that if O.R.T. was still placed in foster care, and never adopted, the parent would have the opportunity to seek extraordinary relief per Florida Rule of Juvenile Procedure 8.270(b)(4), therefore, the trial court would be legally obligated to address the substance of his claims on the merits of the litigation he instituted; regardless on the amount of time his child has remained in foster care.

The termination/adoption orders that the parent and his child still face is far below the statutory prerequisite in order to legally warrant such, which creates a manifest injustice and a denial of due process in his case, because the termination/adoption judgments could otherwise be vacated via the issuance of the habeas writ, upon a lawful/legal judgment based on the substance of his claims on the merits; thus capturing the child's best interests. Therefore, the parent's continued loss of his child, and vice versa, on the termination/adoption judgment is a manifest miscarriage of justice, and the parent respectfully requests that this Honorable Supreme Court issue the writ of certiorari.

CONCLUSION

WHEREFORE, because of the parent's claim of termination/adoption illegality is apparent on the face of the record, and the parent has attached those portions below of the record that demonstrate on their face an entitlement

to relief, along with the questions he presented in his state habeas petition in which were never addressed, the parent respectfully requests that this Honorable Supreme Court grant jurisdiction and issue the writ of certiorari; remanding the case to the lower state courts so the substance of his claims on the merits can be appropriately addressed via petition for writ of habeas corpus; or any other relief the Supreme Court may deem just and proper.

Signed and executed on this 6th day of May, 2020.

Respectfully Submitted,

Hailey Kyle Vallier

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Petitioner, Father of O.K.T., Prose.

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