

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

In Re: KINLEY MACDONALD

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CIVIL NO.: 2:22-cv-00336-JAW

JUDGMENT

In accordance with the Order Affirming Recommended Decision issued by U.S.
District Judge John A. Woodcock, Jr. on December 16, 2022;

JUDGMENT of dismissal is hereby entered.

CHRISTA K. BERRY, CLERK

By: /s/ Teagan Snyder
Deputy Clerk

Dated this 16th day of December, 2022

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

IN RE: KINLEY MACDONALD)	
)	2:22-cv-00336-JAW
)	
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ORDER AFFIRMING RECOMMENDED DECISION

On October 21, 2022, Petitioner Kinley MacDonald, proceeding pro se, petitioned the Court for a writ of mandamus. *Pet.* (ECF No. 1). The United States Magistrate Judge filed with the Court on December 1, 2022 his Recommended Decision (ECF No. 2), recommending that the Court dismiss the petition. Ms. MacDonald filed an objection on November 23, 2022. *Pet'r's Obj. to Recommended Decision on Pet. for Writ of Mandamus* (ECF No. 3) (*Pet'r's Obj.*).

The Court reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; the Court made a de novo determination of all matters adjudicated by the Magistrate Judge's Recommended Decision; and the Court concurs with the recommendations of the United States Magistrate Judge for the reasons set forth in his Recommended Decision and dismisses the petition for writ of mandamus.

The Court notes for Ms. MacDonald that, while she has identified statutes that give federal courts jurisdiction over certain matters, *Pet'r's Obj.* at 1, no statute gives a federal court authority to issue a writ of mandamus directing a state court in the performance of its official duties. *See Recommended Decision* at 1 (collecting cases).

1. It is therefore ORDERED that the Recommended Decision of the

Magistrate Judge (ECF No. 2) be and hereby is AFFIRMED.

2. It is further ORDERED that Kinley MacDonald's Petition for Writ of Mandamus (ECF No. 1) be and hereby is DISMISSED.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 16th day of December, 2022

Appendix E

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

IN RE: KINLEY MACDONALD

2:22-cv-00336-JAW

RECOMMENDED DECISION ON PETITION FOR WRIT OF MANDAMUS

Petitioner Kinley MacDonald was evidently involved in a contested parental rights action in Maine state court. (Petition, ECF No. 1.) Petitioner alleges that the process was flawed, and that the Maine state court improperly deprived her of her parental rights. She asks the Court to issue a writ of mandamus. While Petitioner has not specified the purpose of the writ, she apparently wants the Court to direct the Maine state court to stay or modify one or more of its decisions or to alter its process. A federal court does not have the authority to issue a writ of mandamus to direct a state court to issue an order or otherwise to direct state courts or judicial officers in the performance of their official duties. *In Re Martinez*, 778 Fed. App'x 198, 199 (3rd Cir. 2019); *Cross v. Thaler*, 356 Fed. App'x 724, 725 (5th Cir. 2009); *Woods v. Weaver*, 13 Fed. App'x 304, 306 (6th Cir. 2001); *In re Austin*, 8 Fed. App'x 253, 254 (4th Cir. 2001); *White v. Ward*, 145 F.3d 1139, 1140 (10th Cir. 1998). Accordingly, I recommend the Court dismiss the petition.¹

¹ To the extent Petitioner's filing could be construed as a complaint seeking different remedies based on a federal cause of action, such as declaratory or injunctive relief, dismissal would likely still be required because federal district courts ordinarily may not review the final decisions of state courts, *see generally*, *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983), or interfere during ongoing state court proceedings when the federal claims may be raised within those proceedings, *see generally*, *Younger v. Harris*, 401 U.S. 37 (1971).

Other Orders/Judgments2:22-cv-00336-JAW In re: Kinley MacDonald Petition for Writ of Mandamus**U.S. District Court****District of Maine****Notice of Electronic Filing**

The following transaction was entered on 12/1/2022 at 11:29 AM EST and filed on 12/1/2022

Case Name: In re: Kinley MacDonald Petition for Writ of Mandamus

Case Number: 2:22-cv-00336-JAW

Filer:

Document Number: 2

Docket Text:

REPORT AND RECOMMENDED DECISION re [1] MOTION for Writ of Mandamus. Objections to R&R due by 12/15/2022. By MAGISTRATE JUDGE JOHN C. NIVISON. (MFS)

2:22-cv-00336-JAW Notice has been electronically mailed to:

2:22-cv-00336-JAW Notice has been delivered by other means to:

KINLEY MACDONALD
CUMBERLAND COUNTY JAIL
50 COUNTY WAY
PORTLAND, ME 04102

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1025705658 [Date=12/1/2022] [FileNumber=2839147-0]
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f91d7c9af4981655c83255a25ecbea6ac01e4628c1e90a32427cfa91cffce]]

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Yor-22-329

In re Children of Kinley M.

**ORDER ON PENDING MOTIONS,
CONSOLIDATING APPEALS,
APPOINTING COUNSEL, AND
ESTABLISHING PROCEDURE FOR
APPEAL**

On October 3, 2022, the trial court entered orders terminating Kinley M.'s parental rights to her children in docket numbers YORDC-PC-2021-01 and -02. On October 7, 2022, Kinley filed a notice of appeal from those orders.

Kinley, who is currently incarcerated on several criminal charges related to these child protection matters,¹ has recently filed six documents² with this Court relevant to this appeal:

- On October 12, 2022, Kinley filed a letter containing two requests. First, Kinley requests "paperwork & instruction to make 2 separate appeals to the Supreme Judicial Court regarding a protective custody order & order denying removal of Judge & continuance." Second, Kinley requests any paperwork necessary to obtain appellate counsel.
- On October 19, 2022, Kinley filed a document titled "Motion for

¹ Kinley has been charged with burglary (Class A), reckless conduct with a dangerous weapon (Class C), criminal threatening with a dangerous weapon (Class C), and assault (Class D).

² In addition to the five documents docketed in this appeal, Kinley has filed a petition for a "writ of mandamus/habeas corpus" which is proceeding under Supreme Judicial Court docket number SJC-22-13.

extent that her requests for enlargements of time are intended to request an enlargement of time for her brief, the Court will grant a short enlargement of time for Kinley's brief.

Kinley's requests regarding her desire to commence a petition for a writ of habeas corpus must be denied because there are no forms or other assistance that this Court can provide her. There are no court forms for that purpose, and this Court cannot give Kinley legal advice on how to proceed. Kinley must perform her own legal research using any resources available at the facility in which she is housed or through any public Maine law library, such as the Maine State Law and Legislative Reference Library in Augusta, which provides assistance to Maine residents over the phone and by mail.

Kinley's "Motion for Further Finding or Amendment of Judgement or New Trial" requests relief that can be granted only after consideration of the merits of the appeal.³ The Court cannot vacate a trial court judgment on a procedural motion.

Kinley's request that this Court accept a copy of her petition for a writ of mandamus as her appellate argument is moot because the request is conditioned on this Court denying her "access to appellate counsel [and]/or

³ To the extent that Kinley intended her motions to be motions under M.R. Civ. P. 52(b), 59(a), or 59(e), the motion must be filed in the trial court within 14 days after entry of judgment.

Child of Nicholas G., 2019 ME 13, ¶ 16, 200 A.3d 783. However, the right to counsel is not absolute. A court may decline to appoint new counsel if a parent has expressly waived the right to counsel or forfeited the right through their actions. In re Child of Stephen E. 2018 ME 71, ¶ 7 n.4, 186 A.3d 134.

This Court has weighed the trial court's well-reasoned concerns, Kinley's due process right to counsel, Kinley's ongoing incarceration, and the children's interests in expeditious consideration and in finality.

Although the trial court was concerned about Kinley's financial status given that she was represented by retained counsel and had failed to file an indigency affidavit, given Kinley's incarceration and the interests at stake, this Court will appoint appellate counsel. Dawn M. Corbett, Esq., has agreed to represent Kinley on appeal. However, cognizant of Kinley's behavior in the trial court, this Court will establish guidelines for that representation.

It is ORDERED as follows:

1. **Consolidation.** Kinley's appeals from orders terminating her parental rights entered in docket numbers YORDC-PC-2021-01 and -02 are CONSOLIDATED under Law Court docket number Yor-22-329.

2. **Appointment of Counsel and Scope of Representation.**

a. Attorney Corbett is appointed to represent Kinley on appeal,

e. If there is a breakdown in the attorney-client relationship, Attorney Corbett may notify the Clerk of the Law Court and complete the drafting of the brief (and any reply brief) without further consultation with Kinley.

f. Unless this Court subsequently orders otherwise, Kinley may personally (and not through Attorney Corbett) file any motions or requests regarding her appeal directly with the Court. She must either (1) send copies to counsel for the Department of Health and Human Services, Attorney Corbett, and guardian ad-litem Steven M. Carey, Esq., and indicate in her motion that she has done so, or (2) certify that she is unable to provide copies and request that the Clerk of the Law Court serve the other parties with copies.

3. Briefing Schedule.

a. The Department of Health and Human Services must file the appendix on or before **December 13, 2022.**

b. Attorney Corbett must file the appellant's brief on or before **January 2, 2023.**

c. Kinley may personally file a supplemental brief on or before **January 24, 2023,** containing any additional arguments that Attorney Corbett did not include in the primary brief. Kinley need

STATE OF MAINE

SUPREME JUDICIAL COURT

Sitting as the Law Court

Docket No. Cum-22-327

Kinley MacDonald

v.

ORDER DISMISSING APPEAL

Jeanne Lambrew et al.

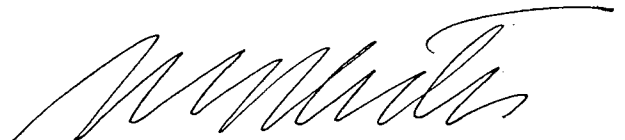
On August 16, 2022, a Single Justice of the Maine Supreme Judicial Court entered an order on Kinley MacDonald's complaint in docket number SJC-22-4. On October 7, 2022, MacDonald filed a notice of appeal. The Clerk of the Law Court docketed the appeal under Law Court docket number Cum-22-327.

The notice of appeal was filed 52 days after the entry of the order appealed from and is therefore untimely. *See* M.R. App. P. 2B(c)(1) (requiring an appeal to be commenced within 21 days after entry into the docket of the judgment or order appealed from).

It is therefore ORDERED that MacDonald's appeal is DISMISSED as untimely.

Date: 7 Nov., 2022

For the Court,



Associate Justice

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**Additional material
from this filing is
available in the
Clerk's Office.**