No. 22-6481

In The

Supreme Court of the United States

COURTNEY J.,

Petitioner,

v.

BEAUFORT COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Supreme Court of North Carolina

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BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Supreme Court of North Carolina correctly found constitutional N.C. Gen. Stat. § 7B-1111(a)(3) providing that a parent's parental rights might be terminated when a child has been placed in the custody of the department of social services and that parent has for six months failed to pay a reasonable portion of the cost of care although physically and financially able to do so.

PARTIES TO THE PROCEEDING

Petitioner herein, Courtney Johnson, was the appellant below and the former respondent mother of the minor children.

Respondents herein, are: the Beaufort County (North Carolina) Department of Social Services, an agency of locally government statutorily mandated to "assess reports of child abuse and neglect and to take appropriate action to protect such children." N.C. Gen. Stat. § 108A-14(a)(11); the Guardian ad Litem for the children, a statutorily-established program whose responsibilities, in part, are "to protect and promote the best interests of the juvenile." N.C. Gen. Stat. § 7B-601(a); and Jeremy Johnson, the former respondent father of the children.

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OPINIONS BELOW

Following a two-day hearing, the Beaufort County (North Carolina) district court entered an adjudicatory order on October 22, 2020 finding that grounds existed to terminate the parental rights of the Petitioner and father of her children. After a subsequent hearing considering whether termination was in the children's best interest, the court entered a dispositional hearing order finding best interests and directing termination.

Those orders were appealed to the Supreme Court of North Carolina which unanimously affirmed the termination order on July 15, 2022. *In re J.C.J. & J.R.J.*, 2022-NCSC-86, 381 N.C. 783, 874 S.E.2d 888. The Petitioner filed a petition for rehearing on August 19, 2022 which was denied on August 23, 2022. Orders of the appellate courts of North Carolina are typically not published but are maintained by the Clerk pursuant to N.C. App. R. 39(b). This order is noted on the docket sheet available at: https://appellate.nccourts.org/dockets.php?court=1&docket=1-2021-0288-001&pdf=1&a=0&dev=1.

With the Petitioner's exhaustion of remedies, the children's foster parents moved forward with their adoption proceeding and an Adoption Decree was entered on September 22, 2022 in Beaufort County file 22 SP 128 and 129. Records in connection with an adoption – other than the decree of adoption and entry in the special proceedings index – are confidential and sealed and maintained by the Beaufort County Clerk of Court.

The Petitioner herein then filed a Petition for a writ of supersedeas and application for a temporary stay with the Supreme Court of North Carolina on December 9, 2022. The Court denied the writ and motion on December 13, 2022. Orders of the appellate courts of North Carolina are typically not published but are maintained by the Clerk pursuant to N.C. App. R. 39(b). This order is noted on the docket sheet available at: https://appellate.nccourts.org/dockets.php?court=1&docket=1-2021-0288-002&pdf=1&a=0&dev=1.

JURISDICTIONAL STATEMENT

The Supreme Court of North Carolina affirmed the termination of parental rights order on July 15, 2022. The Petitioner subsequently filed both a petition for rehearing and a petition for writ of supersedeas. Both petitions were denied. At the same time, the adoption proceeding moved forward and a final decree of adoption was entered on September 22, 2022. One of the legal effects of a decree of adoption is that it "severs the relationship of parent and child between the individual adopted and that individual's biological or previous adoptive parents." N.C. Gen Stat. § 48-1-106(c). As such, the Petitioner was without standing to file this petition and the question raised by the petition is moot.

Aside from the question of mootness, the Respondent would agree with Petitioner's invocation that 28 U.S.C. § 1257(a) would be the only basis for this Court's jurisdiction.

STATEMENT OF THE CASE

I. Overview of terminations of parental rights in North Carolina based on the willful nonpayment of a reasonable portion of the cost of care.

A. Statutory framework.

Cases involving abused and neglected children in North Carolina are governed by the Juvenile Code found in Chapter 7B of the North Carolina General Statutes and cases are presided over by the district court division of the General Court of Justice. The legislature has restricted the ability of the court to terminate parental rights to certain enumerated grounds found in N.C. Gen. Stat. § 7B-1111. Four of those grounds were alleged in the motion to terminate parental rights and the district court found all four of those grounds were found to have been established.

B. The "inherent duty to support" interpretation of N.C. Gen. Stat. § 7B-1111(a)(3).

Of the eleven grounds for termination of parental rights found in N.C. Gen. Stat. § 7B-1111, two separate grounds involve the failure of a parent to support their child. N.C. Gen. Stat. § 7B-1111(a)(4) involves situations in which one parent has custody of the child and the other parent has failed to provide support. These involve actions solely between parents and are typically referred to as private TPR's.

Separately, the ground involved in this case is found at N.C. Gen. Stat. § 7B-1111(a)(3) and applies when a child has been in the custody of a county department of social services and "the parent has for a continuous period of six months

immediately preceding the filing of the petition or motion willfully failed to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so." In cases of a child placed in the custody of a department of social services the cost of care for the child has been assumed by an agency of government and funded by tax dollars.

Although both grounds have the similarity of involving financial assistance, the two grounds are distinct. In cases involving a department of social services, there is not a statutory requirement that support have been "required by the decree or custody agreement." Rather, the law has long held parents responsible for the cost of care for their children in foster care.

In *In re Wright*, the North Carolina Court of Appeals considered the appeal of an order terminating parental rights. The department of social services filed a petition "alleging neglect in and failure to pay any amount toward the costs of caring for the child." On appeal, the father argued the statute unconstitutional as applied to him because "the statute does not require notice that payment is due, no notice was received by him, and because he had received public assistance all of his life, he was unaware that anything was expected or required of him." *In re Wright*, 64 N.C. App. 135, 139, 306 S.E.2d 825 (1983). The Court of Appeals held that:

> Though this argument is novel, it is unavailing. Very early in our jurisprudence, it was recognized that there could be no law if knowledge of it was the test of its application. Too, that respondent did not know that fatherhood carries with it financial duties does not excuse his failings as a parent; it compounds them.

Id. *See also*, *In re T.D.P.*, 164 N.C. App. 287, 595 S.E.2d 735 (2004).

The Supreme Court of North Carolina followed this long-standing precedent in the case at bar rejecting the Petitioner's argument that she was not accountable for supporting her children unless and until she was duly served with a child support order.

II. The trial court proceedings.

The Beaufort County Department of Social Services filed a Juvenile Petition on October 22, 2017 alleging that the Petitioner's children were neglected because they did not receive proper care, supervision, or discipline from her and that they lived in an environment injurious to their welfare. Specifically, the department recited a lengthy history of involvement with the family (including siblings who were not part of the termination of parental rights' action) including sexual abuse of a sibling, the mother's substance abuse and domestic violence in the home. The judge presiding over juvenile court in Beaufort County conducted an adjudication hearing on 11 April 2018 and made findings consistent with the allegations, also ordering, in part, that the children remain in the legal and physical custody of DSS and that the Petitioner herein engage with certain services designed to allow the children to be reunified with her. There followed a series of hearings at which the court reviewed the Petitioner's progress. Ultimately, however, DSS filed a motion to terminate the parents' parental rights because there was very little progress.

The motion to terminate parental rights alleged four separate and independent grounds for termination of the rights of the Petitioner:

- That the mother neglected the children, N.C. Gen. Stat. § 7B-1111(a)(1);
- That the mother willfully left the children in foster care for more than 12 months without making reasonable progress toward correcting the conditions which led to the removal of the children, N.C. Gen. Stat. § 7B-1111(a)(2);
- That the mother willfully failed for six months prior to the filing of the motion to pay a reasonable portion of the cost of care although physically and financially able to do so, N.C. Gen. Stat. § 7B-1111(a)(3); and
- That the mother was incapable of providing for the proper care and supervision of the children such that they were dependent (as defined by N.C. Gen. Stat. § 7B-101(9)), N.C. Gen. Stat. § 7B-1111(a)(6).

At the adjudicatory hearing, evidence was presented as to each of the grounds. Although Petitioner focuses on the failure to support ground, the trial court considered all of the evidence and agreed that all grounds were found by clear, cogent, and convincing evidence.

III. The direct appeal to the Supreme Court of North Carolina.

Petitioner challenged all four grounds for termination in her direct appeal to the Supreme Court of North Carolina. The Court gave "careful consideration of the parents' challenges to the trial court's termination orders" and concluded that the orders should be affirmed. *In the Matter of: J.C.J. and J.R.J.*, 2022-NCSC-86, 1, 381 N.C. 783, 874 S.E.2d 888 (2022).

It is well established law in North Carolina that even a single ground for termination is sufficient to affirm a trial court's decision. *See, for example*,

In re Moore, 306 N.C. 394, 404, 293 S.E.2d 127 (1982). The Supreme Court *began* its analysis by looking at the failure to pay ground and stated that,

> In view of the fact that the trial court's unchallenged findings of fact show that, even though respondent-mother had the physical ability to work, she elected not to do so and the fact that the undisputed record evidence shows that respondent-mother failed to make any monetary payments to DSS or the foster parents for the purpose of assisting in the provision of care for the twins, we hold that respondent-mother's challenge…lacks merit.

Id, at ¶ 15.

The Court also rejected her challenge based on not being served with a child support order citing *In re S.E.*, 373 N.C. 360, 838 S.E.2d 328 (2020) that mother "had an inherent duty to support the twins." The Court also noted the trial court's unchallenged findings that the "respondent-mother had been aware as early as 2018 that a referral had been made to the child support enforcement agency…, she had failed to investigate the referral or to attempt to ascertain the amount of child support that she needed to pay." *In Re J.C.J. and J.R.J., supra*, at ¶ 17. The Court specifically addressed Petitioner's Fourteenth Amendment challenge refusing to address it for the first time on appeal.

Because the Court found that the trial court did not err in finding the failure to support ground for termination, the Court did not need to address the remaining grounds.

Following the Court's decision, the Petitioner filed a petition for rehearing which the Court denied. Given that the Supreme Court of North Carolina had twice ruled in finality that the respondent-mother's parental rights were terminated, the

adoption case proceeded. A final decree of adoption was entered on 22 September 2022 in Beaufort County special proceeding 22 SP 128 and 129. The adoption decree had the effect, in part, of severing the relationship of the Petitioner to her biological children. N.C. Gen Stat. § 48-1-106(c). Given that the respondent-mother's parental rights had been officially and finally severed she was not notified of the confidential adoption proceeding.

Petitioner then tried to have another bite at the apple by filing on 9 December 2022 with the Supreme Court of North Carolina a petition for writ of supersedeas and application for temporary stay purporting to ask the Court to stay the termination of parental rights order pending resolution before this Court. The Supreme Court of North Carolina denied that motion on 13 December 2022.

REASONS FOR DENYING THE PETITION

I. It violated neither the due process nor equal protection rights of the Petitioner for her parental rights to be terminated after her children were removed from her custody due to neglect and she failed to pay a reasonable portion of the cost of care.

The Petitioner's two children[1] were removed from her physical and legal custody after years of involvement with the Beaufort County Department of Social Services. The final referral which led to the children's removal and ultimately the termination of parental rights involved allegations of child-on-child sexual abuse occurring in the home between two half siblings. One of the purposes of the North Carolina Juvenile Code is to provide services for the "protection of juveniles by means that respect both the right to family autonomy and the juveniles' needs for

[1] As well as five half-siblings who were not part of the termination of parental rights action.

safety." N.C. Gen. Stat. § 7B-100(3). The Code also provides "standards consistent with the Adoption and Safe Families Act…for ensuring that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time." N.C. Gen. Stat. § 7B-100(5).

Toward that end, the Department of Social Services – under court supervision – worked toward reunification with the Petitioner from when the children were removed on October 23, 2017 until the Department filed a motion to terminate parental rights on April 6, 2020. In fact, DSS had provided services to the family from the time the first referral was made – before these children were born – on March 21, 2013. Those services included linking the family to Medicaid transportation, parenting education, and safety planning. Once the children were brought into custody, additional services were provided and the Department developed a case plan – approved by the court – designed to address the conditions such that the children could be reunified with the Petitioner. The case plan was not designed to avoid grounds for termination of parental rights but to avoid every moving to the termination stage. Unfortunately, those efforts were fruitless.

The Juvenile Code also requires permanence within a reasonable time. The Department filed a motion to terminate parental rights on April 6, 2020. In that motion, the DSS alleged four of the eleven statutory grounds for termination:

- That the mother neglected the children, N.C. Gen. Stat. § 7B-1111(a)(1);

- That the mother willfully left the children in foster care for more than 12 months without making reasonable progress toward correcting the conditions which led to the removal of the children, N.C. Gen. Stat. § 7B-1111(a)(2);
- That the mother willfully failed for six months prior to the filing of the motion to pay a reasonable portion of the cost of care although physically and financially able to do so, N.C. Gen. Stat. § 7B-1111(a)(3); and
- That the mother was incapable of providing for the proper care and supervision of the children such that they were dependent (as defined by N.C. Gen. Stat. § 7B-101(9)), N.C. Gen. Stat. § 7B-1111(a)(6).

Following hearing on the motion, Judge Regina Parker made extensive findings of fact and concluded that all four grounds had been established by clear, cogent, and convincing evidence.

N.C. Gen. Stat. § 7B-1111(a)(3) provides that a ground for termination of parental rights exists if a parent "willfully failed to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so." Application of this ground to the Petitioner's case was neither a violation of her equal protection rights not her due process rights.

Petitioner's equal protection argument is based on the statutory distinction between N.C. Gen. Stat. § 7B-1111(a)(3) and (a)(4). Section (a)(4) references child support payment "as required by the decree or custody agreement." This distinction is logical based on the difference between private TPRs involving a dispute brought by a custodial parent against a noncustodial parent as opposed to

one in which the State had to remove a child due to child neglect and provide services toward reunification. Petitioner's reference to *Richardson v. Ramirez*, 418 U.S. 24, 94 S. Ct. 2655, 41 L.Ed.2d 551 (1974) is misplaced and unconvincing. In *Richardson* this Court considered provisions of law in California regarding the voting rights of convicted felons. Much of the argument centered on section 2 of the Fourteenth Amendment and the Court held that the distinction was allowed. Justice Marshall did write in dissent that in considering the difference in voting rights "'the Court must determine whether the exclusions are necessary to promote a compelling state interest.'" *Id.* 418 U.S. at 78, *quoting*, *Dunn v. Blumstein*, 405 U.S. 330, 337, 92 S. Ct. 995, 1000, 31 L.Ed.2d 274 (1972). However, the majority disagreed saying that "the exclusion of felons has an affirmative sanction in [section] 2 of the Fourteenth Amendment." *Richardson*, *supra*, 418 U.S. at 54.

In the case at bar, the distinction between private termination actions and those involving the public child welfare system are significant. Private termination actions are fought between estranged parents and often disgruntled litigants. It is reasonable and, in fact, required that grounds would differ. Other grounds for termination are also inapplicable to those of private TPR's. For example, N.C. Gen. Stat. § 7B-1111(a)(2) provides for termination when a parent "has willfully left a juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the

removal of the juvenile." This ground is frequently asserted by departments of social services in TPR cases but is not applicable to private TPR's.

Furthermore, it is reasonable to place a responsibility of the parents of children placed into the foster care system – and cared for by state institutions and resources – to provide for their support. Custodial parents in private TPR's might have made the decision to forego child support to avoid contact with the noncustodial parent. But the North Carolina General Assembly has enacted a requirement that parents in TPR's involving DSS must pay a reasonable portion of the cost of care if able to do so. The Petitioner's citation of *State v. Mason*, 268 N.C. 423, 150 S.E.2d 753 (1996) is not controlling. *Mason* dealt with N.C. Gen. Stat. § 49-2, "nonsupport of child born out of wedlock by parent made misdemeanor." The Court's requirement of a "demand" for payment to use Petitioner's phrase was based on a requirement of willfulness, "that is [an act] intentionally done, 'without just cause, excuse or justification,' after notice and request for support.'" *State v. Hayden*, 224 N.C. 779, 781, 32 S.E.2d 333 (1944), *quoting*, *State v. Cook*, 207 N.C. 261, 176 S.E. 757 (1934). This requirement in N.C. Gen. Stat. § 49-2 of willfulness in nonsupport for children born out of wedlock differs from that of N.C. Gen. Stat. § 14-326.1 in which a person has not provided for "his or her own immediate family." Just as it is reasonable for the State to require that a defendant know that a child is his before being criminally responsible for nonsupport it is a rational distinction that a parent know they have an obligation to support a child in the government's custody.

In the same way, N.C. Gen. Stat. § 110-135 provides that when the State provides public assistance on behalf of a child, this "creates a debt, in the amount of public assistance paid, due and owing the State by the responsible parent or parents of the child." This debt applies regardless of whether there was a child support order although the presence of an order limits the responsibility. *See,* for example*, Wilkes County By and Through Child Support Enforcement Agency ex rel Nations v. Gentry*, 311 N.C. 580, 319 S.E.2d 224 (1984). Just as parents can be held responsible for past paid public assistance it is reasonable for the State to require parents to support their children in DSS custody regardless of the presence of a child support order. In fact, the system of child support enforcement is consistent with a parent having an inherent duty to support their child.

Affirmation of a termination of parental rights order for failure to provide support is also not a violation of due process. This case did not involve the "arbitrary action of government." *See, Petition*, page 14. Rather, it was a slow and deliberative action which was thoroughly considered by the trial court and has been considered twice by the Supreme Court of North Carolina.

Petitioner's recitation of "relevant facts" is incomplete. When the Juvenile Petition was filed the Department was given nonsecure custody of the children. The Petitioner stipulated that she was aware from that time that the children were in foster care. The trial court also found as a fact that "the parents were aware as early as 2018 (by their own statement) that a referral had been made to the child support agency; and, neither parent attempted to look into the referral or the

amount of child support that would need to be paid." The court found that "both parents were aware they had the obligation to support their children" and "decided to take no step to address the issue until they were sued for failure to pay child support." Also, while the Petitioner claimed to have provided money for field trips or boxes of diapers, she testified that she gave it to the foster care provider rather than providing to the agency charged with the children's care and custody.

Petitioner's footnote 4 notes that the record does not address "that Beaufort County DSS has the ability to accept such direct payments." Petitioner cites N.C. Gen. Stat. § 110-139(f) which established "the State Child Support Collection and Disbursement Unit" which has the duty of "collection and disbursement of payments under support orders for all [Child Support Enforcement] cases." However, section 110-139(f) does not prohibit individual agencies from accepting payments made by parents on behalf of their children, and there was no evidence presented at trial that the Petitioner attempted to pay support to DSS and refused.

It is clear from the record that the Petitioner received all the due process which could be provided. From the beginning of the underlying juvenile process, she was represented by counsel and given notice of each hearing. Before the case moved to the termination of parental rights' stage there were numerous review hearings at which the court reviewed the case progress. During the termination phase, the Petitioner was again represented by counsel and stipulated to many of the facts. The trial court did not base termination solely on the nonsupport ground but found all four of the grounds alleged. On direct appeal, the Supreme Court of

North Carolina was briefed on each of the grounds for termination. The Court gave "careful consideration of the parents' challenges to the trial court's termination orders" and concluded that the orders should be affirmed. *In the Matter of: J.C.J. and J.R.J.*, 2022-NCSC-86, 1, 381 N.C. 783, 874 S.E.2d 888 (2022).

Regardless of the number of termination grounds alleged and proven, it is the practice of the appellate court conducting review to address only one ground given that a single ground is sufficient to affirm the termination. *In re Moore*, 306 N.C. 394, 404. 293 S.E.2d 127 (1982). That practice was followed in the case at bar.

Lastly, the Petitioner argues it is "shocking to the conscience" because of the duty of DSS to make reasonable efforts to help parents achieve reunification with their children. Reasonable efforts are defined in N.C. Gen. Stat. § 7B-101(18), in part, as "reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time." Toward that end DSS entered into a case plan with the Petitioner for DSS to partner with her in the completion of services which might address the reasons keeping the children from safely returning home. Payment of child support or the lack of payment was not an issue regarding reunification and was irrelevant to its existence as a ground for termination of parental rights.

II. The question presented is moot because the minor children's adoption was finalized prior to the initiation of this action. The Petitioner is not entitled to any relief from this Court.

The Petitioner states that "the unquestionably high stakes involved" are the equivalent of the "civil death penalty." *See*, *Martinez-Cedillo v. Sessions*, 896 F.3d 979, 989 (9th Cir. 2018). However, the *Martinez-Cedillo* panel took that phrase from several state court decisions dealing with termination cases. The *Martinez-Cedillo* case actually dealt with a Mexican citizen with lawful permanent resident status who was ordered removed by the Board of Immigration Appeals after he was criminally convicted of felony child endangerment. The majority of the panel denied the petition for review. Subsequently, the Circuit Court granted a motion to dismiss the appeal as moot. *Martinez-Cedillo v. Barr*, 923 F.3d 1163 (2019).

Similarly, the issue which the Petitioner raised to the Supreme Court of North Carolina is now moot. The Court filed an opinion affirming the termination order on July 15, 2022. The Petitioner filed a petition for rehearing on August 19, 2022 which was denied on August 23, 2022.

After those proceedings, the adoptive parents moved forward. The Clerk of Court – which serves as the court of adoption in North Carolina – entered final decrees of adoption on both children on September 22, 2023 in Beaufort County special proceeding 22 SP 128 and 129. N.C. Gen. Stat. § 48-1-106(c) provides, in part, that an adoption decree severs the relationship of the Petitioner to her biological children.

This Court has said that "[i]n general a case becomes moot "'when the issues presented are no long "live" or the parties lack a legally cognizable interest in the outcome."'" *Murphy v. Hunt*, 455 U.S. 478, 481, 102 S. Ct. 1181, 71 L.Ed.2d 353 (1982), *quoting*, *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 396, 100 S. Ct. 1202, 63 L.Ed.2d 479 (1980). While there is an exception for cases "capable of repetition, yet evading review" that exception only applies when the challenged action was of short duration such that it couldn't be litigated and "there was a reasonable expectation that the same complaining party would be subjected to the same action again." *Id.*, *Murphy*, 455 U.S. at 482. Given the finalization of the adoption proceeding it is entirely implausible that the Petitioner would be subjected to the same action again.

III. The Petitioner failed to raise any Constitutional concerns before the trial court and, hence, lost her right to argue such for the first time on appeal.

The Petitioner asserts that the Supreme Court of North Carolina was attempting to evade thorough review of her due process and/or equal protection claims by following the rule of *State v. Gainey*, 355 N.C. 73, 558 S.E.2d 463 (2002). The *Gainey* Court ruled that "Constitutional issues not raised and passed upon at trial will not be considered for the first time on appeal." *Id.*, 355 N.C. at 87. During the trial proceedings the Petitioner never made any allegations that her Constitutional rights were violated because she was treated differently from a hypothetical respondent-mother in a private termination case. Instead, her position was that she would have paid child support had she been ordered to do so and, in

any event, she provided some limited support to the foster parents which should be sufficient.

That a party may not raise Constitutional issues for the first time on appeal is well settled law in North Carolina.

> But the existence of a constitutional protection does not obviate the requirement that arguments rooted in the Constitution be preserved for appellate review. Our appellate courts have consistently found that unpreserved constitutional arguments are waived on appeal. *See*, *State v. Lloyd*, 354 N.C. 76, 86-87, 552 S.E.2d 596, 607 (2001)("Constitutional issues not raised and passed upon at trial will not be considered for the first time on appeal."); *State v. Fernandez*, 346 N.C. 1, 18, 484 S.E.2d 350, 361 (1997)(holding that defendant waived confrontation and due process arguments by not first raising the issues in the trial court); *Dep't of Transp. v. Haywood Oil Co.*, 195 N.C. App. 668, 677-78, 673 S.E.2d 712, 718 (2009)(holding that arguments pertaining to the Fourteenth Amendment to the United States Constitution and law of the land clause of the North Carolina Constitution, although constitutional issues, were not raised before the trial court and therefore not properly preserved for appeal); *State v. Wiley*, 355 N.C. 592, 615, 565 S.E.2d 22, 39 (2002)("It is well settled that an error, even one of constitutional magnitude, that [is not brought] to the trial court's attention is waived and will not be considered on appeal.").

Matter of J.N., 2022-NCSC-52, 381 N.C. 131, 133, 871 S.E.2d 495 (2002).

Petitioner correctly cites precedent that a federal court has the authority to determine whether a federal question was sufficiently raised in the state court. Regardless of whether this Court *could* hear the case, this Court *should not* hear the case. As argued herein, there is not even a facial argument that the Petitioner's due process or equal protection rights were violated. Furthermore, the issue was rendered moot by the final adoption of the minor children and the Petitioner is entitled to no relief from this Court.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted.

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