No. 24-6985

IN THE
SUPREME COURT OF THE UNITED STATES

R.V., Jr.,

Petitioner,

vs.

S.V.,

Respondent.

On Petition for a Writ of Certiorari to
The Texas Court of Appeals at Austin
Third District

PETITION FOR A WRIT OF CERTIORARI

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Pro Se Litigant

I. QUESTION PRESENTED

Where an incarcerated and indigent parent is in a suit to terminate their parental rights, what circumstances reach the "troublesome points of law," "determinitive difference," or "fundamental fairness" thresholds announced in Lassiter for the parent to have a Fourteenth Amendment right to counsel?

II. LIST OF PARTIES AND RELATED CASES

Ricardo Vera Jr., henceforth R.V., is the petitioner in this Court. R.V. was the respondent at trial, the appellant on appeal, and the petitioner to the Supreme Court of Texas.

Shannon M. Vera, henceforth S.V., is the respondent in this Court. S.V. was the petitioner at trial, the appellee on appeal, and the respondent to the Supreme Court of Texas.

R.V. v. S.V., No. 24-0822, 2025 Tex. LEXIS 7 (Tex. 2025). Unpublished order denying Motion for Rehearing entered on January 3, 2025.

R.V. v. S.V., No. 24-0822, 2024 Tex. LEXIS 979 (Tex. 2024). Unpublished order denying Petition for Review entered on November 8, 2024.

R.V. v. S.V., No. 03-23-00810-CV, 2024 Tex. App. LEXIS 6555, (Tex. App.--Austin 2024). Published decision affirming the trial court's orders entered on August 30, 2024.

In the Interest of B.J.V., a Child, No. D-1-FM-22-006452. The 455th Judicial District Court of Travis County, Texas, ordered the termination of the parent-child relationship between R.V. and B.J.V. on November 1, 2023. The same court denied R.V.'s Motion for Court-Appointed Alternate Counsel on September 27, 2023.

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IV. LIST OF AUTHORITIES

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V. OPINIONS BELOW

The decision by the Texas Court of Appeals at Austin, Third District, affirmed the trial court's orders to terminate the parent-child relationship between R.V. and B.J.V. and to deny R.V. court-appointed counsel, and is reported as R.V. v. S.V., No. 03-23-00810-CV, 2024 Tex. App. LEXIS 6555 (Tex. App.--Austin 2024). The Texas Supreme Court denied R.V.'s Petition for Review on November 8, 2024, in an unpublished opinion attached at appendix ("App.") E. The Texas Supreme Court later denied R.V.'s Motion for Rehearing on January 3, 2025, in an unpublished opinion at appendix F.

VI. JURISDICTION

R.V.'s Motion for Rehearing to the Texas Supreme Court was denied on January 3, 2025. R.V. invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this Petition for Writ of Certiorari within ninety days of the Texas Supreme Court's decision..

VII. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment I:

> Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the priviliges or immunites 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.

Tex. Fam. Code § 107.021: at Appendix G

Tex. Fam. Code § 161.001: at Appendix H

VIII. STATEMENT OF THE CASE

In 1981, this Court held in Lassiter v. Dep't of Social Services that a parent in a suit terminating their parental rights may have a Fourteenth Amendment right to counsel. Lassiter ruled that the right exists when there are "troublesome points of law, either procedural or substantive," when the presence of counsel could have "made a determinitive difference," or when the lack of counsel "render the proceedings fundamentally unfair." Lassiter v. Dep't of Social Services, 452 U.S. 18, 32-33 (1981).

On August 24, 2022, S.V. filed her petition to terminate the parent-child relationship between R.V. and their biological son, B.J.V.. S.V. filed in the 455th Judicial District Court in Travis County, Texas while R.V. was and remains incarcerated at the state prison in Concord, New Hampshire. On September 27, 2023, the trial court heard R.V.'s Pro Se Motion for Court-Appointed Alternate Counsel (App. I), awarded withdrawal of his prior counsel, and filed his uncontested affidavit of indigence. The motion for counsel states how R.V. meets several factors announced in Lassiter for a Fourteenth Amendment right to counsel. It also states the court's statutory authority to provide R.V. counsel under Tex. Fam. Code § 107.021 (App. G) and cites an authority that analyzed Lassiter where termination was predicated on the same ground termination was sought in this case, Tex. Fam. Code § 161.001(b)(1)(Q) (App. H). The court issued a written order denying R.V. counsel on both constitutional and statutory grounds (App. B, p.2).

On direct appeal, R.V. raised the issue of his attorney appointment again in his Brief of the Merits to the Texas Court of Appeals at Austin, Third District. On August 30, 2024, the appelate court published an opinion at appendix A which ruled that counsel "would not have made a determinitive difference" for R.V. and that the absense of counsel "did not render the proceedings

fundamentally unfair." R.V. v. S.V., No. 03-23-00810-CV, 2024 Tex. App. LEXIS 6555 at *15-16 (Tex. App.--Austin 2024);(App. A).

R.V. raised the same issue again in his Petition for Review to the Texas Supreme Court. The petition was denied on November 8, 2024, in an unpublished opinion. (App. E). A subsequent Motion for Rehearing was submitted to the same court which was later denied on January 3, 2025, in an unpublished opinion. (App. F). This Petition for Writ of Certiorari to the Supreme Court of the United States timely follows.

This case presents the question of whether those Lassiter factors are satisfied when: the child was not provided statutorily-mandated representation; the parent had an adverse finding fraudulently procured; and the incarcerated parent had evidentiary burdens. While there are state-based sub-issues, they are all encapsulated within, and directly applicable to, the preserved federal issue of the right to counsel.

A. Statutorily-Mandated Representation Not Provided to the Child.

In a suit terminating the parent-child relationship not filed by the government, Tex. Fam. Code § 107.021(a-1) (App. G) requires the court to appoint an amicus or ad litem attorney to the child unless the court finds a party to the suit can represent the child. Implied findings where the Findings of Fact state nothing is prohibited. In re K.M.M., 326 S.W.3d 714, 715 (Tex. App.--Amarillo 2010)(holding no finding could be implied where no specific finding entered by the trial court encompassed an element of whether the mother could adequately represent the child)(citations omitted). With the Findings of Fact in this case being entirely silent on B.J.V.'s representation (App. D), the court was required to appoint him an attorney. They had not.

The appellate court concluded that the issue of B.J.V.'s attorney

appointment was not preserved for appellate review. They cite the Texas Supreme Court's decision in K.A.F. which states, "the rules governing error preservation must be followed in cases involving termination of parental rights." In re K.A.F., 160 S.W.3d 923, 928 (Tex. 2005). However, post-dating the 2005 decision, the Texas Court of Appeals at San Antonio in D.M.O., and at Amarillo in K.M.M., ruled that a trial court's failure to appoint an attorney for a child in a private termination suit may be raised for the first time on appeal. In re D.M.O., No. 04-17-00290-CV, 2018 Tex. App. LEXIS 1992 at *4-5 (Tex. App.--San Antonio 2018); K.M.M. 326 S.W.3d at 715. The Austin appellate court in this case did not analyze their sister courts' holdings despite ruling opposite of them. Furthermore, with the court explicitly ruling that R.V. did not possess a right to counsel, they are implicitly ruling that B.J.V.'s lack of representation--an issue R.V.'s counsel could have raised--had not rendered a fundamentally unfair proceeding.

R.V. raised the issue again to the Texas Supreme court while mentioning the state's intermediary courts conflicting rulings on the same statute and issue. R.V. also raised a federal issue for review: a child has a constitutional right to, and a fundamental liberty interest in, their association with their parent (U.S. CONST. amend I), and that any adjudication that permanently divests them from those rights without representation is a violation of due process (U.S. CONST. amend. XIV).

This Petition here asks if R.V.'s right to counsel was met through the following determinations: is the trial court's failure to provide a statutorily-mandated attorney for a child in a suit that terminates their basic rights to their parent adequately unfair; and is a procedural issue in which appellate court justices cannot agree on, and state supreme court justices have not resolved, a point of law that is sufficiently troublesome?

B. Fraudulently Procured Adverse Finding

On November 1, 2023, with R.V. now represented pro se, the trial court held a hearing on S.V.'s Motion to Terminate. S.V.'s principle arguments for termination was based on R.V.'s crimes, which do not include the manufcature of child sex abuse images, RSA 649-A:3-b. (App. U). Furthermore, R.V.'s convictions related to B.J.V.'s female friends, a violation of privacy and indecent exposure, had never overlapped into any charges of pornography. However, through false statements of S.V.'s attorney (2RR p.32,40) and perjured testimony of S.V. (2RR p.66), the court is told that R.V. not only manufactured child pornography, but did so with B.J.V.'s friends. (App. S).

On appeal, R.V. cited the false statements and perjured testimony in his brief. S.V. does not refute the assertions and even agrees that there is insufficient evidence to support the direct grounds that the fraudulent evidence helped advance, the findings of Tex. Fam. Code § 161.001(b)(1)(L)(iv) and (xiii). Nonetheless, the Austin appellate court concluded that any error of findings that support termination on Subsection (L) is harmless because R.V.'s rights are satisfactorily terminated on Subsection (Q). (App. A). As such, the appellate court does not analyze the issue.

However, to terminate parental rights, a finding of the child's best interest is required as well. Tex. Fam. Code § 161.001(b)(2);(App. H). An analysis of a child's best interest includes not only direct evidence, but also circumstantial evidence, subjective factors, and the totality of the evidence as a whole. G.H. v. Tex. Dep't of Family & Protective Servs., No. 03-16-00157, 2016 Tex. App. LEXIS 8903 at *12 (Tex. App.--Austin 2016)(citations omitted). In short, a best-interest analysis can include any evidence that is produced anywhere. With the court having not analyzed the issue of fraud, the court

does not analyze the extent which the false statements and perjured testimony unfairly aggravated the factors which support the best-interest finding. The issue was raised in the Petition for Review to the Supreme Court of Texas.

This Petition here asks: are false statements and perjured testimony that support an omnifarious ground for termination a substantive issue that is troublesome enough, and could counsel have made a determinitive difference here, for R.V. to possess the right to counsel?

C. Incarcerated with Evidentiary Burdens

ONE. The trial court may terminate on Subsection (Q) of the involuntary termination statute if, in conjunction with it being in the best interest of the child, that the court clearly and convincingly finds that the parent knowingly engaged in criminal conduct that resulted in a conviction of an offense, confinement or imprisonment, and an inability to care for the child for not less than two years from the filing date of the petition. Tex. Fam. Code § 161.001(b)(1)(Q);(App. H). Evidence for Subsection (Q) requires a burden-shifting, three-step analysis:

1. the party moving to terminate must produce evidence for the crime and incarceration elements; then if that is met,
2. the incarcerated parent must produce some evidence of how they, or their arrangement with another person, will care for the child during the period of confinement; then if that is met,
3. the party seeking termination must persuade with clear and convincing evidence that the incarcerated parent's provisions are inadequate.

In the Interest of J.G.S., 574 S.W.3d 101, 118-19 (Tex. App.--Houston 2019) (emphasis added). An "ability to care" includes financial, emotional, educational, and physical care. In the Interest of A.G.D., No. 07-15-00201-CV, 2016 Tex. App.

688 at *13-14 (Tex. App.--Amarillo 2016). However, when no financial care for the child was sought prior to the petition to terminate, that prong is excused. Id at *13 (citing Holley v. Adams, 544 S.W.2d 367, 372 (Tex. 1976)). Additionally, a 2023 amendment to the involuntary termination statute states that a parent's economic disadvantage does not constitute sufficient evidence to make a finding in Subsection (b). Tex. Fam. Code § 161.001(c)(2);(App. H)..

With the crime and incarceration elements shown, R.V. produced evidence to care through testimony, terms in the mediated settlement agreement (MSA), and the Guardian ad Litem report to the court which was introduced as evidence via the doctrine of judicial notice. (App. T). R.V. demonstrates his ability to:

1. emotionally support B.J.V. through letters and gift giving (App. J p.3 ¶5-a);
2. educationally support B.J.V. with a 529 college fund (App. J p.3 ¶6);
3. physically support B.J.V. with in-person visits through an arrangement with R.V.'s mother (App. R); and
4. financially support B.J.V. when R.V. gave S.V. 75% of the proceeds from the sale of their marital home (App. K p.3,5).

S.V. neither sought financial support prior to her petition to terminate nor does she appear to persuade the court that R.V.'s provisions are inadequate. R.V. also demonstrates his economic disadvantage through his affidavit of indigence. However, the trial court terminated on predicate grounds (b)(1)(Q), (L)(iv) and (xiii), and the best-interest ground in (b)(2). (App. C). They found that even if the MSA was not valid, a seperate issue raised here shortly, "sufficient evidence was presented to support requisite findings for termination by clear and convincing evidence." (App. D ¶8).

R.V. raised the issue of legal and factual sufficiency of the evidence to

support termination on appeal. The reviewing standard in termination suits requires the appellate court to examine all of the evidence. In the Interest of A.C., 560 S.W.3d 624, 630-31 (Tex. 2018). The Austin appellate court in this case, however, restricts their examination to testimonies only--letters, gifts, and visits--and ignores evidence in the MSA and guardian report. Even so, their examination acknowledged some evidence, which was all that R.V. was required to produce to satisfy his burden. Nonetheless, the court decided R.V.'s production fell short, thereby defying what the plain language of "some" implies. The court does not cite, and R.V. cannot find, any authority that defines "some evidence." As a result, the misapplied reviewing and evidentiary standards on this one issue compounded the court's analytical errors.

Additionally, the appellate court weighed R.V.'s student loan against him. However, because that financial care was not sought prior to S.V.'s petition to terminate, then its use as an aggravating factor violates precedence established in Holley 544 S.W.2d at 372. The court had also not analyzed how R.V.'s indigency and the "economic disadvantage" line in Subsection (c)(2) intersected with the financial consideration in Subsection (b) of Tex. Fam. Code § 161.001. (App. H). As such, the appellate court affirms the trial court's findings which R.V. challenged in his Petition for Review to the Texas Supreme Court.

The question asked here is: when a parent who suffers the incapacities of indigency and incarceration has their own evidentiary burden--especially when it involves a misapplied reviewing standard, an undefined and nebulous evidentiary standard, decades-old stare decisis, and new and unanalyzed statutory tension--do they have a right to counsel? The Texas Court of Appeals at Houston in I.M.S. analyzed the Lassiter factors when an incarcerated father's termination was predicated on Subsection (Q). That court decided since Father was not simply

required to defend against allegations that he violated Subsection (Q), but instead had his own evidentiary burden, that unto itself presented "troublesome points of law" where counsel could have "made a determinitive difference." In the Interest of I.M.S., 679 S.W.3d 704, 719-20 (Tex. App.--Houston 2023)(citing Lassiter 452 U.S. at 32-33).

TWO. The MSA signed by R.V. and S.V. on August 15, 2023, was found valid and enforceable by the trial court (App. D ¶7) which was not analyzed by the appellate court. This was R.V.'s second evidentiary burden on appeal, and first chronologically at trial.

During the septemebr 27, 2023 hearing, R.V. informed the court that he needs counsel to contest the MSA's voluntariness and to defend against the best-interest litigation. (App. P p.5-6). The court acknowledged that it would be "really hard" to set aside the MSA, and a "very heavy load to carry." (Id p.6). The court agrees that "the system ought to give [R.V.] a lawyer" and that is "how it ought to work," yet denies R.V. counsel due to a seeming unawareness of the authority to appoint. (Id p.9). After reconsideration, the court agrees to review R.V.'s written motion for counsel (App. I) which the court later denies at appendix B.

Before the November 1, 2023 hearing on S.V.'s Motion to Terminate, R.V. filed an Objection to Motion to Enter Order Terminating Parental Rights (App. L) and a Motion for Subpoena of Telephone Calls (App. M). The objection states the manipulations of the mediator and his former counsel; the unenforceable terms of post-termination contact in the MSA; his belief the MSA was a "good faith promise only" as per the exact term of the MSA; supporting court decisions; and a formal revocation of the MSA. (App. L). The subpoena request was to gather evidence stored in the New Hampshire State Prison phone records to demonstrate

his initial attempt at revocation 24 hours after signing the MSA and his former counsel's vacilating answers to the MSA's enforceability. (App. M).

During the November 1, 2023 hearing, R.V. attempted to reiterate his motion but was instructed not to. (App. Q). He instead attempts to recall his MSA's issues from memory with poor results, in part due to confusion towards the hearing for a motion transforming into a full evidentiary hearing and bench trial. The court does not entertain the subpoena request because, unbeknownst to R.V., he was required to create a seperate hearing for that motion.

After trial, R.V. discovers the precise contractural language to his issue, "indefiniteness," and seeks allowance to raise that unpreserved complaint on appeal through a Motion to Enter Formal Bill of Exception to the trial court. (App. N). R.V. learned how to facilitate the complicated hearing process between the New Hampshire prison and Texas court from confinement, and scheduled it for March 20, 2024. The trial court later moved the hearing to May 10, 2024, so the judge that entered the final judgement could hear it. However, the appellate court denied R.V.'s Motion to Extend Time to File a Bill of Exception to accomodate the trial court's delay, so R.V. canceled the hearing. (App. O).

At this point, this Petition asks if the Lassiter factors exist for R.V.'s right to counsel when his evidentiary burden included: the involuntary execution of a waiver to his parental rights in which his own counsel played a role; demonstrating both unenforceable and indefinite terms in a contract; gathering phone records that R.V. would have no access to due to his confinement restrictions; hearing scheduling; and onerous deadlines?

IX. REASONS FOR GRANTING THE PETITION

A. To prevent the erroneous deprivation of counsel in termination of parental rights cases, this Court should clarify the thresholds established in Lassiter.

In Santosky v. Kramer, 455 U.S. 745, 761 (1982), this Court held that heightened procedural safeguards are necessary in cases terminating parental rights, which is one of the most severe deprivations of liberty in American law. While Lassiter extended a due process right to counsel in such cases under certain conditions, it left open critical questions to that guarentee regarding evidentiary burdens and fraudulent findings for the parent, and fundamental fairness for the child. This case presents an urgent need for this Court to clarify the scope of the right to counsel in termination cases, ensuring that indigent and incarcerated parents are not unduly deprived of their fundamental rights.

B. The Texas Court of Appeals has decided important questions of federal law that has not been, but should be, settled by this Court, and has done so in a way that conflicts with relevant decisions in Lassiter.

The Austin apellate court has implicitly decided a number of questions regarding a parent's due process right to counsel in cases that terminate their rights to their child. They made the following case law when they decided that the right to counsel did not exist:

1. the failure to provide a statutorily-mandated attorney for a child in such cases is not adequately unfair;
2. procedural issues which intermediary courts have disagreement, and is unresolved by the state court of last resort, is not a point of law that is sufficiently troublesome;
3. false statements and perjured testimony is neither a substantive issue that is troublesome enough nor would counsel have made a difference in;

raised on appeal to ensure procedures comport to due process. If the appellate court's opinion is viewed to have not assessed B.J.V.'s appointment through the lense of R.V.'s due process procedural issue--R.V.'s attorney appointment--then that contradicts the holdings in B.L.D. and Lassiter. If the appellate court's opinion is viewed to have made that assessment, then they not only decided a federal question as articulated in the preceeding reason, but deductively they also ruled in a way that conflicts with the decisions of another state court of last resort, and a federal appellate court, as demonstrated on the succeeding reason.. This Court's intervention is required to prevent Texas litigants from enduring uncertain, and perhaps unlawful, interpretations that vary depending on their court's geography.

D. This case presents an opportunity to decide whether a child has a due process right to legal representation in termination suits.

Courts have recognized a child's right to maintain a relationship with their parent, as seen in Smith v. City of Fontana, 818 F.2d 1411, 1987 U.S. App. LEXIS 800 at *16 (9th Cir. 1987), and State ex rel. Tina K. v. Adam B., 948 N.W.2d 182, 189 (Neb. 2020). If a child has a constitutional right to associate with their parent, then the absense of legal representation in suits that permanently divests them from that association violated their Fourteenth Amendment due process right. However, with the appellate court ruling that R.V: had no right to counsel, they are holding that B.J.V.'s lack of legal representation--an issue R.V.'s attorney could have raised--still produced a fundamentally fair proceeding. This Court should resolve this important due process question and create a national standard that ensures fairness for children in cases that terminate their rights to their parent.

E. Counsel would have made a determinitive difference in this case, as demonstrated by the use of fraudulent testimony and procedural barriers.

The trial court relied on demonstrably false statements to justify termination. Additionally, procedural obstacles prevented R.V. from adequately contesting key evidentiary issues. Had counsel been provided, these errors could have been addressed, potentially leading to a different outcome. This case exemplifies why appointed counsel is essential in termination proceedings and why this Court must intervene to prevent similar injustices.

X. CONCLUSIONS

For the foregoing reasons, R.V. respectfully requests that this Court issue a writ of certiorari to review the judgement of the Texas Court of Appeals at Austin, Third District. DATED this 27th day of March 2025.

Respectfully submitted,

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