

22-5499

SUPREME COURT OF THE UNITED STATES

SCOTT JAMES REPELLA
Plaintiff-Appellant

Vs.
LUZERNE COUNTY C&Y
Defendant- Appellee

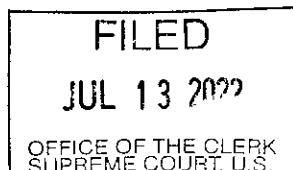
ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD
CIRCUIT ORDER OF CASE NUMBER 22-1130

PETITION FOR WRIT OF CERTIORARI
BRIEF OF APPELLANT

Date: August 25, 2022

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Luzerne County C&Y, Appellee



ORIGINAL

QUESTIONS SUBMITTED FOR REVIEW

1. DID THE COURT OF APPEALS ERROR IN DENYING THE COA AND NOT TAKING INTO THE COUNT THE COMPLEXITY AND SEVERITY OF THE CONSTITUTIONAL RIGHTS VIOLATION?
2. IS THERE A CONSTITUTIONAL RIGHTS VIOLATION IN QUESTION THAT WAS OVERLOOKED BY BOTH THE DISTRICT COURT AND COURT OF APPEALS?
3. SHOULD THIS COURT CONSIDER THE CONSTITUTIONAL RIGHTS VIOLATION IN QUESTION?

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STATEMENT OF THE ISSUES PRESENTED

1. CIRCUIT COURT DENIED IN AFFIRMING THE DISTRICT COURT ORDER
2. CIRCUIT COURT DID NOT LOOK AT THE ISSUES PRESENTED
3. CIRCUIT COURT DID NOT LOOK AT THE CONSTITUTIONAL RIGHTS VIOLATION.

STATEMENT OF SUBJECT MATTER JURDICATION

This court exercises review of the Third Circuit Court of Appeals affirming Plaintiff's Federal 28 U.S.C. § 2253 (C) (1) (A) filed in the District Court for the Middle District of Pennsylvania. 42 U.S.C. §1973 (b) (a) (5) 28 U.S.C. §1284

STATEMENT OF THE CASE

Herein this case is very complicated case by the plaintiff, On March 15, 2019, the appellant herein after "Repella" filed a petition for relief with the United states District Court for the Middle District of Pennsylvania under 28 USC §2254 alleging that his child was being held in state custody in violation of her constitutional rights. May 13, 2019, United States Magistrate Judge Joseph Saporito, Jr. wrote an opinion in his report And recommendation that the petition be denied for lack of Jurisdiction. May 24, 2019, Repella, filed a response to the R&R. Then on February 18, 2020, US District Judge entered an order adopting the Magistrate Judge's R&R and also denied issuing a Certificate of Appealability (COA). March 3, 2020, Repella filed an application for Certificate of Appealability (COA) with the District court. January 5, 2022, that request and application was denied by the honorable Judge Robert D. Mariani, an appeal was filed with the United States Court of Appeals for the Third Circuit on January 20, 2022. An application for (COA) Certificate of Appealability was filed with The court on April 5, 2022, and denied by the court on April 22, 2022, and a rehearing en Banc was submitted on May 3, 2022 and denied on June 30, 2022. This Writ of Certiorari follows.

ARGUMENT

Repella believes that the District Court as well as the Third Circuit erred in its decision granting relief. They failed to consider the true nature of this case in its entirety to fully grasp the Constitutional Rights violation involved. It has been decided that one must be heard and to confront and cross examine adverse witnesses Goldberg V. Kelly, 397 U.S. 254, 90 S. Ct. 1011, 25 L.Ed 287 (1970). Due Process demands that one is afforded a due process protection in any type of termination proceeding The Supreme Court affirmed and held that one be afforded these procedural safeguards to satisfy the constitutional due process requirement. As established by Goldberg, one has a right to confront his or her adverse witness, prior to termination of parental rights. See Mathews V. Eldridge, 424 U.S. 319 (1976) the right to be heard at a meaningful time meaningful manner, all which has been a principal basis to our judicial system for decades. The district court first denied the relief for lack of jurisdiction see (App 1, then denied the COA (App 2,) Repella argued to the Third Circuit on the basis that jurisdiction can be waived when a true colorful constitutional issue arises. That was denied by the third circuit in there COA denial decision (App 3). Repella showed a colorful constitutional rights violation. See Bacon V. Sullivan, 969 F.2d 1517, 1521-22 (3. rd. Cir (1992). Repella believes that he did in fact show a constitution rights Violation in his first complaint to the district court, and to the third circuit. Then the third circuit went off track and stated a substitutional right violation was not shown, which it was clearly shown by the COA to the District Court as well as to the Third Circuit, third circuit alleged that Repella did not raise a colorful constitutional right violation as he was not deprived Due Process, but he was denied his right to due process clearly Repella will not again restate the district court or the third circuit decision that is irrelevant here, what Repella will do however is just simply argue he was deprived due process of law by being denied his rights and shown that in the COA applications to both courts. "The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not include the stigma of a criminal conviction is a principal basis to our society." "Joint Anti-Fascist Comm V. McGrath, 341 U.S. 123, 341 U.S. 168 (1951). Repella

Was not afforded any procedural safeguards of his due process rights prior to termination of his parental rights. Repella believes that the court erred in denying the COA, and the 2254 petition. Repella made it clear that he believed that his minor child Alexis Repella is being held in state Custody in violation of constitutional rights. On August 12, 2009, the court of common pleas of Luzerne County visiting Judge Clinton W. Smith, terminated the parental rights of the natural Parents to their minor child Alexis Repella. Timely appeals were filed in this Matter and the Natural father exhausted all the available state remedies. See orders from the Superior Court of Pennsylvania and Supreme Court of Pennsylvania. First and foremost, 28 U.S.C. §2254 habeas corpus has been used in child custody cases in many states and in New England. As seen in *Lehman V. Lycoming County Children and Youth* 73 L.Ed 2d. 928, 458 U.S. 502 1982. Authorizing federal-court collateral review of the federal decisions, could be construed to include the type of custody to which petitioners' children are subject. But reliance on what may be appropriate within the federal system or within a state system is of little force, as in this case a state judgment is attacked collaterally in a federal court. Petitioner would have the federal judicial system entertain a writ that is not time-barred to challenge collaterally a final judgment entered in a state judicial system. *Stanley V. Illinois*, 405 U.S. 645, 651, 31 L.ed 2d 551, 92 S. Ct 1208. Here state has sought not to simply to infringe upon that interest, but to end it. If the state prevails, it would have worked a unique kind of deprivation. Cf. *May V. Anderson*, 345 US 528, 533, 97 L.ed 2d 1221, 73 S.Ct. 840, 52 Ohio OPS 45, 67 Ohio L Abs 468, *Armstrong V. Manzo*, 380 US 545, 14 L.ed 2d 62, 85 S.Ct 1187. A parent's interest in the accuracy and justice of the decision to terminate his or her parents' status is, therefore, a comity one. 23 Pa C.S. §2511 (a) (27, which provides:

§2511. Grounds for involuntary termination

- (A) General Rule--- The right of a parent in regard to a child may be terminated after a petition filed on any of the following grounds: (2) The repeated and continued incapability, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his or
- (B) physical or mental well-being and the conditions and causes of the incapability, abuse, neglect, or refusal cannot or will not be remedied by the parent.

The fact in this case is that there was no abuse or neglect or continued incapability of the parent of the minor child as the child was never not one day in the custody of the natural parents. The minor child was taken immediately after her birth by allegations of a previous long history with the county agency "CYS". The evidence was clear from the door that the natural parents jumped over every hurdle to get custody of their child, only to be deprived by that opportunity by many and I mean many different excuses. The law does not state that the agency has a right to take custody of a newborn child immediately after birth based upon a long history of the natural parents with "CYS". The statue has read above is clear there must be some sort of abuse, neglect, or incapability of the parent to lose rights of their minor child. But the basis of this case is simple this was like vendetta the agency had against the natural parents so, they just basically walked into the hospital of a child being born and simply ripped the child right from underneath the natural parents Finally, the court prejudiced the natural father by not allowing him to adequately defend himself the allegations on the termination petition, and not allowing him to properly confront and cross his adverse witness. Goldberg V. Kelly, 397 US 254, 262-263, 5 L.ed 2d 287, 90 S Ct. 1011 (1970) the right to confront and cross examine adverse witness, is the right under the XVI amendment of the US Constitution. Quoting Joint Anti-Fascist refugee Committee V. McGrath, 341 US 123, 168 95 L.ed 817, 71 S.Ct 624 (1951). (Frankfurter, J, Concurring). Whether the loss threatened by a particular type of processing is sufficiently grave to warrant more than average certainty on the part of the factfinder turns the nature of the private interest threatened loss. Lassiter declared it. "Plain beyond the need for multiple citation" desire for and right to 'the companionship, care, custody, and management of his or her children' "is an interest far more precious than any property right. (435 US 759) 452 US at 27, 68 L.ed 2d 640, 101 S. Ct 2153, quoting Stanley V. Illinois, 405 US at 651, 31 L.e2d 551, 92 S. Ct 1208. When the state initiates a parental right termination proceeding, it seeks not to merely to infringe that fundamental liberty interest, but to end it. "If the state prevails, it will have worked a unique kind of deprivation.... A parent's right interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one." 452

US, at 68 L.ed 2d 640, 101 S. Ct 2153. The fact-finding does not purport-and is not intended-to balance the child's interaction A normal family home against the parents' interest in raising the child. Nor does it purport to Determine whether the natural parents or foster parents would provide the better home. Rather the fact-finding hearing pits the state directly against the parents. The state alleges that the natural parents are at fault. Fam Ct Act §614.1 (d). The questions disputed and decided are What the state did- "made diligent efforts", 614.1 (c) -and what the natural parents did not do- "maintain conduct with or plan for the future of the child". §614.1 (d). The state marshals an Array of public to resources to prove its case, disapprove the parents' case. <pg. 6117 victory by the state not only makes termination of parental rights possible; it entails judicial Determination that the parents are unfit to raise their own children. In this case the natural Parents, mainly the natural father did all that was expected of him, and completed every Family service plan made available, and so much more. Both the natural parents jumped over Every hurdle known and still the child service agency" CYS" would use every excuse in the book to deprive the natural parents of their child. The Supreme Court has said previously and has Maintained that the interest of the child and his or her natural parents coincide to favor use of error-reducing procedures. However substantial the foster parents maybe, cf. Smith V. Organization of Foster families, 431 US, at 845-847, 53 L.ed 2d 14, 97 S. Ct 14, 97 S.Ct 2094, They are not implicated directly in the fact-finding stage of a state-initiated permeant neglect Proceeding against the natural parents. Thus, in this case even though the foster parents did not directly participate in this proceeding the court did seem to take the input of "CYS" on behalf of the foster parents. The natural father in this case, was the one who was prejudiced the most, as again he was incarcerated during the proceedings and was forced to participate by telephone. Counsel on behalf of the natural father as stated earlier did attempt to secure the natural fathers' presence at the termination of parental rights proceedings, however, those attempts we're denied by the court. As seen by the attached exhibits. While the natural father cannot excuse his incarceration, he did attempt to stay completely involved in his child's life, by sending constant letters birthday cards, holiday cards,

attempt to make telephone calls, all of which was never recognized by "CYS" or the court. One of sound mind can see clear how the natural father was prejudiced and denied his right to due process as secured by the United States Constitution XVI amendment. While Pennsylvania has their own set of guidelines When it comes to termination proceedings and when it comes to incarcerated parents' rights to Attend the termination hearing, as seen in, in the interest of A.P. 692 a.2D 240 (1997) Superior Court of Pennsylvania. That case is different than this case at hand, as seen by the interest of A.P. the natural father who was incarcerated at the time of the hearing, and was serving a sentence of 5 to 10 years challenged the right to be present at his termination hearing. The natural father in that case, was able to be heard by way of telephone conference call, was able to hear the witness, testify clearly and was even able after every witness to confer with his counsel in private. The natural father in this instant case, was unable to be heard, nor was he able to clearly hear the witnesses as there was a lot of construction and noise in the background, he was also denied his right to confer with counsel in private, as the judge clearly stated that he will not be able to confer with counsel in private. See TR. 4/29/09 pg. 17. Wherein the court had threatened to cut Mr. Repella off the phone or put him on hold so, he Would not be able to hear the witness or even confer with his counsel. Pg. 25 where Mr. Repella requested to speak with his attorney and the request was denied by the court actually It was ignored. See Nt,4/29/09 Pg 4-12 wherein counsel attempted to secure fathers appearance at the hearing. should also be noted that the witness that we're called we're also testifying by Telephone see TR. Pg. 24, 25. (4/29/09). Without even going any further in detail how Mr. Repella was denied his right to be present. It is a clear due process violation when witness that we're testifying against Mr. Repella, we're also by telephone, there is no way to be 100% certain that Mr. Repella was even able to hear the testimony of the expert witnesses. As the Supreme Court has stated in Goldberg V. Kelly, a person has a right to confront and cross Examine adverse witness. As stated in Matthews V. Eldridge, 424 US 319, 47 L.ed 2d 18, 96 S.Ct. 893 (1975). The right to be heard at a meaningful time and in a meaningful manner. It is The fundamental requirement of due process. Due process, unlike some legal rules, is not a

technical conception with a fixed content unrelated to time, place, and circumstances, due Process is flexible and calls for such procedural protections as the situation demands. In this instant case, the situation demanded that the natural father was not afforded any type Of due process protection as the law demands. Repella was denied his right to confront and cross examine adverse witnesses, as set forth under the US Constitution XVI amendment See Nt, 4-29-2009, Pg's 12, 29, 31, 32, 34, 40, 41, 44, 45, 46, 47, 48, 49, 50, 51, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67. These are where all the witnesses and experts testified while Natural father was by phone, which one can refer as a 6th amendment right to confront his accusers, while the natural father can say that in this termination petition the agency and their witnesses were in fact accusing him of being a bad or indifferent and neglectful parent the 6th amendment clause only applies to criminal cases and juvenile, however one could argue that this court has the power now to now apply the 6th amendment to termination of parental rights cases. Which is far more precious than any criminal conviction. Also, as this court has stated in Goldberg the right to cross adverse witnesses. It is double standard and kind of conflicting If, you can confront adverse witnesses in a civil case as Goldberg, then this court should now address the 6th amendment right to confront accusers, CYS is an actual accuser accusing the natural parents of being unfit. It comes to a person's right to his or her child. Which does not apply just to criminal cases as set forth in Goldberg. Reading it is clear that the appellant "Repella was deprived of his Due process rights which is afforded to him Stanley v. Illinois, 405 US 645, 31 L.ed 2d 551, 92 S.Ct. 1208 (1972) the custody, care, and control of a child first resides in the parents, whose Primary function and freedom include preparation for obligations the state can neither supply nor hinder. The equal protection law of the fourteenth amendment limits the authority of a state to draw such legal lines as it chooses.

In this instant case the state did exactly that, they choose their own legal lines and crossed that of the US constitution. The judge in this case ignored the pleas for the natural father to speak with his counsel, as seen by the transcripts of the proceeding. The courts' role was to protect the due process of the natural father and the court failed to do so in this case. The state's role is protecting the moral, emotional, mental, and physical welfare of a minor and the best interest of the community, strengthening the minor's family ties whenever possible, and removing the child from the custody of his parents only when their welfare or safety is at stake, or the protection of the public cannot be adequately safeguarded without removal, are legitimate interests well within the power of the state to implement, that's when neglectful parents may be separated from their children. In this case there was no need to even take custody of the child from the natural parents, there was no report of neglect or abuse or any kind of anything else that may warrant the removal of a child.

The minor child here was simply stripped from the parents' custody and placed in foster care from the moment she was born, fact she was even discharged from the hospital earlier than usual and placed in the custody of the state. Clearly there was a huge miscarriage of justice done by the state, it is firmly believed that it was a personal vendetta. *Santosky V. Kramer*, 455 US 745, 71 L. ED 2D 599, 102 S. CT. 1388 (1982). Application of at least "clear and convincing" evidence "Standard of proof to states parental rights termination proceeding, held required by the Fourteenth Amendment Due Process Clause. The fundamental liberty interest of natural Parents in the care, custody, and management of their child does not evaporate simply because They have not been model parents or lost temporary custody to their child to the state. Even when relationships are strained, parents retain a vital interest in preventing the irremovable

destruction of their family life. If anything, persons faced with dissolution of their parental rights have a more critical need for procedural protection. When the state means to destroy weekend familial bonds it must provide the parents with fundamental fair procedures. There was no clear and convincing evidence here to terminate, there was no due process. It is without a doubt that there was a huge miscarriage of justice and a clear violation of due process, and in return cost the natural father custody and parental rights of his child. All this makes it clear that the child is being held in state custody in violation of her constitutional rights. There is no question that Repella, has established that his constitutional rights were violated. Appellant, "Repella" believes that the state court violated his rights to due process by refusing him to participate in his termination of parental rights hearing. Repella filed a 28 U.S.C. §2254 with the United States district court for the middle district of Pennsylvania. Alleging that his child Alexis Repella was being held in state custody in violation of her due process rights. And that his rights to due process was violated. Repella, by and through counsel at the time of termination petition attempted to secure his presence at the hearing, due to the fact Repella was incarcerated at the time. The state courts denied that request, forcing Repella to participate by telephone. The state court prejudiced the natural father by not allowing him too adequately defend himself on the allegations put forth in the termination petitions. The natural father Repella was unable to confront or even properly cross examine the witnesses. Goldberg V. Kelly, 397, US 254, 5 Led 2d 287, 90 S Ct. 1011 (1970) The right to confront and cross examine adverse witnesses one is the right under the XVI amendment of the US Constitution. Quoting Joint Anti-Fascist Refugee Committee V. McGrath, 341 US 123, 168 95 Led 817, 71 S Ct 624 (1951) Frankfurter, J, Concurring. Whether the loss threatened by a particular type of

processing is sufficiently grave to warrant more than average certainty on the part of the factfinder turns the nature of the private interest threatened loss. Lassiter declared it "Plain beyond the need for multiple citation" desire for right to 'the companionship, care, custody, and management of his or her children' "is an interest far more precious than any property, (435 US 759) right. 452 US at 27, 68 Led 2d 640, 101 S. Ct 2153, quoting Stanley V. Illinois, 405 US at 651, 31 Led 2d 551, 92 S. Ct 1208. When the state initiates a parental rights termination proceeding, it seeks not to merely to infringe that fundamental liberty interest, but to end it. "If the state prevails, it will have worked a unique kind of deprivation..... A parent's right interest in the accuracy and justice of the decision to terminate his or her parental status is a commanding one. One of clear mind and see that just the basic has been outlined to prove that the natural father Repella was deprived of his due process rights under the United States Constitution XVI Amendment. The natural father was unable to confront his adverse witness as set forth in Goldberg, and not only that was unable to heard at a meaningful time, but meaningful manner also as set forth in Matthews V. Eldridge, 424 US 319, 47 Led 2d 18, 96 S. Ct. 893 (1975) The right to be heard at a meaningful time and in a meaningful manner. It is the fundamental requirement of due process. Due process, unlike some legal rule, is not technical conception with a fixed content unrelated to time, place, and circumstances, due process is flexible and calls for such procedural protections as the situation demands. In the case and argument at hand demanded that the natural father be able to participate in his termination proceeding. Clearly it is without doubt the appellant has demonstrated a substantial rights violation and therefore a COA should have been granted by the District Court. Based upon the case law that supports a constitutional rights violation as well as the clear and convincing

evidence and the documents that have been presented it has been established that "Repella" was denied his rights which are provided to him under the US Constitution XVI amendment. The constitution does not indicate that constitutional rights are optional when it comes to these types of proceedings. One can see how Repella was deprived of his constitutional rights and therefore, with the Writ under 28 USC §2254 established such and Repella shown that Writs of those natures have been used previously in these types of proceedings and therefore Repella shown that the District Court had jurisdiction and even if they didn't Appellant shown that his rights were violated under the US Constitution and proved beyond all reasonable doubt that he had shown enough to warrant a Certificate of Appealability (COA). At the beginning of this argument Repella, stated the law and argument for a 2254 procedure. Repella, wanted to establish how the facts of the case started. Appellant wanted to also establish a basic for the petition and to show the history of the case. The argument ties into together with a showing of a constitutional rights violation. This appeal stems from the 2254 petition and the denying of the COA by the district court, and the third circuit, the material stated and argued all comes together as one. As set forth in Matthews V. Eldridge and Goldberg V Kelly, the Supreme Court had established under the US Constitution and per set by precedent, and under the Due Process clause of the US constitution, wherein it has been established and set forth that a person has a right to confront and cross examine adverse witness. The right to be heard at a meaningful time meaningful manner is a fundamental right afforded to us by the US Constitution. It is clear in this case Repella was not afforded his due process protection as set forth by both the Supreme Court and US Constitution he was not afforded any type of protection by the US Constitution, the evidence attached shows there was a complete disregard

for due process So, for the district court to allege in their denial that there wasn't a showing of a substantial rights violation that would grant a COA, is beyond logic and makes one to wonder what else do they need to show to establish a Due Process violation. The case laws are there, they have set precedent, not only that the US constitution is 100% certain and clear, one can say it is written in stone. There is no doubt it is clear, convincing, and overwhelming that Repella has shown a substantial due process violation and the district court as well as the third circuit did not take a true look at this case and the true issues arising. Fact is, Repella submitted his request for a COA on April 5, 2022, and the appellee submitted their response April 15, 2022, and Repella filed his response in opposition April 21, 2022, and the court entered an order denying the COA and affirming the District Court the very next day, they did not even give it's time for Repella's response to be received and clearly looked at before rendering a decision. The third circuit relied on Murray V. Bledsoe, 650 F.3d 246,247 (3rd Cir. 2011) (per curium); 3rd Cir L.A.R. 27.4; 3d Cir. I.O.P. 10.6, wherein they allege that there was no showing of a constitutional rights violation. The court also relied on Lehman V, Lycoming Cty Children Servs Agency, 458 U.S. 502, 511 (1982) wherein the court dismissed federal habeas for lack of jurisdiction. The courts seem to forget that this type of relief has been granted by the courts before and based upon the cases argued, but still, that does not take away from the issue of the court denying the COA and affirming the district court's decision for no substantial rights violation shown, which Repella has shown and argued to both the district court and 3rd circuit. Repella is dumbfounded to think that a court is not able to see the true substitutional rights violation, not once but twice to two different courts, district court and the third circuit.

It is clear without a shadow of a doubt and nothing else needs to be said or argued to show and prove the fact that there was a clear and convincing substitutional constitutional rights violation. It appears that either the courts did not care enough to look or even consider the evidence involved in this case, or simply does not care to understand the true nature of the constitutional rights violation. By a shadow of a doubt Repella has shown, proven, and argued overwhelmingly a true substitutional rights violation. There is no further argument needed to show the justices that there was a substitutional constitutional right violation, and that Repella was deprived of his right to due process as afforded to him under the United States Constitution XVI Amendment, V amendment of the procedural due process clause and possibly VI amendment of the right to confront accusers/adverse witnesses.

Conclusion

Wherefore based upon the following law and argument the issues and Circumstances involved, the exhibits presented with this petition it's clear That a miscarriage of justice had occurred that resulted in a Due Process Violation that effected Repella and will surely impact many others. Due to such It is respectfully requested that this honorable court grant Petition for Writ of certiorari.

Respectfully submitted:



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