

No. 22-6944

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In The
Supreme Court of the United States

PAIGE C. SULLIVAN
N/K/A PAIGE C. AUER,

Petitioner,

v.

JACOB JAMES CULWELL,

Respondent.

FILED
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PETITION FOR HEARING

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
PETITION FOR REHEARING	1
CONCLUSION	4
CERTIFICATE OF GOOD FAITH	5
CERTIFICATE OF SERVICE	5

TABLE OF AUTHORITIES

FEDERAL CASES

Troxel v. Granville, 530 U.S. 57 (2000)	<u>3</u>
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STATE CASES

Dyne v. Tyler, 2023 Pa. Super. Unpub. LEXIS 738, *7-8, 2023 WL 2642612 (Pa. Super. Ct. March 27, 2023)	<u>2</u>
Fish v. Fish, 285 Conn. 24, 939 A.2d 1040 (2008)	<u>3</u>
Hotchkiss v. Moore, 2023 Mich. App. LEXIS 2606, 2023 WL 2939977 (Mich. Ct. App. April 13, 2023)	<u>1</u>
Hunter v Hunter, 484 Mich 247, 771 N.W.2d 694 (2009)	<u>2</u>
In re Guardianship of B.H., 770 N.E.2d 283 (Ind. 2002)	<u>2</u>
In re J.J., 2023-Ohio-1209, P69, 2023 Ohio App. LEXIS 1164, 2023 WL 2912420 (Ohio Ct. App., Stark County April 11, 2023)	<u>2</u>
Matter of R.D.R., 2023 N.Y. Misc. LEXIS 1556, 2023 WL 2851375 (N.Y. Fam. Ct. March 17, 2023)	<u>2</u>
Morin v. Fye, 2023 Mich. App. LEXIS 2645, 2023 WL 2938985 (Mich. Ct. App. April 13, 2023)	<u>1</u>
O'Donnell-Lamont and Lamont, 337 Ore. 86, 91 P3d 721 (2004), cert den, 543 U.S. 1050 (2005)	<u>3</u>
W.K. v. T.M., 2023 Ind. App. LEXIS 99 (Ind. Ct. App. March 29, 2023)	<u>2</u>

PETITION FOR REHEARING

Petitioner, Paige C. Sullivan n/k/a Paige C. Auer, respectfully submits this Petition for Rehearing of the April 17 2023 Order of this Court denying this petition for a writ of certiorari. She attaches the certification required by this Court's Rule 44(2).

As detailed in the underlying petition, Petitioner is the biological parent of BC. Respondent is *not* the biological father and never adopted the child. Nonetheless, the Circuit Court for Brevard County, Florida, granted custody to Respondent despite the fact that Petitioner is unquestionably a fit parent and he is not the biological father of the child, never adopted the child. Petitioner contended that she, as a fit parent has a federal due process constitutional right to make decisions concerning the care, custody, and control of his or her child without interference by a third party.

Since that petition was filed, there continues to be a conflict of decisions in the state courts concerning the issue, some of which, as here, have eschewed the constitutional issues and have decided the case on a best interest of the child basis.

In Michigan, for example, the Court of Appeals has recently held that, although parents have a fundamental due process liberty interest in the care, custody, and control of their children, this is a mere "presumption," which is rebutted when a "third party seeking custody . . . establish[es] by clear and convincing evidence that it is not in the child's best interests . . . for the parent to have custody. *Morin v. Fye*, 2023 Mich. App. LEXIS 2645, *23, 2023 WL 2938985

(Mich. Ct. App. April 13, 2023); *Hotchkiss v. Moore*, 2023 Mich. App. LEXIS 2606, *16, 2023 WL 2939977 (Mich. Ct. App. April 13, 2023) (both quoting *Hunter v. Hunter*, 484 Mich 247, 265, 771 N.W.2d 694 (2009)).

We find the same holding in *W.K. v. T.M.*, 2023 Ind. App. LEXIS 99, *11-13 (Ind. Ct. App. March 29, 2023) where the Court found a similar presumption. And to “overcome this presumption and place a child ‘in the custody of a person other than the natural parent, a trial court must be satisfied by clear and convincing evidence that the best interests of the child require such a placement.’” (Quoting *In re Guardianship of B.H.*, 770 N.E.2d 283, 287 (Ind. 2002)).

A Ohio Court of Appeals has gone even further, holding that a trial court may award custody to a stranger if it finds that the parents are “unsuitable.” See *In re J.J.*, 2023-Ohio-1209, P69, 2023 Ohio App. LEXIS 1164, *24, 2023 WL 2912420 (Ohio Ct. App., Stark County April 11, 2023) (“Before awarding legal custody to a non-parent, a trial court must ordinarily make a finding that each parent is unsuitable.”)

Contrast this with the rule in Pennsylvania where, as a general rule, “the Child Custody Act does not permit third parties to seek custody of a child contrary to the wishes of that child’s parents.” *Dyne v. Tyler*, 2023 Pa. Super. Unpub. LEXIS 738, *7-8, 2023 WL 2642612 (Pa. Super. Ct. March 27, 2023). And, in New York, a Family Court recently restated New York precedent as holding that a “non-parent must show that there are extraordinary circumstances present which render the

parent unable or unwilling to care for the subject child.” *Matter of R.D.R.*, 2023 N.Y. Misc. LEXIS 1556, *11, 2023 WL 2851375 (N.Y. Fam. Ct. March 17, 2023).

This reflects a month of decisions that deviate what was thought to be the constitutional principles behind *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000). The Connecticut Supreme Court got it right in *Fish v. Fish*, 285 Conn. 24, 45–46, 939 A.2d 1040, 1053 (2008): “Where the dispute is between a fit parent and a private third party, however, both parties do not begin on equal footing in respect to rights to care, custody, and control of the children. The parent is asserting a fundamental constitutional right. The third party is not. A private third party has no fundamental constitutional right to raise the children of others.”

Troxel thus stands for the proposition that the constitutional right of a parent to make decisions for the child a preclude a court from granting custody to a non-parent over the objection of the natural parent and best interests cannot and do not come into play. Contrast *O'Donnell-Lamont and Lamont*, 337 Ore. 86, 100, 91 P3d 721, 730 (2004), cert den, 543 U.S. 1050 (2005) (“[t]he absence of a majority opinion in *Troxel* and the array of viewpoints expressed in the six different opinions make it difficult to identify the scope of the parental rights protected by the Due Process Clause.”)

The hodgepodge of decisions in the past month demonstrate that it is incumbent upon this Court to clarify *Troxel* and reject decisions holding that a court may engage in a best interest analysis to award custody to a stranger, no matter

how close that stranger may “feel” he or she is to that child. There is no “best interest” of the child rule that trumps a parent’s constitutional rights. Indeed, the holdings summarized below are frightening. They mean that a stranger may obtain custody of a child whose parents are at a lower economic status simply because the stranger can financially afford the child a better life.

CONCLUSION

On rehearing, certiorari should be granted to resolve the serious constitutional issue presented and rectify a grave injustice. The best interests of the child become a consideration only after one of the grounds for invading the parental rights is established, a rule that must be reaffirmed by this Court.

Dated: May 4, 2023

/s/ Paige C. Sullivan
n/k/a Paige C. Auer
Petitioner Pro Se

CERTIFICATE OF GOOD FAITH

The undersigned hereby certifies that this Petition for Rehearing is restricted to the grounds specified in Rule 44(2) of the Rules of the Supreme Court and is presented in good faith and not for delay.

Dated: May 5, 2023

/s/ Paige C. Sullivan
n/k/a Paige C. Auer
Petitioner Pro Se

CERTIFICATE OF SERVICE

I certify that a copy of this document was e-mailed to the person(s) listed below on May 5, 2023

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