

No. _____

IN THE
Supreme Court of the United States

KRISTY RENEE RASNICK,
Petitioner,

v.

DICKENSON COUNTY DEPARTMENT
OF SOCIAL SERVICES,
Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

- 1) Whether Petitioner was deprived her constitutional right affording her due process when the Virginia Supreme Court and the Virginia Court of Appeals by upholding the Dickenson County Circuit Court's decision which deprived Petitioner of her due process when the Circuit Court denied Appellant's appeal for not being timely and therefore denied Appellant the protections of counsel afforded her under Va. Code § 16.2-266(D)(2), the Virginia Constitution and the United States Constitution to have a prepared attorney to represent her before the state terminated her parental rights.

LIST OF PARTIES IN THE VIRGINIA SUPREME COURT

Dickenson County, Virginia Department of Social Services

Kristy Rasnake

STATEMENT PURSUANT TO RULE 14(1)(b)(iii)

Kristy Rasnake v. Dickenson County Department of Social Services, Case

Number 0688-19-3 from the Virginia Supreme Court.

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On Petition for a Writ of Certiorari to the United States

Court of Appeals from the Virginia Supreme Court

To create uniformity among the states in the interpretation of the Due Process Clause as provided in the United States Constitution. This is the Court of last resort to determine the proper due process to be afforded a parent before a governmental agency terminates the parent's rights to raise and rear children fear of government intrusion. The fact that states are conflicted on a parent's due process rights afforded under the Due Process Clause in the United States Constitution to have court appointed counsel and sufficient time to prepare for the hearing prior to terminating parental rights.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review the judgement of the Virginia Supreme Court since this issue concerns the United States Constitution and the interpretation of the Due Process Clause and the protections afforded therein.

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision involved is the Due Process Clause of the Fifth Amendment.

STATEMENT OF THE CASE

On November 29, 2018, the Juvenile Court entered an adjudication order concerning the abuse and neglect of the infant child. The Department filed the proposed foster care plan on November 30, 2018. Defendant's Exhibit 1. On December 5, 2018, the Juvenile Court entered the initial foster care plan and appointed a *guardian ad litem* for JWR. On December 12, 2018, the Juvenile Court appointed Appellant an attorney and set the hearing for December 19, 2018.

On December 19, 2018, the Dickenson County Juvenile Court conducted a termination hearing and, after speaking with her attorney for 10 minutes, the Juvenile Court terminated her parental rights. Transcript page 22, lines 15-18.

After the hearing, at some point, Appellant decided that she did not agree with the order and sought to appeal the Juvenile Court's Order. She advised her attorney on January 3rd, 2019 that she wished to file an appeal. Transcript page 18, lines 12-17. Her attorney refused to file the appeal, advising her that the appeal was beyond the 10 days allowed by rule. Id. lines 17-21. Appellant had to file her own appeal on the 8th day of January 2019. Id. lines 22-25.

In the Dickenson County Circuit Court, the Department of Social Services filed a Motion to Dismiss for failing to file a timely appeal, within the 10 days

provided by rule. Appellant moved the Dickenson County Circuit Court to accept the appeal and provide her with an attorney, that has enough time to review the case, investigate the facts and become prepared to protect her parental rights. The Dickenson County Circuit Court conducted a hearing on April 8, 2019. The parties presented evidence and made argument. That day the Circuit Court entered the order granting the Department's Motion to Dismiss. Mother filed a timely appeal. The Virginia Court of Appeals addressed the appeal without the benefit of oral argument, upholding the judgment of the Circuit Court of Dickenson County. Petitioner's counsel had difficulty contacting Petitioner due to her circumstances and therefore the Virginia Supreme Court granted Petitioner's Motion for an Extension to file her opening brief.

STATEMENT OF THE FACTS

Due to the nature of this appeal, only the necessary facts and procedure will be stated. On October 24, 2018, the Department of Social Services (The Department) took custody of JWR, child of Appellant. On November 29, 2018, the Juvenile Court entered an adjudication order concerning the abuse and neglect. The Department filed the proposed foster care plan on November 30, 2018. Defendant's Exhibit 1. On December 5, 2018 the Juvenile Court entered the initial foster care plan and appointed a guardian *ad litem* for JWR. On December 12, 2018, the Juvenile Court appointed Appellant an attorney and set the hearing for December 19, 2018. It is important to note that the attorney appointed to represent

Appellant, was not in court and his office was located in another county, as demonstrated on the addresses listed in the pleadings and letters.

Appellant testified that the hearing on December 19, 2018, was held in the afternoon. Transcript page 12, lines 18-25 and page 13, lines 1-2. Appellant testified that the 12th was on a Wednesday and that she was not able to meet with her court appointed counsel that day, nor the next six days. Transcript page 13, lines 8-25. Appellant testified that she met her court appointed attorney, regarding a termination hearing, on December 19, 2018, 20 minutes before the hearing. Transcript page 14, lines 2-11. They spoke for 10 minutes before the Juvenile Court terminated her parental rights. Transcript page 22, lines 15-18. Appellant testified that she did not have an opportunity to review the document terminating her parental rights with her attorney. Transcript page 14, lines 13-21. Appellant stated that she was advised and understood that the document and agreement was for her father to adopt JWR. *Id.* at lines 22-25. Appellant testified that she did not read nor have read to her the entrustment agreement. Transcript page 15 lines 1-4.

After the hearing, at some point, Appellant decided that she did not agree with the order and sought to appeal the Juvenile Court's Order. She advised her attorney on January 3rd, 2019 that she wished to file an appeal. Transcript page 18, lines 12-17. Her attorney refused to file the appeal, advising her that the appeal was beyond the 10 days allowed by rule. *Id.* lines 17-21. Appellant had to file her own appeal on the 8th day of January 2019. *Id.* lines 22-25.

When asked why she filed the appeal, Appellant stated:

Because I realized that the Department was not going to be good on their word and let my dad adopt him because that was my understanding. And so, when I saw that, you know, that they weren't going to let my father adopt my son, and that they were lying, then I filed the appeal.

Transcript page 19, lines 19-24.

The Department filed a Motion to Dismiss for failing to file a timely appeal, within the 10 days provided by rule. Appellant moved the Dickenson County Circuit Court to accept the appeal and provide her with an attorney, that has had sufficient time to review the case, investigate the facts and become prepared to protect her parental rights. The Virginia Court of Appeals entered an order based upon the brief's submitted, sustaining the Circuit Court's decision.

REASONS FOR GRANTING THE WRIT

On appeal, this Court reviews *de novo* the application of facts to defined legal standards, Ornelas v. United States, 517 U.S. 690, 699 (1996), The only question on appeal to be decided is a question of law and not fact and thus entitled to *de novo* review.

Pursuant to Va. Code § 16.1-266 (D)(2) if the parent faces termination of parental rights, the Court, "if the court determines that the parent . . . is indigent within the contemplation of the law, . . . shall appoint an attorney-at-law to represent him." The appointment of counsel is not some perfunctory action needed to take someone's child. It is intended to afford due process and protect society from the most profound of governmental takings. Implicit in that appointment is that the attorney will have sufficient time and knowledge to represent the client's

interests. However, in this situation that did not happen, and a mother lost her parental rights.

This is a civil matter; however, the Courts need to look to the criminal case law and the application of the Sixth Amendment principles concerning attorney's obligations in representing clients. "The Sixth Amendment's guarantee of assistance of counsel requires that counsel exercise such care and skill as a reasonably competent attorney would exercise for similar services under the circumstances. Stokes v. Warden, 226 Va. 111, 116-17, 306 S.E.2d 882, 884 (1983); see McMann v. Richardson, 397 U.S. 759, 770-71 (1970)." Frye v. Commonwealth, 231 Va. 370, 400, 345 S.E.2d 267, 287 (1986). The Virginia Supreme Court stated that:

For a considerable period of time, we have been applying the reasonable competence standard, but until now, we have not had an opportunity to adopt it formally as the rule in this jurisdiction. We now hold, therefore, that the constitutional guarantee of the assistance of counsel includes the right to the care and skill which a reasonably competent attorney would exercise for similar services under the circumstances.

Stokes v. Warden, Powhatan Corr. Ctr., 226 Va. 111, 116-17, 306 S.E.2d 882, 884 (1983).

The United States Supreme Court found that "in its Fourteenth Amendment, our Constitution imposes on the States the standards necessary to ensure that judicial proceedings are fundamentally fair." Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 33, 101 S. Ct. 2153, 2163 (1981). However, the Supreme Court fell short, by a vote, of finding that the Constitution required such protections in parental termination cases. Of course, the Supreme Court previously ruled that states need

not provide appointed counsel in criminal cases. Betts v. Brady, 316 U.S. 455 (1942). Such was the law for 20 years, until Gideon v. Wainwright, 372 U.S. 335 (1963). This Court has overruled long standing principles because a reflection of the impact demonstrates the injustice. Plessy v. Ferguson 163 U.S. 537 (1896) a 7-1 ruling which was overruled by Brown v. Board of Education 347 U.S. 483 (1954) by a 9-0 ruling. How long must the poor people of this country suffer at the hands of a governmental taking of their children? It is necessary to address this matter because Appellant should be entitled, not just statutorily, to have competent representation, including sufficient time for the attorney to prepare to guarantee that the “judicial proceedings are fundamentally fair.” Lassiter at 33. Much like the cases listed above, history demonstrates that inequity caused by delaying justice and fundamental protections.

While many states have continued to utilize the Lassiter opinion to deny parents court appointed counsel or to deny competent counsel. At least some of the states have gone beyond the majority’s opinion and adopted the dissenting opinion from Lassiter. In the Interest of N.A., 119 Haw. 28, 193 P.3d 1228 (Ct. App. 2008).

In the In the Interest of N.A., the Hawaii appellate court stated that “Applying the case-by-case balancing test of Lassiter, we conclude that Father was deprived of his due-process right under the United States Constitution when he was not appointed counsel until sixteen days prior to trial. In the Interest of N.A., 119 Haw. 28, 58, 193 P.3d 1228, 1258 (Ct. App. 2008).

Clearly, the states are at odds on how to apply the Lassiter opinion. Like Gideon, it is time to correct the in justice created by having poor people fighting for

the parental rights against government agencies without adequate counsel and time to prepare and represent their interest.

CONCLUSION

As demonstrated in numerous cases, Circuit Courts have inherent authority to achieve justice. The cornerstone of justice is due process, a fair hearing. In this case, the Petitioner was denied such a hearing. The Juvenile Court appointed counsel on the afternoon of December 12, 2018. Six days later, two of which were a Saturday and Sunday, the Juvenile Court terminated her parental rights on the 19th day of December 2018. Appellant had less than 10-minutes to discuss possible defenses, witnesses and facts with her court appointed attorney. It was not her court appointed attorney's fault the case was set so quickly, that was the judiciary. As such, the judiciary should correct the injustice Petitioner suffered. The Virginia Supreme Court and the Virginia Court of Appeals and the Dickenson County Circuit Court erred by denying Appellant her appeal and therefore denying her the due process guaranteed in the Constitution of the United States of America. Once the Courts stop affording the protections guaranteed to the people, then the suppression of the people will be complete.

Therefore, Petitioner prays this honorable Court grant her Writ for Certiorari and reverses and remand this matter to the Virginia Supreme Court with direction to remand the case to the Dickenson County Circuit Court and afford Petitioner the due process denied by the Juvenile Court.

KRISTY RENEE RASNICK

By Counsel

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Counsel for Appellant

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KRISTY RENEE RASNICK,
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DICKENSON COUNTY DEPARTMENT
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On Petition for Writ of Certiorari
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APPENDIX

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VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 10th day of July, 2020.

Kristy Renee Rasnick, Appellant,

against Record No. 200006
Court of Appeals No. 0688-19-3

Dickenson County Department of Social Services, Appellee.

From the Court of Appeals of Virginia

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court refuses the petition for appeal.

The Circuit Court of Dickenson County shall allow court-appointed counsel the fee set forth below and also counsel's necessary direct out-of-pocket expenses. And it is ordered that the Commonwealth recover of the appellant the costs in this Court and in the courts below.

Justice Chafin took no part in the resolution of the petition.

Costs due the Commonwealth
by appellant in Supreme
Court of Virginia:

Attorney's fee \$950.00 plus costs and expenses

A Copy,

Teste:

Douglas B. Robelen, Clerk

By:


Deputy Clerk

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday the 29th day of October, 2019.

Kristy Renee Rasnick,

Appellant,

against

Record No. 0688-19-3
Circuit Court Nos. CJ19-01 and CJ19-02

Dickenson County Department of Social Services,

Appellee.

From the Circuit Court of Dickenson County
Before Judges Petty, Athey and Senior Judge Clements

Kristy Renee Rasnick (mother) appeals a circuit court order dismissing her appeal from the juvenile and domestic relations district court (the JDR court). Mother argues that the circuit court erred by “depriving [her] of her due process when it denied [her] appeal for not being timely” and denying her “the protections of counsel afforded her under Va. Code § 16.1-266(D)(2), the Virginia Constitution and the United States Constitution to have a prepared attorney to represent her before the state terminated her parental rights.”

The Dickenson County Department of Social Services (the Department) previously had removed children from mother’s care, and her parental rights to those children had been involuntarily terminated. In April 2018, the Department became involved when the home where mother’s son, J.R., was living became uninhabitable due to a bed bug infestation. The Department provided prevention services to the family. In September 2018, mother tested positive for drugs, so the Department placed J.R. with a family friend through a safety plan. The family friend subsequently informed the Department that she could no longer care for J.R. The JDR court entered an emergency removal order, and J.R. was placed in foster care. Five days later, the JDR court entered the preliminary removal order and scheduled the adjudicatory hearing. Mother and father’s counsel moved to withdraw, which the JDR court granted. The JDR court appointed new counsel and continued the adjudicatory hearing. Mother advised the JDR court that she intended to retain counsel and requested another continuance. The JDR court denied the continuance because the hearing was on the “last

available date for the adjudication” and mother had had three different court-appointed attorneys. The JDR court further informed mother of her right to retain counsel before the dispositional hearing but warned her that if she appeared without counsel, it would proceed with the hearing. The JDR court entered the adjudicatory order and found that J.R. was abused or neglected.

The Department prepared a foster care plan with a goal of relative placement and a concurrent goal of adoption. The foster care plan stated that the Department was seeking termination of mother’s parental rights and not providing her services because her parental rights to other children had been terminated.

At the scheduled dispositional hearing, mother requested court-appointed counsel, and the JDR court appointed counsel for her and continued the matter for one week. On December 19, 2018, mother was represented by counsel and entered into an entrustment agreement. On the same day, the JDR court approved the entrustment agreement and terminated mother’s parental rights to J.R.

On January 8, 2019, mother filed *pro se* a notice of appeal. The Department moved to dismiss mother’s appeal because her notice of appeal was untimely. After mother’s counsel was permitted to withdraw, the circuit court appointed new counsel for mother. On April 8, 2019, the parties appeared before the circuit court.¹ The circuit court found that the JDR court entered its final orders on December 19, 2018 and that mother filed a late notice of appeal on January 8, 2019, after her counsel had advised her that it was too late to note an appeal. The circuit court found that mother’s appeal was not timely filed under Code § 16.1-296 and dismissed mother’s appeal. This appeal followed.

Code § 16.1-296(A) provides that “[f]rom any final order or judgment of the juvenile court . . . an appeal may be taken to the circuit court within 10 days from the entry of a final judgment” Mother’s appeal was not filed within ten days of the JDR court’s final order. “Where a statute contains ‘prohibitory or limiting language,’ the statute is mandatory, and a court cannot exercise its subject matter jurisdiction if the

¹ Mother did not timely file the transcript for the April 8, 2019 hearing; therefore, it is not part of the record. See Rule 5A:8(a). The transcript is not indispensable for a review of this appeal. Shiembob v. Shiembob, 55 Va. App. 234, 246 (2009); Turner v. Commonwealth, 2 Va. App. 96, 99 (1986).

requirements of the statute have not been met.” Boatright v. Wise Cty. Dep’t of Soc. Servs., 64 Va. App. 71, 80 (2014) (quoting Marrison v. Fairfax Cty. Dep’t of Family Servs., 59 Va. App. 61, 68 (2011)). Mother’s “failure to comply with [Code § 16.1-296(A)] precludes the exercise of jurisdiction by the circuit court.” Blevins v. Prince William Cty. Dep’t of Soc. Servs., 61 Va. App. 94, 101 (2012). Accordingly, the circuit court had no authority to hear mother’s appeal and did not err in dismissing her appeal. See Congdon v. Commonwealth, 57 Va. App. 692, 696 (2011) (“The statutory right of appeal . . . is implicitly waived (more precisely, forfeited) if the appellant misses the ten-day deadline . . .”).

Mother contends that her due process rights were violated. “The requirements of the due process clause are satisfied if a party ‘has reasonable notice and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it.’” Eddine v. Eddine, 12 Va. App. 760, 763 (1991) (quoting Dohany v. Rogers, 281 U.S. 362, 369 (1930)). There was no violation of mother’s due process rights. The circuit court had scheduled a hearing for her appeal, but was without authority to consider it and had to dismiss the appeal because mother failed to comply with the jurisdictional requirement of filing a timely notice of appeal. Blevins, 61 Va. App. at 101; Congdon, 57 Va. App. at 696.

Mother also argues that the JDR court erred by appointing counsel within one week of the termination of parental rights hearing. “[T]he Court of Appeals of Virginia is a court of limited jurisdiction. Unless a statute confers jurisdiction to this Court, we are without power to review an appeal.” Reaves v. Tucker, 67 Va. App. 719, 727 (2017) (quoting Prizzia v. Prizzia, 45 Va. App. 280, 286 (2005)). Code § 17.1-405 states, in pertinent part, that “[a]ny aggrieved party may appeal to the Court of Appeals from . . . [a]ny final judgment, order, or decree of a *circuit court* involving . . . the control or disposition of a child” (Emphasis added.) This Court does not have the jurisdiction to review the rulings of a juvenile and domestic relations district court. Therefore, we will not consider the arguments in mother’s brief regarding alleged errors of the JDR court.

For the foregoing reasons, the circuit court's ruling is summarily affirmed. Rule 5A:27. The appellant shall pay to the appellee \$150 damages.

It is ordered that the trial court allow counsel for the appellant a fee of \$725 for services rendered the appellant on this appeal, in addition to counsel's costs and necessary direct out-of-pocket expenses.

The Commonwealth shall recover of the appellant the amount paid court-appointed counsel to represent her in this proceeding, counsel's costs and necessary direct out-of-pocket expenses, and the fees and costs to be assessed by the clerk of this Court and the clerk of the trial court.

This order shall be certified to the trial court.

Costs due the Commonwealth
by appellant in Court of
Appeals of Virginia:

Attorney's fee \$725.00 plus costs and expenses

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:

Marty K.P. Ring
Deputy Clerk