

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RUTH ROYAL, Petitioner

vs.

**WEST VIRGINIA DEPARTMENT OF HEALTH AND
HUMAN RESOURCES, CHILD PROTECTIVE SERVICES (CPS)**

and

I. R., infant.¹

**On Petition for a Writ of Certiorari to
The West Virginia Supreme Court of Appeals
(Highest State Appellate Court)**

PETITION FOR WRIT OF CERTIORARI

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¹Name redacted (Appendix) in accordance with applicable rules

QUESTIONS PRESENTED

- 1) Has disintegration of the traditional family leading to substantial increases in child neglect and abuse cases caused agencies dealing with these matters, courts adjudicating them, and state government through legislation to resort to expedient measures that violate federal constitutional rights?
- 2) With far more adults seeking to adopt children than are available, tensions of supply and demand can lead to abuse. Does adoption performed without other family members' knowledge contesting the same matter notwithstanding multiple applications (motions) to stay such an occurrence violate federal constitutional rights?
- 3) Does right to notice, a fair hearing, standing and other fundamental constitutional rights apply in neglect/abuse proceedings especially where close relatives as grandparents are involved?
- 4) Given modern day tension on families, the very fabric of society, it only make sense to allow greater opportunity and resources for raising children. Presently there is no formal or legal requirement for actual relatives of a child to have a role where adoption or other such estrangement may have occurred. This is particularly true for grandparents, generally regarded as having a beneficial role in helping to raise children. Would it not make sense for this Court to promulgate recommendations or dicta recognizing and recommending this?

PARTIES TO THE PROCEEDINGS

Ruth Royal- petitioner/appellant in all underlying state proceedings.

West Virginia Department of Health Human Resources [Child Protection Services-CPS] and
J. Rudy Martin, Attorney at Law, *guardian-ad-litem* for child
Opposing parties in all proceedings

Corporate Disclosure does not apply under Rule 29.6

PROCEEDINGS AND RELATED PROCEEDINGS

Intervention

In re. I.R., No. 19-JA-620, Circuit Court of Kanawha County, West Virginia
Judgments entered June 1, 2020 and June 18, 2020.

In re. I. R., No. 20-0512, The Supreme Court of Appeals of West Virginia
Judgments entered January 31, 2022 and April 14, 2022.

Adoption

In re. Adoption of I.R., No. 22-A-55, Circuit Court of Kanawha County, West Virginia
Judgments entered April 29, 2022 and June 7, 2022.

In re. Adoption of I.R., No. 22-0418, The Supreme Court of Appeals of West Virginia
Judgments entered May 2, 2023 and September 8, 2023.¹

Adoption by Others Without Notice to Petitioner

In re. I.R., No. 19-JA-620, Circuit Court of Kanawha County, West Virginia
Order Denying Application to Stay Adoption (by others) entered February 7, 2022

In re. Adoption of I.R., No. 22-A-55, Circuit Court of Kanawha County, West Virginia
Denials of Applications to Stay Adoption (by others) June 3, 2022 and June 7, 2022.

In re. Adoption of I.R., No. 22-0418, The Supreme Court of Appeals of West Virginia
Order Refusing to Stay Adoption (by others) entered May 2, 2023

Trial Court Changes of Original Findings During Appeal

In re. I.R., No. 19-JA-620, Circuit Court of Kanawha County, West Virginia
Order Denying Petition for Grandparent Visitation entered April 19, 2022.

In re. Adoption of I.R., No. 22-A-55, Circuit Court of Kanawha County, West Virginia
Order Dismissing Petition (for Adoption) entered April 21, 2022.

¹Final state judgment from which this Petition for Writ of Certiorari is taken

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*Not filed under seal.

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IN THE

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RUTH ROYAL, Petitioner

v.

**WEST VIRGINIA DEPARTMENT OF HEALTH and HUMAN RESOURCES
CHILD PROTECTIVE SERVICES (CPS) and I.R., infant**

*ON ORDERS DENYING INTERVENTION AND ADOPTING
GRANDCHILD IN CHILD NEGLECT/ABUSE PROCEEDINGS
and*

ADOPTION BY OTHERS WITHOUT PETITIONER'S KNOWLEDGE DURING PROCEEDINGS

THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

PETITION FOR WRIT OF CERTIORARI

Ruth Royal, petitioner and maternal grandmother of infant, I.R., by counsel, petitions for issuance of a writ of certiorari to review judgments of the highest state appellate court.

OPINIONS BELOW

In matters concerning an infant, Case Nos. 20-0512 and 22-0418, intervention and adoption respectively, state highest appellate court upheld trial court denial of intervention in grandchild neglect/abuse case and denying adoption. [App. A/pp. 1-7 & 15-18] During adjudication of these matters the child child was adopted without petitioner's knowledge notwithstanding her motions to stay such an event¹

JURISDICTION

Final judgment by the state appellate court was entered September 8, 2023 leaving petitioner with no further recourse in state courts. [App. A/p. 29] Jurisdiction is under 28 U.S.C. §1257(a).

¹State confidentiality laws and rules caused petitioner to learn only indirectly of this occurrence

CONSTITUTIONAL PROVISIONS INVOLVED

No state shall make or enforce any law which shall abridge the privileges and 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. 14th Amendment, United State Constitution

STATEMENT

November 2019 a friend of petitioner's daughter informed her the daughter had given birth two months earlier to a male child, who was a subject of neglect/abuse proceedings and in the custody of Child Protective Services (CPS), agency of the West Virginia Department of Health and Human Resources. Petitioner telephoned CPS immediately, and within hours social workers appeared at her residence to inspect the premises and to investigate her background.

They promised they would return to reinspect her residence the following month and would keep her apprised of developments in the child's neglect/abuse proceedings. However they never returned to her residence or apprised her of the subject proceedings despite her repeated telephone calls they do so. [App. N/pp. 136-148]

Frustrated, petitioner first contacted Legal Aid, which was unable to help, and February 2020 she filed a hand-written *pro se* petition to intervene in the child's neglect/abuse proceedings. [App. N/pp. 132-150] Upon filing she learned from a courthouse clerk the child's status had been adjudicated the previous month in what is known as a disposition hearing that included termination of her daughter's (and birth father's) parental rights, custody of the child with foster parents, and adoption already likely in progress. She added this information at the top of the first page to her petition. [App. N/p. 132]

Three months later a hearing was conducted on petitioner-grandmother's motion to intervene, which due to recent court rules under the coronavirus pandemic required her participation by telephone yet others present in person. [App. N/pp. 151-172] This semi-remote hearing began with the trial court

noting the child's disposition hearing had occurred a month prior to the motion's filing; to which petitioner responded immediately saying she had been unaware and added she had been in contact with caseworkers well before that date expressing her interest in the child only to be repeatedly ignored. App. N/pp. 155-156]

Although CPS is required to make a sustained effort to locate willing and able relatives, particularly grandparents, to care for children in matters as this, it was petitioner, not CPS, who initiated contact. Appearing to conclude the hearing after less than a half hour, trial court directed petitioner to hang up the phone, yet the hearing did not conclude. [App. N/p. 167] CPS caseworker testified petitioner's trailer park residence was unsatisfactory, and trial court concurred with opposing counsel petitioner had been aware of the proceedings notwithstanding her testimony and pleadings to the contrary. [Id.] Following denial of intervention, grandmother retained present counsel, who filed objections to all the trial court's findings; particularly whether petitioner-grandmother had notice of her grandson's neglect/abuse proceedings, evidence received outside her presence, and pervasive *ex parte*' discussions with others, also outside her presence, whether she was fit to care for the child. [App. N/pp. 151-172]

Petitioner-grandmother appealed denial of intervention to state's highest appellate court on various state law grounds and constitutional due process violations for evidence entered after she had been instructed to hang up the telephone. [App. J/p. 58] Concerned the child might be adopted while she was litigating this matter, the petitioner also filed multiple applications over the following three years with both the appellate and trial courts to stay any adoption by others while she was engaged in these matters. [Apps. G/pp. 30-31 & H/32-35] Some applications also included assertions her federal constitutional rights had been violated. [Apps. J/p. 61 & K/p. 98]

No stays were ever granted by either state court [Apps. G/pp. 30-31 & H/32-35], and petitioner

later learned from other trial court rulings the child had been adopted while she was engaged in these matters before the same court. State-mandated confidentiality rules for neglect/abuse were also apparently extended to this adoption, thus petitioner knows virtually nothing about her only grandchild, who is now four-years old. [see also p. 1, fn. 1] State appellate court upheld denial of intervention employing particularly harsh language in an already emotionally fraught matter.¹ [App. A/pp. 1-7]

While pursuing her state court appeal, petitioner sought visitation with her grandson through the trial court, which was denied [App. I/p. 36]; then later filed a separate action to adopt him, which was also denied by the same trial court. [App. I/p. 43] However, in denying visitation as well as adoption, the trial court entered orders in both matters that differed completely from the earlier-stated grounds for denying intervention in the child's neglect/abuse proceedings. These original grounds had also served as the basis for denying adoption. The trial court now found it "unclear" stating "nothing in the record" had indicated whether the petitioner had notice of the child's neglect/abuse proceedings and employed identical language regarding the condition of her residence, and whether she had been a fit placement to care for the child.² [App. I/pp. 40 & 43]

Trial Court never once addressed any of petitioner's claims her constitutional rights were violated, now before this Court, and state appellate court summarily discarded them as "feeble." [App. A/p. 7] While intervention and adoption, as well as seeking visitation and preventing adoption by others constituted separate matters, they were continuing in nature and intricately related. Thus this Petition is filed within the requisite time period following final disposition in the highest state appellate court.

¹Undersigned counsel suspects his role in a recent US District Court action alleging gender bias by a court majority. However, he concedes while this may not have been strictly a neglect/abuse case, it was his first experience with such matters leading him to take state-required continuing legal education (CLE) courses on-line.

²Prior to filing this Petition grandmother sought visitation based upon these changes. There has been no response from the trial court, and petitioner is far from optimistic. This is notwithstanding expert opinions children in these situations benefit from having a relationship with their biological relatives. A recent new story featuring the same trial court judge in an unrelated adoption even lauded this concept.

REASONS FOR GRANTING WRIT

1. Jurisdiction

This Court described jurisdiction in a domestic law appeal as “a judicial doctrine from a misty understanding of English legal history.” Marshall v. Marshall, 547 U.S. 293, 293 (2006) While the matters here concern fundamental constitutional rights, they are nevertheless based upon events likely viewed as those of domestic law. Notwithstanding its adjudication in Marshall and other cases, this Court has customarily regarded domestic law as primarily within the province of state jurisdiction.

However, child neglect/abuse cases now consume substantial amounts of judicial attention in West Virginia and other states as well. Given this deluge of cases, often under excruciating circumstances, fundamental federal constitutional principles as notice, treatment of evidence and basic fairness are understandably constantly subject to temptations for resort to expediency. This can cause overlooking fundamental principles of constitutional law as occurred here. This Court has stated the “Constitution recognizes higher values than speed and efficiency.” U.S. Dept. of Agriculture v. Murry, 413 US 508, 513 (1973) The same should apply to the increasing number of child neglect and abuse cases where expedient measures, while undoubtedly appearing necessary in numerous circumstances, may also lead to violations of fundamental constitutional rights.

2. Adoption By Others During Proceedings

Most egregious here has been adoption of the child by others while petitioner was litigating in good faith these very matters, including adoption, before the same state courts. The trial court justified this adoption referring to rules that call for “permanent placement” within a specific time period. [App. M/p. 131, Rule 43-W. Va. Rules of Procedure for Child Abuse and Neglect Proceedings.] However, adoption does not constitute the sole means of permanency, and the same rule also allows greater flexibility with respect to time than the trial court articulated. [Id.] However, this discussion is tangential to

petitioner's right for equal protection of the law where a proverbial cloak of confidentiality, together with a conflicting and unconstitutional statutory scheme *supra*, allowed adoption to occur in the same court from which petitioner was appealing a ruling on the same matter.

Like most states there is a finality for adoptions in West Virginia that now severely impairs grandmother's options. [West Virginia Code §48-22-704, App. M/p. 109] One remedy may lie however in equity under principles of estoppel requiring fundamental fairness where an injustice is perceived to have occurred. Minerva Surgical, Inc. v. Hologic, Inc, 141 S. Ct. 2298, 2305 (2021) In any event there is little doubt this precipitous adoption has placed a substantial burden on whatever rights petitioner may still possess with respect to her grandson.

3. Constitutional Violations

The trial court's 'mid-stream' change in findings, if not making clear, certainly creates doubt about petitioner's knowledge of the neglect/abuse proceedings and whether a fair hearing had even occurred where critical, adverse evidence was tendered against her without benefit of counsel, much less any opportunity to rebut such evidence. Finding her unfit to care for the child together with other findings adversely affected her throughout the rest of the proceedings. Adoption of her only grandchild while she was lawfully contesting this same matter amounted to an additional, and unexpected, violation of her federal constitutional rights, both equal protection of the law as well as due process.

State action (and inaction) throughout these matters, executive and judicial, violated long-standing holdings of this Court protecting constitutional rights. Procedural due process is particularly relevant where grievous loss (here only grandchild) has occurred and requires increased governmental attention for effective use of its resources. Goldberg v. Kelly, 397 US 254, 262-67 (1970).

This Court has found family matters can represent extensions of concepts as prosperity and liberty

well beyond their customary definitions. Bd. of Regents of State Colleges v. Roth, 408 US 564, 571 - 572 (1972) Surely such extension would apply to the often intense drama of child custody proceedings for the purpose of protecting federal constitutional rights.

Constitutional protection generally always incorporates family relationships. Cleveland Bd. of Educ. v. Fleur, 444 US 632 (1974) In terms of equal protection, and as applicable here as in university admissions, citizens have a right not to be injured by unlawful use of government power. Schuette v. Coal. to Defend Affirmative Action, 572 US 291, 311 (2014) Where government action can seriously injure an individual, and that action relies on fact-finding, evidence must be disclosed. Goldberg at 269 However extenuating the circumstances may have been in this child neglect and abuse matter, both the state agency and state trial court rushed to judgment. The roughshod manner in which this was done violated petitioner's rights under the Fourteenth Amendment of the United States Constitution causing her irreparable harm, and the state appellate court simply turned a blind eye.

The damaging acts commenced as petitioner submitted a hand-written, *pro se* motion and appeared without counsel in a remotely-conducted hearing filled with inexcusable irregularities that plagued her throughout the rest of these proceedings. It is inconceivable these irregularities would have occurred had petitioner been represented by counsel. It aptly illustrated this Court's holding in Goldberg that representation by counsel can be essential for protecting fundamental constitutional rights. 397 US 254, pp. 270-271

4. Standing

State (highest) appellate court while casually treating the trial court's failure to address petitioner's federal constitutional rights, instead relied on state laws to find since petitioner did not have a relationship with the child she was precluded from participating in the neglect/abuse proceedings. [Apps. A/p. 1-7] However, the holding failed to recognize petitioner had no possibility of having a relationship

with the child since the state had taken custody of him at birth then prevented her from knowing anything about him thereafter.

While petitioner's assertions of federal constitutional rights violations primarily addressed what had occurred before retaining counsel, the effect of those violations harmed her throughout the proceedings. She objected to these ambiguous and conflicting state statutes that precluded her from participation implying they were unconstitutional as well. A statutory "hodgepodge" establishing degrees of participation in child neglect/abuse matters exemplifies what this Court found that "standing can be inherently complex and vague." Jenkins v. Keithen, 395 US 411, 423 (1969)

The statutes create a tiered approach for parties' participation in neglect/abuse proceedings, which state highest appellate court found precluded petitioner entirely. [West Virginia Code §49-4-601, App. M/p. 120] Yet the same statute entitles her a 'right to be heard' by definition for what is termed a "relative caregiver." [West Virginia Code §49-4-601(h), App. M/p. 122 and West Virginia Code §49-1-204(A), App. M/p. 111; also West Virginia Code §49-4-608(b), App. M/pp. 128-130] Numerous other statutes qualify her as "a fit and willing relative" for the child's placement.¹ The foregoing adds to a well-merited priority for grandparents in these matters. In re. P.F., 848 S.E.2d 826 (W. Va. 2020); also [West Virginia Code §49-4-114(a)(3), App. M/p. 115] Public policy by statute(s) throughout the state code emphasize keeping families intact. [West Virginia Code §49-2-201, App. M/p.112]

CONCLUSION

While child neglect/abuse cases currently are overwhelming courts in West Virginia, and probably elsewhere as well, the temptation for resort to expedient measure is understandable. But this does

¹Concern this particular discussion may appear rehashing state law claims as opposed to violations of federal constitutional rights, petitioner adds by footnote a sample of statutes subject to varying interpretations in need of clarity. [West Virginia §§49-4-301(b)(2)(1), 49-4-302(g)(1), 49-4-601(h)-relative caregiver right to be heard, and 49-4-604(c)(E)(ii), App. M/pp. 118-127]

not excuse abandoning fundamental rights. Petitioner is a disabled Vietnam-era veteran. "Thank you for your service." She asks a writ be issued in this matter in order it be remanded to the state court(s) directing adherence to federal constitutional rights in child neglect and abuse proceedings notwithstanding the inevitable and inherent trauma usually present in those matters.

Matters affecting families are tearing at the very fabric of society. This case represents a step the Court can take to call attention to this.

Respectfully submitted,
January 16, 2024

Ruth Royal, Petitioner
By Counsel


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