App No. TBD

IN THE UNITED STATES SUPREME COURT

TIMOTHY DASLER,
and on behalf of Minor Child T.D.
Petitioner,

v.

DALENE WASHBURN,
Respondent

On Application for an Extension of Time
to File Petition for a Writ of Certiorari to the
United States Court of Appeals from a
2nd Circuit Court Decision

PETITIONER'S APPLICATION TO EXTEND TIME
TO FILE PETITION FOR WRIT OF CERTIORARI

Timothy Dasler, Pro Se
488 NH Rt 10 Apt D
Orford, NH 03777

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

To the Honorable Sonia Sotomayor, as Circuit Justice for the United States Court of Appeals for the Second Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner Timothy Dasler respectfully requests that the time to file his Petition for Writ of Certiorari in this matter be extended by 60 days, up to and including November 22, 2024.

The Second Circuit Court of Appeals issued its opinion on April 25, 2024(Appendix A), and denied rehearing on June 25, 2024 (Appendix B), with the Mandate issuing on July 2, 2024.

Due to unforeseen and serious circumstances, including a bout with COVID-19, which significantly disrupted my ability to prepare the petition, as well as other legal obligations and family responsibilities, Petitioner was unable to meet the 10-day advance filing requirement for this request. Petitioner now respectfully asks the Court to grant this extension in light of these exceptional circumstances.

Absent an extension of time, the Petition for Writ of Certiorari would be due on September 23, 2024. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

Background

At the heart of this case is the failure of the State of Vermont to properly protect Petitioner's Fourteenth Amendment rights, particularly his fundamental parental rights. The state's failure to provide adequate protection for these rights necessitates Federal Jurisdiction.

All Abstention Doctrines require adequate remedies at the state level, and if state remedies are inadequate Federal Abstention is not appropriate. Neither the District Court, nor Circuit Court addressed the inadequacy of State Remedies.

Not only has the Vermont Supreme Court abbrogated the application of Standards of

Evidence by declaring that no finding is error if any evidence exists to support it, but it also permits delegation of authority to private actors resulting in constitutional violations without remedy. This failure necessitates federal intervention through the mechanisms of 42 U.S.C. § 1983 and § 1985, as state courts have proven unable or unwilling to safeguard the rights guaranteed under the Fourteenth Amendment.

Petitioner, Timothy Dasler, alleges that State of Vermont delegation of power has allowed, Ms. Dalene Washburn, in collaboration with Ms. Knapp, to sever Mr. Dasler and his child's access to their constitutionally protected parent/child rights. Specifically, Ms. Washburn has been delegated by state power as the sole provider of therepeutic services, thus becoming the gatekeeper of that right. When state power limits access to a sole person, that person's obstruction of that becomes a state-backed severance of a Constitutional right in violation of his substantive due process rights under the Fourteenth Amendment. Through its delegation of authority to Ms. Washburn, the state has enabled the deprivation of Mr. Dasler's rights, thereby necessitating federal court action under § 1983.

The Federal Court's decision to abstain under Younger v. Harris was inappropriate in this case, as Ms. Washburn is not a party to any existing state case, and Vermont courts have consistently failed to protect the constitutional rights of individuals like Mr. Dasler. Vermont's abrogation of proper standards of evidence—especially the use of an "any evidence" standard rather than reasonable application of the Constitutionally Required standards of evidence—has created an environment where due process is disregarded. In cases involving parental rights, the state has allowed private individuals, empowered by state authority, to violate these rights without meaningful oversight or accountability. Federal intervention is required to correct this ongoing dysfunction in the state's judicial system.

State's Failure to Protect Fundamental Rights and Inappropriate Abstention

The state's failure to uphold proper judicial standards has led to constitutional deprivations that Vermont courts are either incapable or unwilling to rectify. By abstaining, the federal court left Mr. Dasler without a remedy for his constitutional claims, despite the well-established principle that federal courts have a duty to protect federal rights when state courts fail to do so. The Fourteenth Amendment's Due Process Clause mandates that individuals cannot be deprived of their fundamental rights—such as the right to participate in their child's medical decisions—without due process of law. Vermont's judicial system, by allowing private actors to exercise state power without oversight, has created a situation where those rights have been violated without any recourse.

Abrogation of Standards of Evidence in Vermont Courts

Vermont's judicial dysfunction is further evidenced by its abrogation of traditional standards of evidence in family court proceedings. The use of an "any evidence" standard—where even minimal or speculative evidence can justify life-altering decisions—has resulted in a systemic violation of due process in cases involving parental rights. In Mr. Dasler's case, these lowered standards enabled Ms. Washburn and Ms. Knapp to deny him access to his child's medical records and care without a legitimate basis. Vermont's courts have consistently failed to enforce the higher standards required by due process, creating a situation where federal oversight is necessary to protect constitutional rights.

§ 1983 and § 1985 Claims: Failure of State to Prevent Delegation of Power

The improper delegation of state power to Ms. Washburn, a private actor, gives rise to a § 1983 claim. Under Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982), the state's delegation of authority to private actors, who then exercise that power to violate constitutional rights, constitutes state action. By failing to intervene and allowing Ms. Washburn to obstruct Mr. Dasler's access to his child's medical care, the state is complicit in these constitutional

violations.

Additionally, recent developments in Class of One litigation under the Fourteenth Amendment, particularly the decision in Village of Willowbrook v. Olech, 528 U.S. 562 (2000), expand the scope of § 1985(3). The Willowbrook decision clarified that individuals who are arbitrarily singled out by state actors can assert equal protection claims, even if they are not part of a traditional protected class. This evolving interpretation of the Fourteenth Amendment mandates a corresponding expansion of protections under § 1985 to include Class of One claims. The Second Circuit failed to address this evolving interpretation of equal protection, dismissing Mr. Dasler's § 1985 claim without considering the broader application of Willowbrook to such cases.

Reasons For Granting An Extension Of Time

Petitioner was sick with COVID for an extended period with the first positive test on 9/7/24 and was barely able to leave bed for days, and certainly unable to think clearly and critically about any sort of legal filing or deadline. As a single father(1/2 time), self employed full time, and self represented in both Vermont Family Court proceedings and the Federal Proceedings(necessitated because Ms. Washburn is not a party to the Vermont Family Court case, and tort claims against Ms. Knapp are forbidden from Family Court proceedings) with competing deadlines he is extremly overtaxed and struggles to keep up with it all. COVID really pushed him far beyond capacity and the brain fog from COVID has continued and he is still trying to make sense of all of the things that have fallen by the wayside during this time. This also includes medical appointments for his child and urgent medical developments for his child which have required his immediate attention.

Petitioner has been trying to protect his Parental Rights within the Vermont system, however, he has been deprived of any proceeding of competent jurisdiction to disturb the precedent that continues to decide this case.(Rocket Docket proceedings, bound by precedent,

lack the authority to disturb precedent and may only apply existing precedent to cases)

Vermont precedent also indicates that civil recovery for tort damages must be independent of the Family Court proceedings.

Petitioner eventually sought relief in Civil Court with filings in Federal District Court in 2021.

One Civil Suit is against Respondent, Jennifer Knapp, who continues to wield state power to sever petitioner's parental rights in violation of court orders and without a hearing.

The second Civil Suit is against Dalene Washburn, a medical provider and the non-party witness previously mentioned(whose counsel continually interrupted the proceedings).

Ms. Washburn is a medical provider who has acted in a conspiracy with Respondent Jennifer Knapp to sever Respondent's access to his child's medical records and medical care.

The Vermont Family Court has repeatedly reaffirmed Respondent's right to access his child's medical records and providers, however, it has stated it cannot enforce the actions of a non-party to the case.

Due to the pandemic and court shut-downs, Respondent's 3 cases ended up moving forward in sync and overwhelming the pro se litigant.

The Family Court filing dating back to 2019 was postponed due to the pandemic and was only resolved on appeal at the end of 2023.

The Federal Civil Suits filed in 2021 were dismissed due to claims of the Domestic Relations Abstention and petitioner is subject to appellate deadlines in these proceedings.

He seeks to set the boundaries of due process in Vermont Court through Declaratory Judgement and also to stop the wrongful use of state power, which Ms. Knapp and Ms. Washburn have usurped to steal his parental rights without a hearing.

He needs to establish in the Circuit Court that there is no remedy at the state level and rebut the District Court's mis-application of the Domestic Relations Abstention.

Coupled with these tight deadlines, Petitioner is also a single father(50/50 visitation), self-employed full time(not an attorney), had an extended illness at the end of December, which put him behind in all his deadlines, and was also in a car accident that has created additional

logistical/administrative burdens that are unavoidable.

The intersection of Federal Law with Family Law is complicated and very difficult to get any advice on due to the rarity of attorneys who are experienced in both areas.

In this case, the Due Process issues are solidly within Federal Issues, yet have been overlooked by federal courts since the circumstances where Federal Courts have jurisdiction over cases related to parental rights/child custody are relatively rare.

Petitioner has a solid argument why these Federal Issues require a Federal Court to take the case, yet the knee jerk response from District Courts(and many Circuits) seems to be to reject such cases.

Although the SCOTUS has repeatedly cautioned application of the Domestic Relations Exception where Federal Jurisdiction otherwise lies, it appears that the Federal Courts often over-use the doctrine and reject cases inappropriately.

This has resulted in a very difficult set of issues to understand and respond to.

The weight of all of these responsibilities coupled with the illness and auto accident has left too much work for a pro se litigant to keep up with, and an extension of time is just.

As explained above, the Vermont Supreme Court's disregard for fundamental fairness is directly at odds with SCOTUS precedent and appears that either the state court believes that Hamer does not apply, since it is based upon Federal Law(although obviously the principles were rooted in the difference between time limits set by statute vs. court rule and these principles are not limited to Federal cases).

Moreover, though, this case is about a Constitutional Right to a fair hearing, standards of evidence required under the 14th Amendment(and the fact that appellate court definition of "clear error" sets the meaning of those standards), and when/how a court's actions illustrate bias/unfairness simply through judicial acts that are consistently unreasonable/unlawful.

In particular, the issue is that state courts, particularly Vermont, conclude that in Domestic Relations Cases they need not provide a fair hearing because of their belief that precedent such as Ankenbrandt mean that the proceedings are entirely the domain of the state and they need not adhere to Federal judicial standards of fairness.

Although the UCCJEA sets which court has jurisdiction, there needs to be clarification that states must conduct those proceedings within the boundaries of due process.

This clarification may also be used through Declaratory Judgement in Federal District Courts to achieve what petitioner is already seeking(which the District Court has denied) by obtaining prospective relief when the states disregard Federal Precedent in Family Court.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the time to file his Petition for Writ of Certiorari be extended by 60 days, up to and including November 22, 2024.

Tmek Dacle 9/23/24

APPENDIX A

23-1156-cv
Dasler v. Washburn

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of April, two thousand twenty-four.

PRESENT:

JOHN M. WALKER, JR.,
STEVEN J. MENASHI,
Circuit Judges,
ORELIA E. MERCHANT,
District Judge. *

Timothy P. Dasler, for himself and on behalf of T. D.,

Plaintiff-Appellant,

v. **23-1156**

Dalene Washburn,

Defendant-Appellee.

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* Judge Orelia E. Merchant of the United States District Court for the Eastern District of New York, sitting by designation.

FOR PLAINTIFF-APPELLANT: TIMOTHY P. DASLER, pro se, Orford, NH.

FOR DEFENDANT-APPELLEE: JENNIFER E. MCDONALD, Downs Rachlin Martin PLLC, Burlington, VT.

Appeal from a judgment of the United States District Court for the District of Vermont (Reiss, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Plaintiff-Appellant Timothy Dasler, pro se on his own behalf and seeking to act on behalf of his minor child, T.D., sued Dalene Washburn, the therapist his ex-wife selected for T.D., claiming that Washburn was not acting in T.D.'s best interest. He asserted claims under 42 U.S.C. § 1985 and Vermont state law. The district court dismissed the lawsuit for failure to state a claim but permitted Dasler to move to amend his complaint. Dasler did not initially amend in time; instead, he moved after judgment was entered to file an amended complaint that raised additional claims under 42 U.S.C. § 1983 and state law. The district court denied leave to amend as futile, reasoning that Dasler failed to state a § 1983 claim and that the domestic relations exception to diversity jurisdiction applied.[1] We assume the parties' familiarity with the facts, the procedural history, and the issues on appeal.

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[1] We conclude that we have jurisdiction to review both the dismissal of the original complaint and the denial of leave to amend because we may liberally construe Dasler's district court submissions as seeking vacatur of the judgment and leave to amend his complaint, tolling his time to appeal. *See* Fed. R. App. P. 4(a)(4)(A)(iv)-(v); *see also Ruotolo v. City of New York*, 514 F.3d 184, 191 (2d Cir. 2008) ("A party seeking to file an amended complaint postjudgment must first have the judgment vacated or set aside pursuant to Fed. R. Civ. P. 59(e) or 60(b).").

We review de novo the denial of leave to amend based on futility, applying the same standard used to evaluate a dismissal under Rule 12(b)(6). *See Nielsen v. Rabin*, 746 F.3d 58, 62 (2d Cir. 2014). We construe the complaint liberally, accept all of its well-pleaded factual allegations as true, and draw all reasonable inferences in the plaintiff's favor in order to determine whether the complaint states a plausible claim for relief. *See id.* On a judgment dismissing a complaint for lack of subject matter jurisdiction, we review factual findings for clear error and legal conclusions de novo. *Maloney v. Soc. Sec. Admin.*, 517 F.3d 70, 74 (2d Cir. 2008).

I. Dismissal of the Original Complaint

The district court properly dismissed the claims that Dasler brought on behalf of his child. A non-attorney may not bring claims on his child's behalf. *Cheung v. Youth Orchestra Found. of Buffalo, Inc.*, 906 F.2d 59, 61 (2d Cir. 1990). While Dasler argues that the district court should have granted his requests to appoint counsel for T.D., there is no right to counsel in civil cases except when facing the prospect of imprisonment. *See Guggenheim Cap., LLC v. Birnbaum*, 722 F.3d 444, 453 (2d Cir. 2013). The discretionary denial of counsel was not an abuse of discretion because, as discussed below, Dasler's claims were not "likely to be of substance." *Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir. 1997) (quoting *Hodge v. Police Officers*, 802 F.2d 58, 61 (2d Cir. 1986)).

Dasler's claims were otherwise properly dismissed. He failed to plead race- or class-based animus, as required to state a § 1985 claim. *Mian v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 7 F.3d 1085, 1088 (2d Cir. 1993). Vermont common-law breach of patient confidentiality requires a doctor-patient relationship. *Lawson v. Halpern-Reiss*, 210 Vt. 224, 232-33 (2019). But Washburn was his child's doctor, not Dasler's.

Dasler did not otherwise meet Vermont's "high" bar of pleading "outrageous conduct" sufficient to support an intentional infliction of emotional distress claim. *Dalmer v. State*, 174 Vt. 157, 171 (2002). He alleged that Washburn

obstructed access to her practice by requiring Dasler to include his ex-wife on emails and by prohibiting him from bringing his child to sessions, amounting to an abuse of power. But, especially in the context of a divorce proceeding between Dasler and his ex-wife, Washburn's requests to have both parents copied on email communications about their child and to have the ex-wife bring the child to sessions were not outrageous.

II. Denial of Leave to Amend

Dasler challenges the district court's denial of leave to amend the complaint, but the denial was not erroneous. As discussed above, claims brought on behalf of the child were properly dismissed. Furthermore, Dasler did not add facts to his proposed amended complaint that would have cured the deficiencies identified in the district court's first order.

A. Section 1983 Claim

The district court properly concluded that Dasler failed to state a § 1983 claim. A § 1983 claim requires the violation of a federal right by a defendant acting under the color of state law. 42 U.S.C § 1983. But Washburn is a private individual, and a private individual acts under color of state law only when (1) the state compelled the individual's conduct, (2) the individual acted jointly with the state, or (3) the individual fulfilled a role that is traditionally a public function performed by the state. *Sybalski v. Indep. Grp. Home Living Program, Inc.*, 546 F.3d 255, 257 (2d Cir. 2008).

Dasler did not allege facts demonstrating that Washburn, a private therapist, was compelled to act by the state, that she acted jointly with the state, or that she fulfilled a traditional public function. While he contends that Washburn was a state actor by virtue of being selected as the child's therapist by his ex-wife, who was authorized to do so by court order, the order did not appoint Washburn as the child's therapist. Instead, it merely authorized Dasler's ex-wife to select a private provider; she chose Washburn.

B. State Law Claims

We conclude that Dasler's proposed state law claims fail on the merits. *See Wells Fargo Advisors, LLC v. Sappington*, 884 F.3d 392, 396 n.2 (2d Cir. 2018) (observing that we may affirm on any ground with support in the record).[2] In his proposed amended complaint, Dasler asserted state law claims for defamation, breach of contract, negligent infliction of emotional distress, and abuse of process.[3]

In Vermont, the elements of defamation—including libel and slander—are "(1) a false and defamatory statement concerning another; (2) some negligence, or greater fault, in publishing the statement; (3) publication to at least one third person; (4) lack of privilege in the publication; (5) special damages, unless actionable per se; and (6) some actual harm so as to warrant compensatory damages." *Russin v. Wesson*, 183 Vt. 301, 303 (2008) (quoting *Lent v. Huntoon*, 143 Vt. 539, 546-47 (1983)). Dasler alleged that Washburn's clinical appointment notes contained a number of statements about his relationship with his child. But the notes recorded statements the child made during therapy, not statements made by Washburn about Dasler. Dasler also alleged that Washburn spread unspecified false allegations to childcare providers and other mutual contacts. But because Dasler failed to allege actual statements that were false and defamatory, Dasler's claim that Washburn made "false" statements about him to others must fail.

Dasler also failed to state a claim for breach of contract based on

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[2] We have subject matter jurisdiction because "the domestic relations exception encompasses only cases involving the issuance of a divorce, alimony, or child custody decree," and this case does not involve those matters. *Ankenbrandt v. Richards*, 504 U.S. 689, 704 (1992).

[3] Dasler also asserted a claim styled "Duty of Care." It appears that Dasler is asserting that Washburn had a duty of care toward him as part of a negligence claim. Dasler did not assert any of the other elements of a negligence claim, so he fails to state a claim for negligence.

Washburn's failure to comply with a subpoena and the Vermont state court's failure to enforce it. "To prove breach of contract, [a] plaintiff must show damages." *Smith v. Country Vill. Int'l, Inc.*, 183 Vt. 535, 537 (2007). Dasler did not allege what damages he suffered from Washburn's failure to produce the documents. He stated that he was deprived of discovery before the Vermont court entered a final divorce decree. But he did not allege that the documents would have been essential to an element of his claims in state court.

The remaining state claims also fail. Negligent infliction of emotional distress requires physical peril or fear of injury, *see Brueckner v. Norwich Univ.*, 169 Vt. 118, 125 (1999), but Dasler pleaded neither. And abuse of process fails because Dasler did not plead facts suggesting an improper use of a court. *See Weinstein v. Leonard*, 200 Vt. 615, 625 (2015).

III. Unredacted Material

Finally, we note that Dasler's opening brief, reply brief, and appendix contain the full first name of his minor child, and the appendix recites the child's date of birth. Federal Rule of Appellate Procedure 25(a)(5), which incorporates Federal Rule of Civil Procedure 5.2, requires redaction of this information. Accordingly, the Clerk of the Court is directed to **SEAL** from public view documents 30, 31, and 70 on this court's docket. While we do not remand, the district court may wish to seal similar filings.

* * *

We have considered Dasler's remaining arguments, which we conclude are without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: April 25, 2024
Docket #: 23-1156cv
Short Title: Dasler v. Washburn

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 21-cv-194
DC Court: VT (BURLINGTON)
DC Judge: Reiss

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:
* be filed within 14 days after the entry of judgment;
* be verified;
* be served on all adversaries;
* not include charges for postage, delivery, service, overtime and the filers edits;
* identify the number of copies which comprise the printer's unit;
* include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
* state only the number of necessary copies inserted in enclosed form;
* state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
* be filed via CM/ECF or if counsel is exempted with the original and two copies.

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: April 25, 2024
Docket #: 23-1156cv
Short Title: Dasler v. Washburn

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 21-cv-194
DC Court: VT (BURLINGTON)
DC Judge: Reiss

VERIFIED ITEMIZED BILL OF COSTS

Counsel for

_____

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

_____

and in favor of

_____

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____ ____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

_____
Signature

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of June, two thousand twenty-four,

Before: John M. Walker, Jr.,
Steven J. Menashi,
Circuit Judges,
Orelia E. Merchant,
District Judge.

Timothy P. Dasler, for himself and on behalf of T. D.,

Plaintiff - Appellant,

v.

Dalene Washburn,

Defendant - Appellee.

ORDER
Docket No. 23-1156

Appellant Timothy P. Dasler having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

CERTIFICATE OF SERVICE

I hereby certify that on 9/23/24 I sent a copy of
(date)
Request for Extension of Time to file a Petition for Writ of Certiorari to

Jennifer E. McDonald, at
(Opposing Party or Attorney)
199 Main Street
P.O. Box 190
Burlington, VT 05402-0190,
(the last known address)
by US MAIL.
(state method of service)

9/23/24 Trish Daeler
Date Signature