No. 20-848

In the Supreme Court of the United States

DAVID SNYDER

Petitioner,

v.

ALABAMA MADISON COUNTY
DEPARTMENT OF HUMAN RESOURCES

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

PETITION FOR A WRIT OF CERTIORARI

DAVID SNYDER
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QUESTIONS PRESENTED

First Question Presented: An indigent parent relocated to a State with expanded Medicaid to get addiction treatment, because his home State, which was adjudicating his parental rights, did not have expanded Medicaid, and had failed to provide him with necessary, adequate reunification services, pursuant to 42 U.S.C. §671(a)(15)(B). On the date set for trial, the indigent parent is 1,200 miles away in a 42 C.F.R. Part 2 addiction treatment program and requests to participate at his trial remotely. If the adjudicating State has the technical capability to grant such a request for remote participation but denies it, is that denial a violation of the parent's due process?

Second Question Presented: Is a State order terminating a parent's rights valid if the State violated the parent's rights of due process, equal protection, and to be secure in effects and papers, and if the State violated federal law 42 U.S.C. §290dd-2, and federal regulation 42 C.F.R. Part 2, during the trial to adjudicate that parent's rights *forever*?

Third Question Presented: During a State's bifurcated custody proceedings, if the State violated federal laws & regulations, and a parent's rights of due process, equal protection, and to be secure in effects and papers, and that State then terminates the

parent's rights, on appeal, must the State provide all records from its bifurcated proceedings, which were initiated, and bifurcated, without notice to the parent?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

Christopher v. Harbury, 536 U.S. 403 (2002)

M.L.B. v. S.L.J, 519 U.S. 102, 104 (1996)

Santosky v. Kramer, 455 U.S. 745 (1982)

Smith v. Organization of Foster Families, 431 U.S. 816, 824-47 (1977)

Stanley v. Illinois, 405 U.S. 645 (1972)

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SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari is issued to review the judgment below.

OPINIONS BELOW

The opinion of the Alabama Supreme Court denying a review of the merits appears at Appendix C and is unpublished. The opinion of the Alabama Court of Civil Appeals appears at Appendix A and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was July 11, 2020. A copy of that decision appears at Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL & STATUTORY PROVISIONS

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STATEMENT OF THE CASE

General Background

Alabama removed my child without notice to me, or to any paternal relative, as required by 28 U.S.C. §1738A(e) and 42 U.S.C. §671(a)(29). I am the legal father, not "putative father." After the State removed my child, she was declared "dependent," again without notice. Alabama then

petitioned to terminate my parental rights ("TPR"), again without notice.

After Alabama initiated its child custody proceedings without notice, it unilaterally bifurcated the proceedings: (1) child dependency and permanency and (2) parental fitness. After obtaining a dependency determination, Alabama petitioned to terminate my parental rights, without notice. I learned of the proceedings 17 months later, while in a 42 C.F.R. Part 2 addiction treatment program 1,200 miles away. I was in that other state because Alabama does not have expanded Medicaid, and it had failed to provide adequate services for a "safe reunification," required by 42 U.S.C. §671(a)(15)(B)(i)(ii). My request to attend my trial remotely was denied, although court had the technical capability to grant it.

The adjudication of my parental rights was conducted without me, but with a court appointed attorney that I had tried to replace with a retained attorney; however, my new lawyer's had to withdraw because he had a 6-week military duty and the court would not grant continuance for his service and for him to get up to speed. The trial was held on schedule, and three weeks later, Alabama terminated my parental rights. During my appeal, I discovered the State had

violated my constitutional and statutory rights, and had also violated federal laws and regulations *in the courtroom* during the adjudication of my parental rights.

Alabama violated 42 U.S.C. §290dd-2(a) and 42 U.S.C. §290dd-2(c) which protects a patient's substance use disorder ("SUD") treatment records, 42 C.F.R. §2.13(a) and 42 C.F.R. §2.13(b), which prohibit the use of federally-protected records against a patient at a trial, 42 C.F.R. §2.63(a), which protects the confidential communications about a patient's diagnosis, treatment, or referrals, 42 C.F.R. §2.64(a), which stipulates the procedures a party with a legally recognized interest must follow to apply for a disclosure of protected records, 42 C.F.R. §2.64(b), which requires that party to give adequate notice of the disclosure application to the patient, and 42 C.F.R. §2.64(c), 42 C.F.R. §2.64(d), 42 C.F.R. §2.64(e), which stipulate the content and criteria a disclosure order must have to ensure its compliant with 42 C.F.R. Part 2.

When I discovered all of the federal violations that occurred during the trial to adjudicate my parental rights forever, I asked for the dependency and permanency proceeding records, suspecting I would find more violations there. That was denied. The trial court said that I was no longer the

father and could not access those records. So I requested to consolidate the dependency records with the record on appeal of the termination of my parental rights, but the appellate court denied that. Next, I separately appealed the dependency and permanency determinations, but the appellate court said there was no final order to appeal and dismissed it.[1] The appellate court then affirmed the termination of my parental rights, without opinion. The Alabama Supreme Court denied certiorari. Then I launched a collateral attack on the dependency and permanency determination, under Rule 609b)(6). The trial court denied the 60(b)(6) motion for relief and I appealed. The trial court refused to release the record on appeal, stating the case was "already decided," and the appellate court denied my request for a mandate to the trial court to provide the record on appeal. The appellate dismissed my appeal as untimely, although I had provided written, objective evidence from U.S.P.S.

Events Leading to First Question

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[1] However, I received the record on appeal for the dependency determination before the appeal was dismissed.

I have no legal background, so I'll tell my story in plain language. I was married December 26, 2016, and nine months to the day, on September 26, 2017, my child was born. Regrettably, my wife and I were caught up in the nationwide opiate crisis and were addicted to opiates; however, to our credit, our child was born healthy, full-term, and with no drugs in her system. Alabama was involved with us because we were arrested earlier in the year for possession of drug paraphernalia, and my wife had three small children (my step-children). This misdemeanor was my first arrest. The Alabama Madison County Department of Human Services ("DHR") took custody of my wife's three children, and my wife and I were evicted from our home due to the incident.

Because we lost our home after the arrest, and my wife was pregnant, my mom allowed us to stay, rent free, in an apartment building she owned. However, about 60 days after we moved into the apartment, my mom discovered that we were stealing from her, and made us move out. This caused a riff between my wife and my mom, but my mom and I remained cordial.

When our baby was born September 26, 2017, my wife did not want my mom at the hospital, as she was upset for being evicted. At the hospital were the Alabama DHR

caseworker(s), my wife's cousins and myself. The day after the birth, DHR, my wife, the maternal cousins and I devised a written agreement, entitled a "safety plan" for my wife's cousins to take our child while DHR rehabilitated us for safe reunification with our baby. We all signed the agreement.

After the birth, I visited our child at DHR's facility and also attended DHR Individual Service Plan ("ISP") meetings there. In October 2017, a DHR caseworker asked me to relay a message to my mom to stop bugging them. Several weeks later, my mom was diagnosed with breast cancer, and in November 2017, she relocated to Derry New Hampshire, where she owned property, to begin cancer treatment at the Dana Farber Cancer Institute in Boston, MA. I remained in Alabama with my wife and we waited for DHR to provide us services for reunification.

Between November 2017 and June 2018, due to my addiction and homelessness, I was arrested several times for other petty misdemeanors. DHR never offered my wife and I any real opiate addiction treatment. DHR never offered us housing support or job counseling. My wife and I slept in our car, or at the Salvation Army, after our child's birth. We received minimal outpatient treatment at a free, state-supported, mental health clinic, Wellstone, Inc. ("Wellstone").

Wellstone is a certified 42 C.F.R. Part 2 program, but in 2018 it had no detox and no inpatient treatment program. The outpatient treatment we received there was minimal, and being homeless and broke made it a challenge to even get to our weekly counseling session.

Between October 2017 and August 2018, DHR was supposed to rehabilitate my wife and I for a "safe reunification." However DHR failed to provide us with adequate services. We both needed medically supervised detoxification, followed by an inpatient substance abuse treatment program. Without treatment our lives were chaotic, and my wife and I soon separated. I called my mom in August 2018, still addicted, still homeless and still unemployed. I called her for help because I finally realized that I was never going to get any reunification services from DHR.

My mom helped me relocate by buying me a one-way bus ticket from Alabama to Manchester New Hampshire, and by giving me a place to sleep once I arrived there.

Alabama does not have expanded Medicaid and I was an indigent, homeless addict. If the State had expanded Medicaid, I could have gotten proper addiction treatment in Alabama, regardless whether DHR helped me or not. But with neither lifeline available

to me there, I knew I had to do something else. I knew that New Hampshire had expanded Medicaid, and if I were a resident there, the State could help rehabilitate me via its expanded Medicaid program. So I left Alabama for New Hampshire to get medical treatment for my addiction, and to try to help my mom through her chemo, which was about to start.

I arrived in New Hampshire the first of September 2018, in the grips of addiction. I acted exactly like an untreated addict would act. I was paranoid and drank alcohol furtively, hiding empty bottles around my mom's house. Even though I broke her "no drugs or alcohol" rule, I knew she was secretly relieved that I was not on heroin. At the time, Mexican heroin was being laced with fentanyl and could kill a person instantly, while alcohol usually takes years to kill someone. I got it together enough to accompany my mom to chemo treatments in Boston, while I struggled with my addiction.

The first round of my mom's dose dense chemo ended December 2018. The second round was to start January 2019. She decided to return to Alabama for the second round because the properties she owned there. On January 5, 2019 (my sober day), I checked into the Hampstead Psychiatric Hospital for its three week medically

supervised detox program. After my release, I went to "Turning Point," a 90-day residential treatment program, administered by the Southeastern New Hampshire Services, which is a certified 42 C.F.R. Part 2 program. After being released from Turning Point, I went to live at the Bonfire Recovery Services, LLC sober living program, and I passed every random urine test. I sincerely wanted to kick my addiction in order to reunite with my daughter. My actions in New Hampshire prove that.

Today, two years later, after getting proper treatment, I am clean, sober and gainfully employed. I live at the Oxford House in Manchester New Hampshire, where I was elected to be their house treasurer. I am very thankful to New Hampshire for my recovery. After completing chemo in Alabama in March 2019, from June to August 2019, my mom had 35 radiation treatments while there. Today she is in remission, cancer free.

However, while all this was happening, unbeknownst to me or my mom, thirty-two (32) days after I signed their "safety plan," DHR initiated petitioned to have my child declared "dependent," which meant the state wanted custody. In its petition, DHR claimed my child was in physical danger and needed to be removed immediately. However, my child was continually with her maternal

cousins, so DHR's statement is suspect. DHR never notified me of its dependency petition, even though I was at their facility eleven (11) times between October 2017 and April 2018. Also, in DHR's files were my mom's and brother's names, addresses, phone numbers but DHR never contacted them, as required by 28 U.S.C. §1738A(e), which is the national standard for child custody proceedings.

Next, in October 2018, DHR initiated the proceedings to terminate my parental rights, which paves the way for strangers to adopt my child, and again, neither I, nor anyone in my family, was notified. So DHR initiated two child custody proceedings without giving notice to me, or to any paternal family member. These events lead to my first question, which is, perhaps, a question of first impression, pursuant to U.S. Supreme Court Rule 10(c):

First Question Presented: An indigent parent relocated to a State with expanded Medicaid to get addiction treatment, because his home State, which was adjudicating his parental rights, did not have expanded Medicaid, and had failed to provide him with necessary, adequate reunification services, pursuant to 42 U.S.C. §671(a)(15)(B). On the date set for trial, the indigent parent is 1,200 miles away in a 42 C.F.R. Part 2 addiction treatment program and requests to

participate at his trial remotely. If the adjudicating State has the technical capability to grant such a request for remote participation but denies it, is that denial a violation of the parent's due process?

I claim it is a violation of my due process. The U.S. Supreme Court has stated, "process is constitutionally due a natural parent at a state-initiated parental rights termination proceeding." [See APPENDIX I, *Santosky v. Kramer*, 455 U.S. 745 (1982).]

Events Leading to Second Question

On June 5, 2019, while my mom was still in Alabama, I informed her of a hearing to be held in two weeks, on June 19, 2019. That hearing was for the State to decide whether to terminate my parental rights or not. After three months of sobriety and some clear thinking, I discovered DHR petitioned to terminate my parental rights eight (8) months earlier, and that DHR had petitioned and received a dependency determination seven (7) months before that. I discovered all of this after 90-days of sobriety, and I could think clearly with all the drugs & alcohol purged from my system. I contacted DHR from my inpatient treatment program the end of March 2019. DHR took my contact information and sent me a certified letter April 2019, notifying me of their petition to terminate my parental rights. This was my

first notice of any custody proceedings that apparently had been ongoing for 17 months.

It was then I learned that the "maternal cousins" in DHR's "safety plan" were not actually cousins; those people were distantly related to my wife's family and are legal strangers to my child.

Court records show that DHR never notified my family, or searched for any viable alternatives to dependency or the termination of my parental rights ("TPR"), and both are required by 42 U.S.C. §671(a)(19) and 42 U.S.C. §671(a)(29). [See APPENDIX E] However, records from the dependency and permanency proceedings *do* show that I provided DHR the contact information of my mom and my brother as my "family resources."

Because I was still penniless in New Hampshire and living in a state-supported residential addiction treatment program, and then in sober living, I could not attend the trial to adjudicate my parental rights. However, my mom attended and told me everything that happened in the courtroom. At the time my mom didn't realize it, but she and I eventually realized that she had witnessed the trial court, three lawyers, and DHR violate federal laws and regulations *in the courtroom* while my parental rights were being adjudicated in Alabama.

At the trial, before any other testimony, the judge allowed a lawyer from Wellstone to approach the bench. That lawyer brought *originals* of all my substance use disorder records that were in the custody of Wellstone, an Alabama Part 2 program, pursuant to 42 C.F.R. §2.11 and 42 C.F.R. §2.12(b), because it accepts federal money for its treatment services (i.e., Medicare and Medicaid). [See APPENDIX F] Wellstone's lawyer brought my treatment records to court in response to a subpoena duces tecum that was issued to DHR three days before the trial. DHR's lawyer served the subpoena at Wellstone the day it was issued. The subpoena was directed to Dr. Tim Cheplen, who no longer worked at Wellstone. My mom and I did not receive notice that DHR intended to subpoena the production of all of my treatment records from Wellstone. By not giving notice to my mom (the intervening party) or to me, DHR violated my, and my mom's, rights of notice and to be heard.

Interestingly, one day after receiving the subpoena (i.e., two days before trial) the record shows that Wellstone submitted a motion to quash, correctly arguing that the subpoena was invalid because (a) it was directed to an ex-employee, (b) three days' notice for production of documents was an undue burden, and (c) 42 U.S.C. §290dd-2(c) prohibits Wellstone from so much as even

acknowledging whether they had my treatment records or not, and (d) Wellstone needed a court order, pursuant to 42 U.S.C. §290dd-2(b)(2)(c), to compel the disclosure. [See APPENDIX E] These were sound legal arguments for Wellstone to not disclose my federally-protected records.

However for some unknown reason, on the day of the trial, Wellstone sent in a young, fresh-out-of-law-school lawyer who carried the *originals* of all my federally-protected substance use disorder treatment records, in Wellstone's custody, including extra sensitive, and extra protected, psychotherapy notes, pursuant to 42 C.F.R. §2.63. [See APPENDIX F] The young lawyer asked for an order to disclose my records. The judge issued a hasty, verbal, bench order.

I claim that the abrupt turnaround of Wellstone's position, from two days before trial and citing 42 U.S.C. §290dd-2, to the day of the trial and bring in all my original treatment records in its custody, demonstrates Wellstone was, more likely than not, improperly influenced during the time between its motion to quash and its unlawful disclosure. I know something happened to change Wellstone's position in two days. The record shows that the judge reviewed Wellstone's motion to quash before the trial, and allowed the disclosure,

regardless. Immediately after trial, the record shows the judge ruled the motion to quash "moot." This shows that the court *knowingly* allowed Wellstone to violate federal laws and regulations during the adjudication of my parental rights. I don't know what happened in those two days to influence Wellstone to violate federal law. I do know that my protected records were unlawfully disclosed and unlawfully used against me at the trial to adjudicate my parental rights *forever*.

Before the trial, I had requested to attend remotely since I was in a 42 C.F.R. Part 2 addiction treatment program in NH and had no travel money. My request to participate remotely was denied, although the trial court admits, on record, that it had technical capability to grant my request. Consequently, I was not there to object to the unlawful production of my federally-protected records or assert my privilege. My court-appointed lawyer was there, but she did not object to the production of the protected records or try to assert my privilege for me. My mom was there, but at the time, she did not understand these actions violated 42 U.S.C. §290dd-2(a), 42 U.S.C. §290dd-2(c), 42 C.F.R. §2.13(a), 42 C.F.R. §2.13(b), 42 C.F.R. §2.13(c), 42 C.F.R. §2.63(a), 42 C.F.R. §2.64(a), 42 C.F.R. §2.64(b), 42 C.F.R. §2.64(c), 42 C.F.R.

§2.64(d) and 42 C.F.R. §2.64(e), or she would have objected to the disclosure. [See APPENDICES E & F]

Later on in the trial, the guardian ad litem, who is a licensed attorney in Alabama, ("AGAL") questioned the DHR caseworker on the witness stand. The AGAL produced a document and asked if the caseworker recognized it. The caseworker said the document was my discharge report that she had received from Turning Point, the 42 C.F.R. Part 2 substance use disorder treatment facility in New Hampshire, as defined by 42 C.F.R. §2.11 AND 42 C.F.R. §2.12(b). [See APPENDIX F] The discharge report was emailed to the caseworker a couple of weeks earlier. I had given my written consent for the NH counselor to email the report to the DHR caseworker, because, in good faith, I wanted to show DHR that I was making progress in my addiction treatment program. DHR used the discharge report as evidence against me at my trial. After learning that DHR used the report against me at trial, I immediately rescinded my consent for any other of my treatment records to be shared with DHR.

Federal laws and regulations state that any person who receives federally-protected records shall not redisclose them to anyone else, for any purpose, *period*. At the end the

report was a conspicuous federal warning, stating the record was federally protected and redisclosure was strictly prohibited. [See 42 C.F.R. §2.32(a)(1) APPENDIX F] The DHR caseworker ignored the warning and shared my discharge report with the AGAL, who unlawfully used it as evidence against me at trial, violating 42 C.F.R. §2.13(a) and 42 C.F.R. §2.13(b). Federally-protected records *may not* be used as evidence against a patient at trial, *period*. The AGAL simply ignored federal regulations and introduced the report as evidence against me at my trial. [See APPENDIX F]

While all this was occurring in the courtroom, my wife's lawyer (not mine) objected to the discharge report as hearsay, and "hearsay within hearsay." Apparently, this was so blatant that my wife's lawyer felt she could not stand by and do nothing as hearsay was being introduced. However, under further questioning by the AGAL, the DHR caseworker testified the report was one she regularly maintained in her DHR's files, and the trial court overruled the other lawyer's objections. So, the trial court admitted even more unlawfully obtained and unlawfully disclosed protected records, to be unlawfully used as evidence against me at my trial. I repeat: the trial court allowed the admission of a federally-protected report, created and maintained at a 42 C.F.R. Part 2

program in NH, 1,200 miles away, as an Alabama DHR business record, and by declaring it as such, the trial court circumvented the hearsay rule too.

Next, at the request of the AGAL, the DHR caseworker read portions of my report that were unfavorable to me, out loud. The AGAL asked the caseworker to read the specific sentences that she (AGAL) had underlined beforehand. Any favorable sentences to me were omitted when it was read. My mom said it was quite clear the DHR caseworker and the AGAL had conspired to violate federal law to disclose my protected report.[2]

There is a criminal penalty for violating these federal laws and regulations, 42 C.F.R. §2.3. "Criminal penalty for violation. Under 42 U.S.C. 290dd-2(f), any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined in accordance with Title 18 of the U.S. Code."[3]

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[2] I complained to the Alabama Bar Association about the attorneys' violations. They responded they would not take any action.

[3] I complained to the U.S. Attorney for Northern Alabama, Jay Town, about the violations but did not hear back.

The actions of DHR and three attorneys in the courtroom during the adjudication of my parental rights by unlawfully obtaining, unlawfully disclosing and unlawfully using my federally-protected records against me at trial violated my rights of due process, equal protection, and my right to be secure in my effects and papers. These are "plain errors."

If DHR want my federally-protected records, including confidential communications of my diagnosis, treatment and referral, there's a legal way to do this. DHR could have *complied* with 42 C.F.R. §2.63, "Confidential Communications," 42 C.F.R. §2.64(a) and 42 C.F.R. §2.64(b), "Procedures and criteria for orders authorizing disclosures for noncriminal purposes," that require an application to disclose protected records and require adequate notice. [See APPENDIX F]

Also, the hasty, verbal, bench order to disclose my federally-protected records was not in compliance with the regulations. The court is required to *comply* with 42 C.F.R. §2.64(c) "Review of evidence: Conduct of hearing," 42 C.F.R. §2.64(d), "Criteria for entry of order," and 42 C.F.R. §2.64(e), "Content of order." [See APPENDIX F]

DHR, the three attorneys, and the trial court knew, or should have known, their actions violated federal laws and regulations and my constitutional and statutory rights. However,

three weeks after my trial, the judge terminated my parental rights, which also terminated my mother's grandparental rights. My mom and I appealed. The Alabama Court of Civil Appeals consolidated our appeals and we became "co-appellants."

On appeal I learned that my first, fourth and fourteenth rights had been violated, and that during the adjudication of my parental rights, DHR, its lawyer, the AGAL, Wellstone, Wellstone's lawyer, and the trial court violated many federal statutes and regulations during the adjudication. To wit:

(1) DHR violated 28 U.S.C. §1738A(e), 42 U.S.C. §671(a)(29) when they failed to notify me, when they failed to notify my mom, and when they failed to notify adults in my paternal family of my child's custody proceedings.

(2) DHR, DHR's lawyer and the trial court violated 42 C.F.R. §2.64(a) and 42 C.F.R. §2.64(b), by unlawfully issuing and serving a subpoena for the production of my federally-protected records three days before trial, without notice to myself or my mom, the intervening party.

(3) DHR, Wellstone and Wellstone's lawyer violated 42 U.S.C. §290dd-2(c) and 42 C.F.R. §2.63(a) when they unlawfully disclosed

confidential communications about my diagnosis, treatment and referrals.

(4) Wellstone and Wellstone's lawyer violated 42 U.S.C. §290dd-2(a), 42 U.S.C. §290dd-2(c), 42 C.F.R §2.13(a), 42 C.F.R. §2.13(b) and 42 C.F.R. §2.13(c) when they unlawfully disclosed my federally-protected records.

(5) The trial court violated 42 C.F.R. §2.64(c), 42 C.F.R. §2.64(d) and 42 C.F.R. §2.64(e) when it issued a hasty, verbal, bench order to disclose my federally-protected records.

(6) DHR violated 42 U.S.C. §290dd-2(a), 42 U.S.C. §290dd-2(c), 42 C.F.R. §2.13(a) and 42 C.F.R. §2.13(b) by unlawfully disclosing my federally-protected record to the AGAL.

(7) The DHR caseworker and the AGAL violated 18 U.S.C. §241 when they conspired to unlawfully disclose my federally-protected records.

(8) The DHR caseworker and the AGAL violated 42 U.S.C. §290dd-2(c) and 42 C.F.R §2.13(a) when they unlawfully used my federally-protected records as evidence against me at my trial.

[See APPENDICES E & F for the above federal laws & regulations, respectively.]

During the appeal of the TPR, I requested access to the records of the dependency and permanency proceedings. I was certain if the

State violated federal laws and regulations at my trial with my mom there watching them, the dependency and permanency proceedings, from which my mom and I were entirely, purposely excluded, would be rife with legal errors and violations. However, the trial court denied my request for those records, stating I was no longer the child's father and had no right to see those records.

So I filed a separate and direct appeal of the dependency and permanency determination, but the Alabama Court of Civil Appeals dismissed it, stating there was no final judgment to appeal. However, before the appellate court had a chance to dismiss my appeals, I received the record on appeal and closely scrutinized it. And just as I thought, those proceedings were rife with legal errors and federal violations. To wit:

(1) In November 2017, DHR attempted service of process of the dependency and permanency proceedings on me, which failed due to my transient and homeless lifestyle. Afterward, DHR stated they used "due diligence" to locate me for service, but were unable to ascertain my whereabouts. However, the record shows I was at DHR's facility to visit my child, and/or attend DHR Individual Service Plan ("ISP") meetings, eleven (11) times during the eight (8) months after signing DHR's "safety plan," and

waiting for their promise of "safe reunification services," which DHR spectacularly failed to do. DHR could have, and should have, notified me during one of those eleven times I was at their facility, but they didn't and proceeded regardless, violating my rights of notice and equal protection.

(2) DHR violated 28 U.S.C. §1738A(e) and 42 U.S.C. 671(a)(29) when they did not notify my mom, or any adult paternal relative, of my child's custody proceedings.

(3) The trial court did not make the required, timely, federal judicial determinations, pursuant to 45 C.F.R. §1356.21(b)(1)(i)(ii) and 45 C.F.R. §1356.21(c).

(4) DHR violated 42 U.S.C. §671(a)(15)(B)(i)(ii) when it failed to provide me with adequate reunification services.

(5) DHR violated 42 U.S.C. §671(a)(19) when they did not give my mom preference, or even consider her fitness, before placing my child into foster care with legal strangers.

(6) Seventy-five percent (75%) of the DHR reports the court used to make its dependency and permanency determinations are completely missing from the record.

(7) Fifty-three percent (53%) of the AGAL reports the court used to make its

dependency and permanency determinations are completely missing from the record.

(8) The trial court did not assign my court appointed attorney (who was assigned to my termination case on April 10, 2019) to the dependency and permanency proceedings. Alabama law bestows all parents whose child is in a state-initiated dependency proceeding the right to counsel. The court violated Alabama Code §12-15-305(b), the statute giving parents the right to counsel for its dependency proceedings. This action by the trial court also violated my right of equal protection under the law.

[See APPENDICES E & F for the federal laws and regulations above. See APPENDIX G for the Alabama statute giving parents the right of counsel in its dependency proceedings.]

The procedural and legal violations listed supra, directly affected my rights and the integrity of dependency and permanency proceedings. However, Alabama's violations didn't end there. I discovered that in October 2018, when DHR petitioned to terminate my parental rights ("TPR"), they could no longer get away with stating they used "due diligence" to locate me but had failed. For a TPR, Alabama requires a service of process. So DHR devised a new scheme. They sent a sheriff to serve my notice of their petition to

terminate my parental rights to my estranged, ex-mother-in-law's house. DHR knew I was not there, because my estranged, ex-mother-in-law had worked with DHR to get custody of her three grandchildren (my stepchildren) after my wife's and my arrest. DHR and the AGAL visited there regularly to check up to ensure things were going well. So when the service of process failed at my estranged, ex-mother-in-law's home, as DHR fully expected that it would, they received the trial court's permission to publish my service of process in the local newspaper. DHR did all this instead of simply contacting my mom or my brother, whose information was in their case files, in order to locate me for service of process.

The U.S. Supreme Court has determined, "process is constitutionally due a natural parent at a state-initiated parental rights termination proceeding." [See APPENDIX I, *Santosky v. Kramer*, 455 U.S. 745 (1982)]

I claim Alabama violated my due process during its bifurcated custody proceedings. I claim that as the child's legal father, my family and I have more rights in my child's custody proceedings than legal strangers, as this court has decided in *Smith v. Organization of Foster Families*, 431 U.S. 816, 824-47 (1977).

> "It is one thing to say that individuals may acquire a liberty interest against arbitrary governmental interference in the family-like associations into which they have freely entered, even in the absence of biological connection or state-law recognition of the relationship. It is quite another to say that one may acquire such an interest in the face of another's constitutionally recognized liberty interest that derives from blood relationship, state-law sanction, and basic human right — an interest the foster parent has recognized by contract from the outset. Whatever liberty interest might otherwise exist in the foster family as an institution, that interest must be substantially attenuated where the proposed removal from the foster family is to return the child to his natural parents."

This court has also ruled, "Under the Due Process Clause of the Fourteenth Amendment petitioner was entitled to a hearing on his fitness as a parent before his children were taken from him." *Stanley v. Illinois*, 405 U.S. 645 (1972).

The fact that Alabama unlawfully obtained, unlawfully disclosed and unlawfully used my

protected records against me at trial, coupled with the fact that DHR used an under-handed service of process, plus all the procedural errors by the trial court, such as not having the number of federally required hearings, and not making the timely, required federally judicial determinations, when Alabama accepts federal funds for foster care/adoption, plus the other federal violations by DHR, such as purposely excluding my family, and not considering my mother or brother for my child's placement before strangers, leads to my second question, which is, perhaps, a question of first impression, pursuant to U.S. Supreme Court Rule 10(c):

Second Question Presented: Is a State order terminating a parent's rights valid if the State violated the parent's rights of due process, equal protection, and to be secure in effects and papers, and if the State violated federal law 42 U.S.C. §290dd-2, and federal regulation 42 C.F.R. Part 2, during the trial to adjudicate that parent's rights *forever*?

There should be some adverse consequence to Alabama for violating all these federal laws and regulations during my child's custody proceedings. I contend that because Alabama does not have an expanded Medicaid program, the State has a *greater duty* to vulnerable parents who are stranded

in their convoluted and shady system, because without expanded Medicaid, the parents have no safety net. I was lucky to get out and get rehabilitated in another State, but there are many others who are not as fortunate as me. And when I say "*greater duty*" I simply mean that Alabama should execute its custody proceedings in a lawful, transparent manner. But as in my personal case, as I have so painstakingly tried to show, DHR, its lawyer, the AGAL, and the trial court violated my constitutional and statutory rights, while they violated federal laws and regulations. It's a travesty of justice there, and someone, somewhere, should have the power and wherewithal to tell them enough is enough! Alabama should not be allowed to get away with blatantly violating federal laws and regulations, especially when their violations also violate its citizens' rights.

Events Leading to Third Question

When I realized that DHR had thwarted its service of process on me, and purposely excluded my family from its custody proceedings, I believed I had three choices: (1) ask to consolidate records from the two proceedings for my TPR appeal (denied), (2) directly appeal the dependency and permanency determinations (dismissed), and (3) report the violations to the Department of

Health and Human Services ("HHS"), the federal agency that funds DHR (dead-end).

When the trial court denied my request for the records from the dependency proceedings, because I was "no longer the father" and I could not access those records, and when the Court of Civil Appeals denied my motion to consolidate the bifurcated records for my termination appeal, and when that court dismissed my direct appeal of dependency and permanency determinations stating there was "no final order to appeal," and when the appellate court dismissed my collateral attack on the dependency and permanency determinations, and when the Alabama Supreme Court denied certiorari, I sent a letter to HHS, the agency that funds DHR, detailing DHR's federal violations during my child's removal and custody proceedings. I received a letter in reply from a Mr. Joe Bock, stating HHS could not help and would not take any action.

The penalty for DHR's violations of federal laws and regulations is defined at 45 C.F.R. §1356.50 and 45 C.F.R. §1356.86 and is it paltry. [See APPENDIX F] The penalty is that Alabama must return the federal funds it received for my child's foster care. However, Bock's letter showed that even *that* would not happen. I have no other recourse now, other than to appeal to this court.

When Alabama's Court of Civil Appeals affirmed the trial court's decision to terminate my parental rights ("affirmed, no opinion"), it provided comparable cases. [See APPENDIX A] After examining those cases, I gather that Alabama's appellate court believes (a) no legal errors occurred during the trial to adjudicate my parental rights, (b) DHR was not required to provide reasonable efforts for reunification, and (c) DHR was not required to consider viable alternatives to the dependency or termination of my parental rights because the appellate court believes that I abandoned my child.

To prove otherwise, I seriously needed access to the dependency and permanency proceedings, to file a grievance and for the court to hear. However, the Alabama judicial system made it impossible for me to show any court that I did not abandon my child. It was impossible to show that I had left Alabama after waiting around for eleven (11) months for its reunification services, but the State, which does not have expanded Medicaid, failed to provide the reunification services it had promised to me when I signed their "safety plan." Without access to the records, or without consolidation of the records for my appeal of the termination of my parental rights, and with the trial and appellate courts successfully blocking my direct appeal and collateral attack of the

dependency and permanency determinations, it was impossible to show the appellate court that I was at DHR eleven (11) times after signing their "safety plan," and I finally left to go to a State that had expanded Medicaid in order to get proper rehabilitation services to reunify with my child. I relocated only after realizing that the reunification services from DHR were never going to come.

I claim that the decisions of the trial court, the Court of Civil Appeals, and the Alabama Supreme Court are W-R-O-N-G, due to, if nothing else, *the appellate courts' ignoring the many federal violations during the trial to adjudicate my parental rights forever.*

In my brief to Alabama's Court of Civil Appeals, and in my petition for certiorari to the Alabama Supreme Court, I asked them to consider the "*cumulative adverse effect*" of the legal errors and federal violations that occurred during both proceedings. However, they chose to not even consider the federal violations that occurred *in the courtroom* during my trial. Perhaps even more egregiously, the Alabama courts actively prevented my access to the court records to successfully have my grievances heard about the procedural and legal errors that occurred during my child's dependency and permanency proceedings.

When I went back and collaterally attacked the dependency and permanency determination under Alabama Rule Civil Procedure 60(b)(6), my reasoning was that Alabama courts had claimed it was "an entirely separate case." The trial court denied my motion for relief, as expected. In its denial, the trial court changed its previous tune of "it's a separate case," to claiming that the dependency and permanency issue was "already decided" by the appellate court. I appealed the decision, but the trial court *refused to release the record on appeal.* Next the Alabama Court of Civil Appeals denied my motion for it to compel the trial court to provide the record for my appeal. Next, the appellate court dismissed my appeal, stating it was not timely, although I provided U.S.P.S written documentation showing when my notice of appeal was sent and when it was received. Upon appellate court request, the trial court clerk (the same clerk who issued a subpoena duces tecum three days before trial) signed an affidavit that my notice of appeal was received four days late. The appellate court took her affidavit at face value, and ignored my written, objective, documentation from U.S.P.S.

The message in Alabama is loud and clear. The two custody proceedings are separate when I appeal and want to consolidate the

records; they are one case that has "already been decided," when I launch a collateral attack on the dependency and permanency determinations. I'm in a no-win position and humbly ask this court to intervene to decide what is right.

I claim the unilateral bifurcation of my child's custody case, without notice to me or to anyone in my child's paternal family, coupled with the actions of the trial and appellate courts when I tried to file my grievances of the dependency portion of the bifurcated custody proceedings, effectively thwarted my ability to demonstrate the totality of the State's legal errors and federal violations that impacted the case and myself during the entire custody proceedings.

I claim the federal violations that occurred during the trial to adjudicate my parental rights *forever* should have been more than enough to invalidate the trial court's order. However in Alabama, in 2019 and 2020, it was not enough. This leads to the third question presented, which is, perhaps, a question of first impression, pursuant to U.S. Supreme Court Rule 10(c):

Third Question Presented: During a State's bifurcated custody proceedings, if the State violated federal laws & regulations, and a parent's rights of due process, equal protection, and to be secure in effects and

papers, and that State then terminates the parent's rights, on appeal, must the State provide all records from its bifurcated proceedings, which were initiated, and bifurcated, without notice to the parent?

I claim that the trial and appellate courts effectively denied my right of access to the court system to file my grievances about the State's violations during the dependency and permanency proceedings, and in doing so Alabama violated my first amendment right to access the courts in order to file a grievance. [*Christopher v. Harbury*, 536 U.S. 403 (2002), See APPENDIX I]

Alabama violated my rights of due process and equal protection, when DHR purposely excluded me from my child's custody proceedings, and when the trial court failed to assign my court appointed attorney to my child's dependency and permanency proceedings, a right bestowed to me by the State, pursuant to Alabama Code §12-15-305(b). [See APPENDIX G] The dependency and permanency proceedings were conducted from November 2, 2017 (the day DHR filed its dependency petition) to July 11, 2019, (the day the court issued the final dependency and permanency order). My court-appointed lawyer was assigned on April 10, 2019. I had a right to have counsel during the dependency proceedings, which

was denied to me, depriving me of equal protection of the law.

I claim that Alabama did not follow due process during its bifurcated custody proceedings. The Supreme Court states, "process is constitutionally due a natural parent at a state-initiated parental rights termination proceeding." [See APPENDIX I, *Santosky v. Kramer*, 455 U.S. 745 (1982)]

According to *M.L.B. v. S.L.J.*, 519 U.S. 102, 104 (1996), the Alabama courts must give me access to the court records to file an appeal about the denial of relief for my grievances of the procedures during my child's dependency proceedings. This court has determined that [a state] "may not withhold the transcript she needs to gain review of the order ending her parental status. The Court's decisions concerning access to judicial processes, commencing with Griffin and running through Mayer, reflect both equal protection and due process concerns." [See *M.L.B. v. S.L.J.*, 519 U.S. 102, 104 (1996) in APPENDIX I]

I claim that Alabama's custody proceedings are fundamentally unfair. They are to my daughter, they are unfair to my family, and they are unfair to myself. In its zeal to achieve an agenda, Alabama recklessly violated my constitutional and statutory rights and federal laws and regulations.

I ask the U.S. Supreme Court to issue a declaratory judgment that Alabama violated federal laws and regulations during its bifurcated child custody proceedings, and that the orders from their proceedings are invalid. I ask for the custody proceedings to begin again, this time with DHR giving adequate notice so I can be heard, and giving my family, who claim the rights of visitation and custody of my child adequate notice, so they too can be heard. If that happens, my family and I will attend the custody proceedings and be on the alert to ensure DHR, its lawyer, Wellstone, Wellstone's lawyer and the trial court do not violate any more federal laws and regulations.

REASONS FOR GRANTING PETITION

Because no Alabama court would, or could, explain why these questions are irrelevant, and in the interest of justice for all parents, in Alabama and nationwide, who are similarly situated, I respectfully request for this court to grant a writ of certiorari.

I believe that if Alabama can do this so easily to me, there are many other parents out there suffering the same fate, especially in the wake of the nationwide opiate crisis.

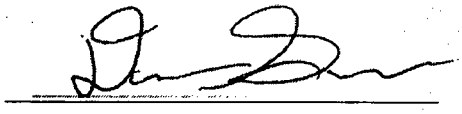
There is my last recourse. I submitted complaints to the Alabama Bar about the three attorneys' federal violations during

adjudication—the Bar responded they would take no action, no reprimand, no warning, nothing. I submitted complaints to the U.S. Attorney for Northern Alabama—as directed by 42 C.F.R. §2.3—about the federal violations by the three attorneys, the DHR caseworker and Wellstone; however, they did not respond. HHS too is a dead-end street. If this court will grant a writ of certiorari, it means that the law matters if a State takes legal action against a vulnerable parent and then blatantly breaks federal laws and regulations to accomplish its agenda. This issue is of nationwide importance and I respectfully request for the U.S. Supreme Court to issue a writ. Thank you.

CONCLUSION

Please grant my petition for writ of certiorari.

Respectfully submitted,



David Snyder

December 7, 2020