

IN THE
Supreme Court of the United States

DANA ALBRECHT,

Applicant,

v.

KATHERINE ALBRECHT,

Respondent.

**APPLICATION FOR EXTENSION OF TIME TO
FILE PETITION FOR WRIT OF CERTIORARI**

TO THE HONORABLE STEPHEN G. BREYER, ASSOCIATE JUSTICE
OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT
JUSTICE FOR THE FIRST CIRCUIT:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Applicant Dana Albrecht, who was petitioner and then appellant in the proceedings below, respectfully requests a 60-day extension of time, to and including March 23, 2020, to file a petition for a writ of certiorari to review a decision of the New Hampshire Supreme Court, Case No. 2019-0436. As grounds, it is stated:

This is a family law case. In New Hampshire, a "marital master" is a judicial officer appointed by the New Hampshire Judicial Branch to hear divorce and other family law cases in a trial court. A marital master can only issue recommendations, which must be reviewed by a judge. Only a judge, who must

RECEIVED

JAN 17 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

certify that the marital master has applied the correct legal standard, is empowered to issue an order. See NH Rev Stat § 490-D:9 (2015) and Appendix A, “App. A” hereto.

On September 1, 2017, the Ninth Circuit Court, Family Division, Nashua, New Hampshire (“trial court” hereto) entered a Final Parenting Plan (Appendix B “App. B” hereto) in *In the Matter of Dana Albrecht and Katherine Albrecht*, Case No. 659-2016-DM-00288 (“divorce case” hereto).

On May 30, 2019, the trial court entered its judgment (Appendix C “App. C” hereto), on pending motions involving parenting rights in the divorce case, with notice dated June 11, 2019 by the clerk. The judgment (App. C at 4) was recommended by Marital Master Bruce F. Dalpra, and ordered by Judge Julie A. Introcaso.

Both parties then entered timely motions for reconsideration in the trial court.

On June 30, 2019, the trial court entered its judgment (Appendix D “App. D” hereto). The judgment (App. D at 1) was recommended by Marital Master Bruce F. Dalpra, and “approved and so ordered” (App. D. at 14, 19) by Judge Mark S. Derby.

On July 29, 2019, pursuant to NH Supreme Court Rule 7(1)(B), Petitioner filed a “Notice of Discretionary Appeal” (Appendix E “App. E” hereto) in the NH Supreme Court, Case No. 2019-0436, under which the “[NH] Supreme Court may, in its discretion, decline to accept an appeal.” (*Id.*). Petitioner asked the NH

Supreme Court to decide six questions (App. E at 8) of law, including “whether, or under what circumstances, is [the NH Supreme] Court’s rule providing for certiorari reviews of parental rights and responsibilities pursuant to RSA 461-A, other than on the first and final order, unlawful and unconstitutional?” (*Id.*)

On September 16, 2019, the NH Supreme Court issued a declination of acceptance order (Appendix F “App. F” hereto) . However, a declination of acceptance expresses “no opinion on the quality or correctness of either the decision below or the arguments to be advanced by counsel on appeal.” *See State v. Cooper*, 127 N.H. 119, 125 (1985).

On September 26, 2019, Petitioner filed a timely Motion for Reconsideration (Appendix G “App. G” hereto) in the NH Supreme Court.

On October 25, 2019, the NH Supreme Court denied *Petitioner’s Motion for Reconsideration* (Appendix H “App. H” hereto). This Court has jurisdiction under 28 U.S.C. §1257 to review the final decision of New Hampshire’s highest court in this case.

Subsequent to the NH Supreme Court’s final decision, there were “intervening matters” (c.f. Rule 25.6 of this Court).

On November 1, 2019, the trial court re-opened the divorce case.

On December 9, 2019 the trial court held a hearing in a separate, but related matter, *In the Matter of Katherine v. Dana Albrecht*, Case No.659-2019-DV-00341 (“DV case” hereto). In the DV case, Judge Mark S. Derby presided, and

stated (Appendix I “App. I” hereto, at 12, lines 15-16), on the record, “I’ll tell you the truth. I have no knowledge of the divorce case.”

Consequently, the trial court judge, Judge Mark S. Derby, who denied Petitioner’s Motion for Reconsideration (App. D at 2-15) in the divorce case later stated, on the record, he had “no knowledge of the divorce case,” calling into question whether Judge Mark S. Derby actually “read the recommendations” of the marital master or actually determined whether the marital master “applied the correct legal standard to the facts determined,” pursuant to NH Rev Stat § 490-D:9 (2015). The NH Supreme Court then subsequently declined to hear Petitioner’s appeal.

This raises a serious “due process” issue, namely, that both parties are presently subject to a New Hampshire trial court order that might not have been adequately reviewed by any New Hampshire court, including both the trial court that issued it and New Hampshire’s highest court.

Background

This case has been described as a “family law disaster” that began on April 8, 2016, that has been extensively litigated since that time, and that involves an interstate custody battle. Petitioner-Appellant Dana Albrecht and Respondent-Appellee Katherine Albrecht have four children, Peter (now age 22), Caleb (now age 19), Sophie (now age 15), and Grace (now age 13). The trial court issued its final parenting plan (App. B.) on September 1, 2017.

Mr. Albrecht presently resides with their son Peter in Nashua, New Hampshire. Ms. Albrecht presently resides with their other children Caleb, Sophie, and Grace in Sierra Madre, California. Further, both parties and their children also have “significant contacts” with Massachusetts arising from the ongoing involvement by and with their former church in this matter. Consequently, this is a diversity of citizenship case between New Hampshire, Massachusetts, and California where “conflict of laws” apply.

Under federal due process, the question of whether an appeal provided in the State system is one of right or of discretion is also a federal question. *See State v. Cooper*, 127 N.H. 119, 129 (1985) (quoting *Evitts v. Lucey*, 469 U.S. 387, 393, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985)).

Parenting rights are protected under the Due Process Clause of the Fourteenth Amendment. *See Troxel v. Granville*, 530 U.S. 57, 66, 120 S.Ct. 2054 (2000). Both parties are fit parents, and there is a presumption that fit parents act in the best interests of their children (*Id.*).

However, Mr. Albrecht has, in effect, been effectively deprived of his parenting rights, this being repugnant to the Constitution of the United States. In particular, contrary to the trial court’s parenting plan, and contrary to NH Rev Stat § 461-A:2 (2015), requiring the State to “support frequent and continuing contact between each child and both parents,” Mr. Albrecht has been unable to

have any substantive contact with his minor daughters Sophie and Grace, either in person, or by telephone, in over a year, and not for lack of effort.

Reasons for Granting an Extension of Time

The time to file a petition for a writ of certiorari should be extended for the following reasons:

1. There have been “intervening matters” since the NH Supreme Court issued its final decision, including that the “divorce case” has been re-opened by the trial court.

2. Further, that trial court Judge Mark S. Derby, who signed the trial court’s orders on both parties’ motions for post-decision relief in the divorce case, later stated, on the record, that he “had no knowledge of the divorce case.”

3. Applicant has not had adequate time since these “intervening matters,” and substantially because of them, to prepare.

4. Applicant’s need for additional time is further heightened by the fact that he is *pro se*, with no formal training in the law.

5. Both parties are scheduled to attend mediation on February 4, 2020.

These reasons afford good cause for a sixty-day extension to and including March 23, 2020.

Respectfully submitted,



DANA ALBRECHT

Applicant Pro Se
131 D.W. Hwy #235
Nashua, NH 03060
(603) 809-1097
dana.albrecht@hushmail.com

January 15, 2020