

Appendix A

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 23-70
Docket No. Yor-22-329

IN RE CHILDREN OF KINLEY M.

Submitted on Briefs May 23, 2023

Decided May 30, 2023

Panel: STANFILL, C.J., and JABAR, HORTON, and CONNORS, JJ.

MEMORANDUM OF DECISION

Kinley M. appeals from a judgment of the District Court (York, Duddy, J.) terminating her parental rights to three children. 22 M.R.S. § 4055(1)(B)(2)(b)(i)-(iv) (2023). Contrary to the mother's contentions, the court was not required to sua sponte appoint a guardian ad litem for her pursuant to M.R. Civ. P. 17(b). See *In re Child of Sherri Y.*, 2019 ME 162, ¶¶ 10, 18, 221 A.3d 120; *In re Child of Mercedes D.*, 2018 ME 149, ¶¶ 16-17, 196 A.3d 888. "Suffering from mental health issues does not necessarily render one incompetent to participate in a hearing." *In re Child of Sherri Y.*, 2019 ME 162, ¶ 15, 221 A.3d 120. Further, any failure of the Department of Health and Human Services to comply with its obligations does not preclude the termination of her parental rights. See *In re Child of Amelia C.*, 2020 ME 28, ¶ 8, 227 A.3d 156; 22 M.R.S. § 4041 (2023). The mother's incarceration was but one factor the court considered, and competent record evidence supported at least one finding of parental unfitness by clear and convincing evidence. See *In re Alijah K.*, 2016 ME 137, ¶ 16, 147 A.3d 1159.

The court also did not abuse its discretion in declining to continue the termination hearing at the mother's request as she failed to present "sufficient grounds" and "substantial reasons" for doing so. *In re J.B.*, 2015 ME 25, ¶ 5, 112 A.3d 369. The mother received due process because she was given notice of the hearing and an opportunity to be heard. See *In re Children of Benjamin W.*, 2019

ME 147, ¶ 10, 216 A.3d 901. Contrary to the mother's contention, the court has jurisdiction over child protection proceedings. See 22 M.R.S. § 4031(1) (2023).

We do not address the mother's other challenges which attempt to relitigate earlier stages of the proceeding and thus were not cognizable in this appeal. *In re Children of Corey W.*, 2019 ME 4, ¶ 12, 199 A.3d 683. The remainder of the mother's arguments were not sufficiently developed on appeal or presented to the court. See *In re Anthony R.*, 2010 ME 4, ¶ 8, 987 A.2d 532. Accordingly, the court did not err or abuse its discretion in determining that the mother is unable to protect her children from jeopardy or take responsibility for them within a time that is reasonably calculated to meet their needs, and that the termination of her parental rights is in the children's best interests. See 22 M.R.S. § 4055(1)(B)(2)(a)-(b)(i)-(iv).

The entry is:

Judgment affirmed.

Dawn M. Corbett, Esq., Law Office of Dawn M. Corbett, PA, Ellsworth, and Kinley M, pro se, for appellant Kinley M.

Aaron M. Frey, Attorney General, and Hunter C. Umphrey, Asst. Atty. Gen., Office of the Attorney General, Augusta, for appellee Department of Health and Human Services

York District Court docket numbers PC-2021-01 and PC-2021-02
FOR CLERK REFERENCE ONLY

AFFIDAVIT IN SUPPORT OF AN ARREST WARRANT

I, Deputy Steven D. Broy, being duly sworn, depose and state that I am a certified Law Enforcement Officer in the State of Maine. I have been employed as a Sheriff's Deputy by York County Sheriff's Office for about 2 months where I am currently assigned to the Patrol Division. Before working at the York County Sheriff's Office, I was at the Old Orchard Beach Police Department for over 6 years. Most recently as a Detective. I also served as a Patrol Officer and Patrol Supervisor during my time at Old Orchard Beach Police Department. I have attended and successfully completed training at the Maine Criminal Justice Academy and over the last 6 years, I have attended numerous specialized classes pertaining to various aspects of criminal investigations, to include crime scene processing, death scene processing, electronic evidence processing, and response to major crimes.

I have been personally involved in investigating an incident of Burglary, Reckless Conduct with a Dangerous Weapon, Assault, and Possession of a Firearm by Prohibited Person that took place around 11:45 PM on August 5, 2022, in Parsonsfield, ME.

I have probable cause to believe that **Kinley M. MacDonald**, whose date of birth is April 24th, 1981, has committed the crimes of Burglary, Reckless Conduct with a Dangerous Weapon, Assault, and Possession of a Firearm by Prohibited Person that took place at 1156 North Road in Parsonsfield, Maine. **The Burglary in this case is a violation of Title 17-A Section 401.1.B.1 a Class A Crime. Reckless Conduct with a Dangerous Weapon in this case is a violation of Title 17-A Section 211.1 a Class C crime. The Criminal Threatening with a Dangerous Weapon is a violation of Title 17-A Section 209.1 a Class C crime. The Assault in this case is a violation of Title 17-A Section 207.1.A a class D crime.**

BASIS FOR PROBABLE CAUSE

1. On 08/05/22 at approximately 2345 hours I was dispatched to 1156 North Road in Parsonsfield for a reported burglary in progress along with Deputies Frazier, Markellos, and Chenard. While enroute, dispatch advised that they had the 911 caller still on the phone and that it was a young female (Alana J. [REDACTED] D.O.B. 06/19/2007) in her upstairs bedroom, and she could hear her foster mom (Megan Valente D.O.B. 01/31/93) screaming downstairs. Dispatch advised a short time later that a female was the suspect and that she came into the home wearing camouflage, with gloves, and had a firearm with her. Ms. Valente was soon able to get on the phone with dispatch that the female had ran off but she dropped the firearm and now she and Ms. Johnson were waiting in the upstairs bedroom for Deputy's to arrive. Ms. Valente then advised dispatch that the suspect was Ms. Johnson's biological mother Kinley MacDonald D.O.B. 04/24/81.
2. Myself and the other Deputy's arrived on scene just after midnight on 08/06/22. We checked the surrounding property for Ms. MacDonald before making forced entry into the home as Ms. Johnson and Valente were too scared to come out of the bedroom they were locked in without the Sheriff's Office checking the residence first.
3. Deputy Markellos and Frazier ended up making contact with Ms. Valente and Ms. Johnson in the upstairs bedroom where they told dispatch they were hiding. Inside of this bedroom was the firearm used in the burglary that Ms. Valente had brought upstairs with her. The firearm was a Ruger .357 Magnum Revolver with what appeared to be all 6 cartridges in

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the chamber, with the hammer cocked back as well. This item was later photographed and collected as evidence.

4. I then began asking Ms. Valente questions about what had happened from her perspective. Ms. Valente stated that she went to bed around 10PM and was asleep shortly thereafter. Ms. Valente stated that she woke up just before midnight to Ms. MacDonald in her bedroom. Ms. Valente stated that Ms. MacDonald came through the sliding glass door in her bedroom that she thought was locked but may have forgotten to lock it.
5. Ms. Valente stated that she recognized Ms. MacDonald right away and that she was dressed in camouflage, wearing black gloves, with a revolver in one hand, and a roll of duct tape in the other. Ms. Valente stated that she then started fighting with Ms. MacDonald as she came towards her. Ms. Valente stated that she and Ms. MacDonald ended up on the ground fighting and at some point, the revolver Ms. MacDonald had discharged. Ms. Valente stated that at one point she also grabbed Ms. MacDonald's head and slammed it into the wall numerous times. Ms. Valente stated that Ms. MacDonald fled out the same sliding glass door she entered a short time later which is when Ms. Valente locked the sliding glass door, grabbed the revolver off the ground and then brought it up stairs with her to where Ms. Johnson was hiding in her bedroom.
6. Ms. Valente then showed me a photograph of Ms. MacDonald. Ms. Valente stated that Ms. MacDonald looked almost exactly the same as she did tonight in the photograph she showed me which was of a recent booking photograph. I confirmed the photograph that Ms. Valente showed me was of Ms. MacDonald and that she matched the description she gave dispatch of the suspect involved in the burglary.
7. Ms. Valente also showed me some bite marks that she had on both her left and right arms as well as one of her hands, which she stated were caused by Ms. MacDonald during their fight. I took blind swabs of Ms. Valente's injuries as well as photographs.
8. I then spoke with Ms. Johnson who did not witness anything but had gone to bed at approximately 10-11 PM and was woken up by Ms. Valente screaming just before midnight, which is when she called 911. I asked Ms. Johnson if she heard a gunshot and she stated that she was not sure but did not think so. I asked Ms. Johnson how often she sees her mother and she stated that she will have supervised visits with her every Monday and Wednesday and then on Friday's they have supervised Zoom calls. Ms. Johnson stated that she had just talked to Ms. MacDonald from 9AM - 10AM today on Zoom and that she was at her house in the Boston area and did not appear distraught or acting out of the ordinary.
9. I then went into the bedroom where the fight had happened and saw that Ms. Valente had piled some of her belongings up against the sliding glass door. I then saw what appeared to be a bullet hole in the wall right next to the sliding glass door. I checked the other side of the wall for an exit hole but was unable to locate one. I then located a roll of duct tape on the ground which was also right next to a cell phone that Ms. Valente stated was not hers

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and was possibly Ms. MacDonald's. Deputy Markellos then located a pair of shooting hearing protection which I seized as evidence as well.

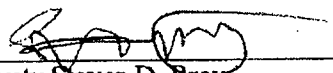
10. I then went upstairs and secured the firearm used during the burglary. The firearm still had the hammer in the cocked position ready to fire. Before moving it, I photographed it and then took some blind swabs of the handle and the trigger. I then took the firearm outside and pointed it in a safe direction and de-cocked it to make it safe. Once de-cocked, I was able to open the cylinder to see that 1 cartridge had been fired, and that there were still 5 more cartridges remaining in the cylinder that were yet to be fired.

11. Ms. Valente was unsure how Ms. MacDonald got to the residence, and where she went when she left. Deputies were unable to locate Ms. MacDonald at this time.

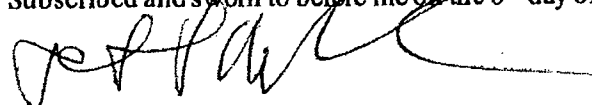
Wherefore, with the above information there is probable cause to believe Kinley M. MacDonald, with a date of birth 04/24/1981, did commit the crimes of **Burglary which in this case is a violation of Title 17-A Section 401.1.B.1 a Class A Crime. Reckless Conduct with a Dangerous Weapon which in this case is a violation of Title 17-A Section 211.1 a Class C crime. Criminal Threatening with a Dangerous Weapon which is a violation of Title 17-A Section 209.1 a Class C crime. Assault which in this case is a violation of Title 17-A Section 207.1.A a class D crime** that occurred in Parsonsfield at 1156 North Street on 08/05/22. I believe that Ms. MacDonald did commit these crimes when she entered Ms. Valente's home, assaulting her, and discharging a firearm in the process.

I am requesting an arrest warrant be issued for Kinley MacDonald who is described as a Caucasian female, 5' 8" tall, weighing approximately 200 pounds, having blonde hair, and blue eyes. Kinley MacDonald's last known address is 177 Bigelow Street in Brighton, MA.

I, Steven D. Broy, hereby swear under oath that the information set forth in this affidavit is true and correct to the best of my knowledge, information and belief, and that I make this oath under pains and penalties of perjury.



Deputy Steven D. Broy
York County Sheriff's Office

Subscribed and sworn to before me on the 6th day of August 2022


Judge/Complaint Justice
Notary Public

Probable cause found. Arrest Warrant to issue. Bail set at \$100,000.00 cash, no third-party bail. Conditions of bail are no contact, direct or indirect, with Megan Valente (1-31-93), Alana Johnson (6-19-07); no use or possession of dangerous weapons, including firearms; random search of person, residence or vehicle for possession or use of dangerous weapons.

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STATE OF MAINE
YORK, ss

Appendix B
SUPERIOR COURT
LOCATION: ALFRED
DOCKET NO:

YORK COUNTY SUPERIOR
AUG 9 '22 AM 11:38

CR-2022-522

STATE OF MAINE

COMPLAINT

v.

KINLEY MACDONALD
DOB: 04/24/1981
SIN:
177 Bigelow St
Brighton, MA 02135
G: Female Ht: 5' 8" Wt: 200 H: Blonde
E: Blue R: White

COUNT 1: BURGLARY
COUNT 2: RECKLESS CONDUCT WITH A
DANGEROUS WEAPON
COUNT 3: CRIMINAL THREATENING WITH A
DANGEROUS WEAPON
COUNT 4: ASSAULT

The undersigned officer, being duly sworn, states upon information and belief that:

COUNT 1:

17-A M.R.S. §401(1)(B)(1)
Seq No: 8481
BURGLARY
CLASS A
ATNCTN 448013B001

On or about August 05, 2022, in Parsonsfield, YORK County, Maine, KINLEY MACDONALD, knowing she was not licensed or privileged to do so, did enter or surreptitiously remain in a structure of Megan Valente with the intent to commit reckless conduct with a dangerous weapon and/or criminal threatening with a dangerous weapon and/or assault therein. KINLEY MACDONALD was armed with a firearm or knew that an accomplice was so armed.

COUNT 2:

17-A M.R.S. §211(1), 1604(5)(A)
Seq No: 636WU
RECKLESS CONDUCT WITH A DANGEROUS
WEAPON
CLASS C
ATNCTN 448013B002

On or about August 05, 2022, in Parsonsfield, YORK County, Maine, KINLEY MACDONALD, did recklessly create a substantial risk of serious bodily injury to Megan Valente with the use of a dangerous weapon, a firearm.

COUNT 3:

17-A M.R.S. §209(1), 1604(5)(A)
Seq No: 631WU
CRIMINAL THREATENING WITH A
DANGEROUS WEAPON
CLASS C
ATNCTN 448013B003

On or about August 05, 2022, in Parsonsfield, YORK County, Maine, KINLEY MACDONALD, did intentionally or knowingly place Megan Valente in fear of imminent bodily injury with the use of a dangerous weapon, a firearm.

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COUNT 4:

17-A M.R.S. §207(1)(A)
Seq No: 8382
ASSAULT
CLASS D
ATNCTN 448013B004

On or about August 05, 2022, in Parsonsfield, YORK County, Maine, KINLEY MACDONALD, did intentionally, knowingly or recklessly cause bodily injury or offensive physical contact to Megan Valente.

DATED: 8/8/ 2022Sworn to before me, 8/8 2022[Signature]
COMPLAINANT[Signature]
Clerk/Judge of Peace Judge/Justice (Deputy)

OFFICER: Steven Broy
DEPT: York County Sheriff's Dept
ARREST AWRANT
PROS: Justina A McGettigan
JW#: 22-5535
ROJ

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CONTAINS NONPUBLIC DIGITAL INFORMATION

MAINE JUDICIAL BRANCH

Appendix C

☒ COMMITMENT ORDER with CONDITIONS OF RELEASE ☐ CONDITIONS OF RELEASE☒ UNIFIED CRIMINAL ☐ DISTRICT ☐ SUPERIOR COURT located at BDC for AlfredDocket No. YRKCD-CR-2022-00522STATE OF MAINE v. Kinley MacDonald, DefendantOFFENSE(S): WOA: Burglary, Residential Contact w/ DW, Civil Threatening w/ DW AssaultOFFENSE DATE (mm/dd/yyyy): 08/05/2022 LOCATION OF OFFENSE: ParsonsfieldAGENCY: York County SDSEQUENCE NUMBER: 8481; 636W; 631W 8382 ATN/CTN: 440406BDefendant shall be held at the ☒ York County Jail ☐ Department of Corrections☐ without bail ☐ as indicated on attached Bail Bond form ☒ until bail is posted as follows:☐ PERSONAL RECOGNIZANCE.☐ UNSECURED. Defendant is not required to post any security to be released, but if defendant fails to appear as the Bail Bond requires defendant shall owe the State of Maine \$_____☒ SECURED. Defendant shall be released from custody only after the following security is posted.☒ Cash in the amount of \$ 100,000 or ☒ No Third Party Bail Allowed☐ Real estate (or _____) with a net value (total value less encumbrances) of \$_____☐ Bail Lien. ☐ Within 1 working day after today. ☐ Before defendant may be released, a lien on the real estate described must be recorded in the Registry of Deeds in the country where the real estate is located, and proof of such recording must be filed with the court listed above. (Note: The Registry of Deeds and the clerk's office are different offices and may be in different counties.)☐ SUPERVISED RELEASE: Check One Box Only ☐ AND ☐ OR in the alternative, defendant is released to the custody of a supervised bail contract pursuant to terms and conditions provided in the contract. The contract must be signed by the Defendant, the Court, and the supervising agency.☐ CONCURRENT. This bail is concurrent to the bail previously set/posted in (list court and docket number): _____Additional conditions to which the defendant agrees to obey, if checked. The defendant will not:☐ use ☐ possess OR ☐ excessively use or possess ☐ alcohol; and☐ use ☐ possess OR ☐ excessively use or possess ☐ marijuana or marijuana products; and☐ use or possess ☐ any illegal drugs or their derivatives; and☒ use or possess ☒ any dangerous weapons or ☒ firearms.☐ In order to determine if s/he has violated any prohibitions of this bond regarding alcohol, illegal drugs or their derivatives, marijuana or marijuana products, she/he will submit to searches of her/his person, vehicle, and residence and, if applicable, to chemical tests upon articulable suspicion.☐ As a condition of her/his participation in a specialty court docket, or as a condition of her/his deferred disposition, she/he will submit to random searches of her/his person, vehicle, and residence and, if applicable, to chemical tests for possession or use of alcohol, illegal drugs or their derivatives, or marijuana or marijuana derivatives.☒ In order to determine if s/he has violated any prohibitions of this bond regarding firearms or dangerous weapons, s/he will submit to searches of her/his person, vehicle, and residence ☒ at any time without articulable suspicion or probable cause. ☐ upon articulable suspicion.ADA Notice: The Maine Judicial Branch complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation contact the Court Access Coordinator, accessibility@courts.maine.gov, or a court clerk.Language Services: For language assistance and interpreters, contact a court clerk or interpreters@courts.maine.gov.

CONTAINS NONPUBLIC DIGITAL INFORMATION

Appendix C
MAINE JUDICIAL BRANCH

- ☒ have no direct or indirect contact with (name and DOB (mm/dd/yyyy)) W.M. (DOB 10/19/19), B.M. (4/14/16), A.S. (6/19/07), or Megan Valente (1/31/19)
except as is necessary ☐ for counseling; ☐ to pay child support; ☐ for child contact; ☐ for court appearances; ☐ by telephone (☐ from _____ ☐ am ☐ pm to _____ ☐ am ☐ pm); ☐ by text; ☐ by email; ☐ _____
- ☒ and not enter any ☒ residence ☒ place of employment ☒ place of education of any such person(s); ☐ except for a single time, while accompanied by a police officer, for the purpose of retrieving defendant's personal effects.
- ☐ maintain or actively seek employment; ☐ maintain or commence an education program.
- ☐ participate in regular substance abuse counseling and provide proof of such counseling upon request.
- ☐ undergo ☐ medical ☐ mental health ☐ evaluation ☐ counseling/treatment & provide proof of such counseling/treatment upon request.
- ☐ complete certified Domestic Violence Intervention Program ☐ undergo other counseling/treatment and provide proof of such counseling/treatment upon request.
- ☒ abide by the following restrictions on personal associations, place of abode, or travel: not be on the DHS properties located in Sanford, Biddeford, Portland or Bangor, ME
- ☐ report ☐ daily ☐ weekly ☐ _____, ☐ in person ☐ by phone, to ☐ probation officer ☐ _____
- ☐ comply with the following curfew: _____
- ☐ participate in ☐ outpatient ☐ voluntary inpatient treatment; at or with _____
- ☐ take medications as prescribed. ☐ participate in an electronic monitoring program.
- ☐ not operate any motor vehicle under any circumstances ☐ unless lawfully licensed to do so.
- ☒ not be at any location of the Office of Attorney General; no contact with James OCF's caseworkers - Kelli-S. Dearden, Megan Thomas; no contact except in written remote communication incidental during in person court appearance
following individuals: Tara Lynn Picard (OCFS), Jesse Cummings (OCFS), ARB Maeva
If the defendant makes bail, the defendant is required to appear at the Unified Criminal Court on: Keenaway,
(mm/dd/yyyy) 01/11/2023 at 8:30 ☒ am ☐ pm and on any other date and time and at the court the justice, judge, or clerk tells me to appear. Filed

(This Conditions of Release form must be attached to defendant's Bail Bond.)

08/19/2022
Date (mm/dd/yyyy)

Thomas Lawrence
☒ Justice ☒ Judge ☐ Clerk (Lawrence)
☐ Bail Commissioner

Printed Name of Bail
Commissioner

ADA Notice: The Maine Judicial Branch complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation contact the Court Access Coordinator, accessibility@courts.maine.gov, or a court clerk.

Language Services: For language assistance and interpreters, contact a court clerk or interpreters@courts.maine.gov.

Appendix D**STATE OF MAINE**

SUPERIOR COURT

DISTRICT COURT

_____, ss.

Location _____

Docket No. _____

Docket No. _____

STATE OF MAINE

v.

**PETITION FOR DE NOVO
DETERMINATION OF BAIL
(15 M.R.S.A. § 1028)**_____
Defendant

1. The defendant is charged with the following offense(s): _____

_____ in the District Court in _____.
2. The defendant is NOT charged with violation of probation.
3. Bail is now set at _____
with the following conditions: _____
_____ and an attested copy of the District Court Order and/or complaint if available is attached.
4. The following bail is requested:
☐ personal recognizance or
☐ an unsecured appearance bond
5. If released on bail, the defendant will live at _____
(give full address) and will be employed at _____
_____ (give name and address of employer).
6. Please list any earlier criminal convictions and any prior failures to appear: _____

_____.
7. The defendant has lived in Maine for _____ (state how long) and has the following family ties to Maine: _____

_____.

Date: _____

(Attorney for) DefendantAppendix D p. 1/1

BOOTHBY, SILVER & RICKER, LLC

Attorneys-at-law

L. Clinton Boothby, Esq.
Victoria J. Silver, Esq.
Kendall A. Ricker, Esq.
Mikala L. Holt, Esq.

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22 School House Hill Rd, Suite 105
PO Box 216
Turner, ME 04282

Tel. 207-225-5044
Fax 207-225-5046

Admitted in Maine, Massachusetts and Federal Courts

August 25, 2022

CONFIDENTIAL LEGAL CORRESPONDENCE

Kinley MacDonald
C/O York County Jail
1 Layman Way
Alfred, ME 04002

In Re: Alana J., Brodie M., & Wlady M.
Docket No.: YORDC-PC-21-01 & 02

Dear Kinley:

Enclosed herewith please find a copy of the Order on Motion for Expedited Judicial Review and Scheduling Notice for a One Hour Expedited Judicial Review on **Friday, September 9, 2022 at 2:30 p.m. via Zoom** with the York District Court. The court is contacting the jail to set you up for Zoom. Also find the underlying Motion that we discussed on August 23, 2022. Meeting ID: **935 7091 4730** Passcode: **322100**.

Also please be reminded there is a **Termination of Parental Rights Hearing on September 28th and 29th, 2022 at 8:30 a.m. in person at Biddeford District Court**. You should request a writ for the jail to transport you to the court event.

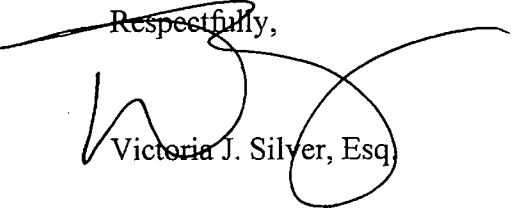
Other documents also enclosed:

- Denied Order on Motion for Enlargement of Time to File Objection and Objection to Order on UCCJEA Conference filed by Attorney Chipman
- Case Management Order as to Father
- Judicial Review Order and Permanency Planning Order as to Father
- Notice of 1 day Jeopardy Hearing as to Father

Please call our office at least two days in advance of any event to review any proposed orders or make sure we have your updated email address and phone number.

If you have any questions, please do not hesitate to contact me.

Respectfully,


Victoria J. Silver, Esq.

VJS/hrm
Enclosure

Appendix F

Northland Legal Solutions, LLC, PA

Andrew S. Edwards, Esq.

Tel: 207-530-0102

Fax: 207-221-1765

PO Box 18190

Andrew@northlandlegalsolutions.com

Portland, ME 04112

www.northlandlegalsolutions.com

FILED VIA SHAREFILE

September 19, 2022

York County Unified Criminal Docket
Clerk's Office

Re: State of Maine v. Kinley Macdonald
YRKCD-CR-22-00522

Dear Sir or Ms.:

Enclosed please find a Motion to Re-Determine Bail for the defendant in the above-captioned matter.

If there are any questions, please feel free to call me at 207-530-0102.

Sincerely,

s/Andrew S. Edwards

Andrew S. Edwards
Attorney for the Defendant
Maine Bar ID 5267

Enclosure

cc: District Attorney's Office
File
Kinley Macdonald

Appendix F

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FILED VIA SHAREFILE

STATE OF MAINE
YORK, ss.

UNIFIED CRIMINAL DOCKET
DOCKET NO. YRKCD-CR-22-00522

STATE OF MAINE

vs.

KINLEY MACDONALD,
Defendant

MOTION TO RE-DETERMINE BAIL
U.C.D.R.P. 46 (D)

NOW COMES the Defendant, Kinley Macdonald, by undersigned counsel, and moves the Court to Modify her bail. In support of this Motion, Defendant states the following through counsel:

1. Ms. Macdonald's bail was set at \$100,000 by J. Moskowitz on 8/8/2022.
2. Ms. Macdonald is entirely unable to make this amount.
3. Ms. Macdonald respectfully asks that this court schedule this matter for a De Novo Bail hearing.
4. Assistant District Attorney Justina McGettigan OBJECTS to this motion.

WHEREFORE, the Defendant respectfully requests the Court to grant this motion.

Dated at Portland, Maine this 19th day of September, 2022.

/s/Andrew S. Edwards
Maine Bar #5267
Attorney for the Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the within Motion to Re-Determine Bail has been served on the attorney for the State by mailing/emailing/or hand delivering a copy to the Clerk of Office of the District Attorney, on this 19th day of September, 2022.

/s/Andrew S. Edwards
Maine Bar #5267
Attorney for the Defendant

ORDER

Defendant's Motion to Modify Bail is:

Granted _____

Denied _____

Dated: _____

JUDGE/JUSTICE, UNIFIED CRIMINAL DOCKET

**U.S. District Court
District of Maine (Portland)
CIVIL DOCKET FOR CASE #: 2:22-cv-00293-JAW**

MACDONALD v. DUDDY et al
Assigned to: JUDGE JOHN A. WOODCOCK, JR
Referred to: MAGISTRATE JUDGE JOHN C. NIVISON
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 09/21/2022
Jury Demand: None
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

KINLEY MACDONALD
Mother of AJ, BM and WM

represented by **KINLEY MACDONALD**
CUMBERLAND COUNTY JAIL
50 COUNTY WAY
PORTLAND, ME 04102
PRO SE

V.

Defendant

JUDGE MICHAEL DUDDY
Individually and in official capacity

Defendant

JUDGE LOU ANN SUTTON
Individually and in official capacity

Defendant

JUDGE MULHERN
Individually and in official capacity

Defendant

JUDGE JOHN DOE 1
Individually and in official capacity

Defendant

JUDGE JOHN DOE 2
Individually and in official capacity

Defendant

JEANNE LAMBREW
*Individually and in official capacity as
representative for Maine's Department of
Health and Human Services*

Defendant

DHHS WORKER JANE DOE 1-4
Individually and in official capacity

Defendant**ATTORNEY GENERAL FRY***Individually and in official capacity***Defendant****AAG JANE DOE 5-7***Individually and in official capacity***Notice Only Party****MAINE ATTORNEY GENERAL -
PRISONER CASES**☐ Email All Attorneys☐ Email All Attorneys and Additional Recipients

Date Filed	#	Docket Text
09/21/2022	<u>1</u>	COMPLAINT against JOHN DOE 1, JANE DOE 1-4, JOHN DOE 2, JANE DOE 5-7, MICHAEL DUDDY, FRY, JEANNE LAMBREW, MULHERN, LOU ANN SUTTON, filed by KINLEY MACDONALD. (Service of Process Deadline 12/20/2022) (Attachments: # <u>1</u> Exhibit A - Inventory, # <u>2</u> Exhibit B - Motion for Enlargement of Time, # <u>3</u> Exhibit C - Order Dismissing Complaint, # <u>4</u> Envelope)(jwr) (Entered: 09/21/2022)
09/21/2022	<u>2</u>	MOTION to Proceed Without Prepayment of Fees and Costs by KINLEY MACDONALD (jwr) (Entered: 09/21/2022)
09/21/2022	<u>3</u>	MOTION for Assistance with Service by KINLEY MACDONALD (jwr) (Entered: 09/21/2022)
09/21/2022	<u>4</u>	MOTION to Appoint Counsel by KINLEY MACDONALD (jwr) (Entered: 09/21/2022)
09/21/2022	<u>5</u>	MOTION to Accept Petition "As Is" by KINLEY MACDONALD (jwr) (Entered: 09/21/2022)
09/21/2022	<u>6</u>	MOTION for Protection of Rights by KINLEY MACDONALD (jwr) (Entered: 09/21/2022)
09/23/2022	<u>7</u>	ORDER REGARDING FILING FEE. By MAGISTRATE JUDGE JOHN C. NIVISON. (MFS) (Entered: 09/23/2022)
09/23/2022		Set Deadlines: Filing Fee or Application to Proceed Without Prepayment due by 10/14/2022. (MFS) (Entered: 09/23/2022)
09/23/2022	<u>8</u>	ORDER denying <u>4</u> Motion to Appoint Counsel. By MAGISTRATE JUDGE JOHN C. NIVISON. (MFS) (Entered: 09/23/2022)
09/29/2022	<u>9</u>	ORDER denying without prejudice <u>2</u> Motion to Proceed Without Prepayment of Fees and Costs. As set forth in the Court's Order Regarding Filing Fee (ECF No. 7), Plaintiff must file a complete motion or pay the filing on or before October 14, 2022. If Plaintiff fails to file a complete motion or pay the filing fee by October 14, the Court could dismiss the matter. By MAGISTRATE JUDGE JOHN C. NIVISON. (NIVISON, JOHN) (Entered: 09/29/2022)
09/29/2022	<u>10</u>	ORDER denying without prejudice <u>3</u> Motion for Service. Plaintiff's complaint is subject to a preliminary screening in accordance with 28 U.S.C. section 1915A. If the Court, upon review, determines that Plaintiff has alleged an actionable claim, the Court will

		revisit Plaintiff's request for assistance with service. Any objection to this order shall be filed in accordance with Federal Rule of Civil Procedure 72. By MAGISTRATE JUDGE JOHN C. NIVISON. (NIVISON, JOHN) (Entered: 09/29/2022)
09/29/2022	<u>11</u>	ORDER dismissing as moot <u>5</u> Motion to Accept Petition As Is. Plaintiff's filing has been placed on the Court's docket. By MAGISTRATE JUDGE JOHN C. NIVISON. (NIVISON, JOHN) (Entered: 09/29/2022)
09/29/2022	<u>12</u>	ORDER denying <u>6</u> Motion for Protection of Rights. Plaintiff evidently asks the Court to preserve her ability to assert additional claims, including claims on behalf of minors. To the extent Plaintiff intends to file additional claims, her ability to do so will be governed by the applicable rules of procedure and the applicable law. Any objection to this order shall be filed in accordance with Federal Rule of Civil Procedure 72. By MAGISTRATE JUDGE JOHN C. NIVISON. (NIVISON, JOHN) (Entered: 09/29/2022)
10/19/2022	<u>13</u>	NOTICE of Change of Address by KINLEY MACDONALD (Attachments: # <u>1</u> Envelope)(tcs) (Entered: 10/20/2022)

Appendix H

STATE OF MAINE
YORK, ss

SUPERIOR COURT
LOCATION: ALFRED
DOCKET NO: YRKCD-CR-2022-00522

STATE OF MAINE

INDICTMENT

v.

KINLEY M MACDONALD

DOB: 04/24/1981

SIN: ME0356276

177 Bigelow St

Brighton, MA 02135

G: Female Ht: 5' 8" Wt: 200 H: Blonde

E: Blue R: White

COUNT 1: BURGLARY

**COUNT 2: RECKLESS CONDUCT WITH A
DANGEROUS WEAPON**

**COUNT 3: CRIMINAL THREATENING WITH A
DANGEROUS WEAPON**

COUNT 4: ASSAULT

THE GRAND JURY CHARGES:

COUNT 1:

17-A M.R.S. §401(1)(B)(1)

Seq No: 8481

BURGLARY

CLASS A

ATNCTN 448013B001

On or about August 05, 2022, in Parsonsfield, YORK County, Maine, **KINLEY M MACDONALD**, knowing she was not licensed or privileged to do so, did enter or surreptitiously remain in a structure of Megan Valente with the intent to commit Reckless conduct with a dangerous weapon and/or criminal threatening with a dangerous weapon and/or assault therein. **KINLEY M MACDONALD** was armed with a firearm or knew that an accomplice was so armed.

COUNT 2:

17-A M.R.S. §211(1), 1604(5)(A)

Seq No: 636WU

**RECKLESS CONDUCT WITH A DANGEROUS
WEAPON**

CLASS C

ATNCTN 448013B002

On or about August 05, 2022, in Parsonsfield, YORK County, Maine, **KINLEY M MACDONALD**, did recklessly create a substantial risk of serious bodily injury to Megan Valente with the use of a dangerous weapon, a firearm.

COUNT 3:

17-A M.R.S. §209(1), 1604(5)(A)

Seq No: 631WU

**CRIMINAL THREATENING WITH A
DANGEROUS WEAPON**

CLASS C

ATNCTN 448013B003

On or about August 05, 2022, in Parsonsfield, YORK County, Maine, **KINLEY M MACDONALD**, did intentionally or knowingly place Megan Valente in fear of imminent bodily injury with the use of a dangerous weapon, a firearm.

Appendix H

Appendix H

COUNT 4:

17-A M.R.S. §207(1)(A)

Seq No: 8382

ASSAULT

CLASS D

ATNCTN 448013B004

On or about August 05, 2022, in Parsonsfield, YORK County, Maine, **KINLEY M MACDONALD**, did intentionally, knowingly or recklessly cause bodily injury or offensive physical contact to Megan Valente.

DATED: 10/3/22

A TRUE BILL

AKC
FOREPERSON

OFFICER: Steven Broy

DEPT: York County Sheriff's Office

PROS: Justina A McGettigan JW#: 22-5535

Appendix H

P 2/2

Appendix I

Northland Legal Solutions, LLC, PA

Andrew S. Edwards, Esq.

Tel: 207-530-0102

Fax: 207-221-1765

PO Box 18190

Andrew@northlandlegalsolutions.com

Portland, ME 04112

www.northlandlegalsolutions.com

November 7, 2022

Kinley Macdonald
c/o Cumberland County Jail
50 County Way
Portland, ME 04102

In Re: State of Maine v. Kinley Macdonald
YRKCD-CR-20-00522

Dear Kinley,

Today you were scheduled for a Bail Hearing, Arraignment, and Hearing on State's Motion for Department of Health and Human Services Records (DHHS). These were scheduled for 11/4/22, but you refused to participate and turned your tablet off. The court re-scheduled these matters to today. You also refused to participate in court proceedings today and again turned your tablet off.

Because of this the court dismissed the Motion to Amend Bail that I filed. This was done without prejudice and if you wish me to (and are willing to participate in court) then it will be re-filed and scheduled. The Arraignment also was not held.

I objected to the granting of the State's Motion for DHHS records. This motion was necessary because DHHS records are usually confidential and not subject to being released to prosecutors (or defense lawyers) without a court order. The state wants these records because they believe that you have submitted letters and other materials to the court in that matter making admissions about your guilt. The state granted this motion over my objection. This means that records from the DHHS case will be reviewed by the court and then if any relevant records are found by the court, they will be provided to the prosecutor and myself for limited review.

I strongly encourage you to participate court matters. It will not be possible to have your bail reviewed without your participation.

Sincerely,

/s/Andrew S. Edwards

Andrew S. Edwards, Esq. (5267)
Northland Legal Solutions

CC: File

Appendix I

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Yor-22-329

In re Children of Kinley M.

**ORDER ON PENDING MOTIONS,
CONSOLIDATING APPEALS,
APPOINTING COUNSEL, AND
ESTABLISHING PROCEDURE FOR
APPEAL**

On October 3, 2022, the trial court entered orders terminating Kinley M.'s parental rights to her children in docket numbers YORDC-PC-2021-01 and -02. On October 7, 2022, Kinley filed a notice of appeal from those orders.

Kinley, who is currently incarcerated on several criminal charges related to these child protection matters,¹ has recently filed six documents² with this Court relevant to this appeal:

- On October 12, 2022, Kinley filed a letter containing two requests. First, Kinley requests "paperwork & instruction to make 2 separate appeals to the Supreme Judicial Court regarding a protective custody order & order denying removal of Judge & continuance." Second, Kinley requests any paperwork necessary to obtain appellate counsel.
- On October 19, 2022, Kinley filed a document titled "Motion for

¹ Kinley has been charged with burglary (Class A), reckless conduct with a dangerous weapon (Class C), criminal threatening with a dangerous weapon (Class C), and assault (Class D).

² In addition to the five documents docketed in this appeal, Kinley has filed a petition for a "writ of mandamus/habeas corpus" which is proceeding under Supreme Judicial Court docket number SJC-22-13.

Enlargement of Time to File Appeal."

- Also on October 19, 2022, Kinley filed a letter requesting the appointment of appellate counsel, paperwork to request counsel, and paperwork to file a habeas petition.
- Also on October 19, 2022, Kinley filed a document titled "Mother's Motion for Further Finding or Amendment of Judgment or New Trial." The document requests a "new trial with a new judge [and] effective assistance of counsel."
- On October 21, 2022, Kinley filed a 39-page document labeled as a copy of a petition for a writ of mandamus filed in federal court.
- Also on October 21, 2022, Kinley filed a document titled "Motion for Clarification/Conversion into Appeal," requesting that this Court accept her federal petition as her appellate argument if her motions for appointment of counsel and to enlarge time are denied.

Kinley's requests regarding her taking an appeal from various orders are moot because she timely filed a notice of appeal that allows her, subject to any limitations of law, to challenge any orders entered during the course of the child protection proceedings. Her requests for enlargement of time are moot to the extent that they request additional time to take an appeal. To the

extent that her requests for enlargements of time are intended to request an enlargement of time for her brief, the Court will grant a short enlargement of time for Kinley's brief.

Kinley's requests regarding her desire to commence a petition for a writ of habeas corpus must be denied because there are no forms or other assistance that this Court can provide her. There are no court forms for that purpose, and this Court cannot give Kinley legal advice on how to proceed. Kinley must perform her own legal research using any resources available at the facility in which she is housed or through any public Maine law library, such as the Maine State Law and Legislative Reference Library in Augusta, which provides assistance to Maine residents over the phone and by mail.

Kinley's "Motion for Further Finding or Amendment of Judgement or New Trial" requests relief that can be granted only after consideration of the merits of the appeal.³ The Court cannot vacate a trial court judgment on a procedural motion.

Kinley's request that this Court accept a copy of her petition for a writ of mandamus as her appellate argument is moot because the request is conditioned on this Court denying her "access to appellate counsel [and]/or

³ To the extent that Kinley intended her motions to be motions under M.R. Civ. P. 52(b), 59(a), or 59(e), the motion must be filed in the trial court within 14 days after entry of judgment.

expansion of time to appeal," and the Court is providing her with appellate counsel and additional time to file her brief.

That leaves Kinley's request for court-appointed appellate counsel. The Court has reviewed the record, particularly the trial court's "Order Again Appointing Standby Counsel," dated August 4, 2022, and "Order Responding to Objection to Appointment of Standby Counsel," dated September 8, 2022.

The record indicates that Kinley, who was represented by ten attorneys in the trial court, is a very difficult client. Kinley's behavior toward her attorneys has been so egregious that the trial court concluded that her actions rose to the level of forfeiture of the right to counsel. Because of Kinley's inability to work with counsel and because Kinley did not complete the required indigency affidavit for appointment of counsel, the trial court appointed Victoria J. Silver, Esq., to serve as only standby counsel at the hearing on the petition for termination of Kinley's parental rights.⁴

Because the nature of representation on appeal is different from the nature of representation in the trial court, this Court has independently considered Kinley's request for appellate counsel.

Because a fundamental right is at stake in child protection proceedings, an indigent parent has a right to appointed counsel. 22 M.R.S § 4005(2); In re

⁴ When Kinley failed to appear at the hearing on the Department's petition to terminate her parental rights, the trial court permitted Attorney Silver to act as full counsel for Kinley.

Child of Nicholas G., 2019 ME 13, ¶ 16, 200 A.3d 783. However, the right to counsel is not absolute. A court may decline to appoint new counsel if a parent has expressly waived the right to counsel or forfeited the right through their actions. In re Child of Stephen E. 2018 ME 71, ¶ 7 n.4; 186 A.3d 134.

This Court has weighed the trial court's well-reasoned concerns, Kinley's due process right to counsel, Kinley's ongoing incarceration, and the children's interests in expeditious consideration and in finality.

Although the trial court was concerned about Kinley's financial status given that she was represented by retained counsel and had failed to file an indigency affidavit, given Kinley's incarceration and the interests at stake, this Court will appoint appellate counsel. Dawn M. Corbett, Esq., has agreed to represent Kinley on appeal. However, cognizant of Kinley's behavior in the trial court, this Court will establish guidelines for that representation.

It is ORDERED as follows:

1. **Consolidation.** Kinley's appeals from orders terminating her parental rights entered in docket numbers YORDC-PC-2021-01 and -02 are CONSOLIDATED under Law Court docket number Yor-22-329.
2. **Appointment of Counsel and Scope of Representation.**

a. Attorney Corbett is appointed to represent Kinley on appeal,

subject to the conditions described below. Attorney Silver and all other attorneys who have represented Kinley must transfer their complete files to attorney Corbett on or before **November 29, 2022**. See M.R. Prof. Conduct 1:15(f). The Clerk of the Law Court is directed to send a copy of this order to each of Kinley's previous attorneys.

b. Attorney Corbett's responsibilities are to review the record, consult with the Department of Health and Human Services on the contents of the appendix, and draft an appellant's brief and any reply brief.

c. Attorney Corbett need not file any motions on behalf of Kinley and may not assist Kinley with any other matter in this Court or any other court.

d. Subject to paragraph e. below, Attorney Corbett must discuss the contents of the appellant's brief with Kinley reasonably in advance of filing the brief but must argue only those issues that she considers to be meritorious. As indicated below, the Court will provide Kinley with an opportunity to personally file a supplemental brief containing any additional arguments that she wishes to make.

e. If there is a breakdown in the attorney-client relationship, Attorney Corbett may notify the Clerk of the Law Court and complete the drafting of the brief (and any reply brief) without further consultation with Kinley.

f. Unless this Court subsequently orders otherwise, Kinley may personally (and not through Attorney Corbett) file any motions or requests regarding her appeal directly with the Court. She must either (1) send copies to counsel for the Department of Health and Human Services, Attorney Corbett, and guardian ad litem Steven M. Carey, Esq., and indicate in her motion that she has done so, or (2) certify that she is unable to provide copies and request that the Clerk of the Law Court serve the other parties with copies.

3. Briefing Schedule.

- a. The Department of Health and Human Services must file the appendix on or before **December 13, 2022.**
- b. Attorney Corbett must file the appellant's brief on or before **January 2, 2023.**
- c. Kinley may personally file a supplemental brief on or before **January 24, 2023,** containing any additional arguments that Attorney Corbett did not include in the primary brief. Kinley need

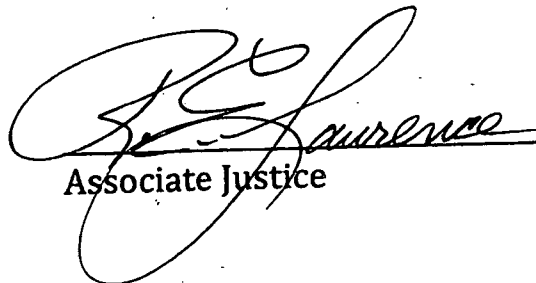
not follow the requirements of the appellate rules for her supplemental brief, except that the brief may not exceed 40 pages and the pages may have writing on only one side. The brief may be handwritten and need not be bound, and Kinley need file only a single copy. The Clerk of the Law Court is directed to send copies of the supplemental brief to the parties if Kinley is unable to do so.

d. The Department must file its appellee's brief on or before **February 21, 2023.**

4. Remaining issues. Except as otherwise ordered above, all requests that Kinley has made in the documents that she has filed to date are **DENIED** to the extent that the Court has jurisdiction to act on them and are otherwise **DISMISSED**.

Dated: November 15, 2022

For the Court,


Associate Justice

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Clerk's Office
Maine Supreme Judicial Court

Appendix K

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MARIA R. HAMILTON
CLERK

JOHN JOSEPH MOAKLEY
UNITED STATES COURTHOUSE
1 COURTHOUSE WAY, SUITE 2500
BOSTON, MA 02210
(617) 748-9057

December 8, 2022

Kinley MacDonald
50 County Way
Cumberland, ME 04101

In re Kinley MacDonald
Case No. 22-1319

Dear Kinley MacDonald,

I am writing to acknowledge your letter postmarked November 17, 2022, in which you requested a hard copy of your previously filed petition for writ of mandamus. The fee for copies of case documents, according to the Court of Appeals Miscellaneous Fee Schedule issued in accordance with 28 U.S.C. §1913, is fifty cents per page copied. In your above captioned mandamus case, the amended petition for writ of mandamus that you filed on April 29, 2022 contains 98 pages, which would cost \$49.00 to reproduce, and the exhibits that you filed with your amended petition on April 29, 2022 are 1,507 pages, which would cost \$753.50 to reproduce. The fee to order a copy of those documents, totaling 1,605 pages in length, would come to \$802.50. If you would like to order copies of those filings, please send a letter, specifying the document(s) you seek and enclosing a check or money order in the appropriate amount, made payable to "Clerk, US Court of Appeals, First Circuit."

If in the alternative, you would like a copy of a different document(s) filed in your above captioned mandamus case, please send another letter to the Clerk's Office identifying the document(s) you seek and I will respond with the cost to produce a copy of them. As a courtesy, I have enclosed for your reference a copy of the docket report from your above captioned mandamus case. I hope this information is helpful.

Sincerely,

Maria R. Hamilton, Clerk

Enc.

Appendix K
p. 1/1

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Yor-22-329

In re Children of Kinley M.

ORDER

Pending before the Court are

- a motion of Seth Berner, Esq., for permission to review the file;
- a second motion by Kinley M. for the appointment of counsel; and
- a request by Kinley M. for "a copy of the Rules for Appeal . . . [.] especially in regards to federal questions and violations of constitutional rights."

The Court has not waited for any responses to the requests.

Because it does not appear that any personal legal interest of Attorney Berner will be at stake in this appeal, and because any information presented about Attorney Berner will be confidential, his motion for access to the file is DENIED.

Because this Court has already appointed counsel for Kinley M. on appeal, the motion to appoint counsel is DISMISSED as moot.

Because Kinley will have the assistance of counsel on appeal, and because the Court does not provide legal research materials to parties on appeal, the request for a copy of any rules or other legal materials is DENIED.

Appendix L

Dated: Nov. 21, 2022

For the Court,

Cathleen Conners
Associate Justice (Conners)

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CLERK'S OFFICE
Quebec Superior Judicial Court

Appendix L

o. 2/2

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Cum-22-327

Kinley MacDonald

v.

**ORDER DENYING MOTION TO
RECONSIDER DISMISSAL OF
APPEAL**

Jeanne Lambrew et al.

Kinley MacDonald has filed a motion to reconsider this Court's order of November 7, 2022, dismissing her appeal from an order of a single justice dismissing her claims for declaratory judgment and injunctive relief.

MacDonald first argues that she was "never provided notice of Decision by the Supreme Judicial Court but was sent the decision by the trial court" while she was in jail. This argument must fail, for two reasons.

First, the Clerk of the Court *did* send notice of the decision to MacDonald. The Clerk mailed the decision to MacDonald's address of record on August 16, 2022. The following day, MacDonald was arrested.¹ That MacDonald did not receive the notice because she was arrested does not make the already-mailed notice ineffective.

Second, MacDonald states that she was sent the decision by the trial court. An enlargement of time of more than 21 days after the expiration of the

¹ The Court takes judicial notice of the docket record in *State v. Kinley MacDonald*, York County Unified Crim. Dkt. No. CR-2022-522, which indicates that the arrest warrant for Kinley was executed on August 17, 2022.

original time to appeal² is available only where the aggrieved party “did not otherwise learn of the entry of judgment.” M.R. App. P. 2B(d)(2)(B). Because MacDonald “otherwise learn[ed] of the entry of judgment,” she is not entitled to an enlargement of time to file her appeal more than 21 days after the expiration of the original time in which to appeal.

MacDonald also argues that “[j]ust because the Court received a notice of appeal on 10/7/22 does not mean that is when [MacDonald] filed the notice,” arguing that a filing by a prisoner is deemed filed when deposited with the jail authorities. This argument, too, fails for two reasons.

First, Maine has not adopted the “prisoner mailbox rule” for appeals to this Court, but only for petitions for judicial review under M.R. Civ. P. 80C directed to the Superior Court. *See Martin v. Dep’t of Corrs.*, 2018 ME 103, ¶ 21, 190 A.3d 237 (“[W]e adopt the prisoner mailbox rule for any unrepresented prisoner *whose Rule 80C petition . . . arrives at the clerk of court after that deadline has expired.*” (emphasis added).)

Second, even if this Court were to adopt the “prisoner mailbox rule,” MacDonald does not state when she deposited the mail with jail authorities and therefore has not made the requisite showing that she deposited it with them in sufficient time for it to timely reach the Clerk’s office. *See id.*

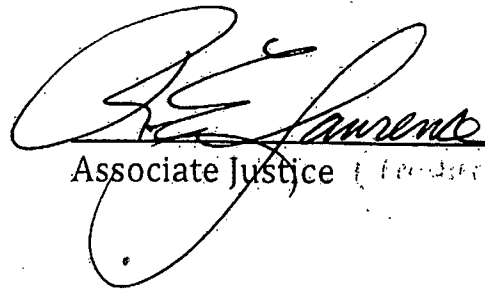
² MacDonald’s notice of appeal was filed 31 days after the expiration of the original time to appeal.

(requiring that a filing is considered timely filed with a court only if it is deposited with corrections officials "at least three days before the last day on which [it] may be timely filed" with the court).

The motion is therefore DENIED. MacDonald's appeal remains dismissed.

Date: November 22, 2022

For the Court,


Associate Justice (10-2022)

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Clerk's Office
Maine Supreme Judicial Court

Appendix N

Northland Legal Solutions, LLC, PA

Andrew S. Edwards, Esq.

Tel: 207-530-0102

PO Box 18190

Andrew@northlandlegalsolutions.com

Portland, ME 04112

www.northlandlegalsolutions.com

December 5, 2022

Kinley Macdonald
c/o Cumberland County Jail
50 County Way
Portland, ME 04102

In Re: State of Maine v. Kinley Macdonald
YRKCD-CR-20-00522

Dear Kinley,

The motion to withdraw I filed has been granted and the court has appointed a new attorney to represent you, his name is David Mooney and his phone number is 603-828-8474. Please direct all future questions and concerns to him. I have already forwarded him a copy of my file.

As your case has reached a final result, I am closing your file and my representation of you is at an end. Northland Legal Solutions will maintain your file for a period of 8 years after which, it will be destroyed. If you wish for copies of anything in your file you must write to Northland Legal Solutions and request it.

Sincerely,

/s/Andrew S. Edwards

Andrew S. Edwards, Esq. (5267)
Northland Legal Solutions

CC: File

Appendix N

P. 1/1

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Yor-22-329

In re Children of Kinley M.

ORDER

In response to this Court's procedural order dated November 15, 2022, Kinley M. has filed a motion titled "Motion to Reconsider / Notice of Appeal."

As an initial matter, the procedural order that Kinley challenges provides Kinley with two options regarding service of any motions: Kinley must either (1) send copies of her motion to the other parties and certify in her motion that she has done so, or (2) certify that she is unable to provide copies and request that the Clerk of the Law Court serve the other parties with copies. The present motion includes, after the signature line, the request, "Please service parties." In the body of the motion, Kinley asserts that she "is not equipped with the resources described by the Court to file her own motions from jail." The motion does not sufficiently certify that Kinley is *unable* to provide copies to the other parties. Although the Court accepts this motion as filed, Kinley is cautioned that she must, in the future, utilize one of the two service options established by this Court's procedural order. If Kinley does not send copies of her motion to the other parties she must provide more information to this Court as to why she is unable to serve them.

Regarding the substance of Kinley's motion, Kinley challenges actions of the trial court, states that this Court is mistaken to assume that she has "access to any library or books or has the time and training to represent herself" and that "limiting counsel and counsel's time to meet with appellant mother is an error." Kinley requests that she "be allowed the time her counsel needs to work effectively and efficiently." Finally, Kinley requests that, in the alternative, the Court accepts her motion for reconsideration as a notice of appeal from this Court's procedural order.

To the extent that Kinley's motion challenges any actions of the trial court, she may address those challenges in her brief or any supplemental brief if those issues are properly on appeal. Otherwise, she must address any challenges to the trial court.

This Court's procedural order carefully established a framework for appellate counsel to represent Kinley on appeal. The order does not prevent counsel from filing appropriate motions on Kinley's behalf. Her argument that she is unable to represent herself is moot.

Additionally, it is unclear why Kinley asserts in her motion that her time with counsel is limited and should be enlarged. The procedural order has already enlarged the briefing schedule. In other words, Kinley has already been permitted more time than is standard in an appeal from an order

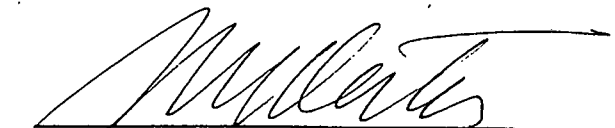
terminating parental rights which is expedited by rule and statute. 22 M.R.S. §4006 (2022); M.R. App. P. 7(b)(1)(B).

Finally, the rules of appellate procedure do not permit any appeal from an order of this Court.

It is therefore ORDERED that the motion is DENIED.


Dated: Dec. 6, 2022

For the Court,


Associate Justice (Horton)

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 Clerk's Office
Maine Supreme Judicial Court

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Cum-22-327

Kinley MacDonald

v.

ORDER DENYING MOTION

Jeanne Lambrew et al.

Kinley MacDonald has filed a motion titled "Motion to Correct Error / Notice of Appeal to Dismissal of Appeal." The motion does not contain a certificate of service. However, the Court accepts the motion as filed.

This appeal was dismissed as untimely on November 8, 2022. MacDonald moved to reconsider that dismissal on November 18, 2022. That motion was denied by order dated November 22, 2022.

MacDonald's motion does not persuade the Court that it erred in the dismissal of her appeal or in denying her motion to reconsider the dismissal of her appeal. Even if she was arrested in Massachusetts on August 8, 2022, before the Executive Clerk mailed the underlying order to her, the fact remains that the Clerk sent the order to her last known address, and that is all that the rule requires. See M.R. App. P. 2B(d)(2) (permitting an enlargement of time of greater than 21 days after expiration of original 21-day appeal period only where the clerk "fail[s] to send notice of the entry of judgment to the moving party").

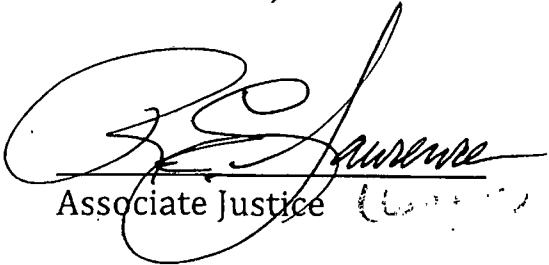
Regarding MacDonald's request that her motion be treated as a notice of appeal, the Rules of Appellate Procedure do not permit an appeal from any order of this Court.

It is therefore ORDERED that MacDonald's motion is DENIED to the extent that this Court has jurisdiction to act on it and otherwise DISMISSED for want of jurisdiction.

Date: December 6, 2022

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Clerk's Office
Maine Supreme Judicial Court

For the Court,


Associate Justice

Appendix Q

CASREF

**U.S. District Court Northern District of Indiana [LIVE]
USDC Northern Indiana (South Bend)
CIVIL DOCKET FOR CASE #: 3:22-cv-01002-DRL-MGG**

MacDonald v. Duddy et al
Assigned to: Judge Damon R Leichty
Referred to: Magistrate Judge Michael G Gotsch, Sr
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 12/07/2022
Jury Demand: Plaintiff
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Discovery Deadline:
Dispositive Motion Deadline:
Expert Discovery Deadline:

Settlement Conference:
Final Pretrial Conference:
Trial Date:

Plaintiff

Kinley MacDonald
also known as
Kinley Mary Angela MacDonald
also known as
Mary Angela MacDonald
also known as
Mary Angela Johnson

represented by **Kinley MacDonald**
Cumberland County Jail
50 County Way
Portland, ME 04102
PRO SE

V.

Defendant

Michael Duddy
Judge, sued in individual and official capacities

Defendant

LouAnn Sulton
Judge, sued in individual and official capacities

Defendant

Robert Mulhern
Judge, sued in individual and official capacities

Defendant

John Doe 1
Judge, District Court, Maine York County, sued in individual and official capacities

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Appendix A**Defendant****John Doe 2***Judge, Indiana Probate Court, South Bend,
sued in individual and official capacities***Defendant****Jeane Lambrew***DHHS, Maine, sued in individual and
official capacities***Defendant****Aron Frey***Attorney General State of Maine, sued in
individual and official capacities***Defendant****Martha-Hallisey Swift***AAG, State of Maine, sued in individual
and official capacities***Defendant****Maura Keaveny***AAG, State of Maine, sued in individual
and official capacities***Defendant****Jesse Cummings***State of Maine, DHHS, sued in individual
and official capacities***Defendant****Megan Thomas***State of Maine DHHS, sued in individual
and official capacities***Defendant****Tara-Lynn Picard***State of Maine DHHS, sued in individual
and official capacities***Defendant****Supreme Judicial Court***of Maine, sued in individual and official
capacities***Defendant****Lawrence***Judge, Supreme Judicial Court of Maine,
sued in individual and official capacities*Appendix A 2/32

Appendix Q**Defendant****John Doe 3***Judge, Supreme Judicial Court of Maine,
sued in individual and official capacities***Defendant****Kellie Jo Deardorff***State of Maine DHHS, sued in individual
and official capacities*

Date Filed	#	Docket Text
12/07/2022	<u>1</u>	PRO SE COMPLAINT with Jury Demand against Jesse Cummings, Kellie Jo Deardorff, John Doe 1, John Doe 2, John Doe 3, Michael Duddy, Aron Frey, Maura Keaveny, Jeane Lambrew, Lawrence, Robert Mulhern, Tara-Lynn Picard, LouAnn Sulton, Supreme Judicial Court, Martha-Hallisey Swift, Megan Thomas, filed by Kinley MacDonald. (Attachments: # <u>1</u> Envelope)(No filing fee or IFP received)(File stamped copy with case number sent to MacDonald)(kmt) (Entered: 12/08/2022)

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Civil Action No.

3:22-cv-1002

Kinley MacDonald

-FILED-

DEC - 7 2022

At
GARY T. BELL, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

Judge Michael Duddy

Judge Lou Ann Sutton

Judge Robert Mathern

Judge John Doe 1, District Court, Maine York County

Judge John Doe 2, Indiana Probate Court, South Ben

Seane Lambrew, DHS, Maine

Aron Frey, Attorney General State of Maine

AAG Martha-Hallisey Swift, State of Maine

AAG Maura Heavens, State of Maine

Jesse Cummings, State of Maine DHS

Megan Thomas, State of Maine DHS

Tara-Lynn Picard, State of Maine DHS

Supreme Judicial Court of Maine

Judge Lawrence, Supreme Judicial Court
of Maine

Judge John Doe 3, Supreme Judicial Court
of Maine

Kellie So Deardorff, State of Maine DHS

all defendants such in individual and official
capacities

1. Jurisdiction and Venue

i) This is a civil action authorized by 42 U.S.C. Section 1983, 28 U.S.C. § 1391 (b), 28 U.S.C. § 2254, 28 U.S.C. § 1362, 28 U.S.C. 1651 (a) to redress and intervene against the deprivation, under the color of law by confining an inferior court to a lawful exercise of it's prescribed jurisdiction and realign with the laws and state Constitutions as well as the Constitution of the United States. Plaintiff seeks declaratory relief pursuant to 28 U.S.C. Section 2201 and 2202. Plaintiff seeks injunctive relief according to 28 U.S.C. Section 2283 and 2284 and Rule 65 of the Federal Rules of Civil Procedure as well as 28 U.S.C. 1651 (a). The court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. Section 1362.

ii) The Northern District of Indiana is an appropriate venue under 28 U.S.C. Section 1391 (b)(2) because it is original jurisdiction of underlying cases, jurisdiction where Mother and her 3 minor children are residents at all relevant times of this case.

II Plaintiff

3) Plaintiff, Kinley MacDonald, aka Kinley Mary Angela MacDonald, Mary Angela MacDonald and Mary Angela Johnson, is Mother and primary caregiver to three minors, Alana [REDACTED], Bodie M. [REDACTED], and Waddy M. [REDACTED].

III Defendants

4) Judge Michele Duddy, Judge Lou Ann Sullivan, Judge Robert Mulhern, Judge John Doe 1 are District Court Judges for York County Maine, responsible for the rights of Plaintiff and her children according to Maine Revised Statutes, UCCSAA, the state and US Constitution.

5) Judge John Doe 2, is a Judge or Magistrate for the State of Indiana Probate Court in South Bend, Indiana, responsible for the rights of Plaintiff and her children according to Indiana Codes and statutes, UCCSAA, the state and U.S. Constitutions.

6) Jeanne Lambrew is head of the DHHS (Department of Health and Human Services) which oversees the "CPS" (Department of Families and children), responsible for the oversight and conduct and restraint of state CPS workers

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7) Aaron Fry, Attorney General of Maine represents the State agency DHS voluntarily, and is in charge of supervising and training of Assistant Attorney Generals (hereafter "AAG's")

8) AAG Martha Halsey-Swift and Maura Heaverty are actors of the state, having knowingly and intentionally assisted in the irreparable harm of separating children from their mother into foster abuse without lawful or truthful reasons; inciting fraud upon the court.

9) DHS workers Sessee Cummings, Megan Thomas, Kellie Joanne Deardoff, Tara-Lynn Picard are CPS workers of the State of Maine with supervised state licensure or social worker licensure-prohibited from making and evaluating mental health by license and laws of the State of Maine.

10) Judge Lawrence, Judge John Doe 3, are ~~the~~ Justices of the Supreme Judicial Court of Maine, the Court of last resort in the State of Maine, charged with oversight of Defendants Buddy, Sutton, Mulhern, John Doe 1, of Judicial abuses and errors, as well as the rights of Plaintiff and her children according to Maine Revised Statutes, UCCJEA, and the State and U.S. Constitutions.

11) Each individual is sued individually and in his/her official capacity. At all times mentioned in this complaint, each defendant acted under the color of state law, in direct abuse of discretion, or in absence of jurisdiction, and/or in absence of all jurisdiction.

IV) Facts

12) Plaintiff restates and realleges all facts brought in state case, ~~the~~ Petition for Declarative Judgement, ^{Supreme} ~~State~~ Judicial Court of Maine docket No. Cum-22-327, Writ of Mandamus to Court of Appeals, First Circuit Docket No. 22-15193, U.S. District Court for the State of Maine 2:22-cv-00293-SAW, Writ of Mandamus - (Unknown case No.) U.S. Court of

appeals first circuit, but summarizes from memory below

- 13.) Plaintiff (hereafter: "Mother") and children resided in St. Joseph County, Indiana where children's care and custody cases were opened or transferred to the jurisdiction by "home state" of the children. Children attended school and sought pediatric care regularly in this jurisdiction at Pediatric Associates of Michiana.
- 14.) Plaintiff and children temporarily re-located to the state of Maine and received Domestic Violence (DV) resources, but returned to ~~the~~ Indiana regularly and Plaintiff re-married in Sept 2020 in South Bend.
- 15.) Plaintiff did endure some DV from her husband. The hospital notified Indiana CPS whom investigated.
- 16.) Plaintiff and children separated from husband and returned to Maine; reconciling, but staying in contact/cooperating with Indiana law enforcement and CPS.
- 17.) Indiana CPS, with Mother's permission, requested a

"courtesy interview" from Maine CPS. Maine CPS declined the interview. Indiana closed the case as "Unsubstantiated." Maine CPS opened their own case in Sept. 2020.

13.) Mother was never made aware she was under investigation by Maine CPS, but went to the ~~to~~ police station with children and their medical records when CPS called Mother to accuse her of "medical neglect." CPS never showed to meet Mother and children, October 2020.

14.) Mother and children returned to Indiana

15.) Mother, children and husband visited Maine in January 2021..

16.) Maine CPS filed a fraudulent hearsay petition in attempts to remove children in Maine.

17.) Judge Mulhern accepted the petition on prohibited evidence without notice to Mother & opened a protective custody case 1/4/21.

18.) Judge Duddy intervened from a different Court to appoint counsel and warn Mother

she could lose custody of her children "by default."

19) Mother directed appointed counsel to dismiss the case and quash petitions. Appointed counsel refused and counseled Mother in front of DHS. Mother demanded her withdrawal.

20) Without counsel, Mother returned to Indiana to resolve the matters (unaware Indiana CPS had closed their investigation). Mother acquired protective orders against her husband, filed for divorce, moved out, and allowed herself and her children to be interviewed by law enforcement and CPS. 6 weeks later, the family returned to Maine to move from Maine.

21) The Child protective custody case was statutorily required to be dismissed, but was reportedly "continued" violations of Maine Statute

22) Mother was under surveillance - Alana was doing Covid internet school while Mother rode bikes outside with her toddlers. A secret ex-parte hearing took

place and Judge Puddy ordered the children removed from her custody 3/3/21

23) Mother, after school, allowed Alana to babysit while she ran to the store. Mother was pulled over just to serve her by police. Mother returned to her home & was told she could not be home or she would be arrested. Mother calmly disagreed and demanded a warrant and was then arrested falsely.

24) The police stormed the home in fall riot gear - terrifying the children into hiding. When found, the children were taken to the E.R., given a "wellness exam" re-vaccinated & sent to foster care unknown to Mother.

25) Judge Mulhern conducted bond/bail conditions while Mother was muted on the zoom. Judge Mulhern set PR bail, but intervened that Mother could not see or contact her children without DHS discretion; prohibiting Mother and children the mandated visits within 7 days & inhibiting return of children according to Maine Statutes.

26) Mother filed a motion to reconsider the judgment

taking her children, it was rejected by the clerk according to GAL. Mother asked appointed counsel to appeal and counsel refused.

22) Mother was enduring great emotional distress, signed all releases & did everything to get her children home.

23) Summary preliminary hearing had to be continued per bail/bond conditions, but, while "hearsay" is allowed at this hearing and only at this hearing, No jurisdiction allowed for the children to remain in state custody. Judge Sutton stated Mother had exposed the children to DV, and, by hearsay of hearsay (prohibited evidence) was acting crazy in Indiana according to social workers that were not there and are prohibited by license and law to make such assessments. Mother asked appointed counsel for an appeal, but counsel refused.

24) Judge Paddy met with the attorneys without Mother's knowledge or consent.

T. Dan D. Baker, Esq. p. 13/32

deliver the threats that Mother should get into an agreement with the state or his findings would be similar to the Summary preliminary hearing and more harsh. Maine state law prohibits the "hearsay" in any other aspect of a child protective custody case as well as the orders based on the prohibited evidence. Appointed counsel, however, advised Mother to do what the judge said, leading Mother into what she was told was a "reunification agreement."

30.) At the "Seopardy" trial, Mother was repeatedly threatened by Judge Duddy to enter into an agreement with the state or he would make it more difficult for mother to reunify. Mother's agreement, under extreme duress and confusion was. Mother admits she exposed the children to her husband whom was abusive to her (not the children), but she left the relationship in February of 2021. (over a month prior to the children being removed. Mother agreed to a neuropsychological evaluation, DV participation, and counseling.

a schedule for visits was established. at this time Mother notified the court she had only seen the children twice in 2 months. Judge Duddy promised all efforts to reunify, but made no specific requirements.

31.) Just after the hearing, Mother's ^{next} visit was cancelled. Mother demanded appointed counsel to address this violation with the court. Counsel was reluctant. Mother demanded she file a motion or withdraw. Mother's counsel filed a Motion to withdraw and replace counsel.

32.) A hearing took place. Mother explained she liked her attorney but would not compromise time away from her children. Judge Duddy refused to address visitation, disparaged Mother, and told her she could not have counsel other than appointed stand by counsel.

33.) In haste, Mother hired the first lawyer that agreed to help Mother appeal the abuse of discretion. That lawyer failed.

to obtain any records or timely file an appeal. Mother demanded him to withdraw.

34) Unbeknownst to Mother, Judge Duddy had manipulated the "Agreement" into a "Jeopardy Order" and Findings, stating that Mother "agreed" that she had abused/neglected her children, suffered undiagnosed mental health disorders, and agreed to the adoption of her children; an order Mother would not agree to even if a gun was to her head. This order was not distributed to Mother.

35) Judge Duddy submitted 2 orders to the record only, stating Mother had disqualified herself according to State v. Nibet, 134 A. 840 (Me. 2016), which, contrary to Duddy's purposes, describes how Duddy's actions were error and reversible.

36) Without having Duddy's ridiculous Orders, Mother motioned for new counsel. Duddy responded by stating Mother's motion was "premature," that Duddy provided a "pathway"

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for earning her right to counsel back and provided standby counsel's name and contact info.

37.) Appointed Counsel agreed to fully represent Mother, then changed her mind.

38.) Mother had a judicial review upcoming the same date as long awaited neuropsychological evaluation. Without counsel, Mother filed Emergency Motion to Continue, along with other Motions.

39.) During "Judicial Review" Duddy acknowledged Mother had filed Motions but refused to hear them prior to the hearing. The hearing commenced on other issues Mother had not been provided with notice for. Duddy was made aware of this and proceeded anyway. Duddy stated Mother was trying to somehow manipulate the process by being absent (see transcripts 7/30/21, Bar Complaint against DR. Maura Heavens, Paula Caponi, Stephen Swartz)

40) Mother was only informed a hearing took place without her by a proposed Seopardy order emailed to Mother AFTER the hearing (instead of the mandated 10 days prior).

41) Mother filed Motion to object to the Order and asked for oral arguments. Hearing scheduled.

42) Foster abuse started to occur with clear evidence of a black eye on Wlady, M [REDACTED], an infected scratch on the foot of Brodie M [REDACTED], and untreated depression with Alana S [REDACTED]. No help to Mother from police or DHS to resolve.

43) Because of the abuse, Mother hired the next attorney in haste. After Mother retained new counsel, new counsel went on vacation, became unreachable, and did nothing to assist the family. Mother fired this attorney over the misconduct & proceeded pro-se, submitting records of Foster abuse and stated misconduct on her own.

Appendix A

44). Unbeknownst to Mother, Duddy had scheduled standby Counsel's motion to withdraw to be heard a month after the next Judicial review, requiring Mother be pro se.

45). Pro Se, Mother was surprised at all of the proceedings taking place at the judicial review besides the scheduled judicial review. Mother argued jurisdiction and was silenced and verbally abused and humiliated by Judge Duddy- calling her "irrational" and other things related to mental illness when Mother had submitted to the court her neuropsychological evaluation specifically ruling out these mental health accusations. Duddy threatened Mother again to accept Jeopardy order suggested by the state or suffer less reunification with her children, a trial to find new evidence against her, and findings he was already prepared to make; Mother was disabled and unable to provide financially which was jeopardy. Mother declined to accept any more offers or threats. Judge Puddy refused the mandated judicial review, set a hearing for December, and appointed Counsel.

46.) Mother's children were separated, Mother continued to be denied access to her children and they received no help from the State. Mother suffered a panic attack, mistook it for a heart attack, said goodbyes, but recovered.

47.) A family team meeting had to occur before Mother could see her children. With counsel, the state refused to discuss/describe the "Jeopardy" or threat that Mother posed to her children to be so limited from contact. State refused to discuss.

48.) In December, at the "Contested Judicial Review," Mother was informed of the initial Jeopardy Finding / Order that erroneously resulted from the "Agreement." Daddy had threatened Mother into making - Mother testified that was not something she agreed to in anyway and had caused problems/confusion between her and her appointed and hired counsel in the past. Mother's experts testified to Mother's evaluation documents. Mother testified she had moved to Massachusetts and needed her

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Case transferred. On cross exam, Mother was questioned, as Daddy promised to be questioned on things unrelated to Seopardy of the children - questioning Mother if she was a "good person" and demanding Mother name the fathers of the children. Mother objected to relevance and refused to recall the names. Daddy refused to continue the hearing.

4a.) Daddy created an erroneous order with findings that did not result from expert testimony and threatened Mother's counsel. Mother's attorney argued with Daddy and withdrew on those reasons alone. Mother's counsel filed an appeal on Mother's behalf.

50.) Mother's counsel was allowed to stay on, but the appeal on abuse of discretion was denied on grounds of "Interlocutory". Mother and counsel disagreed on how to proceed with Daddy's misconduct. Counsel had to withdraw. It was a cordial disengagement.

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51) Pro Se, Mother sought intervention from the Supreme Judicial Court of Maine as well as the First Circuit Court of Appeals. For declarative judgement, and injunction. First Circuit denied writ of Mandamus for Mother's lack of legal training on when and where to file the extra-ordinary writ.

52) Mother had asked for a stay in trial court from the Maine Supreme Judicial Court, but a hearing was scheduled for April 2022. Mother's subpoenas were quashed. Mother hired an attorney who called to request a telephonic appearance which was denied. Mother was denied another judicial review and a termination of parental rights was scheduled. "Standby counsel" filed notice of full appearance. After the "hearing" commenced

53) New Counsel and Mother agreed on an appeal and other ways to proceed, but new counsel never filed his appeal and did not consult with Mother on the changes in strategy. This caused a rift, but Mother was willing to work it out if Counsel continued as

previously agreed Counsel could not commit to the appeal and Mother & Counsel cordially disengaged.

54.) Former counsel emailed documents of transcripts from the "Jeopardy Order / Reaffirmation agreement." The transcripts were different than what Mother recalled and this had happened before (9-30-21 Transcripts. Mother ~~was~~ contacted ~~after~~ the court reporting agency that stated she only transcribed the audio that was sent to her and she forwarded the audio files to Mother.

55.) Mother sent the audio files to a forensic audio specialist. The specialist stated the audio record was "spliced" or altered.

56.) Mother was in the process of finding new counsel to hire.

57.) The children continued to suffer abuse and neglect in foster care. The unsanitary conditions and dangerous dogs were previously reported, but continued. Now the children were reportedly being left home

alone and being pawed on others. Alana's mental health continued to decline and the unsanitary conditions surrounding the foster home was attracting bears.

58.) Mother visited the foster home and witnessed the dangerous conditions.

59.) The ^{and foster mother} state have falsely and maliciously accused Mother of Burglary and threatening while the foster mother's own statements and surveillance footage are exculpatory.

60.) Judge John Doe I of Biddeford District Court intervened (same court as child protective cases) when the criminal case is docketed in Maine Superior Court, Alfred, ME. This judge heard hearsay allegations from the State unsupported by any facts, included people of DHS that were not parties. Judge John Doe I of Biddeford set bail/bond at \$100,000.00 and included conditions Mother not have any contact with a long list of non parties and ~~later~~ including Mother's children. 2 of whom, were not even home when Mother investigated the property. This Judge appointed ineffective counsel, ^{24/32} during a de novo

review to Mother since.

61.) Mother received partial paperwork from "standby counsel" that Puddy appointed for a termination of parental rights hearing that included a response from former counsel objecting to an order Puddy and Judge John Doe of St. Joseph County had come up with regarding UCCSAA jurisdiction. Puddy had allowed Mother until a certain date to file an objection, then forwarded the order to Mother's former counsel after that objection date had expired. Mother's former counsel requested an expansion of time to file an objection and also objected to the validity of the order.

62.) Mother notarized temporary guardianship to her family in Indiana and sent 2 copies to Maine trial court and St. Joseph County Probate Court.

63.) Mother demanded emergency motion to reconsider to the St. Joseph County Probate Court.

64) Mother was provided notice that her petition to Declarative Judgement + dismissal of case was Denied based on the altered transcripts + setting forth an erroneous review standard of "preponderance of evidence" that Mother had "mental illness" and, was going to be assumed that mental illness was automatically jeopardy to the children when the Supreme Court demands "at least clear and convincing evidence" Santosky v. Kramer 455 U.S. 745, at 268-71, (1982).

65) Mother filed numerous Emergency Motions in trial court for full appointment of counsel, continuances to Dismiss the case, to transfer the case, to remove the Judge. All denied.

66) Mother petitioned the District Court of Maine for immediate stay to correct all issues fundamental to the case prior to the termination hearing. That petition was filed on 9/23/22, but no stay or intervention was granted; the court took precedent issues of filing fees before the risk of irreparable harm to the children. Am. v. 126/32

67.) A termination hearing took place on 9/28/22 when Mother was too ill to attend & later hospitalized. The trial took place without her.

68.) After hospitalization, Mother filed Motion to reconsider & filed notice of appeal & made every effort to hire counsel in Maine & Indiana for assistance.

69.) Mother was transported to a different jail without warning & her legal mail & access to the court was censored unlawfully (see MacDonald v Cumberland County Sheriff.)

70.) The state court of last resort, State Supreme Judicial Court set a schedule for appeal, and limited Mother's appointed counsel based on Paddy's slanderous and extrajudicial findings and orders and demands Mother semi-represent herself.

VI Legislation Claims

n1) Mother has a fundamental right to be free from state intervention + seizure of her children protected by the First, Fourth, and 14th Amendments. The circumstances of being arrested do not prohibit these connections to her children by guarantee of these same Amendments but also included are the 5th, 6th, and 8th amendments. The Uniform Child Custody Act (UCCSEA) prohibits the State of Maine in both Maine and Indiana from Kidnapping, beautiful, healthy, brilliant children into foster care, and by threats and bail/bond conditions, refusing a Mother her due process, and all other Constitutional rights to challenge the "findings", the standards, the abuses of process, lack of jurisdiction and irreparable harm being inflicted as result simply because that is the way one state chooses to deviate from law and morality.

n2) Mother has tried to hire counsel for this petition, but respectfully requests allowances for unintentional errors given the life long harms at risk for these children, whom are absolutely worth the time and attention. Plaintiff has no plain, adequate, or complete defense to her claims.

Wrongs described herein. Plaintiff has been & will continue to be irreparably injured, but so will the children by the conduct of the defendants unless this court grants the declaratory and injunctive relief which plaintiff seeks.

V Prayer for Relief

Wherefore, plaintiff respectfully prays that this court enter a judgement granting plaintiff:

73) A declaration that the acts and omissions described herein violated plaintiff's rights under the Constitution and laws of the United States,

74) A preliminary & permanent injunction ordering the defendants (named above) to immediately stay any further proceedings to restrict contact between Mother & children via bail/bond conditions, stay any further proceedings to terminate parental rights of Mother, immediately declare Indiana as jurisdiction for matters related to the children & immediately return children to Indiana.

With their family until mother resolves
+ is exonerated from these false allegations
of crimes (aggravated) appoint counsel in this
case for mother and children.

15) A jury trial on any triable issues.

16) Plaintiff's + children's costs in this suit.

17) Any additional relief this court deems
just, proper, and equitable.

Dated 11/25/22

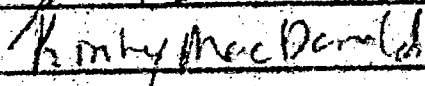
Respectfully Submitted,
Kinley MacDonald
a/o Cumberland County Jail

c/o Matt Anderson, Esq.
4100 Edison Lakes Pkwy
Suite 100
Mishawaka, IN 46545

Verification I have read the foregoing
complaint + hereby verify that the
matters alleged therein are true, except
as to matters alleged on information and
belief as to those I believe them

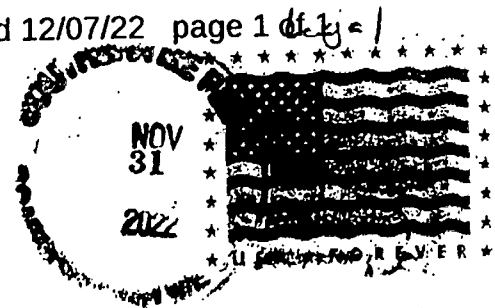
to be true and correct

Executed on 11/25/22


Kimberly MacDonald

Winty MacDonald
50 County Way
Portland, ME 04101 C3

POSTAGE DUE



THIS CORRESPONDENCE IS FROM
THE CUMBERLAND COUNTY JAIL
OPERATIONAL FACILITY

United States Courthouse
Northern District of Indiana - South Bend
204 S. Main St.
South Bend, IN 46601

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Appendix Q

THE LAW OFFICE OF DAWN M. CORBETT, PA

PO Box 68
Ellsworth, ME 04605
207-460-4562 Phone

Admitted in Maine and Massachusetts

January 2, 2023

Kinley MacDonald
CCJ
50 County Way
Portland, ME 04102

Re: In Re: Children of Kinley M.
Docket No. YOR-22-329

Dear Kinley:

As I wrote you on December 28, 2022, enclosed is a copy of the brief that I will file on your behalf.

In accordance with the Order dated November 15, 2022, you may file a supplemental brief on or before January 24, 2023, containing any additional arguments that you wish to make.

DHHS must file its brief by February 21, 2023.

Depending upon what arguments DHHS makes, I may file a reply brief to their brief. If I do so, I will make sure that I schedule a meeting with you prior to the filing. I will also be sure that you receive a copy.

After all briefs are filed, the Law Court will decide whether to hear oral argument or to decide the issues on the filed briefs. When I receive notice, I will be sure to send you a copy.

Thank you.

Sincerely,

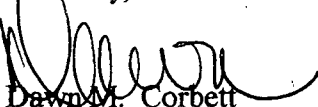

Dawn M. Corbett

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TABLE OF CASES AND OTHER AUTHORITIES

CASES:

Adoption of Hali D., 2009 ME 70, ¶2, 974 A.2d 916, 917 (Me. 2009).

Davis v. Anderson., 2008 ME 125, ¶18, 953 A.2d 1166 (Me. 2008).

In re: Cody T., 2009 ME 95, 979 A.2d 81 (Me. 2009).

In re: Scott S., 2001 ME 114, 775 A.2d 1144 (Me. 2001).

In re: Thomas H., 2005 ME 123, 889 A.2d 297 (Me. 2005).

Rideout v. Riendeau, 2000 ME 198, 761 A.2d 291 (Me. 1992).

Troxel v. Granville., 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000).

MAINE REVISED STATUTES ANNOTATED:

22 M.R.S. § 4055(1)(B)(2)(b)

22 M.R.S. § 4041

MAINE RULES OF CIVIL PROCEDURE

Me. R. Civ. P. 17.

STATEMENT OF THE FACTS

Procedural History

On January 7, 2021, The Department of Health and Human Services ("DHHS") filed a Straight Petition for Child Protection Order in reference to Kinley M.'s three children.

On March 23, 2021, DHHS filed another Petition for Child Protection Order alleging immediate risk and seeking to have the children placed in DHHS custody.

On March 23, 2021, the court issued a Preliminary Protection Order placing the children in DHHS's custody.

On April 12, 2021, the court held a contested Summary Preliminary Hearing. The court ordered the children to remain in DHHS's custody.

On May 19, 2021, Kinley MacDonald agreed to a Jeopardy Order. On May 27, 2021, the court signed the Jeopardy Order.

On July 30, 2021, the court held the first Judicial Review. By agreement of Kinley M.'s attorney, Judge Duddy entered a Judicial Review Order. Kinley M. was absent. Subsequently, Kinley M. requested that the court vacate the Judicial Review Order. The court did so and scheduled a contested Judicial Review on December 3 and 8, 2021 and January 6, 2022. After hearing, the court issued a Judicial Review Order (corrected) dated January 24, 2022 (nunc pro tunc January 11, 2022). The court found that Kinley M. had not alleviated Jeopardy.

On October 22, 2021, DHHS filed a Petition for Termination of Parental Rights ("TPR").

On May 11, 2022, a Contested Judicial Review was scheduled. A Judicial Review Order was entered over Kinley M.'s objection.

On September 30, 2022, as docketed on October 3, 2022, Judge Duddy entered an order granting DHHS's Petition for Termination of Parental Rights.

Trial counsel did not seek further findings of facts and conclusions of law from the court. Throughout the case, Kinley M. filed many motions, which were addressed by the court throughout the duration of the case.

This appeal followed.

Facts

Kinley M. is the biological mother of the three minor children. Each child has a different biological father. At the time of the TPR hearing, the father of the oldest child consented to the termination of his parental rights. The second child's father was not revealed during the duration of the case. The third child's father continued to work reunification at the time of the TPR hearing.

In 2020, DHHS received a report from Indiana requesting that DHHS assess and work with the family as they recently moved to Maine.

On January 14, 2021, DHHS interviewed the oldest child at school pursuant to Title 22. This child reported that there was a man living in the house who was her

dad.

In Indiana, Kinley M. reported that this man was violent toward her and had sexually assaulted her.

On May 19, 2021 (as docketed on May 20, 2021), the court entered a jeopardy order by agreement based upon the following:

The Department suspects the mother has undiagnosed mental health issues. There are reports from service providers and the Department that the mother becomes emotionally dysregulated when advocating for her children. The parties agree that the mother needs to do a neuropsychological/psychological evaluation.

The mother exposed the children to an individual, Nickolaus Prikosovich. The mother accused this individual of sexual assault in August 2020 and sexual and domestic violence in February 2021. The mother obtained a Protection from Abuse Order against this individual in February 2021 and has ended the relationship.

The Jeopardy Order also ordered reunification services and that Kinley M. participate in a neuropsychological examination/psychological evaluation and follow recommendations for treatment. (A. 176.)

On July 17, 30 and September 8, 2021, Kinley M. participated in a Neuropsychological Evaluation with Dr. James Harrison. Dr. Harrison diagnosed Kinley M. with severe and debilitating Post-traumatic Stress Disorder, with strong signs of disassociation and persistent depression. Dr. Harrison also suggested that Kinley M. had Borderline Personality Disorder. Dr. Harrison, however, did not

have enough information available to make this diagnosis. (A. 156-157.)

In the Judicial Review Order (corrected) dated January 24, 2022 (nunc pro tunc January 11, 2022), Judge Duddy found that the issue of whether Kinley M. had Borderline Personality Disorder had not been adequately explored. (A. 157.)

Dr. Harrison recommended that Kinley M. receive psychotropic medications, including a combination of an anti-depressant and anxiety medication. Dr. Harrison also recommended intensive psychotherapy focused on Kinley M.'s past trauma. (A. 157.)

Kinley M. engaged in therapy with Augusta O'Riley from August 24, 2021 through November 23, 2021. Ms. O'Riley diagnosed Kinley M. with PTSD. Ms. O'Riley did not do any historical trauma work with Kinley M. and focused on the here and now. (A. 157.) Ms. O'Riley's work focused on communication and stress management. (A. 158.)

In late 2021, Kinley M. moved to Massachusetts. Kinley M. moved because there were more resources and supports in Massachusetts. (A. 158.)

During the case, Melissa Tavares, a domestic violence advocate with the Hope and Justice Project in Presque Isle, ME, provided support to Kinley M. (A. 159.)

Kinley M. had regular visits with her children until August 2022. On August 5, 2022, Kinley M. entered the home of the Resource Parent. (Tr. 31.) Kinley M. was arrested and held on a \$100,000.00 cash bail. At the time of the TPR hearing,

Kinley M. was incarcerated on pending charges.

The TPR hearing was scheduled on September 28, 2022. On this day, Kinley M. did not appear for the hearing. The message delivered to the court was that Kinley M. was not feeling well. (Tr. 5.)

Despite knowing that Kinley M. was not present and was not feeling well, the court did not continue the TPR hearing. Rather, the court proceeded on with the hearing in Kinley M.'s absence and permitted Kinley M.'s attorney to ask questions and object to evidence on Kinley M.'s behalf. (Tr. 6.)

STATEMENT OF ISSUES FOR REVIEW AND ARGUMENT

I. WHETHER THE COURT SHOULD HAVE CONTINUED THE HEARING ON DHHS'S MOTION TO TERMINATE KINLEY M.'S PARENTAL RIGHTS.

Kinley M. had the right to be present at the TPR hearing. The court was aware that Kinley M. was not feeling well on the day of hearing.

At the beginning of the hearing, Judge Duddy asked the Marshal what he knew about Kinley M.'s absence. The Marshal reported that he received information from the jail transportation captain that Kinley M. was not feeling well. (Tr. 5.)

Judge Duddy ruled that he did not have a complaint of not feeling well and that he would not continue the hearing. (Tr. 5 and 8.) This is inaccurate, he had information that Kinley M. was not feeling well. Rather, than seeking further information regarding the nature of Kinley M.'s illness, the court simply proceeded with the hearing. Judge Duddy made a footnote in his TPR Order that the court did not credit Kinley M.'s claim that she was not feeling well. (A. 106.)

Attorney Victoria Silver was present at the TPR as stand-by counsel for Kinley M. Given Kinley M.'s absence, Judge Duddy ordered Attorney Silver to participate on Kinley M.'s behalf by making appropriate evidentiary objections and motions and cross-examining witnesses. (Tr. 6.) Attorney Silver, however, was

not required to try the case on behalf of Kinley M. Indeed, she would not have been able to do so because, as stand-by counsel, she did not prepare the case for the TPR hearing. (Tr. 6.)

At the outset, Attorney Silver motioned the court to continue the TPR hearing based upon Kinley M.'s illness and the motions that Kinley M. filed. (Tr. 7.) Kinley M. filed a motion to continue for many reasons, including the fact that stand-by counsel was unavailable prior to the TPR hearing and that she found new counsel to represent her, but that the counsel stated that he needed a continuance in order to prepare for the TPR hearing. (A. 257.)

Judge Duddy denied Attorney Silver's motion for a continuance and Kinley M.'s written motions. (Tr. 7.)

Given the serious nature of the TPR hearing and the outcome of such a hearing, severing the bond and relationship of a parent and child, the court should have further inquired about Kinley M.'s illness. The court should have also provided Kinley M. with the opportunity for counsel to fully assist her in such important matters. Clearly, Attorney Silver was unprepared to try the case on behalf of Kinley M. After DHHS rested, there was no evidence entered on behalf of Kinley M. (Tr. 86.)

By not conducting further inquiry and not continuing the hearing, the court violated Kinley M.'s due process rights.

II. WHETHER THERE WAS SUFFICIENT EVIDENCE FOR THE COURT TO FIND KINLEY M. UNFIT TO PARENT HER CHILDREN?

Under Maine law, it remains “firmly established” that parents have “a fundamental liberty interest to direct the care, custody, and control of their children.” *Davis v. Anderson*, 2008 ME 125, ¶18, 953 A.2d 1166 (Me. 2008) (citing *Troxel v. Granville*, 530 U.S. 57 at 65); *Rideout v. Riendeau*, 2000 ME 198, ¶12, 761 A.2d 291 (Me. 1992). Because of the fundamental importance of parents’ rights to raise and nurture their children, the State may not interfere with those rights absent compelling overriding interests. Accordingly, except in the context of a dispute between the parents in a divorce or a similar proceeding, the State may not remove children from a parent’s care solely because of the best interest of the children. *In re Scott S.*, 2001 Me. 114, ¶20, 775 A.2d 1144 (Me. 2001).

The Standard of Review in DHHS cases is “whether the court could have reasonably been persuaded on the basis of the evidence in the record that the required factual findings were highly probable.” *In re: Thomas H.*, 2005 ME 123, 889 A.2d 297 (Me. 2005) at 302, ¶18.

“Findings supporting termination of parental rights must be based on clear and convincing evidence.” *In re: Cody T.*, 2009 ME 95, 979 A2d 81 (Me. 2009) at 85, ¶ 26. The Court must first reach the conclusion by clear and convincing evidence that the parent is unfit before it can address the issue of the best interest of the

children. *In re: Thomas H.*, 2005 ME 123, 889 A.2d 297 (Me. 2005) at 302, ¶19.

In deciding parental fitness, the Court must determine whether the parent is able to protect the children from jeopardy, and whether the parent will be able to protect the children within a time that will meet the children's needs. *Id.* at 303. 22

M.R.S. §4055(1)(B)(2)(b) provides four (4) tests regarding parental fitness. The Court must find based on clear and convincing evidence that: "Either: (i) The parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs; (ii) The parent has been unwilling or unable to take responsibility for the child within a time which is reasonably calculated to meet the child's needs; (iii) The child has been abandoned; or (iv) The parent has failed to make a good faith effort to rehabilitate and reunify with the child pursuant to section 4041." *Id.*

Judge Duddy found that DHHS provided clear and convincing evidence, based on all four termination grounds, that Kinley M. was unfit to parent her children. (A. 113.)

Throughout his Order, Judge Duddy, made repeated findings of fact regarding Kinley M.'s mental health issues. In fact, Judge Duddy refers to an Order by Justice Horton wherein Justice Horton found that Kinley M. suffered from

significant, untreated mental illness. (A. 106.) Judge Duddy found that Kinley M.'s mental illness significantly impaired her ability to parent her children safely and appropriately. (A. 107.)

Judge Duddy found that Kinley M. did nothing to address her untreated mental illness. (A. 108.) "She displays absolutely no insight or willingness to get into treatment. [Kinley M.'s] behavior has spiraled downward, and she has sadly become a menace to her children and the foster family caring for her children." (A. 108.) "Throughout this case, [Kinley M.] has made unreasonable demands, followed by threats and insults. Rather than doing the modest work necessary to reunify, [Kinley M.] repeatedly threatened nearly all participants with complaints and other measures. Moreover, she has shown a stubborn refusal to work cooperatively with legal counsel appointed or hired to represent her." (A. 114-115.)

Maine Rules of Civil Procedure 17b, provides for guardians when people who are the subject of litigation are incompetent to represent themselves. Under 17b. the court shall appoint a Guardian for an incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person. *Me. R. Civ. P. 17.*

There is overwhelming evidence in this case that Kinley M. suffered from mental health issues. The transcript and the appendix are replete with example

after example of such.

In fact, the Jeopardy Order reflects that DHHS suspected there were some serious mental health issues.

In the Appendix, are examples upon examples of proof of Kinley M.'s mental health issues. Kinley M. filed motions on paper that was inappropriate. (A. 257-266.) Judge Duddy recognized this during the TPR hearing when he stated that the "filings are bizarre, to say the least." (Tr. 7.)

The Guardian ad Litem testified about emails that he received with song links embedded into the emails, which were meaningless and vulgar. (Tr. 103.)

The caseworker testified to the same. (Tr. 55.)

The most obvious example of a significant mental health issue is when Kinley M. entered the home of the Resource Parent. (Tr. 31.)

Kinley M., who had severe mental health issues, should have been appointed a 17b Guardian to assist her with completing the necessary services to reunify and to help her get the mental health treatment that she so desperately needed.

Yet, Judge Duddy found that Kinley M.'s behavior from August 2 through August 5, was so premeditated, outlandish and dangerous that it must be construed as indicating an intent to forego being a parent to her children. (A. 114.) Although Judge Duddy was aware of the plethora of examples of significant mental illness, he attributes her actions and behaviors to her as if she were a mentally well person.

It is unheard of for a litigant in DHHS matters to have ten attorneys, but Kinley M. did. One right after the other. None of the attorneys petitioned the court for a 17b Guardian. None. Each could have petitioned the court for such. Typically, upon motion by an attorney for the assistance of a 17b Guardian, the court will review the need for such and appoint when necessary. Yet, this court never had that opportunity because no attorney filed a motion.

The court could have also appointed a 17b Guardian on its own volition. Clearly, the court was aware of Kinley M.'s significant mental health issues.

Kinley M. filed many motions on her own behalf. She appears to be brilliant and able to function at a very high level. Yet, that does not mean that she does not have significant and debilitating mental health issues that left her incapacitated to complete the requirements to alleviate Jeopardy.

Under these circumstances, a 17b Guardian should have been appointed to assist her, to help her, to speak for her and to sign the appropriate releases that were needed by mental health providers and DHHS. By not appointing a 17b Guardian, Kinley M.'s rights were violated.

The caseworker testified that although Kinley M. was still in reunification, he had no communication with her since Kinley M. became incarcerated. (Tr. 64, lines 15-17.) Although a prior reunification plan was in effect, after her

incarceration, the caseworker did not communicate with Kinley M. about how to continue reunification while incarcerated. Effectively, DHHS ceased reunification without a court order effecting such. Thereby, violating Kinley M.'s rights.

Significantly, there was no evidence presented regarding how long Kinley M. would be incarcerated, only that she was incarcerated. There was no evidence that Kinley M. would plead guilty to any of her criminal charges nor was there any evidence presented that Kinley M. would not be able to plead to her charges for a reduced sentence.

Further, Judge Duddy found that Kinley M.'s inability to be responsible for her children is further compounded by her incarceration. (A. 114.) However, this Court has found that a parent's incarceration, standing alone, does not provide grounds for the termination of parental rights. *Adoption of Hali D.*, 2009 ME 70 ¶2, 974 A.2d 916, 917 (Me. 2009). In considering the parental fitness of an incarcerated parent, the court's focus is not on the usual parental responsibility for physical care and support of a child, but upon the parent's responsibility or capacity "to provide a nurturing parental relationship using the means available." *In re Cody T.*, 979 A.2d 81, 2009 ME 95 (Me. 2009).

Judge Duddy's finding is simply based upon the fact that Kinley M. is incarcerated, not based upon what else Kinley M. could offer to her children to provide a nurturing parental relationship using the means available.

Based upon the above, the court's decision was made in error. This Court should overturn the Order Terminating Parental Rights.

III. WHETHER THE COURT ERRED IN FINDING THAT IT IS IN THE CHILDREN'S BEST INTEREST TO TERMINATE KINLEY M.'S RIGHTS?

The Standard of Review for this issue is "twofold: We review the court's factual findings related to the child's best interest for clear error, but its ultimate conclusion regarding the child's best interest for abuse of discretion." *In re Thomas H.*, 2005 ME 123, 889 A.2d 297 (Me. 2005) at 301, ¶16.

The court must first reach the conclusion, by clear and convincing evidence that the parent is unfit before it can address the issue of the best interest of the children. *In re Thomas H.*, 2005 ME 123, 889 A.2d 297 (Me. 2005) at 302.

The court violated Kinley M.'s due process rights by proceeding with the TPR hearing in her absence. The court also violated Kinley M.'s rights by not providing her with a 17b Guardian. For these reasons, the Order of the court terminating Kinley M.'s parental rights should be vacated.

Even if parental unfitness was justifiably found by the Trial Court, it was not in the children's best interest to terminate Kinley M.'s parental rights. In fact, the second child reported that he wanted to return home with his mom. (A. 111 and Tr. 25.)

Appendix R

For the above reasons, the Court should vacate the Order terminating the parental rights of Kinley M. and remand this matter for further proceedings consistent with that Order.

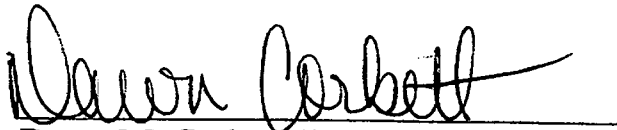
Appendix R

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CONCLUSION

For the above reasons, Kinley M. respectfully requests that the Law Court vacate the Judgment of the Trial Court, Order that reunification efforts continue and for such other and further relief as the Law Court deems just and appropriate.

Dated: January 2, 2023



Dawn M. Corbett, Esq.

Bar # 8919

Law Office of Dawn M. Corbett, PA
P.O. Box 68
Ellsworth, Maine 04605
(207) 460-4562

Appendix R

CERTIFICATE OF SERVICE

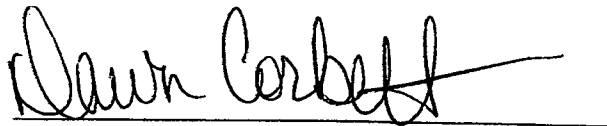
I, Dawn M. Corbett, Attorney for the Appellant, Kinley M, hereby certify that two (2) conformed copies of the Brief of the Appellant, Kinley M. were mailed via regular U.S. mail, postage prepaid on this 2nd day of January 2023 to the following:

Hunter Umphrey, AAG
Office of the Attorney General
84 Harlow Street
2nd Floor
Bangor, ME 04401

Steven Carey, GAL
677 US Route 202
Box 689
Greene, ME 04236.

A copy of the Brief was also provided to Appellant, Kinley M., at CCJ, 50 County Way, Portland, ME 04102.

Dated: January 2, 2023



Dawn M. Corbett, Esq.
Bar # 8919

Law Office of Dawn M. Corbett, PA
P.O. Box 68
Ellsworth, Maine 04605
(207) 460-4562

Appendix R

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STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Yor-22-329

In re Children of Kinley M.

ORDER

On December 30, 2022, Kinley M. filed a document titled "Notice of Appeal" purporting to appeal from this Court's order dated December 6, 2022. On January 5, 2023, Kinley filed a document titled "Motion for Expansion of time to Replace Appointed Counsel."

Neither filing contains a certificate of service. Both filings contain a request that this Court serve the motion on the parties because "as described previously and at length, appellant is unable to do so."

This Court's procedural order of November 15, 2022, provides Kinley with two options regarding service of any motions: Kinley must either (1) send copies of her motion to the other parties and certify in her motion that she has done so, or (2) certify that she is unable to provide copies and request that the Clerk of the Law Court serve the other parties with copies. This Court's order of December 6, 2022, cautioned Kinley that "she must, in the future, utilize one of the two service options established by this Court's

procedural order. If Kinley does not send copies of her motion to the other parties she must provide more information to this Court as to why she is unable to serve them.” Kinley’s perfunctory request that this Court send copies of her motions to the parties because she is “unable to do so” does not provide this Court with sufficient information as to why she is unable to send copies to the parties when she is able to send an original to the Court. Because Kinley has failed to comply with this Court’s orders, her filings must be dismissed.

However, even if this Court considered Kinley’s filings on the merits, her requests would be denied.

Both of Kinley’s pending filings essentially challenge this Court’s procedural order of November 15, 2022. Kinley previously challenged that order in a motion titled “Motion to Reconsider/Notice of Appeal” filed on December 2, 2022. This Court denied that motion in an order dated December 6, 2022.

Regarding Kinley’s “Notice of Appeal” filed on December 30, 2022, the Maine Rules of Appellate Procedure do not permit an “appeal” from an order of this Court. To the extent that Kinley’s “Notice of Appeal” is a request to refer her motion to the entire Court pursuant to M.R. App. P. 10(a)(4), the request would be denied because she has not provided any argument to

support her challenge to the orders dated November 15, 2022, and December 6, 2022.

Regarding Kinley's motion for Expansion of Time to Replace Appointed Counsel, filed on January 5, 2023, this Court's procedural order established the procedure to follow if there is a breakdown in the attorney-client relationship.¹ Counsel for Kinley has filed an appellant's brief on her behalf. Kinley may file a supplemental brief on or before January 24, 2023. Because the appellant's brief has already been filed and because Kinley may supplement that brief with any additional arguments she wishes to make, there is no need at this time to appoint new counsel or enlarge any time period.

It is ORDERED that Kinley's filings are DISMISSED.

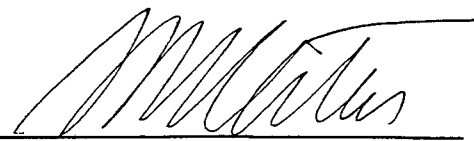
Dated: Jan. 13, 2023

For the Court,

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JAN 13 2023

Clerk's Office
Maine Supreme Judicial Court


Associate Justice (Horton)

¹ In compliance with this Court's procedural order, counsel for Kinley notified the Court on December 28, 2022, that there has been a breakdown in the attorney-client relationship. Kinley states in her motion that "communication between counsel and mother didn't exactly break down—it was never established."

3/23

Appendix T

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Cum-22-327

Kinley MacDonald

v.

**ORDER DISMISSING NOTICE OF
APPEAL**

Jeanne Lambrew et al.

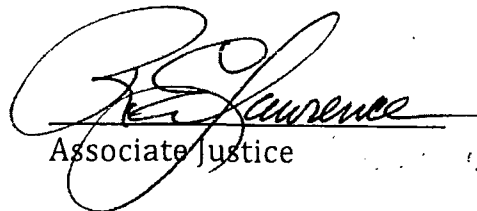
Kinley MacDonald has filed a notice of appeal that “provides notice her right to Appeal the Single Justice order denying [her] an appeal ordered on 12/6/22 by Justice Lawrence.” As the Court’s order of December 6, 2022, explained, there is no “appeal” from any order of this Court.

It is therefore ORDERED that MacDonald’s appeal is DISMISSED for want of jurisdiction.

Date: January 13, 2023

For the Court,

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Clerk's Office
Maine Supreme Judicial Court


Associate Justice

Appendix T

Appendix U
STATE OF MAINE

- ☒ UNIFIED CRIMINAL DOCKET
☐ SUPERIOR COURT
☐ DISTRICT COURT

County: York
Location: Alfred
Docket No: CR-22-527

STATE OF MAINE

v.

Kinley MacDonald

Defendant

**ORDER AFTER REVIEW OF
OF CONFIDENTIAL DHHS RECORDS**
22 M.R.S. § 4008

This matter came before the court upon review of confidential records produced by the Department of Health and Human Services (DHHS) pursuant to an Order to Produce Records entered by the court on 11/7/22. The court recognizes these records are ordinarily confidential pursuant to 22 M.R.S. § 4008, but is also mindful of the need to weigh the confidentiality of these records against the necessity for counsel to have access to the documents for preparation for trial.

With those issues in mind, the court makes the following order pursuant to 22 M.R.S. § 4008(3)(B):

☐ **No Release.** No records are to be disclosed.

☐ **Partial Release.**

☐ The court **has** redacted the following types of information:

- ☐ Complaint information furnished by a third-party not involved in the case.
☐ Mental health or substance abuse records of a third person who is not a party nor a resident in a party's household.
☐ Other: _____

Counsel may request a conference with the court if it is believed that counsel's review of any redacted information is unavoidably necessary for trial preparation or any other purpose. Other parties, and DHHS, shall be given notice of and an opportunity to participate in any such conference.

☒ **Full Release.** The full record is to be disclosed.

☒ **Scope of Disclosure.**

☒ Non-redacted material is made available for review by counsel only. Information contained in the records **may not be discussed** with any person except other counsel, **including client and potential expert witnesses** without further specific court permission.

- ☐ Non-redacted material may also be discussed with actual or potential trial experts.
☐ Non-redacted material may also be discussed with client as necessary for trial preparation.

Appendix U
Page 1 of 2

Appendix U

The records are to remain in the Court Clerk's Office at all times. No duplicated or copies are to be made of any of the records and no information contained in those records is to be disclosed except by further order of the court.

Counsel (and if specified above, parties and/or experts) must be mindful that the records remain confidential and may be used only for purposes of litigating the pending action. Counsel shall take such steps as may be necessary to preserve the confidentiality of the records and shall not further disseminate the information without court order.


In the event that counsel desires to receive copies of any of the records reviewed to discuss the contents of the records with anyone not specified in this order, or to make use of the contents of the records for any other purpose, counsel shall list the documents or information sought to be released and present the request for release to the trial judge. A copy of the request shall be provided to the counsel for the other parties, and DHHS who shall be given notice of and an opportunity to participate in any such conference or hearing reasonable in advance of any hearing or conference on the request.

The trial judge will then review the records and make further order as to whether those records may be copied and released to the requesting party, or whether information in the records may be released to the other party or any other person. These documents are to be subject to any motions *in limine* brought by the opposing party.

The Clerk shall make the following entry on the docket pursuant to M.R. Civ. P. 79(a): "Order specifying scope of disclosure entered after review of DHHS's response to the Order to Produce Records and incorporated by reference."

Date: _____

1/27/23



Judge/Justice (Mulhern)

Appendix U

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Appendix V

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Yor-22-329

In re Children of Kinley M.

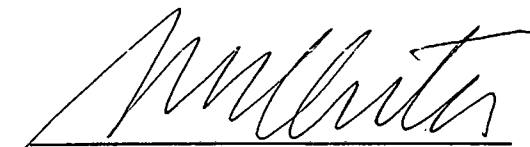
**ORDER ON "OBJECTION TO
LIMITED AND INEFFECTIVE
REPRESENTATION"**

Kinley M. has filed a document titled "Objection to Limited and Ineffective Representation." Again, Kinley does not provide the details on why she is unable to serve copies on other parties. The Court nevertheless accepts the document as Kinley's fourth motion challenging the appointment of counsel in this Court's order dated November 15, 2022.

The motion is DENIED.

Dated: Jan. 31, 2023

For the Court,


Associate Justice (Horton)

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Clerk's Office
Maine Supreme Judicial Court

Appendix V

P. 1/1

2/6/23

Appendix W

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Cum-23-32

Kinley MacDonald

v.

ORDER

State of Maine

Kinley MacDonald has appealed from an order of a single justice of the Supreme Judicial Court dismissing her petition for writs of mandamus and habeas corpus. The petition was related to pending criminal charges against her.

The Clerk of the Law Court docketed the matter under the caption "Kinley MacDonald v. State of Maine" and assigned it docket number Cum-23-32. Although the State did not participate in the matter before the single justice, the Clerk of the Law Court docketed the State as the appellee so that there would be an opposing party should the Court need any briefing in response to MacDonald's brief.

MacDonald did not pay the appeal fee or file a motion to waive the appeal fee. The Court is aware from other proceedings, however, that MacDonald is indigent.

The appeal appears to be frivolous. In order to expedite the decision on this matter and provide MacDonald with an opportunity to be heard without

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Appendix W

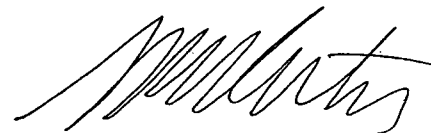
causing an undue burden on the State or the Court, the Court will set an abbreviated process for this appeal.

It is therefore ORDERED as follows:

1. The appeal fee is WAIVED.
2. The Clerk of the Law Court need not issue a notice of docketing in the Law Court or a schedule for the briefs and appendix.
3. MacDonald need not file an appendix.
4. MacDonald must file her appellant's brief on or before **March 3, 2023**.
5. MacDonald may file only one copy of her brief and need not serve the brief on the State. The brief need not comply with the Maine Rules of Appellate Procedure but may consist of a handwritten document not to exceed 20 pages.
6. The Clerk of the Law Court is directed to provide a copy of MacDonald's brief to the State when it is filed.
7. The State need not file an appellee's brief unless the Court requests one. MacDonald's appeal will be in order for consideration on the briefs without oral argument when MacDonald's brief is filed.

Dated: FEB 6, 2023

For the Court,



Associate Justice

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FEB 06 2023

Clerk's Office
Maine Supreme Judicial Court



MAINE JUDICIAL BRANCH

SUPREME JUDICIAL COURT

Appendix X

Matthew Pollack
Executive Clerk
Clerk of the Law Court

205 Newbury St Rm 139, Portland ME 04330
Phone: 207-822-4146

February 10, 2023

Kinley MacDonald
Cumberland County Jail
50 County Way
Portland ME 04101

**RE: Kimberly MacDonald v. Jeanne Lambrew et al.
Supreme Judicial Court docket no. SJC-22-4**

Dear Ms. MacDonald:

I have received your letter asking for copies of your petition for declaratory judgment including all of the exhibits and the order. You state that you need these "for the appeal previously requested/noticed to this court."

As you know, your appeal, Law Court docket number Cum-22-327, was dismissed. Under Section III of the Revised Court Fees Schedule and Document Management Procedures, JB-05-26 (A. 6-22), indigent litigants are entitled to copies of documents from a court file without paying a fee only "during the pendency of that action . . . when the requested copy or service is essential to the conduct of the action." Because your appeal is no longer pending, you are not entitled to copies of those documents without paying the standard fee for them.

The standard fee is \$2 for the first page, \$1 for each additional page, and \$5 for postage. The documents that you request consist of 1055 pages. Therefore, if you still wish that we send you copies of the documents, please send us \$1061.00 for the copies.

Sincerely,

Matthew Pollack

Appendix X

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STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Yor-22-329

In re Children of Kinley M.

**ORDER ON MOTION TO
WITHDRAW**

Dawn M. Corbett, Esq., who is at least the eleventh attorney who has represented Kinley M. in this proceeding, has moved to withdraw from her representation of Kinley M. on appeal on the ground that Kinley M. has filed a complaint with the Board of Overseers against Attorney Corbett, and that given "the allegations in the complaint, [Attorney Corbett] cannot continue to represent [Kinley M.]" in this appeal. No party has filed an opposition to the motion.

The Court will grant the motion and permit Attorney Corbett to withdraw. The only matter that remains for Kinley M. to do in this appeal is file a reply brief and, if the Court sets the matter for oral argument, participate in oral argument.

Because the trial court appointed seven different lawyers for Kinley M. (not including attorney Corbett) and she also had standby counsel and at least two other retained attorneys, the trial court determined she has demonstrated an unwillingness to work with the attorneys who have been attempting to help her present her case. See Order Again Appointing Standby

Counsel (Aug. 4, 2022); Order Responding to Objection to Appointment of Standby Counsel (Sept. 8, 2022). Kinley M. is not entitled to require or expect her counsel to present arguments that they reasonably believe to have no good-faith basis in fact or law. ^{never said that} If Kinley M. wishes to have new counsel appointed, she must file a written motion within 14 days of this Order. The motion must demonstrate that (1) Kinley M. accepts, agrees and understands that her attorneys are not required to present all of the arguments she may wish them to and (2) that she is fully committed to allow her attorneys to perform their functions as they reasonably see fit to do. Given that she has also retained attorneys in the course of this proceeding, she must also file an affidavit demonstrating indigency using the standard indigency affidavit form to qualify for appointment of counsel. However, regardless of whether new counsel is appointed, Kinley M. may retain counsel at her expense and in any case the Court will give Kinley M. additional time to file a reply brief in her own words.

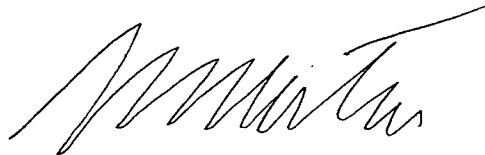
Because the motion to withdraw was pending at the time that the Department of Health and Human Services filed its appellee's brief, the Department, with the consent of the Clerk of the Law Court, provided the Clerk with the two printed copies of its appellee's brief and served Attorney Corbett with an electronic copy of the brief.

It is therefore ORDERED as follows:

1. The motion is GRANTED. Attorney Corbett is permitted to withdraw.
2. The Clerk of the Law Court is directed to serve Kinley M. with the printed copies of the Department's brief. - *News received.*
3. The time for Kinley M. to file a reply brief is ENLARGED. Kinley must file her reply brief on or before **April 7, 2023, unless new counsel is appointed or retained before that date**, in which case a further deadline for a reply brief will be set. Regardless of whether new counsel is appointed and files a reply brief, Kinley M. may file her own reply brief. Kinley M. need not follow the requirements of the appellate rules for her reply brief, except that the brief may not exceed 10 pages and the pages may have writing on only one side. The brief may be handwritten and need not be bound, and Kinley M. need file only a single copy. The Clerk of the Law Court is directed to send a copy of the reply brief to the Department if Kinley M. is unable to do so.

Dated: Feb. 22, 2023

For the Court,



Associate Justice (Horton)

RECEIVED

FEB 22 2023

Clerk's Office
Maine Supreme Judicial Court

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Yor-22-329

In re Children of Kinley M.

**ORDER ON MOTIONS TO APPOINT
COUNSEL AND FOR ENLARGEMENT
OF TIME FOR REPLY BRIEF**

Kinley M. has filed (1) "Mother's Objections to Contents of Order on Motion to Withdraw 2/22/23," in which she requests that the Court appoint another attorney to represent her for the remainder of her appeal, and (2) a motion to enlarge the time for her reply brief.

The Court's order of February 22, 2023, made clear that if Kinley M. wished to have new counsel appointed, she was required to make a motion that (1) demonstrated that she understood that attorneys are not required to present all the arguments that she may wish them to present; (2) demonstrated that "she is fully committed to allow her attorneys to perform their functions as they reasonably see fit"; and (3) was accompanied by an affidavit demonstrating that she is indigent. Kinley M.'s motion for the appointment of new counsel does none of those things.

It is ORDERED as follows:

1. The motion to appoint new counsel is DENIED.

Appendix Z

2. The motion to enlarge the time for the reply brief is GRANTED. Kinley M. must file her reply brief on or before **April 7, 2023**.

Dated: March 17, 2023

For the Court,



Associate Justice (Horton)

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MAR 20 2023

Clerk's Office
Maine Supreme Judicial Court

Appendix Z
p. 2/2

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Yor-22-329

In re Children of Kinley M.

ORDER

On March 28, 2023, Kinley M. filed a document titled "Objection to 'Order on Motions to Appoint Counsel and For Enlargement of Time for Reply brief' of 3/7/2023." This Court accepts the filing as a motion to reconsider this Court's order of March 17, 2023, denying Kinley's request for appointment of new appellate counsel. Also on March 28, 2023, Kinley filed a document that is apparently intended as her reply brief.

The motion for reconsideration is DENIED.

It is ORDERED that Kinley's brief filed on March 28, 2023, is ACCEPTED as her reply brief only to the extent that it responds to arguments contained in the appellee's brief of the Department of Health and Human Services. Any other arguments are STRICKEN. *-Newer provided states reply brief*

The Clerk of the Law Court is directed to set this matter for consideration on the briefs without oral argument.

Dated: April 4, 2023

For the Court,



Associate Justice (Horton)

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APR 04 2023

Clerk's Office
Maine Supreme Judicial Court

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Yor-22-329

In re Children of Kinley M.

ORDER

On April 21, 2023, Kinley M. filed an "Objection to Order dated 4/4/23" and a notice of appeal listing April 4, 2023, as the date of the order appealed from. Kinley has not served the filings on the other parties. Nevertheless, the Court accepts the documents as filed.

The Rules of Appellate Procedure do not permit an appeal from a procedural order entered by a single Justice.

Kinley's "objection" does not make clear what relief she seeks.

Kinley claims that she did not receive the brief of appellee Department of Health and Human Services. The Department's brief was filed on February 15, 2023. The Clerk of the Law Court forwarded the Department's brief to Kinley on February 22, 2023, along with this Court's order dated February 22, 2023. On March 10, 2023, Kinley filed a motion that references this Court's order of February 22, 2023. The Court concludes that Kinley did receive a copy of the ~~From Dawn Corbett's~~ Department's brief.

Appendix BB

Kinley states, "It remains a mystery if the document being referenced [in this Court's order dated April 4, 2023] is, in fact, mother's brief on appeal." To clarify, the briefing in this matter was as follows:

- On January 3, 2023, counsel for Kinley filed an appellant's brief.
- On January 18, 2023, Kinley personally filed an appellant's brief. *- filed in error of court by filed brief*
- On February 15, 2023, the Department filed its appellee's brief.
- On March 28, 2023, Kinley filed a document that this Court accepted as her reply brief.
- On April 5, 2023, Kinley filed a one-page conclusion and a motion for the conclusion to be added to her brief. This Court granted the motion and ordered that the one-page conclusion be added to Kinley's reply brief.

This matter has been completely briefed and has been set for consideration on the briefs. No further action by the parties is needed at this time.

It is therefore ORDERED that, to the extent this Court has jurisdiction to act on any requests contained in Kinley's filings of April 21, 2023, the requests are DENIED. The filings are otherwise DISMISSED for want of jurisdiction.

Dated: April 25 2023

For the Court,



Associate Justice (Horton)

RECEIVED

APR 25 2023

Clerk's Office
Maine Supreme Judicial Court

Appendix BB

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Appendix CC

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
JOHN JOSEPH MOAKLEY U.S. COURTHOUSE
1 COURTHOUSE WAY - SUITE 2500
BOSTON, MASSACHUSETTS 02210

OFFICIAL BUSINESS

RECEIVED
MAY 1 2023

R I WHOS

23-1042 Notice 4/27/23

Kinley MacDonald
York County Jail
1 Layman Way
Alfred, ME 04002



US POSTAGE
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0000354155 APR 27 2023

2023 MAY 18 PM 12:02

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RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

0400233537 RO SC: 02210300425 *1121-03561-28-01
022103004

Appendix CC p.16

Good morning,

On Tuesday at 11am, the forensic evaluator will come and meet you.

She explained the purpose of the meeting as this:

- 1- Explain to you the purpose of the evaluation. Allow her to speak for this. Do not walk away.
- 2- If you do chose participate, they want to Determine if you understand that the charges against you that led to your arrest are separate from the custody case of your children.

She clarified that she does not expect you talk about details of either case as this is not necessary for her evaluation. (Unless you choose to do so)

You may choose to not participate; however it is the general understanding that this would delay your goal of a fair trial and representation.

It is inappropriate to allow a move to a trial if there is no confirmation that you understand them. I cannot confirm that to her. YOU have to confirm that to her.

Regards,

Dr. Rondon, MD

To whom it may concern at Riverview Psychiatric Center:

In response to the harrassing visit from the "Legal advocate" today and the letter from Dr. Rondon in regards to the scheduled competency evaluation, I would like to clarify my position in writing.

1.) I disagree with Dr. Rondon's statement that a competency hearing is the route to "a fair trial and representation!" (Attached)

2.) I have not received any orders, and have not participated in my defense in any significant way - this was not because of an unwillingness or delay on my part.

3.) My position is the same as I have repeated to the competency evaluator:

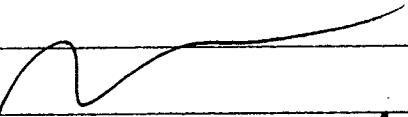
I am happy to comply once I receive effective assistance of counsel. I have requested Attorney Robert Ruffner, Christine Henley, and Rory McNamara for immediate appellate issues. I have been requesting counsel through other means.

I have a right to effective assistance of counsel at every step through this process and I will never waive that right. My right to a fair trial is also a right to fairness prior to trial - i.e., hearings

Appendix CC

that right either.

This hospital, however, by refusing to acquire my personal property from the jail which includes my legal paperwork and discovery is prohibitive to any goals or patient rights. I ask for the hospital "Legal advocate" to resolve this issue immediately and refrain from offering me legal advice in any shape, matter, form.


Kimberly MacDonald

5/22/23

Appendix CC

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



Maine Department of Health and Human Services
State Forensic Service
11 State House Station
250 Arsenal Street
Augusta, Maine 04333-0011
Tel.: (207) 624-4648; Fax: (207) 287-6209
TTY: Dial 711 (Maine Relay)

Date: 05/23/23
To: Kinley M. MacDonald, DOB: 04/24/81
Riverview Psychiatric Center
From: Dr. Shalene Kirkley
State Forensic Service
Re: Criminal Docket
York County Superior Court
Docket #: YRKCD-CR-2022-00522
Subject: Competence to Proceed Evaluation

Dear Ms. MacDonald,

You currently have the following charges pending in York County, Maine:

1. Burglary, Class A felony
2. Reckless Conduct with a Dangerous Weapon, Class C felony
3. Criminal Threatening with a Dangerous Weapon, Class C felony
4. Assault, Class D misdemeanor

York Superior Court ordered an evaluation of your competence to proceed in your criminal case. These evaluations typically include some background information, particularly if the defendant has a mental health history, but the primary focus is the defendant's ability to understand their current charges, potential outcomes, and make decisions in their legal case. The evaluation does *not* entail gathering incriminating information or reporting sensitive historical details about your life that are irrelevant to your competence.

I have attempted to evaluate you twice, once in Cumberland County Jail on 11/10/22 and once at Riverview Psychiatric Center on 05/15/23. You declined to participate both times before I had a chance to explain why I was there. Because I was not able to say this to you in person, I want to be sure to notify you of the nature and purpose of the evaluation.

The Court ordered your competence be assessed. I do not work for your attorney, nor the prosecutor in your case. I send my report directly to the judge, and I may be called to testify if there is a hearing on the matter. Nothing in these evaluations is confidential, but as I noted previously the scope of a competence evaluation is limited to your factual and rational understanding of the criminal proceedings, and ability to assist in your defense. I would prefer to have your cooperation, but I am required to submit a report either way. Since you declined to

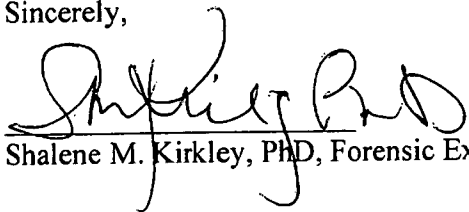
Appendix CC

participate, I am relying on your current and past medical and mental health records and interviews with collateral sources.

I will notify the Court of your reluctance to do the evaluation. As a result, you may return to jail to await the next step in your criminal case, remain at the hospital for additional treatment, or be released to the community, depending on your bail terms, the Court's orders, and your mental health needs. The Court may also direct me to try again or appoint a new examiner.

If you have any questions or would like to discuss this further, please call our office as soon as possible at (207) 624-4648.

Sincerely,



Shalene M. Kirkley, PhD, Forensic Examiner

Appendix DD

MAINE SUPREME JUDICIAL COURT

205 Newbury Street
Portland ME 04101-4125
www.maine.gov/courts

**Sitting as the Law Court
Docket No. Yor-22-329**

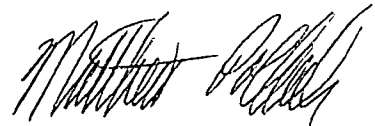
In re Children of Kinley M.

**Notice of Submission on Briefs
Without Oral Argument
M.R. App. P. 11(g)**

To: **Appellant:** Kinley MacDonald, York County Jail 1 Layman Way, Alfred ME 04002
Appellee: Hunter C. Umphrey Esq., OFFICE OF THE ATTORNEY GENERAL 84 HARLOW STREET 2ND FLOOR
Guardian ad litem: Steven M. Carey Esq., The Carey Law Firm PA 677 US Route 202 Box 689, Greene ME 04236

Pursuant to M.R. App. P. 11(g)(1), we are notifying you that the Law Court has decided to consider this case on the briefs without oral argument.

Dated: April 28, 2023



**Matthew Pollack
Clerk of the Law Court**

Appendix DD

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4/28/23

Appendix DD

MAINE SUPREME JUDICIAL COURT

205 Newbury Street
Portland ME 04101-4125
www.maine.gov/courts

**Sitting as the Law Court
Docket No. Cum-23-32**

Kinley MacDonald

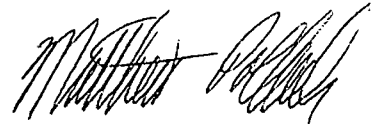
**v.
State of Maine**

**Notice of Submission on Briefs
Without Oral Argument
M.R. App. P. 11(g)**

To: **Appellant:** Kinley MacDonald, York County Jail 1 Layman Way, Alfred ME 04002
Appellee: Justina A. McGettigan Esq., OFFICE OF THE DISTRICT ATTORNEY, ALFRED ME 04002

Pursuant to M.R. App. P. 11(g)(1), we are notifying you that the Law Court has decided to consider this case on the briefs without oral argument.

Dated: April 28, 2023



**Matthew Pollack
Clerk of the Law Court**

Appendix DD

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United States Court of Appeals For the First Circuit

No. 22-1949

KINLEY MACDONALD, Mother of AJ, BM and WM,

Plaintiff - Appellant

v.

MICHAEL A. DUDDY, individually and in his official capacity; LEA-ANNE SUTTON, Judge, individually and in her official capacity; RICHARD W. MULHERN, Judge, individually and in his official capacity; JEANNE LAMBREW, individually and in her official capacity as representative for Maine Department of Health and Human Services; AARON M. FREY, Attorney General, individually and in his official capacity,

Defendants - Appellees,

JUDGE JOHN DOE 1, individually and in official capacity; JUDGE JOHN DOE 2, individually and in official capacity; DHHS WORKER JANE DOE 1-4; AAG JANE DOE 5-7,

Defendants.

Before

Barron, Chief Judge,
Kayatta and Gelpi, Circuit Judges.

JUDGMENT

Entered: May 3, 2023

Plaintiff-appellant Kinley MacDonald has filed a notice of appeal in the district court, challenging the magistrate judge's November 23, 2022, order adjudicating MacDonald's "Motion to Correct Error." After the appeal was opened, this court entered an order directing MacDonald to show cause why this appeal should not be dismissed for lack of appellate jurisdiction, where it did not appear the district court's order was final or otherwise immediately appealable. MacDonald has filed a response and a motion requesting the appointment of counsel.

As an initial matter, MacDonald's request that this court appoint counsel is denied. Having carefully considered MacDonald's response and relevant portions of the record, we conclude we

Appendix EE

lack jurisdiction. See Fabrica de Muebles J.J. Alvarez, Incorporado v. Inversiones Mendoza, Inc., 682 F.3d 26, 32 (1st Cir. 2012) ("The party asserting jurisdiction has the burden of demonstrating the existence of federal jurisdiction."). No final judgment has entered in the underlying district court case, the challenged order is not an appealable collateral order, and the district court has not certified the order pursuant to Fed. R. Civ. P. 54(b) or 28 U.S.C. § 1292(b). See 28 U.S.C. §§ 1291, 1292; see also United States v. Ecker, 923 F.2d 7, 9 (1st Cir. 1991) (a magistrate judge's order is not a final order that can be reviewed directly by a court of appeals, and a party seeking to challenge a magistrate judge's order must seek initial review in the district court).

Accordingly, the appeal is hereby dismissed. See 1st Cir. R. 27.0(c) (court may dismiss at any time when appellate jurisdiction is lacking).

By the Court:

Maria R. Hamilton, Clerk

cc:

Kinley MacDonald

Aaron M. Frey

United States Court of Appeals For the First Circuit

No. 22-1949

KINLEY MACDONALD, Mother of AJ, BM and WM,

Plaintiff - Appellant

v.

MICHAEL A. DUDDY, individually and in his official capacity; LEA-ANNE SUTTON, Judge, individually and in her official capacity; RICHARD W. MULHERN, Judge, individually and in his official capacity; JEANNE LAMBREW, individually and in her official capacity as representative for Maine Department of Health and Human Services; AARON M. FREY, Attorney General, individually and in his official capacity,

Defendants - Appellees,

JUDGE JOHN DOE 1, individually and in official capacity; JUDGE JOHN DOE 2, individually and in official capacity; DHHS WORKER JANE DOE 1-4; AAG JANE DOE 5-7,

Defendants.

MANDATE

Entered: May 25, 2023

In accordance with the judgment of May 3, 2023, and pursuant to Federal Rule of Appellate Procedure 41(a), this constitutes the formal mandate of this Court.

By the Court:

Maria R. Hamilton, Clerk

cc:

Aaron M. Frey

Kinley MacDonald

United States Court of Appeals For the First Circuit

No. 22-1921

KINLEY MACDONALD, Mother of AJ, BM and WM,

Plaintiff - Appellant,

v.

MICHAEL A. DUDDY, individually and in his official capacity; LEA-ANNE SUTTON, Judge, individually and in her official capacity; RICHARD W. MULHERN, Judge, individually and in his official capacity; JEANNE LAMBREW, individually and in her official capacity as representative for Maine Department of Health and Human Services; AARON M. FREY, Attorney General, individually and in his official capacity,

Defendants - Appellees,

JUDGE JOHN DOE 1, individually and in official capacity; JUDGE JOHN DOE 2, individually and in official capacity; DHHS WORKER JANE DOE 1-4; AAG JANE DOE 5-7,

Defendants.

Before

Barron, Chief Judge,
Kayatta and Gelpí, Circuit Judges.

JUDGMENT

Entered: May 3, 2023

Plaintiff-appellant Kinley MacDonald has filed a notice of appeal in the district court, challenging the district court's November 4, 2022, order affirming the magistrate judge's order denying MacDonald's second motion for appointed counsel, overruling MacDonald's objection to the magistrate judge's order, and denying MacDonald's third request for appointed counsel. After the appeal was opened, this court entered an order directing MacDonald to show cause why this appeal should not be dismissed for lack of appellate jurisdiction, where it did not appear the district court's order was final or otherwise immediately appealable. MacDonald has filed a response and a motion requesting the appointment of counsel.

As an initial matter, MacDonald's request that this court appoint counsel is denied. Having carefully considered MacDonald's response and relevant portions of the record, we conclude we lack jurisdiction. See Fabrica de Muebles J.J. Alvarez, Incorporado v. Inversiones Mendoza, Inc., 682 F.3d 26, 32 (1st Cir. 2012) ("The party asserting jurisdiction has the burden of demonstrating the existence of federal jurisdiction."). No final judgment has entered in the underlying district court case, the challenged order is not an appealable collateral order, and the district court has not certified the order pursuant to Fed. R. Civ. P. 54(b) or 28 U.S.C. § 1292(b). See 28 U.S.C. §§ 1291, 1292; see also SAI v. Transp. Security Admin., 843 F.3d 33, 36 (1st Cir. 2016) (per curium) (citing Appleby v. Meachum, 696 F.2d 145, 147 (1st Cir. 1983) (per curium) (order denying appointed counsel pursuant to 28 U.S.C. § 1915(e) not appealable as collateral order)).

Accordingly, the appeal is hereby dismissed. See 1st Cir. R. 27.0(c) (court may dismiss at any time when appellate jurisdiction is lacking).

By the Court:

Maria R. Hamilton, Clerk

cc:

Kinley MacDonald
Aaron M. Frey

**United States Court of Appeals
For the First Circuit**

No. 22-1921

KINLEY MACDONALD, Mother of AJ, BM and WM,

Plaintiff - Appellant,

v.

MICHAEL A. DUDDY, individually and in his official capacity; LEA-ANNE SUTTON, Judge, individually and in her official capacity; RICHARD W. MULHERN, Judge, individually and in his official capacity; JEANNE LAMBREW, individually and in her official capacity as representative for Maine Department of Health and Human Services; AARON M. FREY, Attorney General, individually and in his official capacity,

Defendants - Appellees,

JUDGE JOHN DOE 1, individually and in official capacity; JUDGE JOHN DOE 2, individually and in official capacity; DHHS WORKER JANE DOE 1-4; AAG JANE DOE 5-7,

Defendants.

MANDATE

Entered: May 25, 2023

In accordance with the judgment of May 3, 2023, and pursuant to Federal Rule of Appellate Procedure 41(a), this constitutes the formal mandate of this Court.

By the Court:

Maria R. Hamilton, Clerk

cc:

Aaron M. Frey

Kinley MacDonald

Appendix EE

Orders on Motions

2:22-cv-00293-JAW

MACDONALD v. DUDDY et al

PRISONERCIVILRIGHTS

U.S. District Court

District of Maine

Notice of Electronic Filing

The following transaction was entered on 5/26/2023 at 11:27 AM EST and filed on 5/26/2023

Case Name: MACDONALD v. DUDDY et al

Case Number: 2:22-cv-00293-JAW

Filer:

Document Number: 41(No document attached)

Docket Text:

ORDER denying [23] Motion for Reconsideration: On November 23, 2023, the Court deferred ruling (ECF No. 26) on Kinley MacDonalds motion for reconsideration (ECF No. 23) until after the Court of Appeals for the First Circuit had ruled on her interlocutory appeal, which she had filed on November 23, 2023. (ECF No. 25). On December 2, 2022, Ms. MacDonald filed another notice of interlocutory appeal (ECF No. 30). On May 3, 2023, the First Circuit dismissed both interlocutory appeals (ECF Nos. 36, 37), and on May 25, 2023, the First Circuit issued its mandates returning jurisdiction to this Court. (ECF Nos. 39, 40). Jurisdiction now having been returned to this Court, the Court now addresses the merits of Ms. MacDonalds motion for reconsideration (ECF No. 23). The Court **DENIES** Kinley MacDonalds motion for reconsideration of its November 4, 2022 Order on Plaintiffs Objection and Renewed Motion for Appointment of Counsel (ECF No. 21). In her motion, Ms. MacDonald acknowledges that she has no constitutional right to counsel and that there is no funding mechanism for the appointed counsel in civil cases, but she argues that the Court should nevertheless exercise its discretion and appoint counsel to represent her, because her case involves the rights of a mother to her children. Although the Court respects Ms. MacDonalds earnest position, the Court declines to exercise its discretion in her case and seek counsel to represent her. If Ms. MacDonald wishes to obtain counsel, she should find a lawyer to represent her in this matter. If she cannot do so, it appears from her filings that Ms. MacDonald is capable of representing herself. **SO ORDERED.**
By JUDGE JOHN A. WOODCOCK, JR. (jad)

2:22-cv-00293-JAW Notice has been electronically mailed to:

2:22-cv-00293-JAW Notice has been delivered by other means to:

KINLEY MACDONALD
RIVERVIEW PSYCHIATRIC CENTER
11 STATEHOUSE STATION
250 ARSENAL STREET
AUGUSTA, ME 04330

Appendix EE p. 2/7

Appendix FF
Maine Revised Statutes (M.R.S.) 2020 Edition

Title

19-A Domestic Relations, Part 3 Parents and children, Chapter 58,
Uniform Child Custody Jurisdiction and Enforcement Act
(UCCJEA), Subchapter 2 Jurisdiction.

§1745 Initial child custody jurisdiction

1.) Jurisdiction over initial determination. Except where otherwise prohibited in §1748, a court of this state has jurisdiction to make an initial child custody determination only if:

A. This state is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this state but has a parent or person acting as a parent continuing to live in this state.

B. A court of another state does not have jurisdiction under paragraph A or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the most appropriate forum under section 1751 or 1752 and:

(1) The child and the child's parents, or the child and at least one parent or a person acting as caretaker, have a significant connection with the state other than mere physical presence; and

(2) Substantial evidence is available in this state concerning the child's care, protection, training and personal relationships.

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0.1/20

Appendix FF

C. All courts having jurisdiction under paragraph A or B have declined exercise jurisdiction on the ground that a Court of this State is the more appropriate forum to determine the custody of the child under Section 1751 or 1752, or §3

D. No court of any other State would have jurisdiction under the criteria specified in paragraph A, B, or C.

2) Exclusive jurisdictional basis. Subsection 1 is the exclusive jurisdictional basis for making a child custody determination by a court of this State.

3) Physical presence or personal jurisdiction not necessary or sufficient. Physical presence or personal jurisdiction over a party or a child is not necessary or sufficient to make a child custody determination.

§1746 Exclusive, continuing jurisdiction.

1) Exclusive, continuing jurisdiction. Except as otherwise provided in Section 1748, a court of this State that has made a child custody determination consistent with Section 1745 or 1747 has exclusive, continuing jurisdiction over the determination until;

A. A court of this State determines that neither the child, nor the child and one parent, nor the child and one person acting as a parent have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or

B. A court of this State or a court of another State determines that the child, the child's parents and any person acting as a parent do not presently reside in this State.

Appendix FF

2) Modification without exclusive, continuing jurisdiction. A court of this State that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 1745.

§ 1747 Jurisdiction to modify determination. Except otherwise provided in section 1748, a court of this State may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under section 1745 § 1(A) or (B) and:

1.) Jurisdiction of other state; more convenient forum. The court of the other state determines it no longer has exclusive, continuing jurisdiction under section 1746 or that a court of this State would be a more convenient forum under section 1751; or

2) Not residents of other state. A court of this State or a court of the other state determines that the child, the child's parents and any person acting as a parent do not presently reside in another state.

§ 1748 Temporary emergency jurisdiction.

1.) Abandoned child; emergency. A court of this State has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.

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2) No previous determination and no pending proceeding. If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under §1745 to §1747, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 1745-1747. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 1745-1747, a child custody determination made under this section becomes a final determination, if it so provides, and this State becomes the home state of the child.

3) Previous determination pending proceedings. If there is a previous child custody determination that is entitled to be enforced under this chapter or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 1745-1747, any order issued by a court of this State under this section must specify in the order to obtain an order from this state having jurisdiction under sections 1745 to 1747. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the time expires.

4) Communication with the Court in another State. A Court of this State that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under sections 1745-1747 shall imm-

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mediately communicate with the other court. A court of this State that is exercising jurisdiction pursuant to sections 1745-1747, upon being informed that a custody proceedings has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child and determine a period for the duration of the temporary order.

§1749 Notice; opportunity to be heard; joinder.

1) Notice and opportunity to be heard required. Before a child custody determination is made under this chapter, notice and opportunity to be heard in accordance with the standards of §1738 must be given to all persons entitled to notice under the laws of this State as in child custody proceedings between residents of this State, any parent whose rights have not been previously terminated and any person having physical custody of the child.

2) Enforceability without notice and opportunity to be heard. This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

22 Health and Welfare, Subtitle 3 Income Supplementation, Part 3 Children, Chapter 1071 Child and Family Services and Child Protection Act.

§ 4002 Definitions. As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1) Abuse or neglect. "Abuse or neglect" means a threat to a

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child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation under Title 17-A § 282, § 852, § 853, + § 855, deprivation of essential needs or lack of protection from these or failure to ensure compliance with school attendance requirements under Title 20-A, § 3272, subsection 2, paragraph B or § 5051-A, subsection 1, paragraph C, by a person responsible for the child.

1-A) Abandonment. "Abandonment" means any conduct on the part of the parent showing an intent to forego parental duties or relinquish parental claims.

3.) Child protection proceeding. "Child protection proceeding" means a proceeding on a child protection petition under Subchapter IV, a subsequent proceeding to review or modify a case disposition under § 4038, an appeal under section 4006, a proceeding on a termination petition under Subchapter VI, or a proceeding on a medical treatment petition under Subchapter VII.

6.) Jeopardy to health or welfare or jeopardy. "Jeopardy to health or welfare" or "jeopardy" means serious abuse or neglect as evidenced by:

A. Serious harm or threat of serious harm;

B. Deprivation of adequate food, clothing, shelter, supervision or care or education when the child is at least 7 years of age and has not completed grade 6;

B-1. Deprivation of necessary health care when the deprivation places child in danger of serious harm; or

C. Abandonment of the child or absence of any person responsible for the child, which creates a threat of serious harm; or

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D. The end of voluntary placement, when the imminent return of the child to his custodian causes a threat of serious harm.

6-A) Licensed mental health professional. "Licensed mental health professional means a psychiatrist, licensed psychologist, licensed clinical social worker or certified social worker.

10.) Serious harm. "Serious harm" means:

A. Serious injury

B. Serious mental or emotional injury or impairment which now or in the future is likely to be evidenced by serious mental health, behavioral or personality disorder, including severe anxiety, depression or withdrawal, outward aggressive behavior, seriously delayed development or similar serious dysfunctional behavior; or

C. Sexual abuse or exploitation

11.) Serious injury. "Serious injury" means serious physical injury or impairment.

12.) Suspicious child death. "Suspicious child death" means the death of a child under circumstances in which there is reasonable cause to suspect that abuse or neglect was a cause of or a factor contributing to the child's death.

§ 4003 Purposes

1.) Authorization. Authorize the department to protect and assist abused and neglected children, children in circumstances which present a substantial risk of abuse and neglect, and their families;

2.) Removal from parental custody. Provide that children will be removed from the custody of their parents only where failure to do so would jeopardize their health or welfare.

§ 4004-A Voluntary agreements

1.) Agreement authorized. If the following conditions are met, the department and a custodian may enter into a mutual agreement

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which the custodian remains in custody of the child and the department agrees to provide services to the child.

A. The department finds that staying in the custodian's home would be detrimental to the welfare of the child.

B. The department finds that, absent a mutual agreement, the child is at risk of entering the child protection system or the juvenile justice system.

2.) Agreement requirements. An agreement entered into pursuant to subsection 1 must meet the following requirements.

A. The agreement may not exceed 180 days unless, within 180 days, the District Court has found that returning to the custodian's home would be detrimental to the welfare of the child. If the court has made that determination the agreement may continue but must be reviewed by the court no more than 18 months after commencement of the agreement and at least every 2 years following the 18-month review.

B. The agreement must specify the legal status of the child and the rights and obligations of the custodian, the child, the department and any other parties to the agreement.

C. If the custodian is able to contribute resources to the care of the child, that contribution must be specified in the agreement. Resources include, but are not limited to, insurance coverage and disposable income.

D. The agreement must be approved by the commissioner or the commissioner's designee.

§ 4005 Parties' rights to representation; legal counsel

1.) Child, guardian ad litem. The following provisions shall govern guardians ad litem. The term guardian ad litem is inclusive of lay court appointed special advocates under Title 4, Chapter 31, F.

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The guardian ad litem on the child may request the court to appoint legal counsel for the child. The District Court shall pay reasonable costs and expenses of the child's legal counsel.

2.) Parents. Parents and Custodians are entitled to legal counsel in child protection proceedings, except a request for a preliminary Protection Order under §4034 or a petition for a medical treatment order under §4071, but including hearings on those Orders. They may request the court to appoint legal counsel for them. The court, if it finds them indigent, shall appoint and pay the reasonable costs and expenses of their legal counsel.

§4006 Appeals. A party aggrieved by an order of a court entered pursuant to §4035, 4054 or 4071 may appeal directly to the Supreme Judicial Court sitting as the Law Court and such appeals are governed by the Maine Rules of Civil Procedure, Chapter 9. Appeals from any order under §4035, 4054 or 4071 must be expedited. Any attorney appointed to represent a party in a District Court proceeding under this chapter shall continue to represent that client in any appeal unless otherwise ordered by the court. Orders entered under this Chapter under sections other than §4035, 4054 or 4071 are interlocutory and are not appealable.

§ 4031 Jurisdiction; venue

2. Venue

A. Petitions shall be brought in the district where the child is present. When a child is in voluntary placement with the department or an agency, the petition may be brought only in the district where he legally resides.

B. The court, for the convenience of the parties or in the int-

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crests of justice, may transfer the petitions to another district or division.

§ 4033, Service and Notice

3. Service of preliminary protection order. If the court makes a preliminary protection order, a copy of the order must be served on the parents, legal guardian and custodians by

A. In-hand delivery by the judge or court clerk to any parent, legal guardian, custodian or their counsel who is present when the order is made;

B. Service in accordance with the Maine Rules of Civil Procedure. Notwithstanding the Maine Rules of Civil Procedure, the court may waive service by publication of a preliminary protection order for a party whose whereabouts are unknown if the department shows by affidavit that diligent efforts have been made to locate the party; or

C. Another manner is ordered by the court.

§ 4034. Request for a preliminary protection order

1.) Request. A petitioner may add to a child protection petition a request for a preliminary protection order or may request a preliminary protection order separately from the child protection petition. A request for a preliminary protection order must include a sworn summary of facts to support the request and identify the specific services offered and provided under section 4036-B, Subsection 3 to prevent the removal of the child from the home.

2.) Order. If the court finds by a preponderance of evidence presented in the sworn summary or otherwise that there is immediate risk of serious harm to the child, it may order any disposition under § 4036. A preliminary protection order automatically expires at the time of the issuing of a final protection

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order under section 4035 or a judicial review order under § 4039.

4.) Summary Preliminary Hearing. The court shall schedule a summary preliminary hearing on a preliminary protection order within 14 days but not less than 7 days after issuance of the preliminary protection order, except that counsel for a parent may request that the hearing take place sooner. Upon request of counsel, the Court may conduct the summary preliminary hearing as expeditiously as the court determines the interests of justice require. If a parent, custodian or legal guardian appears for the summary preliminary hearing and does not consent to the preliminary protection order, the court shall conduct a hearing ^{at which the} ~~and does~~ petitioner bears the burden of proof. At the summary preliminary hearing, the court may limit testimony to the testimony of the caseworker, parent, custodian, legal guardian, guardian ad litem, foster parent, preadoptive parent or relative providing care and may admit evidence, including reports and records that would otherwise be inadmissible as hearsay evidence. If after the hearing the court finds by a preponderance of the evidence that returning the child to the child's custodian would place the child in immediate risk of serious harm, it shall continue the order or make another disposition under § 4036. If the court's preliminary protection order includes a finding of an aggravating factor, the court may order the department not to commence reunification or to cease reunification, in which the court shall conduct a hearing on jeopardy and conduct a permanency planning hearing. The hearings must commence within 30 days of entry of the preliminary protection order. If the petitioner has not been able to serve a

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parent, custodian or legal guardian before the scheduled ^{summary} petition hearing. preliminary hearing, the parent, custodian or legal guardian may request a subsequent summary preliminary hearing within 10 days after receipt of the petition.

6.) Visitation. When the court issues a preliminary protection order, the court shall order the department to schedule visitation with the child's parents and siblings within 7 days of the issuance of the order, unless there is a compelling reason not to schedule such visitation.

§ 4034-A. Evidence and findings inadmissible

1.) Evidence. The exception under § 4034, subsection 4 for the admission of evidence that would otherwise be inadmissible hearsay applies to only the preliminary protection hearing under § 4034, subsection 4. Evidence admitted under that exception is not admissible in any other proceeding unless the evidence is admitted pursuant to the laws and rules of evidence applicable to that other proceeding.

2.) Findings. A finding made at the conclusion of a preliminary protection hearing based on evidence that would otherwise be inadmissible hearsay admitted under § 4034, subsection 4 is not admissible in any other proceeding.

§ 4035 Hearing on Jeopardy Petition

1.) Hearing required. The court shall hold a hearing prior to making a jeopardy order.

2.) Adjudication. After hearing evidence, the court shall make a finding, by a preponderance of the evidence, as to whether the child is in circumstances of jeopardy to the child's health or welfare.

A. The court shall make a fresh determination of the question of jeopardy and may not give preclusive effect to the findings

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of fact made at the conclusion of the hearing under §4034, subsection 4.

B.) The court shall make ^{its} findings of fact on the record upon which the jeopardy determination is made.

C.) The court shall make a jeopardy determination with regard to each parent who has been properly served.

3. Grounds for disposition. If the court determines that the child is in circumstances of jeopardy to the child's health or welfare, the court shall hear any relevant evidence regarding proposed dispositions, including written or oral reports, recommendations or case plans. The court shall then make a written order of any disposition under §4036. If, after reasonable effort, the department has been unable to serve a parent by the time of the hearing under subsection 1, the court may order any disposition under section 4036 until such time as the parent is served and a jeopardy determination is made with regard to that parent. If possible, this disposition phase must be conducted immediately after the adjudication phase. Written materials to be offered as evidence must be made available to each party's counsel and the guardian ad litem reasonably in advance of the dispositional phase.

4. Jeopardy Order. The court shall issue a jeopardy order within 120 days of filing the child protection petition. This time period does not apply if good cause is shown. Good cause does not include a scheduling problem.

§4036-B Removal of child from home.

1.) Application. The provisions of this section apply in any case in which the court orders, or has ordered, the removal of a child from home.

3.) Reasonable efforts to prevent removal. The department shall make reasonable efforts to prevent removal of the child from the home,

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unless the court finds the presence of an aggravating factor. In an order providing for the removal of the child from home, the court shall make a finding:

A. Whether or not the department made reasonable efforts to prevent the removal of the child from home; and

B. If the court finds that the department did not make reasonable efforts to prevent the removal of the child from home, whether or not there is an aggravating factor.

4.) Reasonable efforts to reunify. The department shall make reasonable efforts to rehabilitate and reunify the family as provided by §4041, subsection 1-A unless the court has ordered that the department need not commence or may cease reunification pursuant to §4041, subsection 2. In the jeopardy order pursuant to section 4035 and in each judicial review order pursuant to §4038, the court shall make a finding whether or not the department has made reasonable efforts to rehabilitate and reunify the family.

6.) Requirement for findings. A court order making any finding required by this section must:

A. Be in writing

B. State that the finding was based on specific facts and circumstances relating to the child; and.

C. Explicitly document the basis for the finding

§4038 Mandated review; review on Motion

1.) Mandated Review. If a court has made a jeopardy order, it shall review the case at least once every 6 months, unless the child has been emancipated or adopted.

2.) Review on Motion. The court, the child's parent, custodian or guardian ad litem or a party to the proceedings except a parent whose rights have been terminated under subsection VI;

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may move for judicial review. The moving party shall have the burden of going forward.

S.) Hearing. The court shall hear evidence and shall consider the original reason for the adjudication and disposition under § 4035 and 4036, the events that have occurred since then and the efforts of the parties as set forth under § 4041. After the hearing or by agreement, the court shall make written findings that determine:

A. The safety of the child in the child's placement.

B. The continuing necessity for and appropriateness of the child's placement;

C. The effect of a change in custody on the child.

D. The extent of the parties' compliance with the case plan and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care.

E. Likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship, and.

§ 4039 Enforcement of custody orders. When the court has ordered a change in the custody of a child and a person not entitled to custody refuses to relinquish physical custody to the Custodian, then ^{by} the request of the department or Custodian, a law enforcement officer may take necessary and reasonable action to obtain physical custody of the child for the rightful Custodian. Necessary and reasonable action may include entering a public or private property with a warrant based on probable cause that the child is there.

§ 4041 Department responsibilities.

1-A. Rehabilitation and reunification. A child is considered to have entered foster care on the date of the first judicial finding

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that the child has been subjected to child abuse or neglect or on the 60th day after the child is removed from the home, whichever comes first. When a child is considered to have entered foster care, the responsibility for reunification + rehabilitation of the family must be shared as follows:

A. The department shall;

(1) Develop a rehabilitation and reunification plan as provided in this subparagraph;

(a) In developing the rehabilitation and reunification plan, the department shall make good faith efforts to seek the participation of the parent. Information must be included in developing the plan includes the problems that present a risk of harm to the child, the services needed to address those problems, provisions to ensure the safety of the child while the parent engages services needed to address those problems, provisions to ensure the safety of the child while the parent engages in services, a means to measure the extent to which progress has been made, and visitation that protects the child's physical and emotional well-being with this information, the department shall prepare a written reunification and rehabilitation plan.

(b) The department shall circulate the plan to the parties at least 10 days before a scheduled court hearing and shall present the plan to the court for filing at that hearing.

(c) The reunification plan must include the following:

(i) The reasons for the removal of the child from home;

(ii) The changes that are necessary to eliminate jeopardy to the child while in the care of a parent;

(iii) Rehabilitation services that will be provided and must be completed satisfactorily prior to the child's return home;

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(iv) Services that must be provided or made available to assist the parent in rehabilitating and reunifying with the child, as appropriate to the child and family, including, but not limited to, reasonable transportation for the parent for visits and services, child care, housing assistance, assistance with transportation to and from required services and other services that support reunification.

(v.) A schedule of and conditions for visits between the child and the parent designed to provide as positive of parent - child interaction as can practically be achieved while ensuring the emotional and physical well-being of the child when visits are not detrimental to the child's best interests;

(vi) Any use of Kinship support, including, but not limited to, placement supervision of visitation in-home support or respite care;

(vii) A reasonable time schedule for proposed reunification, reasonably calculated to meet the child's needs; and

(viii) A statement of the financial responsibilities of the parent and the department during the reunification process.

(2) Provide the parent with the prompt written notice of the following, unless that notice would be detrimental to the best interests of the child:

(a) The child's residence and, when practicable, at least 7 days' advance written notice of planned change of residence; and

(b) Any serious injuries, major medical care received or hospitalization of the child;

(3) Make good faith based efforts to cooperate with the parent in pursuit of the plan;

(4) Periodically review with the parent the progress of the plan

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and make any appropriate changes in the plan. If the parties disagree about the proposed changes in the plan, any party may seek an informal conference with all other parties in an effort to resolve the disagreement, prior to initiating court action. If the parties are unable to agree after an informal conference, the parties may have access to the court's case management system. This subparagraph may not be construed to limit the court's authority to manage and control any cases within the court.

Subchapter 6 Termination of Parental Rights

§ 4050 Purpose

Recognizing that instability and impermanency are contrary to the welfare of children, it is the intent of the Legislature that this subchapter

- 1.) Termination of parental rights. Allow for the termination of parental rights at the earliest possible time after rehabilitation and reunification efforts have been discontinued and termination is in the best interests of the child.
- 2.) Return to family. Eliminate the need for children to wait unreasonable periods of time for their parents to correct the conditions which prevent their return to the family.
- 3.) Adoption. Promote the adoption of children into stable families rather than allowing children to remain in the impermanency of foster care; and
- 4.) Protect interests of child. Be liberally construed to serve and protect the best interests of the child.

§ 4052 Termination petition; petitioners, time filed; contents

2-A Department as petitioner or as party. The department shall file a termination petition or seek to be joined as a party to a

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pending petition:

A. When a child has been in foster care 15 of the most recent 22 months. The department must file the petition before the end of the child's 15th month in foster care.

* This paragraph does not apply if the department is required to undertake reunification efforts and the department has not provided to the family of the child such services as the court determines to be necessary for the safe return of the child to the child's home consistent with the time period in the case plan.

3. Contents of petition. A termination petition shall be sworn and shall include at least the following

F. An allegation which is sufficient for termination

4. Hearing date. On the filing of a petition, the court shall set a time and date for a hearing.

§ 4055 Grounds for termination.

1. Grounds. The court may order termination of parental rights if:

A. One of the following conditions has been met

(1) Custody has been removed from the parent under

(a) Section 4035 or 4038

B. Either;

(1) The parent consents to termination. Consent shall be written and voluntary and knowingly executed in court before a judge. The judge shall explain the effects of a termination order; or

(2) The court finds, based on clear and convincing evidence, that:

(a) Termination is in the best interests of the child; and

(b) Either;

(i) The parent is unwilling or unable to protect the child

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from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs;

(iii) The child has been abandoned; or

(iv) The parent has failed to make a good faith effort to rehabilitate and reunify with the child pursuant to Section 4041.

§ 4059. Termination orders of other states. If parental rights have been terminated by judicial order in another state, the order, unless against public policy of this State, shall be accorded full faith and credit.

§ 4071 Medical Treatment order

1.) Petitioner. The department, a physician or a chief medical administrator of a hospital may petition for a medical treatment order.

4.) Order. On the basis of the petition or other evidence, the court may order medical treatment for the child if the custodians are unable or unwilling to consent to it, and the treatment is necessary to treat or prevent an immediate risk of serious injury. The order shall include notice to the parents and custodians of their right to counsel as required under section 4032, Subsection 2, paragraph 6, and notice of the date and time of the hearing.

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main Rules of Unified Criminal Procedure (2023Ed)

Rule 12 Pleadings and Motions Before Trial; Defenses and Objections

(a) Pleadings and Motions. Pleadings in criminal proceedings shall be the complaint, the indictment, and the information, and the pleas of not guilty, not criminally responsible by reason of insanity, guilty and nolo contendere. All other pleas and objections raised before trial that heretofore would have been raised by one or more of such other pleas or pleadings shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these Rules.

(b) Motion Raising Defenses and Objections

(1) Defenses and Objections That May be Raised. Any defenses and objections that is capable of determination without the trial of the general issue may be raised before trial by motion.

(2) Defenses and Objections That Must Be Raised

Defenses and objections based on defects in the institution of the prosecution or the indictment, information, or complaint, other than that it fails to show jurisdiction in the court, may be raised only by motion before trial. The motion shall include all such defenses and objections available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction shall be

noticed and served upon by the court at any time during pendency of the proceeding.

(3) Time of Making Motions and Filing and Service of Motions.

(A) Motions to dismiss, motions relating to joinder of offenses, motions seeking discovery pursuant to court order under Rules 16 and 16A, motions to suppress evidence, and other motions relating to the admissibility of evidence shall be served upon the opposing party, but not filed with the court, at least 7 days before the date set for the dispositional conference under Rule 18. If the matter is not resolved at the dispositional conference, the motions shall be filed with the court no later than the next court day following the dispositional conference. If, as a result of the dispositional conference, the party filing motions determines the need to alter or amend a motion previously served, the amended motion must be served upon the opposing party pursuant to Rule 49.

(B) All other motions shall be filed with the court promptly after grounds for the motion arise.

(4) Hearing on Motion. A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue. All issues of fact shall be determined by the court with or without a jury or on affidavits or in such other manner as the court may direct.

(5) Effect of Determination. If a motion is determined adversely to the defendant, the defendant shall be permitted to plead if the defendant has not previously pleaded. A plea previously entered shall stand. If the motion is based upon a defect that may be cured by amendment of the complaint or information, the court may deny the motion and order that the complaint or information be amended. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment, information, or complaint the defendant shall be discharged.

(c) Motion In Limine. The defendant or the State may make a pretrial motion requesting a pretrial ruling on the admissibility of evidence at trial or on other matters relating to the conduct of the trial no later than 7 days before the date set for jury selection. The court may rule on the motion or continue it for a ruling at trial. In determining whether to rule on the motion or to continue it, the court should consider the importance of the issue presented, the desirability that it be resolved before trial, and the appropriateness of having the ruling made by the justice or judge who will preside at trial. For good cause shown the justice or judge presiding at trial may change a ruling made in limine.

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Rule 36. Appeals; Petitions

- (b) De Novo Review of Preconviction Bail set by Judicial Officer for a crime Bailable as of Right
- (2) Defendants Aggrieved by the Court's Decision. Any defendant charged with a crime bailable as of right who is aggrieved by a decision of the court made at arraignment or initial appearance as to the amount or conditions of bail set may file a petition in the Unified Criminal Packet for a redetermination of bail in accordance with 15 MRS § 1028-A and the additional procedures set forth in Rule 46(d).
- (c) Review of Bail by or Appeal to a Single Justice of the Supreme Judicial Court
- Rule 43. Presence of the Defendant

The defendant shall be present at the arraignment, at the dispositional conference, at every stage of the trial including the verdict and imposition of sentence. A corporation may appear by counsel for all purposes. In any criminal prosecution for a Class D or Class E crime, the court may permit arraignment, plea, trial, and imposition of sentence of a represented defendant in defendant's absence.

RULE 44. RIGHT TO AND ASSIGNMENT OF COUNSEL

(a) Assignment of Counsel.

(1) *Before Verdict.* If the defendant in a proceeding in which the crime charged is murder or a Class A, Class B, or Class C crime appears in any court without counsel, the court shall advise the defendant of the defendant's right to counsel and assign counsel to represent the defendant at every stage of the proceeding unless the defendant elects to proceed without counsel. If the defendant is without sufficient means to employ counsel, the court shall make an initial assignment of counsel. Assigned counsel must be designated by the Maine Commission on Indigent Legal Services as eligible to receive assignments

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for the type of case to which counsel is assigned. The Maine Commission on Indigent Legal Service will, pursuant to procedures established by the Commission, accept the initial assignment made by the court or substitute other counsel for counsel assigned by the court. Counsel initially assigned by the court shall remain counsel of record unless the Commission does not accept the assignment and provides notice of substitution of counsel and counsel files a notice of withdrawal pursuant to Rule 44B, or counsel is otherwise granted leave to withdraw pursuant to Rule 44B.

If a defendant in a proceeding in which the crime charged is a Class D or Class E crime appears without counsel, the court shall advise the defendant of the defendant's right to be represented by counsel at every stage of the proceeding unless the defendant elects to proceed without counsel. If the defendant is without sufficient means to employ counsel, the court shall make an initial assignment of counsel, unless the court concludes that in the event of conviction a sentence of imprisonment will not be imposed. Assigned counsel must be designated by the Maine Commission on Indigent Legal Services as eligible to receive assignments for the type of case to which counsel is assigned. The Maine Commission on Indigent Legal Service will, pursuant to procedures established by the Commission, accept the initial assignment made by the court or substitute other counsel for counsel assigned by the court. Counsel initially assigned by the court shall remain counsel of record unless the Commission does not accept the assignment and provides notice of substitution of counsel and counsel files a notice of withdrawal pursuant to Rule 44B, or counsel is otherwise granted leave to withdraw pursuant to Rule 44B.

(2) *On Appeal.* Counsel assigned to a case in the Unified Criminal Docket shall continue to represent the defendant unless relieved by order of the trial court or the Law Court. The court may assign counsel to a defendant determined indigent after verdict or finding pursuant to Rule 44A.

RULE 46. CERTAIN PROCEDURAL PROVISIONS GOVERNING BAIL

(a) *In General.* This Rule contains certain procedural provisions governing bail for a defendant or for a witness. The procedure governing preconviction and post-conviction bail for a defendant is generally provided by statute.

(d) *Redetermination of Bail by Another Justice or Judge.* Any defendant charged with a crime bailable as of right who is aggrieved by a decision of the court made at arraignment or initial appearance as to the amount or conditions of bail set may file one petition for redetermination of bail by another justice or judge. Such petition must be filed with the court no later than 14 days before the date set for the defendant's dispositional conference. If the defendant is incarcerated, hearing on the petition shall be scheduled before any justice or judge within 48 hours of filing, excluding Saturdays, Sundays, legal holidays, and court holidays. For a defendant who is in custody, the court shall provide notice of the hearing to the attorney for the State at least 24 hours before the hearing. If the defendant is not in custody, hearing on the petition shall be scheduled within 7 days after it has been filed. For a defendant who is not in custody, the court shall provide notice of the hearing to the attorney for the State at least 72 hours before the hearing. The court shall review the petition and, after providing the parties with an opportunity to be heard, may set bail in any manner authorized by 15 M.R.S. § 1026.

Maine Revised Statutes (2023 Edition)

Title 15 Court Procedure - Criminal, Part 1, Chapter 5

Mental Responsibility for Criminal Conduct

§101-C Access to records by persons or entities performing examinations or evaluations

1. Written demand for records. When a person or entity has been ordered to perform an examination or evaluation pursuant to section 101-B, a diagnostic evaluation pursuant to section 3309-A, a competency examination pursuant to section 3318-A, an evaluation and treatment pursuant to section 3318-B, or an examination of a juvenile with reference to insanity or abnormal condition of mind, and the person to be examined has sought the examination, joined a request or order for the examination or has entered a plea or answer of not criminally responsible by reason of insanity, that person or entity may make written demand upon any individual, partnership, association, corporation, institution or governmental entity to produce the records or copies of the records, in whatever medium preserved, of the subject of the examination or evaluation.

2. Production of records. Any such entity from whom records are demanded pursuant to subsection 1 shall produce the records or copies of the records forthwith. The production shall be made notwithstanding any other law. No entity, or employee or agent of the entity, may be criminally or civilly responsible for furnishing any records in compliance with this section,

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3. Confidentiality of records. Records provided under this section shall be confidential and shall not be disseminated by any person other than upon order of the court pursuant to petition for release under section 104-A or pursuant to an involuntary commitment proceeding under Title 34-B, section 3864.

4. Definition. "Records" means information about a person, in whatever medium preserved. It includes, but is not limited to, medical histories, social histories, military histories, government histories, educational histories, drug and alcohol treatment histories, criminal record histories, penal institution histories and documentation pertaining to diagnosis or treatment.

§101-D. Mental examination of persons accused of crime

1. Competency to proceed. The court may for cause shown order that the defendant be examined to evaluate the defendant's competency to proceed as provided in this subsection.

A. Upon motion by the defendant or by the State, or upon its own motion, a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation of the defendant's competency to proceed. When ordered to evaluate a defendant in this paragraph, the State Forensic Service shall promptly examine the defendant and report its initial determination regarding the defendant's competency as to the nature and scope of any further examination. The court shall forward any report filed by the State Forensic Service to the

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defendant or the defendant's attorney for the State.

B. If the defendant is incarcerated, the examination ordered pursuant to paragraph A must take place within 21 days of the court's order, and the report of that examination must be filed within 30 days of the court's order. If further examination is ordered pursuant to paragraph C, the report of that examination must be filed within 60 days of the court's order. If further examination is ordered pursuant to paragraph D, the report of that examination must be filed within 90 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may grant any extension of time that is reasonable under the circumstances. The examination may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the examination. If the State Forensic Service determines otherwise, the examination must be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination.

● Appendix HH Chapter ●

Part 2: Proceedings Before Trial, Chapter 105, Subchapter 1,
§ 810 Copy of indictment furnished; assignment of counsel

2.) Assignment of counsel before arraignment. Before arraignment, competent defense counsel must be assigned by the court unless waived by the accused after being fully advised of the accused's rights by the court if the court determines that the accused is indigent and the accused is charged with murder or a Class A, B or C crime, except when the accused has not had an initial appearance on the complaint.

3. Assignment of counsel at arraignment. Competent defense counsel must be assigned by the court unless waived by the accused after being fully advised of the accused's rights by the court if the court determines that the accused is indigent and that;

A. There is a risk upon conviction that the accused may be sentenced to a term of imprisonment

● Appendix HA ●

Title 15 Court Procedure - Criminal, Part 2 Proceedings Before Trial, Chapter 105-A Maine Bail Code, Subchapter 1

§1002. Legislative Findings; statement of purpose ... It is the purpose and intent of this chapter that bail be set for a defendant in order to reasonably ensure the appearance of the defendant as required, to otherwise reasonably ensure the integrity of the judicial process and, when applicable, to reasonably ensure the safety of others in the community. It is also the purpose and intent of this chapter that the judicial officer consider, relative to crimes bailable as a right pre-conviction, the least restrictive release alternative that will reasonably ensure the attendance of the defendant as required, or otherwise reasonably ensure the integrity of the judicial process. Finally, it is also the intent and purpose of this chapter that a defendant, while at liberty on bail, refrain from committing new crimes.

§1028-A. De novo determination of bail set by a justice or judge acting under section 1026.

1) By defendant. Any defendant charged with a crime bailable as of right who is aggrieved by a decision of the court made at arraignment or initial appearance as to the amount or conditions of bail set may file a petition with the Unified Criminal Pocket for a de novo determination of bail by another justice or judge in accordance with the procedures set forth in Rule 46(d) of the Maine Rules of Unified Criminal Procedure. The court making the initial decision shall advise the defendant of the right to obtain a de novo deter-

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Title 17-A, Maine Criminal Code, Part 2 Substantive Offenses, § 401. Burglary

1. A person is guilty of burglary if:

A. The person enters or surreptitiously remains in a structure knowing that that person is not licensed or privileged to do so, with the intent to commit a crime therein. Violation of this paragraph is a class C crime; or

B. The person violates paragraph A and:

(1) The person is armed with a firearm, or knows that an accomplice is so armed. Violation of this subparagraph is a Class A crime.

§ 211 Reckless Conduct

1. A person is guilty of reckless conduct if he recklessly creates a substantial risk of serious bodily injury to another person

2. Reckless conduct is a class D crime.

§ 209 Criminal threatening

1. A person is guilty of criminal threatening if he intentionally or knowingly places another person in fear of imminent bodily injury

2. Criminal threatening is a class D crime

§ 207 Assault

1. A person is guilty of assault if:

A. The person intentionally, knowingly or recklessly causes bodily injury or offensive physical contact to another person. Violation of this paragraph is a class D crime.

Part 6 Punishments, Chapter 63 Sentences of Imprisonment

§ 1604 Imprisonment for crimes other than murder

5. Circumstances elevating class of crime, The follow-

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ing circumstances elevate the class of a crime.

A. If the State pleads and proves that a class B, C, D, or E crime was committed with the use of a dangerous weapon, then the sentencing class for such crime is one class higher than it would otherwise be. In the case of a Class A crime committed with the use of a dangerous weapon, such use must be assigned special weight by the court in exercising its sentencing discretion. This paragraph does not apply to a violation or an attempted violation of section 208, to any other offenses for which the sentencing class is otherwise elevated because the actor or an accomplice to that actor's or accomplice's knowledge was armed with a firearm or other dangerous weapon.

Appendix II Maine Constitution

Article

1§1 Natural rights. All people are born equally free and independant, and have certain natural, inherent and unalienable rights, among those which are those enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and hapiness.

1§2 Power inherent in people. All power is inherent in the people; all free governments are founded in their authority and instituted for their benefit; they have therefore an unalienable and indefensible right to institute government, and to alter, reform or totolly change the same when their safety and happiness require it.

1§3 Religious Freedom, sects equal; religious tests prohibited; religious teachers. All individuals have a natural and unalienable right to worship Almighty God (יְיָ אֱלֹהֵינוּ) according to the dictates of their own consciences, and no person shall be hurt, molested or restrained in that person's liberty or estate for worshipping God (HeShem) in the manner and season most agreeable to the dictates of that person's own conscience, nor for that person's religious professions or sentiments provided that that person does not disturb the public peace, nor obstruct others in their religious worship; and all persons demeaning themselves peaceably, as good members of the State, shall be equal under the protection of the laws, and no subordination nor preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be required as qualification for any office or trust, under this State, and all religious societies in this State, whether incorporated or unincorporated, shall at all times have the exclusive

Appendix II

right of electing public teachers and contracting with them for their support and maintenance

§4 Freedom of speech and publication; libel; truth given in evidence; jury determines law and fact. Every citizen may freely speak, write and publish sentiments on any subject, being responsible for the abuse of this liberty; no laws shall be passed regulating or restraining the freedom of the press; and in prosecutions for any publication respecting the official conduct of people in public capacity, or the qualifications of those who are candidates for the suffrage of the people, or where the matter published is proper for public information, the truth thereof may be given in evidence, and in all indictments for libels, the jury, after having received the direction of the Court, shall have a right to determine, at their discretion, the law and the fact.

§5 Unreasonable searches prohibited. The people shall be secure in their persons, houses, papers, and possessions from all unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without a special designation of the place to be searched, and the person or thing to be seized, nor without probable cause supported by oath or affirmation.

§6 Rights of persons accused. In all criminal prosecutions, the accused shall have the right to be heard by the accused and Counsel to the accused, or either, at the election of the accused; to demand the nature and cause of the accusation, and have a copy thereof; to be confronted by the witnesses against the accused, to have compulsory process for obtaining witnesses in favor of the accused, to have a speedy

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public trial, and, except for trials by martial law or impeachment, by a jury of the vicinity. The accused shall not be compelled to furnish or give evidence against himself or herself, nor be deprived of life, liberty, property or privileges, but by judgement of that person's peers or the law of the land.

1 § 6-A. Discrimination against persons prohibited. No person shall be deprived of life, liberty or property without due process of law, nor be denied equal protection of the laws, nor be denied the enjoyment of that person's civil rights or be discriminated against in the exercise thereof.

1 § 9 Sanguinary laws, excessive bail, cruel or unusual punishments prohibited. Sanguinary laws shall not be passed; all penalties and punishments shall be proportioned to the offense, excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

1 § 10 Bailable offenses; habeas corpus. No person before conviction shall be bailable for any of the crimes which are now, or have been denominated capital offenses since the adoption of the Constitution, when the proof is evident or the presumption great, whatever the punishment of the crimes may be. And the privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion or the public safety may require it.

1 § 15 Right of petition. The people have a right at all times in an orderly and peaceable manner to assemble to consult upon the common good, to give instructions to their representatives, and to request of either department of the government by petition or remonstrance, redress of their wrongs and grievances.

1 § 16 To keep and bear arms. Every citizen has a right to

Appendix II

Keep and bear ●ns and this right sh● never be
questioned.

Appendix J.I

Universal Declaration of Human Rights (UDHR) Involved

Article

- 1.) All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in the spirit of brotherhood.
- 2.) Everyone is entitled to all the rights and freedoms set forth in this Declaration, without discretion of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional, or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under other limitation of sovereignty.
- 3.) Everyone has the right to life, liberty and security of person.
- 5.) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- 7.) All are equal before the law and are entitled without any ^{discrimination} ~~discretion~~ to equal protection against discrimination in violation of this Declaration and against any incitement to such discrimination.
- 8.) Everyone has the right to effective remedy by competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.
- 9.) No one shall be subjected to arbitrary arrest, detention or exile.
- 10.) Everyone is entitled to a fair and public hearing by an independent and impartial tribunal in the determination of his

Appendix J.I

rights and obligations and of any criminal charge against him.

12.) No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

16.) (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution.

(3) The family is the natural and fundamental group unit of society and is entitled to protection of society and ^{the State} ~~is entitled~~ _{is}.

18.) Everyone has the right to freedom of thought, conscience and religion, belief, and freedom to change his religion, belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observation.

19.) Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

20.) (1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

23.) (3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

25.) (2) Motherhood and childhood are entitled to special care

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and assistance. All children, whether born or out of wedlock, shall enjoy the same social protection.

28.) Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

29.) (2) In the exercise of his Rights and Freedoms, Everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Appendix KK 1/2
U.S. Constitutional Provisions

Amendments:

- 1.) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the government for a redress of grievances.
- 2.) A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.
- 4.) The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
- 5.) 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 subjected for the same offense 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 shall be deprived of life, liberty, or property without due process of law; nor shall private property

be taken for public use, without just compensation.

6) 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.

8.) Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

14§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 person within its jurisdiction the equal protection of the laws.

Appendix LL

United States Statutory Provisions Involved

28 U.S.C § 1251 Original Jurisdiction

(a) The Supreme Court shall have original + exclusive jurisdiction of all controversies between two or more states

(3) All actions or proceedings by a state against a citizen of another state... or against aliens.

28 U.S.C § 1253 Direct appeals from decisions of 3 judge Courts

28 U.S.C § 1254 Cases in the Court of appeals may be reviewed by the Supreme Court

(1) By writ of Certiorari granted upon the petition of any party to any question of law in any civil or criminal case, before or after rendition of judgement or decree;

28 U.S.C § 1257 State Courts; Certiorari

(a) Final judgement or decree rendered by the highest Court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a State Statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, any commission held or authority exercised under, the United States.

28 U.S.C § 1331 Federal Question - The District Courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States

28 U.S.C § 1334 Civil rights and elective franchise

(a) the district courts have original jurisdiction of any civil action authorized by law to be commenced by any person;

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(1) To recover damages for injury to his person or private property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in § 1985 of Title 42

(2) to recover damages from any person who fails to prevent any wrongs mentioned in § 1985 where about to occur + power to prevent.

(3) To redress the deprivation under color of any state law, Statute, ordinances, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of Civil Rights including the right to vote.

28 U.S.C. § 1357 Injuries under Federal laws - The district courts shall have original jurisdiction of any civil action commenced by any person to recover damages for any injury to his person or property or account of an act done to him, under any act of Congress, for the protection or collection of any of the revenues, or to enforce the right of citizens of the United States to vote in any state.

28 U.S.C. § 1367 Supplemental jurisdiction

a.) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any

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civil action of which the district courts have original jurisdiction, ^{over} the district Courts have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same cause or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

28 USC § 1369 - Multiparty, multiform jurisdiction

(c) Special rules and definitions

(1) minimal diversity exists between adverse parties - if any party is a citizen of another state, a citizen or subject of a foreign state, or a foreign state as defined in Section 1603(a) of this title

(e) NOTIFICATION OF JUDICIAL PANEL ON MULTIDISTRICT LITIGATION - A district court in which an action under this section is pending shall promptly notify the judicial panel on the multidistrict litigation of the pendency of the action.

28 U.S.C § 1443 Civil Rights cases - Any of the following civil actions or criminal prosecutions, commenced in a state court may be removed by the defendant to the district court and division embracing the place wherein it is pending.

(1) Against any person who is denied or cannot enforce the courts of such state a right under any law providing for the equal civil rights of citizens of the United States, or all persons within the jurisdiction thereof;

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(27) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law

28 U.S.C. § 1651 All Writs Act

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

28 U.S.C. § 2101(c). An application to the Supreme Court for writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at anytime before judgment.

28 U.S.C. § 2201 Creation of Remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under sections 505 or 1146 of title 11, or any civil action involving antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(1) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

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28 U.S.C. § 2202 Further relief - Further necessary or proper relief, based on a declaratory judgment or decree may be granted after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

28 U.S.C. § 2241 Power to grant Writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts, and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless -

(1) He is in custody under or by color of authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or

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(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or

laws or treaties of the United States; or

(5) It is necessary to bring him into court to testify at trial

28 U.S.C. § 2243. Issuance of writ; return; hearing; decision

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained.

It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed. The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

28 U.S.C. § 2250. Indigent petitioner entitled to documents without cost.

If any application for a writ of habeas corpus or an order has been made permitting the petitioner to prosecute the application in forma pauperis, the clerk of any court of the United States shall furnish to the petitioner without cost certified copies of such documents or parts of the record on file in his office as may be required by order of the judge before whom the application is pending.

28 U.S.C. § 2251. Stay of State Court Proceedings.

(a) IN GENERAL

(1) PENDING MATTERS - A justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment of discharge, or pending appeal, stay any proceeding against the person detained in any State Court or by or under the authority of any State for any matter involved in the habeas corpus proceeding.

(2) MATTER NOT PENDING - For purposes of this section, a habeas corpus proceeding is not pending until the application is filed.

28 U.S.C. § 2254 State custody; remedies in Federal Court

(a) The Supreme Court, a justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus ^{by} in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)

(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that -

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)

(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(d) An applicant for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim -

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this Section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3066A of title 18.

28 U.S.C. § 2283. Stay of State court proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be

be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in such action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1985 Conspiracy to interfere with civil rights.

(2) Obstructing justice; intimidating party, witness, or juror.

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to

Injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of dam-

ages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C § 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000.00 damages thereon, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

42 U.S.C § 1988.

(c) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24 and

20 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adopted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the Constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is criminal in nature, in the infliction and punishment on the party found guilty.

b) Attorney's fees.

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 USC 1691 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000-bb et seq.], or section 12361 of title 34, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such off

icer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert Fees.

In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

42 U.S.C. §§ 12132 Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participating in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. §§ 12202 State Immunity

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State Court of competent jurisdiction for a violation of this Chapter. In any action against a State for a violation of the requirements of this Chapter, remedies (including remedies both at law and in equity) are available for such a violation in an action against any public or private entity other than a State.

42 U.S.C. §§ 12203 Prohibition against retaliation and coercion

(a) Retaliation

No person shall discriminate against any individual because such individual has opposed any act or practice made unlaw-

ful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation.

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Chapter.

(c) Remedies and procedures.

The remedies and procedures available under sections 12117, 12133, and 12488 of this title (Below) shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to subchapter I, subchapter II, and subchapter III, respectively.

• 42 U.S.C §§ 12117 Enforcement

(a) Powers, remedies, and procedures

The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

• 42 U.S.C §§ 12133 Enforcement

The remedies, procedures, and rights set forth in section 794 a

of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

• 42 U.S.C. §§ 12188 Enforcement

(a) In general

(1) Availability of remedies and procedures

The remedies and procedures set forth in section 2000a-3(a) of this title are the remedies and procedures this subchapter provides to any person who is being subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 12183 of this title. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this subchapter does not intend to comply with its provisions.

(2) Injunctive Relief

In the case of violations of sections 12182(b)(2)(A)(iv) and section 12183(a) of this title, injunctive relief shall include an order to alter facilities readily accessible to and usable by individuals with disabilities to the extent required by this subchapter. Where appropriate, injunctive relief shall also include requiring the provision of an aux

illary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this subchapter.

(b) Enforcement by Attorney General

(1) Denial of rights

(A) Duty to investigate

(a) In general

The Attorney General shall investigate alleged violations of this subchapter, and shall undertake periodic reviews of compliance of covered entities under this subchapter.

42 USC §§ 12205 Attorney's fees

In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.