

No. _____

In the
Supreme Court of the United States



D.H.,

Petitioner,

v.

WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES, ET AL.

Respondents.

**On Petition for a Writ of Certiorari to the
Supreme Court of Appeals of West Virginia**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The West Virginia Statute for Abuse and Neglect falls under the West Virginia Child Welfare Act, found at § 49-1-101 *et seq.*, is a remedial statute designed to help families in crisis access state resources to preserve the family or protect children. The questions presented, upon which the court is asked to opine is:

Whether, for the purposes of the due process rights guaranteed to natural parents under the 14th Amendment, is it Constitutional to terminate the natural mother's parental rights to her surviving child based on her refusal to confess to allegations when the state bears the burden of proof by statute?

PARTIES TO THE PROCEEDINGS

Petitioner

- D.H., Mother

Respondents

- West Virginia Department of Health and Human Resources
- R.W., a juvenile Child born September 16, 2019, by his Guardian *ad Litem* Julia Callaghan, Esq.
- S.T.W., biological father of R.W., and the psychological parent/step-father of the deceased child K.H.

Note: West Virginia court rules require that the names of parents and children in abuse and neglect matters are presented solely by initials in public filings.

LIST OF PROCEEDINGS

Supreme Court of Appeals for the
State of West Virginia

No. 21-0626

In re R.W.

Date of Judgment: February 1, 2022

Circuit Court of Braxton County of West Virginia

No. CC-04-2021-JA-9

In the Interest of: R.W.

D.H. & S.T.W., Adult Respondents

Date of Order: July 6, 2021

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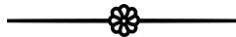
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Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.



OPINIONS BELOW

The Decision of the Supreme Court of Appeals for the State of West Virginia, dated February 1, 2022, appears at App.1a. This memorandum decision was not designated for publication in the West Virginia Reports, but may be cited in any court or administrative tribunal. The Order of the Circuit Court of Braxton County of West Virginia, dated July 6, 2021, appears at App.13a.



JURISDICTION

The State of West Virginia Supreme Court of Appeals issued the Memorandum Decision for this matter on February 1, 2022. A copy of that decision appears at App.1a. By letter dated May 3, 2022 the Clerk of Court provided an additional 60 days in which to complete the filing.

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



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. XIV, § 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.

W. Va. Code 49-4-604

Disposition of neglected or abused children; case plans; dispositions; factors to be considered; reunification; orders; alternative dispositions.

This statute is reproduced at App.23a.



STATEMENT OF THE CASE

Petitioner D.H. is the natural mother of R.W., a juvenile child born on September 16, 2019. Petitioner is also the mother of K.H., whose murder at the hands his psychological parent/step-father, S.T.W., did cause the West Virginia Department of Health and Human Resources to file a Petition of Abuse and Neglect against Petitioner with regard to her surviving child, R.W.

On February 2, 2021, Petitioner was at work at a local nursing home, and her children K.H. and R.W. were exercising parenting time with their father, S.T.W. In the early morning hours, K.H. was found unresponsive in the home of S.T.W. and emergency services were called. R.W. was also in the home, but had not been harmed. K.H. was later pronounced dead at Braxton County Memorial Hospital. It is undisputed that Petitioner was at work and not present in the home at the time of K.H.'s death, nor had she resided in the home for several months.

A. Lower Court Abuse & Neglect Proceedings

The State of West Virginia did file an Emergency Petition of Abuse and Neglect naming R.W. as an infant respondent on February 2, 2021. The Emergency Petition of Abuse and Neglect was amended twice over several weeks, to include additional allegations of abuse and neglect. The Second Amended Petition of Abuse and Neglect, which was the basis of the Petitioner's adjudication as an abusive and neglectful parent, was filed on or about April 22, 2021.

An Adjudicatory Hearing was held on May 7, 2021. The Court did enter an Order on June 2, 2021 and Petitioner was adjudicated as an abusive and neglectful parent, 1) based on a failure to protect K.H. from domestic violence that happened between Petitioner and S.T.W. several months prior, 2) for allowing her father, whose rights had been terminated 10 years previously to Petitioner, to babysit, and 3) failing to confess to wrong doing of abuse or neglect of R.W.

On June 23, 2021 a dispositional hearing was held. The Circuit Court did enter an Order on July 6, 2021 denying an improvement period for Petitioner, and

terminating her parental rights to R.W. permanently. The termination was effectively based upon the same issues in which she had been adjudicated. The Circuit Court did not take into consideration the bond which existed between Petitioner and R.W.

B. Appeal to the West Virginia Supreme Court

Petitioner did appeal both her adjudication as an abusive and neglectful parent, and the termination of her parental rights, to the West Virginia Supreme Court of Appeals. This Petition for Writ of Certiorari deals only with the Memorandum Decision (App.1a) that affirmed the Circuit Court's termination of her parental rights (App.12a).

Petitioner did assert the following assignments of error to the West Virginia Supreme Court: a) the circuit court erred in terminating the respondent mother's parental rights based on her allowing her father to babysit after his parental rights had been terminated 10 years prior, b) the circuit court erred in terminating the respondent mother based on exposure of the child to domestic violence discourages victim from using state resources to protect themselves and their children from domestic violence c) terminating parental rights based on a failure to admit any wrongdoing or culpability (when the adjudication is on appeal) impermissably shifts the burden of proof from the state to the respondent parent thereby depriving her of her constitutional right to due process d) the forensic psychologist down-graded mother's prognosis, which was a basis of her termination, which was based in part on the courts' mistaken belief that she had defended S.T.W. when her direct testimony was otherwise.

The West Virginia Supreme Court of Appeals upheld each and every one of the factors that the Circuit Court used to terminate mother's rights to her children.

It is from this ruling that the Petitioner seeks this Petition for Writ of Certiorari.



REASONS FOR GRANTING THE PETITION

I. THE QUESTION PRESENTED IS IMPORTANT, AS THIS CASE PRESENTS AN IMPORTANT AND RECURRING 14TH AMENDMENT ISSUE WITH SIGNIFICANT IMPLICATIONS FOR NATURAL PARENTS ACROSS THE UNITED STATES OF AMERICA, AND THE INTRUSIVE POWERS OF THE STATE TO FORCE CONFESSIONS OF GUILT UNDER PAIN OF NEVER SEEING ONE'S CHILDREN EVER AGAIN.

As of March, 2022, the State of West Virginia has approximately 6,618 children in foster care as the result of abuse and neglect cases brought against natural parents by the Department of Health and Human Resources. West Virginia Department of Health and Human Resources, *West Virginia Department of Health and Human Resources Legislative Foster Care Placement Report*, (03/2022), <https://dhhr.wv.gov/bcf/Reports/Pages/Legislative-Foster-Care-Reports.aspx>.

It is widely regarded that the opiate epidemic played a large part in the explosive growth in removal of children from their parents in West Virginia. With the extremely high volume of removals from West Virginia families came a body of cases that change the statutory burden of proof from the state to a requirement of

these parents to admit to the abuse to gain an improvement period. The successful completion of a period of improvement is the only way for parents like your petitioner to regain custody of their children and retain their parental rights.

This case is unique to bring the issue before this Court, because the issue of parental rights terminations are rarely, if ever, appealed beyond the West Virginia Supreme Court of Appeals and there appears to be a great need to review the application of case law to the state statute, state constitution, and United States Constitution.

The parents caught in abuse and neglect cases are overwhelmingly poorly educated and represented by overworked and under resourced public defenders. State services are often provided by a carousel of Child Protective Services workers. These workers often fail to meet the most basic statutory requirements of abuse and neglect proceedings, while being very unfamiliar with the children, respondent parents, and the statutes and case law that govern their work; it is the opinion of these workers, along with a vast body of case law that the West Virginia Circuit Courts must apply, when deciding the outcome of these cases.

W. Va. Code § 49-4-604(C)(5)(c)¹ sets forth that abuse and neglect cases are meant to be remedial in nature, and that the Supreme Court has repeatedly found the termination of parental rights is the most drastic remedy under the statutory provision covering the disposition of neglected children. However, the Courts have drifted far from their stated nature to

¹ *In re T.M.*, 242 W. Va. 268, 835 S.E.2d 132 (2019) at 144.

reunite families in crisis, and instead turn to the mass termination of parental rights in a perversion of the phrase, “the child’s best interests.”

The Court of Appeals decision at App.10a highlights the extreme measure unto which the Courts have turned, saying with regard to Petitioner:

[t]here was no reasonable likelihood that petitioner could substantially correct the conditions of abuse and neglect in the near future² and that termination of parental rights was necessary for the welfare of the child. West Virginia Code § 49-4-604(c)(6) provides that circuit courts are to terminate parental rights upon these findings. Clearly, petitioner presented a danger to the child if in her custody. Additionally, “we find that adoption, with its corresponding rights and duties, is the permanent out-of-home placement option which is most consisted with the child’s best interests.” *State v. Michael M.*, 202 W. Va. 350, 358, 504 S.E.2d 177, 185 (1998.) The circuit court’s termination of petitioner’s parental rights to R.W. was necessary to facilitate adoption for the child. As such, it is clear that termination of petitioner’s parental rights was necessary to provide permanency for the child and, therefore, necessary for welfare.

² Here, the alleged murderer was in jail facing a felony criminal trial and therefore could not possibly be around R.W. even if your petitioner, in stark contrast to all of her testimony, would allow either herself or her surviving child to be in contact with him. Your Petitioner was never charged with any crime in connection with this death.

Petitioner herein did not harm K.H.³. Throughout the matter, Petitioner was employed, subject to random drug and alcohol screenings without any failed screens and participated in parenting classes and other state services. It is undisputed in this matter that, Petitioner being the victim of domestic abuse by S.T.W., took the necessary steps to remove herself and the children from that situation and stopped his contact with K.H. and R.W. for a period of several weeks. Once S.T.W. started receiving counseling and medication for his mental illness, petitioner allowed a phased-in period of supervised visitation that graduated to unsupervised parenting time.

It was shortly after the phased in parenting time was implemented between the parents that K.H. was killed and S.T.W. was arrested in connection with that death.

In this instance, Petitioner was clearly not a danger to R.W. However, the case law has radically transformed the abuse and neglect system, in that termination of parental rights is almost always the outcome. The opinion that was affirmed by the West Virginia Supreme Court of Appeals almost cements the fact that the filing of an abuse and neglect petition is the only grounds necessary for the eventual termination of parental rights, and the denial of the due process to natural parents guaranteed by the United State Constitution.

³ Deceased.

II. THE FACTS OF THE CASE ARE LARGELY NOT IN DISPUTE AND THE REVIEW OF THE APPLICATION OF THE LAW AND THE ISSUES SURROUNDING THE APPLICATION OF WEST VIRGINIA CASE LAW CONTRARY TO THE U.S. CONST. 14 AMEND.

The Due Process Clause of the 14th Amendment to the U.S. Constitution is also enshrined in the West Virginia Constitution through Article 1-1 which states “The constitution of the United States of America, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land.” Here, due process was denied to your Petitioner in that she could either confess to the allegations made by the state in all of the petitions, and subsequent amended petitions, in the hopes of seeing her remaining child, or she could deny the allegations and be ineligible for an improvement period. The denial of an improvement period effectively makes it impossible to ever regain her child.⁴ Simply put, the right to notice and to be heard must mean more than the obligation to confess to whatever allegations⁵ the State sets forth, or never to see one’s children ever again.

It is well settled law in West Virginia that the failure to admit to an issue makes the awarding on an

⁴ As required by Statute, the West Virginia Depart. Health and Human Resources, Child Protective Services (hereinafter Department) filed a Family Case plan on March 26, 2021, after the application to ratify the removal of the child from your petitioner was submitted on February 2, 2021 and stated that the permanency plan for the child was adoption, and a concurrent plan of guardianship as required under 42 U.S.C. § 675(5)(C) and (E). At no point did the state make any recommendation indicating the possibility of reunification of your Petitioner with her child because of her failure to confess to the allegations contained in the Amended Petition.

improvement period futile.⁶ That is in stark contrast to the Statutory burden of proof being on the State to prove its allegation by clear and convincing evidence.⁷

Here a grieving mother who was herself a victim of domestic violence and who had just suffered the violent murder of her child, is asked to place the blame for that murder, which she had no part in, on herself or face certain termination of her parental rights. To add further injury, West Virginia law requires that any children your Petitioner would have in the future, would automatically trigger another abuse and neglect case, wherein her hypothetical future child could be removed from her care, custody and control. This continued denial of her due process rights would be predicated merely on this case and the birth of any subsequent children to her.

The Department later filed a third Petition in the matter, titled Second Amended Petition.

⁵ Here the allegations contained in the various petitions filed against your petitioner are a nuanced collection of events which, taken together, could be construed to mean that the petitioner knew, or should have known that S.T.W. would kill her child K.H. and that she failed to protect her child R.W. from this murder.

⁶ See *West Virginia Dept. of Health and Human Resources es rel. Wright v. Dorris S.*, 475 S.E.2d 865, 874 (1996).

⁷ W. Va. Code § 49-4-601(i) requires “[t]he findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence” to adjudicate parents as abusing or neglectful parents and the child(ren) as abused or neglected.



CONCLUSION

The Court should grant the Petition for Writ of Certiorari to address the issues set forth herein.

Respectfully submitted,

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