

No.

IN THE
SUPREME COURT OF THE UNITED STATES

M. H.,

Petitioner,

v.

INDIANA DEPARTMENT OF
CHILD SERVICES

Respondent.

On Petition for Writ of Certiorari
To The Indiana Supreme Court

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QUESTIONS PRESENTED FOR REVIEW

- I. What are the present-day parameters to any assertion of privilege pursuant to the 5th Amendment to the United States Constitution (re: compulsion and waiver)?
- II. Whether the Constitutional principles espoused in 5th Amendment are violated when compelled to incriminate oneself in order to successfully complete Court-ordered SOMM program or lose one's fundamental right to raise one's children?

PARTIES

Martin Hilty is the Petitioner, who was the Respondent-Appellant below. The Indiana Department of Child Services is the Respondent, who was the Petitioner-Appellee below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Martin Hilty, respectfully petitions for a writ of certiorari to review the judgment of the Indiana Supreme Court.

OPINIONS BELOW

The Opinion by Chief Justice Rush of the Indiana Supreme Court is captioned as *In the Matter of Ma.H., Le.H., Lo.H., W.H., La.H., Me.H., and S.W. (Minor Children); M.H. (Father) and R.H. (Mother)*, 134 N.E.3d 41, No. 19S-JT-323 (2019), and is provided in the Appendix to the Petition. [Appx. A]. No petitions for rehearing were filed. The Indiana Court of Appeals for the Seventh Circuit Opinion, No. 18A-JT-1296, is attached and marked as Appendix B. The trial court's Order of Involuntary Termination of Parental Rights, Findings of Fact and Conclusions of Law, and Judgment as to Children's Mother, Rebecca Hilty, and Hilty Children's Father, Martin Hilty is attached and marked as Appendix C.

JURISDICTIONAL STATEMENT

The Indiana Supreme Court rendered its decision on October 31, 2019. [Appx. A]. Petitioner filed his Application for Extension of Time to File Petition for Writ of Certiorari on January 13, 2020, which was subsequently granted by the Honorable Brett V. Kavanaugh on January 14, 2020, thus extending the time for filing this Petition for Writ of Certiorari to and including March 2, 2020. On February 25, 2020, Honorable Brett V. Kavanaugh further extended the time within which to file a Petition for Writ of Certiorari to and including March 29, 2020. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a) (2018).

STATUTES AND CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or 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 to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Facts and Proceedings Below

M.H. [hereinafter "Father"] had six biological children [hereinafter "Father's Children"], and one step-daughter [hereinafter "S.W."], adjudicated Children in Need of Services on July 11, 2016. While allegations of poor child hygiene and Father's alcohol abuse were initially introduced by the Wells County Department of Child Services [hereinafter "DCS"], the primary allegation that led to the DCS investigation and thereafter the Trial Court's determination to terminate Father's parental rights lies squarely on Father's refusal to admit to an allegation of sexual abuse made by another step-child, R.W., a child which is not named in this termination proceeding or the underlying CHINS action. Father maintained his innocence from the time of the

investigation, throughout the CHINS proceedings, through an Appeal of the Factfinding trial, during the months of CHINS services, and throughout this termination of parental rights trial that led to this Appeal. The allegations were made by a then 17-year-old step-daughter, R.W., that the abuse happened several years prior to 2016, and those allegations were made by R.W. at a time when she had recently run away from the family to stay with her maternal uncle.

Allegations of sexual abuse were not allegations of sexual abuse on any of father's biological children at issue here on appeal, and yet the Trial Court found that these seven (7) children's physical or mental condition was impaired or seriously endangered as a result of the alleged sexual abuse of R.W. (the older step-child that is not part of this termination proceeding), by Father, whom after the allegations were made remained in the home with his Wife.

The allegations were that Father committed sexual crimes on R.W. in three separate counties, and that each county was investigating the sexual-abuse allegations - Jay, Adams and Wells. The police were immediately notified of the allegations and Father spoke to the detective assigned to investigate the matter, allowed the detective in his home, allowed the detective to look at his phone, provided the detective a letter written by R.W., and even provided the detective the name and telephone number for his Bishop - the religious leader of their Amish community.

Todate, the State did has not arrested Father and there has never been any criminal charges pressed to prosecute Father for the crime in any county. Yet, DCS has proceeded in their process on the presumption that Father in fact committed the allegations as

asserted, even though Father has maintained his innocence to these allegations since R.W. first leveled them against him in March of 2016. DCS readily substantiated Father as a sexual predator and the Trial Court affirmed the same by a preponderance of the evidence in their CHINS adjudication and parent participation plan which required sex offender counseling.

From the date of the removal of the children until the termination of parental rights trial, Father was continually and completely prevented from having any contact with his children whatsoever, even though there were no allegations of sexual abuse having occurred on any child of this action.

Dr. James Cates testified for DCS as an expert on Amish culture and a psychologist that works with families after a sex offense has occurred and he testified there are risks to other children when sex abuse has occurred in the home. However, when asked to consider his studies and career, and whether there is a way to predict or measure risk to other children in the home, he answered there is varying evidence and differing opinions on the subject. However, Dr. Cates boldly testified "No" when asked if when he is working with a family about molestation issues if he automatically takes the approach that there is a risk and works under that assumption.

Throughout the termination trial, Father's polygraph was readily discussed even though the test's admissibility had been challenged and all parties' acknowledged the unreliability of the polygraph test. In addition, the guardian ad litem (GAL) interjected into the trial court record unsolicited references to Father's polygraph results. As the trial court noted in the Appealed Order, "[t]he polygraph examination results indicated that

[Father] was deceptive to the main issue, which was the sexual abuse that occurred by [Father] on his step-daughter, R.W. Based on the polygraph examination, Phoenix Associates recommended that M.H. complete its Sex Offender Management and Monitoring program [hereinafter SOMM], which would require him to admit and take ownership of the sexual abuse against his step-daughter, R.W.

Accordingly, if Father would not admit to the crime, Father could not successfully complete SOMM or any other sex offender treatment program, and if unable to successfully complete SOMM, DCS would not institute an appropriate safety/treatment plan for the children that would permit Father's reunification with children. Thus, according to the Trial Court, if Father did not admit to the alleged crimes, then Father did not and could not complete the sex offender treatment offered Phoenix Associates. If Father would not admit to the crime on R.W., then the Trial Court would find a reasonable probability that Father had not remedied the situation that led to the other seven children's removal and would find a reasonable probability Father's continued relationship with the children posed a threat to their well-being. With a heavy heart, Father still maintains his innocence.

B. Proceedings on Direct Appeal

Petitioner appealed, arguing, that the Trial Court impermissibly infringed upon his fundamental rights which includes both the constitutional right against self-incrimination (Fifth Amendment) and the right to care, custody and control of his children (Ninth and Fourteenth Amendment), and the Trial Court did so without affording him the due process of law, by expressly requiring him to confess to a crime for

which he was never charged, and that he did not commit, in order to protect fundamental right to raise his children. The Indiana Court of Appeals reversed the termination of Mother and Father's parental rights to Children and remanded to the trial court the reinstatement of the CHINS cases, a re-examination of the requirements for reunification and a revised dispositional order outlining the services consistent with the holdings in their opinion that Parents must complete to reunify with Children. See [Appendix B]. Respondent filed a Petition to Transfer from the Indiana Court of Appeals on April 4, 2019, which was granted by Loretta H. Rush, Chief Justice of Indiana, on May 23, 2019. The Indiana Supreme Court found that the trial court did not violate Father's Fifth Amendment privilege against self-incrimination, and the Court's decision to terminate Parents' parental rights is not clearly erroneous and thereby affirmed the Trial Court's Order of Involuntary Termination of Parental Rights, Findings of Fact and Conclusions of Law, and Judgment as to Children's Mother, Rebecca Hilty, and Hilty Children's Father, Martin Hilty. See [Appendix C].

REASONS FOR GRANTING THE PETITION

I. There Is A Circuit Conflict

Circuit Opinions/Split:

United States v. York, 357 F.3d 14 (1st Cir. 2004)
United States v. Johnson, 446 F.3d 272 (2d Cir. 2006)
United States v. Lee, 315 F.3d 206 (3d Cir. 2003)
United States v. Dotson, 324 F.3d 256 (4th Cir. 2003)
United States v. Locke, 482 F.3d 764 (5th Cir. 2007)
United States v. Zinn, 321 F.3d 1084 (11th Cir. 2003)
United States v. Stoterau, 524 F.3d 988 (9th Cir. 2008)
United States v. Antelope, 395 F.3d 1128 (9th Cir. 2005)
United States v. Taylor, 338 F.3d 1280 (11th Cir. 2003)

U.S. Supreme Court

M.L.B. v. S.L.J., 519 U.S. 102 (1996)
McKune v. Lile, 536 U.S. 24 (2002)

U.S. Court of Appeals

Lacy v. Butts, 922 F.3d 371 (7th Cir. 2019)

State Supreme Courts

In re Samantha C., 268 Conn. 614 (2004)
In re Parental Rights as to A.D.L., 133 Nev. Adv. Op. 72 (Oct. 5, 2017)
Bennett v. Bigelow, 387 P.3d 1016 (Utah 2016)

State Court of Appeals

State v. Suzette M. (In re Clifford M.), 577 N.W.2d 547 (Neb. Ct. App. 1998)
In re Amanda W., 124 Ohio App. 3d 136 (1997)

II. This Case Was Wrongly Decided Below

The primary reason for DCS involvement stemmed from allegations leveled at M. H. sexually abused his stepdaughter (R. H.). Although DCS had made its determination, no additional evidence was purported at the house. And after R.H. was dismissed out because she had reached majority, DCS still wantonly maintained its presence by insisting other children were at risk. M.H. was never charged

criminally for anything, but nonetheless was labeled a sexual predator for which DCS referred M.H. to a SOMM program through Phoenix Associates in Fort Wayne, Indiana. SOMM required M.H. to either prove his innocence through polygraph, or "admit". M.H. could not be untruthful. As a result, M.H.'s parental rights were eventually terminated.

III. This Case Is An Ideal Vehicle

M.H. has faithfully maintained his innocence throughout notwithstanding M.H.'s fundamental rights pertaining to family have now been eviscerated. Yet, DCS and GAL insist upon compelling M.H. to admit the allegations.

This Court sometimes denies certiorari when the resolution of the question presented would be "irrelevant to the ultimate outcome of the case." Eugene Gressman *et al.*, *Supreme Court Practice* 248 (9th ed. 2007). This is not such a case. On the contrary, a grant of certiorari and reversal not only might but *would* be outcome-determinative on *all* issues in petitioner's appeal to the Seventh Circuit. This case is therefore an unusually good vehicle for resolving the circuit and various state court interpretations of *McKune v. Lile*, 536 U.S. 24 (2002).

CONCLUSION

Petitioner respectfully prays that this Honorable Court grant *certiorari*, and reverse the judgment below, and/or vacate the judgment and remand for reconsideration in light of any relevant forthcoming authority.

Respectfully submitted this 30th day of March, 2020.



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