REL: 03/06/2020

STATE OF ALABAMA -- JUDICIAL DEPARTMENT
THE COURT OF CIVIL APPEALS
OCTOBER TERM, 2019-2020

2180893

R.M.S. v. Madison County Department of Human Resources.

2180918

D.A.S. v. Madison County Department of Human Resources.
Appeals from Madison Juvenile Court (JU-17-1319.02).

MOORE, Judge.

2180893 -- AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P.; Rule 28(a)(10), Ala. R. App. P.; 25 CFR § 23.108(b); Andrews v. Merritt Oil Co., 612 So. 2d 409, 410 (Ala. 1992); W.N. v. Cullman County Department of Human Resources, 282 So. 3d 870 (Ala. Civ. App. 2019); D.M. v. Jefferson Cty. Dep't of Human Res., 232 So. 3d 237, 243 (Ala. Civ. App. 2017); R.D.J. v. A.P.J., 142 So. 3d 662, 668 n.4 (Ala. Civ. App. 2013); J.D. v. Lauderdale Cty. Dep't of Human Res., 121 So. 3d 381, 384 n.2 (Ala. Civ. App. 2013); Salter v. Moseley, 101 So. 3d 242, 247 (Ala. Civ. App. 2012); J.S. v. Etowah Cty. Dep't of Human Res., 72 So. 3d 1212, 1223-24 (Ala. Civ. App. 2011); Buco Bldg. Constructors, Inc. v. Mayer Elec. Supply Co., 960 So. 2d 707, 711-12 (Ala. Civ. App. 2006); Gary v. Crouch, 923 So. 2d 1130, 1136 (Ala. Civ. App. 2005); and D.M. v. Walker Cty. Dep't of Human Res., 919 So. 2d 1197, 1205-06 (Ala. Civ. App. 2005).

2180918 -- AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P.; Rule 28(a)(10), Ala. R. App. P.; Rule 45, Ala. R. App. P.; Rule 60(b), Ala. R. Civ. P.; Rule 1(B), Ala. R. Juv. P.; § 12-15-301(1), Ala. Code 1975; § 12-15-319(b), Ala. Code 1975; M.J.C. v. G.R.W., 69 So. 3d 197, 207 (Ala. Civ. App. 2011); Ex parte L.E.O., 61 So. 3d 1042, 1050 (Ala. 2010); Ex parte McInish, 47 So. 3d 767, 778 (Ala. 2008); Ex parte T.V., 971 So. 2d 1, 9

(Ala. 2007); Andrews v. Merritt Oil Co., 612 So. 2d 409, 410 (Ala. 1992); D.M. v. Jefferson Cty. Dep't of Human Res., 232 So. 3d 237, 243 (Ala. Civ. App. 2017); C.O. v. Jefferson Cty. Dep't of Human Res., 206 So. 3d 621, 627 (Ala. Civ. App. 2016); Salter v. Moseley, 101 So. 3d 242, 247 (Ala. Civ. App. 2012); Burgess v. Burgess, 99 So. 3d 1237, 1239-40 (Ala. Civ. App. 2012); R.M. v. Elmore Cty. Dep't of Human Res., 75 So. 3d 1195, 1200 (Ala. Civ. App. 2011); J.F.M. v. C.W.B., 72 So. 3d 663, 665-66 (Ala. Civ. App. 2011); J.W. v. C.B., 68 So. 3d 878, 879 (Ala. Civ. App. 2011); Beverly v. Beverly, 28 So. 3d 1, 4 (Ala. Civ. App. 2009); and Clements v. Clements, 990 So. 2d 383, 396 (Ala. Civ. App. 2007).

The motion to submit the corrected preface to original brief and to include a table to correct an error in the original brief and the motion to submit a corrected "table of authorities" to their reply brief and a replacement page filed by the appellants are granted.

The motion to invoke Rule 45, Ala. R. App. P., and the motion to supplement brief filed by the appellants are denied.

Thompson, P.J., and Donaldson, Edwards, and Hanson, JJ., concur.

APPENDIX C Decision of the Alabama Supreme Court

APPENDIX B Decision of the Alabama Trial Court

IN THE SUPREME COURT OF ALABAMA

July 10, 2020

1190674

Ex parte R.M.S. and D.A.S. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: R.M.S. v. Madison County Department of Human Resources) (Madison Juvenile Court: JU-17-1319.02; Civil Appeals : 2180893).

CERTIFICATE OF JUDGMENT

WHEREAS, the petition for writ of certiorari in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on July 10, 2020:

Writ Denied. No Opinion. Wise, J. - Parker, C.J., and Bolin, Sellers, and Stewart, JJ., concur.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Julia J. Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 10th day of July, 2020.

Julia Jordan Weller

Clerk, Supreme Court of Alabama

APPENDIX D U.S. Constitutional Provisions

First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fourth Amendment

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Fourteenth Amendment

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX E Federal Statutory Provisions

18 U.S.C. §241 – "Conspiracy against rights. If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same..."

42 U.S.C. §290dd-2(a) "Requirement. Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance use disorder education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e), be confidential and be disclosed only for the purposes and under the circumstances authorized under subsection (b)."

42 U.S.C. §290dd-2(c) "Use of records in criminal, civil, or administrative contexts. Except as otherwise authorized by a court

order under subsection (b)(2)(C) or by the consent of the patient, a record referred to in subsection (a), or testimony relaying the information contained therein, may not be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority, against a patient, including with respect to the following activities:

"(1) Such record or testimony shall not be entered into evidence in any criminal prosecution or civil action before a Federal or State court.

"(2) Such record or testimony shall not form part of the record for decision or otherwise be taken into account in any proceeding before a Federal, State, or local agency.

"(3) Such record or testimony shall not be used by any Federal, State, or local agency for a law enforcement purpose or to conduct any law enforcement investigation.

"(4) Such record or testimony shall not be used in any application for a warrant."

42 U.S.C. §671(a)(15) "provides that—

"(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

"(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

"(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

"(ii) to make it possible for a child to safely return to the child's home;

"(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an interstate placement), and to complete whatever steps are necessary to finalize the permanent placement of the child;

"(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

"(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

"(ii) the parent has—

"(I) committed murder (which would have been an offense under section 1111(a) of title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

"(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

"(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

"(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

"(iii) the parental rights of the parent to a sibling have been terminated involuntarily;"

42 U.S.C. §671(a) "Requisite features of State plan. In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which —

"(19) provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the

relative caregiver meets all relevant State child protection standards..."

"(29) "provides that, within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to the following relatives: all adult grandparents, all parents of a sibling of the child, where such parent has legal custody of such sibling, and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence..."

42 U.S.C. §672(a)(2) "Removal and foster care placement requirements. The removal and foster care placement of a child meet the requirements of this paragraph if—

"(A) the removal and foster care placement are in accordance with—

> "(i) a voluntary placement agreement entered into by a parent or legal guardian of the child who is the relative referred to in paragraph (1); or
>
> "(ii) a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts of the type

described in section 671(a)(15) of this title for a child have been made."

28 U.S.C. §1738A "(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

"(b) As used in this section, the term—

"(2) "contestant" means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;"

"(e) "Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child."

APPENDIX F Federal Regulatory Provisions

42 C.F.R. §2.11 "Part 2 program means a federally assisted program (federally assisted as defined in §2.12(b) and program as defined in this section)."

42 C.F.R. §2.12(b) "Federal assistance. A program is considered to be federally assisted if:

(1) It is conducted in whole or in part, whether directly or by contract or otherwise by any department or agency of the United States (but see paragraphs (c)(1) and (2) of this section relating to the Department of Veterans Affairs and the Armed Forces);

(2) It is being carried out under a license, certification, registration, or other authorization granted by any department or agency of the United States including but not limited to:

> "(i) Participating provider in the Medicare program;
>
> "(ii) Authorization to conduct maintenance treatment or withdrawal management; or
>
> "(iii) Registration to dispense a substance under the Controlled Substances Act to the extent the controlled substance is used in the treatment of substance use disorders;

"(3) It is supported by funds provided by any department or agency of the United States by being:

> "(i) A recipient of federal financial assistance in any form, including

financial assistance which does not directly pay for the substance use disorder diagnosis, treatment, or referral for treatment; or

"(ii) Conducted by a state or local government unit which, through general or special revenue sharing or other forms of assistance, receives federal funds which could be (but are not necessarily) spent for the substance use disorder program; or

"(4) It is assisted by the Internal Revenue Service of the Department of the Treasury through the allowance of income tax deductions for contributions to the program or through the granting of tax exempt status to the program."

42 C.F.R. §2.13(a) "Confidentiality restrictions and safeguards. (a) General. The patient records subject to the regulations in this part may be disclosed or used only as permitted by the regulations in this part and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any federal, state, or local authority. Any disclosure made under the regulations in this part must be limited to that information which is necessary to carry out the purpose of the disclosure."

42 C.F.R. §2.13(b) "Unconditional compliance required. The restrictions on disclosure and use in the regulations in this part apply whether or not the part 2 program or other lawful holder of the patient identifying information believes that the person seeking the information already has it, has other means of obtaining it, is a law enforcement agency or official or other government official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted by the regulations in this part."

42 C.F.R. §2.13(c) "Acknowledging the presence of patients: Responding to requests. (1) The presence of an identified patient in a health care facility or component of a health care facility which is publicly identified as a place where only substance use disorder diagnosis, treatment, or referral for treatment is provided may be acknowledged only if the patient's written consent is obtained in accordance with subpart C of this part or if an authorizing court order is entered in accordance with subpart E of this part. The regulations permit acknowledgement of the presence of an identified patient in a health care facility or part of a health care facility if the health care facility is not publicly identified as only a substance use disorder diagnosis, treatment, or referral for treatment facility,

and if the acknowledgement does not reveal that the patient has a substance use disorder."

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."

42 C.F.R. §2.32(a)(1) "This record which has been disclosed to you is protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of this record unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed in this record or, is otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see §2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§2.12(c)(5) & 2.65."

42 C.F.R. §2.63 "Confidential communications. (a) A court order under the regulations in this part may authorize disclosure of confidential communications made by a patient to a part 2 program in the

course of diagnosis, treatment, or referral for treatment only if:

> "(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;
>
> "(2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime allegedly committed by the patient, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or
>
> "(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications."

42 C.F.R. §2.64 "Procedures and criteria for orders authorizing disclosures for noncriminal purposes.

(a) Application. An order authorizing the disclosure of patient records for purposes

other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which the applicant asserts that the patient records are needed to provide evidence. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given written consent (meeting the requirements of the regulations in this part) to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.

"(b) Notice. The patient and the person holding the records from whom disclosure is sought must be provided:

> "(1) Adequate notice in a manner which does not disclose patient identifying information to other persons; and
>
> "(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order as described in §2.64(d).

"(c) "Review of evidence: Conduct of hearing. Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record, unless the patient requests an open hearing in a manner which meets the written consent requirements of the regulations in this part. The proceeding may include an examination by the judge of the patient records referred to in the application."

"(d) "Criteria for entry of order. An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

> "(1) Other ways of obtaining the information are not available or would not be effective; and
>
> "(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services."

(e) "Content of order. An order authorizing a disclosure must:

"(1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;

"(2) Limit disclosure to those persons whose need for information is the basis for the order; and

"(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered."

45 C.F.R. §1356.10 "Scope. This part applies to title IV-E agency programs for foster care maintenance payments, adoption assistance payments, related foster care and adoption administrative and training expenditures, and the independent living services program under title IV-E of the Act."

45 C.F.R. §1356.21(a) "Statutory and regulatory requirements of the Federal foster care program. To implement the foster care maintenance payments program provisions of the title IV-E plan and to be eligible to receive Federal financial participation (FFP) for foster care maintenance payments under this part, a title IV-E agency must meet the

requirements of this section, 45 CFR 1356.22, 45 CFR 1356.30, and sections 472, 475(1), 475(4), 475(5), 475(6), and for a Tribal title IV-E agency section 479(B)(c)(1)(C)(ii)(II) of the Act."

45 C.F.R. §1356.21(b) "Reasonable efforts. The title IV-E agency must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In order to satisfy the "reasonable efforts" requirements of section 471(a)(15) (as implemented through section 472(a)(2) of the Act), the title IV-E agency must meet the requirements of paragraphs (b) and (d) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the paramount concern."

45 C.F.R. §1356.21(b)(1) "Judicial determination of reasonable efforts to prevent a child's removal from the home.

"(i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

"(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care."

45 C.F.R. §1356.21(c) "Contrary to the welfare determination. Under section 472(a)(2) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from

home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care."

45 C.F.R. §1356.21(d) "Documentation of judicial determinations. The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

"(1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

"(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations except for a Tribal title IV-E agency for the first 12 months that agency's

title IV-E plan is in effect as provided for in section 479B(c)(1)(C)(ii)(I) of the Act.

"(3) Court orders that reference State or Tribal law to substantiate judicial determinations are not acceptable, even if such law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made."

45 C.F.R. §1356.50 "Withholding of funds for non-compliance with the approved title IV-E plan.

"(a) To be in compliance with the title IV-E plan requirements, a title IV-E agency must meet the requirements of the Act and 45 CFR 1356.20, 1356.21, 1356.30, and 1356.40 of this part.

"(b) To be in compliance with the title IV-E plan requirements, a title IV-E agency that chooses to claim FFP for voluntary placements must meet the requirements of the Act, 45 CFR 1356.22 and paragraph (a) of this section; and

"(c) For purposes of this section, the procedures in § 1355.39 of this chapter apply."

45 C.F.R. §1356.86 "Penalties for noncompliance.

"(a) Definition of Federal funds subject to a penalty. The funds that are subject to a penalty are the CFCIP funds allocated or reallocated to the State agency under section 477(c)(1) of the Act for the Federal fiscal year that corresponds with the reporting period for which the State agency was required originally to submit data according to section 1356.83(a) of this part.

"(b) Assessed penalty amounts. ACF will assess penalties in the following amounts, depending on the area of noncompliance:

> "(1) Penalty for not meeting file submission standards. ACF will assess a penalty in an amount equivalent to two and one half percent (2.5%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the file submission standards defined in section 1356.85(a) of this part."

APPENDIX G Alabama Statutory Provisions

Alabama Code §12-15-305(b) "Right to counsel for petitioners or respondent parents, legal guardians, or legal custodians in dependency proceedings. In dependency and termination of parental rights cases, the

respondent parent, legal guardian, or legal custodian shall be informed of his or her right to be represented by counsel and, if the juvenile court determines that he or she is indigent, counsel shall be appointed where the respondent parent, legal guardian, or legal custodian is unable for financial reasons to retain his or her own counsel."

Alabama Code §38-12-2(b) "When a child has been removed from his or her home and is in the care, custody, or guardianship of the department, the department shall attempt to place the child with a relative for kinship foster care. If the relative is approved by the department to provide foster care services, in accordance with rules and regulations adopted by the department regarding foster care services, and a placement with the relative is made, the relative may receive payment for the full foster care rate only as provided by federal law for the care of the child and any other benefits that might be available to foster parents, whether in money or in services. Foster care payments shall cease upon the effective date of the kinship subsidiary payments or as provided by the department.

APPENDIX H Alabama Court Rules

Alabama Rule Civil Procedure 60(b). "Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On

motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: ... (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than four (4) months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation... This rule does not limit the power of a court to entertain an independent action within a reasonable time and not to exceed three (3) years after the entry of the judgment (or such additional time given by §6-2-3 & §6-2-8."

Alabama Rule Juvenile Procedure 13: "... (2) There shall be no service by publication of any proceeding in the juvenile court except in proceedings to terminate parental rights or to remove the disabilities of nonage.

"(3) The service of the summons shall give the juvenile court jurisdiction over the persons served. Except with respect to required service upon a child, nothing in this rule is intended to prevent the court from proceeding when a person as to whom notice or service is otherwise required to be given cannot be found."

"(a) Access-to-courts claims fall into two categories: claims that systemic official action frustrates a plaintiff in preparing and filing suits at the present time, where the suits could be pursued once the frustrating condition has been removed; and claims of specific cases that cannot be tried, no matter what official action may be in the future. Regardless of whether the claim turns on a litigating opportunity yet to be gained or an opportunity already lost, the point of recognizing an access claim is to provide some effective vindication for a separate and distinct right to seek judicial relief for some wrong. Thus, the access-to-courts right is ancillary to the underlying claim, without which a plaintiff cannot have suffered injury by being shut out of court. It follows that the underlying claim is an element that must be described in the complaint as though it were being independently pursued; and that, when the access claim (like this one) looks backward, the complaint must identify a remedy that may be awarded as recompense but not otherwise available in some suit that may yet be brought. The underlying cause of action and its lost remedy must be addressed by allegations in the complaint sufficient to give the defendant fair notice."

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

"(d) Guided by Lassiter, Santosky, and other decisions acknowledging the primacy of the parent-child relationship, the Court agrees with M.L.B. that Mayer points to the disposition proper in this case: Her parental termination appeal must be treated as the Court has treated petty offense appeals, and Mississippi 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 Ross v. Moffitt, 417 U.S. 600, 608-609. In these cases, "[d]ue process and equal protection principles converge." Bearden v. Georgia, 461 U.S. 660, 665."

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

"1. Process is constitutionally due a natural parent at a state-initiated parental rights termination proceeding. Pp. 752-757. (a) The fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and does not evaporate simply because they have not been model parents or have lost temporary

custody of their child to the State. A parental rights termination proceeding interferes with that fundamental liberty interest. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures. Pp. 752-754."

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

"Under the New York scheme children may be placed in foster care either by voluntary placement or by court order. Most foster-care placements are voluntary. They occur when physical or mental illness, economic problems, or other family crises make it impossible for natural parents, particularly single parents, to provide a stable home life for their children for some limited period. Resort to such placements is almost compelled when it is not possible in such circumstance to place the child with a relative or friend, or to pay for the services of a homemaker or boarding school.

"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."

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

"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. (a) The fact that petitioner can apply for adoption or for custody and control of his children does not bar his attack on the dependency proceeding. (b) The State cannot, consistently with due process requirements, merely presume that unmarried fathers in general and petitioner in particular are unsuitable and neglectful parents. Parental unfitness must be established on the basis of individualized proof. See Bell v. Burson, 402 U.S. 535. Pp. 647-658."

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

Additional material from this filing is available in the Clerk's Office.