No.

In the Supreme Court of the United States

DANIEL E. HALL, PETITIONER

v.

DEVON BROCHU-REYNOLDS, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE NEW HAMPSHIRE SUPREME COURT
CASE NO. 2022-0630

PETITION FOR WRIT OF CERTIORARI

Daniel E. Hall
Petitioner, Pro Se
393 Merrimack Street
Manchester, N.H. 03103

10

Table of Contents

Questions Presented

1. Did the NHSC apply Rule 20(2) unconstitutionally and violate Father's due process rights to a meaningful appeal?
2. Did the NHSC violate the Due Process Clause of the Fourteenth Amendment or the Equal Protection clause of the Fifth Amendment, in failing to perform a de novo review of his case or in failing to follow its own precedents and in requiring Father to go above and beyond New Hampshire law and precedent to prove his case?
3. Did the NHSC error in failing to apply any procedural burden shifting requirements of RSA 170- C:5, I to the Mother?
4. Did the NHSC error in failing to determine whether Mother was "financially able" to do more than she did?
5. Did the NHSC rewrite its own stare decisis on the meaning of "nominal" child support?
6. Did the NHSC error in applying a Family Division admissions rule to Probate proceedings under RSA 170-C:3?
7. Did the NHSC violate the Due Process Clause of the Fourteenth Amendment or the Equal Protection clause of the Fifth Amendment, in not allowing the Father to challenge Judicially Noticed facts entered after the trial had been completed?
8. Did the NHSC error in not following its own stare decisis regarding the issues of abandonment, neglect, admissions and judicial notice?

Authorities

US Supreme Court

New Hampshire Supreme Court

Other Citations

New Hampshire Law

Constitutions

Other Citations

I. JURISDICTION

1. The United States Supreme Court may review a state court's final judicial decisions. **[1]** See also, Judiciary Act of 1789, §25, 28 U.S.C. § 1257(a). See *Jefferson v. City of Tarrant,* 522 U.S. 75 (1997); *Plyler v. Moore,* 129 F.3d 728, 731 (4th Cir. 1997); *Young v. Ditech Fin., LLC,* Civil Action No. PX 16-3986, 5 (D. Md. Jul. 19, 2017).

2. In failing to complete and provide a de novo review process or follow its own precedents, the New Hampshire Supreme Court's (hereafter as, "NHSC") procedural rulings are inadequate and are themselves questions of federal law" *Beard v. Kindler,* 558 U. S. 53, 60 (2009).

3. The two orders produced by the NHSC in this case are unsupported state-court decisions which question state procedures which would not constitute an adequate ground to preclude this Court's review of a federal question." *Bouie v. City of Columbia,* 378 U. S. 347, 354; See also, *Cruz v. Arizona* 251 Ariz. 203, 487 P. 3d 991(2022).

II. PETITION FOR WRIT OF CERTIORARI

4. Appellant-Petitioner, Daniel E. Hall, "Father" respectfully petitions this US Supreme Court for a Writ of Certiorari to review the judgment of the NHSC which denied Father's rights of the due process of a proper appeal. Father also challenges the constitutionality of the actions taken by the NHSC as its orders fail to overrule any law or prior decisions.

5. The NHSC disregarded many state precedents, court rules, procedures, the US Constitution and disregarded the effects of New Hampshire law and the N. H. Constitution, in failing to uphold the requirements of; (1) stare decisis; (2) burden shifting; (3)"nominal" or "financially able" to pay child support; and (4) court procedural rules, which all lack 'fair or substantial support in prior New Hampshire State law, See *Walker* v. *Martin,* 562 U. S. 320 (2011) (quoting 16B Wright & Miller §4026, at 386), and reverses and overrules previously binding NHSC precedents. ("A state ground, no doubt, may be found inadequate when 'discretion has been exercised to impose novel and unforeseeable requirements without fair or substantial support in prior state law"' (quoting 16B C. Wright, A. Miller, & E. Cooper,

---

[1] A state-court decision is final if it has effectively determined the entire litigation. *Market Street R. Co. v. Railroad Comm'n of Cal.,* 324 U. S. 548, 551.

Federal Practice and Procedure §4026, p. 386 (2d ed. 1996) (Wright & Miller))). See also, Cruz v. Arizona, No. 21-846 (U.S. Feb. 22, 2023).

6. When pro se Father received the trial court's order, he researched the applicable rules, laws, doctrines, and precedents applicable to his case, and identified several errors of law to which would be successful in any appeal had the NHSC followed its own precedent or stare decisis. Bolstering this belief, N.H. Rev. Stat. § 567-A:1, **[2]** entitled Petitioner an appeal on questions of law, and SUP. CT. R. 3, **[3]** entitled him to a review on the merits. The Order is in error as it is an incorrect application of clearly established state law.

7. The NHSC's orders are contrary to clearly established precedent and repeat the same legal errors made by the trial court because it applied rules that contradict the governing law set forth in prior NHSC cases and confronts facts that are materially indistinguishable from the NHSC's past decisions and nevertheless arrives at a different results. *Williams v. Taylor,* 529 U.S. 362 (2000).

III. BRIEF HISTORY BELOW

8. On May 25, 2021, the biological Father Petitioned to Terminate Mother's parental rights of her two children ages 4 and 6 on the basis of abandonment and neglect. **[4]** On August 1, 2022, a hearing was held, testimony given, and on August 17, 2022, the New Hampshire Circuit Court, 9th Circuit- Family Division- Manchester, "trial court", denied Father's petitions with a final order. **[5]** The Father motioned for reconsideration on several grounds which were also denied on September 19, 2022. **[6]**

9. Father appealed the trial court's opinions to the NHSC (Case No. 2022-0630) and filed a brief on February 28, 2023, **[7]** including 5 appendixes; And a reply brief on March 31, 2023,

---

[2] Mandatory appeal of a final decision on the merits issued by a probate court.

[3] Merits review is the process by which a person or body: other than the primary decision-maker; reconsiders the facts, law and policy aspects of the original decision; and. determines what is the correct and preferable decision.

[4] Petitions 656-2021-TR-00043 and 656-2021-TR-00043.

[5] See Appendix, Exhibit A, trial court order.

[6] See Appendix, Exhibit B, trial court order.

[7] See Addendum, Exhibit A, submittal no. (36851677551690057).

[8]; the NHSC denied Father's appeal on May 17, 2023, **[9]** Father then filed a motion for reconsideration May 31, 2023, **[10]**; and on June 14, 2023, the NHSC denied Father's motion to reconsider. **[11]** Lastly, Father has filed a Rule 16 motion to void judgement on August 2, 2023 for lack of jurisdiction, which to date, has not been answered by the NHSC. **[12]**

IV. STATE LAWS AND RULES

10. The New Hampshire Supreme Court has consistently recognized that "[a]s a separate and coequal branch of government, the judiciary is constitutionally authorized to promulgate its own rules," and therefore could not just make up the rules themselves, individually, on the fly. *Petition of Burling*, 139 N.H. 266, 271, 651 A.2d 940, 943 (1994); *see* N.H. CONST. pt. I, art. 37; N.H. CONST. pt. II, art. 73-a; *In re Proposed Rules of Civil Procedure*, 139 N.H. 512, 513, 659 A.2d 420, 420 (1995) (supreme court's supervisory and rule-making authority over courts in State derives primarily from State Constitution and from common law); *LaFrance*, 124 N.H. at 180, 471 A.2d at 345 (court's authority to adopt rules of practice and procedure is of ancient origin); *Nassif Realty Corp. v. National Fire Ins. Co.*, 107 N.H. 267, 268, 220 A.2d 748, 749 (1966) (rule-making power of supreme court as court of general jurisdiction is broad and comprehensive). *Opinion of the Justices*, 141 N.H. 562, 569-70 (N.H. 1997). *See* also, "endorsed with constitutional authority", N.H. CONST. pt. II, art. 73-a; *Garabedian v. William Company*, 106 N.H. 156, 157, 207 A.2d 425, 426 (1965); *Opinion of the Justices*, 141 N.H. 562, 570 (N.H. 1997).

11. In New Hampshire the word "shall" in a statute generally indicates that the provision is mandatory. See *Dover Professional Fire Officers Assoc. v. City of Dover,* 124 N.H. 165, 169, 470 A.2d 866, 869 (1983), and that the word, "may," in *Black's Law Dictionary* are "[t]o be permitted to" and "[t]o be a possibility." *Black's Law Dictionary* 1127 (10th ed. 2014), and that the general rule of statutory construction in New Hampshire, is that "may" is permissive, not mandatory. *Appeal of Coos County Comm'rs,*166 N.H. 379, 386, 97 A.3d 654 (2014) (quotations

---

[8] See Addendum, Exhibit B, submittal no. (36851680229031141).
[9] See Appendix, Exhibit C, NHSC order.
[10] See Addendum, Exhibit C, submittal no. (36851685502803158).
[11] See Appendix, Exhibit D, NHSC order.
[12] See Addendum, Exhibit D, submittal no. (36851690947049552).

omitted), and that Self-represented litigants are bound by the same procedural rules that govern parties represented by counsel. *In the Matter of Birmingham & Birmingham*, 154 N.H. 51, 56 (2006); *H.T. v. P.M. No.* 2021-0597 (N.H. Jun. 20, 2022).

12. Sup. Ct. R. 20(2) Non-precedential Status of Orders. "An order disposing of any case that has been briefed but in which no opinion is issued, whether or not oral argument has been held, shall have no precedential value, but it may, nevertheless, be cited or referenced in pleadings or rulings in any court in this state, so long as it is identified as a non-precedential order and so long as it was issued in a non-confidential case; provided however, that an order may be cited and shall be controlling with respect to issues of claim preclusion, law of the case and similar issues involving the parties or facts of the case in which the order was issued."

V. CONSTITUTIONAL PROVISIONS INVOLVED

13. In filing his Petition for Termination of Parental Rights of Mother under RSA 170-C, **[13]** the Father was entitled under the U.S. Constitution, his liberty rights to raise his children as he sees fit,**[14]** and a fair procedure in accordance with due process under the Fourteenth Amendment **[15]** in the New Hampshire Probate Court, which would be governed by the rules of evidence and procedure, and the combined application of material facts of the case to the statutes under Section 170-C and by the doctrine of stare decisis which demands respect in this State **[16]** and protects against arbitrary and unpredictable results, **[17]** provided that

---

[13] N.H. RSA 170-C.

[14] *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925).

[15] The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures in state proceedings.

[16] See *State v. Quintero*, 162 N.H. 526, 532, 34 A.3d 612 (2011); *Brannigan v. Usitalo*, 134 N.H. 50, 53, 587 A.2d 1232, 1233 (1991).

[17] stare decisis is "essential if case-by-case judicial decision-making is to be reconciled with the principle of the rule of law, for when governing legal standards are open to revision in every case, deciding cases becomes a mere exercise of judicial will with arbitrary and unpredictable results." See *Jacobs v. Director*, 149 N.H. 502, 504-5 (N.H. 2003); "the idea that today's Court should stand by yesterday's decisions," *Kimble v. Marvel Entertainment, LLC*, 576 U.S. 446, 135 S. Ct. 2401, 2409, 192 L.Ed.2d 463 (2015); *Providence Mut. Fire Ins. Co. v. Scanlon*, 138 N.H. 301 (N.H. 1994).

neither law nor precedent be overruled.**[18]**

14. The liberty interest at issue in this case-the interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court more than 75 years ago. The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." *Washington v. Glucksberg*, 521 U. S. 702, 719 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." Id., at 720; see also *Reno v. Flores*, 507 U. S. 292, 301-302 (1993). In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. See, *e. g., Stanley v. Illinois*, 405 U. S. 645, 651 (1972) ("It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements'" (citation omitted)); *Wisconsin v. Yoder,* 406 U. S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"); *Quilloin v. Walcott*, 434 U. S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); *Parham v. J. R.,* 442 U. S. 584, 602 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); *Santosky v. Kramer*, 455 U. S. 745, 753 (1982) (discussing "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"); Glucksberg, supra, at 720 ("In a long line of cases, we have held that, in addition

---

[18] The Order fails to overrule any law or prior decisions. See *Pike v. Madbury,* 12 N.H. 262, 267 (1841); *State v. Sage,* 170 N.H. 605, 618 (N.H. 2018); *Union Leader Corp. v. Town of Salem,* 173 N.H. 345, 352, 239 A.3d 961 (2020).

to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the righ[t] ... to direct the education and upbringing of one's children" (citing *Meyer and Pierce)).* In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. *Troxel v. Granville,* 530 U.S. 66 (2000).

15. Whether state action against an individual was a deprivation of life, liberty or property was initially resolved by a distinction between "rights" and "privileges." Process was due if rights were involved, but the state could act as it pleased in relation to privileges. Process was due before the government could take an action that affected a citizen in a grave way. This could create an "entitlement," the Court said; the expectation need not be based on a statute, and an established custom of treating instructors who had taught for X years as having tenure could be shown. While, thus, some law-based relationship or expectation of continuation had to be shown before a federal court would say that process was "due," constitutional "property" was no longer just what the common law called "property"; it now included any legal relationship with the state that state law regarded as in some sense an "entitlement" of the citizen. See *Bi-Metallic Investment Co. v. State Board of Equalization* (1915).

16. Due process rights of an opportunity to present reasons why the proposed action should not be taken. The right to know opposing evidence. The right to cross-examine adverse witnesses A decision based exclusively on the evidence presented. Requirement that have not been met by the NHSC.

17. Due Process of Law under U.S. CONST., AMEND. XIV and N.H. CONST., PT. I, ART. 2 and 14. "No subject shall be deprived of his property, immunities, or privileges, ... or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land." *Id.* "Law of the land means due process of law." Petition of Harvey, 108 N.H. 196 A.2d 757 (1967). Federally, "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." U.S. CONST., AMEND. XIV.

18. The Father had a liberty interest in protecting his children's rights, whether or not such interest was protected by statute. Liberty interest protected by the Due Process Clause includes the right 'generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.' . . . Among the historic liberties so protected was a right to be free from, and to obtain judicial relief for his parental rights. *Ingraham v. Wright*, 430 U.S. 651, 673 (1977). Cases involving the family-related liberties discussed under substantive due process, as well as associational and privacy rights, may also involve liberty interests that require procedural due process protections. *See Armstrong v. Manzo*, 380 U.S. 545 (1965) (natural father, with visitation rights, must be given notice and opportunity to be heard with respect to impending adoption proceedings); *Stanley v. Illinois*, 405 U.S. 645 (1972) (unwed father could not be presumed unfit to have custody of his children because his interest in his children warrants deference and protection). See also *Smith v. Organization of Foster Families, 431 U.S. 816 (1977)*; *Little v. Streater,* 452 U.S. 1 (1981); *Lassiter v. Dep't of Social Servs.*, 452 U.S. 18 (1981); *Santosky v. Kramer,* 455 U.S. 745 (1982).

19. The Father was entitled to due process protections for his rights of procedure through an appeal and was not given any notice that the current New Hampshire statutes and previous stare decisis would not be used in his case, nor was he given any meaningful opportunity to present reasons why the proposed action should not be taken.

VI. APPLICATION OF RULE 20(2)

20. Courts are expected to exercise judicial authority over disputes to determine how the law applies to each case. This authority is limited by precedent such that what has been done in the past is done again unless some rational basis for a departure is found. Father expected his case would be decided in adherence to the court's prior rulings and expected that he would receive a ruling just like the last guy or the guy who may come after him. The court's unfettering itself from creating and following precedents leads to blatantly unjust results for the Father in this case. The Order's application of N.H. Supr. Ct. "Rule 20(2)", abandons precedent and creates an unconstitutionally unjust outcome.

21. In New Hampshire the doctrine of stare decisis "demands respect in a society governed by the rule of law, for when governing legal standards are open to revision in every case,

deciding cases becomes a mere exercise. *State v. Sage* 170 N.H. 605 (N.H. 2018); is a "[p]rincipled application of stare decisis requires a court to adhere even to poorly reasoned precedent in the absence of some special reason over and above the belief that a prior case was wrongly decided." *Ford v. N.H. Dep't of Transp.*, 163 N.H. 284, 290, 37 A.3d 436 (2012); "[r]especting stare decisis means sticking to some wrong decisions." *Kimble v. Marvel Entm't,* LLC, 576 U.S. 446, 135 S. Ct. 2401, 2409, 192 L.Ed.2d 463 (2015); "The doctrine rests on the idea, that it is usually 'more important that the applicable rule of law be settled than that it be settled right." *Burnet v. Coronado Oil & Gas Co.,* 285 U.S. 393, 406, 52 S.Ct. 443, 76 L.Ed. 815 (1932); *Union Leader Corp. v. Town of Salem* 173 N.H. 345 (N.H. 2020). "Stare decisis, the idea that today's court should stand by yesterday's decisions, commands great respect in a society governed by the rule of law, and we do not lightly overrule a prior opinion." *Seacoast Newspapers v. City of Portsmouth,* 173 N.H. 325, 333, 239 A.3d 946 (2020).

22. But on occasion, judges depart from precedent, but the act of overruling requires its own set of conditions before it can achieve legal force and is directly related to due process in both the federal and state constitutions. Because the NHSC here can give no legitimate reasons for departing from precedent, it simply treads over Father's rights by making its order under N.H. S. Ct. Rule 20(b), thereby extinguishing any existing conditions which would allow it to not following its own precedent. This discretionary designation of opinions as "not for publication" and as nonprecedential violated basic axioms as to the nature and limits of the judicial power under the New Hampshire Constitution and therefore is unconstitutional. See *Anastasoff v. United States,* 223 F.3d 898 (8th Cir. 2000), vacated as moot, 235 F.3d 1054 (8th Cir. 2000) (en banc). The current NHSC panel implicitly ignored prior panels precedent and without any reasoning as to why. *In re Blaisdell,* 261 A.3d 306, 310 (N.H. 2021). See *U.S. v. Valencia,* 669 F.2d 37, 37 (2d Cir. 1981).

23. And although judicial deference to precedent, stare decisis, should have controlled NHSC's decisions in this case, it simply did not. See *Thornburgh v. American College of Obstetricians,* 476 U.S. 747, 786-87 (1986) (White, J., dissenting); *Akron v. Akron Center for Reproductive Health,* 462 U.S. 416, 420 (1983); *Brannigan v. Usitalo* 134 N.H. 50 (N.H. 1991). The act or procedure of utilizing N.H. S. Ct. Rule 16 would be generally constitutional, but here, it operates not in

good faith or in accordance with constitutional and statutory mandates as it allows the NHSC to hide its failure to comport with the due process principles of stare decisis, on multiple issues, which tread on Father's rights.

VII. DE NOVO REVIEW

24. Previously binding case law in New Hampshire is that appeals requiring the application of the law to the facts of record are to be de novo. See *Phaneuf Funeral Home v. Little Giant Pump Co.*, 163 N.H. 727, 730, 48 A.3d 912 (2012); *Conant v. O'Meara*, 167 N.H. 644, 648 (N.H. 2015). State v. Etienne 163 N.H. 57 (N.H. 2011); "Because the Father challenges the sufficiency of the evidence regarding abandonment and neglect, the task here is to review the record to determine whether it supports the trial court's findings beyond a reasonable doubt. *In re Guardianship of G.S.*, 157 N.H. 470, 473-74, 953 A.2d 414 (2008)." In re C.R., 174 N.H. 804, 807 (N.H. 2022). See also, *State v. Kay*, 162 N.H 237, 243, 27 A.3d 749 (2011), (sufficiency of the evidence raises a claim of legal error, and is reviewed de novo). Because the ultimate determination requires an application of a legal standard to historical facts, it is not merely a factual question but a mixed question of law and fact.) See *Cf. Great Lakes Aircraft Co. v. City of Claremont,* 135 N.H. 270, 282, 608 A.2d 840, 848 (1992). Statutory interpretation her should be de novo. See *In re D.O.,* 173 N.H. 48, 52 (2020); de novo review when deciding the issue of "admissions. See *Phaneuf* and *Conant.*

25. As the Father challenged the sufficiency of evidence, mixed questions of law and fact, statutory interpretation, and questions regarding abandonment, neglect, admissions and judicial notice, he was entitled to the process or procedure of a de novo appellate review of his arguments on the merits under the due process protections of the State and Federal Constitutions, to which the NHSC failed to provide when it provided only an unsustainable exercise of discretion standard of review. See U.S. CONST. amend. XIV; N.H. CONST. pt. I, art. 15; *Glen Condo. at Linderhof Assoc. v. Rosatto*, 140 N.H. 657, 661 (N.H. 1996).

VIII. ABANDONEMENT

26. As the Father had met the presumption of abandonment, the NHSC should have applied, and did not, the burden shifting provision as set out in previous NHSC stare decisis as is the standard under *In re H.J.*, 171 N.H. 605, 609 (N.H. 2018); In re Shannon M., 146 N.H.

22, 25, 766 A.2d 729 (2001); *In re Deven O.*, 165 N.H. 685, 690, 82 A.3d 229 (2013).; *In re Sheena B.*, 139 N.H. 179, 181, 651 A.2d 7 (1994) (quoting RSA 170-C:5, I). *In re Lisa H.*, 134 N.H. 188, ___, 589 A.2d 1004, 1006 (citing *In Re Jessica B.*, supra at 294, 429 A.2d at 322); *In re Matthew G.*, 124 N.H. 414, 416, 469 A.2d 1365, 1366 (1983); *In the Matter of Doe*, 118 N.H. 226, 229, 385 A.2d 221, 223 (1978); *Eldridge v. Eldridge*, 136 N.H. 611, 615, 620 A.2d 1031 (1993); *In re M.M.*, 262 A.3d 343, 353 (N.H. 2021).

IX. NEGLECT

27. The Mother provided paystubs that she worked 5 months earning over $8,500, and Mother's testimony that she received a Covid check for $1,200 and had enough to save money, and testimony of a tree work job in September 2020, and other earned monthly income through the course of 2 years confirms beyond a reasonable doubt that she was financially able within the standards of NH RSA 170- C:5, II.

28. Mother's testimony that she only gave the children gifts and cards in the month of September 2020 and including and up to the trial in August 2022, that she had paid Father no monies and no child support whatsoever over a period of 23 months, is proof beyond a reasonable doubt that Mother neglected and nominally failed to support her children under RSA 170- C:5, II.

29. The issue here is whether Mother was "financially able" to do more to support her two children. See In re Faith T., 165 N.H. 346, 349 (N.H. 2013). The evidence is overwhelming that Mother could have paid more than zero dollars towards the support of her two children, and that the NHSC failed to apply precedent to determine if in fact Mother was financially able to pay more for the care of her children, and rewrote the definition of "nominal" child support.

X. ADMISSIONS

30. Father brought his claims under RSA 170-C:3, to which authority resides within the probate court. See Trial Court Order, P. 1. There is absolutely nothing within the record with which the court could find good cause to waive Family Rule 1.25 when it isn't controlling in the case. Even if the trial court waived the proper applicable rule, Rule 54, there is absolutely no evidence to indicate that the Mother's failure to answer the demand for admissions within

thirty days was either outside her control or "due to accident, mistake or misfortune." See, *e.g., In the Matter of Harman & McCarron*, 168 N.H. 372, 375-76, 129 A.3d 311 (2015). Also, there is no evidence that the Mother made any objection prior to or at trial. Therefore there cannot be any such "good cause" as required by any waiver Rule. The trial Court lacked good cause to waive any rule because it "deemed it just and fair" because there is no evidence in record that the Admissions were not true or that it wasn't fair or just, as the Mother never responded to suggest that there were adequate or substantial grounds for not allowing the Admissions. The NHSC cannot now "challenge" these 268 admissions on behalf of the Mother, to justify or establish any such good cause, and this Court's Order should be reconsidered under that proper standard of review and the trial Court's order should be reversed and a new trial ordered.

31. The NHSC erroneously concluded that it's ok to use family division rules in a probate proceeding under N.H. RSA 170-C, which has it's its own rules of procedure.

XI. JUDICIAL NOTICE

32. Both Judicial Notice(s) were "admitted" sua sponte by the trial judge, after trial, with no notice and without hearing. Both Notice(s) include adjudicative facts which were in dispute and the Father had a due process rights to dispute, at a hearing or otherwise, any of these disputed facts prior to any judicial notice. When judicial notice of an element is taken outside the context of the trial itself, the party is denied his due process right to confront or challenge an essential fact establishing an element, whether or not the fact is indisputable. Here, the trial judge took it upon herself to investigate facts in a matter independently, after the trial, extra-judicially and outside the [closed] record, then obtained material information to which she then judicially noticed and then relied upon in making her decision. Clearly this "opinion evidence" is untenable or unreasonable to the prejudice of Father's case. See *State v. Johnson*, 145 N.H. 647, 648 (2000); *State v. Lambert*, 147 N.H. 295, 296 (2001).

33. First, "[A] judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed. See Rule 2.9 - Ex Parte Communications, N.H. R. Sup. Ct. 2.9 (C). Second, Rule 201(e) contains procedural due process rights to notice and provides that "the party is entitled to be heard on

the propriety of taking judicial notice and the nature of the fact to be noticed." Additionally, both Notice(s) contain facts that are not generally known, and of facts not capable of ready and accurate determination. Third, RSA 170-C:10 (2022), contain the procedural due process requirement to confront any "person making such a report, study or examination" and "shall be subject to both direct and cross-examination". Fourth, judicial notice is both a rule of evidence as described above and it is also a procedure. Whether applied in a 201 (entitled a hearing) or a 170 (entitled to confront witness or report) situation, some type of procedure to admit this "evidence" must take place in order to provide a proceeding which does not violate Father's procedural due process rights which are provided by the rule or law.

34. Under both Part I, Article 15 of the New Hampshire Constitution and the Fourteenth Amendment of the Federal Constitution, "an elementary and fundamental requirement of due process is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Douglas v. Douglas*, 143 N.H. 419, 423 (1999) (quotation omitted); Matter of Bundza, No. 2018-0173, 2019 WL 1787457, at *6 (N.H. Apr. 24, 2019).

35. ...A trial court cannot go outside of the evidentiary record except as to matters judicially noticed.... *In Matter of Rokowski*, July 23, 2015 168 N.H. 57 121 A.3d 284. (Trial court committed reversible error when it relied upon its own internet research to ascertain the marital home's value, in divorce proceeding.

XII. CONCLUSION

36. The evidence in this case was not in serious dispute as most of the evidence comes straight from the Mother's own testimony.

37. It is hard to imagine that under RSA 170-C, a parent who testifies to giving her children absolutely no communication, emotional support or any other support, for 22 months is not found to have not abandoned or have neglected her two children when the Mother had every opportunity to seek visitations or communications with them and support them when she testified to having substantial and continuous income within those 23 months, and that this is somehow to be considered "nominal" support under the RSA 170-C and the laws of stare decisis.

38. The material facts in record do not support the trial court's decisions or the NHSC's orders regarding: (1) abandonment- as fault can be attributed to the Mother when burden shifting is properly applied; (2) neglect- as Mother had continuous and substantial income and never paid a dime to the Father for the support of both her Children and only gave them some cards and gifts in September 2020 and cannot be considered to be nominal support under the statute; (3) Mother's admissions were not applied as they should under Probate Rules, as the Court used Family Court Rules; (4) material facts were erroneously admitted through judicial notice, then applied after the trial had been completed, which had a significant bearing on the outcome of the case, and was prejudicial to the Father.

39. Each of the trial court and NHSC holdings are "contrary to" clearly established due process principles and contradicts the governing law set forth in both New Hampshire case law and US Supreme Court cases, See Price v. Vincent, 538 U.S. 634 (2003), which violate Father's State and Federal Constitutional rights to due process and equal protections under the law.

40. The NHSC and the trial court did not provide a meaningful process or procedure in this case by any reasonable definition of due process to which the Father was entitled. The trial court twisted the material facts of the case, failed to apply any burden shifting process, ignored the significant amount of money Mother had earned, rewrote the meaning of nominal child support, failed to allow admissions under the proper court rules, and to cement it's version of "facts", went outside the case, after trial, added material facts of her own, and the NHSC willing went along with it. Normally, if the Father was represented by an attorney, the NHSC would have listened, applied the facts to the law and then followed precedent and reversed the trial courts' decisions, but it did not. Instead the NHSC simply gave a head nod to the trial court's unlawful decisions and made no effort to complete a de novo review on any issue. Then to top it off, the NHSC whips out it's "unpublished" rule so that it can bury and hide its own acts of rewriting the laws in the state, which basically allows the Court to disregard law, just for this Father, in his case only. Most disturbingly, the NHSC could care less of trampling over the Father's rights to a fair and meaningful proceeding, which is evident throughout it's orders.

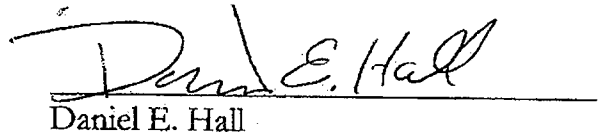
41. The law, as rewritten by this case, allows the court to apply the facts to any law "it" deems fit. To hell with precedent. There will be no more burden shifting, no more determining whether a parent is financially able and now, under this ruling, nominal child support equates to a couple of letters and ZERO DOLLARS over a 23 month period while earning thousands. When a rule doesn't suit a party, just use another rule from another division, no problem. When a party fails to prove its case, no problem, the judge will go out and judicially notice additional facts to help support your story after the trial has been completed and stick it in the record, unopposed.

42. But alas, before parents start planning their vacations from the duties owed their own children, the NHSC has Rule 20(2), these "new laws" only applied to this Father, in his case, so there will be no need to overrule any law or prior decisions which are meant to protect against arbitrary and unpredictable results. How convenient. Now the NHSC doesn't have to come up with any reason for its unlawful actions.

Wherefore, Appellant Father, for the reasons stated above, prays this US Supreme issue a Writ of Certiorari in this case.

Dated September 12, 2023

Respectfully,



Daniel E. Hall
Petitioner- Appellant, Pro Se
603-948-8706