No. 23-83

IN THE
SUPREME COURT OF THE UNITED STATES

MARTINE BERNARD, Petitioner

v.

CHRISTOPHER HODYL, Respondent

On Petition For Writ Of Certiorari
To The Colorado Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Martine Bernard
Pro se
8119 S. Humboldt Circle
Centennial, CO 80122
martinebrnrd@yahoo.com
Tel: (720)-616-1027

QUESTIONS PRESENTED

1. Whether a state court's denial of the right to freely negotiate the terms of a visiting supervisor's contract on the grounds that the supervised vists are court-ordered constitutes a violation of the freedom of contract guaranteed by the Fourteenth Amendment of the United States Constitution?

2. Whether a claim to freedom of contract guaranteed by the Fourteenth Amendment of the United States Constitution is now barred by issue preclusion and claim preclusion when the claim to freedom of contract was raised in the district court but a final judgment was never entered and was never addressed when it was raised on appeal?

3. Whether procedural due process guaranteed by the Fourteenth Amendment of the United States Constitution was violated when a litigant was left with only six (6) minutes for examination and cross examination as a result of the court allowing unplanned enlargement of the scope of the hearing after the hearing has already started ?

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

a) In The Trial Court:

Petitioner: CHRISTOPHER HODYL and Respondent: MARTINE BERNARD, No. 18DR30102, Douglas County District Court. Related judgments entered on September 1, 2020 for individual therapy and monetary sanctions.

Petitioner: CHRISTOPHER HODYL and Respondent: MARTINE BERNARD, No. 18DR30102, Douglas County District Court. Related judgments entered on September 15, 2020 for individual therapy.

Petitioner: CHRISTOPHER HODYL and Respondent: MARTINE BERNARD, No. 18DR30102, Douglas County District Court. Related judgments entered on October 21, 2020 for individual therapy treatment requiring "progress" reports from the treating individual therapist.

Petitioner: CHRISTOPHER HODYL and Respondent: MARTINE BERNARD, No. 18DR30102, Douglas County District Court. Related judgments entered on November 18, 2020 vacating the weekly filing on therapists contacted, and provided its own list of therapists for Petitioner to contact.

Petitioner: CHRISTOPHER HODYL and Respondent: MARTINE BERNARD, No. 18DR30102, Douglas County District Court. Related judgments entered on November 19, 2020 for Family Therapy Treatment and Vacating the November 18, 2020 Order For Individual Therapy Treatment.

Petitioner: CHRISTOPHER HODYL and Respondent: MARTINE BERNARD, No. 18DR30102, Douglas County District Court. Judgments entered on January 8, 2021; Granted Respondent $13,738.50 in Attorney Fees and Costs.

Petitioner: CHRISTOPHER HODYL and Respondent: MARTINE BERNARD, No. 18DR30102, Douglas County District Court. Judgments entered on January 29, 2021 For Family Therapy Limiting Petitioner To The District Court's Own List Of Therapists; It Required That A Treatment Summary Be Filed By The Parties And For The Parties To Ensure that The Family Therapist Appear In Court To Be Examined. Also Requiring a copy of Board complaints be filed within 24 hours of the original complaint was filed with the professional Boards.

Petitioner: CHRISTOPHER HODYL and Respondent: MARTINE BERNARD, No. 18DR30102, Douglas County District Court. Related judgments entered on February 22, 2021; Required Petitioner to file a copy Of any Board Complaints filed against professionals in the Case.

Petitioner: CHRISTOPHER HODYL and Respondent: MARTINE BERNARD, No. 18DR30102, Douglas County District Court. Judgments entered on March 25, 2021; penalized Petitioner with $4,600.00 fees and required the posting of additional $5,000.00 to cover the daily $100.00 for each day that Petitioner fails to contact the treating family therapist to "complete paperwork", which undoubtedly involves the signing of a contract.

Petitioner: CHRISTOPHER HODYL and Respondent: MARTINE BERNARD, No. 18DR30102, Douglas County District Court. Judgments entered on July 28, 2021; Granted Respondent $13,479.00 in Attorney Fees and Costs.

b) In The Appellate Courts:

In re the Marriage of Appellee: Christopher Hodyl and Appellant: Martine Bernard, No. 2019CA1553 & 2019CA1982, Colorado Court of Appeals. Mandate issued on June 9, 2021. Petition for a Writ of Certiorari was denied by the Colorado Supreme Court.

In re the Marriage of Appellee: Christopher Hodyl and Appellant: Martine Bernard, No. 2019CA2380, Colorado Court of Appeals. Mandate issued on June 9, 2021.

In re the Marriage Petitioner : Martine Bernard, and Respondent: Christopher Hodyl, No.. 2021SC143, Colorado Supreme Court. Judgment entered on June 7, 2021 denying Petition for a Writ of Certiorari to the Colorado Court of Appeals case no. 2019CA2380.

In re the Marriage of Appellee: Christopher Hodyl and Appellant: Martine Bernard, No. 2020CA333 &2020CA522 Colorado Court of Appeals. Mandate issued on June 24, 2021 upholding the district court order coercing Petitioner to sign a visiting supervisor's contract under duress and without a meeting of the minds between the visiting supervisor and Petitioner. The Mandate also upheld the district court's order sanctioning Petitioner $3,032.50 in attorney fees to the opposing party for having to respond to a motion in which Petitioner asked for changes to be made to the visiting supervisor's contract prior to signing.

In re the Marriage Petitioner: Martine Bernard, and Respondent: Christopher Hodyl, No. 2021SC207, Colorado Supreme Court. Judgment entered on June 21, 2021 denying Petition for a Writ of Certiorari to the Colorado Court of Appeals case no. 2020CA333 &2020CA522 .

In re the Marriage of Appellee: Christopher Hodyl and Appellant: Martine Bernard, No. 2020CA1468, Colorado Court of Appeals. Mandate was issued on August 27, 2021.

In re the Marriage of Appellee: Christopher Hodyl and Appellant: Martine Bernard, No. 2020CA1962, Colorado Court of Appeals. Unpublished Opinion was entered on September 30, 2021. Mandate issued on February 28, 2022.

In re the Marriage of Petitioner: Martine Bernard, and Respondent : Christopher Hodyl. The Supreme Court of Colorado case no. 2021SC850. Petition for a Writ of Certiorari denied on February 28, 2022.

Martine Bernard, Petitioner v. Christopher Hodyl, No. 21-1530, United States Supreme Court. Petition for a writ of certiorari was denied on October 3, 2022.

In re the Marriage of Appellee: Christopher Hodyl and Appellant: Martine Bernard, No. 21CA0177, Colorado Court of Appeals. Unpublished Opinion entered on April 7, 2022. The Mandate was issued on December 20, 2022.

In re the Marriage of Petitioner: Martine Bernard, and Respondent : Christopher Hodyl. The Supreme Court of Colorado case no. 2022SC403. Petition for a Writ of Certiorari denied on December 19, 2022.

Martine Bernard, Petitioner v. Christopher Hodyl, No. 22-936, United States Supreme Court. Petition for a writ of certiorari was denied on May 30, 2023.

In re the Marriage of Appellee: Christopher Hodyl and Appellant: Martine Bernard, No. 21CA1410 & 21CA1417, Colorado Court of Appeals. Unpublished Opinion entered on October 6, 2022. The Mandate was issued on May 1, 2022.

In re the Marriage of Petitioner: Martine Bernard, and Respondent : Christopher Hodyl. The Supreme Court of Colorado case no. 2022SC883. Petition for a Writ of Certiorari denied on April 24, 2023.

TABLE OF CONTENTS

Page

REASONS FOR GRANTING THE PETITION

Opinions and Orders at Issue:

Other Relevant Orders

Other Essential Documents

TABLE OF AUTHORITIES

Page

CASES

CONSTITUTIONAL PROVISIONS

STATUTORY PROVISIONS

RULES OF CIVIL PROCEDURES

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Martine Bernard, respectfully petitions this Court for a writ of certiorari to review the judgment of the Colorado Court of Appeals in this case.

OPINIONS AND ORDERS BELOW

a) Opinions and Orders at Issue:

The Colorado Court of Appeals' Opinion was entered on October 6, 2022; it is unpublished and is reproduced in Appendix A on pages la-28a.

The Colorado Court of Appeals' Order denying the Petition for Rehearing was entered on November 3, 2022; it is unpublished and is reproduced in Appendix K on pages 49a-50a.

The Supreme Court of Colorado's Order denying the Petition for a Writ of Certiorari was issued on April 24, 2023; it is unpublished and is reproduced in Appendix C on pages 31a-33a.

The Colorado Court of Appeals' Mandate issued on May 1, 2023 is unpublished and is reproduced in Appendix B on pages 29a-30a.

The January 8, 2021 Douglas County District Court's Order Granting Respondent $13,738.50 in

Attorney Fees and Costs is reproduced in Appendix D on pages 34a-36a.

The July 28, 2021 Douglas County District Court's Order Granting Respondent $13,479.00 in Attorney Fees and Costs is reproduced in Appendix E on pages 37a-38a.

b) Other Relevant Orders:

The July 27, 2021 Douglas County District Court's Order Informing the Parties that the July 28, 2021 Hearing Will Be Limited to the Reasonableness of Attorney Fees Awarded to Respondent in the Court's January 8, 2021 Order is reproduced in Appendix F on pages 39a-40a.

The April 16, 2021 Colorado Court of Appeals' Order Dismissing the January 8, 2021 Appeal Without Prejudice Because the Douglas County District Court Scheduled a Hearing on May 14, 2021 on the Issue of Attorney Fees and Costs is reproduced in Appendix G on pages 41a-42a.

The July 13, 2020 Douglas County District Court's Order Reinstating the Prior Visiting Supervisor (Ms. Veith) to the Case after She was Unilaterally Fired by Respondent is reproduced in Appendix H on pages 43a-44a.

The April 3, 2020 Douglas County District Court's Order Appointing the New Visiting Supervisor (Miss Haas) to the Case, whose Contract

Led to the July 10, 2020 Hearing that Cost $13,738.50 in Attorney Fees and Costs is reproduced in Appendix I on pages 45a-46a.

The June 4, 2021 Colorado Supreme Court's Order Denying Petitioner's Show Cause Petition Pursuant to C.A.R. 21 Regarding the Colorado Court of Appeals' Dismissal of Petitioner's Appeal of the Douglas County District Court's January 8, 2021 Order Granting Petitioner $13,738.50 in Attorney Fees and Cost for Lack of Finality is reproduced in Appendix J on pages 47a-48a.

STATEMENT OF JURISDICTION

The Colorado Court of Appeals entered its opinion on October 6, 2022. App. la-28a. The Petition for rehearing was denied on November 3, 2022. App. 49a-50a.

On April 24, 2023 the Colorado Supreme Court issued an order denying the Petition for a Writ of Certiorari. App. 31a-33a. This Court has jurisdiction pursuant to 28 U.S.C. § 1257 (a).

CONSTITUTIONAL PROVISIONS, STATUTORY PROVISIONS, AND RULES INVOLVED

I. U.S. Constitution, Amendment XIV, § 1 provides that:

> *"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."*

II. The Supremacy Clause of the United States Constitution, Art. VI, cl. 2 provides:

> *"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding."*

II. Colo. Const. Art. II, Section 25 provides that:

> *"No person shall be deprived of life, liberty or property, without due process of law."*

"The right to equal protection of the laws guarantees that all parties who are similarly situated receive like treatment by the law."

IV. Colorado Revised Statutes § 14-10-129.5 - Disputes concerning parenting time. Its complete text is provided at App. 51a-54a.

V. Colorado Rules of Civil Procedures 59- Motions for Post-Trial Relief. Its complete text is provided at App. 55a-59a.

VI. Colorado Rules of Civil Procedures 121 Section 1-15 (3) provides that:

"Effect of Failure to File Legal Authority. *If the moving party fails to incorporate legal authority into a written motion, the court may deem the motion abandoned and may enter an order denying the motion. Other than motions seeking to resolve a claim or defense under C.R.C.P. 12 or 56, failure of a responding party to file a responsive brief may be considered a confession of the motion."*

STATEMENT OF THE CASE:

A. Nature Of The Case:

This case is regarding freedom of contract and procedural due process violation in a post-decree divorce case under Title14 of the Colorado Revised Statutes. This petition is asking the Court to review the Colorado Court of Appeals Opinion affirming the Douglas County District Court's January 8, 2021 and July 28, 2021 orders. App.1a-28a; App. 34a-36a; App. 37a-38a.

The January 8, 2021 order granted $13,768.00 in attorney fees and costs to Respondent [Father] for a hearing that was schedule and held based on the Douglas County District Court's erroneous legal conclusion that Petitioner [Mother] did not have freedom of contract in regards to a visiting supervisor's contract because the supervised visits were court-ordered. App. 34a-36a. This is a clear violation of Petitioner's Fourteenth Amendment right to freedom of contract.

In addition, the hearing in question was conducted in a manner that violated Petitioner's procedural due process. Also the attorney fees and costs for holding the hearing were shifted to Petitioner without first granting her the requested evidentiary hearing on the reasonableness of the fees and despite the fact that Respondent cited the wrong

rule in his motion for attorney fees and costs. App. 34a-36 a.

The July 28, 2021 order is about the procedural due process violation that occurred during the evidentiary hearing on the reasonableness and necessity of the $13,478.00 that was granted in the January 8, 2021 order and the manner in which the district court failed to use established standards to determine the reasonableness of the fees

B. Locations Where Federal Issues Were Raised:

Freedom of contract was raised on page 14 of Petitioner's April 23, 2020 Response by stating that she has the right "... *not to sign a contract that she does not agree with is supported by public policy and freedom to contract.*"

On June 24, 2020, during a Webex status conference, the Douglas County District Court ruled that Petitioner does not have freedom of contract in relation to court-ordered visits and later refused to reduce its legal conclusion to writing. Transcript is available.

Freedom of contract was raised with the Colorado Court of Appeals in an Opening Brief for case number 2020CA1468, but it was not addressed in the unpublished Opinion.

gave the Douglas County District Court authority to appoint the visiting supervisor, whose contract is the reason for scheduling the July 10, 2020 hearing.

On July 9, 2020, the Douglas County District Court cited the July 9, 2019 permanent orders as its sole authority for appointing the visiting supervisor:

"*The permanent orders ordered the appointment of a supervisor, and this includes the authority to issue orders for the parties to sign and execute a supervisor's contracts, similar to when a DR court orders parties to sign and execute releases for children's therapy.*"

In her July 6, 2020 motion to dismiss the July 10, 2020 hearing and alternately for a continuance, Petitioner raised procedural due process rights as a basis for asking continuance of the July 10, 2020 hearing to prepare her case, and for 7 hours instead of 20 minutes to present her case.

On July 9, 2020 the Douglas County District Court denied the request for a continuance and kept the time allocation to 20 minutes for each party.

In her July 21, 2020 motion to dismiss the July 10, 2020 continuance, Petitioner cited Lack of Procedural Due Process before and during the July 10, 2020 hearing because of : a) Unfair surprise and insufficient notice because the contract issue was never addressed; b) Violation of C.R.E. 701, C.RE. 702, and C.R.C.P. 26 during the July 10, 2020 hearing; Violation of C.R.S. 14-10-129.5.

702, and C.R.C.P. 26 during the July 10, 2020 hearing; Violation of C.R.S. 14-10-129.5.

The Douglas County District Court still held the July 21, 2020 continuance of the July 10, 2020 hearing.

On August 3, 2020, in a motion to object to the hearing, Petitioner raised the issue of lack of procedural due process in both the July 10, 2020 hearing and its July 21, 2020 continuance citing insufficient notice and insufficient time.

On August 7, 2020, the Douglas County District Court denied that it violated Petitioner's procedural due process.

The procedural due process violations were also raised in Petitioner's Opening Brief for appeal no. 20CA1468. The Colorado Court of Appeals denied that any such violation occurred.

In her August 12, 2021 C.R.C.P. 59 Motion, Petitioner objected to the unreasonableness of the January 8, 2021 attorney fees and to the manner in which the Douglas County District Court failed to use established standards to determine the reasonableness of the fees.

On October 6, 2021, the Douglas County District Court issued its ruling in which it made minor adjustments to the attorney fee amount and denied the Rule 59 motion.

Procedural due process violations concerning the July 28, 2021 hearing were raised during the hearing. Transcript of the hearing is available.

REASONS FOR GRANTING THE PETITION

The Colorado Court of Appeals reached a conclusion that is at odds with basic principles of the constitutional guarantees of a party to freely contract and not be denied procedural due process and equal protection of the laws. App. 1a-28a.

I. The Colorado Court of Appeals' Ruling Affirming the Douglas County District Court's January 8, 202 Order Conflicts With Basic Principles Of Freedom of Contract And Procedural Due Process As Provided By The Fourteenth Amendment of Both the United States and Colorado Constitutions.

The Colorado Court of Appeals' Opinion erred by affirming the Douglas County District Court's January 8, 2021 Order awarding Respondent $13,738.50 in attorney fees and costs for the July 10, 2020 hearing and its two (2) continuances. App. 2a-3a; App. 34a-36a. However, said hearing should not have taken place because it was scheduled and held based on the Douglas County District Court's erroneous legal conclusion that Petitioner does not have the freedom of contract because the supervised visits are court-ordered. App. 2a-3a; App. 34a-36a.

Thus, instead of letting Petitioner and the visiting supervisor negotiate the contract, the Douglas County District Court ruled on the contract issue during the June 24, 2020 Webex status conference as follows :

> *"I know you [*Petitioner*] mentioned the -- the right to freely contract and things like. That does not apply here because it is court ordered supervision."*

TR (June 24, 2020), p. 12:20-22.

Based on its erroneous legal conclusion on contract law, the Douglas County District Court scheduled a hearing to take place on July 10, 2020, pursuant to section 14-10-129.5 of the Colorado Revised Statutes, in order to determine whether Petitioner not signing the visiting supervisor's contract "as is" constitutes non compliance with Respondent's parenting time by stating the followings:

> *"... the main issue is whether Dr. Bernard's [*Petitioner herein*] refusal to execute the contract would constitute a, essentially, a denial or -- or -- yeah, a denial of parenting time. I do think -- I need a hearing, first of all, but I'm not going to dismiss that. In other words, I don't agree with Dr. Bernard that simply a refusal does not constitute noncompliance. It could, that's the ultimate issue at the hearing.*

TR (June 24, 2020), p. 9:9-17.

The Douglas County District Court also ordered Petitioner to sign the visiting supervisor's contract despite having been fully advised that Petitioner does not agree with most of the terms in the contract and without allowing negotiation of the contract to take place.

> *"So I am going to order that Dr. Bernard sign and execute that contract within seven days."*

TR (June 24, 2020), p. 9-10.

The Douglas County District Court's date by which Petitioner was ordered to sign the visiting supervisor's contract was set for July 1, 2020, or nine days prior to the July 10, 2020 scheduled hearing in which the contract issue was supposed to be decided.

In addition, the hearing was scheduled pursuant to § 14-10-129.5 of the Colorado Revised Statutes, a statute that gives authority to the court to resolve missed parenting time disputes. App. 51a-54a. However, Respondent did not miss any parenting time because Petitioner and other family members took over the task of supervising the visits with the parties' daughter while the issue with professional visiting supervisors was being worked out. Pursuant to the June 11, 2019 permanent orders, both family and professional visiting supervisors were authorized to supervise Respondent's visits with the parties' daughter.

Since Respondent did not miss any parenting time, it was not necessary for the Douglas County District Court to hold a hearing to determine whether Petitioner not signing the visiting supervisor's contract constituted noncompliance with Respondent's parenting time. Such a hearing was clearly unnecessary because it is undisputed that both the United States and Colorado constitutions guarantee the right to freely contract. This constitutional right cannot be abridged or denied simply because the supervised visits were court ordered. *See U.S. Constitution, Amendment XIV, § 1;* *See* also Colo. Const. Art. II, Section 25.

U.S. Const. amend. XIV, *§ 1* states in pertinent part as follows:

> *"No State shall . . . 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."*

Colo. Const. art. II, § 25, states that "*No person shall be deprived of life, liberty or property without due process* of law." Also, the right to equal protection of the laws is included within article II, section 25, of the Colorado Constitution. *See* Colo. Const. Art. II, Section 25.

The Douglas County District Court 's legal conclusion on freedom of contract, therefore, contravenes the liberty, due process, and equal

protection clauses of both the Colorado and the United States Constitutions.

Similarly, the Colorado Court of Appeals erred in affirming the Douglas County District Court 's January 8, 2021 judgment shifting the $13,738.50 in attorney fees and costs for the hearing to Petitioner, because the hearing was held by misusing section 14-10-129.5 of the Colorado Revised Statutes statute in order to deny Petitioner her freedom to freely contract and negotiate the visiting supervisor's contract terms. App. 2a-3a; App. 34a-36a; App. 51a-54a.

In addition to the $13,738.50 in attorney fees and costs, the July 10, 2020 hearing and its two (2) continuances also ended up costing Petitioner $5,000.00 in posted bonds to ensure Petitioner's future compliance with signing future contracts "as is".

The Douglas County District Court's September 1, 2020 order following the hearing stated in part:

> " *Mother* [Petitioner herein] *shall post a $5,000 cash bond with the Court to ensure her future compliance per C.R.S. 14-10-129.5(2)(c). For every instance of Father's* [Respondent herein] *missed parenting time due in part or whole to the actions of Mother* [Petitioner herein], *including but not limited to.....Mother refusing to sign contracts...issuing a formal complaint*

against any professional involved in the instant case...then a $100 fine shall be taken from the $5,000 bond."

In para. 14-17 of the Opinion, the Colorado Court of Appeals did not address the freedom of contract claim and the July 10, 2020 hearing procedural due process violations claims, citing issue preclusion and claim preclusion. App. 8a-11a.

But, based on the court filings and legal precedents, Petitioner is of the opinion that the freedom of contract claim is not barred by issue preclusion or claim preclusion. Petitioner will expand on the topic in the latter part of this petition.

Although the issue of procedural due process violations during the July 10, 2020 hearing and its continuances has been raised in Appeal # 2020CA1468, Petitioner finds it important to apprise this Court of these procedural due process violations to fully in order for this Court to fully appreciate the injustice in the Colorado Court of Appeals' opinion affirming the January 8, 2021 district court order shifting the attorney fees to Petitioner.

This is due to the fact that the district court violated Petitioner's procedural due process by intentionally hiding the true scope of the hearing, and by not giving Petitioner time in a meaningful manner to allow her to present her case and cross examine witnesses, but only revealed at the completion of each hearing whether or not more time

would be granted, making it impossible for Petitioner to properly prepare and present her case. This is in contradiction to this Court's holding in *Armstrong v. Manzo* that "*A fundamental requirement of due process is 'the opportunity to be heard.' Grannis v. Ordean, 234 U.S. 385, 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner.*" See *Armstrong v. Manzo* 380 U.S. 545, 551 (1965). Also, this Court stated in *In re Gault* that "*... adequate and timely notice is the fulcrum of due process, whatever the purposes of the proceeding. See* ***In re Gault*** *387 U.S. 1,* ***73*** *(1967).*

Furthermore, the manner in which the district court conducted the July 10, 2020 hearing and its two (2) continuances makes it clear that the goal of the hearing was to penalize Petitioner for asking for changes to be made to the terms of the visiting supervisor's contract before signing. This is contrary to previous holdings by this Court that consent is the essence of a valid contract. *French v. Shoemaker*, 81 U.S. 314, 333 (1871). This Court is also of the opinion that an individual may be penalized for violating the law, but may not be punished for exercising a protected statutory or constitutional right. See *United States v. Goodwin* 457 U.S. 368, 372 (1982).

The fact that the hearing was for the purpose of penalizing is evidenced by the fact that the contract issue was never addressed despite that being stated by the district court, on June 24, 2020, as the main reason for scheduling the hearing. TR (June 24, 2020), p. 9:9-17. App. 45a-46a; App. 60a-

66a. This is evidenced by the fact that the only witnesses were the family therapist and daughter's individual therapist whose testimonies were for the purpose of justifying leaving the parties' daughter unsupervised with Petitioner to overcome the terms of the July 9, 2019 permanent orders, which specified that the parties' daughter must feel comfortable with the idea of being unsupervised with Respondent before being placed in that position, a determination to be made by daughter's individual therapist.

However, on July 10, 2020, testifying as a lay witness, the individual therapist testified that the parties' daughter was not comfortable with being unsupervised with Respondent and was tired of having therapy to talk about the relationship. In violation of Colorado Rules of Evidence 701, the district court extracted parenting time recommendations from the individual therapist, who was testifying as a lay witness. Despite the individual therapist' testimony, the district court justified leaving the parties' daughter unsupervised with Respondent to help her be more willing to continue with the individual therapy. This decision is contrary to the recommendation in the July 9, 2019 permanent order in which individual therapy was for the purpose of helping daughter feel comfortable with being unsupervised with Respondent.

Moreover, the district court accepted a made-up theory of phobia from the treating family therapist as being the cause for the parties' daughter

being afraid to be unsupervised with Respondent, ignoring daughter's past symptoms suggestive of sexual abuse when she was left unsupervised with Respondent in the past. When the family therapist was asked for documentation to support her theory, she disqualified herself as an expert witness as she was unable to provide the evidence. In violation of Colorado Rules of Evidence 702, the district court still used the testimony to leave the parties' daughter unsupervised with Respondent.

On July 10, 2020, Petitioner inquired about the scheduled noncompliance hearing that is supposed to take place before the modification hearing that the district court seemed to be holding, contrary to the statute pursuant to which it was being held. Petitioner stated:

> *"DR. BERNARD* [Petitioner herein]*: And, Your Honor, the other thing is also this hearing for noncompliance, but all I'm hearing is a recommendation for unsupervised visits when this was to be about (indiscernible) for not signing a contract. I haven't heard any (indiscernible).*
>
> *" THE COURT: I have already made the finding that we have not followed the parenting time schedule.*
>
> TR (July 10, 2020), Vol. 7, p. 19: 3-4

In short, the district court made his findings that Petitioner was noncompliant without the benefit of first holding a noncompliance hearing as required by statute. Instead, the district court held a modification hearing for the purpose of issuing the sanctions that he alluded to during the June 24, 2020 Webex status conference.

On June 24, 2020, the district court stated that leaving the parties' daughter unsupervised with Respondent would be one of the sanctions being considered as follows:

> *"So that is the possible sanction, Dr. Bernard* [Petitioner herein], *is that at that hearing, one of the options I will look at is just giving Mr. Hodyl* [Respondent herein] *unsupervised parenting time. So understand that that is one of the possible sanctions."*

The district court's action of not first holding a noncompliance hearing is in violation of sections 14-10-129.5 (1) (b) and (2) of the Colorado Revised Statutes, which make it clear that a non compliance hearing is mandatory before proceeding to a modification hearing, in which sanctions can be imposed. App. 51a-54a.

Moreover, missed parenting time is an essential fact for holding a hearing pursuant to that statute. Here, Respondent did not miss any parenting time, his reason for requesting the hearing was to force Petitioner to sign the visiting

supervisor's contract "as is". He never claimed to have missed any parenting time, nor did he ask for any make-up parenting time.

Also, on July 10, 2020, Petitioner filed multiple documents evidencing that Respondent has been exercising his parenting time per the July 9, 2019 permanent orders, and also testified to that effect. TR (July 10, 2020), p. 82. Petitioner's filings provided the district court with irrefutable evidence that Respondent was indeed communicating with daughter daily and was getting enough parenting time that he often opted not to visit daughter but to skype instead; Respondent also had numerous weekend visits at his discretion with the parties' daugher's maternal aunt, or paternal uncle as supervisors.

Faced with this evidence, the district court redefined parenting time as being only Respondent is being supervised by his preferred supervisor, and any visits supervised by Petitioner or her sister do not qualify as parenting time, in order to justify the sanctions of prematurely leaving parties' daughter unsupervised with Respondent.

Additionally, the district court violated the guidelines of the Februar 8, 2018 case management order which requires that the district court resolve quickly, justly, and economically.

> *"A judicial officer will be directly involved in managing your case to*

> *ensure its efficient, just, and economical resolution. The Court will strive to promote the efficient management of the case in order to achieve the earliest possible resolution of all disputed issues with the least expense to the parties."*

Based on the precepts of the case management order, the July 10, 2020 hearing and its continuances should have been canceled or dismissed, as requested by Petitioner, when the visiting supervisor, whose contract caused the controversy, left the case on June 24, 2020 and the previous supervisor was reinstated. App. 43a-44a; App. 6oa-66a. This would have prevented Respondent from incurring $13,478.50 in attorney fees, which were then shifted to Petitioner. App. 34a-36a.

Additionally, the district court granted the January 8, 2021 attorney fees to Respondent as amendment to the final order that was issued on September 1, 2020. App. 34a-36a. But Respondent filed his Motion to Amend pursuant to the wrong rule, C.R.C.P. 50 instead of C.R.C.P. 59. App. 55a-59a. Furthermore, per C.R.C.P. 121 Section 1-15(3), a motion filed without legal authority is deemed abandoned. C.R.C.P. 121 Section 1-15(3) states in part:

> *"If the moving party fails to incorporate legal authority into a written motion, the court may deem the motion abandoned and may enter an order denying the motion."*

Para. 18-20 of the Opinion states that Petitioner was not prejudiced by the attorney fees being granted under the wrong Rule, nor was Petitioner's substantial rights affected. App.11a-13a. However, Petitioner was being deprived of property ($13,478.50) in attorney fees which greatly affected her substantial right to her property and to her equal protection provided by C.R.C.P. 59 and C.R.C.P. 121 Section 1-15(3).

Also, contrary to Colorado Supreme Court legal precedents, the district court issued the January 8, 2021 attorney fees without first granting Petitioner's request for an evidentiary hearing on the reasonableness of the fees. Based on the Supreme Court of Colorado holding in *Pedlow v. Stamp*, if an evidentiary hearing is requested before the Court makes a ruling on attorney fees, it must be granted. *Pedlow v. Stamp* 776 P.2d 382, **385** (Colo. 1989).

The evidentiary hearing was granted only after Petitioner filed a Notice of Appeal. On April 16, 2021, the appeal was dismissed without prejudice, after the district court scheduled the evidentiary hearing, four (4) months after having already awarded the attorney fees. App.41a-42 a. Petitioner then filed a Show Cause pursuant to C.A.R. 21 with the Colorado Supreme Court to have the appeal reinstated, which was denied on June 4, 2021. App. 47a-48a. The evidentiary hearing was held on July 28, 2021, on which Petitioner will expound on the latter part of this petition.

II. The Colorado Court Of Appeals' Ruling That Petitioner's Freedom of Contract Claim is Barred by Both Issue and Claim Preclusion Doctrines is in Error and Conflicts with this Court's Definition of Said Doctrines.

Contrary to para. 14-17 of the Colorado Court of Appeals' Opinion, Petitioner's claim to freedom of contract is not barred by issue preclusion or claim preclusion. App. 8a-11a.

In *Herrera v. Wyoming,* citing *New Hampshire v. Maine,* this Court defined issue preclusion as follows:

> "*Under the doctrine of issue preclusion, 'a prior judgment ... foreclos[es] successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment.'* " (Internal citations omitted). See *Herrera v. Wyoming* 139 S. Ct. 1686, 1697 (2019).

In *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.,* citing *Brown v. Felsen* and other cases, this Court defined claim preclusion as follows:

> "*...Unlike issue preclusion, claim preclusion prevents parties from raising issues that could have been raised and decided in a prior action—even if they were not actually litigated...*" (Internal

citations omitted). S*ee Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.* 140 S. Ct. 1589, 1594 (2020).

Here, Petitioner raised the issue of freedom of contract with the district court in her April 23, 2020 Response to Respondent's April 15, 2020 Verified Motion to Enforce, in which he asked the district court to force Petitioner to sign the visiting supervisor's contract "as is". In her Response, Petitioner raised her constitutional right to freedom of contract. During the June 24, 2020 Webex status conference, the district court gave a verbal ruling on the issue by stating that Petitioner does not have the freedom of contract:

> *"I know you [*Petitioner*] mentioned the -- the right to freely contract and things like. That does not apply here because it is court ordered supervision."*

TR (June 24, 2020), p.12:20-22.

On July 1, 2020, nine days before the scheduled July 10, 2020 hearing, Petitioner again raised the issue of freedom of contract in her Advisement updating the court of the fact that the visiting supervisor (Ms. Haass), whose contract was the reason for the scheduled hearing, resigned from the case on June 24, 2020. App. 60a-66a; App. 45a-46a. In said Advisement, Petitioner also requested that the district court reduce to writing its June 24, 2020 oral legal conclusion by specifically stating the following in part of her Update:

> *"...Respondent* [Petitioner herein] *is therefore requesting the Court* [Douglas County District Court] *put the followings in writing so they can be reviewed by the Court of Appeals:*
> *a) its June 24, 2020 Order that Respondent sign Ms. Hass's* [the visiting supervisor] *contract within 7 days,*
> *b) its legal conclusions that Respondent* [Petitioner herein] *does not have freedom of contract in relation to signing Ms. Hass's* [the visiting supervisor] *contract...."*

On September 1, 2020, the district court addressed Petitioner's request concerning being ordered to sign the visiting supervisor's contract but ignored the request to reduce the legal conclusion in writing:

> *"Based upon the agreement of the parties, the Court ordered Melinda Veith* [the prior supervisor that Respondent herein fired and now was being reinstated by the court] *shall supervise Petitioner* [Respondent herein] *Father's parenting time until September 30, 2020 and starting October 1, 2020 shall supervise parenting time exchanges. This order renders moot the Court's June 24, 2020 order that Respondent Mother sign Ms. Haas' contract* [the visiting supervisor in question] *as Ms.*

> *Haas withdrew as supervisor in this case*"

Petitioner also raised the issue of freedom of contract with the Colorado Court of Appeals when she filed a Notice of Appeals on July 7, 2020. On July 21, 2020, the Colorado Court of Appeals issued a Show Cause Order why the appeal should not be dismissed for lack of a final and appealable judgment. On August 17, 2020, Petitioner filed a Motion in which she again requested that the district court reduce its June 24, 2020 legal conclusion to writing. Petitioner's request was again ignored. On August 21, 2020, the Colorado Court of Appeals dismissed the appeal without prejudice for lack of a final appealable order. The Colorado Court of Appeals stated:

> "*Upon consideration of Appellant's* [Petitioner herein] *response to the court's July 21, 2020 Order to Show Cause, and for the reasons set forth in the show cause order, the court determines that it does not have jurisdiction.*
>
> *IT IS THEREFORE ORDERED that the appeal is dismissed without prejudice for lack of a final appealable order.*"

Petitioner again raised the issue of freedom of contract in her Opening brief for appeal case number 2020CA1468. However, the Colorado Court of

Appeals' opinion ignored Petitioner's freedom of contract claim.

In summary, the district court never gave a final/written ruling on its legal conclusion concerning Petitioner's freedom of contract in regards to court-ordered supervised visits. Therefore, Petitioners did raise her claim to freedom of contract with both the district court and the Colorado Court of Appeals. However, both courts declined to make a final ruling. Therefore, her claim to freedom of contract is not barred by claim preclusion contrary to what is stated in para.14-17 of the Colorado Court of Appeals' Opinion. App.8a-11a.

Similarly, since there has never been any final judgment on Petitioner's claim to freedom of contract, her claim is not barred by issue preclusion.

III. The Colorado Court of Appeals' Ruling Affirming The Douglas County District Court's July 28, 2021 Order Conflicts With Basic Principles Of Procedural Due Process And Equal Protection Of The Laws As Provided By The Fourteenth Amendment Of The United States Constitution And Article II, Section 25 Of The Colorado Constitution.

Petitioner was deprived of a substantial amount of money ($13,104.00) in an attorney fee award, without the district court having determined the reasonableness of the fees and without the benefit of the procedural due process guaranteed

under both the Colorado and the United States Constitutions. *See* U.S. Const. amend. XIV, § 1. See also, Colo. Const. art. II, § 25.

In *In re Gault,* this Court stated that it *"...has consistently made plain that adequate and timely notice is the fulcrum of due process, whatever the purposes of the proceeding." See In re Gault* 387 U.S. 1, 73 (1967). Citing *Armstrong* v. *Manzo* this Court also stated that *"Failure to give notice violates 'the most rudimentary demands of due process of law.'* " *See Peralta v. Heights Medical Center, Inc.* 485 U.S. 80, 84 (1988).

Contrary to this Court's opinion in *In re Gault* and in *Peralta v. Heights Medical Center* the district court denied Petitioner adequate notice by allowing the scope of the July 28, 2021 hearing to be enlarged after the hearing had already started. App. 37a-38a. *See In re Gault* 387 U.S. 1, 73 (1967). See also *Peralta v. Heights Medical Center, Inc.* 485 U.S. 80, 84 (1988).

The July 28, 2021 evidentiary hearing was scheduled for the purpose of determining the reasonableness of the $13,738.50 attorney fees and costs that were shifted to Petitioner in the January 8, 2021 Order. Instead of proceeding as scheduled, the hearing was used as a tool to induce Petitioner to concede guilt for allegedly having caused Respondent to incur approximately $4,000.00 in attorney fees and costs back in December 2019.

This was a surprise because, in its January 30, 2020 order, the district court had already shifted the $4,000.00 attorney fees to Petitioner, but did so without granting the requested evidentiary hearing. Over a year ago, Petitioner had already appealed the January 30, 2020 attorney fee awards, and the Colorado Court of Appeals affirmed the order in part, but required the district court to grant an evidentiary hearing to determine the reasonableness of the January 30, 2020 attorney fee awards.

However, per the district court's July 27, 2021 order, the July 28, 2021 hearing was for the sole purpose of determining the reasonableness and necessity of the January 8, 2021 attorney fee award. App. 39a-40a; App. 37a-38a. In its July 27, 2021 order, the district court stated:

> *"The Court reminds the parties that the hearing is limited to the reasonableness of attorney's fees awarded to Petitioner* [Respondent herein] *in the Court's January 8, 2021 order. At tomorrow's hearing each side will have 20 minutes and speaking objections count against their respective time"*

App. 39a-40a.

But at the beginning of the July 28, 2021 hearing, Respondent, who was also pro se, started direct examination of his expert witness (his former attorney in the divorce proceeding), with a line of questioning that was not at all about the January 8,

2021 attorney fee awards, but was solely about the unrelated January 30, 2020 attorney fee award. Despite the specifications in the district court's July 27, 2021 order, the district court agreed for Respondent to continue his line of questioning as follows:

> "*MR. HODYL* [Respondent herein]*: At this time, I'd like to present Exhibit 7, the January 30th, 2020, district court order.*
> *THE COURT: All right."*

TR (July 28, 2021), p. 16:18-20.

Petitioner objected to Respondent's line of questioning as follows but to no avail:

> *"DR. BERNARD* [Petitioner herein]: *Your Honor, we are not here for that -- for that order. We are here for the one issued on January 8th. He's going back to January 20th."*

TR (July 28, 2021), p. 17:19-21.

> *MR. HODYL* [Respondent herein]*: Judge -- Judge Baum, all -- all I'm doing with bringing that up is showing a pattern of -- of how the Respondent* [Petitioner herein] *has a pattern of interfering with the Petitioner's* [Respondent herin] *parenting time and filing a -- excessive motions."*

> *"THE COURT: Okay. As that relates to the reasonableness and necessity of the fees, I find it's relevant. So you can talk about the January 30th order."*

TR (July 28, 2021), p. 18:5-11.

> *"DR. BERNARD* [Petitioner herein]*: I -- I object, Your Honor, because we are not here to decide whether or not this (indiscernible) the Court did (indiscernible) we are here to decide the reasonableness of the fees themselves. That has already been decided, Your Honor.*
>
> *This is just fees themselves as billed by Ms. Denson [*Respondent's former attorney*], not the reason behind the fees being given."*

TR (July 28, 2021), p. 18:13-19

At that point, the district court asked Petitioner whether she is willing to concede to the allegations of being the cause of Respondent having to hire an attorney post decree as follows:

> *"THE COURT: So are you saying, then, that you're not contesting that it was necessary for Mr. Hodyl to hire an attorney? You're just objecting to the actual amount, is that what you're saying?"*

TR (July 28, 2021), p. 19:10-13

Therefore, the district court violated Petitioner's procedural due process by allowing Respondent to enlarge the scope of the hearing without prior notice. The district court continued violating Petitioner's procedural due process by using using up fourteen (14) minutes of Petitioner's twenty (20) minutes to pressure her to concede to the allegations concerning the unscheduled January 30, 2020 order before the hearing could proceed to the scheduled topic of the January 8, 2021 order as follows:

> *"THE COURT: Well, Dr. Bernard [*Petitioner herein*], I asked you, are you objecting simply -- are you conceding that the fees were necessary in terms of the fact that Mr. Hodyl [*Respondent herein] *had to hire an attorney for -- for the post-decree action.*
> *You said -- you essentially didn't answer, which tells me you are contesting, which makes this relevant.*
> *If -- if you want it not to be relevant and focus on just the January 8th order, then you're welcome to say, 'I concede that all of that' -- 'It was necessary for Mr. Hodyl* [Respondent herein] *to' -- 'to hire an attorney.'*
> *But you don't have to do that. I'm not telling you you have to concede. You've got about six minutes remaining.*
> *We're -- we're using up a lot of time talking about this. I -- I found it to be*

> *relevant based on your objection to the fees..."*

TR (July 28, 2021), p. 26-27

The district court erred in stating that Respondent had to hire an attorney post-decree because of Petitioner's conduct, due to the fact that Ms. Denson (Respondent's former attorney/now his expert witness) is the only attorney that Respondent has hired for the divorce from its initiation back in February 8, 2018, till January 29, 2021 when Respondent could no longer afford her fees.

Moreover, during the permanent order hearing on March 25, 2019, Ms. Denson (Respondent's attorney) herself asked the district court to stay in the case post-divorce as follows:

> *"Ms. Denson : Now, with respect to court oversight, are you asking the courts to stay in this case post-divorce?*
> *Mr. Hodyl* [Respondent herein]*: A Yes. I -- I feel it is necessary for the Court to monitor the -- the status of this case."*

TR (March 25, 2019) p. 67: 14-17

Therefore, Respondent's request for the district court's continued involvement in the case post decree is the reason for him incurring high attorney fees, and not because of Petitioner's actions.

Contrary to this Court's opinion in *Armstrong v. Manzo that* the opportunity to be heard is

fundamental to due process and must be granted at a meaningful time and in a meaningful manner. S*ee Armstrong v. Manzo* 380 U.S. 545, 551 (1965).

Here, the district court denied Petitioner adequate time and violated Petitioner's procedural due process by refusing to allow her more time or a continuance to present her case given the fact that the scope of the hearing had been enlarged. Petitioner requested for more time to present her case as follows:

> "*DR. BERNARD* [Petitioner herein]: *And, Your Honor, I need more time, because, Your Honor, my time has been (indiscernible) up in something that wasn't planned. That was not planned. Twenty minutes is not enough. And basically, by giving me only six minutes, you're basically blocking me from defending myself from those fees, because you're –*
>
> *THE COURT: Well, no –*
>
> *DR. BERNARD* [Petitioner herein]*: -- giving me very little time, and Ms. Denson [*Respondent's former attorney and expert witness*] and her -- and -- and Mr. Hodyl* [Respondent herein] *are spending a lot of time talking about my conduct, and we are not addressing the real issue. And you're saying I don't*

have enough time. So this way, you're not allowing me to prove my case.

TR (July 28, 2021), p. 27:11-25.

The district court declined Petitioner's request for more time as follows:

"THE COURT: I gave both sides 20 minutes, because usually these --
DR. BERNARD: It's not enough, Your Honor.
THE COURT: Hold on, hold on, Dr. Bernard. Hold on. I'll even pause your time. I gave both sides 20 minutes, because in my experience, these types of issues can be handled with a one- hour hearing."

TR (July 28, 2021), p. 28:6-13

During her cross examination of Respondent's expert witness, Petitioner barely had enough time to ask two questions concerning two of the fees, and both times, the expert witness agreed that she made a mistake on her attorney fee affidavit. Petitioner had a lot more questions to ask about the fees in order to properly defend her case, but six (6) minutes were not enough time to properly cross examine the witness and present her case. Petitioner then asked the district court for a continuance, the district court denied her request as follows:

"DR. BERNARD [Petitioner herein]*: Your Honor?*

> *THE COURT: Yes, ma'am.*
> *DR. BERNARD* [Petitioner herein]*: Additional (indiscernible) for a continuance of-- of this hearing because I haven't really had time to – to show my case and admit exhibits into evidence.*
> *THE COURT: Well, I'm going to deny that and reflect back to what I said before the break. I gave each side 20 minutes, which should be plenty of time. I can't control how each side uses their time. If-- if someone chooses to use their time in a non-productive manner, that's their choice. So you've got just under two minutes remaining, Dr. Bernard."*

TR (July 28, 2021), p. 40-41.

After the four (4) minutes of cross examining Respondent's attorney, Petitioner only had two (2) minutes left to present her case. She had to forgo properly presenting her case and resigned herself to simply admitting into evidence anAdvisement (Exhibit L) and other exhibits (J, K, and M) in support of said Advisement. The Advisement, Exhibit L contained her contentions in regards to Respondent's attorney fee affidavit for the January 8, 2021 order. TR (July 28, 2021), pp. 42-47.

Nevertheless, in para. 32 of the Opinion, the Colorado Court of Appeals stated that Petitioner did not show what evidence she wanted to present and how her inability to present her evidence prejudiced her as follows:

> *"Significantly, mother does not explain on appeal what evidence she was unable to present because of the time limitations or how her inability to present that evidence prejudiced her."*

App.20a.

But it is self-evident that with only six (6) minutes left, Petitioner did not have enough time to present her case regarding the January 8, 2021 attorney fees. App. 20a.

Despite the facts that Petitioner only had 6 minutes to present her case, in para. 29 of the Opinion, the Colorado Court of Appeals stated "*Mother then cross-examined Ms. Denson and later testified*" as if to convey that Petitioner had plenty of time to properly present her case. App 18a-19a. In short, the Colorado Court of Appeals downplayed the fact that Petitioner only had four (4) minutes to cross examine the witness and was only able to ask two questions when she planned on asking many more, and her testimony consisted of simply presenting her arguments in the form of exhibits.

Despite this clear show of inflexibility on the part of the district court in not allowing Petitioner adequate time to present her case and denying her a continuance, the Colorado Court of Appeals stated that the district court was not inflexible. Citing *In re Marriage of Yates,* para. 30 and 31 of the Opinion stated that "*...the district court's time management during the hearing did not appear inflexible or*

unduly restrictive." App. 19a. S*ee In re Marriage of Yates*,148 P.3d 304, 310 (Colo. App. 2006).

However, contrary to Petitioner's case, in *In re Marriage of Yate,* the parties consented to seven (7) hours at pretrial conference and the court gave one of the parties forty (40) extra minutes. Because of the extra time that was given and the agreed-upon time for trial, the Colorado Court of Appeals did not find for denial of due process in I*n re Marriage of Yates*. S*ee In re Marriage of Yates*,148 P.3d 304, 310 (Colo. App. 2006).

Here, there were no pretrial conferences, the district court sua sponte decided on 20 minutes being sufficient for each party to present their case and issued an order to that fact less than 24 hours before the hearing, leaving no time to object.

Furthermore, Petitioner was not allowed an additional 40 minutes or any additional significant amount of time to present her case. Therefore, the findings that there was no denial of due process in In re Marriage of Yates does not apply to the circumstances in this present case.

Moreover, in para. 24-27 of the Opinion, the Colorado Court of Appeals condoned the district court's action of providing only 20 minutes to each party to present their case by citing *Maloney vs. brassfield*, 251 P.3d at 1102-05. App. 14a-15a. For example, the Opinion stated that the 20 minutes allocated to each party for the evidentiary hearing on

reasonableness of attorney fees and costs was sufficient from the outset simply because the parties did not object. App.15a.

Just like in In re Marriage of Yates, in *Maloney vs. brassfield,* the court held a pretrial conference two weeks before trial to address the amount of time needed for the hearing, and allocated 7 (seven) days for the hearing. S*ee Maloney v. Brassfield* 251 P.3d 1097, 1100 (Colo. App. 2010).

Here again, unlike in *Maloney vs. brassfield,* the 20 minutes time limit was not based on the parties' agreement reached in pretrial conferences, as no pretrial conferences were held, but, as mentioned earlier, was decided sua sponte by the district court and within less than 24 hours before the hearing was to take place. This left no time to object to the 20 minutes time limit that was allocated to each party. App. 39a-40a.

In addition, in this instant case, only one (1) hour total was allotted for the hearing, which is in sharp contrast to the 7 days allotted in *Maloney vs. brassfield. See Maloney v. Brassfield* 251 P.3d 1097, 1100 (Colo. App. 2010). Also, unlike in *Maloney v. Brassfield*, the district court allowed Respondent to enlarge the scope of the hearing, after the hearing had already started.

Despite Petitioner having been denied adequate notice and adequate time to be heard, which are basic elements of procedural due process,

para. 22 of the Colorado Court of Appeals' Opinion disagreed that Petitioner's procedural due process rights were violated. App.13a-14a.

The Colorado Court of Appeals also ignored the fact that the scope of the hearing had been enlarged to cover two separate orders, the January 8, 2021 order for attorney fees and cost that was scheduled and the January 30, 2020 order that was added-on after the hearing had already started. For example, in para. 29, the Opinion stated that "... *At the hearing, the only issue was the amount of reasonable and necessary attorney fees and costs.*" See App.16a.

Despite the enlargement of the scope of the July 28, 2021 hearing occurring because the district court allowed Respondent to present an unscheduled attorney fee award in order to induce Petitioner to concede to being the cause of unrelated fees, in para. 27 of the Opinion, the Colorado Court of Appeals still opined that: "...*the time limitations did not become inadequate because of developments during the proceeding.*" See App.15a.

Citing *Bryant v. State and In re Marriage of Yates*, the Colorado Court of Appeals blamed Petitioner's "speaking objections" for the allocated 20 minutes having become inadequate while remaining silent on the enlargement of the scope of the hearing as being the real cause for more time being needed. See *Bryant v. State*, 282 S.W.3d 156, 172 n.10 (Tex.

Crim. App. 2009. See also *In re Marriage of Yates*, 148 P.3d 304, 310 (Colo. App. 2006).

Also, what the Colorado Court of Appeals is calling "speaking objections" is simply Petitioner defending herself against false accusations on an unscheduled issue and resisting being pressured to concede to those accusations as it is her constitutional right to do. App. 16a-19a.

In addition, a "speaking objection" is described in para. 28 of the Opinion as an objection wherein the speaker gives more information than needed for the judge to rule. App. 15a-16a. However, in this case, the district court was the one asking for more information from Petitioner before ruling on her objections. For example, upon Petitioner objecting to Respondent's former attorney being the expert witness concerning her own attorney fee affidavit, the district court did not simply state "sustained" or "overruled" to Petitioner's objections, but the distinct court kept asking for more explanations, and then countered Petitioner's explanations with his own very long explanations as to why he is overruling Petitioner's objections. TR (July 28, 2021), p. 8-22. The district court also used-up a lot of Petitioner's time to induce her to concede to Respondent's accusation concerning the unscheduled January 30, 2020 order before proceeding to the reasonableness of scheduled January 8, 2021 attorney fees. TR (July 28, 2021), p. 25-29.

Because of all the irregularities during the July 28, 2021 hearing, very little time was dedicated to determining the reasonableness of the January 8, 2021 attorney fee award. Also, the district court did not follow the lodestar method but simply accepted the attorney fee affidavit at face value and only subtracted the two fees that the expert witness, herself, conceded to being in error during cross examination.

In *Ridgell-Boltz v. Colvin,* the 10th Circuit Court stated that the lodestar amount of a fee is presumed to be reasonable:

> *"To determine the reasonableness of a fee request, a court must begin by calculating the so-called lodestar amount of a fee, and a claimant is entitled to the presumption that this loadstar amount reflects a reasonable fee."*

See Ridgell-Boltz v. Colvin No. 15-1361, at *9 (10th Cir. 2016).

Petitioner raised the issue of the district court not using the lodestar method during her direct testimony:

> *"THE WITNESS [Petitioner herein]: Your Honor, I would like -- I would like to submit that this hearing did not follow the lodestar and the rules of -- of evidentiary hearing for billing, Your Honor. And all my -- all my concerns are in my advisement, Exhibit L. I would like to admit Exhibit L into evidence."*

TR (July 28, 2021), pp. 42-43.

In *Blum v. Stenson,* this Court opined it is important for fee applicants to provide supporting evidence in addition to the attorney's own affidavit. *Blum v. Stenson, 465 U.S. 886 at 895, n. 11 (1984).*

Here, no additional evidence besides the attorney's own affidavit was offered into evidence. Also, over Petitioner's objections, Respondent's former attorney was allowed to testify as an expert witness about her own fee affidavit.
TR (July 28, 2021), pp. 7-9.

Per Respondent's attorney fee affidavit, he requested $4,188.50 in paralegal fees, but did not provide any evidence to show that the individuals for whose work they were charging paralegal fees actually received paralegal education from an American Bar Association (ABA) approved program

or have obtained a paralegal certificate to justify their hourly rate of $125.00-$155.00.

Also, the $4,188. 50 charged for the paralegals' time were for duties that were clerical in nature and should be considered as overhead costs and are not recoverable in an attorney fee award. "Hours that are not properly billed to one's *client* are also not properly billed to one's *adversary* pursuant to statutory authority." *Biery v. United State*s 818 F.3d 704, 712 (Fed. Cir. 2016).

Neither did the district court require proof that Respondent had already paid the fees to his former attorney, Ms. Denson, before requiring that Petitioner pay the money judgment directly to Respondent. In para. 43 of the opinion, the Colorado Court of Appeals did not understand how Petitioner was prejudiced by these facts. App. 26a-27a.

However, after Petitioner had already paid the money judgment directly to Respondent as ordered, on February 14, 2023, the district court held a Webex status conference to inquire about the unsatisfied payment to the creditor, Respondent's former attorney, Ms. Denson.

> *"THE COURT: Yeah. So what I'm seeing in my record that there was a judgment that was entered. The creditor is Lucy Denson, and you are the judgment debtor, and I see the principal amount to be $13,104, and that is unsatisfied."*

TR (February 14, 2023), p.6: 16-19.

having to defend herself against the allegations that she still owes the money after she has already paid it directly to Respondent is prejudicial to Petitioner. This supports Petitioner's assertion that the July 28, 2021 evidentiary hearing was not conducted properly. Had there not been a written final order for the purpose of appeal, she would have been obligated to again pay the money judgment that she already paid to Petitioner, now to the attorney/ creditor.

CONCLUSION:

Based on the arguments above, Petitioner respectfully asks that this Court grant this Petition for Writ of Certiorari.

Respectfully submitted, on July 23, 2023.

M. Bernard

Martine Bernard

Martine Bernard, *Pro se*
8119 S. Humboldt Circle
Centennial, CO 80122
martinebrnrd@yahoo.com
Tel: (720)-616-1027
July 22, 2023