

19-8101

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

~~FILED~~

MAR 10 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ANGELO MAMONE,

Petitioner,

vs.

ANGELA PLOWS BURCH,

Respondent

**PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND**

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FILED: MARCH 23, 2020

I. Question presented:

Does the Constitution of the United States permit the State of Maryland to create legal precedents to deprive the petitioner and similarly-situated fathers of their Constitutional right to participate in the raising of their children, and punish fathers by denying them their freedom, civil rights, rights such as that to drive a motor vehicle, receive public benefits, and be free of unlawful incarceration?

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IV Petition for Writ of Certiorari

Petitioner Angelo Mamone, respectfully requests the Court to issue a writ of certiorari to the Court of Appeals of Maryland to review the decisions of the State of Maryland to deny petitioner's freedom, civil liberties, and due process and those similarly-situated fathers of their rights to participate in the upbringing of their children.

V Decisions Below

On December 23, 2019, the Court of Appeals of Maryland issued an order summarily without explanation denying the petition for writ of certiorari to the Court of Special Appeals of Maryland.¹

On September 3, 2019, the Court of Special Appeals issued an unreported decision, denying the appeal of the petitioner.² The Court of Special Appeals did not address the constitutional issue other than to rule that the appeal lacked timeliness.

On October 9, 2015, Lynda L. Mallory, a Family court evaluator, filed a written report with the Circuit Court, recommending that "legal custody of GM be

¹ Court of Appeals of Maryland, September Term 2019, Docket No. 0306-2019.

² Docket No. 1763, September Term 2017.

with Ms. Plows" and joint custody of the child with no child support to be paid. Report page 8. Nowhere in her evaluation did she discuss or evaluate Mr. Mamone's parental fitness or make any findings. This recommendation was adopted by Judge G. Edward Dwyer in his decision of November 19, 2015; "Ordered, that *sole legal and physical custody* of the minor child of the parties, GM, born 3/29/13, be and hereby is awarded to the Defendant, Angela Plows" Order page 1 (Emphasis added). The Circuit Court made no finding regarding Petitioner's fitness as a parent or identified any evidence to support such a conclusion or order. Judge Dwyer relied on Ms. Mallory' report to deny custody of the child. The Court did not dispute any of the claims made by Petitioner. The decisions of the Supreme Court of the United States clearly show that such technicalities cannot deprive a citizen of his constitutional rights. In Johnson v. Zerbst, 304 U.S. 458, 464 (1937), the Supreme Court held that: "courts indulge every reasonable presumption against waiver" of fundamental constitutional rights. In Bookhart v. Janis, 384 U.S. 1, 4 (1965), the Supreme Court again clarified the issue: "There is a presumption against the waiver of constitutional rights. . . . and for a waiver to be effective it must be clearly established that there was "an intentional relinquishment or abandonment of a known right or privilege."

Precedents in the federal and state courts and the Code refute any inference contradicting Petitioner's appeal. Petitioner's constitutional rights were ignored,

even though he rejected Ms. Mallory's recommendation of joint custody. The Court of Special Appeals denied Petitioner's appeal of the ruling on his Constitutional rights based solely on a technicality, finding of lack of timeliness of the appeal. The Court did not dispute any of the claims made by Petitioner. The decisions of this Court show that such technicalities cannot deprive a citizen of his constitutional rights. In Johnson v. Zerbst, 304 U.S. 458, 464 (1937), the Supreme Court held that: "courts indulge every reasonable presumption against waiver" of fundamental constitutional rights. In Bookhart v. Janis, 384 U.S. 1, 4 (1965), the Supreme Court again clarified the issue: "There is a presumption against the waiver of constitutional rights. . . . and for a waiver to be effective it must be clearly established that there was "an intentional relinquishment or abandonment of a known right or privilege."

VI Jurisdiction

Petitioner's appeal to the Court of Appeals of Maryland was denied on December 23, 2019. Petitioner invokes this Court's jurisdiction under 28 U.S.C. Section 1257, having timely filed this petition for a writ of certiorari within 90 days of the Maryland Court's judgment.

VII Constitutional Provisions Involved

The United States Constitution 14th amendment states all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and state wherein they reside and no State shall make or enforce any law which shall abridge the privileges and 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 any person within its jurisdiction the equal protection of the laws.

VIII Statement of the Case

On November 24, 2014, Petitioner filed a petition for custody of his child GM. (E.175 to E.177) On October 9, 2015, Lynda L. Mallory, the Family Court Evaluator, filed a report with the Circuit Court for Frederick County recommending joint custody of the child. (E.86 to E.94) On October 12, 2015, Judge Dwyer issued an order, contrary to Ms. Mallory's recommendation, rejected the recommendation of joint physical custody of the child and granted Ms. Plows exclusive physical and legal custody with child support. (E.98 to E.100) Judge Dwyer made no finding of unfitness of the petitioner, as a basis to deny physical and or legal custody of the child. Appeals to the Maryland Court of Special Appeals and the Court of Appeals of Maryland, were denied on technicalities regarding timeliness, even though ongoing Constitutional issues continued without being addressed by any court.

IX Reasons for Granting the Writ

A. Violation of Fundamental Rights

Justice James MacReynolds in 1923, writing for the Supreme Court, held that the right of parents to direct and govern the care, custody, and control of their children is a fundamental right protected by the Fourteenth Amendment of the United States Constitution. Meyer v. Nebraska, 262 U. S. 390 (1923). These cases are among the oldest establishing the fundamental liberties recognized by the Supreme Court. In the intervening century, a plethora of decisions of this Court has defined the rights of parents to control their children in opposition to the attempts of the State to do so. In Pierce v. Society of Sisters, 268 U.S. 510, 534-535, Justice MacReynolds held the State could not mandate compulsory public school attendance of the children contrary to the wishes of the parents. In 2000, Justice O'Connor surveyed the landscape of family arrangements, noting that 28 percent of children were living in single parent households. Troxel v. Granville, 530 U.S. 57 (2000). Justice O'Connor noted that in 1944, the Court returned to the subject in Prince v. Massachusetts, 321 U.S. 158; Stanley v. Illinois, 409 U.S. 645, 651 (1972); Santosky v. Kramer, 455 U.S. 745, 753 (1982).

In 2017 in Maryland, the Court of Appeals adopted the holding of Troxel v. Granville, 530 U.S. 57, 66, that there is a presumption favoring parental custody because the Due Process Clause of the Fourteenth Amendment protects the

fundamental right of parents to make decisions concerning the care, custody and control of their children. See Barak v. Barak, 455 Md. 564 (2017). Despite the prominence of the holding in Barak, the Court of Appeals in this proceeding ignored its own precedent and allowed the petitioner to be deprived of his constitutional rights. Only this Court can protect the constitutional right of this parent and the millions of other fathers to participate in the raising of their children by issuing a writ to the Court of Appeals of Maryland.

B. Mistreatment of Poor Fathers

The mistreatment of poor fathers, like your petitioner, who are unable to pay child support, is illustrated in Turner v. Rogers, 564 U. S. 431 (2011), wherein the Court found that it is an unconstitutional violation of due process to incarcerate a poor father without proof that he is able to pay the child support. Justice Breyer set out the requirements for due process before allowing the incarceration of poor fathers.

Law School Professor Deborah Dinner made an exhaustive study of the conflict with fathers' rights groups over the last 50 years in the development of modern

divorce and custody law and related sociology exposing the damaging effects on children of fatherless children.³

An increasing coercive federal-state legal apparatus has imposed child support obligations on divorced and never married fathers, causing severe childhood damage.⁴ Low income men were often financially incapable of meeting child support obligations, the legal enforcement of such obligations backed by criminal penalties, drives these men away from their children and the incarceration of low income men deprives these fathers and their children of the opportunity for close relationships.⁵

An NPR author cites a U.S. Department of Education study that found 39 percent of students, first through 12th grade, are fatherless. Fatherlessness is having a great impact on education. First of all, it is growing, and the correlations with any number of risk issues are considerable. Children are four-times more likely to be poor if the father is not around. And we know that poverty is heavily

³ Deborah Dinner, The Divorce Bargain: The Fathers' Rights Movement and Family Inequalities, 102 Va. L.R. 79 (2016).

⁴ Dinner *supra* at 86.

⁵ Solangelo Maldonado, Deadbeat or Dead Broke: Refining Child Support for Poor Fathers, 39 Univ. Calif. Davis Law Rev. 991, 1014-16 (2006).

associated with academic success. [Fatherless kids] are also twice as likely to drop out.⁶

There is a father absence crisis in America. According to the U.S. Census Bureau, 19.7 million children, more than 1 in 4, live without a father in the home. Consequently, there is a “father factor” in nearly all of the social ills facing America today.⁷

This crisis cries out for the assistance of this Court in addressing the legal aspects of fatherless children in America.

X Conclusion

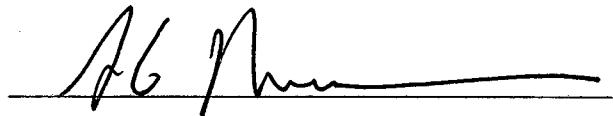
For the foregoing reasons, petitioner respectfully requests that this Court issue a writ of certiorari to review the judgments of the Maryland Courts.

⁶ Claudio Sanchez, npr.org, June 18, 2017, Poverty, Dropouts, Pregnancy, Suicide: What The Numbers Say About Fatherless Kids.

⁷ Fatherhood.org, 2016, National Fatherhood Initiative, funded by the U.S. Dept. of Health and Human Services.

Dated March 23, 2020.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "AG Mamone", is written over a horizontal line.

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