

20-8130

No. _____

SUPREME COURT OF THE UNITED STATES

Jasma McCullough

Petitioner,

Supreme Court, U.S.

FILED

MAY 17 2020

OFFICE OF THE CLERK

vs.

Shayolonda Herron, Frederick Jones; Sondra White

Respondent,

On Petition for a Writ of Certiorari to

the United States Court of Appeals

for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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I. Questions Presented

1. Whether a child abuse investigator can give a medical diagnosis/opinion to the court without a Doctors opinion to remove a child.
2. Whether unauthorized practice of Medicine violates both Procedural and Substantive Due Process
3. Whether the District and Appellate courts can determine if /when drugs have been used without seeking the opinion of a Medical Review Officer/Expert when removing a child.
4. Whether simply notifying a parent of a child abuse allegation satisfy the 14th Amendment Procedural Due Process requirements when removing a child.
5. Whether a child abuse investigator relying on an uncorroborated allegation and testifying that it is "known knowledge of facts" violates the 14th Amendment Substantive Due Process Clause.
6. Whether a child abuse investigator can give a false testimony in effort to remove a child if probable cause exists for any other reason.

7. Whether a child abuse investigator withholding exculpatory evidence constitute perjury by omission and violate the 14th Amendment Substantive and Procedural Due Process Clause.
8. Whether a court could accept a disputed affidavit used to remove a child in a prior proceeding as true and correct without requiring evidence.

PARTIES TO THE PROCEEDING

All parties to the proceeding are named in the caption.

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1.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Jasma McCullough, Pro Se respectfully petitions
for a writ of certiorari to review the judgment of the
United States Court of Appeals for the Fifth Circuit

OPINIONS BELOW

The decision of the United States Court of Appeals for the Fifth Circuit
is Unpublished

JURISDICTION

Ms. McCullough's appeal to the U.S Court of Appeals for the Fifth
Circuit was denied on December 16th, 2020. Due to Covid, the Supreme
Court ordered a 150-day extension. Ms. McCullough invokes this
Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this
petition for a writ of certiorari within 150 days of the U.S Court of
Appeals for the 5th Circuit judgment.

2.

CONSTITUTIONAL PROVISIONS INVOLVED

1. 14th Amendment Procedural due process is the guarantee of a fair legal process when the government tries to interfere with a person's protected interests in life, liberty, or property.
2. 14th Amendment Substantive due process is the guarantee that the fundamental rights of citizens will not be encroached on by government.

STATEMENT OF THE CASE

The Fourteenth Amendment (Amendment XIV) to the United States Constitution was adopted on July 9, 1868, as one of the Reconstruction Amendments, it addresses citizenship rights and equal protection under the law. This court held the right to procedural due process is implicated where a constitutionally protected liberty or property interest is concerned. *Bd. of Regents of St. Colleges v. Roth*, 408 U.S. 564, 570, 92 S.Ct. 2701, 2705 (1972). The crux of procedural due process is the right to notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Fuentes v. Shevin*, 407 U.S. 67, 80, 92 S.Ct. 1983, 1994 (1972). The U.S. Supreme Court has repeatedly held that parents have a fundamental right to make decisions as to the companionship, care, custody, and management of their children, which right is a protected liberty interest under the Due Process Clause of the Fourteenth Amendment. *Troxel v. Granville*, 530 U.S. 57, 65–66, 120 S.Ct. 2054, 2060 (2000). As a result, there can be no doubt that the Fourteenth Amendment is implicated whenever the

government seeks to separate a parent from his or her child, and due-process principles generally require the right to notice and a hearing before children are separated from their parents. This case presents the question of whether a parent's substantive and procedural rights have been violated when a social gives medical opinion about a child's health without consulting with a Doctor, can rely solely on uncorroborated allegations and state they are "known knowledge of facts", omit exculpatory evidence, falsify a child removal affidavit if probable cause exists for something else and if the court is allowed to act as an "expert witness" when determining when/if drug usage has been involved.

CPS Investigation and Child Removal

On or around November 11th, 2014, Texas Department of Family and Protective Services (DFPS) received a call from Paternal Grandmother Washita McCoy alleging that Grandson KRM had a "Seizure Disorder", was referred to a "Neurologist" and Petitioner (Jasma McCullough) failed to take him. On or around November 24th, 2015, (DFPS) received a call stating Petitioner was engaged in a "Domestic Violence dispute" while "driving 10-month KS on her lap". Petitioner received a call from DFPS investigator Shayolonda Herron on or around December 5th, 2014 and advised Shayolonda Herron she wanted nothing to do with CPS at all. She was then advised by Shayolonda Herron that if she did not comply, Herron would have to "go to the courts". Petitioner, under duress, met with Shayolonda Herron December 9th, 2014, for approximately 10 minutes to discuss the seizure, allegations, domestic violence with KS and getting the children's shots up to date, they were 4 months behind, petitioner told Herron she was no longer interested in getting the vaccinations due to personal reasons. Petitioner denied all allegations, explained that KRM had 3 seizures in his lifetime, went to

the ER all three times and all Doctors diagnosed them as "Febrile Seizures", seizures associated with a fever and instructed that she alternate Motrin and Tylenol, and that they did not refer her to a neurologist. Petitioner told Herron that the "Dispute" with KS had nothing to do with her, it was a fight with Perriun Simmons (KS Father) and Petitioner's brother, Maron Smith, she was just going to get her vehicle she shared with Mr., Simmons. There was no talk about KS being in petitioners lap at that time. That was the end of the investigation, per petitioner, On or around December 18th, petitioner was advised by Herron that she needed to take a drug test. Petitioner asked why and informed Herron that she had no vehicle to just jump and do it. Herron told petitioner if she did not take a drug test, she would go to the courts and have the children removed. On December 23rd, 2014, Herron demanded that the children get their vaccinations and notify Petitioner that their (government) Medicaid had lapsed and advised her to go the Health & Humans Services that day. Petitioner advised her that it is almost Christmas, and she could not get an appointment the same say for vaccinations, Herron told Petitioner if the

children do not get their vaccinations she was going to the court. Petitioner demanded a supervisor. Petitioner spoke with Supervisor, Sondra White and explained the unhealthy relationship between her and Herron along with the unreasonable demands and time constraints and ask for a new investigator. White told petitioner "it's best you do what she says because once you lose your kids it will be hard to get them back".

On January 5th, 2015, Petitioner received a txt at 9pm from Herron stating, "She needed to see the kids for a 30-day contact, she already saw the oldest, just needed to see KS." Petitioner advised her that she was at work, the visit would have to wait til morning. On January 6th, 2015, Perriun Simmons took KS to see Herron for the "30-day contact". Mr. Simmons called Petitioner 30 minutes later crying and explained "They (DFPS) took KS". Petitioner called Herron and was told that "if she wanted to know why the kids were taken, she had to come to the office". When petitioner arrived, she was advised that she lost her kids because her hair follicle tested positive for cocaine".

8.

On 1/5/2015 Shayonloda Herron at both her Supervisor Sondra White and Frederick Jones instructions filed an Affidavit for an emergency Ex-Parte Removal with the Harris County District court alleging Medical Neglect and Neglectful Supervision along with:

1. Mother had porn on the internet
2. KRM had a "seizure disorder" that was ongoing, untreated and getting progressively worse and mother failed to get him medical attention
3. Mother refused to take her children to the doctor
4. Mother was referred to a neurologist and failed to take KRM
5. Mother told her that she got into a domestic violence dispute with Perriun Simmons because she saw Simmons with another woman in her car
6. Mother admitted to driving with KS in her lap while engaging in a domestic violence dispute with Perriun Simmons and that mother did not think it was anything wrong.
7. Mother tested positive for cocaine

Petitioner's children were returned to her after 1yr, 3 months and 23 days after claims against her was dismissed. January 5th, 2017, Petitioner sued alleging her 14th Amendment Procedural and Substantive Due Process rights were violated arguing that Shayolonda Herron Falsified her affidavit by stating the children were "Medically Neglected" because Herron had no evidence KRM was ever referred to a neurologist or have a "Seizure disorder" nor never sought medical records or Doctor's opinion for KRM. Alleging that Petitioner refused to take her children to the doctor and Neglectful Supervision, claiming Petitioner told her she drove with KS on her lap and engaged in a Domestic Violence dispute because Mr. Simmons was driving with a woman in the car, and stating that the intake was from law enforcement when there are no reports from law enforcement and omitting Petitioners negative drug urinalysis results from the Ex-Parte hearing. The district court dismissed all claims holding.

Medical Neglect (Texas Department of Family and Protective Services)

Failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child.

“The summary judgment evidence does not raise a fact issue that Herron knowingly and intentionally, or with reckless disregard for the truth, made a false statement in her affidavit about KNM’s seizure disorder. McCoy and his mother both told Herron that the KNM had a seizure disorder, and Plaintiff admitted that KNM had a seizure several weeks earlier. Simply because Plaintiff disagrees with others’ characterization of her son’s medical history does not raise a fact issue that Herron lied in her affidavit when telling the court that family members told her that KNM had a seizure disorder.

(see ROA 20-20058.1669-1697)

Neglectful Supervision (Texas Department of Family and Protective Services)

Placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that result in bodily injury or a substantial risk of immediate harm to the child.

The final District Court judgment also held "The statement in Herron's affidavit that Plaintiff got into a verbal altercation with her baby's father and then drove away in the father's vehicle with the unrestrained baby on her lap was supported by summary judgment evidence that the factual basis for this information came from a police report of the incident that was found in the file. Herron's field notes also recounted that Plaintiff later admitted to Herron that Plaintiff was holding the baby on her lap as she drove away, and that Herron attempted to contact the baby's father for his version of the incident but was unsuccessful".

The court concluded, "Even if the court were to assume that Herron lied in her field notes and the lie was repeated in Herron's affidavit, the false statement was not material to the court's determination of probable cause as there is evidence in the record supporting the removal of the children based on medical neglect."

Drug Test

The court held: The undisputed summary judgment evidence supports Herron's statement that McCullough tested positive for cocaine from a hair follicle test. The fact that the contemporaneous urinalysis sample tested negative did not raise a constitutional claim that Herron lied in her affidavit. The negative urinalysis would on raise inference that the usage was not recent."

Oddly, the affidavit used in the 2015 Ex Parte Emergency removal is the same affidavit the District used to come up with its conclusion.

There are no police reports in any file, there are no medical records or doctor's opinions in any file.

On appeal, petitioner renewed her argument that both her Procedural Due Process and Substantive due were violated. Her son does not have

a seizure disorder, Herron is not a Doctor or Medical Professional, drug test results are in controversy because Herron omitted Petitioners negative drug test results from the Ex Parte hearing both were administered the same day and petitioner never used drugs, petitioner never drove with KS on her lap or admitted to engaging in a domestic violence dispute with Perriun Simmons, Herron has no medical records to substantiate her claims and there are no police reports corroborating her story.

The Court of Appeals gave a similar if not exact recitation of the U.S District Courts M&R and AFFIRMED

REASONS FOR GRANTING THE WRIT

To avoid erroneous deprivations of parent's 14th Amendment Procedural and Substantive Due process rights.

In order to prevail on a Fourteenth Amendment procedural due process claim, a plaintiff must show (1) that she possessed a protected liberty or property interest of which she has been deprived; and (2) that the procedures afforded to her were not constitutionally sufficient. *Victory*, 814 F.3d. at 67 (citing *Swarthout v. Cooke*, 562 U.S. 216, 219 (2011)).

Today, a parent child relationship in the 5th Circuit is threatened by ex parte emergency removals if DFPS receives a call alleging a child is ill because it has been held that a social worker can simply go tell the court "what they've been told" by the caller without requiring any qualified medical opinion, facts, investigation or evidence which does not allow the parent their Procedural Due Process Right to be heard. Telling a court that a child has a "Seizure Disorder that is ongoing, untreated and getting progressively worse" is a Medical Opinion that only a Doctor is qualified to give. The crux of procedural due process is the right to notice and an opportunity to be heard at a meaningful time

and in a meaningful manner. *Fuentes v. Shevin*, 407 U.S. 67, 80, 92 S.Ct. 1983, 1994 (1972) However, if the State courts, District Court and Court of Appeals accept the same affidavit used to remove the child as "True and Correct" requiring no evidence, parents have no recourse and no right to redress their grievances with the court when they have lost before they filed their complaint. The court also held that because Herron told Petitioner about the allegations, that was her notice and opportunity to be heard.

A social workers affidavit can also contain false or misleading information if there is probable cause for something else.

Finding due process right to be free from deliberately fabricated evidence in a child abuse proceeding where plaintiff produced evidence that a social worker. deliberately falsified statements *Kovacik v.*

Cuyahoga Cnty. Dep't of Children & Family Servs. 724 F.3d 687 (6th

Cir. 2013). A parent also does not have the right to decide if they want

their children vaccinated or not which is contrary to *Troxel v. Granville*,

530 U.S. 57, 65–66, 120 S.Ct. 2054, 2060 (2000) and courts having the

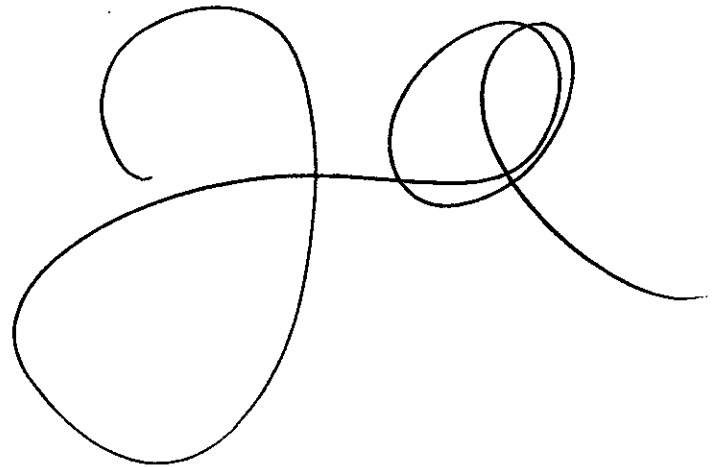
authority to decide if and when a parent has used drugs without

obtaining an expert opinion. It is important that thus court address the questions presented because parents will have no protections in the 5th Circuit if they allege, they have been injured by a child abuse investigator although the constitution allows it. Because the District Court and Court of Appeals Accepted the disputed affidavit that was used in a child removal proceeding as true and correct without requiring a Doctors opinion or any evidence to substantiate the claims, a review is warranted. Allowing unauthorized practice of medicine in a child welfare proceeding is fatal. Contrary to the District Court and Court of appeals final judgement, although it is stated numerous times that respondent produced evidence, the record will show no evidence submitted in State, Federal or Appellate Court.

17.

CONCLUSION

For the foregoing reasons, Ms. McCullough respectfully requests that this Court issue a writ of certiorari to review the judgment of the 5th Circuit Court of Appeals.

A handwritten signature in black ink, consisting of a large, stylized 'J' or 'G' shape followed by a smaller, more complex loop and a trailing line.