

ORIGINAL

23-5866

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
SEP 13 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

JAMES ALLEN BRICKLEY — PETITIONER
(Your Name)

vs.

MARIE L. G. JOSEPH-STEPHEN RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE THIRD COURT OF APPEALS OF TEXAS, at AUSTIN
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAMES ALLEN BRICKLEY
(Your Name)

3201 FM 929
(Address)

Gatesville, Texas 76597
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

QUESTION 1: In a parental-rights termination case, when deciding the sufficiency of the evidence to terminate, must the court have evidence to of every element required, or is the decision to terminate sufficient when considering the trial judge's best interest decision?

QUESTION 2: Must a court provide a trial by jury if requested by a pro-se party?

QUESTION 3: Is it error to deny a motion for continuance for discovery, in order to terminate a parents rights to his child by summary judgment, while issues are contended?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- Brickley v. Joseph-Stephen, No. 03-22-00574-CV, 2023 Tex. App. LEXIS 1367 (Tex. App. Mar. 2, 2023)
- Brickley v. Joseph-Stephen, No. 23-0248, 2023 Tex. LEXIS 641 (June 30, 2023)
- Brickley v. Joseph-Stephen, No. 23-0248, 2023 Tex. LEXIS 787 (Aug. 25, 2023)

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at 2023 Tex. App. LEXIS 1367*; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Texas Supreme court appears at Appendix C to the petition and is

reported at 2023 Tex. LEXIS 641*; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

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).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was June 30, 2023. A copy of that decision appears at Appendix C.

[X] A timely petition for rehearing was thereafter denied on the following date: Aug. 25, 2023, 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 Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." Washington v. Glucksberg, 521 U.S. 702, 719, 138 L. Ed 2d 772, 117 S.Ct 2258(1997). Due process under Texas Family Code requires that a fact finder must find that the parent was both confined for a conviction and unable to provide support for the child before moving to the best interest of the child element of the case. Texas Family Code §161.001(b)(1)(Q), &(2).

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law." USCS Const. Amend. 7.

"All persons born and naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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 laws." USCS Const. Amend. 14. section 1.

STATEMENT OF THE CASE

Nature of the case. Father, James Allen Brickley, who was sentenced to a term of imprisonment was sued by Mother, Marie L. G. Joseph-Stephen, for termination of Father's parental rights. Although Father requested a Jury Trial and a continuance to perform discovery the trial court, ~~ssua sponte~~, held a summary judgment hearing to terminate Father's parental rights. (APP F, APP B)

Proceedings in the trial court. The law suit was filed in the 426th District Court, Bell County, Texas, the Honorable Steven Duskie, presiding.

The Judgment of the trial court, found in favor of the Mother was signed Set.13,2022. (APP B)

Proceedings in the Third Court of Appeals. Father appealed the judgment of the trial court. Father was appellant, Mother was Appellee. Opinion of the panel. The panel consisted of Justices Kelly, Smith, and Theofanis. The appeals court issued it's opinion on March 2,2023. (APP A) Motion for en banc reconsideration and rehearing were denied on April 25,2023. (APP G)

Proceedings in the Texas Supreme Court. Father petitioned for Discretionary Review by the Texas Supreme Court, which was denied on June 30, 2023. The court denied a timely filed motion for rehearing on August 25,2023. (APP C).

REASONS FOR GRANTING THE PETITION

This Honorable Court should grant the Petition because of the total deprivation of Due Process when considering the termination of this Petitioner's parental rights. In each of the issues raised the State Court of Appeals overlooked error of the trial court in depriving Brickley of his right to a jury trial; discovery; and a fair tribunal.

Question 1 asks this Court whether a father's parental rights may be terminated without fulfillment of each required element of the State required statute. Here, proof that Father was in prison was uncontested, and fulfilled the first element to terminate his parental right's, however, Mother had admitted to be receiving an apportionment check, on Father's behalf, for support of their child. [(R.R. pg 19) App. E]. This according to the lower appellate courts of Texas agree precludes a termination of parental rights, by barring the fact-finder from reaching the element of the best interest of the child. See In the Int. of X.T., No. 04-22-00118-CV, 2022 Tex. App. LEXIS 4420 (Tex. App. San Antonio June 29, 2022); In the Int. V.S., No. 02-22-00063-CV, 2022 Tex. App. LEXIS 4315 (Tex. App. Fort Worth June 23, 2022); and S.S. v. Tex. Dep't of Fam. & Protective Servs., No. 03-21-00695-CV, 2022 Tex. App. LEXIS 4662 (Tex. App. Austin July 8, 2022) However, the Texas Supreme Court, despite the reoccurrence of this phenomena, has refused to rule on the issue. It undermines the decision of the State courts to rule both ways. If a precedent is set by the superior state court the lower courts should follow, and the distribution of justice would then be equal. Instead of considering the trial courts

error in overlooking the second, complained of, element it should be noted that the Third Court of Appeals asserted its own interpretation of the evidence, by insisting that the apportionment check received on behalf of Brickley was for the Mother of the child rather than for the child himself. (APP. A *6). The Court of Appeals also overlooked the fact that Mother did not prevail or even attempt to argue the shifted burden, that the Mother must show that the amount received was not enough to satisfy the duty of the Father to the Child, as set out in the court's opinion. (APP. * 4*5 citing Schexnider v. Texas Dep't of Fam. & Protective Servs., No. 03-03-00298-CV, 2005 WL 770562, at *3 (Tex.App.-Austin Apr. 7, 2005, no pet.)). This again precluded the court's decision that termination was in the child's best interest. Instead the court of appeals relied on the Mother's statement that she did not need the apportionment because she and her husband had been providing for the child on their own. Id at *6. But that does not relieve the Mother from her burden of persuasion that Father failed to fulfill HIS duties. This had no bearing on the believability of either of the parents as suggested by the court of appeals. Id at *6-7.

Although there is a strong presumption that a child's best interest is served by maintaining the parent-child relationship, as cited by the court of appeals in D.J. v. Texas Dep't of Fam. & Protective Servs., No. 03-20-00323-CV, 2020 WL 7395924, at *5 (Tex. App.-Austin Dec. 17, 2020, pet. denied), the court of appeals determines that it is sufficient that Mother testified on behalf of the child's best interest, when stating, Father taught Child some fighting moves which he used on a teacher. (APP. A at *8) The court of appeals stated this testimony out of context however, where

even though Mother did imply the blame was on Father for Child performing a "move" on a teacher which resulted in an alleged injury to the teacher; the trial court had no proof past hearsay that the allegation was true. Even if it were true, Mother's testimony was that the principal of the school ordered Child to perform the "move" on the teacher during the time Father was in prison; which could not be considered Father's fault. [(R.R. pg36) APP. E]. The other allegations relied on by the court of appeals were also hearsay, and contested. Although the court of appeals could have determined the trial court did not abuse discretion if making a determination based on these statement and disbelieving Father; the trial court still refused Father the right to present rebuttal evidence or conduct discovery based on the opposing party's attorney statement that she did not believe Father was capable of providing discovery, despite Father's requests for discovery which went unanswered.

In Question 2, Brickley asks whether a trial court must allow a trial by jury if requested by a party?

The applicable State law requires a party to request a jury trial 30 days in advance of a trial setting with a non-jury. See Texas Rule of Civil Procedure 216. A request for a jury trial was submitted by Father in his pleadings. [(C.R. at 35) APP.F]. Because there was no notice of a trial date, Father could not be late in his jury trial demand.

Other applicable law requires a trial court to give all parties 45 day notice of a trial date. See Texas Rule of Civil Procedure 245; *In re J.C.*, 108 S.W.3d 914, 916-17 (Tex.App.-Texarkana 2003, no pet.). Here the only notice given was for a motion to dismiss raised and withdrawn significantly before the date set, by Father.

[(C.R. at 32) APP. F]. In the court of appeals opinion, at *10, the court suggests that Father did not object to the non-jury trial, despite the several times Father stated he was not ready for the hearing on the merits. Here, the pro-se respondent did not waive his jury trial request, and his statements of not ready should have reasonably been construed as an objection to the hearing, especially considering the want and obvious need for discovery in the case. Which leads to the 3rd Question to this Court.

In Question 3, Brickley asks is it error for a trial court to deny a motion for continuance to conduct discovery by a pro-se party, and sua sponte shorten the discovery process to make a summary judgment on contended issues in a parental-rights termination case?

Here, the court of appeals opined that "Father's motion for continuance lacked a supporting affidavit and so did not preserve error". (APP. A at *9) Texas State law does allow a court to over rule a parties motion for continuance if he does not submit an affidavit. Texas Rule of Civil Procedure 251. However, the decision is discretionary, and the purpose of an affidavit is to swear to the facts of the motion. Here, the trial court held a hearing on the motion for continuance to conduct discovery, where Father had been sworn to the facts, alleviating the need to swear to the motion in the form of an affidavit.

In the hearing Father made several showings of the need for discovery, mostly surrounding the fact that Mother was receiving support for Child on Father's behalf, through an apportionment check on a monthly basis, and other reasons. [(C.R. at 7; 19; 22; 29; 30; 31; 33; 36; 37; 43; 44; 45; 47-64; 66; 67-68; 93; 96; 97; and 98.

Regardless of the amount of issues needing additional discovery, it was error to over rule the motion for continuance based on the court of appeals reasoning, that Father did not submit an affidavit, because the issues were sworn to and shown that discovery was needed in an unconventional hearing for the continuance and hearing on the merits at the same time.

It is important to mention that the Father and Child in this case are closer than Child and Mother, and there were allegations that Mother had a hand in manipulating facts to have Father put in prison, however the trial court would not allow Father to develope that discovery or even question those facts during the hearing. During Father's criminal trial Mother testified that Father was Childs favorite person, but later during the termination hearing, she changed her testimony to imply that Child mourned even talking to his father. Had discovery been allowed, Father could have proven his theories without a doubt, and the hearing on the merits by the trial court could not have in any reasonable way found that Father's parental rights should have been terminated.

It is also important to note that the Texas Supreme Court has not ruled on the issue of the sufficiency of the evidence in parental-rights termination cases, despite the apparent need for guidance on the issue. And it is of paramount importance that the appellate court's interpretation of the record be reasonably construde, unlike here, where the record does not reflect the interpretation put forth by the Texas Third Court of Appeals.

This Petitioner implores this Honorable Court to review the the stark differences in the way the courts of appeals, here in Texas has dealt with similarly situated respondents compared to

the adverse treatment suffered by a pro-se inmate attempting to maintain parental rights of his son.

Thank you for your consideration of this petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JAMES ALLEN BRICKLEY

Date: SEPTEMBER 5, 2023