23-6669

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2023

Docket No. _____-_____



IN RE A.M., A.C. & C.C., CHILDREN

---

On Petition For A Writ Of Certiorari From
The Twelfth Court Of Appeals In Tyler, Texas

---

# PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

Sarah Melissa Collins, Pro Se Petitioner
602 West Debard Street
Palestine, TX 75801
(903)724-2159
Smc8392@gmail.com

James Daniel Collins, Pro Se Petitioner
602 West Debard Street
Palestine, TX 75801
(903) 830-9274
Jdanielc46@gmail.com

No. _____

IN THE

# Supreme Court of the United States

## IN RE A.M., A.C. & C.C., CHILDREN

---

On Petition For A Writ Of Certiorari From
The Twelfth Court Of Appeals In Tyler, Texas

---

## PETITION FOR WRIT OF CERTIORARI

---


Sarah Melissa Collins, Pro Se Petitioner
602 West Debard Street
Palestine, TX 75801
(903)724-2159
Smc8392@gmail.com

James Daniel Collins, Pro Se Petitioner
602 West Debard Street
Palestine, TX 75801
(903) 830-9274
Jdanielc46@gmail.com

Texas Department of Family Protective Service, Respondent
Ms. Amie Serrano, Lead Counsel
Bar No: 24079203
3635 S.E. Military Dr
San Antonio, Tx 78223
(210)218-6174
amie.serrano@dfps.texas.gov

Stanley Arron Sokolowski
Bar No: 00794671
Attorney Ad Litem, Children
606 E Crawford St
Palestine, Tx 75801-2963
(903)729-4529
stanley@sokolawoffice.com


---

## QUESTIONS PRESENTED

I. Whether the denial of appointed counsel for parents found to be indigent in the trial court despite multiple requests for an attorney to protect their interests, coupled with the subsequent ineffective assistance of two separate belatedly appointed counsels after the first of two termination trials, harmed the parents and children due to the unfair advantage it gave the state in the adversarial proceedings in the trial court, failed to protect the parents from multiple violations to their rights to due process, and subjected them to the unlawful erroneous deprivation of their fundamental liberty interest to protect and preserve their parental rights. Did the failure of the appointed attorney to object to the Sua Sponte transfer of the case by the trial court judge which changed the venue of the case without offering any opportunity for hearing or objection, along with other acts and failures to act, deprive parents of due process by failing to uphold their right to competent counsel?

II. Whether the trial court violated the Due Process Clause by holding termination of parental rights proceedings beyond the automatic dismissal date set by Texas Family Code §263.401 without making the necessary finding of extraordinary circumstances and entering orders which schedule the new dismissal date, failing to make further temporary orders for the safety and wellbeing of the children, and not setting the trial for the merits as specified, thereby exceeding its jurisdiction and depriving parents of their right to Due Process. In addition, did the trial court *again* fail to abide by the statutory provisions set forth in Texas Family Code 263.4011 when it did not issue a final order within 90 days of the timely commencement of the trial on February 15, 2022, and subsequently only signed the final order June 23, 2022 under cause No CCL20-16990. Did the trial then neglect to dismiss the case when the new trial was granted upon which the case status was set back to the status it was in prior to the commencement of the February trial (Texas Rules of Civil Procedure Rule 29.1(b)), thus putting the case well past the previously date set by extension of the case of February 14, 2022, due to the Deparment's inability to file additional case extensions from those previously ordered under Texas Family Code 263.402?

III. Whether the procedures of the trial court and the Texas Department of Family and Protective Service risked cutting off critical Federal foster care funding to Texas due to noncompliance with ASFA and Title IV-E. Also whether the trial court's failure to follow fundamentally fair procedures also violates the provisions of ASFA, due to the trial court's obvious bias against the Petitioners due to the trial court allowing the

Department to violate the rules of production and discovery when offering its evidence after the periods of discovery had passed and before submission to the Petitioners, in effect "blindsiding" the Petitioners with certain evidence in open court which deprived them of an opportunity to examine their evidence or object.

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page, with the exception of the Guardian ad Litem for the children and the Intervenors to the suit. The former attorneys for the Petitioners are also listed below. Those parties are identified and listed below.

CASA of Trinity Valley
Guardian Ad Litem for the Children
Lee Brown, Director
1000 N. Church St.
Palestine, Texas 75801
**903-723-CASA**
**lee@casaoftv.org**

Shantell and Steven Ennis
Intervenors to the Suit
610 Douglas Fir Drive
Magnolia, TX 77354
(346)276-3858
(346)818-0500
snsennis@gmail.com

Colin McFall
Former Counsel for Petitioners
Bar No: 24027498
606 E Crawford St
Palestine, TX 75801
(903)723-1923
cmcfall@mcfall-law-office.com

Scott Nicholson
Counsel for Petitioners, 2nd Trial Only
Bar No: 00794372
901 N Perry
P.O. Box 1811
Palestine, TX 75802
palestinelawyer@aol.com

---

## RELATED CASES

-In re A.C., C.C., and A.M., Case No. 23-0363 Texas Supreme Court

-In re A.C., C.C., and A.M., No. 12-22-00277-CV (Tex. App. Dec. 15, 2022) (affirming termination of parental rights)

-In re A.C., C.C., and A.M., No. DCCV22-3393-369 (Anderson County. Dist. Ct., Order of Termination entered Aug. 10, 2022)

-In re A.C., C.C., and A.M., No. CCL-20-16990 (Anderson County. Ct. at Law, Order of Termination entered Aug. 10, 2022)

## TABLE OF CONTENTS

## INDEX TO APPENDICES

TABLE OF AUTHORITIES

CASES PAGE NUMBER

## STATUTES AND RULES



## OTHER AUTHORITIES

# 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

The opinion of the Texas Supreme Court, the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the Twelfth Court of Appeals at Tyler, Texas, the highest state court of appeals to review the trial court's judgement, appears at Appendix B to the petition and is unpublished.

## JURISDICTION

The date on which The Texas Supreme Court decided my case was on July 7, 2023. A copy of that decision appears at Appendix A.

A timely Petition for Rehearing was thereafter denied on the following date: August 25, 2023, and a copy of the order denying rehearing appears at Appendix E. The jurisdiction of this Court is invoked under 28 U. S. C. 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Fifth Amendment:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

U.S. Constitution, Sixth Amendment

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

U.S. Constitution, Fourteenth Amendment, Section 1:

> "All persons born or 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 the laws."

Texas Family Code § 107.013

"MANDATORY APPOINTMENT OF ATTORNEY AD LITEM FOR PARENT. (a) In a suit filed by a governmental entity under Subtitle E in which termination of the parent-child relationship or the appointment of a conservator for a child is requested, the court shall appoint an attorney ad litem to represent the interests of: (1)an indigent parent of the child who responds in opposition to the termination or appointment"

Texas Family Code 107.103(e)

(e) A parent who the court has determined is indigent for purposes of this section is presumed to remain indigent for the duration of the suit and any subsequent appeal unless the court, after reconsideration on the motion of the parent, the attorney ad litem for the parent, or the attorney representing the governmental entity, determines that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances."

Texas Family Code § 263.401

"(a) Unless the court has commenced the trial on the merits or granted an extension under Subsection (b) or (b-1), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court's jurisdiction over the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child is terminated and the suit is automatically dismissed without a court order. Not later than the 60th day before the day the suit is automatically dismissed, the court shall notify all parties to the suit of the automatic dismissal date.

(b) Unless the court has commenced the trial on the merits, the court may not retain the suit on the court's docket after the time described by Subsection (a) unless the court finds that extraordinary circumstances necessitate the child remaining in the temporary

managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child. If the court makes those findings, the court may retain the suit on the court's docket for a period not to exceed 180 days after the time described by Subsection (a). If the court retains the suit on the court's docket, the court shall render an order in which the court:

(1) schedules the new date on which the suit will be automatically dismissed if the trial on the merits has not commenced, which date must be not later than the 180th day after the time described by Subsection (a);

(2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and

(3) sets the trial on the merits on a date not later than the date specified under Subdivision (1).

(b-1) If, after commencement of the initial trial on the merits within the time required by Subsection (a) or (b), the court grants a motion for a new trial or mistrial, or the case is remanded to the court by an appellate court following an appeal of the court's final order, the court shall retain the suit on the court's docket and render an order in which the court:

(1) schedules a new date on which the suit will be automatically dismissed if the new trial has not commenced, which must be a date not later than the 180th day after the date on which:

(A) the motion for a new trial or mistrial is granted; or

(B) the appellate court remanded the case;

(2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and

(3) sets the new trial on the merits for a date not later than the date specified under Subdivision (1)"

Texas Family Code § 263.401(c)

"(c) If the court grants an extension under Subsection (b) or (b-1) but does not commence the trial on the merits before the dismissal date, the court's jurisdiction over the suit is terminated and the suit is automatically dismissed without a court order. The court may not grant an additional extension that extends the

suit beyond the required date for dismissal under Subsection (b) or (b-1), as applicable."

Texas Family Code § 263.4011.

"RENDERING FINAL ORDER; EXTENSION. (a) On timely commencement of the trial on the merits under Section 263.401, the court shall render a final order not later than the 90th day after the date the trial commences.

(b) The 90-day period for rendering a final order under Subsection (a) is not tolled for any recess during the trial.

(c) The court may extend the 90-day period under Subsection (a) for the period the court determines necessary if, after a hearing, the court finds good cause for the extension. If the court grants a good cause extension under this subsection, the court shall render a written order specifying:

(1) the grounds on which the extension is granted; and

(2) the length of the extension.

(d) A party may file a mandamus proceeding if the court fails to render a final order within the time required by this section."

Texas Family Code § 263.402:

"LIMIT ON EXTENSION. The parties to a suit under this chapter may not extend the deadlines set by the court under this subchapter by agreement or otherwise."

Texas Rules of Civil Procedure Rule 29.1(b)

"(b) Granting a 0new trial restores the case to its position before the former trial, including, at any party's option, arraignment or pretrial proceedings initiated by that party."

## STATEMENT OF THE CASE

1. Petitioners James Collins and Sarah Collins are the parents of A.C., C.C., and A.M. In July 2020, the Texas Department of Family and Protective Services (DFPS) received an anonymous report alleging Petitioners operated a meth lab out of a shed on their property. Pet. App. 3a.
2. A DFPS investigator and several police officers visited Petitioners' home but found no evidence of illegal activity. Pet. App. 4a. DFPS requested the Court issue an Order to Participate to invoke the court's authority to force the family participate in interviews, any services deemed necessary, and for the Petittioners to take a drug test along with their children.
3. Petitioners passed the Urinalysis drug screening from the samples provided on August 14, 2020, with the results showing no traces of any drugs in their urine. However, Petitioners did not pass the Hair Strand Testing using hair samples also provided on August 14, 2020. The results of the hair test led the Department to file its petition to seek emergency removal of the children to non-relative foster home placement on August 21, 2020. Id.
4. The Anderson County Court at Law granted the petition and appointed DFPS as temporary managing conservator. Pet. App. 5a.
5. On September 9, 2020, having considered documentation submitted by Petitioners to determine indigent status for purposes of appointing counsel, Judge Jeffery Doran appointed attorney Jeff Coe to represent the parents. (See attached order of appointment Appendix F) Mr. Coe subsequently

recused himself for conflict of interest and was replaced by Jeff Herrington on September 18, 2020.

6. On October 8, 2020, against the objections of Mr. Herrington as to the evidence and the lack of its admission into the court at that point, the trial court granted the Department's request for a finding of aggravated circumstances. Pet. App. 6a (The trial court then filed a Nunc Pro Tunc on February 24, 2021 on its order to amend the order to allow the Department to dispense with the requirement of a service plan for the parents.)
7. Mr. Jeff Herrington filed to withdraw from the case and the judge granted his motion on January 21, 2021. Parents appeared in opposition of the withdrawal and also re-submitted their documentation to prove indigency. No counsel was appointed to replace Mr. Herrington.
8. The parents filed a Motion to Dismiss the case on January 20, 2022 to compel the trial court to render an order and final judgement on the grounds that the trial court lacked jurisdiction. It was denied under cause number CCL20-16990
9. In February 2022, the county court commenced a jury trial on DFPS's petition to terminate parental rights. Pet. App. 6a. However, Petitioners proceeded without counsel after the loss of 2 court-appointed attorneys early on in the case, and then their hired attorney was permitted to file a motion to withdraw 3 days prior to the initial trial setting prior to the extension of the

case. The parents were unable to obtain counsel due to lack of financial means, and the court denied their motions for attorneys.

10. The jury returned a verdict for termination in the first trial in which the parents represented themselves.. Id.

11. Petitioners were appointed new counsel for the purposes of appeal, Mr. Colin McFall, who filed a motion for new trial, which the county court granted. Id. The county court then relieved the appellate attorney of his appointment and replaced him with Mr. Scott Nicholson to represent the parents in the second trial. But before the new trial could be held, the judge Sua sponte transferred the case to the Anderson County District Court. Id.

12. Petitioners were not given notice of the transfer or an opportunity to object. Pet. App. 7a. With this Sua Sponte Transfer in July of 2022, the cause number changed from CCL20-16990 to DCCV22-3393-369. The case would later on undergo yet another change to the cause number when the trial court granted a post-judgement motion to sever the children's cases.

13. At the August 2022 trial, the jury returned another verdict for termination, which the district court entered as its final order. Id.

14. On appeal, Petitioners argued the trial court violated their due process rights by transferring the case without notice and their right to counsel by failing to appoint new counsel for the second trial. Pet. App. 9a. They also challenged the sufficiency of the evidence to support termination. Id.

15. The Texas Court of Appeals affirmed. Pet. App. 10a. As to the unnoticed transfer, the court held Petitioners failed to preserve error. Id. It further found no abuse of discretion in allowing withdrawal of counsel. Id. The evidence was deemed legally and factually sufficient. Id.

16. Petitioners filed a Petition for Review in the Texas Supreme Court. It was denied, along with the subsequent timely filed Motion for Rehearing on same.

## REASONS FOR GRANTING THE WRIT

*The Petition for Writ of Certiorari should be granted to resolve the* inconsistency and clarify whether multiple violations of the Texas Family Code's statutory dismissal timelines implicate due process by depriving courts of jurisdiction over termination suits. In our case, the lower court violated the following statutes related to jurisdictional issues:

- Texas Family Code 263.401 : court improperly granted extension past statutory 12 month deadline when it failed to make extraordinary circumstances finding and to make orders consistent with statutory compliance with ASFA guidelines.
- Texas Family Code 263.4011- the court failed to render final order within the 90 day statutory deadline, and did not dismiss the case as required by law
- Texas Family Code 263.402: trial court continued to exercise jurisdiction, extending the case beyond statutory allowance.

In the Texas courts, there appears to be some misalignments in recent rulings with this court's established precedent, which will no doubt cause dissention among the state and federal courts. One such case is the recent case In the Interest of JS, in the Texas Court of Supreme Court. Due to a potential conflict between the recent Texas Supreme Court decision in In the Interest of J.S., a Child, No. 22-0420 (Tex. 2022) and the prior precedent of In re L.M.I., 119 S.W.3d 707 (Tex. 2003), it

would then be appropriate for this court to review this case in order to reiterate the governance of such cases for the state courts which need guidance.

In L.M.I., as discussed, the Texas Supreme Court held that Family Code §263.401(a) and (b) establish mandatory dismissal deadlines, and if not met, the trial court loses jurisdiction and subsequent termination orders are void. However, in J.S., the Texas Supreme Court issued a per curiam opinion holding that an untimely order under §263.401(a) is merely voidable, not void. It found the statute does not implicate the trial court's jurisdiction. This directly contradicts the prior holding in L.M.I. that §263.401 establishes mandatory deadlines affecting jurisdiction. The J.S. opinion does not discuss or attempt to distinguish L.M.I., even though it is establishing conflicting precedent on a critical issue of statutory interpretation impacting parental rights. This potential conflict between the Texas Supreme Court's rulings in L.M.I. and J.S. on the meaning and effect of §263.401 could warrant the U.S. Supreme Court granting certiorari. Given the fundamental rights at stake, uniformity, and certainty in the interpretation of this state law provision across jurisdictions is important. The high court could promote this by addressing the apparent conflict between these two Texas precedents.

This Court is urged to exercise its supervisory power over this case and to grant this petition to protect the fundamental parental rights of the parents on a national scale. Increasingly, the lower courts exercise their own discretion. The decision from the Court of Appeals conflicts with this Court's precedents regarding procedural due process in parental rights termination cases. This Court has long

recognized that parents have a fundamental liberty interest in the care, custody, and control of their children. *Stanley v. Illinois, 405 U.S. 645, 651 (1972).* Before depriving parents of this interest, states must provide constitutionally adequate procedures. *Mathews v. Eldridge, 424 U.S. 319, 333 (1976).* The trial court and the courts in which we appealed our case did extraordinarily little to protect the constitutional rights of us and of our children. We were found to be indigent twice by the trial court, yet we were deprived of the right to an attorney in a complex termination of parental rights case, which has now lasted over 3 years. To add insult to injury, when the trial court eventually appointed its carefully selected counsel, the inability and refusal to accurately represent our interests only served to silence our voices even further and to deprive us of our rights even more.

By allowing the attorney appointed to represent us to withdraw and then failing to appoint another attorney following its own decision finding us indigent, then, absent any objection to the finding or proof of any material change to our financial circumstances, requiring us to prove our indigency again, the trial court again subjected us to further abuses of our fundamental constitutional right to equality within the justice system. This case is ripe for a full review from the Supreme Court so that the Honorable Justices which serve may invoke the full supervisory power of this court to fully understand this case, as the limitations of this petition cannot even begin to clarify the numerous violations that were imposed upon us by the trial court, the appellate court, and even the Texas Supreme Court.

My husband James Collins and I were denied Due Process when counsel was not appointed until two weeks before our second jury trial trial, which meant we languished away in the trial court for two years awaiting trial without the appointment of an attorney. Once appointed, however, the attorney provided ineffective assistance, as well as demonstrated a deliberate indifference to the suffering of us and our children. By the lower courts multiple refusals to grant us our right to counsel, we were constructively denied counsel as the court continued to grant repeated withdrawals and failure to appoint replacements, which proves not just ineffective assistance by the one attorney, but by many, aided in part by the court itself.

The courts which followed misapplied *Lassiter v. Department of Social Services, 452 U.S. 18 (1981),* regarding the right to counsel in termination cases. Under *Lassiter*, once a court deems a parent indigent and appoints counsel, due process requires effective assistance. *Id. at 31-32.* Having found us indigent, the trial court allowed two successive attorneys to withdraw without appointing new counsel, forcing us to proceed pro se against the state.

This violated our statutory right to counsel under Texas law. *See Tex. Fam. Code § 107.013(a)(1).* The appellate court erred in deferring to the trial court's discretion, as we were constructively denied their right to counsel in a complex jury trial. As has been established by this court in its precedential cases, parents have a fundamental liberty interest in the care, custody, and control of their children protected by the Due Process Clause. (*Cleveland Board of Educ., 414 U.S. at 639-*

*40.)* Depriving parents of effective assistance of counsel constructively denies them a full and fair hearing and violates due process. *(Santosky, 455 U.S. at 754.)* Understanding that the 6th Amendment only guarantees a right to counsel in criminal cases, one must instead rely on the fundamental fairness concept of the Due Process Clause of the 14th amendment in evaluating the constitutionality of counsel in parental rights terminations, as this Honorable Court provided in *Gault. (In re Gault, 387 U.S.1 (1967))*

And again, we see only a few short years prior to *Gault* with *Douglas v. Cal. 372 U.S. 353 (1963),* the Court's holding that the 14th amendment does require the appointment of counsel to indigent defendants for a first appeal as of right. In several opinions, the Court has drawn parallels between parental rights termination cases and criminal cases; insomuch inferring that parental rights terminations are to be elevated to a much higher standard than "usual" civil cases. *(Kent v. United States, 383 U.S. (1966))* Indeed, with *Santosky v Kramer,* the court recognized a termination case may bear "many of the indica of a criminal trial." *(Santosky v. Kramer, 455 U.S.745 (1982)).*

Even though our case bears all the hallmarks and complexities of even the most controversial criminal trials, such as the appearance of an expert witness, complicated matters of production and discovery, admission of evidence, knowledge of complex legal theory, risk of loss of fundamental liberty interest by erroneous decision-making, multiple factual issues at controversy, we still were not afforded the protections guaranteed by our Constitution's Due Process Clause. Not to

mention, all of this was set in motion just as our nation began to shut down due to Covid-19, placing many unprecedented restrictions on family courts, children, parents, child welfare agencies, and more. Yet, we were still denied counsel for over two years in clear violation of due process during these termination proceedings, while we attempted to navigate the already muddy waters of the family court system in the uncharted COVID restricted territory we were left in.

It was a sink or swim scenario, except this was not a gentle wave pool. It was a rushing river of rapids. And just when we thought the rescue boat arrived, when counsel was finally appointed with only a few weeks before trial, that counsel proved to be ineffective by failing to conduct necessary investigation and research into our case, call witnesses, obtain an expert witness as we requested of him, submit exculpatory evidence, or properly preserve issues for appeal.

In *Lassiter*, this Court recognized termination proceedings require skilled representation given the complexity of the issues and high stakes involved. Forcing unrepresented parents such as my husband and I to defend themselves alone against the state is inherently prejudicial. When a court pits parent against child and child against parent, (as ours did by forcing us to represent ourselves at the first trial, whilst the state called our children to testify on its side), the prejudicial effect of such an act leaves parents defenseless. While errors are inevitable, courts must take steps to ensure fundamental fairness for parents, especially when one considers the disability of one such parent. The Father in this case, my husband of over 13 years, suffers from Bipolar Disorder and Major Mood Depressive Disorder,

which interferes with his ability to analyze and interpret important facets of the case and legal theory, leaving him at a distinct disadvantage when pitted against a seasoned veteran attorney, much less three attorneys with a combined 81 years of experience between the three of them such as we faced without the protection of our own counsel in the first trial and throughout the pendency of the case. The trial court was made aware of Mr. Collins' diminished ability to understand the case and the proceedings we were forced to represent ourselves in. We repeatedly requested counsel, begging for a fair chance to defend our family against the termination, attempting to invoke the protections of the Constitution and of the Texas Family Code. However, the state courts failed to apply the test set out in *Eldridge*, instead choosing to favor its own discretion over such matters. *(Mathews v. Eldridge 424 U.S. 319 (1976)).* It is my utmost belief that if the court had factored COVID restrictions into an Eldridge analysis, it would have found the parent's private interest at stake far outweighed that of the state due to the far reaching implications of out of home care, the possibility of placement changes to unknown counties of unknown COVID rates, and of possibly not being able to nurture and nurse your child should they fall ill. The state's prospective pecuniary interest pales in comparison.

In addition to its deprivation of appointed counsel to us as indigent parents, the Sua Sponte recusal and subsequent instant transfer of venue violated our right to procedural due process by deprivation of notice and hearing required before transfer. (*See In re J.O.A., 283 S.W.3d 336, 347 (Tex. 2009)* This Sua Sponte motion

by Judge Doran in the County Court at Law occurred without notice or an opportunity to be heard. The appellate court erred in finding the issue unpreserved, as we lacked a meaningful opportunity to object, nor did we possess the knowledge and expertise needed to do so properly.

With its Sua Sponte instant transfer, the trial court transferred our case from the venue where it was known under CCL20-16990 in the Anderson County Court at Law to a new court under a completely new cause number DCCV-22-3393-369 in the Anderson County District Court, where the presiding judge of the 369th Court, who handles only criminal dockets, immediately recused himself. The two back-to-back recusals then prompted the Administrative Law Judge to appoint Retired Judge and current oil and gas attorney, the Honorable Judge HD Black from another county over an hour away.

We turn now to this Court, to respectfully request that Honorable Chief Justice Roberts and the Honorable Justices of this Court would take up this issue and clarify states' obligations to appoint counsel in a timely, effective manner under the Due Process Clause. Given the complexity of our case and many others like it, the high stakes involved, the risk of erroneous deprivation of a fundamental liberty interest, and lack of appellate scrutiny, the Court now is presented with a unique opportunity to reinforce the constitutional guardrails and ensure parents receive a truly fair hearing before the permanent severance of such a vital and important relationship with their children.

We are only just now starting to see the impact COVID had on cases such as ours, and it would be prudent for this Court to set precedent or reinforce those already in place regarding the many cases I anticipate hitting your desks in the coming days. Many such cases are only now coming to an end, with the states using COVID to extend cases, such as the trial court did with ours. The evidence was constitutionally insufficient under Santosky v. Kramer, 455 U.S. 745 (1982), which requires clear and convincing evidence to terminate parental rights.

In addition to the numerous violations of our right to Due Process, the lower courts have completely disregarded the provisions of a potentially expensive Federal Statute. Under Title IV-E of the Social Security Act, states receive billions annually to fund foster care, adoption assistance, and child welfare services. To qualify for reimbursement, state child welfare systems must comply with ASFA guidelines, and their own Title IV-E plans approved by HHS. Among other obligations, state plans must ensure timely permanency under ASFA and mandate due process protections for parents. The multiple violations of ASFA timelines and lack of mandated findings call into question whether Texas made "reasonable efforts" at family reunification as required. Noncompliance puts at stake millions in annual federal reimbursements that support the State's entire foster care system.

Clarification is urgently needed on the interaction between state law, ASFA, and Title IV-E to guide courts and agencies ensuring both children's well-being and integrity of funding for Texas foster youth. Compliance also requires diligently safeguarding parents' and families' fundamental rights. Only this Court can provide

nationwide uniformity and confirm state's child welfare systems—and the futures of vulnerable children dependent on public funding nationwide—remain accountable to federal law and constitutional protections.

Additionally, the broad policy and fiscal implications of this case extend beyond our case. We believe that certification is warranted, and should this court grant our petition, it will yield precedents impacting every state's Title IV-E participation. Even further, by exercising your power to appoint an attorney and thereby oral argument, only then will this court be able to bring this case under the scrutiny it ultimately deserves. We believe you will find that the Court of Appeals decision conflicts with established precedents on procedural due process in parental rights termination cases. Parents have a fundamental liberty interest in their children's care, custody, and control (Stanley v. Illinois, 405 U.S. 645, 651, 1972), necessitating constitutionally adequate procedures before termination (Mathews v. Eldridge, 424 U.S. 319, 333, 1976).

In our case, the trial court's Sua Sponte motion resulted in an abrupt transfer to a different court, violating our right to procedural due process. The lack of notice and hearing before this transfer contravened established legal principles (In re J.O.A., 283 S.W.3d 336, 347, Tex. 2009). The belated appointment of counsel, coupled with ineffective assistance, further denied us due process rights.

The lower courts misapplied Lassiter v. Department of Social Services (452 U.S. 18, 1981), especially regarding the right to counsel in termination cases. The trial court's failure to appoint new counsel after successive withdrawals violated our

statutory right under Texas law (Tex. Fam. Code § 107.013(a)(1)), infringing on due process. Our case, comparable to complex criminal trials, lacked the protections warranted by the Due Process Clause, exacerbated by the unprecedented challenges of the COVID-19 pandemic. Ineffective assistance, compounded by our vulnerability and disabilities, further compromised our ability to navigate the proceedings.

We respectfully request this Court to clarify states' obligations in timely and effective counsel appointments under the Due Process Clause. This case offers an opportunity to reinforce constitutional protections, ensuring a fair hearing before permanently severing parental rights.

And then there is tremendous issue of the court's lack of jurisdiction throughout the entirety of this case and its multiple attempts to subvert the legislative intent of the statutes by implementing its own discretion of what it is legally required to do. The trial court should have lost jurisdiction at multiple junctures of this case such as:

- At the initial outset of the case, the Department failed to inquire as to the existence of a Court of Continuing Exclusive Jurisdiction in order to determine if the trial court had the power to even hear the case. It was later determined that it did not. Yet, even upon receipt of this news, the trial court did not defer to the CCEJ, and instead attempted to subjugate its own authority over that of the CCEJ and the TX legislature which had enacted the provisions over Texas Courts regarding jurisdiction over child custody suits.
- When the case approached the one-year mark for automatic dismissal, the trial court improperly ordered the extension of the case absent any of the required findings and orders required to do so.
- Failure to grant our Motion for Rendition of final order and the Motion to dismiss (filed as separate instruments) to object to the extension and the court's lack of jurisdiction by not enacting transfer from the CCEJ.

- Failure to require the state to extend the case following the granting of the Motion for New Trial which extended the case well past the *previously established dismissal date of February 15, 2022.*
- Failure to recognize that the reason the Department did not file an extension to the case after the motion for new trial was granted was that under Texas Family Code 262.402, which states that following an extension (as was had in August of 2021) that no further extensions could be granted.
- Attempting to confer jurisdiction of the case onto the 369th District Court of Anderson County by Sua Sponte transfer absent the authority to do so whenever the CCEJ had never responded to the court's request to transfer the jurisdiction.

Under Title IV-E, states must comply with ASFA guidelines to qualify for federal funding. Texas' violations of ASFA timelines and due process protections jeopardize substantial federal reimbursements, impacting the entire foster care system. A uniform clarification of the interaction between state law, ASFA, and Title IV-E is crucial for courts and agencies nationwide.

This case goes beyond individual interests, carrying broad policy and fiscal implications. Certification is warranted to establish precedents affecting Title IV-E participation across all states, upholding federal law and constitutional protections for vulnerable children and families.

## CONCLUSION

In sum, this case presents substantial questions regarding parental due process rights and the proper application of this Court's precedents, which warrant review. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sarah Melissa Collins
01/22/2024

James Daniel Collins
01/22/2024

No. _____

IN THE

Supreme Court of the United States

---

IN RE A.M., A.C. & C.C., CHILDREN

---

On Petition For A Writ Of Certiorari From
The Twelfth Court Of Appeals In Tyler, Texas

---

PETITION FOR WRIT OF CERTIORARI

---

# APPENDIX