19-8108

ORIGINAL

No. _____

IN THE
Supreme Court of the United States

DANA ALBRECHT,

Petitioner,

v.

KATHERINE ALBRECHT,

Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of New Hampshire

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This is a diversity of citizenship family law case. Petitioner is a resident of New Hampshire and Respondent is a resident of California. The care, custody and control of two minor children is in dispute.

"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" (*Troxel v. Granville*, 530 US 57,65,66 (2000)) and this "is perhaps the oldest of the fundamental liberty interests recognized by this Court." (*Id.*) Both parties are fit parents. (*Id.*) However, and contrary to the trial court's "Final Parenting Plan," still in effect, Petitioner has been refused all contact, including by telephone, with his two minor daughters for nearly 15 months.

There is evidence that orders on post-decision relief in the trial court might have been issued without proper review by any trial court judge. The UCCJEA (NH Rev Stat § 458-A:35 (2017)) provides that an appeal may be taken. However, the Supreme Court of New Hampshire declined to hear a subsequent appeal. Consequently, both parties are now subject to a trial court order that has not been adequately reviewed by <u>any</u> court, including both the trial court that issued it and New Hampshire's highest court.

The questions presented are:

1. Whether, or under what circumstances, is the State of New Hampshire's discretionary appellate process unlawful or unconstitutional?

2. Has the State of New Hampshire unlawfully infringed upon Petitioner's constitutionally protected parenting or other "due process" rights?

LIST OF ALL PROCEEDINGS

Katherine Albrecht v. Dana Albrecht
Ninth Circuit Family Division,
Nashua, New Hampshire
Case No. 659-2016-DV-00120
Decision Date: October 4, 2016 (App. 26-29)

Dana Albrecht v. Katherine Albrecht
Ninth Circuit Family Division,
Nashua, New Hampshire
Case No. 659-2016-DM-00288
Date of Final Parenting Plan: September 1, 2017 (App. 49-56)
Date of Divorce Decree and Uniform Support Order: April 27, 2018 (App. 114-130)
Date of Order on Motions: May 30, 2019 (App. 148-151)
Date of Order on Post-Decision Relief: June 30, 2019 (App. 152-170)

State v. Dana Albrecht
Ninth Circuit District Division,
Nashua, New Hampshire
Case No. 459-2017-CR-05023
Decision Date: August 6, 2018
Notice of Decision: Finding of "Not Guilty." (App. 131)

Dana Albrecht v. Katherine Albrecht
Supreme Court of the United States
Case No. 19-79
Decision Date: October 7, 2019
Notice of Decision: Certiorari Denied.

Dana Albrecht v. Katherine Albrecht
Supreme Court of New Hampshire
Case No. 2019-0436
Decision Date: September 16, 2019 (App. 219)
Date of Order denying Motion for Reconsideration: October 25, 2019 (App. 230)

Katherine Albrecht v. Dana Albrecht
Ninth Circuit Family Division,
Nashua, New Hampshire
Case No. 659-2019-DV-00341
Decision Date: December 30, 2019 (App. 269-283)
Date of Order on Post-Trial Motions: January 27, 2020 (App. 286-289)

Katherine Albrecht v. Dana Albrecht
Supreme Court of New Hampshire
Case No. 2020-0118, appealing Case No. 659-2019-DV-00341
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PETITION FOR A WRIT OF CERTIORARI

Petitioner Dana Albrecht respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of New Hampshire in this case.

OPINIONS AND ORDER BELOW

The Supreme Court of New Hampshire's opinions (Case No. 2019-0436) are unpublished. *See* App. 219,230. The opinions of the Ninth Circuit Family Division Court, Nashua, New Hampshire (Case No. 659-2016-DM-00288) are unpublished. *See* App. 148-170.

JURISDICTION

The Supreme Court of New Hampshire entered its judgment on September 16, 2019 and denied a motion for rehearing and reconsideration on October 25, 2019. This Court has jurisdiction pursuant to *28 U.S.C. § 1257(a)*. On January 17, 2020, Justice Breyer granted Petitioner's application (No. 19A806) to extend the time to file a petition for a writ of certiorari to March 23, 2020.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Section One of the Fourteenth Amendment to the United States Constitution provides that "[N]or shall any State deprive any person of life, liberty, or property, without due process of law ..."

NH Rev Stat § 461-A:2 (2015) ("Statement of Purpose") provides that "because children do best when both parents have a stable and meaningful involvement in

their lives, it is the policy of this state, unless it is clearly shown that in a particular case it is detrimental to a child, to support frequent and continuing contact between each child and both parents..."

NH Rev Stat § 490-D:9 (2015) ("Recommendations of Marital Masters") requires that "all recommendations of marital masters shall be signed by a judge. The judge signing such recommendations shall certify that he or she has read the recommendations and agrees that the marital master has applied the correct legal standard to the facts determined by the marital master."

NH Rev Stat § 461-A:4-a (2015) ("Judicial Enforcement of Parenting Plan") requires that "any motion for contempt or enforcement of an order regarding an approved parenting plan under this chapter, if filed by a parent, shall be reviewed by the court within 30 days."

NH Rev Stat § 458-A:35 (2017), adopting the UCCJEA ("Appeals"), requires that "an appeal may be taken from a final order in a proceeding under this subdivision in accordance with expedited appellate procedures in other civil cases."

NH Rev Stat § 458-A:39 (2017), adopting the UCCJEA ("Application and Construction"), requires that "in applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it."

INTRODUCTION

This is a diversity of citizenship family law case. Petitioner is a resident of New Hampshire and Respondent is a resident of California. The care, custody and control of two minor children is in dispute.

Both parties are fit parents, and there is a presumption that fit parents act in the best interest of their children. (*Troxel v. Granville*, 530 US 57,65,66 (2000)) However, and contrary to the family court's "Final Parenting Plan," still in effect, Petitioner has been refused all contact, including by telephone, with his two minor daughters for over 15 months, and not for lack of effort.

There is evidence that orders on post-decision relief in the family court might have been issued without proper review by a family court judge. Further, the Supreme Court of New Hampshire declined to hear a subsequent appeal. Consequently, both parties may now be subject to a family court order on post-decision relief that has not been adequately reviewed by any court, including both the family court that issued it and New Hampshire's highest court. This is a serious violation of "due process."

However, the UCCJEA provides for appeals. See NH Rev Stat § 458-A:35 (2017). Further, 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 NH 119, 129 (1985) (quoting *Evitts v. Lucey*, 469 US 387, 393, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985)).

Further, "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" (*Troxel v. Granville*, 530 US 57,65,66 (2000)) and this "is perhaps the oldest of the fundamental liberty interests recognized by this Court." (*Id.*)

Consequently, this Honorable Court should review, and reverse, the lower courts' decisions.

STATEMENT OF CASE

A. Background

Petitioner Dana Albrecht and Respondent Katherine Albrecht (the "parties") were married on November 4, 1996. They have four children, Peter (now age 22), Caleb (now age 19), Sophie (now age 15), and Grace (now age 12).

The parties separated on April 8, 2016. *See* App. 15-21. Litigated divorce proceedings in a New Hampshire family court followed. With the family court's permission (App. 49-56), on September 1, 2017, Ms. Albrecht (Respondent) relocated with the parties' minor children (then Caleb, Sophie, and Grace) from New Hampshire to southern California, which Mr. Albrecht (Petitioner) opposed (App. 62-81).

At the present time, Mr. Albrecht and the parties' oldest son Peter now reside together in Nashua, New Hampshire. Ms. Albrecht and the parties' other three children (Caleb, Sophie, and Grace) now reside together in Sierra Madre, California.

The parties' former church, Collinsville Bible Church (hereto "CBC"), located in Dracut, Massachusetts, has also played a prominent role throughout the entire case, even though it is not a party to this case.

B. Jurisdiction

Under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), New Hampshire retains original jurisdiction. However, the minor children involved are residents of California.

C. The Role of a "Marital Master" in the New Hampshire Judiciary.

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 family court. A marital master can only issue recommendations, which must be reviewed by a judge. Only a judge, who must 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 App. 1.

D. Lower Court Record

On April 8, 2016, Ms. Albrecht initiated these legal proceedings by filing a domestic violence petition (App. 15-21) in the family court (hereto "DV I"), and Judge Paul S. Moore[1] issued temporary orders (*Id.*) denying Mr. Albrecht all contact, including by telephone, with his minor children.

On April 15, 2016, Mr. Albrecht entered a petition for legal separation in the family court, and also sought *ex parte* relief to regain contact with his children. At that time, the family court then allowed that Mr. Albrecht would be able to see their minor children, but only on the premises of Collinsville Bible Church (hereto "CBC"), located in Dracut, Massachusetts, and only while supervised by the church leadership (Pastor Eric Smith or Elder Robert Cooper). *See* App. 22-25.

On October 4, 2016, the family court dismissed (App. 26-29) Ms. Albrecht's domestic violence petition ("DV I") , thereby vacating the prior order (App. 22-25) that Mr. Albrecht's parenting time be supervised by CBC church leadership, and entered a Temporary Parenting Plan. *See* App. 30-37.

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1 Judge Moore pleaded guilty in May 2018 to one count of felony fraud and has since been disbarred. See NH Supreme Court Case No. JC-17-042-C.

Mr. Albrecht has alleged that Ms. Albrecht next made multiple false allegations (App. 48) that Mr. Albrecht had sexually abused their daughter Grace (Cf. App. 38-40), first directly to the New Hampshire Division for Children, Youth, and Families (hereto "NH DCYF") on October 13, 2016, and subsequently in November 2016 to one of Ms. Albrecht's treating therapists, Ms. Julie Salinger, MSW, LICSW, who then also filed a report with NH DCYF.

On November 17, 2016, the family court granted *ex parte* relief. *See* App. 39.

The family court then held five days of hearings in a bifurcated trial. On August 7, 2017 and August 9, 2017 the family court heard parenting matters, and on September 1, 2017 it entered a Final Parenting Plan. *See* App. 49-46.

With the family court's permission[2], on September 1, 2017, Ms. Albrecht relocated with the parties' minor children from New Hampshire to Pasadena, California, which Mr. Albrecht opposed (App. 62-81). Since that time, Ms. Albrecht has refused to communicate with Mr. Albrecht except through counsel. *See* App 57.

On October 5, 2017 and October 6, 2017 and February 14, 2018, the family court heard financial matters.

On October 7, 2017, Ms. Albrecht had Mr. Albrecht arrested and charged with criminal trespass and invasion of privacy arising from an agreed-upon walk-through of the marital home in Hollis, New Hampshire. Mr. Albrecht was subsequently found "not guilty." *See* App. 131.

In March 2018, Ms. Albrecht relocated a second time with the parties' minor children from Pasadena, California to Sierra Madre, California (App. 101), but did not notify Mr. Albrecht until January 2, 2019. *See* App. 140.

2 *See* Respondent's Motion to Relocate the Parties' Minor Children to California (App. 41-47) granted by the family court.

On April 27, 2018, the family court entered its final divorce decree (App. 120-130) and uniform support order (App. 114-119).

Between December 23, 2018 and December 31, 2018, Mr. Albrecht had parenting time[3] with the minor children at Mr. Albrecht's father's house in San Jose, California. The parties' adult children were also present.

Subsequently, beginning January 1, 2019, and up to the present time, Mr. Albrecht has not had any contact, either in person or by telephone[4], with the parties' minor daughters Sophie and Grace, and not for lack of effort.

On March 15, 2019, the family court granted *ex parte* relief (App. 147) arising out of an incident at Ms. Albrecht's home in Sierra Madre, CA concerning "zip ties." *See* App. 144-147.

On May 30, 2019, the family court entered its judgment on pending motions. *See* App. 148-151. Both parties then entered timely motions for post-decision relief. *See* App. 152-170.

On June 30, 2019, the family court entered its judgment (App. 152-170). The judgment (App. 152) was recommended by Marital Master Bruce F. Dalpra, and "approved and so ordered" (App. 165,170) by Judge Mark S. Derby[5].

On July 29, 2019, pursuant to NH Supreme Court Rule 7(1)(B), Mr. Albrecht filed a "Notice of Discretionary Appeal" (App. 171-182) in the Supreme Court of New Hampshire, Case No. 2019-0436, under which the "[NH] Supreme Court may, in its discretion, decline to accept an appeal." (*Supra* R. 7(1)(B)). Mr. Albrecht asked the

3 Cf. ¶B(2) of the Final Parenting Plan, App. 53.

4 *See* App. 96-113 for relief sought from the family court

5 Judge Derby later stated, "I'll tell you the truth. I have no knowledge of the divorce case." *See* transcript of December 9, 2019 hearing, App. 258 at lines 15-16.

Supreme Court of New Hampshire to decide six questions (App. 178) 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.* at ¶6)

On August 14, 2019, Ms. Albrecht requested summary disposition and attorneys' fees (App. 194-203), which the Supreme Court of New Hampshire denied.

On September 16, 2019, the Supreme Court of New Hampshire issued a declination of acceptance order (App. 219) which expressed "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 NH 119, 125 (1985).

On September 26, 2019, Mr. Albrecht filed a timely Motion for Reconsideration (App. 220-226) in the Supreme Court of New Hampshire.

On October 25, 2019, the Supreme Court of New Hampshire denied Mr. Albrecht's Motion for Reconsideration (App. 230). This Court has jurisdiction under 28 U.S.C. §1257 to review the final decision of New Hampshire's highest court in this case.

E. Subsequent "intervening matters"

Subsequent to the Supreme Court of New Hampshire's final decision, there have been "intervening matters" (Cf. Rule 25.6 of this Court).

On November 1, 2019, the family court re-opened the divorce case, but has taken no substantive further action in that case. In particular, it has not decided any pending motions in that case (App. 231-240) nor scheduled any hearing.

On November 3, 2019, both parties and their children Caleb, Sophie, and Grace were present at Collinsville Bible Church ("CBC") in Dracut, Massachusetts. However, Mr. Albrecht had no contact with either Ms. Albrecht or their children on that day. *See* App. 241-244.

On November 12, 2019, Ms. Albrecht filed a second domestic violence petition (hereto "DV II") against Mr. Albrecht. *See* App. 248-255.

On December 30, 2019, family court Judge Mark S. Derby[6] entered an order against Mr. Albrecht in the "DV II" case. *See* App. 269-283. Unlike "DV I," in which Mr. Albrecht was required by the family court to visit CBC three times a week for nearly six months in order to see his children, in "DV II" Mr. Albrecht has since been prohibited by the family court from visiting CBC at all. *See Id.* at ¶5.

On January 27, 2020, family court Judge Mark S. Derby entered an order on post-trial motions in the "DV II" case. *See* App. 286-288.

On February 25, 2020, Mr. Albrecht entered a notice of appeal of the "DV II" case to the Supreme Court of New Hampshire (Case No. 2020-0118), currently pending. *See* App. 291-296.

F. New Hampshire's Appellate Procedures.

The only state appellate court in New Hampshire is the New Hampshire Supreme Court. In New Hampshire, a "mandatory appeal" is an appeal of right. A

6 Mr. Albrecht has subsquently asked the Supreme Court of New Hampshire to decide "when the judicial officer of the trial court stated, on the record, 'I'll tell you the truth. I have no knowledge of the divorce case,' did this violate 'due process' or Part I, Article 35 of the New Hampshire State Constitution?" *See* App. 293 at ¶3.

"discretionary appeal" is an appeal that first requires the Supreme Court of New Hampshire to grant certiorari. *See* NH Sup Ct. R. 3.

Most appeals in New Hampshire are mandatory appeals, but an appeal from a final decision on the merits, other than the first final order, issued in, or arising out of, a domestic relations matter filed under NH RSA Title XLIII (NH RSA chapters 457 to 461-A) is a discretionary appeal. (*Id.*)

G. California's Appellate Procedures

In California, there are intermediate courts of appeal that serve six districts. Decisions by these courts are then subject to review by the Supreme Court of California.

The right of appeal is governed solely by statute. CA Code Civ. Proc. § 904.1(a)(1),(10) provides that an appeal from any order made appealable by the CA Family Code is one of right. CA Code Civ. Proc. § 904.1(a)(2) further provides that an appeal on a decision after the first and final judgment is also by right, directly contrary to New Hampshire's procedure.

H. Conflict of Laws

California, where Ms. Albrecht resides with the minor children, has statutory provisions for appeals by right. New Hampshire, where Mr. Albrecht resides and which retains original jurisdiction, does not.

REASONS FOR GRANTING THE PETITION

I. Petitioner raises a serious "due process" issue; namely, that no lower court has properly adjudicated the issues in this case pursuant to the relevant state statutes.

NH Rev Stat § 490-D:9 (2015) required that family court Judge Mark S. Derby "certify that he or she has read the recommendations and agrees that the marital master has applied the correct legal standard to the facts determined by the marital master." However, Judge Mark S. Derby later stated, on the record, "I'll tell you the truth. I have no knowledge of the divorce case." *See* App. 258 at lines 15-16.

Consequently, while Judge Derby's signature (App. 165,170) appears on the family court decision concerning parties' motions for reconsideration in the divorce case, the language of the relevant statute does not, as is customary, and Judge Derby's later statements call into question whether he actually "read the recommendations" or determined whether "the marital master has applied the correct legal standard to the facts determined by the marital master" pursuant to NH Rev Stat § 490-D:9 (2015).

The Supreme Court of New Hampshire subsequently declined to hear Mr. Albrecht's appeal. However, the UCCJEA provides for appeals. *See* NH Rev Stat § 458-A:35 (2017). Further, 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 NH 119, 129 (1985) (quoting *Evitts v. Lucey*, 469 US 387, 393, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985)).

II. The "due process" issues raised concern "perhaps the oldest of the fundamental liberty interests recognized by this Court."

As this Court has previously held in *Troxel v. Granville*, 530 US 57,65,66 (2000), "The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children— is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer v. Nebraska*, 262 US 390, 399, 401 (1923), we held that the 'liberty' protected by the Due Process Clause includes the right of parents to 'establish a home and bring up children' and 'to control the education of their own.' Two years later, in *Pierce v. Society of Sisters*, 268 US 510, 534-535 (1925), we again held that the 'liberty of parents and guardians' includes the right 'to direct the upbringing and education of children under their control.' We explained in *Pierce* that '[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.' *Id.*, at 535. We returned to the subject in *Prince v. Massachusetts*, 321 US 158 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. 'It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.' *Id.*, at 166.

"In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. See, e. g., *Stanley v. Illinois*, 405 US 645, 651 (1972) ('It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'come[s] to this Court with a momentum for respect lacking when appeal is made to

liberties which derive merely from shifting economic arrangements' ' (citation omitted)); *Wisconsin v. Yoder*, 406 US 205, 232 (1972) ('The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition'); *Quilloin v. Walcott*, 434 US 246, 255 (1978) ('We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected'); *Parham v. J.R.*, 442 US 584, 602 (1979) ('Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course'); *Santosky v. Kramer*, 455 US 745, 753 (1982) (discussing '[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child'); *Glucksberg*, supra, at 720 ('In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the righ[t] . . . to direct the education and upbringing of one's children' (citing *Meyer* and *Pierce*)). In light of this extensive precedent, it cannot now be doubted that 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."

III. The Rules of the Supreme Court of the State of New Hampshire violate the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA)

Pursuant to NH Sup Ct. R. 3., an appeal from a final decision on the merits, other than the first final order, issued in, or arising out of, a domestic relations

matter filed under NH RSA Title XLIII (NH RSA chapters 457 to 461-A) is a discretionary appeal. (Id.) and will not be heard on the merits unless the Supreme Court of New Hampshire grants certiorari.

However, NH Rev Stat § 458-A:35 (2017), adopting the UCCJEA ("Appeals"), requires that "an appeal may be taken from a final order in a proceeding under this subdivision in accordance with expedited appellate procedures in other civil cases."

IV. In the alternative, the "Uniform Child Custody Jurisdiction and Enforcement Act" (UCCJEA) is not "uniform."

California, where Ms. Albrecht resides with the minor children, has statutory provisions for appeals by right. New Hampshire, where Mr. Albrecht resides and which retains original jurisdiction, does not.

In California, the right of appeal is governed solely by statute. CA Code Civ. Proc. § 904.1(a)(1),(10) provides that an appeal from any order made appealable by the CA Family Code is one of right. CA Code Civ. Proc. § 904.1(a)(2) further provides that an appeal on a decision after the first and final judgment is also by right.

NH Rev Stat § 458-A:35 (2017), adopting the UCCJEA ("Appeals"), also requires that "an appeal may be taken from a final order in a proceeding under this subdivision in accordance with expedited appellate procedures in other civil cases."

NH Rev Stat § 458-A:39 (2017), adopting the UCCJEA ("Application and Construction"), further requires that "in applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it."

Further, the Full Faith and Credit Clause proscribes a State from adopting a "'policy of hostility to the public Acts' of another State," as shown when "it has 'no sufficient policy considerations to warrant' its refusal to apply the other State's laws." See *Carroll v. Lanza*, 349 US 408, 413, 75 S.Ct. 804, 99 L.Ed. 1183 (1955).

Notwithstanding the relevant statutes and federal constitutional provisions, the Supreme Court of New Hampshire declined to hear Mr. Albrecht's appeal, demonstrating that the application of the UCCJEA is, in actual practice, not "uniform" between the sovereign states.

This is also a violation of the Equal Protection Clause.

V. All U.S. citizens, regardless of state residency, who seek relief in the New Hampshire courts under the UCCJEA for the judicial enforcement of a court-approved parenting plan are affected.

It should be noted that both parties (one a citizen of California) sought relief in a New Hampshire court for enforcement of the family court's parenting plan (App. 49-56) and uniform support order (App. 114-119). Ms. Albrecht also sought to find Mr. Albrecht in contempt of the uniform support order (*Id.*).

The family court's USO stated (App. 116 at ¶16A), "Obligor is ordered to provide private health insurance coverage for the children effective: Continuing - See [Final Divorce] Decree re providing coverage under Blue Shield of California," but the family court's Final Divorce Decree with a narrative order (App. 120-130) made no mention of "providing coverage under Blue Shield of California." Nevertheless, the New Hampshire family court subsequently granted Ms. Albrecht's requested relief and found Mr. Albrecht in contempt (App. 150 at ¶6) of the USO (App. 116 at ¶16A),

and ordered him to pay $700 in attorney's fees and $2,575.28 in insurance premiums to Ms. Albrecht, a citizen of California. *See* App. 150 at ¶6.

Mr. Albrecht subsequently asserted (App. 213) to the Supreme Court of New Hampshire that "The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one." *See Longshoremen v. Philadelphia Marine Trade Assn.*, 389 US 64, 76 (1967). Further, "The most fundamental postulates of our legal order forbid the imposition of a penalty for disobeying a command that defies comprehension." *See Id.* Consequently, when asked to review whether a lower court erred by "enforcing an order that was too vague," the Supreme Court of New Hampshire is required to determine whether the order is "sufficiently clear." *See In the Matter of Valentina Conant and William Faller*, NH Supreme Court Case No. 2014-0678, order dated June 23, 2015. To do otherwise is a violation of due process.

Nevertheless, in this case, the Supreme Court of New Hampshire expressed "no opinion on the quality or correctness of ... the decision below or the arguments to be advanced ... on appeal." *See State v. Cooper*, 127 NH 119, 125 (1985). By way of contrast, in California, either party would be entitled to an appeal of right.

Further, the Supreme Court of New Hampshire could, under its rules, deny to hear an appeal concerning enforcement of a parenting plan under the UCCJEA by a citizen of <u>any</u> of the sovereign states, not just California or New Hampshire.

VI. New Hampshire has failed to properly adjudicate what ought to have been a routine family law case and the decisions below are wrong and deeply disturbing.

During their marriage, the parties relocated from California to New Hampshire in 2001, when their sons Peter and Caleb were three years and six months old respectively. Both of their daughters, Sophie and Grace, were born in New Hampshire.

On April 8, 2016, Ms. Albrecht began these proceedings by filing her first domestic violence ("DV I") petition (App. 15-21) against Mr. Albrecht, later dismissed by the family court on October 4, 2016 (App. 26-29), but during which time Mr. Albrecht could only see their minor children at Collinsville Bible Church (App. 22-25) under the supervision of Pastor Eric Smith or church elder Mr. Robert Cooper.

On February 2, 2017, Ms. Albrecht asked the family court for permission to relocate from New Hampshire to southern California with their minor children Caleb, Sophie, and Grace (App. 41-17) because she was "battling Stage IV breast cancer with metastases to the brain ... [and had] been told that her cancer is terminal" (*Id.* at ¶2) and wished "to be closer to her family" (*Id.* at ¶6).

Ms. Albrecht further stated she "is extremely close with her mother, Elaine Hodgkinson (who on August 1, 2019 has since predeceased Ms. Albrecht)," (*Id.* at ¶15) and "is also very close with her step-father, David Hodgkinson (who on May 19, 2018 has also since predeceased Ms. Albrecht)." (*Id.* at ¶17)

Ms. Albrecht also stated that "it has been very difficult for Ms. Albrecht being 3,000 miles away from her son Peter," (*Id.* at ¶13) and that she wished to be "closer

to her son Peter who is in college in Claremont, CA" (*Id.* at ¶6) (Peter now resides with Mr. Albrecht in New Hampshire).

On September 1, 2017, the family court granted Ms. Albrecht permission to relocate to southern California. *See* App. 49-56. Both parties filed timely motions for reconsideration in the family court. *See* App. 62-95.

On September 11, 2017, Ms. Albrecht expressed her "concerns that Mr. Albrecht plans to either relocate to California or will plan to stay for lengthy periods of time in California with his father and will use the Court's language to potentially request parenting time with the children..." (App. 83 at ¶3)

On September 11, 2017, Mr. Albrecht requested that the family court require therapeutic intervention by licensed counselors or psychologists for their children, and in particular "order the parties and their children to attend Family Systems Therapy; or as the parties otherwise agree" (App 80. at Prayer H) at but the family court declined to do so.

Ms. Albrecht then subsequently refused to communicate with Mr. Albrecht except through counsel. *See* App. 57-61.

On March 30, 2018, Mr. Albrecht alleged that Ms. Albrecht had interfered in telephone communications between Mr. Albrecht and their daughters Sophie and Grace, and asked the family court to find Ms. Albrecht in contempt (App. 96-100,110-113) of the family court's Final Parenting Plan. In her objection[7] (App 102-109), Ms. Albrecht acknowledged that after she "felt it important to tell [Sophie and Grace] the privacy implications of using phones owned by [their father]" (*Id.* at ¶11)

7 These pleadings also feature considerable discussion of Mr. Robert Cooper of Collinsville Bible Church.

that "both girls emphatically stated that they no longer wanted the phones" (*Id.* at ¶12) provided by Mr. Albrecht as Christmas presents to Sophie and Grace.

NH Rev Stat § 461-A:4-a (2015) ("Judicial Enforcement of Parenting Plan") requires that "any motion for contempt or enforcement of an order regarding an approved parenting plan under this chapter, if filed by a parent, shall be reviewed by the court within 30 days."

However, the family court did not hold a hearing on Mr. Albrecht's motion for contempt (App. 96-100,110-113), entered March 30, 2018 in the family court, until May 9, 2019, over a year later, a violation of NH Rev Stat § 461-A:4-a (2015).

On April 5, 2018, Ms. Albrecht alleged to the Sierra Madre Police (App. 101) that Mr. Albrecht "went inside [her home] because the neighbor's dog was barking uncontrollably and the side was partially opened" even though Mr. Albrecht was in New Hampshire at the time.

On August 28, 2018, Ms. Albrecht made further allegations to the Sierra Madre Police (App. 132-139) that at approximately 5:30 am she "heard the sound of a drill being operated and feared somebody was going to use the drill on the door locks in an attempt to gain entry," and that "she believed the suspect(s) were somehow affiliated with [Mr. Albrecht]," even though Ms. Albrecht "was unable to show [the police] anything around the property that was either freshly disturbed, or was missing" and Mr. Albrecht was also in New Hampshire at that time. *See* App. 134.

During Christmas 2018, Mr. Albrecht and all four of the parties' children spent the holiday at Mr. Albrecht's father's house in San Jose, California. Mr. Albrecht has not seen, nor had any telephone contact with, their minor daughters Sophie and Grace since that time.

On January 2, 2019, Mr. Albrecht learned for the first time (App. 140) that Ms. Albrecht and Caleb, Sophie, and Grace were actually residing in Sierra Madre, California, having relocated a second time, nine months earlier (App. 101), from Pasadena, California.

On January 31, 2019, Mr. Albrecht received a disturbing letter (App. 141-143) from Sophie provided by her high school in which Sophie described that "even at home ... my dad is always listening."

On March 12, 2019, Mr. Albrecht received a disturbing voice mail from the parties' son Caleb (App. 144) and photographs (App. 145-146) concerning Ms. Albrecht locking the parties' children inside her home with "zip ties." On March 15, 2019, the family court then subsequently granted *ex parte* relief ordering that "neither party shall lock the children into their home or room or cause anyone else to do so. Matter shall be taken up at the next scheduled hearing." *See* App. 147.

Although Sophie's letters (App. 141-143), Caleb's voice mail (App. 144), and the Sierra Madre police report (App. 132-139) were admitted into evidence at the hearing on May 9, 2019, the family court made no mention of them in its May 30, 2019 order (App. 148-151) which the Supreme Court of New Hampshire subsequently declined to review (App. 219,230).

On June 21, 2019, Mr. Albrecht <u>again</u> requested (App. 158-159 at ¶48-54) that the family court require intervention by licensed counselors or psychologists, and in particular "order the parties and their children to attend Family Systems Therapy; or as the parties otherwise agree" (App. 164 at Prayer F) but the family court <u>again</u> declined to do so, with no narrative, in its order "approved and so ordered" by Judge Mark S. Derby (App. 165,170) who later stated, on the record, "I'll tell you the truth. I have no knowledge of the divorce case." *See* App. 258 at lines 15-16.

At that time, Mr. Albrecht also proposed (App. 159 at ¶52) to the family court, and not for the first time, that "high-conflict divorce is highly correlated with one or both parents having a 'cluster B' personality disorder, such as borderline or narcissistic personality disorder."

Both parties have agreed that, since the divorce, Mr. Albrecht has had a poor relationship with their daughters Sophie and Grace. However, the parties are sharply divided concerning the reasons thereof. Mr. Albrecht has alleged that the poor relationship is a result of "alienation" caused by Ms. Albrecht[8]. Ms. Albrecht has alleged that the poor relationship is a result of "estrangement" caused by Mr. Albrecht.

This Court may refer to a two-part series in the Michigan Family Law Journal, "Parental Alienation: The Problem," and "Parental Alienation: Remedies," reproduced in full in the appendix to this petition (App. 2-14) for further information on parental alienation and parental estrangement.

Ms. Albrecht has subsequently sought (App. 248-255), and been granted (App. 269-283), a second domestic violence restraining order (hereto "DV II") against Mr. Albrecht. In this related case, the family court heard testimony and evidence that Mr. Albrecht requested parenting time with Sophie and Grace in southern California from July 31, 2019 through August 14, 2019 pursuant to the court's Final Parenting Plan.

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8 Mr. Albrecht has also raised the issue (App. 79 at ¶128) of "whether Ms. Albrecht has utilized her religious views in inappropriate ways to negatively impact Mr. Albrecht's relationship with his daughters." Cf. *In re Kurowski*, 20 A. 3d 306 NH (2011).

Ms. Albrecht, however, enrolled Sophie and Grace in summer camp at "The Wilds of New England[9]" in New Hampshire (App. 190) from Monday July 29, 2019 through Saturday August 3, 2019[10] (App. 191). Nevertheless, correspondence[11] about parenting (App. 185-186) sent by Ms. Albrecht's counsel on Monday July 29, 2019 made no mention that their daughters were in New Hampshire on the very same day the letter was sent.

Consequently, on the following day, July 30, 2019, and in an effort to contact Sophie and Grace, Mr. Albrecht and the parties' oldest son Peter then flew from New England to southern California, laboring under the mistaken belief that Sophie and Grace were with Ms. Albrecht at her residence in Sierra Madre, California. Ms. Albrecht also reported that same day to the Sierra Madre police (App. 187) that "Dana Albrecht is on his way from New Hampshire to try and speak to his daughters" and further stated "daughters are currently in summer camp" and that their "father does not know ..."

Subsequently, in the Fall, from Tuesday October 29, 2019 through Monday, November 4, 2019, Ms. Albrecht removed their daughters from school, and the parties' children Caleb, Sophie, and Grace were on vacation in New England.

NH Rev Stat § 461-A:2 (2015) ("Statement of Purpose") provides that "because children do best when both parents have a stable and meaningful involvement in their lives, it is the policy of this state, unless it is clearly shown that in a particular

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9 The "Wilds of New England" is closely affiliated with both Collinsville Bible Church and Bob Jones University. Cf. *Bob Jones Univ. v. United States*, 461 US 574, 580 (1983). However, any relevance is limited to descriptions of factual background material.

10 Submitted as "Respondent's Exhibit Q" into evidence during the "DV II" hearing.

11 Submitted as part of "Respondent's Exhibit R" into evidence during the "DV II" hearing.

case it is detrimental to a child, to support frequent and continuing contact between each child and both parents..."

On Friday, November 1, 2019, Mr. Albrecht again sought relief from the family court (App. 231-234) in the divorce case requesting parenting time and seeking that the family court compel Ms. Albrecht's "cooperation in commencing immediately individual therapy for these children with duly licensed and qualified therapists and commencing immediately reunification therapy for these children and Mr. Albrecht with a duly licensed and qualified therapist to repair the parent-child relationships which has been disrupted during high conflict divorce." (*Id.* at Prayer D) which the family court has not, as of the filing of this petition, ruled upon.

The family court instead ordered that "the case shall be scheduled in the ordinary course," (App. 240) but has not yet scheduled any hearing on this matter in the divorce case.

On Sunday, November 3, 2019, both parties and Caleb, Sophie, and Grace were present at Collinsville Bible Church ("CBC"). Mr. Robert Cooper[12], part of the CBC leadership, testified at the "DV II" trial (December 11, 2019 transcript at 103) that he felt "that it was in the best interest of the parties for [Mr. Albrecht] to not be there" and called the Dracut Police (App. 241-244). Consequently, Mr. Albrecht did not have any contact with either Ms. Albrecht or Caleb, Sophie, and Grace that day. (*Id.*)

On November 12, 2019, Ms. Albrecht initiated her "DV II" case (App. 248-255) against Mr. Albrecht, currently pending appeal (App. 291-296) in the Supreme Court of New Hampshire. The family court noted that "plaintiffs in their domestic

12 As previously noted, both Mr. Cooper and CBC have played an extensive role throughout this entire case.

violence petitions are not required to identify by name and citation which crimes in RSA 173-B:1 the defendant has committed. The defendant and the court discern it from the facts that the plaintiff pleads, and that is what happened here." (App. 289)

However, the family court's position that a defendant ought to "discern it from the facts" .. "which crimes ... the defendant has committed" and that they need not be "identified by name and citation" offends a "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental". Cf. *Snyder v. Massachusetts*, 291 US 97, 105 (1934).

In "DV II," the family court also noted that it did "not find anything 'legitimate' about [Mr. Albrecht's] actions on November 3, 2019, because he did not have scheduled parenting time," (App. 277 at ¶9) and that its findings of domestic violence (App. 287) were "rooted ... particularly in the defendant's answers, deflections and evasive non-answers to the questioning on Pages 71-79 of the December 20, 2019 transcript" (App. 259-269) concerning precisely the same family court order dated May 30, 2019 (App. 148-151) related to parenting that the Supreme Court of New Hampshire declined to review.

This is a clear violation of "due process" pursuant to the The Due Process Clause of the Fourteenth Amendment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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