

23-6604 ORIGINAL

No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

Nicole Johnson — PETITIONER
(Your Name)

Commonwealth of Massachusetts
Department of Children & Families — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Judicial Court of Massachusetts
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Nicole Johnson
(Your Name)

10 Carmen Street
(Address)

Dorchester, MA 02121
(City, State, Zip Code)

(774) 360-3743
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the petitioners right to due process and 7th amendment right and Massachusetts rule 38 Jury Trial of Right was violated when petitioner filed timely written demand on February 20, 2022 and was denied on October 19, 2020 and April 22, 2021.
2. Whether the judge violated mother's rights to due process when she **Sua sponte** without clear and convincing evidence terminated her parental rights to all her children despite the fact the department did not have custody of any of the children and did not present an adoption plan and was not seeking the termination of mother's parental rights at the time of trial
3. Whether the evidence was clear and convincing that mother's parental rights should have been terminated because three of the children were living with her at the time of trial and DCF was not seeking to terminate her parental rights or remove them from her care and custody,
4. Whether the termination of mother's parental rights was in any of the children's best interest where they had lived all of their lives with mother and we're bonded with her.
5. Whether the mother should be granted further review because the judge's decision to terminate mother's parental rights to all her children **Sua sponte** mother had custody of all three children at the time of trial two of the

children turned 18 on October 21, 2023 all of the children were bonded with their mother and DCF was not seeking termination at the trial and never submitted an adoption plan.

6. Whether the course of decision to terminate mother's parental rights leaving the children as legal orphans with no adoptive home and no adoption plan determination served no purpose except to punish mother for her conduct during the trial.
7. Whether the appeals court erred in ruling that the mother's conduct at trial was consistent with her parenting deficiencies warranting determination of her parental rights even though she was appropriately parenting her children and that DCF did not seek to remove the children even though mother was not engaged in the department services.
8. Whether the judge violated mother's due process rights and committed reversible error by terminating mother's parental rights to all her children because she could not Sua sponte decide in the issue that was not raised by the parties or properly before the court where the parties have not had notice an opportunity to address the issue. In this case the department never sought to terminate mother's parental rights and the department did not submit an adoption plan as required by statute.

9. The three boys remained in their mother's care and custody from April 7, 2020 and throughout the trial after the mother filed a motion to stay the judgment with the single justice she retained custody of the boys because Justice Englander granted her motion to stay in the judgment because DCF agreed after trial at the single justice hearing that it was still not seeking to terminate mother's parental rights, the twin girls were not in departments custody but was placed with a third party

10. Whether the fundamental right and the due process is to receive notice as to what rights are being deprived mother was entitled to know what was at stake at the trial in order for her to appropriately prepare for her defense though the summons mentioned the possibility that her parental rights might be terminated the understanding of the time of the trial was that DCF was only seeking custody states relief sought including whether or not there will be a request for a decree dispensing with the need for parental consent of adoption custody guardianship or other dispositions other child named in the petition custody and termination of parental rights intertwine in the standard for each and the resulting consequences are significantly different serious problems may be created whether a judge bases a decision on the issue that is not before the court.

11. In this case there was no adoption plan for mother to rebut or a reason for her to prepare for an alternate plan mother was appropriately parenting children in the department acknowledged the appropriate care and the strong bond that the children. Mother was denied her rights to due process because the notice she received did not adequately apprise her of what the stakes given her understanding of DCF intention. Is it not in the best interest of children that the mother's parental rights be terminated in determining whether to dispense without parental consent to adoption the judge must also evaluate whether dispensing with the need of parental consent will be in the best interest of the child this involves consideration of not only the parents character temperament capacity and conduct in relation but particular child needs age affections and environment but also the permanency plan proposed by the department's adoption of Thea

12. Whether the judge abused her discretion and terminating mothers parental rights to all five of her children because termination does not serve the best interest of any of the children the judge is required to consider in the meaningfully evaluated plans move forward put forward by the department and in this case there were no plans presented if the judge rejects any parties plans and orders an alternate disposition not contemplated by the parties to judge plan must be consistent with the child's best interest

13. The judge in her conclusion acknowledged that adoption was unlikely and recommended guardianship for the twins. Despite that the mother's preventive rights terminated regarding the terms it is settled that a determination of parental fitness must be child specific the issue is current fitness of the biological parents to further the wealthy are the best interest of the particular child, the judge did not make findings but only conclusions that it's all in the in all the children's best interest that the mother's rights be terminated the judge did not address each child separately therefore terminates of the mother's parental rights is not in the child's interest.

14. Whether the judge's decision was punitive determinate mother's parental rights this case is one case of impression because there were no other cases in which the parent who has physical custody of a child at the time of trial has had her parental rights terminated when the department was not seeking termination and filed no adoption plan.

15. Whether this decision punitive to not only mother but to the children who are bonded with their mother and the water custody to the department would have sufficient notice and would have preserved the child parent bond good intentions and genuine concerns are not a satisfactory substitute for clear and convincing evidence the natural bond between the parents should not be permanently severed unless the child presents or future welfare demands it

adoption of Carlos therefore the court must grant a public review and restore this family.

16. Whether the Department of Children and families denied the mother's right to appear here right after her request what's the violation of mother's rights to due process.

17. Whether the judge was biased and had a conflict having been a DCF attorney for 20 years.

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

- 1) Suffolk County Juvenile Court, Boston Division
Dkt. No. 20 CP 0046 BD
- 2) Commonwealth of Massachusetts Supreme Judicial Court
- 3) Massachusetts Appeals Court A.C. No 2022-P-0313
- 4) South Boston District Court 2003-CR 000101
- 5) Suffolk Superior Court Civil Division 2284 CR 02149

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CASES

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Parker v. Simpson 180 Mass 334

STATUTES AND RULES

Rule 38. Jury trial of Right Same as federal rule 39
(a) Right Preserved the right to trial by jury as declared by the Seventh Amendment of the Constitution or as given by a statute of the United States shall be preserved to the parties in violation.
(b) DEMAND Any party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the latest pleading directed to such issue and (2) filing the demand as required by Rule 5(d). Such demand may be endorsed upon a pleading of the party.

OTHER This rule provides for the preservation of the Constitutional right of trial by jury as directed in the enabling act of June 19, 1934, 48 Stat. 1064 U.S.C. title 28, § 723c (see 2072) and it and the next rule make definite provision for claim and waivers of jury trial following the method used in many American states and in England and the British Dominions.

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 C 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 Appeals Court court appears at Appendix A to the petition and is

reported at _____; 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).

For cases from **state courts**:

The date on which the highest state court decided my case was October 11, 2023. A copy of that decision appears at Appendix C.

A timely petition for rehearing was thereafter denied 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. § 1257(a).

All five children appealed the judge's decision.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1. Fundamental parental right**
- 2. 7th amendment**
- 3. 14th amendment**
- 4. 5th amendment**
- 5. procedural due process**
- 6. substantive due process**
- 7. due process**
- 8. Civil Procedure 38 right to a jury trial**
- 9. MG L dot 12-11 I violation of constitutional rights civil actions
aggrieved person**
- 10. MGL. 12-11 H violations of constitutional rights civil action**
- 11. MGL. 265-37 violation of constitutional rights**
- 12. US code A 1983**

◦

STATEMENT OF THE CASE

On January 8, 2020, the Department of Children and Families hand delivered a notice pertaining twin 1. On January 10, 2020, DCF filed a Care and Protection case in the Boston Juvenile court. Temporary custody of twin 1 and twin 2 was given to the SJ and EJ by judge Michaela Stewart on April 07, 2020, Judge Stewart granted mother temporary conditional custody of children's A B and N.

A bench trial was held on April 22, April 28, June 14, June 28, July 19, August 9, August 12, and August 16, 2021, Judge Sylvia Gomes presiding.

On September 2, 2021, Judge Gomes entered her judgment terminating mother's parental rights to all five children. On September 10, 2021, mother filed a motion for a new trial, a motion to amend the judgment on September 13, 2021, the children's A, B, N filed a motion for a new trial. September 13, 2021, the children twin 1 and 2 filed their motion to vacate the judgment and relief from judgment 7

motions were heard on October 22, 2021, on November 1, 2021 Judge Gomes DENIED all motions.

November 4, 2021; the mother filed her notice of appeal on November 23, 2021 the children A, B, and N filed their notice of appeal and on November 2, 2021 2122 about twin 1 and twin 2 filed their notice of appeal.

On November 21, 2021, mother filed a motion to stay the judgment pending the appeal. Said motion was assented to by the children. The motion was heard on December 9, 2021, by Justice Engländér. The motion to stay was granted on December 27, 2021, reinstating the temporary custody orders. The department stated it was not seeking the termination of mother's parental rights at the single justice hearing.

Judge Gomes issued her findings of fact, conclusions of law and orders on January 4, 2022.

Oral argument was held on July 17, 2023.

The appeals court affirmed the decision of the Boston juvenile court on August 22, 2023.

The supreme judicial court affirmed the appeals court decision on October 11th, 2023.

There are five children regarding this appeal twin 1 and twin 2 (DOB October 21, 2005) , A (DOB April 27, 2013) B (DOB July 26, 2011) and N (DOB August 21, 2008).

Mother has a strong advocate for her children with regards to their education and has ensured that all the children attend private schools. Mother has a positive relationship with the children school mother has kept the children medically up to date.

At the time of the trial N, B, A were in the mother's care and living at home mother's appropriate care the sons demonstrated that she was fit to parent them at the time of the trial though mother did not cooperate with the department the department did not take any action to remove them while they were in the mother's care custody the children were doing well in school the mother had a good relationship with the school and the school had no concerns with mother.

The department's position regarding the three boys still have custody remain with mother the department stated that the boys are all seen in the community and have support and they can call on if they need it.

Melissa Richards was the ongoing social worker at the time of trial testified that she had been in contact with the children's collaterals even though the social worker have releases regarding the children's pediatricians she did not contact them

based on the collaterals that she contacted there was no protective concerns regarding the care of the boys the court investigator found that A&B have a solid relationship with their teachers and have made a lot of friendships Miss Andrade is social worker at the mission grammar school told the court investigator that she has no concerns about B &A they were well groomed involved in karate and they did not have an IEP Miss Andrew reported that the mother is very thoughtful and appears to trust the people at the school mother even brought a face shields and brought the team treats from Jamaica. N is deaf and attends READS Collaborative deaf and hard of hearing school after mother filed a lawsuit against Boston Public School in the US District Court of Massachusetts, he has an IEP good attendance and has been with the same five children since first grade and attended summer camp.

According to Shannon Allen, the director of the program, is attached to his mother and has no concerns with mother's interaction.

Twin one and Twin two were almost 16 years old at the time of trial. This current case began on February 8, 2020, when twin 1 was found bleeding with the head wound. The twins have been in a third-party placement with S/J since April 21, 2020 they were all on honor roll at their private school, they played sports they were medically up to date.

S/J believes that the twins should be returned home and that the mother takes good care of her children according to the social worker there have been no accusations of physical abuse against the twin's no mandated reporter has filed a 51A report since custody was returned to mother the social worker testified that she believed the twins should return home.

As of March 21, 2021, and for many years prior mother has a lot of supporting strength despite not engaging with the department.

It is important to note that despite not engaging with the department the department's position throughout the trial was that the boys should remain with their mother.

Charges relating to the incident which was dismissed at the request of the Commonwealth on April 28, 2022.

After the judgment and after the motions for a new trial her mother filed a single justice appeal November 21, 2021, seeking a stay of the judgment mother did not relinquish custody of the children after the judgment terminating her parental rights.

At the hearing on December 9th, 2021, the department had assented to a stay regarding the boys but not to the twins the single justice granted a stay and reinstated the temporary orders regarding all the children.

REASONS FOR GRANTING THE PETITION

1. Massachusetts rule 38 Jury Trial of Right is the same as federal rule 39 (a) right reserve the right to trial by jury as declared by the 7th amendment of the constitution or as given by the statute of the state United States shall be preserved to all parties inviolate (B) DEMAND any party may demand a trial by jury of any issue triable by right by a jury by (1) serving upon the other parties that demand therefore in writing at any time after the commencement of the action and no later than 10 days after the service of the latest pleading directed to such issue and (2) filing the demand as required by rule 5D such demand may not be endorsed upon pleading of the party this rule provides for the preservations of the constitution right of the trial by jury as directed in enabling act of June 19, 1934, 48 Stat.1064 U.S.C title 28 723c (see2072) and it and the next rule make definite provisions for claim and waiver of jury trial following the methods used at any American states in the England and in the British Dominions.

I made a demand for jury trial within the timely manner there is nothing in the statute that would prohibit my care and protection case from having a jury trial the statute does not give the courts the discretion to decide if I get a jury trial once I made the demand timely according to the statute. The trial

was an erroneous, clear and convincing violation of my constitutional right to the 7th amendment. This case was confusing. There was no adoption plan put in place which now has left my three sons orphans and wards of the state transferred to seventeen different foster homes.

All parties had a right to know what was going to take place from what the position of the department was that they weren't seeking to terminate my parental rights I was not fighting to keep my parental rights I was fighting to prove my parental fitness as required in the statute and based on the testimony from the case worker the kids have been medically updated they were in good schools they were seen in the community.

Judge Sylvia Gomes had just been appointed to the bench months before taking my case she was a new judge and therefore her inexperience as a judge showed in this case by not informing me a pro se litigant that she could divert from the recommendations of the parties and that is not in the notice serve on me so that I could have prepared and had representation to vigorously fight any termination.

The notice says may lose your parental rights but, in this case, it was not clear during the pendency of the case that I was would lose my parental rights no one in the case wanted me to lose my parental rights and the judge never even hinted that she wanted me to lose my parental rights.

Due to the children being in my custody during the whole trial I would not have thought I was going to lose my parental rights it was more like a surprise like the judge held a secret behind the closed doors and just threw it at me and I was not prepared.

This case is a newly appointed judge former DCF attorney who made a Sua sponte decision no case law to support her decision to terminate my parental rights. In fact, at my hearing before judge Englander he said he had never saw in his entire history on the bench saw a judge Sua sponte terminate a parents rights and the judge had not issued her findings which supported Judge Englanders decision to issue the stay as I requested.

My children and I had a bond this has been a death sentence for my children and I. The constitution was written to keep families together not tear and rip families apart as my family has been.

Too many times this court has violated the right to due process of the parents and the children and made decisions that have grave effects down the road this case is very important to other parents and families because the fact that a judge can take and hold on to a decision and divert away from the recommendation and not a notify any of the parties that was her intent is it dangerous game and abuse of power. All cases have a right to a jury trial and when a person makes a demand, the court should abide by it. My children

are suffering because of this Sua Sponte decision. My children were ripped out of their private school and placed in underperforming public schools. Each day is uncertainty for my children as to where would they be tomorrow, they have all been separated they're all living in three different homes they don't get to see each other on the holidays worse the judge ordered that I only see my children that I've been with all their lives once a year and have no notice when they are up for adoption.

Even the judge herself said that the children would unlikely be adopted so it's not in the best interest that they live in multiple foster homes move from place to place never see each other again all because the judge didn't like me had a conflict of interest and refused to recuse herself. This case is important nationally because parents don't know they have a right to demand a jury trial when the triable issue is their fitness as a parent.

My appellate attorney purposely failed to raise my jury trial demand issue during my appeal and my further appellate review is why I'm asking the court to take and use their discretionary jurisdiction and review this case and remanded so that I would be able to get a fair trial before the jury of my peers.

I was appropriately parenting my children and the evidence was not clear and convincing that my parental rights should have been terminated. There's no evidence of psychological issues there's no evidence of drug or alcohol abuse there's no evidence that I did not have a place for my children to live or I did not feed them appropriately or have the provided clothes in fact all the providers said that they were dressed appropriately they were well fed they did not have no concerns.

2. It was not in the best interest of my children to terminate my parental rights when they wanted to return home.
3. The judge's decision to terminate my parental rights was punitive.
4. My children were in my custody all the way up to the appellate court and when DCF went and snatched them out of this private school.
5. The judge, having been an attorney with DCF for over 20 years had a conflict of interest and the conflict of interest was that she worked along DCF and clearly her decision she played a DCF attorney and a judge she couldn't turn off one switch or the other.
6. DCF was the petitioner, and they did not petition to terminate my parental rights.
7. The judge in this case did not look at my child that has a disability a hearing disability which I have advocated non-stop all his life from the time he was

born prematurely. He clearly doesn't understand what has happened all he knows is that he could never be turned back home and the effects that will have on him long term could be detrimental. Prior to this I was relentlessly fighting for my son to be taught spoken English and now his education is in the hands of people who are not aware of the history in the fight that I have 5 for my son to be equal in society despite having a hearing impairment. The judge never even mentioned my child and his disability in her findings.

8. The judge's decision has sent my sons down the pipeline to prison and the constitution is to protect parents from these erroneous decisions in this case were violated.
9. the judge violated mothers provide due process rights and committed reversible error by terminating the mother's rental bikes to all children because she could not sue a sponte deciding issue that was not raised by the parties or properly before the court where the parties had not had notice or an opportunity to address the address the issues doing this denies the parties the right of due process it can be considered an abusive discretion Adoption of Reid, 39 Mass. App. Ct. 338, 341(1995) In Reid the department filed a request to terminate parental rights, but then change the goal from adoption to guardianship before trial. Reid at page 341 despite disagreement the judge terminated the mother parental rights the appeals court found that there was

abuse of discretion and Reid at page 343. The Appeals Court found this to be an abuse of discretion and vacated the order, termination issues when the parties were prepared for a hearing of all custody requires A fundamentally fair procedure Santosky v. Kramer, 455 U.S. 745, 753-54 (1982).

In this case the department never sought to terminate the mother's parental rights department did not submit an adoption plan as required by statute

When the department petitions the court for permission to dispense with consent to adoption for a particular child it must submit to a court a plan detailing where it proposes the child will be placed if the permission is granted G.L.c. 210 3 ©.

Care and Protection of Three Minors 392 Mass. 704-717 (1984)

The judge is required to consider and meaningfully evaluate plans put forward by the department and the mother's Adoption of Dora, 52 Mass. App. Ct. 472, 475 (2001).

In this case there were no plans presented if the judge rejects any of the parties' plans in orders an alternative disposition not contemplated by the parties, the judge's plan must be consistent with the child's best interests Adoption of Cadence, 81 Mass. App. Ct. 162, 171 (2012) the three boys remained in their mothers care in the custody from April 20, 2020 through the trial the children were never hidden from the public, they attended private schools.

Serious problems may be created whenever a judge bases a decision on the issue that is not before the court Adoption to Reid, 39 Mass. App. Ct. 338, 342 (1995).

In this case there was no adoption plan for mother to rebut or reason for her to prepare for an alternate plan mother was appropriately parenting her children and the department acknowledged the appropriate care in the strong bonds that the children have with their mother was denied her due process rights because the notice she received did not adequately apprised her of what the state given her understanding of DCF intention.

10. There is no evidence presented regarding any abuse and neglect of the boys, there was no evidence presented regarding the psychological trauma that the children might endure if they were removed from their mother's care.

11. In this case the judge may no findings specific to any of the children that it would be in their best interest that they'd be free for adoption the supreme judicial court ruled that we require that the judge articulate specific and detailed findings in support of a conclusion that termination is appropriate demonstrating that she has given evidence close attention Adoption of Nancy at pages 514-515

12. The judge in her conclusion acknowledged that adoption was unlikely and recommendation of guardianship of the twins despite that she terminated the parental rights regarding mother's three so

13. The judge made her decision to terminate mother's parental rights on September 2, 2021, but the judge did not file her findings of fact until January 4th of 2022. Several months after her decision to terminate mother's parental rights was bias and prejudiced against mother because at that point in time how could a judge remember testimony from multiple court dates over several different months and make a fair and unbiased decision.

14. Massachusetts Rule 52 states the judge has 90 days to submit its findings in this case the judge made her decision on September 2, 2021 to terminate petitioners' parental rights but did not submit her findings until January 4, 2023, which was very biased and prejudice against petitioner, and stalled the appeal.

15. Without the judge's findings, the mother and children appeal could not be sent to the appeals court which was erroneous to the mother and children's right to due process.

16. Since the judge made a Sua sponte decision it should not have taken the judge 125 days to submit her findings was erroneous, abuse of discretion and punitive to mother and children.

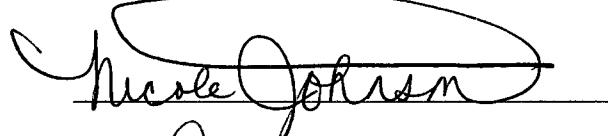
As a result of the judges erroneous era, the appeals court's overlooking the issues which violated mother's rights to due process and mothers appellate attorney failing to argue the issue of mothers jury trial demand this has broken up a family

there are three children who are orphans due to violations of due process failure to follow the stature of Massachusetts law that were put in place to protect children from sitting in the system for years with no place to go when they have a mother who loves them who is willing able and ready and fit to parent them at the time of the trial and to date of this request. I pray that this his granted and my family is restored.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Date: 