

NO. 24-7481

IN THE SUPREME COURT OF THE UNITED STATES

M.L.K., FATHER,

Petitioner,

v.

DEPARTMENT OF CHILDREN AND FAMILIES, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE FIRST DISTRICT COURT OF APPEAL WITH THE STATE OF FLORIDA

**FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES'
BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR
WRIT OF CERTIORARI**

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STATEMENT OF QUESTIONS PRESENTED

1. Whether the trial court violated the Fifth and Fourteenth Amendment guarantee of Due Process of Law during the termination of parental rights proceeding, when the father received his right to the confrontation of the child abuse victims during the civil hearing.

2. Whether the limitations under Florida statute of the father's rights to confront the child abuse victims complied with clear precedent for the protection of the United States Constitutional rights afforded to parents in the termination of parental rights civil proceeding.

OPINIONS AND ORDERS ENTERED IN THE CASE

The Florida Second Judicial Circuit Court entered an opinion terminating the petitioner's parental rights pursuant to Florida statute in case number 201-DP-73. Pet. App. A.

The opinion of the Florida First District Court of Appeal, *M.L.K. III v. Dept. of Children & Families*, 397 So. 3d 837 (Fla. 1st DCA 2024), issued a *per curium affirmance* of the trial court's order terminating the petitioner's parental rights. Pet. App. B. The opinion also noted a Florida Statute, "allowing a court, when testimony is sought from 'a sexual offense victim or witness' to 'enter any order necessary to protect the victim or witness in any judicial proceeding. . . from severe emotional harm or mental harm due to the presence of the defendant'," and two state of Florida opinions from another district court of appeal. Pet. App. B.

The Florida Supreme Court declined to accept jurisdiction to review the *per curium affirmance* opinion from the district court, in case number SC2025-0006.

JURISDICTION

The jurisdictional basis here is 28 U.S.C. § 1257, which applies to final judgments rendered by the "highest court of a state in which a decision could be had." 28 U.S.C. § 1257(a) (emphasis added). Section 1257 permits certiorari jurisdiction where, as relevant here, "any title, right, privilege, or immunity is specially set up or claimed under the Constitution...of...the United States." *Id.*

LEGAL PROVISIONS INVOLVED IN THE CASE

1. The Fifth Amendment to the Constitution of the United States, as set out in the Certiorari Petition.

2. The Sixth Amendment to the Constitution of the United States,

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

3. The Fourteenth Amendment to the Constitution of the United States, as set out in the Certiorari Petition.

STATEMENT OF THE CASE

Respondent objects to the statement of facts in M.L.K.'s certiorari petition. Respondent objects to Petitioner's assertions regarding the process provided for the testimony of the child abuse victims during the termination of parental rights proceeding. Several material facts were omitted in his petition. Therefore, Petitioner submits the following additional facts in support of the brief in opposition:

The children below were sheltered from the petitioner's care based on allegations of physical and sexual abuse. *Record*, pgs. 54-67. The Florida Department of Children and Families sought to terminate the petitioner's parental rights shortly thereafter. *Record*, pgs. 80-86. In preparation for the adjudicatory hearing on the

petition to terminate parental rights, the Department filed a motion for in-camera examination of the children. *Record*, pgs. 335-37. The trial court granted this motion after receiving testimony from the children's mental health counselor and receiving arguments of counsel. *Record*, pg. 453. The court allowed one child to appear in person, if she chose, and for both children to be subject to cross examination. *Record*, pg. 453. Proposed questions by all parties were to be provided in advance of the adjudicatory hearing. *Record*, pg. 453.

In the provision of questions in advance of the hearing by all parties to all parties, the petitioner received advance knowledge of all questions to prepare accordingly. *Record*, pgs. 453, 468-70; *Transcript*, pgs. 9-10. The court further allowed for a break during the cross examination of one of the children and allowed the petitioner to ask additional cross examination questions than what he had provided in advance of the hearing. *Transcript*, pgs. 256-57, 262-63, 267, 738. Petitioner's trial counsel was also given the leeway to berate the sexual abuse victim for crying during her testimony. *Transcript*, pgs. 258-60.

In the final order terminating parental rights, the trial court, noted: "[o]nly one witness appeared remotely, the child [], as previously ordered by the Court. The child testified, subject to cross examination by the parties. During her testimony, the child was able to view the courtroom from her remote location and see all the parties, and all the parties and the Court were able to see her, as part of a hybrid in-person/remote proceeding that was setup for that purpose." Pet. App. A.

ARGUMENT FOR DENYING THE WRIT OF CERTIORARI

The Petitioner contends that the process provided by the trial court in his termination of parental rights adjudicatory hearing for the testimony of the child abuse victims violated his Constitutional rights. When considering the actual process provided and the applicable law, this issue does not warrant this Court's review.

The process provided to the former father in the termination of parental rights proceeding protected the petitioner's limited rights in these types of civil dependency cases. The petitioner received his rights. Furthermore, the clear precedent allows for a limitation of Constitutional rights in such hearings. For the foregoing reasons, and as discussed more fully below, the petition for writ of certiorari should be denied.

THE PETITIONER WAS AFFORDED DUE PROCESS OF LAW IN THE TERMINATION OF HIS PARENTAL RIGHTS.

A. The trial court allowed the father the right to counsel and confrontation of the child abuse victims.

Petitioner seeks this Court's review based on an alleged 'structural' error of the trial court. The petitioner's misstatement of the facts from the trial court adjudicatory hearing omits those facts that show that he received all due process protections in the confrontation, cross examination, and access to counsel during the testimony of the child abuse victims.

The jurisdiction for the certiorari petition hinges on the fact that the petitioner was actually denied due process. However, this is not true. The trial court held an evidentiary hearing on the motion to allow the child abuse victims to testify *in camera*. The trial court received testimony in this hearing and all arguments of

counsel. The court granted the motion and afforded all parties the opportunity to present questions in advance of the children's testimony, including cross examination questions by the petitioner and his counsel.

Petitioner's counsel remained present throughout the testimony of the two children. Petitioner's counsel cross examined the two children. Then, during the testimony, counsel for the petitioner asked additional cross examination questions and the trial court paused proceedings to allow the petitioner to confer with counsel.

Section 92.55, Florida Statutes, provides for "special protections in proceedings involving victim or witness under 18,..." Subsection 92.55(2), then further provides, "...the court may enter any order necessary to protect the victim or witness in any judicial proceeding or other official proceeding from severe emotional or mental harm due to the presence of the defendant if the victim or witness is required to testify in open court..." For termination of parental rights proceedings, Florida Rule of Juvenile Procedure 8.255(d)(2)(A), allows, "...the child may be examined by the court outside the presence of other parties as provided by law." The trial court followed Florida law in the testimony of the child victims in a civil dependency case. Furthermore, the state District Court of Appeal's rejection of Petitioner's due process clauses claim was not contrary to, or an unreasonable application of, federal law as determined by the United States Supreme Court under the facts of this case.

The petitioner's objection to the process in the trial court arose solely from his personal physical exclusion from the courtroom while the children testified. This is the same fact pattern that the petitioner presents in his background of the case in

the certiorari petition herein. This ignores the fact that he personally participated in the process in advance of the final hearing, that he was fully represented by his counsel during the testimony of the two children, and that he personally participated through a pause in the proceedings to confer with counsel.

B. The process of confrontation of the child abuse victims in the termination of parental rights adjudicatory hearing complied with the clear precedent of this Court in protecting the father's Constitutional rights.

The United States Constitution protects individuals from arbitrary and unreasonable government interference with a right to life, liberty, and property. *U.S. Const. Amends. V and XIV*. “[F]reedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment.” *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394, 71 L. Ed. 2d 599 (1982). However, the application of the due process clauses in the Fifth and Fourteenth Amendments to all matters of the family unit is not absolute or unlimited. *See e.g. Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022).

The state process must provide the petitioner with “fundamentally fair procedures.” *Santosky*, 455 U.S. at 753-54. In the termination of parental rights process, Florida “may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action.” *Id.* at 755, *quoting Vitek v. Jones*, 445 U.S. 480, 491, 100 S. Ct. 1254, 1262, 63 L. Ed. 2d 552 (1980). Some procedures used in the termination of parental rights process, should also be considered in light of the fact that the procedure is not generally applicable, but applied on a case-by-case basis. *See Lassiter v. Dept. of Social Services of Durham Co., N.C.*,

452 U.S. 18, 31-32, 101 S. Ct. 2153, 2161-62, 68 L. Ed. 2d 640 (1981). The state procedure at issue herein is on a case-by-case basis and involves only those cases where there is (1) testimony of child victims of physical and sexual abuse, (2) a motion to receive the testimony outside of the presence of the parent has been received, (3) an evidentiary hearing has been held on the motion, (4) the motion has been ruled on in advance of the final adjudicatory hearing, and (5) the trial court makes findings of fact in the order granting the motion in accordance with the state procedure.

The procedures put in place in this case for testimony by child victims in a termination of parental rights proceeding must be considered through the “three distinct factors” specified in *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18 (1976): the private interests affected by the proceeding; the risk of error created by the state’s chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure. The private interests affected by the child’s testimony outside the presence of the parent is slight due to the parent’s limited right to confrontation of the child victim in termination of parental rights civil proceedings. The risk of error created by Florida’s procedures for testimony of child victims in termination of parental rights hearings is nominal due to the protections in place. Finally, the countervailing governmental interest of “protecting the child victim from severe emotional or mental harm due to the presence of the parent” supporting use of the challenged procedure is substantial.

Private Interests Affected

Grounds for termination of parental rights under Florida law require proof by clear and convincing evidence. § 39.809(1), Fla. Stat. (2025); *In re Adoption of Baby E.A.W.*, 658 So. 2d 961, 967 (Fla. 1995). This is well above the preponderance of evidence standard determined to be inconsistent with due process protections in *Santosky, supra*. The protections afforded by Florida's clear and convincing evidence standard allows for the petitioner's Fifth and Fourteenth Amendment due process in the final decision to terminate parental rights.

A termination of parental rights proceeding is civil, not criminal. A parent's right to confrontation of the child victim is limited in civil termination of parental rights proceedings. *S.D. v. Fla. Dept. of Children & Families*, 208 So. 3d 320, 322 (Fla. 3d DCA 2017), *ref. S.B. v. Fla. Dept. of Children & Families*, 851 So. 2d 689 (Fla. 2003), and *A.B. v. Fla. Dept. of Children & Family Services*, 901 So. 2d 324 (Fla. 3d DCA 2005). "[D]ue process is not so rigid as to require that the significant interests in informality, flexibility and economy must always be sacrificed," *Gagnon v. Scarpelli*, 411 U.S., 778, 788, 93 S. Ct. 1756, 1762, 36 L. Ed. 2d 656 (1973).

The petitioner does not possess a private interest right to confront witnesses in civil cases. The right to "be confronted with the witnesses against him" is expressly and directly limited by the Sixth Amendment to *criminal prosecutions*.

The case cited by the petitioner, *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 83 S. Ct. 1175, 10 L. Ed. 2d 224 (1963), which he claims states "a civil litigant has a procedural due process right to confrontation under the Fifth

Amendment,” is not analogous to the situation before this Court herein. In *Willner*, this Court considered a denial of an applicant’s admission to the state bar. *Id.* 373 U.S. at 97. This Court explained that the New York bar did not have any hearings or procedures for an applicant prior to denial of admission. *Id.* at 99. Further, the applicant was not provided a statement of reasons for the denial. *Id.* at 100. Of issue was the applicant “was shown a letter containing various adverse statements about him from a New York attorney; that a member of the Committee promised him a personal confrontation with that attorney; but that the promise was never kept. Petitioner also alleged that he had been involved in litigation with another lawyer who had as his purpose ‘to destroy me’; that the secretary of the Committee was taking orders from that lawyer and that two members of the Committee were ‘in cahoots’ with that lawyer.” *Id.* at 101. The flow of this Court’s holding that “procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood” stemmed from the applicant’s complete lack of procedural due process via notice and hearing, and the lack of substantive due process through an opportunity to answer. *Id.* at 103. This Court stated, “[w]e think the need for confrontation is a necessary conclusion from the requirements of procedural due process in a situation such as this.” *Id.* at 104. The clear holding was then, “petitioner was denied procedural due process when he was denied admission to the Bar by the Appellate Division without a hearing on the charges filed against him.” *Id.* at 106.

In *Willner*, the clear focus of the Court was the complete lack of procedure, that is, a hearing where both procedural and substantive due process may be extended and

protected. *Cf. Shooter v. Arizona*, 4 F.4th 955 (9th Cir. 2021), *cert. den.* 142 S. Ct. 898 (2022) (The “opportunity to address with investigators each of the specific allegations against him arguably provided him with a “sufficient opportunity to clear his name,” and Shooter’s own allegations confirm that he knew the “parameters” of the investigation concerning him.”)

In termination of parental rights proceedings, the procedural and substantive due process is protected through the motion, hearing, and court factual findings for child testimony outside the presence of the petitioner prior to the final hearing, then through the petitioner’s notice and the holding of a final hearing, with the presentation of witnesses who were known to the petitioner through discovery and who were available for both confrontation and cross examination by the petitioner and his counsel. The procedural and substantive due process safeguards do not equate to a Sixth Amendment right to confrontation.

When there is a process available to a civil party to have both notice and an opportunity to be heard, courts have not found the Fifth and Fourteenth Amendments create a right to confrontation. The United States Court of Appeals, for the Eleventh Circuit, declined to extend the right to confrontation in a lawsuit challenging red-light camera ordinance violations. *Worthy v. City of Phenix City, Alabama*, 930 F.3d 1206, 1220 (11th Cir. 2019). Similarly, to the extent that the Confrontation Clause was the basis of an employee’s civil rights claim of deprivation of due process rights, by a district court’s decision not to allow an employee to cross-examine her supervisor during trial, the Sixth Amendment’s right to confront adverse witnesses held to not apply to civil

cases. *Leatherwood v. Anna's Linens Co.*, 384 Fed. Appx. 853 (11th Cir. 2010) (unpublished), *ref. Birt v. Montgomery*, 709 F. 2d 690, 702-03, fn. 2 (11th Cir. 1983) (noting that the Sixth Amendment does not apply to habeas petitions, as civil in nature, adopting *Pulliam v. Balkcom*, 245 Ga. 99, 263 S. E. 2d 123, *cert. den.*, 447 U.S. 927, 100 S. Ct. 3023, 65 L. Ed. 2d 1121 (1980).).

Even in criminal cases, this Court recognized that the confrontation clause did not categorically prohibit child witnesses in child abuse cases from testifying against the defendant at trial, outside of the defendant's physical presence. *Maryland v. Craig*, 497 U.S. 836, 110 S. Ct. 3157, 111 L. Ed. 2d 666 (1990). *See also* 18 U.S.C. § 3509(b). Furthermore, even where there was a violation of the confrontation clause in a criminal proceeding, such a consideration is still reviewed under the harmless error standard. *Coy v. Iowa*, 487 U.S. 1012, 108 S. Ct. 2798, 101 L. Ed. 2d 857 (1988). For a denial of the ability to fully participate in the cross-examination by his counsel, if it were a criminal proceeding, "[t]he correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt." *Olden v. Kentucky*, 488 U.S. 227, 231, 109 S. Ct. 480, 483, 102 L. Ed. 2d 513 (1988).

The parent's private interests to due process in a termination of parental rights proceeding are limited. The application is only to the procedure applied in his case for the testimony of the child victims. The Sixth Amendment right to confrontation is not applicable to civil cases. Therefore, the parent's private interests affected by the child's testimony outside the presence of the parent is slight.

Risk of Error

As noted above, Florida Statute and Florida Rules of Juvenile Procedure created procedures for testimony of child victims in termination of parental rights hearings. The use of these procedures provides the petitioner the due process protections under the Fifth and Fourteenth Amendments. The procedure requires notice, a hearing, and specified findings. § 92.55, Fla. Stat. Specifically, “the court may enter any order necessary to protect the victim or witness in any judicial proceeding or other official proceeding” upon motion of a party, parent, guardian, guardian ad litem, or other advocate. § 92.55(2), Fla. Stat. In ruling on the motion, the statute instructs that the court must consider, “[t]he age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the defendant’s presence, and any other fact that the court deems relevant.” § 92.55(3), Fla. Stat. The Florida Rule of Juvenile Procedure 8.255(d) further require, “on motion and hearing” and the “court shall make specific written findings of fact.”

In *Heagney v. Florida Department of Corrections*, Case No. 1:18-cv-243, 2021 WL 5283331 (N.D. Fla. Oct. 15, 2021) (unreported), the Federal Northern District Court of Florida denied a habeas petition and recognized the Florida statutory procedures put in place for testimony by child victims. The Court noted that, “in *McDonald v. Sec’y Fla. Dept. of Corrections*, 632 F. Appx. 586 (11th Cir. 2016) (unpublished), the Eleventh Circuit affirmed the district court’s denial of federal habeas relief under circumstances similar to this case.” *Id.* at pg. 4. The criminal

proceedings provided for a hearing and written findings of fact; having the child victim testify out of the presence of the defendant in that case protected both the victim from further trauma and the defendant's constitutional rights. *Id.* at pg. 6.

The petitioner received the due process provided by Florida statute and Florida court rules in the trial court. Based on these procedures, as to the second factor of *Mathews*, 424 U.S. 319 (1976), any risk of error is nominal because of the Constitutional protections in place.

Countervailing Governmental Interest

Section 39.001 expressly announces sixteen purposes of Chapter 39. First and foremost, it is the legislature's intent to:

provide for the care, safety, and protection of children in an environment that fosters health social, emotional, intellectual, and physical development; to ensure secure and safe custody; to promote the health and well-being of all children under the state's care; and to prevent the occurrence of child abuse, neglect, and abandonment.

§ 39.001(1)(a), Fla. Stat. The health and safety of children served by the child protection system "shall be of paramount concern." § 39.001(1)(b)(1), Fla. Stat. An additional purpose of chapter 39 is to "remov[e] the child from parental custody only when his or her welfare cannot be adequately safeguarded without such removal." § 39.001(1)(f), Fla. Stat. The legislature mandated children be provided "[p]rotection from abuse, abandonment, neglect, and exploitation." § 39.001(3), Fla. Stat.

Padgett v. Fla. Dept. of Health & Rehab. Services, 577 So. 2d 565, 570 (Fla. 1991), explained, "the only limitation on this rule of parental privilege is that as between the parent and the child the ultimate welfare of the child itself must be controlling."

While Florida courts have recognized the “God-given right” of parents to the care, custody and companionship of their children, it has been held repeatedly that the right is not absolute but is subject to the overriding principle that it is the ultimate welfare or best interest of the child which must prevail.

Ref. In re Camm, 294 So. 2d 318, 320 (Fla. 1974), *cert. den.*, 419 U.S. 866, 95 S. Ct. 121, 42 L. Ed. 2d 103 (1974).

The Florida Statute controlling the testimony of the child victims outside the presence of the petitioner specifies the purpose as ‘protecting the child victim from severe emotional or mental harm due to the presence of the parent.’ Therefore, the clear, stated countervailing governmental interest of the challenged procedure is substantial.

CONCLUSION

The process provided to the petitioner in the termination of parental rights proceeding protected the petitioner’s Constitutional due process rights in these types of civil dependency cases.

Furthermore, the petitioner’s private interests affected by the child’s testimony outside the presence of the parent is slight due to the clear precedent allowing for a limitation of such rights in such civil hearings to procedural and substantive due process. The risk of error is nominal due to the protections in place by Florida’s procedures. Finally, the countervailing governmental interest of protecting the child victims is substantial.

The petition for writ of certiorari should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sarah J. Rumph". The signature is fluid and cursive, with the first name "Sarah" being more prominent than the last name "Rumph".

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