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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

SHELLY D. GRIFFIN

Case # DR2000-091009

Petitioner,

and

JAMES ANTHONY KAISER

Respondent.

**MOTION DEMANDING AN
APOLOGY FROM THE COURT
FOR IT'S ABUSE OF POWER IN
THIS CASE AND DEMANDING
THAT THE COURT CORRECT IT**

Assigned to Commissioner
Casey Newcomb

Father has lost custody and visitation rights in this case for refusing to comply with what are clearly unconstitutional court orders.

Father has a fundamental liberty interest in directing the upbringing and education of his son that far outweighs any state interest.

Father chooses to homeschool his son and refuses to medicate him for ADHD. It is Father's right to make these choices and Father refuses to allow the state to deny him of these rights.

The state has no right whatsoever, without due process, to force father to poison his son with dangerous ADHD medication, or to force father to send his son to the public school system. The court also has no right to force Father to comply with Mother's decisions regarding the same and it has no right to deny father of a relationship with his son when there are far less restrictive means available to ensure Benjamin's health and education.

The court has violated father's rights several times in this case....

1-27-06 - "IT IS ORDERED that the minor child, Benjamin, shall continue to attend the public school, until further order of the Court or mutual agreement of the parties."

5-8-06 - "IT IS FURTHER ORDERED that Father shall ensure that Ben is back in school tomorrow and that both parties shall ensure that Ben attends school every day for the remainder of the school year."

5-11-07 - "The Court admonishes Father that Ben must attend school and Father must provide the child his medications as prescribed by the child's doctors. If Father is adamant regarding his non-compliance with the Court's orders, Father's parenting time may cease."

9-12-07 - "THE COURT NOTES reluctance to permanently change child custody, parenting time, and support issues as a result of today's proceeding. The focus of today's proceeding will be temporary orders and the issue of contempt, specifically Judge Wilkinson's May 11, 2007 orders regarding medication and education of the minor child."

9-25-07 - "THE COURT NOTES that the primary issues before the Court was the question of whether Father is in contempt of Court for failure to comply with Court orders."

"THE COURT FURTHER NOTES that on January 31, 2006, Judge Wilkinson ordered that the minor child would continue to attend public school until further order of the Court."

"THE COURT FURTHER NOTES that on May 16, 2007, Father was admonished to ensure that the minor child attends school. Father was also ordered to administer the minor child's medications or Father's parenting time may cease."

"THE COURT FURTHER NOTES that there were two Court orders that Benjamin be kept in public school. THE COURT FINDS that Father was in violation of the Court's orders in choosing not to keep Ben in school. Regardless of the fact that Father felt justified in his reasons for violating the Court's orders, Court orders must be complied with, and Father's actions were in direct disobedience of the Court orders."

The choice of where to send a child to school belongs to the parents, NOT to the state. The choice of whether or not to medicate a child also belongs to the parents and NOT to the state.

This case has involved teachers, doctors, counselors, a parenting coordinator, and a best interests attorney. NONE of their opinions, solely or collectively, outweigh the RIGHT of the PARENT to make these decisions.

When parents cannot agree on these decisions, it is NOT the job of the state to decide for them, but rather to ensure that both parent's right to raise their child are being protected, while also protecting the best interests of the child. This could have easily been done in this case.

Benjamin's past and present school district both offer programs for homeschooling parents, such as Father, where a child can attend the public school on some days and be homeschooled on others. Several responsible parents make this choice for their children.

Benjamin's doctor was aware that father would not medicate him and he prescribed a medication that did not need to be taken every day, but could be taken on an "as needed" basis (public school days).

This would have been the "least restrictive means" that the court should have considered. This would have protected both parent's rights as the court has the duty to do.

Instead, Judge Fink refused to look at the least restrictive means, or to even consider if the state's interest outweighed the parent's liberty interest. He refused to talk to the school, or to the doctor, or even to Benjamin to determine his wishes.

Judge Fink overstepped his authority in making these decisions and Father will not allow his or his son's rights to be violated in this way.

The Supreme Court of the United States has continuously upheld the principle that parents have the fundamental right to direct the education and upbringing of their children. A review of cases taking up the issue shows that the Supreme Court has unwaveringly given parental rights the highest respect and protection possible. ...

In ***Meyer v. Nebraska***, the Court invalidated a state law which prohibited foreign language instruction for school children because the law did not “*promote*” education, but rather “*arbitrarily and unreasonably*” interfered with “*the natural duty of the parent to give his children education suitable to their station in life...*”

The court chastened the legislature for attempting “*materially to interfere... with the power of parents to control the education of their own.*”

This decision clearly affirmed that the Constitution protects the preferences of the parent in education over those of the State.

In 1925, the Supreme Court decided the ***Pierce v. Society of Sisters*** case, supporting *Meyer’s* recognition of the parents’ right to direct the upbringing of their children and to control the process of their education.

“Under the doctrine of Meyer v. Nebraska, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children.”

In addition to upholding the right of parents to direct the upbringing and the education of their children, *Pierce* also asserts the parents’ fundamental right to keep their children free from government standardization....

“The fundamental theory of liberty upon which all governments in this Union repose excluded any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right and the high duty, to recognize and prepare him for additional obligations.”

The Supreme Court uses strong language in asserting that children are not “*the mere creature of the State.*” The holding in *Pierce*, therefore, preserves diversity of process of education by forbidding the State to standardize the education of children through forcing them to only accept instruction from public schools.

In **Farrington v. Tokushige**, the Court again upheld parental liberty by striking down legislation which the Court admitted would have destroyed most, if not all private schools. The Court noted that the parent has the right to direct the education of his own child without unreasonable restrictions. In support of this assertion the Court explained....

"The capacity to impart instruction to others is given by the Almighty for beneficent purposes and its use may not be forbidden or interfered with by government — certainly not, unless such instruction is, in its nature, harmful to the public morals or imperils the public safety."

The parents' right to instruct their children clearly takes precedence over the state's regulatory interest unless the public safety is endangered.

Similarly, in **Prince v. Massachusetts**, the Supreme Court admitted the high responsibility and right of parents to control the upbringing of their children against that of the State.

"It is cardinal with us that the custody, care, and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the State can neither supply nor hinder."

Twenty-one years later, the Supreme Court, in **Griswold v. Connecticut**, emphasized that the state cannot interfere with the right of a parent to control his child's education.

The Court stated that the right to educate one's child as one chooses is guaranteed in the Bill of Rights and applicable to the States by the First and Fourteenth Amendments.

Forty-eight years after *Pierce*, the U.S. Supreme Court once again upheld *Pierce* as....

"the charter of the rights of parents to direct the upbringing of their children."

In agreement with *Pierce*, Chief Justice Burger stated in the opinion of **Wisconsin v. Yoder** in 1972....

"This case involves the fundamental interest of parents, as contrasted with that of the state, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring tradition."

In its opinion the U.S. Supreme Court further emphasized that....

"Thus a state's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children."

It is clear the constitutional right of a parent to direct the upbringing and education of his child is firmly entrenched in the U.S. Supreme Court case history.

Furthermore, a higher standard of review applies to fundamental rights such as parental liberty than to other rights. When confronted with a conflict between parents' rights and state regulation, the court must apply the "compelling interest test." Under this test, the state must prove that its infringement on the parents' liberty is essential to fulfill a compelling interest and is the least restrictive means of fulfilling this state interest. Simply proving the regulation is reasonable is not sufficient. Following are excerpts from several United States Supreme Court cases where the Court has declared parental rights to be fundamental rights which require a higher standard of review (i.e. the "compelling interest test")....

Carey v. Population Services International, 431 US 678, 684-686 (1977)

Once again, the Court includes the right of parents in the area of "*child rearing and education*" to be a liberty interest protected by the Fourteenth Amendment, requiring an application of the "*compelling interest test*."

"The Court has recognized that one aspect of the liberty protected by the Due Process Clause of the 14th Amendment is a "right of personal privacy or a guarantee of certain areas or zones of privacy . . . This right of personal privacy includes the interest and independence in making certain kinds of important decisions . . . While the outer limits of this aspect of privacy have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage . . . family relationships, Prince v. Massachusetts, 321 US 158 (1944); and child rearing and education, Pierce v. Society of Sisters, 268 US 510 (1925); Meyer v. Nebraska, 262 US 390 (1923)."

Parham v. J.R., 442 US 584, 602-606 (1979).

This case involves parent's rights to make medical decisions regarding their children's mental health. The lower Court had ruled that Georgia's statutory scheme of allowing children to be subject to treatment in the state's mental health facilities violated the Constitution because it did not adequately protect children's due process rights. The Supreme Court reversed this decision upholding the legal presumption that parents act in their children's best interest. The Court ruled....

"Our constitutional system long ago rejected any notion that a child is "the mere creature of the State" and, on the contrary, asserted that parents generally "have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations." Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925)"

Santosky v. Kramer, 455 US 745, 753 (1982)

This case involved the Appellate Division of the New York Supreme Court affirming the application of the preponderance of the evidence standard as proper and constitutional in ruling that the parent's rights are permanently terminated. The U.S. Supreme Court, however, vacated the lower Court decision, holding that due process as required under the 14th Amendment in this case required proof by clear and convincing evidence rather than merely a preponderance of the evidence. The Court, in reaching their decision, made it clear that parents' rights as outlined in *Pierce* and *Meyer* are fundamental and specially protected under the Fourteenth Amendment.

The Court began by quoting another Supreme Court case....

"In Lassiter v. Department of Social Services, 452 US 18, 37 (1981)], it was not disputed that state intervention to terminate the relationship between a parent and a child must be accomplished by procedures meeting the requisites of the Due Process Clause". . . The absence of dispute reflected this Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the 14th Amendment ... Pierce v. Society of Sisters ... Meyer v. Nebraska."

Michael H. v. Gerald, 491 U.S. 110 (1989)

In a paternity suit, the U.S. Supreme Court ruled....

"It is an established part of our constitution jurisprudence that the term liberty in the Due Process Clause extends beyond freedom from physical restraint. See, e.g. Pierce v. Society of Sisters ... Meyer v. Nebraska ... In an attempt to limit and guide interpretation of the Clause, we have insisted not merely that the interest denominated as a "liberty" be "fundamental" (a concept that, in isolation, is hard to objectify), but also that it be an interest traditionally protected by our society. As we have put it, the Due Process Clause affords only those protections "so rooted in the traditions and conscience of our people as to be ranked as fundamental" Snyder v. Massachusetts, 291 US 97, 105 (1934)."

Hodgson v. Minnesota, 497 U.S. 417 (1990)

In *Hodgson* the Court found that parental rights not only are protected under the First and Fourteenth Amendments as fundamental and more important than property rights, but that they are "deemed essential."

"The family has a privacy interest in the upbringing and education of children and the intimacies of the marital relationship which is protected by the Constitution against undue state interference. See Wisconsin v Yoder, 7 406 US 205 ...

The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition." Parham, 442 US, at 603, [other citations omitted]. We have long held that there exists a "private realm of family life which the state cannot enter." Prince v Massachusetts ..."

A natural parent who has demonstrated sufficient commitment to his or her children is thereafter entitled to raise the children free from undue state interference. As Justice White explained in his opinion of the Court in *Stanley v Illinois*, 405 US 645 (1972)....

"The court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed 'essential,' Meyer v Nebraska, ... 'basic civil rights of man,' Skinner v Oklahoma, 316 US 535, 541 (1942), and '[r]ights far more precious ... than property rights,' May v Anderson, 345 US 528, 533 (1953) ... The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, Meyer v Nebraska, supra." The Court leaves no room for doubt as to the importance and protection of the rights of parents."

Troxel v. Granville, 530 U.S. 57 (2000)

In this case the United States Supreme Court issued a landmark opinion on parental liberty. The case involved a Washington State statute which provided that a "court may order visitation rights for any person when visitation may serve the best interests of the child, whether or not there has been any change of circumstances." Wash. Rev. Code § 26.10.160(3). The U.S. Supreme Court ruled that the Washington statute "unconstitutionally interferes with the fundamental right of parents to rear their children." The Court went on to examine its treatment of parental rights in previous cases:

"In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children...Wisconsin v. Yoder, 406 U.S. 205, 232, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972)

*("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"); Quilloin v. Walcott, 434 U.S. 246, 255, 54 L. Ed. 2d 511, 98 S. Ct. 549 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); Parham v. J. R., 442 U.S. 584, 602, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); Santosky v. Kramer, 455 U.S. 745, 753, 71 L. Ed. 2d 599, 102 S. Ct. 1388 (1982) (discussing "the fundamental liberty interest of natural parents in the care, custody, and management of their child"); Glucksberg, supra, at 720 ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the right ... to direct the education and upbringing of one's children" (citing Meyer and Pierce)). **"In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."***

This case clearly upholds parental rights being Fundamental and greater than the state's rights, and that these rights are to be protected by the highest standard of review: the compelling interest test.

The U.S. Supreme Court has made it crystal clear, time and time again, through numerous cases, that the government **may not infringe** parents' right to direct the education and upbringing of their children unless it can show that it is using the least restrictive means to achieve a compelling governmental interest.

This court cannot deny Father of his Fundamental Liberty of directing the upbringing and education of his son unless it can show that it is using the least restrictive means to achieve a compelling state interest.

A compelling state interest, greater than Father's Liberty interest, has never been suggested in this case because NONE exists.

Therefore, Father demands that the state recognize his parental rights, as the U.S. Supreme Court does, as a Fundamental Liberty.

Father further demands that the state acknowledge that this Fundamental Liberty is entitled to protection under the Due Process Clause of the 14th Amendment of the United States Constitution.

Father further demands that if the state feels that it has a greater interest in Benjamin than father's Liberty interest, that the state show what that might be, or acknowledge that it does not have a greater interest that would survive the "compelling interest test".

Father further demands that the court consider "strict scrutiny" and the "least restrictive means" when applying the "compelling interest test" to attempt to deny Father of his Constitutionally Guaranteed Fundamental Rights.

When the court is unable to do this, **Father demands** that the abuse of power by this court, in this case, be acknowledged, apologized for by minute entry, and that joint custody rights be restored.

11/02/2009 James A. Kaiser

11/02/2009
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