

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Michael Jacob Dunne – PETITIONER
(Your Name)

vs.

Austin Knudsen et al – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of the State of Montana
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Jacob Dunne
(Your Name)

700 Conley Lake Rd
(Address)

Deer Lodge, MT 59722
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- Why was I not afforded rights to due process?
- How was it decided that I had "competent" ~~council~~ council when my council advised me to not work with DFS until the end of my criminal proceedings, and my council failed to object to very obvious issues with the proceedings including my treatment plan?
- How did the court put any weight into my treatment plan when the dates EVERY section was to be completed by were over 6 (six) months prior to DFS involvement and over 1 (one) year prior to it being court ordered?
- Why were issues waived on appeal to the state supreme court because I didn't object at the District court?
 - * Doesn't this show that my council wasn't competent during the proceedings?
 - * Isn't my council supposed to raise these issues because I don't have knowledge of the law or proceedings?
- Why was it decided that I had "fundamentally fair" proceedings when my council clearly paid little or no attention to any issues during the proceedings?
- Why was no weight given to the progress I made on my treatment plan?
 - * The DFS worker said on record that she made no attempt to verify my progress but it was still decided that I had made no progress?
 - * The DFS worker said on record that the treatment plan was IMPOSSIBLE for me to complete in the given time frame. How is this used to decide to terminate my parental rights?

(OVER →)

- Why is the standard of evidence so low is something as important as parental rights?
- Why was a motion to stop contact between my child and I signed and ordered without my lawyer having a chance to answer the motion?
 * subsequently the "lack of contact" between my child and I was used as partial basis to terminate my rights?
- Shouldn't EVERY parent that wants to have a relationship with their child be afforded that right assuming they are willing and wanting to address issues with mental health and/or Chemical dependency in order to be a positive force in the child's life?
- I was told that the federal courts may not accept my petition because my child doesn't fall under the "Indian Child Welfare Act." As well as my case having a different standard because of my child not being an Indian. Doesn't Article IV, Section 2, Subsection 1 of the US Constitution guarantee me that "The citizens of each state shall be entitled to all privileges and Immunities of citizens in the several states"? (See Appendix D)
 * Doesn't the constitution guarantee me review from this court because I'm a United States Citizen even though my child doesn't fall under The Indian Child Welfare Act?
- Why did the district court continue with termination hearing when my lawyer asked to withdraw due to conflict of interest?
- Why was a motion to terminate contact between myself and my child ordered without my having a chance to respond to the motion?

LIST OF PARTIES

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

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- Austin Knudsen, Montana Attorney General
- Katie F. Schulz, Assistant Attorney General, Helena, Montana
- Eileen Joyce, Butte-Silverbow County Attorney
- Mark Vucurovich, Special Deputy County Attorney, Butte, MT
- Amanda Hunter, Guardian Ad Litem, Butte, Montana
- Tim Dick, Attorney at Law, Butte, Montana

RELATED CASES

- A.D. A youth in need of care Cause NO. DN-18-594
-KK
District Court of the second Judicial District
Judgement entered ~~January 14, 2021~~ February, 16 2021
- DA 21-0134 In the Supreme Court of the
State of Montana
Decided September 21, 2021
* See 2021 MT 241 N

TABLE OF AUTHORITIES CITED

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In re R.L. 2019 MT 267, 397 Mont 507, 452 P.3d 890	5
In re S.S. 2012 MT 78, 364 Mont. 437, 276 P.3d 883	7

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☒ reported at 2021 MT 241N; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the District Court of Butte-Silverbow court appears at Appendix B to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Sep. 21, 2021
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Father's constitutional right to parenting.
- Father's constitutional right to due process.
- Father's constitutional right to effective counsel.
- Father's right to statutorily fair proceedings was violated and those procedural violations were not harmless.
- Termination of father's Parental Rights was not necessary to ensure child's safety or to provide permanency.

STATEMENT OF THE CASE

This court should reverse and remand this matter because the district court abused its discretion when it terminated Father's Parental rights despite the clear violations of father's right to due process through procedural errors implemented by the state. These errors were not harmless and due to their implication in Father's constitutional right to parent his child, this Court should exercise plain error review in assessing them. The Department also failed to prove by clear and convincing evidence that termination of father's relationship with his child was in child's best interest.

I. The District Court Erred when it terminated Father's Parental Rights.

A) Father's right to statutorily fair procedures was violated and those procedural violations were not harmless.

Appellant asserts multiple procedural errors in this case, including the bifurcation of adjudication and the states failure to meet the statutory timeframes for providing Father with his treatment plan. Father suffered from a delayed order for a treatment plan and the confusion stemming from "sloppy practice and procedures in the termination process." In the matter of J.C and A.D., 2008 MT 127, 183 P.3d 22, 343 Mont. 30 (Nelson, J dissent at 17) Procedural grievances should be taken seriously to uphold the integrity of the termination process and protect children and families from the frivolous severance of the parent-child

legal relationship. "Failure to strictly comply with the statutory requirements governing termination proceedings will constitute grounds for reversal" In the matter of J.C. and A.D. # 53.

Father suffered actual harm stemming from the procedural errors. In its order terminating Father's parental rights, the District Court relied in part on its finding "that an ~~appropriate~~ appropriate treatment plan was provided to father which he failed." (D.L. Doc. 121.) The State argues that the Department had good cause for delay in ordering father's treatment plan because it was unreasonable to approve a plan while he was in prison. However, a parent is entitled to reasonable efforts, including treatment plan, unless the court makes a determination that reasonable efforts are no longer required §41-3-423, M.C.A., in re R.L., 2019 MT 267, # 22, 397 Mont. 507, 41 P.3d 890 ("Engaging in reasonable efforts requires the development and implementation of voluntary services and/or treatment plan reasonably designed to address the parent's treatment and other needs precluding the parent from safely parenting") At no time during father's incarceration did the Department request to be relieved of reasonable efforts. Therefore, father was entitled to a timely treatment plan.

Second, the State argues there was further cause for delay in ordering father's treatment plan because he did not review or sign a treatment plan with his attorney. The burden of ordering a treatment plan is on the Department and the Court. §41-3-443(6), M.C.A. Therefore, father's failure to sign the treatment plan in a timely fashion should not impact the Court's strict compliance with procedural timelines.

Evidence was presented at the termination hearing that since and despite the ordering of his treatment plan in October of 2020, father was making progress on his plan within the six months it had been ordered.

It can be reasonably inferred, based on Father's behavior over the life of this case, that had the treatment plan been ordered in compliance with statutory guidelines, he would have engaged in its tasks and completed it, eradicating the Department's basis for termination of his parental rights.

Statutorily mandated procedural requirements exist to provide parents with a fundamentally fair procedure when terminating a fundamental liberty interest in parenting their children. When the procedure is no longer fundamentally fair, the result is an unpredictable process that makes engagement confusing, frustrating, and untrustworthy. First, this court should not encourage sloppy adjudication. Second, the district court cannot know for certain whether Father's conduct would change in a reasonable amount of time unless the variable created by unfair procedures is removed. Although the best interest of the child are ultimately the paramount consideration in child abuse and neglect cases... statutory and jurisprudential rules must be followed in reaching that ultimate stage." In the Matter of J.C. and A. Cerny, J. Dissent at ¶ 57.)

B) Termination of Father's Parental Rights was not Necessary to Ensure A.D.'s safety ~~or~~ or to provide Permanency.

The District Court abused its discretion because it exceeded the bounds of reason resulting in substantial injustice when it concluded that termination of Father's parental rights was necessary to avoid the risk of abuse and/or neglect and was in child's best interest. Least restrictive options should be considered at termination. In this case, reunification with Mother provided the safety and permanency that was in A.D.'s best interests, therefore the District Court should not have found that severing the parent-child legal relationship was in child's best interest. Termination in this

REASONS FOR GRANTING THE PETITION

-The lower courts abused discretion in terminating father's parental rights. Due process was violated several times throughout the proceedings. All of those violations were "waived on appeal" because they weren't brought up during the proceedings. Issues that exist need to be taken into account whether brought up at district court level with something as important as parental rights. Criminal proceedings have "post-conviction relief" for issues during trial court, parental rights deserve that same relief. DPHHS and the District Court in Butte, Montana are known throughout the state of Montana for "doing what they want" and because of the Montana Supreme Courts rule that they "favor the prevailing party" these cases are affirmed. It should be an absolute last option to terminate parental rights especially if the parent is making an effort and wants a relationship with the child. These cases should not be taken lightly and EVERY rule and process should have to be followed exactly for termination to be possible. Please help me and anyone else that wants a relationship with there kids that have had there rights violated.

8.

No parent making ANY effort should have a relationship with there child severed if they want to have the relationship. The standard of evidence needs to be as high as criminal proceedings for termination proceedings. Any later found issues at the trial court level need to be admissable on apeal for termination proceedings just like in criminal proceedings. A parent/child relationship should be kept intact whenever possible. A right to parent is not only constitutional, but also very important to society as a whole.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Jacob Dunne

Date: 11/30/21