

No. \_\_\_\_\_

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In The  
**SUPREME COURT OF THE UNITED STATES**  
OCTOBER TERM, 2021

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IN THE MATTER OF THE ADOPTION OF A.D., A MINOR

JOSHUA DICKS, *Petitioner*

v.

NATASHA DAVIS, *Respondent*

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**Petition for a Writ of Certiorari  
To the Arkansas Supreme Court**

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JEREMY B. LOWREY  
Arkansas Bar No. 2002153  
Oklahoma Bar No. 15031  
Post Office Box 153  
Sheridan, Arkansas 72150  
(870) 329-4957

ATTORNEY FOR PETITIONER  
JOSHUA DICKS

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## **QUESTIONS PRESENTED FOR REVIEW**

1. Whether the Arkansas Court's application of "attorney diligence" waiver of right to appeal rules to *pro se* litigants in private termination of parental rights proceedings violates Fourteenth Amendment due process rights of *pro se* and indigent litigants.

## **LIST OF PARTIES TO PROCEEDING**

Because this proceeding may call into question the constitutionality of the Arkansas Revised Uniform Adoption Act as applied, 28 U.S.C. § 2403(b) may apply, and service has been made on the Attorney General of the State of Arkansas:

The Honorable Leslie Rutledge  
Attorney General for the State of Arkansas  
323 Center Street, Suite 200  
Little Rock, Arkansas 72201

The Minor Child A.D. was not represented by counsel or ad litem in this proceeding and is identified in the Arkansas Circuit Court Order filed under seal.

## LIST OF DIRECTLY RELATED PROCEEDINGS

1. Court: Circuit Court of Baxter County, Arkansas  
Case Number: 03PR-20-192  
Case Caption: *In the Matter of the Adoption of A.D., a Minor*  
Date of Judgment: [REDACTED]
2. Court: Arkansas Court of Appeals  
Case Number: CV-21-386  
Case Caption: *In the Matter of the Adoption of A.D., a Minor*  
*Joshua Dicks v. Natasha Davis*  
Date of Judgment: September 8, 2021; rehearing denied October 20, 2021
3. Court: Arkansas Supreme Court  
Case Number: CV-21-386  
Case Caption: *In the Matter of the Adoption of A.D., a Minor*  
*Joshua Dicks v. Natasha Davis*  
Date of Judgment: December 16, 2021

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**CITATIONS TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS IN THIS MATTER**

Petitioner is unaware of any formal citations in this matter, as all orders of the lower appellate court were denials of pre-appeal motions. Petitioner has also located no Westlaw citations.

**In The**  
**SUPREME COURT OF THE UNITED STATES**  
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**Petition for a Writ of Certiorari  
To the Arkansas Supreme Court**

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JOSHUA DICKS respectfully petitions for a Writ of Certiorari to review the Judgment of the Arkansas Supreme Court.

**OPINIONS BELOW**

There are no opinions below. All motions in this proceeding were denied by letter orders. The Orders of the Arkansas Court of Appeals and Arkansas Supreme Court denying Petitioners Motions are attached as Appendices A, C, and D.

**JURISDICTION**

The final judgment of the Arkansas Supreme Court, denying Petitioner's petition for discretionary review was entered by letter order on December 16, 2021. Appendix C. Pursuant to United States Supreme Court Rule 13(1) this petition is timely filed on March 15, 2022 within 90 days after

entry of the judgment denying petitioner's appeal. This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1257(a).

## **RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS**

### **U.S. CONST. AMEND 14, SECTION 1**

**Section 1.** 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.

## **STATEMENT OF THE CASE**

### **A. Jurisdictional Facts**

This petition is brought from the final decision of the Arkansas Supreme Court denying Mr. Dicks' motion to file an appeal out of time in a private adoption proceeding that resulted in termination of his parental rights. The Arkansas Supreme Court entered its one-line order denying Mr. Dicks' petition for review on December 16, 2021. This petition is filed within 90 days of that date pursuant to Supreme Court Rule.

### **B. Procedural Background**

Petitioner Joshua Dicks and Respondent Natasha Davis were, at the beginning of this proceeding, the legal mother and father of the minor child, A.D. This action originated as a private adoption action filed by Respondent under Ark. Code Ann. § 9-9-201, *et. seq.* Petitioner Joshua Dicks represented himself *pro se* in the adoption proceeding.

The Circuit Court of Baxter County Arkansas entered its final decree in the above case on [REDACTED]. Appendix B. This was a final decree in an adoption proceeding terminating Joshua Dicks' parental rights regarding the minor child A.D ([REDACTED]). *Id.*

Under Ark. R. App. P. – Civil 4 and Ark. Code Ann. § 9-9-216(a), timely notice of appeal would have to have been filed within thirty days of entry of the [REDACTED] order – or no later than [REDACTED].

*Id.*

[REDACTED] On filing his record on appeal with the Arkansas Court of Appeals, Mr. Dicks filed a concurrent Motion to File Appeal Out of Time, [REDACTED]

[REDACTED] Appendix E at Appen. 7; [REDACTED]

[REDACTED]  
Mr. Dicks' Motion was denied without comment or opinion by the Arkansas Court of Appeals on September 8, 2021. Appendix A (1). His petition for reconsideration under Ark. R. App. P. – Civil 2-1(g) was denied by the Court of Appeals on October 20, 2021, again by one line order. Mr. Dicks petition for review to the Arkansas Supreme Court was denied by one line order on December 16, 2021.

[REDACTED]

[REDACTED]

[REDACTED]

## REASONS FOR GRANTING THE WRIT

Petitioner submits that a writ of certiorari should issue in this case because the action of the Arkansas Supreme Court is in conflict with minimum requirements for due process previously established in this Court's decisions. *See Lassiter v. Dept. Social Services of Durham Cty., N.C.*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640. More specifically:

**I. The Court should grant the petition because the Arkansas rule applied here imposing the same duty to pro se litigants as to represented litigants regarding notice of final decrees and perfection of appeal fails to meet the minimum standards for 14<sup>th</sup> Amendment Due Process established by this Court in *Lassiter v. Dept. Social Services of Durham Cty., N.C.*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640, particularly where there is no requirement for appointment of ad litem counsel at the trial level, and no court advisement of applicable obligations and deadlines to pro se litigants.**

There is no principled basis for distinguishing this case from cases in which the termination of parental rights is initiated by direct action of the Arkansas Department of Human Services. Arkansas has recognized the importance of the rights of parents in termination of rights decisions where the underlying cases are initiated by the Department of Human Services. In those cases, Arkansas has provided for appointment of ad litem counsel for

the minor children, (Ark. Code Ann. § 9-27-316) and has adopted a forgiving standard for appeal, finding that, in the context of belated appeals “[w]hile the instant case is not a criminal case, we have afforded indigent parents appealing from a termination of parental rights similar protections to those afforded indigent criminal defendants...” *Garcia v. Ark. Dep. of Health and Hum. Ser.*, 286 S.W.3d 674, 374 Ark. 144 (Ark. 2008); *see also Jones v. Ark. Dep't of Human Servs.*, 2016 Ark. 389.

In doing so, the Arkansas Court has recognized the fundamental nature of the rights at issue (*See Jones, supra.*), **but has failed to apply them in non-DHS initiated proceedings.** This Court has held that the Due Process Clause protects the right of parents to "establish a home and bring up children." *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). The Court consistently has recognized the primacy of the parent-child relationship—and cast a skeptical eye on government attempts to burden it. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978); *Parham v. J. R.*, 442 U.S. 584, 602 (1979). Even in cases yielding divided opinions, the Court has consistently agreed that "the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment." *Santosky v. Kramer*, 455 U.S. 745, 774 (1982) (Rehnquist, J., dissenting).

Petitioner submits that this fundamental interest should apply equally in private adoption cases involving termination of rights as it does in cases brought by government agency. *Armstrong v. Manzo*, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965)(“Before the State ‘deprive[s] a legitimate [ sic ] parent of all that parenthood implies,’ the requirements of due process must be met.”). Further, the other due process protections are even less present in private adoptions, as Arkansas has no statutory requirement that an ad litem be appointed in private adoptions, no provision for appointed counsel for indigents, and no requirement of any advisement as to relevant deadlines or notice of entry of final decrees.<sup>1</sup>

The Due Process Clause includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997); *see also Reno v. Flores*, 507 U.S. 292, 301-302 (1993). More specifically, termination orders implicate State action; “[f]ew forms of state action are both so severe and so irreversible.” *Santosky*, 455 U.S. at 759. A termination decree represents “the State’s destruction of . . . family bonds” as the targeted parent “seeks to be spared from the State’s devastatingly adverse action.” *M.L.B. vs. S.L.J.*, 519 U.S. 102, 125 (1996). Termination invokes “the awesome authority of

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<sup>1</sup> Although the Arkansas Rule of Appellate Procedure – Civil(4)(b)(3) affords limited relief from Notice of Appeal filing deadlines where there is a “failure to receive notice” of a judgment, this only applies in circumstances where the party can show “diligence” and caselaw interpreting this provision makes it clear that the circumstances here do not fall within that provision’s scope, and that the “diligence” requirement applies even in pro se cases. *See O’Neal v. State*, 484 S.W.3d 671 (Ark. 2016); *Arkco Corp. v. Askew*, 200 S.W.3d 444, 360 Ark. 222 (Ark. 2004)(“lawyer and litigant must exercise reasonable diligence in keeping up with the docket...”)

the State ‘to destroy permanently all legal recognition of the parental relationship.’” *Id.* at 128 (citing *Rivera v. Minnich*, 483 U.S. 574, 580 (1987)).

The fact that the proceeding is initiated by a private individual does not divorce the action from the public policy interests of the State, nor is the final determination free from such interests, as the “best interests of the child” – the core State policy in virtually all child custody situations – remains a public interest. *See Ark. Code Ann. § 9-27-102; Shemley v. Montezuma*, 676 S.W.2d 759, 12 Ark.App. 337 (Ark. App. 1984). And analysis in several other states presents compelling argument that there is no distinction in the actual deprivation resulting from the proceeding. *See e.g. In re Meaghan*, 461 Mass. 1006, 961 N.E.2d 110 (Mass. 2012), finding that, “An indigent parent facing the possible loss of a child cannot be said to have a meaningful right to be heard in a contested proceeding without the assistance of counsel.... appointed counsel not only safeguards the rights of the parents, but it assists the court in reaching its decision with the ‘utmost care’ and ‘an extra measure of evidentiary protection,’ required by law. . . .”; *contra. In the Matter of: L.C.C.* 114 N.E.3d 448, 2018 Ohio 4617; *see also In re Adoption of KLP*, 735 N.E.2d 1071, 316 Ill. App.3d 110, 249 Ill.Dec. 246 (Ill. App. 2000) (“Regardless of under which act the termination action is brought, the goals of the proceedings are identical-(1) to determine whether the natural parent is unfit and, if so, (2) to

determine whether the adoption will best serve the child's needs. . . Given the nature of adoption and the fact that resort to the statutory scheme and the judicial process is necessary for its accomplishment, we find that the required state action is present here..."); *Crowell v. State Pub. Defender*, 845 N.W.2d 676 (Iowa 2014)(“equal protection clause of the Iowa Constitution guarantees an indigent parent the right to counsel at public expense in an involuntary chapter 600A termination proceeding because the right is coextensive with an indigent parent's right to counsel in a chapter 232 termination proceeding.”).

**II. The Court should grant the petition because the absence of any inquiry into the indigency status of pro se litigants and the absence of any statutory requirement for appointment counsel for indigent parents, or of ad litem counsel in a “private adoption” termination of parental rights cases denies those parents whose rights are terminated due process under the 14<sup>th</sup> Amendment.**



imposition of waiver rules under the Arkansas Rules of Appellate Procedure would deny petitioner basic equity and fairness. *See Lassiter v. Dept. Social Services of Durham Cty. N.C.*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (No absolute right

to counsel where the law otherwise “seeks to assure accurate decisions” including procedures that require mandatory appointment of *ad litem* counsel for the child where a material allegation is denied.) The *Lassiter* Court further required that, “the decision whether due process calls for the appointment of counsel for indigent parents in termination proceedings to be answered in the first instance by the trial court, subject, of course, to appellate review.” *Lassiter*, 452 U.S. at 25.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In any DHS initiated termination proceeding, Appellant would have been entitled to counsel as a matter of law under A.C.A. § 9-27-316(h)(1)(a).

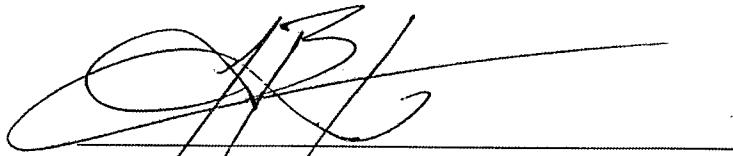
#### **CONCLUSION AND REQUEST FOR RELIEF**

The circumstances in this case deprived Petitioner of basic due process. While he would have been entitled to appeal his decision (and potentially challenge the other counsel issues presented in this petition) in a DHS initiated proceeding, because this was a privately initiated proceeding, he was given no assistance, [REDACTED]

[REDACTED]

[REDACTED] Petitioner respectfully prays that a writ for certiorari issue to review the judgment of the Arkansas Supreme Court.

Dated this 27<sup>th</sup> day of May, 2022.



Jeremy B. Lowrey  
Attorney at Law  
Arkansas Bar No. 2002153  
Oklahoma Bar No. 15031  
Post Office Box 153  
Sheridan, Arkansas 72150  
(870) 329-4957  
Facsimile No: (479) 222-1459

ATTORNEY FOR PETITIONER  
JOSHUA DICKS