

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

RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Petitioner was deprived of her constitutional right of due process when the Virginia Court of Appeals and the Supreme Court of Virginia upheld a decision by the Dickenson County Circuit Court finding that it lacked jurisdiction to hear an untimely appeal of a Juvenile and Domestic Relations District Court Order pursuant to Virginia Code § 16.1-296(A).

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION.....	1
STATUTORY PROVISION INVOLVED	1
STATEMENT.....	1
REASONS FOR DENYING PETITION	3
CONCLUSION.....	5

TABLE OF AUTHORITIES

	Page(s)
CASES	
<u>Boatwright v. Wise Cty. Dep't of Soc. Servs.,</u> 64 Va. App. 71 (2014)	4
<u>Boddie v. Connecticut,</u> 401 U.S. 371 (1971)	4
<u>Congdon v. Commonwealth,</u> 57 Va. App. 692 (2011)	4
<u>Dohany v. Rogers,</u> 281 U.S. 362 (1930)	4
<u>Eddine v. Eddine,</u> 12 Va. App. 760 (1991)	4
<u>Marrison v. Fairfax Cty. Dep't of Family Servs.,</u> 59 Va. App. 61 (2011)	4
CONSTITUTIONAL PROVISION	
U.S. CONST. art. III § II.....	1
STATUTES	
Va. Code § 16.1-296	3
Va. Code § 16.1-296(A).....	1, 3

OPINIONS BELOW

The opinions of the Dickenson County Circuit Court are reported at CJ19-01 and CJ19-02. The opinion of the Court of Appeals of Virginia is reported at Record No. 0688-19-3. The opinion of the Supreme Court of Virginia is reported at Record No. 200006.

JURISDICTION

This Court has jurisdiction pursuant to Article III, Section II of the United States Constitution as Petitioner alleges a violation of her constitutional right of due process.

STATUTORY PROVISION INVOLVED

Virginia Code § 16.1-296(A) which provides: “From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken to the circuit court within 10 days from the entry of a final judgment, order or conviction and shall be heard de novo.”

STATEMENT

In April 2018, the Dickenson County Department of Social Services (“DSS”) became involved with Petitioner when the home where her son, J.R., was living became uninhabitable due to a bed bug infestation. DSS provided prevention services to the family. In September 2018, Petitioner tested positive for drugs, so DSS placed J.R. with a family friend through a safety plan. The family friend subsequently informed DSS that she could no longer care for J.R. The Juvenile and Domestic Relations District Court (“J&DR Court”) entered an emergency removal order, and

J.R. Was placed in foster care. Five days later, the J&DR Court entered the preliminary removal order and scheduled an adjudicatory hearing.

Thereafter, Petitioner's counsel moved to withdraw, which the court granted. The J&DR Court appointed new counsel and continued the adjudicatory hearing. Petitioner advised the Court that she intended to retain counsel and requested another continuance. The J&DR Court denied the continuance because the hearing was on the "last available date for the adjudication" and noted that the mother had three different court-appointed attorneys. The J&DR Court informed Petitioner of her right to retain counsel before the dispositional hearing but warned that if she appeared without counsel, it would proceed with the hearing. The J&DR Court conducted a hearing and entered the adjudicatory order finding that J.R. was abused or neglected.

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

On January 8, 2019, Petitioner filed a *pro se* notice of appeal to the Dickenson County Circuit Court ("Circuit Court"). DSS moved to dismiss the appeal because her notice of appeal was untimely. After Petitioner's counsel was permitted to withdraw, the Circuit Court appointed new counsel. On April 8, 2019, the parties appeared before the Circuit Court. The Circuit Court found that the J&DR Court entered its

final orders on December 19, 2018 and that Petitioner filed a late notice of appeal on January 8, 2019, after she was advised by counsel that it was too late to appeal. The Circuit Court found that Petitioner's appeal was not timely filed under Virginia Code § 16.1-296 and dismissed her appeal.

Petitioner appealed the Circuit Court's decision the Court of Appeals of Virginia ("Court of Appeals"). The Court of Appeals affirmed the decision of the Circuit Court and held that it did not have jurisdiction to review Petitioner's claim that J&DR Court violated her due process rights by appointing counsel within one week of the termination of parental rights hearing. The Supreme Court of Virginia refused to grant Petitioner's petition for appeal.

On December 7, 2020, Petitioner filed a Petition for a Writ of Certiorari and Motion for Leave to Proceed in Forma Pauperis with the Clerk of this Court. The Clerk docketed the Petition and Motion on February 23, 2021.

REASONS FOR DENYING PETITION

This Court should deny the petition because the Circuit Court did not have jurisdiction to hear Petitioner's appeal from the J&DR Court and thus, could not have violated her right to due process.

Virginia 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..." It is undisputed that Petitioner's appeal was not filed within ten days of the J&DR 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 requirements of the statute have not been met.” Boatwright 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)). Accordingly, the Circuit Court had no authority to hear Petitioner’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...”).

Consequently, the Circuit Court’s proper determination that it lacked jurisdiction to hear Petitioner’s appeal did not violate her right to due process. “The requirements of the due process clause are satisfied if a party ‘has reasonable notice and reasonable opportunity to be heard and to present a 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)). Petitioner was afforded a statutorily guaranteed *de novo* trial before the Circuit Court. However, she chose to sit on her right and wait to note her appeal until after the prescribed time limit, and therefore waived her due process right to a *de novo* hearing. “[T]he hearing required by due process is subject to waiver.” Boddie v. Connecticut, 401 U.S. 371, 378-379 (1971). Petitioner cannot couch her dilatory conduct as a violation of due process in order to obtain a hearing that she is not entitled to as a matter of law.

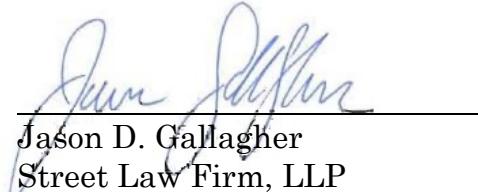
CONCLUSION

The petition for a writ of certiorari should be denied because Petitioner's right to due process was not violated.

Respectfully submitted,

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By Counsel



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