No. 23-761

IN THE

Supreme Court of the United States

KIONN ALLS,

Petitioner

v.

DEPARTMENT OF REVENUE, O/B/O
SHARITA DENISE GOSA

Respondent

On Petition For Writ Of Certiorari
To The Sixth District Court Of Appeal
Of The State Of Florida

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Do our state court of appeals have an unrenunciable judicial duty to correct jurisdictional or fundamental errors that were preserved at trial, were raised on appeal in the briefing process, or that appear on the face of the record?

PARTIES TO THE PROCEEDINGS

The names of all parties to the proceeding in this Court appear on the cover page of the petition.

RELATED CASES

The following is a list of all proceedings in other courts that are directly related to the case in this Court:

Department of Revenue o/b/o Sharita Denise Gosa v. Kionn Alls, No. 2012-DR-7744-O, Circuit Court of Ninth Judicial Circuit Court for Orange County Florida. Judgment entered Mar. 14, 2022.

Department of Revenue o/b/o Sharita Denise Gosa v. Kionn Alls, No. 2012-DR-7744-O, Circuit Court of Ninth Judicial Circuit Court for Orange County Florida. Rehearing denied Apr. 13, 2022.

Kionn Alls v. Department of Revenue o/b/o Sharita Denise Gosa, No. 6D23-1269, Sixth District Court of Appeal of the State of Florida. *Per curiam* affirmed Jul. 18, 2023.

Kionn Alls v. Department of Revenue o/b/o Sharita Denise Gosa, No. 6D23-1269, Sixth District Court of Appeal of the State of Florida. Rehearing denied Aug. 11, 2023.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

CASES *Page*

TABLE OF CITED AUTHORITIES

CASES *Page*

CONSTITUTIONAL PROVISIONS

TABLE OF CITED AUTHORITIES

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Kionn Alls ("Mr. Alls"), respectfully petitions this Court for a writ of certiorari to review the decision of the Sixth District Court of Appeal of the State of Florida.

OPINIONS AND ORDERS BELOW

The opinion and order of the Circuit Court of Ninth Judicial Circuit Court for Orange County Florida is unreported and reproduced in the Petitioner's Appendix ("A") at A1-A33.

The order denying Mr. Alls' Motion for Reconsideration and for Rehearing of Prior Orders by the Circuit Court of Ninth Judicial Circuit Court for Orange County Florida is reproduced at A34-A35.

The *per curiam* affirmed decision by the Sixth District Court of Appeal of the State of Florida is reproduced at A36-37.

The order denying Mr. Alls' Motion for Rehearing, Motion for Rehearing En Banc, Motion for Written Opinion and Motion To Certify Question by the Sixth District Court of Appeal of the State of Florida is reproduced at A38-A39.

BASIS FOR JURISDICTION

The Sixth District Court of Appeal of the State of Florida denied Mr. Alls' motion for rehearing,

motion for rehearing en banc, motion for written opinion and motion to certify question on August 11, 2023. On November 15, 2023, the Clerk of this Court extended the time to resubmit a corrected petition and appendix for a period not exceeding 60 days. Accordingly, the last day to return this petition to the Clerk's Office so that it may be docketed is January 14, 2024. The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question is 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fifth Amendment to the United States Constitution provides, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same 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 be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment to the United States Constitution provides, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. Chapter 7, Subchapter IV, Part D §651 provides, "For the purpose of enforcing the support obligations owed by noncustodial parents to their children and the spouse (or former spouse) with whom such children are living, locating noncustodial parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for assistance under a State program funded under part A) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part."

Florida Rule of Civil Procedure 1.420(b) Involuntary Dismissal, provides, "Any party may move for dismissal of an action or of any claim against that party for failure of an adverse party to comply with these rules or any order of court.

Notice of hearing on the motion shall be served as required under rule 1.090(d). After a party seeking affirmative relief in an action tried by the court without a jury has completed the presentation of evidence, any other party may move for a dismissal on the ground that on the facts and the law the party seeking affirmative relief has shown no right to relief, without waiving the right to offer evidence if the motion is not granted. The court as trier of the facts may then determine them and render judgment against the party seeking affirmative relief or may decline to render judgment until the close of all the evidence. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication on the merits."

INTRODUCTION

On July 5, 2012, the Florida Department of Revenue (DOR), filed a petition to establish paternity, child support and for other relief for minor child, C.D.G., born March 2012, on behalf of Sharita Gosa ("Mrs. Gosa"), against putative biological father, Mr. Alls, and husband and legal father, Randy Gosa ("Mr. Gosa").

On December 9, 2021, Mr. Alls filed an amended motion for relief from judgments and to dismiss. In

Mr. Alls' amended motion to dismiss he argued, in relevant part, that the DOR lacked standing to file its petition and thus the lower tribunal court lacked jurisdiction, and, as a result, all judgments entered by the lower tribunal court must be declared void and vacated and the paternity case against him must be dismissed.

On March 14, 2022, the lower tribunal court denied Mr. Alls' motion for relief from judgments and to dismiss (A1-A33), an opined, in relevant part, that Mr. Alls waived the defense of lack of standing for failure to raise it as an affirmative defense—and even if the DOR lacked of standing it would not deprive the court of its jurisdiction, but noted; however, that the DOR's standing must be established as of the date it filed its petition—, the DOR had standing to file its petition, and that the court had jurisdiction.

On March 24, 2022, Mr. Alls filed an amended motion for reconsideration and for rehearing of prior orders. In Mr. Alls' amended motion for rehearing he argued, in relevant part, that the lower tribunal court erred in ruling that Mr. Alls waived the defense of lack of standing for failure to raise it as an affirmative defense because standing is not necessarily required to be raised only by means of an affirmative defense, the court erred in ruling that the DOR had standing because the lower tribunal case was not a Title IV–D case, all cases the court relied on to support its position that

the DOR had standing were either not analogous, instructive, and/or dispositive of the issue of the DOR's standing, and because the court hadn't considered all relevant statutes with regard to the DOR's standing, and, finally, that the court erred in ruling that it had jurisdiction because the court's jurisdiction was not properly invoked since the DOR lacked standing. On April 13, 2022, however, the lower tribunal court denied Mr. Alls' motion for reconsideration and for rehearing of prior orders (A34-A35).

On June 23, 2022, Mr. Alls filed his initial brief in the Florida Fifth District Court of Appeal.[1] In Mr. Alls' initial brief he argued, in relevant part, that he did not waive the defense of lack of standing, the DOR did not have standing because the lower tribunal case was not a Title IV–D case, the jurisdiction of the lower tribunal court was not properly invoked and perfected, and that the lower tribunal court fundamentally erred when it entered judgment in favor of a nonparty and granted relief pursuant to nonexistent cause of action.[2] On July 18, 2023, however, the Florida Sixth District Court of Appeal *per curiam* affirmed the lower tribunal court (A36-A37).

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[1] Mr. Alls' appeal was later transferred to the Florida Sixth District Court of Appeal as a result of redistricting due to case overload.

[2] Mr. Alls raised the fundamental error: judgment entered in favor of a nonparty, in his reply brief.

On August 2, 2023, Mr. Alls filed his amended motion for rehearing, motion for rehearing en banc, motion for written opinion and motion to certify question in the intermediate-level state appellate court. In Mr. Alls' amended motion for rehearing he argued, in relevant part, that a rehearing was warranted because the court overlooked the lower tribunal court's jurisdictional defects and fundamental errors that were raised, a rehearing en banc was warranted because the DOR exceeded the statutory limitations placed upon it by the legislature, a written opinion was warranted because a written opinion would would provide an explanation for the court's apparent deviation from prior precedent and provide a legitimate basis for Florida Supreme Court review because its *per curiam* affirmed opinion conflicted with opinions of the United States District Court Southern District of Florida, the Florida Supreme Court and other intermediate-level state appellate courts, and, finally that certification was warranted because the lower tribunal case implicated questions of great public importance.

On August 11, 2023, the Florida Sixth District Court of Appeal denied Mr. Alls' amended motion for rehearing, motion for rehearing en banc, motion for written opinion and motion to certify question (A38-39) and this timely petition for writ of certiorari in this Court ensued.

STATEMENT OF THE CASE

The facts material to consideration of the question presented are as follows:

1. The DOR's Lack of Standing

Section 409.2557(1), Florida Statutes, designates the DOR "as the state agency responsible for the administration of the child support enforcement program, Title IV–D of the Social Security Act , 42 U.S.C. ss. 651 et seq." (Emphasis added).

Section 409.2563(1)(f), Florida Statutes, defines a "Title IV–D case" as "a case or proceeding in which the [DOR] is providing child support services within the scope of Title IV–D of the Social Security Act."

The lower tribunal court's case was not a Title IV–D case. There was no evidence in the record that supported that Mrs. Gosa or her dependent child ever received public assistance and no enforcement action was pending when the DOR filed its petition in 2012. *See Dep't of Revenue v. McLeod*, 96 So. 3d 443, 446 (Fla. Dist. Ct. App. 2012) (based on the relevant statutes, there is no Title IV–D case with respect to child support obligations unless either or both parents, or the dependent child, are receiving public assistance, or if the custodial parent has requested DOR's

assistance in enforcing or modifying a child support order).

Additionally, based on the DOR's own contention in *Mcleod*, they would **not** have standing in the following situations:

1. Providing child support establishment services to the custodial parent in those circumstances in which neither the custodial parent nor child are receiving public assistance [or]
2. Providing paternity establishment services to the custodial parent in those circumstances in which neither the custodial parent nor child are receiving public assistance[.]

Id, 449.

Accordingly, the lower tribunal court erred as a matter of law when it relied solely on Section 409.2557(2), Florida Statutes, to support, in part, its ruling that the DOR had standing to provide paternity and child support establishment services on Mrs. Gosa's behalf.

The lower tribunal court also relied on *Dep't of Revenue o/b/o Tisdale v. Jackson*, 217 So. 3d 192, 194 (Fla. 5th DCA 2017); *Florida Dept. of Revenue v. Cummings*, 930 So. 2d 604, 609 (Fla. 2006); and *Dep't of Revenue ex rel. Garcia v. Iglesias and*

Garcia, 77 So. 3d 878 (Fla. 4th DCA 2012) to support its ruling that the DOR had standing. However, these cases were either not analogous, instructive, and/or dispositive of the issues presented in Mr. Alls' case.

Mr. Alls was not challenging the DOR's standing to file for modification of child support obligations as in *Tisdale*. Whether or not a legal father is an indispensable party was at issue in *Cummings*. And there was neither a legal father, nor established paternity, as no father was listed on the birth certificate, nor finding of fact that the marriage was intact in *Iglesias*. Accordingly, the lower tribunal court also erred as a matter of caselaw because the DOR's standing cannot be conferred simply by virtue of previously filed, similarly-styled petitions.

2. Mr. Alls Did Not Waive the Defense of Lack of Standing

The lower tribunal court relied on *Phadael v. Deutsche Bank Trust Co. Americas*, 83 So. 3d 893, 895 (Fla. 4th DCA 2012); *Glynn v. First Union Nat'l Bank*, 912 So. 2d 357, 358 (Fla. 4th DCA 2005); *Kissman v. Panizzi*, 891 So. 2d 1147, 1150 (Fla. 4th DCA 2005); and *Jaffer v. Chase Home Fin., LLC*, 155 So. 3d 1199, 1202 (Fla. 4th DCA 2015) to rule that Mr. Alls' defense of lack of standing was deemed waived for failure to raise it as an affirmative defense.

On Mr. Alls' amended motion for reconsideration and for rehearing of prior orders, he, in opposition to waiver, relied on *Maynard v. Florida Bd. of Educ. ex rel. Univ. of S. Florida*, 998 So. 2d 1201, 1206 (Fla. 2d DCA 2009), which ruled that standing may not be raised for the first time on appeal; however, it does not necessarily require that standing be raised only by means of an affirmative defense. Additionally, Mr. Alls also urged the trial court to reconsider and, subsequently, reject *Phadael*, *Glynn*, *Kissman* and *Jaffer* because the facts in those cases were not analogous to those in the lower tribunal court's case.

In *Phadael*, the Appellant was defaulted and failed to defend the action at any point before entry of the final judgment. In *Glynn*, the Appellant never filed a motion or an answer in the trial court. The central issue in *Kissman* was whether the buyer complied with the financing provision of a contract, not the buyers lack of standing. In *Jaffer*, the Appellants did not file an answer or affirmative defenses, and a default judgment was entered against them. Unlike *Phadael*, *Glynn*, and *Jaffer*, in which the Appellants were defaulted or never filed a motion or an answer in the trial court, resulting in waiver of the defense of standing, Mr. Alls was not defaulted and filed multiple motions in the lower tribunal court. And unlike *Kissman*, lack of standing was a central issue in the lower tribunal court's case.

Maynard is instructive and dispositive of whether or not the defense of standing is waived for failure to raise it as an affirmative defense. Though Mr. Alls did not raise the issue of standing as an affirmative defense, he raised the issue before the lower tribunal court court in a motion for relief from judgments and to dismiss. The parties filed memoranda on the issue of standing, argued the issue at a hearing, and the trial court decided the issue on its merits. Accordingly, Mr. Alls did not waive the defense of lack of standing.

3. The Lower Tribunal Court's Lack of Jurisdiction

The lower tribunal court's order remained silent on whether the jurisdiction of the court was properly invoked and perfected despite the pleadings and argument presented at trial. *See Fla. Power Light v. Canal Authority*, 423 So. 2d 421, 423 (Fla. Dist. Ct. App. 1982) (subject matter jurisdiction must be properly *invoked* and *perfected*).

In regards to its jurisdiction, the lower tribunal court failed prongs (2), (3) and (4) of the *Lovett* quadripartite test:

> A Court has jurisdiction of the subject-matter of any given cause, if these words are to be given their full meaning, they imply, generally speaking, (1) that the Court has jurisdictional power to adjudicate the class of

> cases to which such case belongs; and (2) that its jurisdiction has been *invoked* in the particular case by lawfully bringing before it the necessary parties to the controversy, and (3) the controversy itself by pleading of some sort sufficient to that end; and (4) when the cause is one *in rem,* the Court must have judicial power or control over the *res,* the thing which is the subject of the controversy.

Lovett v. Lovett, 93 Fla. 611, 631 (Fla. 1927) (italics in original; emphasis added).

The lower tribunal court failed prong (2) because the DOR lacked standing and thus the court's jurisdiction was not invoked.

The lower tribunal court failed prong (3) because the DOR filed a petition to establish paternity; therefore, the lower tribunal court did not have the jurisdiction to disestablish Mr. Gosa's paternity or terminate his parental rights because they were not properly plead.

As a result, the lower tribunal court created a "dual fathership," which is not recognized under Florida law, because Mr. Gosa's paternity was not lawfully disestablished nor were his parental rights and attendant responsibilities of support ever terminated under any of the state's applicable legal procedures. *See* §§ 39.801, et seq., §§ 63.087, 742.18, Fla. Stat.; *see also Slowinski v. Sweeney*,

117 So. 3d 73 (Fla. 1st Ct. App. Jun. 27, 2013) (... because the parental rights of the man married to the mother at the time the child was born have not been terminated in accordance with Florida law, which does not recognize dual or concurrent fathers).

The DOR's intent of a petition to establish paternity is two-fold: determining (1) a legal father —listing someone's name as the father on the birth certificate—and determining (2) who has the legal duty to provide support for the child in question. *See* § 409.2564(1), Fla. Stat. (2002) (requiring DOR to institute "action as is necessary to secure the obligor's payment of current support" when regular support payments are not being made to obligee receiving public assistance; emphasis added); *see also D.F. v. Dep't of Revenue*, 736 So. 2d 782, 785 n. 3 (Fla. 2d DCA 1999), *aff'd*, 823 So.2d 97 (Fla. 2002) (These paternity cases seek to determine the man who has a legal duty to support the children involved); *Department of Revenue v. Cummings*, 871 So. 2d 1055, 1058-59 (Fla. Dist. Ct. App. 2004) (noting paternity action is filed to establish legal father who will be legally responsible to support child).

The lower tribunal court failed prong (4) because there was no subject of controversy; paternity was already established, Mr. Gosa's name was listed on the minor child's birth certificate and, because the Gosa's remain married, he was the one

who had the legal duty to provide support. *See Department of Revenue v. Cummings*, 871 So. 2d 1055, 1059 (Fla. Dist. Ct. App. 2004) (so long as a couple remains married, the husband and legal father stands in loco parentis to the child and owes a duty of support to the child).

The DOR's lack of standing did deprive the lower tribunal court of it's jurisdiction because standing is also jurisdictional within the meaning of rule 1.420(b), Florida Rule of Civil Procedure:

> Indeed, it seems that the rule's intent is not to give a dismissal preclusive effect when it is based on a court's lack of power over the case, regardless of whether the defense divesting the court of such power is waivable. Case jurisdiction embraces a court's power to hear a case (even if it has jurisdiction over the class of cases to which it belongs). When a party lacks standing, it cannot invoke the court's jurisdiction to hear the particular case even if the court otherwise has jurisdiction over the subject matter of the class of cases to which the particular case belongs. *Roberts*, 29 So. 2d at 750 ("'[A]n entire failure to invoke the court's jurisdiction over the subject matter or an attempt to do so in a manner wholly inadequate to bring the court's powers into activity would prevent any valid determination of the case.'" (citation

> omitted)); *Lovett*, 112 So. at 775 ("The jurisdiction and power of a court remain at rest until called into action by some suitor . . . .").

Streicher v. U.S. Bank Nat'l Ass'n, 18 (S.D. Fla. Mar. 14, 2016).

Without standing the DOR could not invoke the jurisdiction of the trial court. *Id.*

Without jurisdiction the lower tribunal court lacked any authority to render its decisions and, as such, all orders stemming from the filing of the DOR's petition should have been declared void and vacated and the lower tribunal court's case should have been dismissed.

4. The Florida Sixth District Court of Appeal Violated its State's Doctrine of Fundamental Error

Under Florida caselaw, an error is deemed fundamental "when it goes to the foundation of the case or the merits of the cause of action and is equivalent to a denial of due process." *See F.B.*, 852 So. 2d at 229 (*quoting J.B. v. State*, 705 So. 2d 1376, 1378 (Fla. 1998)).

Mr. Alls was denied procedural due process when the lower tribunal court arbitrarily decided that he was the minor child's biological father in the absence of any evidence to support its decision. *See Superintendent, Massachusetts Corr. Inst.,*

Walpole v. Hill, 472 U.S. 445, 455 (1985) (decision does not comport with the minimum requirements of procedural due process, unless the tribunal's findings are supported by some evidence in the record); *Louisville & N.R. Co.*, 227 U.S. at 91 ,(a finding without evidence is arbitrary and baseless); *Foucha v. Louisiana*, 504 U.S. 71, 72 (1992) (the right to due process also bars arbitrary decisions, regardless of the fairness of the procedures used to reach them); *R.R. Comm'n of California v. Pac. Gas & Elec. Co.*, 302 U.S. 388, 399 (1938) (an order is arbitrary and violates due process if it depends on a finding reached without supporting evidence, or a finding based on evidence that does not support it. Otherwise, a court "could disregard all rules of evidence, and capriciously make findings by administrative fiat." Such authority, however beneficently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power).

Under Florida caselaw, "it is fundamental error to enter judgment in favor of a nonparty." *See Beaumont v. Bank of N.Y. Mellon*, 81 So. 3d 553, 554 (Fla. 5th DCA 2012).

Private counsel for Mrs. Gosa filed the notice of final hearing in the lower tribunal court's case and she and her attorney were the only two in attendance at the final hearing on March 28, 2016; however, absent filing a motion to intervene, they

were nonparties. *See Ibanez v. 21st Mortg. Corp.*, 207 So. 3d 901 (Fla. 4th DCA 2017). Mrs. Gosa nor her counsel had standing when they filed the notice of final hearing and thus the lower tribunal court had no jurisdiction to entertain Mrs. Gosa's notice and proceed with the final hearing.

The Florida Supreme Court instructed that appellate courts have an independent duty to correct fundamental error at issue even if not raised on appeal. *See Smith v. Pattishall*, 127 Fla. 474, 483 (1937); *see also I.A. v. H.H.*, 710 So.2d 162, 165 (Fla. Dist. Ct. App. 1998) (where the trial court has granted relief that is not authorized by law, or pursuant to a cause of action that either does not exist or is not available to the plaintiff[,]" it is the reviewing court's "duty to notice and correct [such] jurisdictional defects or fundamental errors even when they have not been identified by the parties).

The lower tribunal court granted relief pursuant to a cause of action that does not exist under Section 742.011, Florida Statutes. According to Section 742.011, Florida Statutes, Determination of Paternity Proceedings; Jurisdiction:

> Any woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child may bring proceedings in the circuit court, in chancery, to determine the paternity of the

> child when paternity has not been established by law or otherwise.

(Emphasis added).

Paternity in the court's case was established by law under operation of Section 382.01(2)(a), Florida Statutes, which provides that:

> If the mother is married at the time of birth, the name of the husband shall be entered on the birth certificate as the father of the child, unless paternity has been determined otherwise by a court of competent jurisdiction.

Reading these provisions together, they indicate a child born to an intact marriage cannot be the subject of a paternity proceeding brought under Section 742.011, Florida Statutes, by the DOR, nor could its paternity suit be recognized as a cognizable cause of action.

The lower tribunal court also granted relief that was not authorized by Section 742.011, Florida Statutes. The court, in its final judgment of paternity entered against Mr. Alls on March 28, 2016, ordered that Mr. Gosa's name be removed and Mr. Alls' name be added to the birth certificate of the minor child. And, although removing Mr. Gosa's name did disestablish his paternity, it was done so **unlawfully**. Disestablishment of paternity

or termination of child support obligation is only authorized by Section 742.18, Florida Statutes.

The Florida Sixth District Court of Appeal was duty bound to correct the fundamental errors that Mr. Alls raised on appeal. *See Rosier v. State*, No. 1D16-2327, 10 (Fla. Dist. Ct. App. Jun. 28, 2019) (it is also a well-established practice of this [c]ourt to remedy fundamental errors on the face of the record. *E.g.*, *Honaker v. State*, 199 So. 3d 1068, 1070 (Fla. 5th DCA 2016); *Johnson v. State*, 574 So. 2d 222, 224 (Fla. 5th DCA 1991); *Goss v. State*, 398 So. 2d 998, 999 (Fla. 5th DCA 1981).); *Id*, 26: (Florida's appellate courts have long recognized judicial authority—and a "unrenunciable" duty—to correct fundamental errors, meaning those of such gravity that ignoring and not correcting them would diminish public respect for the judicial process, even if those errors were not preserved at trial, not raised on appeal in the briefing process, or raised by the appellate court on its own. *See, e.g.*, *Bell v. State*, 289 So. 2d 388, 391 (Fla. 1973) (it is the long standing rule of this [c]ourt that when assignments of error are not argued in the briefs they will be deemed abandoned unless jurisdictional or fundamental error appears in the record.) (emphasis added in original)); *Id*, 27-28: ([The Florida S]upreme [C]ourt has made clear that an appellate court has an obligation to correct fundamental errors in the "interests of justice." *Ray v. State*, 403 So. 2d 956, 960 (Fla. 1981); *see also*

Smith v. State, 521 So. 2d 106, 108 (Fla. 1988); *Bain*, 730 So. 2d at 302 (purpose of fundamental error doctrine "extends beyond the interests of a particular aggrieved party; it protects the interests of justice itself. It embodies the courts' recognition that some errors are of such a magnitude that failure to correct them would undermine the integrity of our system of justice.)). *Id*, 38: ([a court's] duty is to correct fundamental error on the face of the record as the Legislature and our supreme court have authorized).

However, despite *Rosier*, *Bell*, *Ray*, *Smith*, *Bain* et al., the Florida Sixth District Court of Appeal was derelict in its judicial duty to correct the jurisdictional and fundamental errors that were raised by Mr. Alls on appeal.[3]

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[3] Florida's Sixth District Court of Appeal duty to correct jurisdictional and fundamental errors, as it relates to the federal question sought to be reviewed, was raised in Mr. Alls' amended motion for rehearing, motion for rehearing en banc, motion for written opinion and motion to certify question filed in the intermediate-level state appellate court, "[a] rehearing is warranted in this case because this [c]ourt has overlooked the lower tribunal court's jurisdictional defects and the following fundamental errors that were raised by Appellant: relief granted pursuant to a nonexistent cause of action and judgment entered in favor of a nonparty," but was passed on by the state appellate court when the court denied his motion.

REASONS FOR ALLOWANCE OF THE WRIT

The *per curiam* affirmed decision by the Florida Sixth District Court of Appeal conflicts with decisions of the United States District Court Southern District of Florida, the Florida Supreme Court and Florida's First, Second, Fourth and Fifth District Courts of Appeal and, as a result:

1. Mr. Alls Was Denied Procedural Due Process

The Florida Sixth District Court of Appeal failed to correct the lower tribunal court's arbitrary ruling that Mr. Alls was the minor child's biological father and, as a result, his rights under the Due Process Clauses of both the Fifth and Fourteenth Amendments to the United States Constitution, which this Court interprets as a guarantee to procedural due process, were denied.

2. Mr. Alls Was Denied Equal Protection Under Florida Law

The Florida Sixth District Court of Appeal failed to correct the jurisdictional and fundamental errors of the lower tribunal court raised by Mr. Alls on appeal, as dictated by, and collectively known as, Florida's Fundamental Error Doctrine; and, as a result, his right under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, which this Court interprets as a guarantee that each state must provide equal

protection under the law to all people, including all non-citizens, within its jurisdiction, was also denied.

3. The Integrity of our Justice System Has Been Undermined

As a result of the *per curiam* affirmed decision by the Florida Sixth District Court of Appeal in Mr. Alls' case, it can still be argued that the DOR lacked standing, the lower tribunal court lacked jurisdiction, exceeded its jurisdiction, if properly invoked and perfected, granted relief pursuant to a cause of action that did not exist and that was not authorized by law, denied Mr. Alls procedural due process, and entered judgment in favor of a nonparty. And, since these jurisdictional and fundamental errors remain uncorrected, it can also be argued that the integrity of our justice system has been undermined. Justice, however, does not permit such ambiguity. Justice is either upheld or it is undermined. And, when justice is undermined, as is the case in Mr. Alls' case—or in any case for that matter—it is an issue of great public importance.

CONCLUSION

This petition for a writ of certiorari should be granted because Mr. Alls believes a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United

States court of appeals in accordance with Rule 10(b), a state court of appeals has decided an important question of federal law that Mr. Alls believes has not been, but should be, settled by this Court in accordance with Rule 10(c), Mr. Alls' case involves an issue of great public importance, an issue of federal law, or an issue concerning the United States Constitution in accordance with Article III of the United States Constitution, and/or because of other reasons within this Court's discretion.

Respectfully submitted,

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December 27, 2023