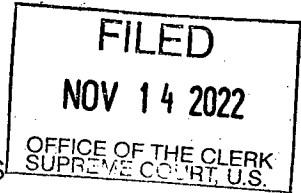


No. 22-6672

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



JadaLynn Marcum — PETITIONER
(Your Name)

vs.

Department of — RESPONDENT(S)
Human Services
ON PETITION FOR A WRIT OF CERTIORARI TO

Oregon Supreme Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

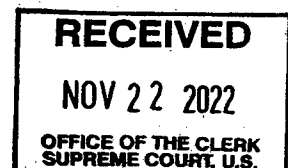
PETITION FOR WRIT OF CERTIORARI

Jada Lynn Marcum
(Your Name)

625 SE Sheridan Rode
(Address)

Sheridan, OR, 97378, Apt. B17
(City, State, Zip Code)

971-322-6522
(Phone Number)



Question(s) Presented:

As a matter of state statutory law and federal due process, parents have the right to meaningfully participate in defending against petitions by the state child welfare agency to terminate their parental rights. In this case, the Oregon Department of Human Services (the department) filed a petition alleging that I Jada Marcum was unfit, and that termination of parental rights (TPR) was in my daughter's best interest.

My TPR trial was conducted on video, over the Oregon courts WebEx platform, during a time Washington county had restrictions on in-person contact due to the covid-19 pandemic, while D.O.C was willing to transport me I still did not have an option to go in person for trial even on such a serious matter. When Jada Marcum appealed from the TPR judgement, my appellate counsel discovered that there were several instances in the transcript where the WebEx system, witness's connections, and video potentially interfered with the courts ability to fully ascertain the entirety of the evidence presented. I Jada Marcum filed a motion to set aside the TPR judgment under ORS 419B.923, citing those technical lapses as evidence that I Jada Marcum was denied my statutory and due process rights to a fundamentally fair hearing. The court denied my motion, both as untimely and on the merits.

1. Did the court abuse its discretion in ruling that I Jada Marcum's motion was untimely filed?
2. Did the court err as a matter of law in ruling that I Jada Marcum failed to state a claim under ORS 419B.923?
3. Did the court err as a matter of law in ruling that the lapses in the record caused by technical difficulties had no effect on I Jada Marcum's rights or the outcome of the proceeding?
4. Did the court err in not transporting me for in person trial?

Related Cases:

- Dept. of Human Services v. A.D.G.,
260 Or App at 525, 317 P3d 950 (2014)

- Dept. of Human Services v. D.J.,
259 Or App 638, 314 P3d 998 (2013)

- Dept. of Human Services v. J.L.M.,
315 Or App 824, 498 P3d 310 (2021)

- Dept. of Human Services v. M.L.N.,
312 Or App 730, 493 P3d 1127 (2021)

- Dept. of Human Services v. T.L.,
358 Or 679, 369 P3d 1159 (2016)

- State ex rel Juv. Dept. v. D.J.,
215 Or App 146, 168 P3d 798 (2007)

- State v. Kurtz,
350 Or 65, 249 P3d 1271 (2011)

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Statutes and Rules:

- ORS 419A.200(1)
- ORS 419A.205(1)(a)(d)
- ORS 419B.504
- ORS 419B.875(2)
- ORS 419B.875(2)(c)
- ORS 419B.918(1)
- ORS 419B.923
- ORS 419B.923(1)
- ORS 419.923(1)(a) - ORS 419B.923(1)(c)
- ORS 419B.923(3)
- ORS 419B.923(7)

Other:

- ORAP 5.40(9)
- ORAP 5.45(6)

CASES: (In Brief)

PAGE NUMBER:

- Dept. of Human Services v. A.D.G., 260 Or App at 525, 317 P3d 950 (2014) 10,16
- Dept. of Human Services v. D.J., 259 Or App 638, 314 P3d 998 (2013) 15
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- Dept. of Human Services v. M.L.N., 312 Or App 730, 493 P3d 310 (2021) 15
- Dept. of Human Services v. T.L., 358 Or 679, 369 P3d 1159 (2016) 13,14
- State ex rel Juv. Dept. v. D.J., 215 Or App 146, 168 P3d 798 (2007) 10,12
- State v. Kurtz, 350 Or 65, 249 p3d 1271 (2011) 13

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 9/26/2022.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: September 1st 2022, and a copy of the order denying rehearing appears at Appendix d.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

Constitutional And Statutory Provisions Involved:

The 14th amendment right for due process constitution

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.

Statement of the case:

Nature of the Proceeding:

In this juvenile dependency case, I Jada Marcum appeals from and seeks reversal of the juvenile court's order denying my motion to set aside the judgement that terminated my parental rights (TPR) to my daughter M.L.M. I Jada Marcum include copies of the termination judgment, my motion for a new trial brief, and the order denying my motion to set aside that judgement at ER 1-3 and 4-7, respectively.

Nature of Judgment:

The Washington County Circuit Court entered the order denying Jada Marcum's motion to set aside its termination judgment on November 16th, 2021. ER 27-28.

Jurisdiction:

This court has jurisdiction pursuant to ORS 419A.200(1) and ORS 419A.205(1)(a)(d).

Notice of Appeal:

The juvenile court entered the judgment on November 16th, 2021. I Jada Marcum timely filed the notice of appeal from that judgement on December 16th, 2021.

Reasons For Granting the Petition:

First assignment of error: The juvenile court erred in denying I Jada Marcum's motion to set aside the judgement terminating my parental rights as untimely.

Second assignment of error: The juvenile court erred in denying I Jada Marcum's motion to set aside the judgement terminating my parental rights on the grounds that i failed to state a cognizable claim under ORS 419B.923.

Third assignment of error: The juvenile court erred in denying I Jada Marcum's motion to set aside the judgement terminating my parental rights on the grounds that the technical difficulties that arose during the proceedings did not violate my right to a fundamentally fair trial.

Fourth assignment of error: The juvenile court abused its discretion in denying my motion to set aside the judgement terminating my parental rights to M.LM.

ORS 419B.923 sets forth the procedures and substantive standards for seeking to set aside a judgement terminating parental rights. It states, in pertinent part, that the court "may modify or set aside any order or judgement made by it." the reasons it enumerates for doing so "include but not limited to" (a) clerical errors, (b) excusable neglect, and (c) newly discovered evidence. ORS.419B.923(1)(a)-(c). The statute further provides that a "motion to modify or set aside an order or judgement must be made within a reasonable time." ORS 419B.923(3). It also specifically contemplates that a trial court may decide a motion to set aside during the pendency of an appeal from the same judgement. In my motion to set aside, i argued that the interruptions in the audio and video connection "impeded (my) due process right to meaningfully participate in the trial," as the "technical difficulties impeded me and (my) counsel from presenting and hearing evidence crucial to the case." ER 4-5. The court rejected I Jada Marcum's argument, ruling that "the outcome of the trial was not impacted by any technical issues that arose due to holding the termination of parental rights trial by virtual means, "specifically noting that the court's decision did not turn on any credibility findings." ER 27. The court's ruling is contrary to this courts case law, which holds that where a parent is unable to fully participate in a juvenile court proceeding, even if evidence is presented or challenged on their behalf, it implicates the parent's rights and renders the hearing fundamentally unfair.

For the foregoing reasons, I Jada Marcum respectfully requests that this court reverse the juvenile courts order denying my motion to set aside the judgement terminating my parental rights to my daughter.