

24-5025

ORIGINAL

In the Supreme Court of the United States

Delbert W. Hargis Jr.- Petitioner

v.

State of New York-Respondent

FILED

JUN 06 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

**New York State
Respondent
New York State Attorney General
Office of the Attorney General
The Capitol Albany, NY 12224-0341**

Delbert W. Hargis Jr.
Petitioner-Pro Se
1502 S. Salisbury Ave
Spencer, North Carolina 28159
(Cell) 315-489-8512
DelHargis101@yahoo.com

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SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI

Delbert W. Hargis Jr., hereafter the Petitioner, respectfully petitions this Honorable Court for a writ of certiorari to review the judgment of the New York State Court of Appeals was entered on April 23, 2024, in which the New York State Court of Appeals denied the father's motion to seek leave to appeal the November 17, 2023 judgement of the Appellate Division Fourth Department that affirmed the Jefferson County Family Court's August 29, 2022 signed Modified Order of Custody, granting full custody of LEH, hereafter the Child, to Victoria A. Pritty-Pitcher, hereafter the aunt, on the basis of a strong bond over the rights of the Petitioner, a fit father.

QUESTIONS PRESENTED

1. Whether the decision of the lower courts, which awarded full custody of a child to a non-parent due to the existence of a strong bond, violates the fundamental rights of a fit parent under the Due Process Clause of the Fourteenth Amendment.(SEE EXHIBIT A)(SEE EXHIBIT B)
2. Whether the standard of "extraordinary circumstances" as applied in *Bennett v. Jeffreys*, 40 N.Y.2d 543 (1976), which allows non-parents to obtain custody without a finding of parental unfitness, is unconstitutional.
3. Whether the Family Court of New York violated the Due Process Clause of the Fourteenth Amendment by granting visitation and subsequently full custody to a non-parent over the objection of a fit parent.(SEE EXHIBIT A)(SEE EXHIBIT B)
4. Whether the actions of the Family Court of New York are in direct conflict with this Court's ruling in *Troxel v. Granville*, which affirms the fundamental right of parents to make decisions concerning the care, custody, and control of their children.(SEE EXHIBIT A)
5. Whether the Family Court's decision to grant custody to an aunt over the biological father, based on the father's his relocation to North Carolina, violates the father's constitutional rights under the Fourteenth Amendment.(SEE EXHIBIT A)
6. Whether a stipulated finding of neglect, based on insufficient information and used to establish extraordinary circumstances, unlawfully infringes on the father's fundamental parental rights and denies the father due process rights.
7. Whether the legal malpractice of the father's attorney, in failing to appeal an original order granting visitation to an aunt against the father's wishes, constitutes a violation of the father's due process rights.(SEE EXHIBIT D)

PARTIES TO THE PROCEEDING

Petitioner: Delbert W. Hargis Jr.
Respondent: State of New York

OPINIONS BELOW

The decision of the New York State Appellate Division of Fourth Department is reported at Matter of Pritty-Pitcher v Hargis 2023 NY Slip Op 05886 Decided on November 17, 2023 and Pritty-Pitcher v. Hargis, 221 A.D.3d 1546. The decision of the Family Court of Jefferson County, New York, as ordered by the Family Court, Jefferson County (Allison J. Nelson, A.J.), entered August 31, 2022, in a proceeding pursuant to Family Court Act article 6 not reported. The decision of the New York State Court of Appeals decided on April 23, 2024 which denied the father's motion to seek leave to appeal the Jefferson County Family Court's August 29, 2022 signed Modified Order of Custody.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The judgment of the New York State Court of Appeals was entered on April 23, 2024, in which the New York State Court of Appeals denied the father's motion to seek leave to appeal the November 17, 2023 judgement of the Appellate Division Fourth Department that affirmed the Jefferson County Family Court's August 29, 2022 signed Modified Order of Custody. This petition is filed within 90 days of that denial.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fourteenth Amendment to the United States Constitution and N.Y. Fam. Ct. Act § 1012(e) & (f).

STATEMENT OF THE CASE

On April 23, 2024, the New York State Court of Appeals denied the father's motion to seek leave to appeal the November 17, 2023 judgement of the Appellate Division Fourth Department that affirmed the Jefferson County Family Court's August 29, 2022 signed Modified Order of Custody, which granted the aunt sole physical custody of the Child and the Order allocated the father supervised parenting time as agreed upon the parties based solely because the father relocated to North Carolina severing the visitation schedule with the aunt. (SEE EXHIBIT C)

Despite Petitioner's multiple petitions and motions which argued about the rights of the parent governed by the New York State statutes, the US Constitution, and New York State case laws which all are in opposition to the visitation orders, the Court rejected the New York State statutes, the US Constitution, and New York State case laws that were contrary to the visitation schedule and maintained the order that granted the aunt visitation rights.(SEE EXHIBIT A)

Petitioner subsequently relocated to North Carolina for employment purposes, with the intention of providing a better life for his child.

Following Petitioner's relocation, the Family Court of New York, citing the Petitioner's move, granted full custody of the Child to the aunt, effectively severing the child's primary relationship with the Petitioner.(SEE EXHIBIT A)

Petitioner contends that these orders were made without giving adequate weight to his fundamental right to make decisions concerning the care, custody, and control of his child, as established in *Troxel v. Granville*, 530 U.S. 57 (2000).

The court's decision was based primarily on the bond formed between the child and the Respondent and the Petitioner's relocation to North Carolina severing the visitation schedule with the aunt, invoking the standard set forth in *Bennett v. Jeffreys*, 40 N.Y.2d 543 (1976), which allows for non-parental custody under "extraordinary circumstances."

Petitioner contends that this decision violates his fundamental right to custody of his child, as protected by the Due Process Clause of the Fourteenth Amendment, and seeks review of this decision.

The issues presented in this case have far-reaching implications for parental rights and the proper application of constitutional principles.

Granting this **PETITION FOR WRIT OF CERTIORARI** is essential to ensure uniformity in the interpretation of constitutional law in custody disputes, preventing inconsistent decisions that may impact parents nationwide.

LEGAL BACKGROUND

Troxel v. Granville, 530 U.S. 57 (2000): This Court held that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.

Parham v. J.R., 442 U.S. 584 (1979): The Court recognized the presumption that parents act in the best interests of their children, affirming parents' fundamental rights over the upbringing of their children.

Santosky v. Kramer, 455 U.S. 745 (1982): The Court held that parents have a fundamental liberty interest in the care, custody, and management of their child, which warrants a heightened standard of proof to terminate parental rights.

U.S. Const. amend. XIV, § 1: Provides that no state shall deprive any person of life, liberty, or property, without due process of law.

legitimate reasons, such as employment or personal matters, should not automatically sever a parent's rights or justify a transfer of custody. This decision undermines the stability of family units and sets a troubling precedent that a fit parent's relocation can be used as grounds for altering custody arrangements.

5. The Granting of Visitation Without a Petition Violates Parental Rights

The aunt did not file a visitation petition in Jefferson County Family Court, yet she was granted visitation against the Petitioner's wishes. This action violates the procedural due process rights of the Petitioner, as it bypassed the proper legal channels and deprived him of the opportunity to contest the visitation order. This violation further undermines the fundamental right of a fit parent to make decisions regarding the care, custody, and control of their child.

6. The Granting of the Visitation Order and the Custody order against the wishes of the father was a Violation of the Due Process Clause

The Due Process Clause of the Fourteenth Amendment protects the right of parents to make decisions concerning the care, custody, and control of their children. The New York court's decisions in this case directly contravene this fundamental right, as established in *Troxel*. By granting visitation and subsequently full custody to a non-parent against the wishes of the Petitioner, the court failed to give due consideration to Petitioner's rights.

7. The Granting of the Visitation Order and the Custody order against the wishes of the father was a Conflict with *Troxel v. Granville*

In *Troxel v. Granville*, this Court emphasized the fundamental liberty interests of parents in the care, custody, and control of their children. The New York court's actions in this case are inconsistent with the principles set forth in *Troxel*, as they disregarded the Petitioner's fundamental rights without demonstrating that the Petitioner was unfit or that such decisions were in the best interest of the child. (SEE EXHIBIT A)

8. The Granting of the Visitation Order and the Custody order against the wishes of the father was a violation of the Fundamental Parental Rights

The U.S. Supreme Court has long recognized that parents have a fundamental right to make decisions concerning the care, custody, and control of their children. In *Troxel v. Granville*, 530 U.S. 57 (2000), this Court reaffirmed that state interference with a parent's rights must meet a strict scrutiny standard. The decision below effectively diminishes these rights by allowing custody to be transferred to a non-parent without a finding of parental unfitness, solely based on a bond formed between the child and the non-parent.

9. The use of extraordinary circumstance rule onlined in *Bennet v. Jeffreys* in the Granting of the Visitation Order and the Custody order against the wishes of the father was an Unconstitutional Standard

The "extraordinary circumstances" standard applied in *Bennet v. Jeffreys* allows courts to

prioritize non-parental bonds over the constitutional rights of fit parents. This standard is overly broad and lacks the necessary protection of parental rights that the Due Process Clause demands. As established in *Santosky v. Kramer*, 455 U.S. 745 (1982), state intervention in parental rights requires a high standard of proof, ensuring that parents are not unjustly deprived of their fundamental rights.

10. The Granting of the Visitation Order and the Custody order against the wishes of the father was not in the Best Interests of the Child

While the best interests of the child are paramount, they must be balanced with the constitutional rights of parents. The decision in this case fails to properly balance these interests, instead placing undue emphasis on the bond with the non-parent without demonstrating that the Petitioner is unfit or that remaining with the Petitioner would harm the child.

Importance of the U.S. Supreme Court's Review of this Case

1. Protection of Parental Rights

Fundamental Right:

Parental rights are a fundamental liberty interest protected by the Fourteenth Amendment. The Supreme Court's review ensures these rights are not infringed upon unjustly.

Precedent: The decision could set a precedent for similar cases, ensuring that parents' rights are consistently protected across the country.

2. Judicial Oversight on Lower Court Decisions

Ensuring Legal Consistency:

The Supreme Court can address and rectify inconsistencies or errors in lower court rulings, particularly when they disregard established legal principles.

Review of State Court Decisions: The case highlights the need for Supreme Court oversight when state court decisions potentially violate constitutional rights.

3. Clarification of Custody and Visitation Laws

Legal Standards:

The Court's review can clarify the legal standards and criteria for granting visitation and custody to non-parents, ensuring they align with both state and federal statutes.

Best Interests of the Child: It can provide guidance on how courts should balance the best interests of the child with the constitutional rights of parents.

4. Implications for Family Law Nationwide

Uniformity in Application: A ruling from the Supreme Court can ensure uniform application of family law principles across different states, preventing disparate treatment of parents based on jurisdiction.

Impact on Future Cases: The decision will impact how future cases involving third-party custody and visitation are handled, promoting fairness and consistency.

5. Addressing Potential Overreach by Courts

Limits on Judicial Authority:

The case presents an opportunity for the Supreme Court to delineate the limits of judicial authority in overruling parental decisions, especially when such decisions contravene established laws.

Protection Against Unwarranted Interference:

It ensures that courts do not overstep and unlawfully interfere in family matters without compelling justification.

6. Public and Legal Community Awareness

Raising Awareness:

The Supreme Court's involvement can raise awareness about the importance of safeguarding parental rights and the potential for judicial overreach.

Educational Impact: The case serves as an educational tool for judges, lawyers, and the public on the constitutional protections afforded to parents.

7. Reinforcement of Constitutional Principles

Fourteenth Amendment Rights: The review reinforces the constitutional principles enshrined in the Fourteenth Amendment regarding family and parental rights.

Due Process: It underscores the importance of due process in custody and visitation disputes, ensuring fair treatment of all parties involved.

8. Correcting Attorney Malpractice

Impact of Malpractice: The case highlights the significance of attorney malpractice which prevented an appeal against an unlawful and unconstitutional visitation schedule.

Ensuring Fair Legal Representation: It emphasizes the importance of competent legal representation and the impact of attorney errors on judicial outcomes.

Remedy for Injustice: The Supreme Court's review can provide a remedy for the injustice caused by the attorney's malpractice, ensuring that the father's rights are properly considered..(SEE EXHIBIT D)

9. Ensuring Just Outcomes

Correcting Misjudgments:

The Supreme Court can correct any misjudgments or unlawful decisions made by lower courts, ensuring justice is served.

Protecting Family Integrity: It helps protect the integrity of the family unit, which is a core value in American society and law.

The New York Family Court's decision to grant visitation and later custody to an aunt, despite being contrary to state and federal statutes, underscores the critical need for the U.S. Supreme Court's review.

The case presents an essential opportunity to:

- **Uphold established parental rights.**
- **Correct judicial overreach.**
- **Clarify the legal standards** for third-party visitation and custody.
- **Address attorney malpractice** and its impact on the legal process.
- **Ensure justice** and constitutional protections are maintained for all parents.

Errors Made by the Lower Courts:

1. Granting Custody to a Non-Parent Over a Fit Parent:

- **Legal Standard:** Courts typically grant custody based on the best interests of the child. However, there is a presumption that fit parents act in the best interests of their children (*Troxel v. Granville*, 530 U.S. 57 (2000)).
- **Error:** The family court's decision to grant full custody to a non-parent over a fit parent without clear and convincing evidence that the parent is unfit or that exceptional circumstances justify this decision is an error. This violates the legal standard that prioritizes the rights of fit parents..(SEE EXHIBIT A)

2. Affirmation of the Family Court's Decision on Appeal:

- **Legal Standard:** Appellate courts should ensure that the lower court applied the correct legal standards and followed due process.
- **Error:** By affirming the family court's decision, the appellate court failed to rectify the violation of your constitutional rights as a fit parent. It also failed to ensure that the family court's decision was based on substantial evidence..(SEE EXHIBIT B)

3. **Denial of Motion to Proceed on Appeal by the New York State Court of Appeals:**

- **Legal Standard:** The highest state court should grant review when there are substantial constitutional questions or significant errors in lower court proceedings.
- **Error:** The denial to proceed on appeal ignored substantial constitutional questions regarding parental rights and due process, leaving the errors uncorrected.(SEE EXHIBIT C)

4. **Legal Malpractice Leading to Non-Appeal of Visitation Order:**

- **Legal Standard:** Effective legal representation is crucial in ensuring that clients' rights are protected, particularly in family law matters where fundamental rights are at stake.
- **Error:** Your attorney's malpractice in failing to appeal the visitation order deprived you of the opportunity to challenge and potentially correct an unjust decision, further compounding the due process violation.(SEE EXHIBIT D)

Impact on Your Constitutional Rights:

1. **Violation of the Fourteenth Amendment's Due Process Clause:**

- **Right to Parent:** The Supreme Court has long recognized that parents have a fundamental right to make decisions concerning the care, custody, and control of their children (*Troxel v. Granville*, 530 U.S. 57 (2000)). By granting custody to a non-parent without sufficient justification, the family court infringed upon your due process rights..(SEE EXHIBIT A)
- **Procedural Due Process:** You are entitled to fair procedures when a state seeks to interfere with your parental rights. The failure of your attorney to appeal critical orders and the appellate court's summary affirmance without addressing substantive due process concerns denied you a fair opportunity to challenge the custody decision..(SEE EXHIBIT D)

2. **Substantive Due Process Violation:**

- **Best Interests of the Child:** While the best interests of the child are paramount, there is a presumption that fit parents act in those interests. The lower courts' decisions disregarded this presumption without proper justification, violating your substantive due process rights.

The Supreme Court's involvement is crucial in safeguarding these principles and setting a clear precedent for future cases.

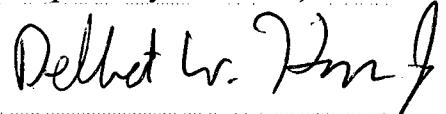
I declare under penalty of perjury that the foregoing is true and correct.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Court grant the petition for a writ of certiorari, reverse the decision of the Appellate Division Fourth Department, and remand the case with instructions to restore custody to the Petitioner, respecting his fundamental parental rights under the Due Process Clause of the Fourteenth Amendment.

DATED: JULY 3, 2024

Respectfully submitted,



Delbert W. Hargis Jr.
Petitioner-Pro Se
1502 S. Salisbury Ave
Spencer, N. C. 28159
(Cell) 315-489-8512
DelHargis101@yahoo.com

Appendix:

- Exhibit A: Copy of the Jefferson County Family Court decision dated August 29, 2022.
- Exhibit B: Copy of the New York Appellate Division Fourth Department decision dated November 17, 2023
- Exhibit C: Copy of the New York Court of Appeals decision dated April 23, 2024.
- Exhibit D: Copy of pages 1 and 21-25 of the New York State Supreme Court Transcript regarding the Stipulation agreement of Legal Malpractice in the Matter of Hargis v Scuderi dated May 22, 2023.