

No. 21-_____

In The
Supreme Court of the United States

AMY NICHOLS-STUART,

Petitioner,

v.

COUNTY OF AMADOR, et al.,

Respondents.

**On Petition For Writ Of Certiorari
To The Court Of Appeal
For The State Of California**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does a parent who in a state court dependency proceeding submitted to jurisdiction on a staff prepared jurisdictional report and did not submit on a dispositional report ‘impliedly’ waive the right to sue for loss of Familial Association when her child is killed by a drunk driving father who the Juvenile Court had placed the child with and at a time when the social workers had been told and confirmed the father was driving under the influence with the child in his car?

PARTIES TO PROCEEDINGS

Petitioner AMY NICHOLS-STUART, on behalf of herself, was the Plaintiff in the State of California, Amador County Superior Court, the plaintiff-appellant in the State of California, Third Appellate District Court of Appeal and the plaintiff-petitioner in the California Supreme Court.

Respondents COUNTY OF AMADOR on behalf of County of Amador, Shannon Sutton, Shannon Diener, and Patricia Orey were the defendants in the State of California, Amador Superior Court, the defendant-respondents in the State of California, Third Appellate District Court of Appeal and the defendant-respondent in the California Supreme Court.

RELATED CASES

Amy Nichols-Stuart v. County of Amador, State of California, Amador Superior Court Case No. 17-CV-10220 (Judgment entered May 16, 2018)

Amy Nichols-Stuart v. County of Amador, State of California, Third Appellate District, Case No. C087609 (Judgment entered July 28, 2021)

Amy Nichols-Stuart v. County of Amador, Supreme Court of California, Case No. 5270710 (Judgment entered October 20, 2021)

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
PARTIES TO PROCEEDINGS	ii
RELATED CASES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AUTHORITY	1
STATEMENT OF THE CASE	5
I. DECISION IN THE AMADOR SUPERIOR COURT	5
II. DECISION OF THE CALIFORNIA THIRD DISTRICT COURT OF APPEAL	6
III. DENIAL OF THE PETITION FOR REVIEW BY THE CALIFORNIA SUPREME COURT	7
ARGUMENT	8
CONCLUSION	8

APPENDIX

Supreme Court of California, Docket Entry Reflecting Order Denying Review, Filed Oct. 20, 2021	App. 1
Court of Appeal of California, Opinion, Filed Jul. 28, 2021	App. 3

TABLE OF CONTENTS – Continued

	Page
Superior Court of California, County of Amador, Judgment, Filed May 16, 2018	App. 26
Superior Court of California, County of Amador, Tentative Ruling, Filed May 4, 2018	App. 28

TABLE OF AUTHORITIES

	Page
CASES	
<i>DeShaney v. Winnebago County Social Services Department</i> , 489 U.S. 189 (1989)	7
<i>Gabrielle A. v. County of Orange</i> , 10 Cal.App.5th 1268 (2017)	5, 7
<i>In Re Ricardo L.</i> , 109 Cal.App.4th 552 (2003)	4
<i>In Re Richard K.</i> , 25 Cal.App.4th 580 (1994)	3
<i>Johnson v. Zerbst</i> , 304 U.S. 458 (1938)	5
<i>Moore v. City of East Cleveland</i> , 431 U.S. 494 (1977)	8
<i>Troxel v. Granville</i> , 530 U.S. 57 (2000)	1, 2
CONSTITUTIONAL PROVISIONS	
U.S. Const. amend. XIV	1
STATUTES	
28 U.S.C. section 1257(a)	1
42 U.S.C. section 1983	3

OPINIONS BELOW

The Petition for Review filed with the California Supreme Court as Case Number S270710 on September 3, 2021 was denied on October 20, 2021. The Docket is reproduced in the Appendix at App. 1.

The opinion of the Third District Court of Appeal of the State of California Case Number C087609 decided July 28, 2021 is unpublished and is reproduced in the Appendix at App. 3.

The Judgment and tentative decision of the Superior Court of California, County of Amador Case Number 17CVC 102220 is reproduced in the Appendix at App. 26 and App. 28.



JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. section 1257(a).



CONSTITUTIONAL AUTHORITY

The right to Familial Association is found in the Fourteenth Amendment and acknowledged in *Troxel v. Granville*, 530 U.S. 57 (2000) as “perhaps the oldest of the fundamental liberty interests recognized by the Supreme Court.

Petitioner seeks review of state court action in dependency cases which is being used to deny parents of

their Federal Constitutional Right of Familial Association which is “the liberty interest of parents in the care, custody and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court.” (*Troxel v. Granville*, 530 U.S. 57 (2000)).

The State Court action is using “waiver” to limit a parent’s right to seek compensation or some other remedy for injury or loss to their child.

In this case, Petitioner was before the California, Amador County juvenile court on a dependency matter involving her unfitness because of inattention to injury to her son and drug use. California law involves a parent having to attend a detention hearing, a jurisdictional hearing and a dispositional hearing. As frequently happens, parents will “submit on a staff report” for the purpose of allowing the court to have jurisdiction. Most California Courts hold that such a ‘submission’ is not an agreement on disposition which can be recommended in the report. Here, the Court at the dispositional hearing placed the child with the father who had a history of alcoholism, but was clean and sober at the time of hearing because he had recently been released from prison. The placement by the Court was conditioned on the father not using alcohol or drugs. During placement with the father, he started drinking again. The Petitioner, the child’s pre-school teacher, a neighbor and a friend of the father all told Child Protective Services who were supervising the placement for the court that the father was drinking alcohol, drunk driving with the child and they were told if they did not intervene the child was at serious

risk of serious injury. The social workers spoke to the father on two occasions and he admitted his drinking, but the social workers did not remove the son and the father while drunk driving with Petitioner's son in the car had an accident which resulted in the death of Petitioner's son.

Petitioner filed a suit under 42 U.S.C. section 1983 in the Amador Superior Court. In a demurrer by the County of Amador and all defendants the Court sustained the demurrer without leave to amend on the ground that Petitioner had 'waived' her right to sue for interference with Petitioner's right to familial association by submitting to the jurisdiction of the juvenile court. At no time did Petitioner ever relinquish or waive her rights concerning injury to her son. There was no 'waiver' and the cases on 'submitting on the report' were not supportive of the concept of Petitioner having waived her rights. In fact, the cases were against a finding of 'waiver' based upon 'submitting' on the report.

However, the Third District Court of Appeal of California extended the concept of waiver to any case where the parent "submits" on the staff report.

While *In Re Richard K.*, 25 Cal.App.4th 580 (1994) and its holding that "Submission" on the report is not a "waiver" had been the law and the record in the trial court in this case clearly limits the submission to the jurisdictional report and not to the disposition, the Third District held Petitioner made an "effective waiver". The Court held that "By submitting on a

dispositional report that recommended custody with the father, appellant became barred from claiming the initial placement of her son with him violated her right to familial association.” (Page 2 of decision of Third DCA). In justifying the approach, the Court cited a case with different facts, *In Re Ricardo L.*, 109 Cal.App.4th 552, 565-566 (2003) where the Court said “while appellant’s attorney stated she was ‘going to submit on the jurisdiction,’ when this statement is read in context, it is apparent that Appellant’s attorney was submitting the matter based on the jurisdictional/ dispositional report, not the recommendations . . . Such a submission acted as consent to allow the court to consider the report as the only evidence in determining whether the allegations in the petition were true.”

Here, Petitioner’s counsel and the Court were very clear Petitioner was only submitting on jurisdiction. There was no discussion of “waiver” or an explanation of the effect of the submission. Petitioner believes that for a waiver to be valid it has to be a “knowing waiver”. This is especially true where constitutional rights are concerned. The waiver should be “express”. The California Supreme Court by refusing to review the method used by its Third District is condoning a waiver of constitutional dimension without there ever being a mention of “waiver”. It is inferring a “waiver” without any express statement in order to justify denying Petitioner’s right to familial association and save the State of California from having to pay for the intentional conduct of its employees which cost Petitioner’s son his life.

A constitutionally sufficient waiver requires that the parties know of the right in question and voluntarily and intelligently waive that right. See *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) where it is stated “Courts indulge every reasonable presumption against the waiver of fundamental rights” and “do not presume acquiescence in the loss of fundamental rights”.

This Petition needs to be granted to address squarely whether the Right to Familial Association requires an express waiver or at least a knowing waiver. In this case, there was no express or implied waiver.

STATEMENT OF THE CASE

I. DECISION IN THE AMADOR SUPERIOR COURT

The Complaint was filed August 15, 2017. On May 4, 2018 the Superior Court sustained the Defendant’s Demurrer without leave to amend which is similar to the sustaining a Motion To Dismiss without leave to amend. The Court based its decision on “waiver” holding that “Plaintiff’s express agreement in Jace’s dependency proceeding to the disposition of Jace’s custody to his father, and Plaintiff’s subsequent failure to seek a modification of custody, waived her right to seek civil damages for harm foreseeable caused by that custody.” The court relied on *Gabrielle A. v. County of Orange*, 10 Cal.App.5th 1268, 1284 (2017). The Court acknowledged that Petitioner asserted there was no waiver or knowledge of the right and no

intention to relinquish it. The trial court actually confused what Petitioner had done when submitting on the staff report for jurisdiction, but not disposition. The Petitioner appealed to the Third District Court of Appeal.

II. DECISION OF THE CALIFORNIA THIRD DISTRICT COURT OF APPEAL

After the briefs were filed and the case submitted, the Court of Appeal affirmed the decision of the trial court finding there had been a ‘waiver’ by Petitioner. In reaching that decision (Appendix A) the Court said on page 8 concerning the Right To Familial Association that “Removal of Jace from appellant’s custody implicates this right. However, any analysis of the constitutionality of the removal must begin with the fact that appellant did not contest the recommendations in the jurisdictional and dispositional report other than appellant having to go to in-patient rehabilitation.” The Court then discussed what happened in the juvenile court with the Court ordering disposition as recommended by staff and never discusses express or knowing waiver. In fact, the Court acknowledged a lack of ‘waiver’ when it said on page 10, “While removal of a child from a parent’s custody can violate the right to familial association, appellant effectively waived her right to contest the jurisdictional and dispositional orders” . . . (My emphasis added). What is an “effective waiver”? Is it an ‘inferred waiver’? It is not a knowing or express waiver of a Constitutional Right.

Gabrielle A. v. County of Orange, 10 Cal.App.5th 1268, 1284 (2017) did not disclose any submission on dispositional recommendations in Los Angeles. It said nothing about what happened at the dispositional hearing. The only submission made in *Gabrielle A. v. County of Orange*, *supra*, was on the report for jurisdictional purposes. The holding of the court was that Gabrielle A. could not object to her being taken out of her parents' custody since they agreed to it. This Petitioner never agreed to the placement with the father, but that was the court's decision on disposition and was not stipulated or submitted to by Petitioner.

Likewise, *DeShaney v. Winnebago County Social Services Department*, 489 U.S. 189, 198 (1989) is not analogous to our facts. The court had not assumed jurisdiction in *DeShaney* and the chief point being made by the Supreme Court is that the government does not have an obligation to protect children which are not under its jurisdiction. Our case is completely different because the Amador County Superior Court did exercise its jurisdiction and take custody of JACE and place him with his father under conditions that included no alcohol or drugs.

III. DENIAL OF THE PETITION FOR REVIEW BY THE CALIFORNIA SUPREME COURT

After the Petition for Review was filed and, answered, the "Petition for Review (was) denied."

ARGUMENT

The Right to Familial Association, also known as the Right to Live Together As A Family and The Right to Family Integrity has existed in case law for close to 45 years. In *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977) the Court stated “the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in the Nation’s history and tradition.”

In the case before this court it was held that this fundamental right was ‘waived’ by the Petitioner without its subject ever being discussed or brought up. There was no knowledge of the subject and no express waiver.

CONCLUSION

This case exposes how a state court is attempting to extinguish a Constitutional Right by an inference or circumstantial waiver when the law requires a knowing and express waiver. Here, the subject matter being waived, the Petitioner’s Right To Familial Association was never discussed when the state court held the waiver occurred. This Court needs to establish that the Constitutional Right of Familial Association, like other

Constitutional Rights cannot be waived unless knowingly and expressly waived.

Dated: March 23, 2022

Respectfully submitted,

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