NO. 22-_____

In the Supreme Court of the United States

R. M. C., III,

Petitioner,

v.

J. D. L.,

Respondent.

On Petition for a Writ of Certiorari to the Colorado Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a state may require an adoptive parent to comply with a custody order issued prior to his adoption of the child without due process.

PARTIES TO THE PROCEEDINGS

Petitioner

Petitioner R.M.C., III was the petitioner for adoption in the trial court, the appellant and cross-appellee at the Colorado Court of Appeals, and the petitioner for writ of Certiorari before the Colorado Supreme Court.

Direct Respondent

Respondent J.D.L. was a movant and attempted intervenor in the trial court that granted R.M.C., III's adoption request, the cross-appellant an appellee at the Colorado Court of Appeals, and the respondent before the Colorado Supreme Court.

Respondents, Interested Parties

The Mother of the minor child, A.L.T., now known as A.L.C., is not a party to the case on appeal. She was a party in the related El Paso County divorce cases, and is the mother of minor child E.A.T., now known as E.A.C.

Note: The original biological father A.J.R. is not a party to these proceedings

LIST OF PROCEEDINGS

Direct Proceedings

Colorado Supreme Court

Case No. 2022SC322

In re R.M.C., III v. J.D.L. for the adoption of E.A.T.

Judgment Entered: July 25, 2022

Colorado Court of Appeals

Case No. 2021CA520

In re R.M.C., III for the adoption of E.A.T. and concerning J.D.L.

Judgment Entered: April 21, 2022

Morgan County District Court

Case No. 2020JA18

In re R.M.C., III for the adoption of E.A.T.

Judgment Entered: November 19, 2020 *nunc pro tunc* November 18, 2020

Judgment Vacated in Part: March 5, 2021

Related Proceedings

El Paso County District Court
Case No. 2015DR30082
In re A.L.C. and A.J.R., et al.
Case No. 2019DR30762
In re J.D.L. and A.L.T.
Judgement Entered: October 28, 2020

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OPINIONS BELOW

The opinion of the Colorado Supreme Court denying Petitioner's state petition for a writ of certiorari dated 25 July 2022 is included in the Appendix at App.1a. The preceding Colorado Court of Appeals' opinion issued 21 April 2022 is included in the Appendix at App.3a. The Morgan County District Court's order dated 19 November 2020 and the Morgan County District Court's subsequent order vacating its 19 November 2020 order dated 5 March 2021 is included in the Appendix at App.23a and App.19a, respectively. These opinions were not designated for publication

JURISDICTION

The Petitioner invoked jurisdiction to appeal the decision of the Morgan Count District Court to the Colorado Court of Appeals under § 13-4-102 Colo. Rev. Stat. Ann. and Colo. App. R. 3. Petitioner then filed a petition for writ of certiorari to the Colorado Supreme Court under § 13-4-108 Colo. Rev. Stat. Ann. and Colo. App. R. 51. Following the Court of Appeals decision which terminated the Supplemental Agreement, Petitioner raised the Constitutional Due Process issue in his petitions to the Colorado Court of Appeals and the Colorado Supreme Court. *Petition for Writ of Certiorari (Colorado Supreme Court)*, Issues Presented for Review p. 5, Argument, p. 14.

The Colorado Supreme Court entered judgment on 25 July 2022. Petitioner files this petition within ninety days of that date. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. amend. XIV, § 1

> 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.

INTRODUCTION

Twenty-two years ago, in *Troxel v. Granville*, 530 U.S. 57, 65 (2000), this Court recognized parents' Constitutionally protected, fundamental right to the care, custody, and control of their children. In her Opinion, Justice O'Connor recognized that "the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a 'better' decision could be made." *Id.* at 72-73. Petitioner asks the Court to extend Troxel's protections to adoptive parents and insulate adoptive parents from custody orders entered before their adoption took place.

STATEMENT OF THE CASE

There are five persons relevant to the Statement of the Case to this Petition. A.L.C. and her son, E.A.C. (now seven years old, born January 10, 2015) are the first two relevant people. A.L.C.'s three husbands, A.J.R., J.D.L., and R.M.C., III are the other three (although only J.D.L. and R.M.C. III are parties to this petition). There are also two trial courts relevant to this Petition: El Paso County District Court and Morgan County District Court.

This case began as a dissolution of marriage in El Paso County District Court (the "Divorce Court") between A.L.C. and her first husband A.J.R.. E.A.C. is A.J.R.'s biological son, and A.J.R. is identified in this Petition as "Biological Father."

Nineteen months after A.L.C. divorced Biological Father, A.L.C. married J.D.L. A.L.C. and J.D.L. separated less than a month after their wedding, but they remained legally married for the next three years. J.D.L. filed for divorce on July 1, 2019. While A.L.C. and J.D.L.'s divorce was pending, J.D.L. intervened in the divorce case between A.L.C. and A.J.R. seeking an allocation of parental responsibility over E.A.C. The Court identified J.D.L. as a "psychological parent" to E.A.C., and J.D.L. is identified in this Petition as "Psychological Father."

The day after the dissolution of A.L.C. and J.D.L.'s marriage, A.L.C. married R.M.C., III. Two months after marrying A.L.C., R.M.C., III adopted E.A.C. with the consent of Biological Father and became E.A.C.'s Adoptive Father. R.M.C., III is the party petitioning

for a writ of certiorari, and R.M.C., III is identified in this Petition as "Adoptive Father." The adoption proceedings properly took place in Morgan County District Court (the "Adoption Court").

From 2015 to 2017, the minor child lived primarily with Mother and Psychological Father who was Mother's boyfriend and later second husband. In 2017, Mother received a new job in Sterling, Colorado. Mother and Psychological Father agreed that Mother would move to Sterling to start her new job, and Psychological Father would follow a few weeks later bringing E.A.C. with him. Psychological Father and E.A.C. never showed up in Sterling.

Psychological Father took E.A.C. from Mother for a little over two years (from September 2017 to November 2019) without authority or consent to have E.A.C. in his care. No court orders allowed Psychological Father to exercise care and control over E.A.C. During this time, Mother was unable to find her son. Once Mother found her son in November 2019, Psychological Father did not have contact with the child for about a year. E.A.C. lived exclusively with Mother and Adoptive Father (though Adoptive Father had not yet adopted E.A.C.) during this time. Psychological Father had sporadic contact from September 2020 until November 2020.

On 28 October 2020, on the Petition of Psychological Father, the Divorce Court found Psychological Father to be a "psychological parent" as defined by Colorado case law and awarded Psychological Father parenting time.

Three weeks later, Adoptive Father adopted the minor child with consent from Biological Father in the Adoption Court.

On 19 November 2020, on motion by Psychological Father, the Adoption Court considered Psychological Father's impact on Adoptive Father's rights. The Adoption Court's order was clear and correct:

> Given prior rulings of the United States Supreme Court, the parents get to make all decisions regarding the minor child including all parenting decisions and visitation decisions. Now that the minor child has a legal father based upon the adoption granted in this case, [Psychological Father] shall have no further contact or visitation with the minor child. The court sees no reason for any further visitation with [Psychological Father], as the minor child now has a mother and father.

App.24a (Emphasis added).

The conflicting orders issued by the Divorce Court and the Adoption Court setup a jurisdictional battle between two district courts of general jurisdiction. In an order dated 15 March 2021, the Adoption Court deferred to the Divorce Court and vacated its 19 November 2021 Order.

The Colorado Court of Appeals took up the matter. The Colorado Court of Appeals could have simply addressed the jurisdictional issue, upheld the Adoption Court's decision to vacate its own order on jurisdictional grounds, and deferred to the Divorce Court. Instead, the Colorado Court of Appeals went further and addressed the impact of an existing custody order on

an adoptive parent. The Colorado Court of Appeals held that:

> As it relates to psychological father's allocation of parental responsibilities, the "rights and privileges" adoptive father enjoys and the "obligations" to which he is subject are no more than those enjoyed by the child's biological father before the adoption. In other words, adoptive father is subject to the existing parenting time order, including the allocation of parenting time to psychological father. Adoptive father can no more ignore that order than biological father could have before the adoption.

App.10a-11a.

Adoptive Father Petitioned the Colorado Supreme Court for review. The Colorado Supreme Court declined to hear the case, though two of the Court's Justices would have granted certiorari.

As the Colorado Court of Appeal's ruling deprives Adoptive Father of a fundamental liberty interest without due process of law in violation of the Fourteenth Amendment, Adoptive Father petitions this Court for relief.

REASONS FOR GRANTING THE PETITION

I. THE STATE OF COLORADO VIOLATED ADOPTIVE FATHER'S CONSTITUTIONALLY PROTECTED, FUNDAMENTAL RIGHT TO MAKE DECISIONS CONCERNING THE CARE, CUSTODY, AND CONTROL OF HIS CHILD BY SUBJECTING HIM TO A CUSTODY ORDER ISSUED PRIOR TO HIS ADOPTION OF HIS CHILD WITHOUT DUE PROCESS.

"The liberty interest at issue in this case—the 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* at 65.

Colorado statute draws no distinction between biological parents and adoptive parents. "'Parent' means either a natural parent of a child, as may be established pursuant to article 4 of this title 19, or a parent by adoption." Colo. Rev. Stat. Ann. § 19-1-103 (105)(a).

The Due Process Clause of the United States Constitution states that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV.

The Colorado Court of Appeals erred when it stated that Adoptive Father stepped in the shoes of Biological Father. One need not think long before recognizing the absurd consequences that would result from the Court of Appeals' decision. If Biological Father had been restrained by a protection order, would Adoptive Father have also been restrained? If Bio-

logical Father had his parenting time eliminated by court order, would Adoptive Father also be subjected to that restriction? If Biological Father owed child support, would Adoptive Father automatically assume that obligation? A parent does not adopt a child to serve as a mere duplicate of the biological parent they replace. A parent adopts a child precisely because the adoptive parent offers something different.

Adoptive Father emerged from his adoption hearing with a son: E.A.C. Adoptive Father emerged from that courtroom just as he would have emerged from a delivery room—a new father with a constitutionally protected fundamental right to the unfettered care and control of his child. While Colorado law, like the law of most states, provides a mechanism by which another concerned adult may attempt to infringe upon that right,[1] such an infringement requires due process of law and strict scrutiny.

Before a court may infringe upon Adoptive Father's right to the care and control of his child, due process affords Adoptive Father the right to litigate, call witnesses, cross examine, and so forth. Further, because Adoptive Father's right is a fundamental one, the Court must identify a compelling governmental interest realized by its infringement upon Adoptive Father's right, and it must find that such infringement is the least restrictive means of achieving that interest. The Court of Appeals ignored Adoptive Father's right when, without a hearing, it required him to comply with an order that never applied to him, issued by a

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[1] Colorado's nonparent intervention statute found at Colo. Rev. Stat. Ann. § 14-10-123(1)(b).

court that did not have personal jurisdiction over him at the time it entered the order.

II. THE STATE OF COLORADO'S INFRINGEMENT UPON ADOPTIVE FATHER'S CONSTITUTIONAL RIGHTS IS INCONSISTENT WITH ITS OWN STATUTES.

There is no unique nuance in Colorado domestic relations law that would permit or excuse Colorado's failure to extend federal due process rights to Adoptive Father. Given federal deference to the states in matters of custody, this Court may presume the existence of some independently viable state statute explaining Colorado's decision in this case. There is none. To the contrary, the Colorado decision conflicts with state law as obviously as it conflicts with federal law.

Colorado law does not specifically address the impact of an adoption on nonparents found to be "psychological parents." However, Colorado law does address the impact of an adoption on biological relatives of the biological parent relinquishing his or her parental rights.

Colo. Rev. Stat. Ann. § 19-5-208 provides a mechanism by which biological relatives may seek contact with an adopted child post-adoption, and it grants the newly adoptive parent total control. Colo. Rev. Stat. Ann. § 19-5-208(4.5)(b) states that only the adoptive parent may request a post-adoption contact agreement for contact between a child and the birth parent or birth relative. Even then, the adoption court still has the power to deny such contact. Colo. Rev. Stat. Ann. § 19-5-208(4.5)(d) states that "the court shall include the post-adoption contact agreement in the adoption decree if the court finds the contact agreement is in

the child's best interests, after considering the child's wishes and any other relevant information."

If Colo. Rev. Stat. Ann. § 19-5-208 terminates any right to contact with the adoptive child held by a birth relative, then similarly it would terminate any such right held by a psychological parent. Under Colorado's adoption statutes, no notice is required to a birth relative (*i.e.* relatives other than the biological parent) regarding the adoption, and birth relatives' rights are automatically terminated. That should be the case with any "psychological parent."

When an adoption occurs, all previous allocations of parental responsibility must be vacated because the new adoptive parents have a right to their adopted child free of any court orders. This is the same as two married parents who have no allocation of parental responsibility orders through the courts. Thus, the allocation of parental responsibility order between Biological Mother and Psychological Father should have automatically terminated, and Psychological Father should have had to petition for an allocation of parental rights over the objection of the newly adoptive legal parents.

An adoption should automatically terminate a previously issued order allocating parental responsibilities over the adopted child. When Adoptive Father adopted his son, it was as if his son had just been born. A child does not emerge from the womb swaddled with a court order, and a child should not emerge from an adoption hearing constrained by one, either.

III. THIS PETITION SQUARELY MEETS THE CRITERION FOR CERTIORARI UNDER SUP. CT. R. 10

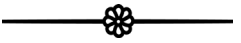
This Court should grant this Petition because a state court of last resort has decided an important question of federal law (1) that has not been, but should be, settled by this Court or (2) in a way that conflicts with relevant decisions of this Court. U.S. Sup. Ct. R. 10.

Troxel does not explicitly mention adoptive parents. If *Troxel* does not implicitly incorporate adoptive parents in its holding, Colorado has decided a question of federal law that has not been, but should be, settled by this Court: that is, the application of the Fourteenth Amendment to adoptive parents. If *Troxel* does implicitly incorporate adoptive parents in its holding, at least in states that draw no legal distinction between biological and adoptive parents, Colorado has decided an important question of federal law in a way that conflicts with this Court's decision in *Troxel*.

If Colorado's decision goes unchecked, it sets a wicked precedent by which state courts nationwide may subject adoptive parents to orders issued before they became parents, without their consent or due process, based upon the circumstances of their predecessor parent.

Colorado's elevation of a "psychological parent" to the level of a biological or adoptive parent may be of even greater national concern. By subordinating Adoptive Father's rights as a parent to the interest of a nonparent and the preference of a state judge without due process, Colorado has opened the door to the usurpation of a fit parent's rights by any party a

court deems better suited to promote a child's best interest. Whether it be a parent's boyfriend, relative, neighbor, teacher, coach, or state actor, Colorado's paradigm permits the dilution of parental authority without due process.



CONCLUSION

The decision of the Colorado Court of Appeals left uncorrected by the Colorado Supreme Court offends the United States Constitution and the existing decisions of this Court. By allowing declared Psychological Father to maintain parental responsibilities over Adoptive Father's objection without a hearing violated Adoptive Father's fundamental right to the care and control of his child without due process.

When the sun set over the Rockies on 18 November 2020, the State of Colorado had at least one new family—the "C's." The "C" Family included Mother and Wife A.L.C., Father and Husband R.M.C., III, and the child over whom these two wedded parents enjoyed all the rights and privileges of parenthood. In no other instance would a competent court interfere in the parental decisions of two fit, married parents. Yet, that is precisely what the trial courts did, that is what the Court of Appeals decided, and that is what the Colorado Supreme Court declined to correct. All three Courts were wrong. Adoptive Father now asks the United States Supreme Court to declare what seemed so obvious to an astute trial court judge way out in Morgan County, Colorado: "Given prior rulings of the United States Supreme Court, the parents get

to make all decisions regarding the minor child including all parenting decisions and visitation decisions." App.24a. The Morgan County judge was talking about Adoptive Father. The judge viewed the bonds forged by law as strong as the bonds forged by blood, and this Court has the opportunity to do the same.

Respectfully submitted,

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