

22-5114 ORIGINAL  
No. \_\_\_\_\_

Supreme Court, U.S.  
FILED

MAY 26 2022

OFFICE OF THE CLERK

In The

Supreme Court of the United States

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Jasmaine H. *in forma pauperis*

Petitioner,

v.

Arizona Department of Child Safety, et al.,

Respondent.

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On Petition for Writ of Certiorari to the

United States Court of Appeals

for the Ninth Circuit

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Petition for a Writ of Certiorari

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**Questions Presented**

**Did the Arizona Department of Child Safety violate Mother's Fourteenth Amendment right to Due Process and deprive her of her fundamental right to parent?**

**Does Arizona's minimum standard for clear and convincing evidence upon findings violate Mother's ability to a fair trial?**

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## **OPINIONS**

The opinion of the highest state court to review the merits appears in Appendix A to the petition and is unpublished. The opinion of the Arizona Maricopa County Superior Court is not required per Rule 14.1(i) of the Supreme Court of the United States and has been omitted but would appear in Appendix B to the petition and is unpublished. The decision of the State Supreme Court denying review appears in Appendix C. Order of State Supreme Court denying rehearing appears in Appendix D.

## **JURISDICTION**

The date on which the highest state court decided my case was September 23, 2021. A copy of that decision appears in Appendix A. A timely petition for rehearing was thereafter denied on the following date: March 1, 2022, and a copy of the order denying rehearing appears in Appendix D. The Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

This case involves United States Constitution 14th Amendment § 1.

## INTRODUCTION

There is a growing phenomenon nationwide within the child welfare system. Children are being removed from their families at alarming rates for more related to poverty and bias than actual abuse. Dr. Frank Edwards has explored over the years this dilemma that has impacted families who have been involved with child protection services. Today, the numbers estimate that 1 in every 3 children will be investigated by CPS and that rate becomes 1 in every 2 for black children. As a representative of ALL mothers who have become a statistic to the design of the system, consideration for certiorari is needed not only to protect our children but the fundamental rights of the family and its foundation of this nation. Decisions to uproot family units include unfair and unjust practices for financial gain. The conspiracy of parties from the state to the attorneys, up to these judges recognizes the actions being taken to deprive many families and their right to due process in line with fundamental principles of liberty and justice; *U.S.—DuBose v. Kelly*, 187 F.3d 999 (8th Cir. 1999). Fundamental fairness is the soul and foundation of due process. The liberties of families are valuable and must be seen as needing protection under the 14<sup>th</sup> Amendment; *Hardy v. Superior Court, Judicial Dist. of Fairfield*, 305 Conn. 824, 48 A.3d 50 (2012).

## STATEMENT OF CASE

On March 28th of 2017 Mother, Jasmaine H. gave birth to twin fraternal boys, M.S. & M.S. During the stay, Mother answered questions from medical personnel including about her use of marijuana as relief from pregnancy symptoms. The Arizona Department of Child Safety, also to be referred to throughout this matter as the department or DCS, began an investigation regarding concerns of substance abuse. Mother agreed to work with the department and participate in services. In

August of 2017 the Department of Child Safety, DCS, closed out services unsuccessfully due to the contracting agencies' inability to provide her with services outside of her work schedule.

In April of 2018, a call to Phoenix Police Department by Mother was made regarding a domestic quarrel. Mother advised the police that she was upset because the father of three children in reference refused to operate the air conditioning. Stated that she was stressed, and they were having another baby. The police report included allegations made of a possible physical altercation involving strangulation; however, Mother refused to conduct an examination with a nurse. This incident triggered a DCS hotline report where no resolution was returned.

In the mid-summer of 2018, another police report was made with conflicting allegations. Father made a phone call stating that Mother had made comments and was concerned about her mental health as she stated she was going to "drive into traffic". Phoenix PD located Mother driving away from the location. Officer confronted Mother who expressed concerns for her mental health. Officer provided

transportation to a mental health facility where concerns of physical assault were addressed. Due to Mother being 6 months pregnant a medical examination was required before mental health was able to be assessed. Upon examination evidence of injury compared to an assault was determined. Mother was released back to her vehicle.

In August of 2018, a DCS investigation continued. The mother expressed issues with stress, mental health, and financial struggles where investigators provided a list of numbers and resources and were advised the case would be closed.

On the morning of November 7th, 2018, Mother went into labor with M.S." At birth, the Mother tested positive for THC/marijuana. Mother testified during the trial that there was no conclusive evidence that M.S. had tested positive for THC/marijuana. Prior to discharge, a DCS investigator arrived at the hospital questioning Mother regarding prior reports of domestic violence between herself and the children's father. This prompted a seven-day separation of the family where the father was asked to be removed from the home until the Team Decision Meeting (TDM) that took place on November 14th of 2018.

During this meeting, discussions were held that aroused emotions for the parents in different fashions. Mother expressed issues with Postpartum Depression after the birth of M.S. & M.S., limited financial resources, and lack of community and partner support which is supported by Dr. Leslie Montijo-Tai's testimony on day two of the severance trial. While Mother regressed towards compliance, Father showed clear signs of resistance. Upon conclusion of the meeting, all parties agreed

to what was termed as “Court Oversight”. Believing that true accountability of all parties would be reviewed, the parents agreed to these services. The safety plan was lifted with a pop-in safety monitor to contact family twice a day to ensure that their needs were being met. Around November 28th, 2018, the DCS investigator obtained signatures from both parents entering an agreement for an In-Home Intervention.

Unbeknownst to the parents, they had willingly signed their legal rights away. “Because of what appears to be a lawful command on the surface, many citizens, because of their respect for what only appears to be a law, are cunningly coerced into waiving their rights, due to ignorance.” *US v. Minker, 350 US 179.*

On or about December 6th, 2018, a phone call to Mother from the investigator advising of a court hearing to discuss the matter further. Mother was confused, Father was outraged. A present danger plan had been provided for a cooling-off period for the family which once again recommended for Father not to be in the home for 14 days. Mother testified that the present danger plan was set to expire on December 31, 2018, and no further action nor documentation was provided by the department.

On January 7th, 2019, a status call was delivered to the DCS Hotline from Phoenix Police Department regarding a disturbance. Father had contacted Phoenix Police Department requesting for Mother to be removed from the home. There was never any contact between either parent. Father made a call while not at the residence and arrived once police were present. The mother provided Phoenix PD with the

present danger plan that they were unable to enforce due to the plan expiration date having passed. On an active warrant, Phoenix PD took Father into custody.

On or about February 13th of 2019, a call was made to Phoenix PD regarding concerns for Mother's mental health. When officers arrived, they found Mother in the home with the children and her uncle who is the current placement for the children. Both Mother and Father had police contact where no reports of a physical altercation had taken place. Mother was admitted into Aurora Behavior Health where she spent 8 days recovering and engaging in healthy coping skills.

Approximately 48 hours into Mother's stay, the Department of Child Safety removed the children from her paternal uncle's home, separated them, and placed them into group homes creating avoidable trauma for the three children. A TDM was held near the end of the week on February 13th of 2019 where a discussion was held with family members and the department. The children were to be placed with the uncle while Mother actively engaged in the Service Letter that was provided by the case manager. Mother's contact was immediately restricted. Mother began complying and completing each aspect of the case plan as follows: Parent Aid, Domestic Violence Counseling, Substance Abuse Assessment, Psychological Evaluation, Random Drug Screening, Stable Financial Income, Housing, and continued contact with the case manager. Mother had received a Medical Marijuana card for legal usage in Arizona in March of 2019.

In August of 2019, supported by Dr. Leslie Montijo-Tai's testimony, Mother completed a psychological evaluation that provided recommendations for DBT

Therapy, domestic violence, and substance abuse in an educational format. In October 2019, Mother enrolled in a family violence course through the University of Phoenix. In November of 2019 the Report & Review hearing continued to address concerns regarding substance abuse, the following week Mother enrolled in a Substance Abuse course, and both were completed successfully through the University of Phoenix by January 2020.

In February of 2020, during a Report and Review hearing, the department continued to request for Mother to complete a substance abuse assessment to determine whether any services were needed. March of 2020, due to the start of the pandemic there was limited availability for scheduling and a virtual appointment was completed during the first week of April 2020 determining no services were required.

In early May of 2020, a TDM was conducted as the path to returning the three children to their mother. Mother completed all required conditions of return. A Reunification Team was assigned to Mother as the family began unsupervised and overnight visits. On or about June 5th of 2020, the case manager came to the mother's home to sign a case plan. There was no safety included in the documents to sign as supported by both Mother's testimony and the testimony of the case manager at trial. On or about June 12th of 2020, the department filed a motion to change custody to Mother. On June 15th, 2020, Father posted a video to YouTube that included the twin boys M.S. & M.S. playing while he spoke out against political officials along with the state agency and its case manager to keep him away from

his children and that he would treat them as the Declaration of Independence sees fit to those who do not uphold their oath and commit treason.

For a deeper perspective, Father Talib S. and the department have never managed to create a rapport of trust to provide resources for him and the family supported by Mother's testimony with the Guardian Ad Litem. During a Report and Reviewing hearing in November of 2019, Father addressed the Court regarding the department not providing him with visits. The department responded with no service providers being willing to attend his visits due to his hostility. The courts advised the department that Father had a constitutional right to see his children and was given two business days to conduct those visits. However, the Court advised Father that if he continued to harass and bully staff members that visits would be suspended. In early March of 2020, the department called for an Emergency Status Conference to suspend Father's visits due to continued hostility in emails to several parties of the case. While there was supporting documentation providing concerns for Father's mental health, there were also disclosures received by all parties from the Arizona Department of Veteran Affairs with notes in his medical records determining that while the father suffered from depression, he was not a danger to himself nor others. Upon completion of that hearing, Father's visits were suspended removing DCS's obligation of providing him with visits throughout the remainder of the dependency.

On June 18th of 2020, the department withdrew its position to change custody to Mother and motioned for a change of case plan to Severance and Adoption due to

time in care pursuant to Arizona Revised Statute 8-533 (B) 8(C). On January 14th, 2021, Reunification team Counselor Christa Jackson testified to the completion of services by Mother. In support of Mother's testimony, Ms. Jackson also testified that no safety plan was provided during intake of services by the department. After testimony from Mother's Behavior Health Therapist, Alisha Shipman, who testified that she had begun working on components of DBT therapy with Mother. On March 15, 2021, the Maricopa County Superior Court terminated the rights of both parents. Mother's rights were severed only on the ground of time in care pursuant to Arizona Revised Statute 8-533 (B) 8(C).

## **REASON FOR GRANTING THE WRIT**

**In August of 2020, the Courts granted the department's motion to change the case plan to Severance and Adoption and did not entertain a concurrent plan for reunification as the assigned judge stated that Mother was "ungrateful for the opportunity that was given to her children to return". After the department was granted its change in the case plan, a TDM (Team Decision Meeting) was held at the request of Mother. The department testified that they felt no need to conduct a TDM prior to putting in the motion as a decision was already made to pursue severance and adoption.**

**A mediation took place in early October of 2020 where after all of Mother's services were completed as well as volunteering for After Care Services with the reunification team. The department refused to walk back its decision for severance and adoption. During a Report & Review hearing in late October of 2020, Mother requested more visits and the department requested for Mother to complete a psychological evaluation to determine if any additional services would be necessary to obtain more visits. Upon completion, visits were not given outside of what was already being provided even after the department refused to make up missed visits that the case manager refused to make up.**

**The first few days of the severance hearing included testimony from the department's case manager. The courts asked the department what had been done to give Mother another chance to show that she can have custody of the children without the father being around to which the case manager responded that "the**

department felt that she had plenty of opportunities." On February 17th, day four of the trial, Mother testifies regarding her position with the children's father and how they are not in a relationship, and she is working towards enhancing her life with her education and raising her children. When the Court inquiries about interaction and contact between Father and the children, Mother expresses the willingness to maintain a fundamental bond between Father and children when appropriate.

Mother testified to the tools given to her by the department to protect herself as well as her children. Mother testified that she was never given a safety plan that advised that she would be unable to provide supervised visits to Father as they moved towards reunification. In support of Mother's position about being confused regarding DCS's position and to maintain a familial relationship with the children and their father, Christa Jackson stated that the same in addition to the department's swift decision to move towards severance, as we ask this court to acknowledge *Scull v. State, 569 So. 2d 1251, "Trial court's haste in resentencing Scull violated his due process rights."* The department lacked the decision to move toward having the mother sign a safety plan at the March 2020 status conference to suspend the Father's visits shows that there were no clear imminent concerns like *Steven M. v. AZ Dep't of Child Safety JD532254.*

This case is not about the inability of the parent being able to exercise proper and effective parental care and control, but about a federal requirement that has pushed courts into a corner to violate even the best parent's rights. "The court is to protect against any encroachment of constitutionally secured liberties." *Boyd v. U.S., 116*

*U.S. 616.* “One of the vital personal rights essential to the orderly pursuit of happiness by free men” In *Loving v. Virginia*, 388 U. S. 1, as unanimously decided for one’s right to marry and upon marriage is the creation of lineage to be protected.

The argument to address is the Arizona Revised Statute 8-533 (B) 8(C) which states: “The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to a court order or voluntary placement pursuant to section 8-806, the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.” This statute is intended to align with the 1997 Adoption and Safe Families Act which makes the state required to accelerate dependency cases to conduct a sale of a child. The purpose of the Adoption and Safe Families Act of 1997 was to provide children who have been placed in foster care for an extended period a permanent placement as it is the child’s constitutional right to have a loving and nurturing home to develop in even with no progress or interest from the parents to reunify. As further supported in re *Appeal in Maricopa County Juvenile Action No. JS-6520*, 157 Ariz. 238, 243, 756 P.2d 335, 340 (App. 1988) “to expedite the process of numerous children who remain in temporary foster care and in so doing to promote a stable and long-term family environment for these children.” However, Mother argues that this is not the case. Mother requests to persuade the court in acknowledging that *Robert G. v. Ariz. Dep’t of Econ. Sec.*, 2011 Ariz. App. Unpub. LEXIS 882, 2011 WL 2517418. “If a

parent successfully completes all offered services, and the services provided the required reasonable opportunity of success for reunification, the parent will have remedied the circumstances which cause her child to be placed in foster care".

While the department will argue that Mother allowed Father time with children and in doing so showed that Mother lacked insight on Father's mental health. Yet, Mother's therapist testified that she holds insight. Testimony from the case aid assigned to supervise Mother's visits supports Mother's ability to exercise proper and effective parental care and control.

"Where rights secured by the Constitution are involved, there can be no rule-making or legislation, which would abrogate them" *Miranda v. Arizona* 384 US 436, 125. Section 1 of the Fourteenth Amendment provides: '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.**' And yet the case manager's testimony after the Court questioned him supports Mother's position of the lack of Due Process when the decision to move towards the termination of her parental rights was made. *Eisenstadt v. Baird*, 405 U.S. 438 (1972) expresses that "If the right to privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusions into matters so fundamentally

affecting a person as the decision whether to bear or beget a child." To terminate both parent's rights because of an interest in the termination of one's creates an unequal decision that does not protect Mother's rights to the care, custody, and control of her children which supports Mother's position of her 14th Amendment Right being violated due to the state's interest to terminate the rights of another party. Marriage, children, and family bonds are foundational to the founders of this Nation.

In *Santosky v. Kramer* 455 US 745, the family questioned the constitutionality of the preponderance of evidence needed to terminate the parent-child relationship.

Mother argues that her rights too were violated by the grounds that allow for anything less than proof beyond a reasonable doubt to support the interest of the state's position to terminate her parental rights and sever the familial bond.

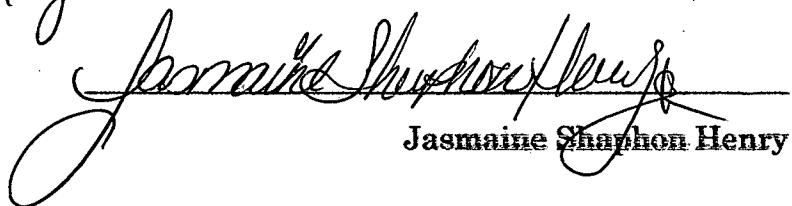
Considering those overturned events, Mother's level of engagement and participation throughout the case further exceeds those within *ibid*. A more recent case reflects an Arizona Maricopa County Superior Court judgment made on the same mother in *re Ross v. Henry*, FC2014-002472 for another child, M.R. Within these proceedings, Mother provided a third psychological evaluation through an agency not contracted with the department that determined her mental fitness and ability to parent. In addition, Mother also had delivered the child with which she was pregnant during her severance trial. Mother reported that both she and child, M.S., had tested negative on a toxicology screen at birth. Mother testified that the department choose to remove the newborn for 27 hours and she was determined

safe to parent when the child was returned. In addition, Mother completed a hair follicle through an order of the family court which determined no use of medicinal marijuana/THC within her system. Mother also indicated that she was not in a romantic relationship with anyone. With the case listed *ibid*, there is proof beyond a reasonable doubt that the appropriate evidence was never provided to the courts to determine Mother's true ability to parent, thus allowing the juvenile court to render its decision to proceed with terminating Mother's rights, see *Stanley v. Illinois* 405 US 645. As the state's standards of clear and convincing evidence do not give authority to take charge of any child over the objection of either parent of such child, *Social Security Act* §1101.6(d).

## CONCLUSION

In conclusion, based on the numbers provided by Dr. Frank Edwards neglect is the number one reason for child welfare involvement which typically stems from poverty (Edwards, 2012). While there are children that need to be protected, there are more families who need support. However, child welfare systems have managed to create a form of oppression against families during their most vulnerable times (Merkel-Hoguin, et al, 2022). While the phenomenon seems to target those minority-based groups, the numbers have shown that every family, no matter the race, color, background, religion, or sex could possibly find themselves at the mercy of our government agencies when it comes to the very thing our founding fathers valued and protected under the United States Constitution and the Bill of Rights. With that, Mother prays that this court will bless her by granting certiorari to no longer deprive one of their constitutional rights *Obergefell v. Hodges* 576 US 644.

Submitted on this 26<sup>th</sup> day of May, 2022.



Jasmaine Shapton Henry