No. _____

Supreme Court of the United States

_____

A.N.,

Petitioner,

v.

Louisiana Department of Children and Family Services,

Respondent.

On Petition for a Writ of Certiorari
to the Louisiana Supreme Court and
Louisiana First Circuit Court of Appeal

_____

Petition for Writ of Certiorari

_____

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QUESTIONS PRESENTED

I. Whether A.N.'s parental rights were unconstitutionally terminated after the appellate court conceded that the juvenile court improperly considered hearsay evidence pertaining to her alleged untreated mental illness.

II. Whether Louisiana's termination statute, which permits termination of parental rights based solely on the showing of the parent's failure to pay parental contributions, violates a parent's liberty interest to the custody and care of her child.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies the parties appearing before the Supreme Court of Louisiana:

1. Petitioner is A.N., who is the biological mother of K.C.N., a minor child, who was removed from A.N.'s custody at birth. A.N. is represented by Jane Hogan, Hogan Attorneys, 310 North Cherry Street, Hammond, LA 70401.

2. The Louisiana Department of Children and Family Services is the Respondent, and is represented by Sandra Terrell, 300 Covington Center, Ste. 1, Covington, LA 70433.

3. K.C.N. is represented by Betsy Smith, 21489 Koop Drive, Ste. 1, Mandeville, LA 70471.

4. K.J. is the biological father of K.C.N. and is represented by Terrell Dupard, 412 North 4th Street, Ste. 102, Baton Rouge, LA 70802.

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PETITION FOR WRIT OF CERTIORARI

Petitioner A.N. respectfully petitions for a writ of certiorari to review the judgments of the Louisiana Supreme Court and Louisiana First Circuit Court of Appeal.

OPINIONS BELOW

The opinion of the Court of Appeal rendered on May 24, 2024, is unreported and is attached as Appendix A. The September 4, 2024, writ denial of the Louisiana Supreme Court is located within the Southern Reporter, at *State in the Interest of K.C.N.*, 391 So. 3d 1059 (La. 09/04/24), and is attached as Appendix B. The juvenile court's written judgment terminating A.N.'s parental rights is unreported and is attached as Appendix C.

JURISDICTION

The judgment of the Louisiana Supreme Court was issued on September 4, 2024. App. B. This petition was timely filed on December 3, 2024. This Honorable Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Louisiana Children's Code Article 1015 provides the grounds for termination of parental rights are:

> (4) Abandonment of the child by placing him in the physical custody of a nonparent, or the department, or by otherwise leaving him under circumstances demonstrating an intention to permanently avoid parental responsibility by any of the following:

(b) As of the time the petition is filed, the parent has failed to provide significant contributions to the child's care and support for any period of six consecutive months.

(5) Unless sooner permitted by the court, at least one year has elapsed since a child was removed from the parent's custody pursuant to a court order; there has been no substantial parental compliance with a case plan for services which has been previously filed by the department and approved by the court as necessary for the safe return of the child; and despite earlier intervention, there is no reasonable expectation of significant improvement in the parent's condition or conduct in the near future, considering the child's age and his need for a safe, stable, and permanent home.

/s/ Jane Hogan

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INTRODUCTION

A.N. gave birth to K.C.N., a healthy baby boy, on April 19, 2022, while she was incarcerated in the St. Tammany Parish Prison for a charge of obstruction of justice. As the prison would not permit A.N. to care for her son, he entered foster care, and she participated in reunification efforts to the best of her ability while incarcerated. On August 16, 2022, A.N. was released from prison and immediately began complying with all aspects of her case plan. Despite A.N.'s clear efforts to complete all components of her case plan, 13 months after K.C.N. was removed the Department of Children and Family Services moved to terminate her parental rights.

Following a hearing for involuntary termination of parental rights which occurred on August 23, 2023, the juvenile court minimized A.N.'s compliance with her case plan and concluded that she has untreated mental illness. Notably, there was no testimony from a mental health professional that supported the juvenile court's conclusion. Rather, the court's conclusion was largely based on improperly admitted hearsay documents. A.N.'s rights were also terminated based on her failure to pay $25 per month in contributions, despite the fact that she frequently made lump sum contributions which equaled the total amount of contributions assessed.

Although the Louisiana First Circuit's narrow majority acknowledged that the juvenile court had improperly admitted hearsay documents during the termination hearing, the court ultimately determined that any resulting error was harmless. Without this prejudicial evidence, and as noted by dissenting Judge Greene, the record unmistakably proved that A.N. repeatedly demonstrated her willingness to

reunite with her child. It is also significant that following the termination, A.N. gave birth to a healthy baby girl and the State has not removed that child or alleged that A.N. is unfit to parent that child. By terminating the parental rights of a mother who has an obvious love and bond with her child, and who worked to the best of her ability to comply with the agency's demands, the lower courts have deprived A.N. of her fundamental right to the care and custody of her son, in violation of the Fourteenth Amendment.

STATEMENT OF THE CASE

A.N. is the mother of K.C.N., who was born on April 19, 2022, while A.N. was incarcerated at the St. Tammany Parish Jail. App. A, p. 1. A.N. was transported to St. Tammany Parish Hospital where she gave birth to K.C.N. *Id.* On April 20, 2022, the Department of Children and Family Services (DCFS) received a report due to concerns that K.C.N. would have no legal caretaker when A.N. was discharged from the hospital and returned to jail. App. A, p. 2. Upon investigation, DCFS spoke with A.N., who reported that prior to her incarceration, she was homeless. *Id.* DCFS sought an instanter order, which was orally granted by the trial court, placing K.C.N. in the provisional custody of DCFS. *Id.* At a continued custody hearing, A.N., through counsel, stipulated that K.C.N. was in need of care; accordingly, the trial court continued custody of K.C.N. with the State, through DCFS. *Id.*

The District Attorney of the 22nd Judicial District Court, State of Louisiana, filed a child in need of care petition on May 19, 2022, asserting A.N. had a valid finding of dependency due to her incarceration without a bond and her unwillingness

to name K.C.N.'s father, thus leaving K.C.N. without a caretaker. *Id.* The petition further asserted A.N. had three older children and that her parental rights had been terminated as to two of them and the third resided in Texas with the father. *Id.* At the adjudication hearing on June 22, 2022, A.N., through counsel, stipulated that K.C.N. was in need of care without admitting to the allegations of the petition. *Id.* The trial court adjudicated K.C.N. in need of care, ordered that K.C.N. remain in state custody in his current foster home placement, and approved DCFS's case plan with the goal of reunification. App. A, p. 3.

The case plan required A.N. to obtain and maintain legal employment and safe and stable housing; complete mental health and substance abuse evaluations and follow all treatment recommendations; resolve current legal issues and inform DCFS of any new arrests/legal issues; attend and complete a parenting program; pay $25.00 per month in parental contributions; and attend all court hearings, meetings, and visits with K.C.N. *Id.* A.N. was released from jail in August 2022. *Id.*

Throughout the pendency of the case, A.N. attended all FTMs, court hearings, and other meetings. She consistently visited her son, and those visits were observed to be very positive. DCFS caseworker Mikyria Michele testified that A.N. was "really good with the child. She plays with the child. She brings…food, appropriate toys, so she's very interactive with the child." A.N. also completed an online parenting class that was approved by DCFS.

On March 3, 2023, A.N. attended a psychological evaluation with Dr. Rafael Salcedo, who noted A.N.'s "thought processes were logical and goal-directed,

although at times, she did appear to be harboring under delusional ideas." Despite Dr. Salcedo noting that A.N. might not be a reliable historian, he concluded that her "speech and language functioning was intact" and that she had "no difficulty being able to express herself intelligently.' Dr. Salcedo noted that it was "somewhat unusual that an individual who comes across as relatively intelligent has lost custody permanently of three [*sic*] of her children." Dr. Salcedo administered personality testing and A.N. "obtained a valid profile, with all clinical scales falling within normal limits." As he struggled to understand how an intelligent woman could have lost custody of her children, Dr. Salcedo recommended that A.N. undergo a psychiatric evaluation to rule out any unspecified psychotic disorder versus a delusional disorder.

DCFS then referred A.N. to the Center for Hope to undergo a psychiatric evaluation. A.N. attended an initial assessment and was scheduled to undergo a psychiatric evaluation on April 11, 2023. However, on that date the center phoned DCFS and stated they were cancelling the appointment because A.N. self-reported that she had no mental health issues.

At a permanency hearing on April 19, 2023, the juvenile court changed the goal from reunification to adoption. App. A, p. 4. Thereafter, on May 26, 2023, DCFS filed a petition for termination of parental rights, asking that A.N.'s rights be terminated pursuant to La. Ch.C. art. 1015(4)(b), for abandonment of K.C.N. by failing to provide significant contributions to his care for a period of six consecutive months, and La. Ch.C. art. 1015(5), failure to comply with her case plan. App. A, p. 5. In support,

DCFS alleged that A.N. made no parental contributions since November 14, 2022. *Id.* Additionally, DCFS alleged A.N. had not substantially complied with the court approved case plans and DCFS had no reasonable expectation of significant improvement in A.N.'s condition in the near future. *Id.* Specifically, DCFS alleged that A.N. had a history of instability and mental illness. *Id.* DCFS further alleged that A.N. had completed some portions of her case plan, but had shown no behavior change nor had she shown that she could sustain a significant period of stability. App. A, p. 6.

The trial court held a hearing on the petition for termination of parental rights on August 16 and 23, 2023. *Id.* The hearing consisted of only the testimony of the DCFS caseworker Mikyria Michele, the Court Appointed Special Advocate (CASA), and A.N.

Ms. Michele began her testimony by summarizing 650 pages of records from the Texas child welfare pertaining to A.N.'s older son (C.U.) that included notations from 2007 through 2016. Counsel for A.N. objected to the introduction of the records and Ms. Michele's summary of the records as hearsay. DCFS then argued the documents were subject to the business records exception. The court overruled the objection noting it was "well aware of the hearsay and will disregard any inadmissible hearsay," to which counsel noted an objection.

Ms. Michele proceeded to read her summary of the Texas records and then also described the child services records from Colorado. Counsel also objected to the

introduction of these documents. For approximately 16 pages of the transcript, Ms. Michele summarized the Texas and Colorado records.

Ms. Michele then described A.N.'s case plan components as consisting of maintaining safe and stable housing, maintaining sufficient income, submitting to a substance abuse evaluation, submitting to a mental health evaluation, submitting to random drug screens, paying parental contributions, attending FTMs and court hearings, consistently visiting with K.C., resolving all criminal issues, and attending a parenting course.

Ms. Michele testified that A.N.'s only pending criminal charge was for obstruction of justice and remained pending, while acknowledging that A.N. had little control over the resolution of these charges. After she was released from prison, A.N. lived in a shelter and then obtained housing through an organization in New Orleans called Thrive. At the permanency hearing in April, A.N. had moved into her own apartment and Ms. Michele assessed the house and found it was appropriate. Ms. Michele testified that she subsequently learned that A.N. may have been evicted from this apartment.

Ms. Michele testified that A.N. has held four jobs throughout the case, including an eight-week paid job readiness program through Thrive, a lab assist, a manager at the Family Dollar, and currently drives for Uber. A.N. provided Ms. Michele with proof of income from Uber.

Ms. Michele testified that A.N. was assessed parental contributions in the amount of $25 per month. Prior to October of 2022, A.N. made a $125 cash payment

directly to the foster parents. A.N. made a total of three payments to DCFS, each one for more than her monthly assessed amount: (1) on October 2, 2022, A.N. made a $125 contribution; (2) on November 14, 2022, A.N. made a $50 contribution; and (3) on August 2, 2023, A.N. made a $100 contribution.

Ms. Michele testified that A.N. consistently attended all visits, Family Team Meetings, and court hearings. Ms. Michele further stated the visits were "good" and "appropriate" and she was usually on time. Ms. Michele testified that A.N. completed an online parenting class, and that DCFS made a referral for an additional parenting class late in the case and A.N. had not enrolled in the course.

Ms. Michele confirmed that A.N. completed a substance abuse evaluation and there was no recommendation for treatment. A.N. attended a mental health evaluation with Dr. Salcedo and attended a subsequent assessment at Center of Hope, which refused to accept A.N. as a client. Ms. Michele then testified that it was "very significant" that A.N. had not fully addressed her mental health issues given her history. However, when Ms. Michele was asked to describe whether she had personally observed A.N.'s "very significant…untreated mental health," she described A.N.'s failure to hold a steady job and inconsistency with housing. When pressed for more examples, Ms. Michele described witnessing an argument between K.C.N. and her attorney at the outset of the case, but Ms. Michele acknowledged that A.N. had never acted disrespectful to DCFS.

Ms. Michele testified that DCFS utilizes a risk assessment tool known as "SDM" which measures the threat to reunification. At the date of the termination,

the SDM was "very high," although previously the SDM was "moderate." Ms. Michele testified she did not believe A.N. could substantially reform in the near future because she "has repeatedly displayed patterns of instability and mental health issues."

On cross-examination, Ms. Michele testified that A.N. had informed DCFS that she was struggling to find housing, but DCFS did not offer her any services or referrals for housing. However, without DCFS's assistance, A.N. procured housing through Thrive. Although the State had submitted information pertaining to a protective order filed by A.N. and a protective order filed against A.N., Ms. Michele confirmed that both orders were dismissed. Ms. Michele testified that she had a prior psychiatric evaluation with Dr. Kent Foster in 2013, but DCFS needed a current one.

Ms. Michele testified that she had observed 10 visits between A.N. and K.C.N. and the following exchange occurred:

Counsel: Do you think that [A.N.] understands what her child's needs are?

Michele: She could.

Counsel: During those visits?

Michele: Yes.

Counsel: Does it appear she can address those needs during the visits?

Michele: Yes.

Counsel: Do you think that [A.N.] is able to perform any basic and essential parenting need?

Michele: She could.

Ms. Michele testified that when she assessed A.N.'s home in April, it was clean, furnished with a bed and diapers for K.C.N., and had food. Ms. Michele stated A.N. has a positive perception of her son and there were never any allegations of physical abuse as it pertained to K.C.N. or any of her other children. Ms. Michele also testified that K.C.N. is not fearful of A.N.

The State's only other witness was the CASA volunteer, a retired teacher who spoke to A.N. once on the phone and was not given the opportunity to observe any visits between A.N. and her son. The court recessed the hearing until August 23, 2023.

At the second setting, A.N. extensively testified about her prior involvements with DCFS in Texas and Colorado and testified that she was diagnosed with anxiety and depression in 2013 but was not currently taking medication. A.N. testified that she had no prior diagnosis of schizophrenia and any mention of such within her medical records came from her mother, with whom she has no contact.

A.N. testified that she maintained her prior apartment for six months but then moved recently into a new apartment in Jefferson Parish. A.N. testified that she currently works for Uber, which provided her with a vehicle and she earns approximately $1,300 per week. Prior to Uber, A.N. participated in a job readiness program through Thrive New Orleans, where she obtained an OSHA certificate, a clean water certification, a TWIK card, and became certified as a lab assistant through Operation Restoration.

A.N. testified that during her eight-week program at Thrive she was constantly drug screened, never tested positive, and regularly saw a licensed clinical social worker. After her evaluation by Dr. Salcedo, A.N. went to Center of Hope for what she thought would be a psychiatric evaluation but it was only an assessment. After Center of Hope refused to perform a psychiatric evaluation, A.N. went on her own to Mental Health Services in New Orleans. Again, A.N. went under the belief that she would have an evaluation but it was only "an assessment as to whether I qualified to be seen there[.]" A.N. spent several hours completing the assessment but the evaluation was not scheduled prior to the termination. A.N. then went to Holy Cross University, which referred her to River Oaks Hospital for a psychological evaluation. A.N. testified that she currently attends counseling at Holy Cross and is under the supervision of Octavia Benjamin, a licensed professional counselor.

A.N. testified that while she was in prison, she was able to virtually visit with her son and the day she was released she had her first in-person visit. "Mikyria did make sure I saw my baby that day….I was really grateful for that." A.N. testified that she was originally referred to the Renew Parenting Class but did not qualify for it since she lived in Orleans Parish. Rather than wait for DCFS to make a referral for a parenting class in Orleans Parish, A.N. found her and completed own parenting course.

The juvenile court terminated A.N.'s parental rights finding she had failed to substantially comply with her case plan and abandoned K.C.N. by failing to provide parental contributions for a six-month period. App. C. On September 11, 2023, the

court issued written reasons for judgment, which extensively discussed A.N.'s prior CINC cases in Texas and Colorado. App. C. The court made the following findings:

> There was overwhelming evidence of the Mother's untreated or undertreated major metal illness. All the records, history, and the court's personal observance during the Mother's testimony made that very clear. During her testimony, she was manipulative and selective. Her willful and deliberate falsehoods for the purpose of deceiving the court mitigated against her credibility and her ability to parent an infant.
>
> She has moved several times during the pendency of the case and was evicted at least once. Most notably, she has refused to provide her address to her Case Worker so that a home study could be done. She claimed to have participated in several non-profit training programs and to have earned some skill certificates. However, the only employment she was able to obtain was at a Dollar Store, a job that lasted only a short time. Whether she quit or was fired from that job or any other she held during the case was never clearly established. At no time did she provide any evidence of any earnings. At the time of the hearings, she was unemployed. She had paid a total of $275 towards the Child' s care with the last payment being made more than 6 months prior to the hearings.
>
> The Mother did attend all FTM's and regularly visited with the Child. Early in the Case, the foster parents were extremely open to visits and accommodated the Mother's requests for deviations. However, her unreasonable demands became overwhelming and the foster family began to have concerns about the effects of the Child's continuing contact with her and her mental illness' effect on the baby. Her visits have since been reduced due to her behavior. After a substance abuse evaluation, no follow up treatment was recommended. As to her mental health evaluation, she only completed a portion of the testing and told the Agency that she had had no prior mental health issues or treatment. After being ordered to provide records of her recent treatment at River Oaks Hospital she refused.
>
> …A.N.'s denials of an overwhelming number of third party observations and records are neither credible nor worthy of believe. At best they are further evidence of mental illness, delusional grandiosity, and conspiratorial accusations without any basis in fact, or any degree of trustworthiness.

> …Removal of the Child from the only family he has ever known, now or in the future, to place him in the custody of an unfit mother would be a disaster to his health, safety and well-being and unconscionable. The decision to terminate the Mother's rights has never been more clear.

App. C.

A.N. timely appealed and argued that the court had erroneously permitted the introduction of hearsay pertaining to her prior cases in Texas and Colorado. A.N. also argued that the court erred by finding that she had failed to substantially comply with her case plan, that she had abandoned K.C.N. by failing to pay contributions each month, and that termination was in the best interest of K.C.N.

The First Circuit narrowly affirmed the termination, finding that the out-of-state child welfare records were "improper hearsay evidence," but the introduction of these records was ultimately harmless error. App. A, p. 12. The majority further found no error in the juvenile court's termination of A.N.'s parental rights for failing to make on-time parental contributions and for failing to substantially comply with her case plan. App. A, pp. 12-17.

In his dissent, Judge Greene found that the "drastic remedy of termination of parental rights" was not justified under the abandonment statute, as A.N. was assessed a $25 monthly contribution and while she "instead made sporadic lump-sum payments" the "important fact is that that A.N. *did pay*, and notably, her total payments equaled the amount she was required to pay monthly." App. A, p. 22 (emphasis in original).

Judge Greene further noted that the record did not support termination pursuant to a lack of case plan compliance.

> AN did not maintain a job at a single place of employment, nor stable housing at a single location, nor continually treat her mental health issues, nor make her payments on a monthly basis, I think the efforts she *did make* collectively showed "substantial compliance" with the case plan. I also think AN's efforts and cooperation with the State showed a reasonable expectation that her condition/conduct would significantly improve in the near future, even though problems still existed.

App. A, p. 23 (emphasis in original).

Judge Greene further noted that DCFS rushed to file its petition for termination once K.C.N. had been in custody for 13 months, despite A.N.'s efforts to achieve reunification. And, given that the biological father's case plan was only beginning, terminating A.N.'s parental rights would not immediately free K.C.N. for adoption. "Rather than rush to terminate AN's parental rights, I think the State failed to fulfill its duty to undertake reasonable efforts to assist AN in removing the obstacles to reunification with KCN." App. A, pp. 23-24.

A.N. timely sought review to the Louisiana Supreme Court, which denied her writ without reason on September 4, 2024. App. B. A.N. then filed a timely petition for a writ of certiorari with this Court, which rejected the filing due to an issue with the appendix and A.N.'s motion to proceed in forma pauperis. On December 16, 2024, this Court noted that A.N. could remedy the issues and refile her petition within 60 days.

REASONS TO GRANT THIS PETITION

I. The state courts violated A.N.'s constitutional rights to the care and custody of her child based on improperly admitted hearsay evidence which alleged untreated mental illness, an alleged failure to comply with her case plan, and an unfounded belief that permanent termination was in the best interest of the child.

i. The Court of Appeal conceded the improper introduction of hearsay evidence.

The Fourteenth Amendment entitles A.N. to due process and equal protection in a termination proceeding. *Stanley v. Illinois*, 405 U.S. 645, 657-58 (1972). Because hearsay evidence is inherently unreliable, its exclusion is undoubtedly also necessary on account of the parent's constitutional due process right to a fundamentally fair termination proceeding at the highest civil standard of proof. *See Santosky v. Kramer*, 455 U.S. 745, 756 (1982) ("Notwithstanding the state's civil labels and good intentions, . . . this level of certainty [proof by clear and convincing evidence] [is] necessary to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual involved with a significant deprivation of liberty or stigma.") (internal citations and quotations omitted).

The First Circuit conceded that the juvenile court erred as a matter of law by allowing DCFS to introduce child welfare records from Texas and Colorado and allowing Ms. Michele to extensively summarize those records. App. A, p. 12. However, the First Circuit held this was a harmless error, as there was other evidence of A.N.'s alleged mental health issues. App. A, p. 12.

When error is detected, it must be weighed to determine whether such error is harmless or prejudicial. *Short v. Gaylord Chemical Corp*., 731 So. 2d 493, 496 (La. App. 1 Cir. 4/1/99). Legal errors are prejudicial when they materially affect the outcome and deprive a party of substantial rights. *Evans v. Lungrin*, 708 So. 2d 731, 735 (La. 2/6/98).

The First Circuit's conclusion drastically minimized the impact of the DCFS caseworker's "summary" of the hearsay records. This "summary" spanned 16 pages of the transcript, and without this evidence there was no direct testimony that A.N. suffered from mental health issues. The DCFS caseworker admitted that she never saw A.N. act erratically and that she always interacted well with K.C.N. Dr. Salcedo's report noted that A.N. presented very well and achieved a valid profile on all administered tests. Dr. Salcedo recommended a further evaluation only to rule out unspecified disorders, and A.N. attempted to comply with this recommendation. She presented for the initial intake and was denied an evaluation because she self-reported that she was not currently suffering from any mental health issue. A.N. then attempted to obtain a psychiatric evaluation through other providers and at the time of termination was under the direct treatment of Octavia Benjamin. A.N.'s self-report to the Center for Hope mirrored the observation of Dr. Salcedo and the fact that she was unable to obtain a psychiatric evaluation because she did not claim to have mental health issues is more indicative of a defect in the system rather than A.N.'s allegedly untreated mental illness.

An error is prejudicial if it materially affected the outcome and deprived a party of a substantial right. Perhaps the most fundamental and substantive right that exists is a parent's right to care for his or her biological children. Here, without the introduction of the highly prejudicial hearsay evidence there would be evidence in the record that A.N. suffered from untreated mental health issues. Because this error has now deprived A.N. of the custody of her son, this error is not harmless and mandates reversal.

ii. A.N. substantially complied with her case plan.

Termination of parental rights interferes with a parent's fundamental liberty interest under the due process clause of the Fourteenth Amendment and therefore the State must prove each statutory ground for termination by clear and convincing evidence. *Santosky v. Kramer*, 455 U. S. 745 (1982); La. Ch.C. art. 1035. This heightened burden of proof "requires the State to show not only that the existence of the fact sought to be established is more probable, but rather that the fact is highly probable or more certain." *State ex rel. Q.P.*, 649 So.2d 512, 515 (La. App. 3 Cir. 11/2/94), (internal citations omitted) (emphasis added).

The juvenile court terminated A.N.'s parental rights pursuant La. Ch.C. art. 1015(5),[1] which provides for involuntary termination when one year passes from the date the child entered care and there has been "no substantial parental compliance with a case plan for services" and "despite earlier intervention, there is no reasonable expectation of significant improvement in the parent's condition or conduct in the

[1] At the time of termination, La. Ch.C. art. 1015(5) was listed as art. 1015(6).

near future, considering the child's age and his need for a safe, stable, and permanent home." La. Ch.C. art. 1015(5).

In its reasons for judgment, the juvenile court found that A.N. had not complied with her case plan primarily due to the court's conclusion that she had not addressed her mental health issues. The court also incorrectly found that A.N. had not obtained housing and was unemployed at the time of the termination hearing.

As noted in the dissenting opinion, it is important to consider that DCFS filed a termination petition after K.C.N. had been in care for only 13 months, that A.N. had attended every visit and appointment for services at the time the petition was filed, and that A.N. made substantial efforts throughout her case to demonstrate compliance and would likely have improved in the near future.

A.N. proved that she completed a parenting class, was on the waiting list for a second parenting class, and completed a substance abuse evaluation and was randomly drug screened. A.N. attended every visit with her son, every court hearing, and every Family Team Meeting. She maintained contact with her case worker throughout her case, thus complying with this component of her case plan. While A.N. did not maintain the same job, she held several jobs throughout the case plan and at the time of the termination hearing was employed by Uber and earning $1,300 per week.

A.N. also complied fully with all referrals for mental health treatment. She submitted to a psychological evaluation and attempted to complete a psychiatric evaluation, but was refused by the agency after it determined she did not qualify for

services. Absent the hearsay records, there is no evidence in the record supporting the juvenile court's conclusion that A.N. had untreated mental illness. A.N. also struggled with stable housing, but at the time of the termination hearing she had secured an apartment.

The dissent noted that while A.N. "did not maintain a job at a single place of employment, nor stable housing at a single location, nor continually treat her mental health issues, nor make her payments on a monthly basis, I think the efforts she did make collectively showed "substantial compliance" with the case plan." App. A, p. 23. Indeed, A.N.'s efforts should not be minimized as she consistently visited K.C.N., was always appropriate in her visits, completed a parenting class, submitted to a psychological evaluation and a psychiatric assessment, attended court hearings and Family Team Meetings, completed a substance abuse evaluation, and at the time of the hearing had held employment with Uber for several months. A.N. admittedly struggled to maintain stable housing, but at the time of the hearing she had an apartment that had not been assessed. In order to terminate pursuant to Article 1015(5), the State must prove A.N. lacked substantial parental compliance with her case plan. Given that she complied in all areas, the lower courts' findings to the contrary were in error.

iii. The lower courts erroneously found that termination was in the best interest of K.C.N.

Even if the State proves grounds for termination by clear and convincing evidence, the court must still consider whether the State proved that termination is in the best interest of the child by clear and convincing evidence. La. Ch. C. art. 1037; *See State ex rel. S.M.W.,* 781 So.2d 1223 (La. 2/21/01) ("The State must only establish one statutory ground for termination, but the trial judge must also find that termination is in the best interest of the child.").

As noted by this Court, the State's interest in securing permanency and the best interest for children arises only "when it is clear that the natural parent cannot or will not provide a normal family home for the child." *Santosky v. Kramer,* 255 U.S. 745, 767 (1982) (emphasis added). This is not a case of a parent who cannot or will not provide a normal family home for her child. To the contrary, throughout the pendency of the case, A.N. visited her son and diligently worked to comply with her case plan, which supports a finding that termination is not in K.C.N.'s best interest.

Ms. Michele described an obvious bond between mother and son and A.N. deserves a genuine opportunity to work towards overnight visits and eventual reunification. A.N. has proved stable enough to comply with obligations, attend court, testify on her own behalf, and lovingly and consistently visited with her son. As this is not a case involving a parent who cannot provide a stable home, the State has no interest in intervening and permanently destroying this family.

The perceived best interest of keeping K.C.N. with his foster mother simply cannot serve as a basis for the permanent dissolution of familial bonds when there are no independent grounds for termination. *See Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("We have little doubt that the Due Process Clause would be offended '[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest,'" *quoting Smith v. Organization of Foster Families*, 431 U.S. 816, 862-863 (1977) (Stewart, J., concurring in judgment)).

Given that A.N. has substantially complied with her case plan and would likely complete her case plan in the near future, the juvenile court erred by finding that permanent termination of A.N.'s parental rights were in K.C.N.'s best interest.

II. Louisiana's statute permitting termination of parental rights based solely on a parent's failure to pay monthly parental contributions violates a parent's liberty interest to the custody and care of her child.

Louisiana Children's Code Article 1015(4)[2] permits involuntary termination on the grounds of abandonment and provides in pertinent part:

> (4) Abandonment of the child by placing him in the physical custody of a nonparent, or the department, or by otherwise leaving him under circumstances demonstrating an intention to permanently avoid parental responsibility by any of the following:

[2] At the time of termination, La. Ch.C. art. 1015(4) was listed as art. 1015(5).

> (b) As of the time the petition is filed, the parent has failed to provide significant contributions to the child's care and support for any period of six consecutive months.

Although Article 1015(4) requires that a parent's failure to pay must be a manifestation of an intention to "permanently avoid parental responsibility," in practice courts and appellate courts in Louisiana find DCFS satisfies this inquiry upon a simple showing that a parent failed to make parental contributions. As noted by the dissent, A.N. gave a $125 payment directly to K.C.N.'s foster parents in the form of $125 cash. The record also shows that A.N. paid $ 125 on October 2, 2022; $ 50 on November 14, 2022; and, $ 100 on August 2, 2023. While A.N. did not make $25 per month as scheduled, her lump-sum payments equaled the amount she was required to pay monthly. App. A, p. 21.

Because they are in derogation of a parent's natural rights, state court jurisprudence has long held that termination abandonment statutes must be strictly construed. *See Henderson v. Spears*, 292 So.2d 801, 803 (La. App. 1 Cir. 1974); *State in Interest of a Little Boy*, 473 So.2d 858, 860 (La. App. 4th Cir. 1985); *See also Rodriguez v. Louisiana Medical Mutual Insurance Company*, 618 So.2d 390, 394 (La. 1993) (a statute in derogation of natural rights must be strictly construed and not extended beyond its obvious meaning). Moreover, a parent's poverty, despite her strives to comply with her case plan for 13 months, clearly should not be a reason for the permanent dissolution of familial bonds.

CONCLUSION

Petitioner respectfully submits that this Court should grant her petition for a writ of certiorari.

Respectfully submitted February 3, 2025.

/s/ Jane Hogan

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No. _____

Supreme Court of the United States

_____

A.N.,

Petitioner,

v.

Louisiana Department of Children and Family Services,

Respondent.

_____

On Petition for a Writ of Certiorari
to the Louisiana Supreme Court and
Louisiana First Circuit Court of Appeal

CERTIFICATE OF SERVICE

_____

I HEREBY CERTIFY, pursuant to Supreme Court Rule 29.5(b) that on February 3, 2025, copies of the Petition for Writ of Certiorari, and the Motion for Leave to Proceed *In Forma Pauperis* were mailed in an envelope to the Clerk, United States Supreme Court, One First Street, N.E., Washington, D.C. 20543; and to the Louisiana Department of Children and Family Services, 300 Covington Center, Ste. 1, Covington, LA 70433; and to the juvenile court, 701 N. Columbia Street, Covington LA 70433, and to counsel for K.C.N., 21489 Koop Drive, Ste. 1, Mandeville, LA 70471, and to counsel for the biological father, 412 North 4th Street, Ste. 102, Baton Rouge, LA 70802.

Respectfully submitted February 3, 2025.

/s/ Jane Hogan

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