LIFTING THE BURDEN: PROTECTING PARENTAL RIGHTS IN WEST VIRGINIA

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I. INTRODUCTION

It would be difficult to find someone who does not agree that society must do all it can to protect children from harm. It would be hard to find a culture anywhere in the world that does not at least pay lip service to the ideals of child protection. Keeping them from suffering, preserving their innocence, and shielding them from emotional and mental distress are all-important goals. A political regime can instantly sway public opinion in its favor by showcasing harm suffered by children at the hands of political opponents.[1] It is a universal ethos; we must protect our children, even if doing so puts adults at risk.

The basic premise is easy to agree upon, but protecting children is not as simple as it sounds. What constitutes harm can be hard to determine, balancing the harm in removing children from their parents' care against the harm of staying in an abusive or neglectful circumstance is difficult, and maintaining a productive relationship with at-risk children and parents is challenging. It is a delicate process that requires flexibility and care. The Supreme Court has made clear that the constitutional rights of parents are fundamental and must only be invaded after a thoughtful evidentiary analysis and a high

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[1] Press Release, United Nations Relief and Works Agency, UNRWA Condemns Placement of Rockets, for a Second Time, In One of Its Schools (July 22, 2014), http://www.unrwa.org/newsroom/press-releases/unrwa-condemns-placement-rockets-second-time-one-its-schools.

level of deference to those compelling rights.[2] Unfortunately, some courts do not bring a surgeon's scalpel to aid them in the termination of parental rights process—they bring a sledgehammer.

In an attempt to expedite the process of finding permanent homes for children suffering abuse or neglect, Congress passed the American Safe Families Act in 1997, which incentivized states to implement statutes to shorten the amount of time kids spend in foster care.[3] Obviously, a necessary requirement of that shortened timeline is less time allotted for an improvement period for parents.[4] In addition to shorter improvement periods, states implemented provisions making it possible for states to forego improvement periods altogether or severely limit them, in exceptional circumstances.[5] Those circumstances are mostly intuitive; parents who have severely abused their children or have murdered the children's other parents are not entitled to an improvement period.[6] Another exceptional circumstance, however, is much more troubling from a constitutional perspective: parents whose parental rights to another child have been terminated in the past are subject to the expedited procedures for any later-born children and may lose their parental rights to a child who has never suffered abuse or neglect at all.[7]

West Virginia has adopted a similar form of the provision in ASFA that raises significant constitutional questions for parents facing the prospect of losing their fundamental parental rights.[8] The implementation of that provision must be carefully undertaken by courts to avoid an invasion of parents' constitutional rights. The West Virginia Supreme Court has been thoughtful in its application of the statute to protect parents, but lower courts have not been so careful.[9] The West Virginia Supreme Court's leadership in avoiding harmful application of the law must serve as a guide to lower courts in the state and could help other states avoid unnecessarily breaking up families and trampling parents' constitutional rights. In order to understand the problem, a brief examination of the federal and state laws that generate cases like *In re K.L.* is in order.

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2 *See* Santosky v. Kramer, 455 U.S. 745, 769 (1982).

3 *See generally* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C. (2013)).

4 *See* 42 U.S.C. § 671(a)(15)(C) (2013).

5 *See id.* § 671(a)(15)(E).

6 *See id.* § 671(15)(D)(i-ii).

7 *See id.* § 671(15)(D)(iii).

8 *See* W. VA. CODE § 49-6-5b(a)(3) (2006).

9 *See generally* In re K.L., 759 S.E.2d 778 (2014) (overturning a lower court's decision to terminate parental rights of a parent solely on the basis of evidence of a prior termination of parental rights).

II. TERMINATING PARENTAL RIGHTS BASED ON PAST WRONGS

The stated purpose of the American Safe Families Act was, as its name implies, aimed at protecting children, particularly from the harm that extended foster care placements can cause.[10] It was passed to incentivize states to expedite the process of finding family permanency for children who had been removed from their parents' custody.[11] Congress expressed concern for children who were left to languish in foster care for extended periods of time, based on a theory that a lack of permanency is more damaging to children than severing ties with their biological or legal parents who had lost custody.[12] The Act shortened the amount of time kids could spend in temporary custodial situations and encouraged skipping reasonable efforts to reunite families in certain circumstances.[13] Those circumstances were intended to be reserved for situations considered egregiously dangerous for children and sufficiently indicative of a fundamental lack of parental abilities that would warrant a rush to termination.[14]

Unfortunately for some parents, however, not all egregious circumstances were created alike. The obvious criteria for skipping the reasonable efforts toward reunification process included instances when a parent has committed murder of another of his or her children or significant other, when a parent has conspired to commit murder of his or her child, or has seriously injured the child.[15] In those cases, it is easy to understand the desire to move toward termination quickly. One of the reasonable efforts exceptions, however, is not, on its face or in practice, as easy to justify as the others. That is the exception that encourages states to rush to termination in cases when the parent has involuntarily lost parental rights to another child in the past.[16] In those circumstances, it is possible to terminate a parent's parental rights on the basis of past wrongs alone, without any current evidence showing abuse or neglect to the child in question.[17]

Because the American Safe Families Act was written and passed to give states incentives to speed the process toward permanency for abused and neglected children, many states were quick to adopt its provisions.[18] West Virginia was no exception.[19] Of

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10 H.R. Rep. No. 105-77, at 8 (1997), *reprinted in* 1997 U.S.C.C.A.N. 2739, 2740, 1997 WL 225672.

11 *See id.*

12 In H.R. Rep No. 105-77, the Ways and Means Committee submitted that adoption is preferable to foster care: "[t]here seems to be almost universal agreement that adoption is preferable to foster care and that the nation's children would be well served by a policy that increases adoption rates." H.R. Rep. No. 105-77, at 8.

13 *See* 42 U.S.C. § 671(a)(15)(C) (2013).

14 *See id.* § 671(15)(D).

15 *See id.* § 671(15)(D)(i-ii).

16 *See id.* § 671(15)(D)(iii).

17 *See id.*; *see also* Kendra Huard Fershee, *The Parent Trap: The Unconstitutional Practice of Severing Parental Rights Without Due Process of Law*, 30 GA. ST. L. REV. 639, 682–94 (2014).

18 *See, e.g.*, Kan. Stat. Ann. § 38-2271 (2013); Ohio Rev. Code Ann § 2151.414 (2013).

course, states did not have to adopt every provision verbatim, but in order to qualify for federal funding that follows ASFA, they did need to capture the thrust of the provisions and abide by them. So, West Virginia enacted, in 1998, its own version of the provisions of ASFA that qualify it for federal funding and codified the provisions into the West Virginia Child Protective Services Act.[20] The Act very closely follows the federal version.

The West Virginia Child Protective Services Act serves several important functions, two of which are particularly important here. First, it sets out the substantive considerations for parents who have found themselves subject to proceedings to determine whether their parental rights should be terminated.[21] Second, it sets out the procedure for state action against parents who are believed to have subjected their children to abuse or neglect.[22] The procedural provisions focus on the macro and are geared to move the process forward in an efficient manner.[23] The substantive portions provide guidance about the situations in which the State is required to seek to terminate parental rights of parents whose children have been identified as at risk.[24]

A. Substantive Provisions Regarding When Termination of Parental Rights Is Required

The ASFA sought to discourage states from engaging in lengthy reunification efforts for parents whose children were removed from circumstances the state deemed too inherently risky to attempt to rectify.[25] West Virginia adopted the provisions requiring courts to move to termination in certain enumerated circumstances.[26] The enumerated circumstances are sensible, for the most part, and they are broken into three separate categories.[27] First, they address the concern about long foster care placements by requiring the state to seek termination when a child has been in foster care for 15 of the most recent 22 months.[28] Second, they seek to expedite placement by requiring termination if the child has been deemed abandoned.[29] Third, they aim to protect children

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19 *See* W. VA. CODE § 49-6-5b (2014).

20 *See id.*

21 *See id.*

22 *See id.* § 49-6-2.

23 *See id.*

24 *See id.* § 49-6-5b.

25 *See* 42 U.S.C. § 671(15)(D)(i-iii) (2006).

26 *See* W. VA. CODE § 49-6-5b(a) (2006).

27 *See id.*

28 *See id.* § 49-6-5b(a)(1).

29 *See id.* § 49-6-5b(a)(2).

from extremely dangerous parents by enumerating situations of past parental behavior that is deemed so egregious that parental rights should be terminated immediately.[30]

The obvious examples that require termination in the third category are related to situations when parents have exhibited an extreme indifference or open hostility to protecting the health and welfare of their children.[31] First, a parent who has committed murder or voluntary manslaughter of another of his or her children will be subject to termination proceedings.[32] Also, when a parent has attempted to murder the child in question or another child, his or her parental rights will be severed.[33] Additionally, when a parent has seriously injured the child in question or another child, termination proceedings are required.[34] The less obvious, and constitutionally troublesome, example of egregious behavior that will serve as a basis for requiring termination of parental rights is when the parent has had his or her parental rights involuntarily terminated in the past.[35]

There are potentially multiple problems with this provision of ASFA, depending on how the states apply their versions of the law. First, states, including West Virginia, often engage in a practice of removing newborns from the custody of their parents if one or both parents have lost parental rights to another child in the past.[36] Second, the West Virginia statute then requires the State to seek to terminate parental rights immediately.[37] Third, there is a risk that the State will seek to proceed with termination of parental rights without satisfying the constitutionally protected procedural safeguards requiring states to carry the burden of presenting clear and convincing evidence to prove termination is necessary, as mandated by the Supreme Court in *Santosky v. Kramer*.[38] As a result, the application by some lower courts in West Virginia of the substantive provision of the

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30 *See id.* § 49-6-5b(a)(3).

31 *See id.*

32 *See id.*

33 *See id.*

34 *See id.*

35 *See id.*

36 *See, e.g.*, In re K.L., 759 S.E.2d 778, 781–82 (W. Va. 2014) (stating that the State intervened to remove a newborn from the mother's legal custody at the hospital two days after the baby was born on the basis of a past involuntary parental rights termination); Padgett v. Dep't of Health and Rehabilitative Servs., 577 So. 2d 565, 567 (Fla. 1991) (stating that the Department of Health and Rehabilitative Services removed a newborn from the mother's custody soon after the baby was born because the mother had lost parental rights to another child in the past); In re West, No. 05CA4, 2005 WL 1400029, at *1 (Ohio Ct. App. June 10, 2005) (stating that a newborn was removed by the State from the hospital one day after it was born because the mother had lost parental rights to another child in the past).

37 *See* W. VA. CODE § 49-6-5b(a) (2006).

38 *See generally* In re George Glen B., Jr., 532 S.E.2d 64 (W. Va. 2000) (holding that a lower court's determination to terminate parental rights of a mother based on a past termination alone was unconstitutional because clear and convincing evidence of abuse or neglect were not proven by the State); In re K.L., 759 S.E.2d at 781–82 (holding that the lower court's requirement that the parents carry the burden of proof to show that they will not abuse their children in the future constituted an improper burden shift).

West Virginia Child Protective Services Act has resulted in unconstitutional violations of their substantive due process rights, which, coupled with procedural defects that lurk in the Act, create extremely difficult hurdles to overcome for parents who have lost parental rights in the past, but who may pose no risk to their later-born children.

B. Procedural Provisions Regarding Termination of Parental Rights

Parents are protected procedurally in a few ways by the West Virginia Child Protective Services Act. First, parents have a right to counsel.[39] Second, parents have a right to an improvement period in which they can show that they are parents who will not harm their children.[40] Depending on the circumstances, the child or children at issue may remain in the parents' custody during the improvement period.[41] They also have the right to a hearing, during which they can "testify and . . . present and cross-examine witnesses."[42]

During the hearing in which parents' rights to direct and control the upbringing of their children will be considered in light of the circumstances that brought them before the court, parents have a right to certain protections. Should they be unable to afford counsel and the order before the court involves the physical custody of the child, the parents will be appointed counsel who is paid by the State and who has been trained in handling child welfare law issues.[43] The parents have the opportunity to be heard at the hearing, and the evidence presented against them must be based on the conditions at the time the State filed the petition alleging neglect or abuse and must be proven by clear and convincing proof of their inability to continue parenting.[44] Unfortunately, the procedural provision requiring clear and convincing proof is not explicit about on whom the burden of proof rests.[45] This ambiguity has allowed courts to improperly apply the constitutional standard mandating that termination be proven by clear and convincing evidence and be proven by the state, not disproven by parents.

The United States Supreme Court has made clear that the standard of proof for terminating parental rights should be a substantial one for the state to satisfy.[46] The Court and Congress have stopped short of requiring that states prove termination of parental rights by a beyond a reasonable doubt standard, but they have made clear that the

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39 *See* W. VA. CODE § 49-6-2(a) (2012).

40 *See id.* § 49-6-2(b).

41 *See id.*

42 *See* W. VA. CODE § 49-6-2(c).

43 *See id.* § 49-6-2(a).

44 *See id.* § 49-6-2(c).

45 *See id.*

46 *See* Santosky v. Kramer, 455 U.S. 745, 747–48 (1982).

standard is only slightly less difficult for a state to prove.[47] The Court, in *Santosky*, overturned a decision to sever parental rights of parents when the state only showed by a preponderance of the evidence that termination was necessary.[48] The Court reasoned that the right of parents to the "care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."[49] The Court in *Santosky* did not directly address where the burden of proof lies in disposition hearings to determine whether parents' rights should be terminated, but it is clear that the State did shoulder the (too light) burden in the lower court proceedings.[50]

The Supreme Court in *Santosky* was not asked to decide if shifting the burden to the defendant in a parental rights termination proceeding is constitutional, but it did address the question indirectly. The Court discussed the parties and their roles and responsibilities in a hearing about parental rights in a couple of contexts. First, the Court framed the analysis of the standard of proof by comparing it to the standard in a criminal prosecution, and pointed out that the ability of the State to craft a case against a parent is much stronger than the parent's ability to mount a defense.[51] The Court went on to review whether requiring a higher burden of proof would make it too difficult on the State to prove its case and decided that it would not; for example, the State carries an elevated burden when suspending a driver's license.[52] The lack in *Santosky*, however, of an explicit statement that the burden of proof in parental termination hearings lies with the State may contribute to some lower courts' impressions that shifting the burden to parents is appropriate.

C. The Statutes Are Poorly Crafted and Create a Risk That the State Will Terminate Parental Rights Without Due Process of Law

There are several problems with the ASFA provisions, and the state statutes that are modeled upon it, including West Virginia's statute, with respect to the portions that address the termination of parental rights of people who have involuntarily lost parental rights in the past. The statutes create an expedited process that presumes abuse and neglect that has not necessarily ever happened, skips rehabilitative services, and requires immediate action toward a permanency plan that terminates parental rights.[53] The triggering event for the Department of Health and Human Services in West Virginia is

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47 *See id.* at 768–69.

48 *See id.* at 747–48.

49 *See id.* at 753–54.

50 *See id.* at 763.

51 *See id.* at 768–69.

52 *See id.*

53 *See* W. VA. CODE § 49-6-5b (2006).

the birth of a child to someone whose parental rights have been terminated in the past.[54] This means that the State removes children from their parents' custody before there could ever be a possibility of abuse or neglect. The lack of evidence of mistreatment of their newborn does not necessarily insulate them from losing parental rights, depending on how the State chooses to proceed.

There are two major flaws with the way ASFA and state statutes modeled on it can be implemented. The first issue with the statutory scheme is that the swiftness with which the proceedings are supposed to commence requires the state to rely on evidence of past abuse and neglect, and/or past behavior that may or may not impact another child's well-being in the future to prove that the newborn child is at risk of similar abuse and neglect. This puts parents in the position of having to disprove a negative; they need to show that the evidence of past abuse does not mean that they will abuse again, which is likely impossible to do if they cannot be with their children to create evidence that they can be good parents. Also, the statutory scheme is written in such a way that courts may improperly shift the burden of proof from the state to prove that the parents are unfit to parents who must show that they are good parents. This is precisely the problem that presented itself to the West Virginia Supreme Court in early 2014.

III. THE WEST VIRGINIA SUPREME COURT GETS IT RIGHT

Because ASFA and the provisions that have been incorporated into the West Virginia Child Protective Services Act leave open important constitutional questions and encourage misapplication of the constitutional standards by encouraging expedited termination processes, parents are at risk of losing their parental rights without due process of law. Courts in some states have been careful to heed the constitutional procedural requirements and apply the appropriate standards to the statutes to avoid unconstitutionally severing parental rights.[55] The West Virginia Supreme Court was one of those courts when it set the points of law to follow, in 2000, for West Virginia courts considering terminating parental rights of parents who had previously lost parental rights to another child.[56] In *In re George Glen B., Jr.*, the West Virginia Supreme Court determined that a termination proceeding that was commenced by the Department of Health and Human Resources ("Department") was procedurally mishandled, which resulted in an improper termination of George's parents' parental rights.[57] The West

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[54] *See* In re George Glen B., Jr., 532 S.E.2d 64, 68 (W. Va. 2000); In re K.L., 759 S.E.2d 778, 781–82 (W. Va. 2014).

[55] *See, e.g.*, J.J. v. Dep't of Children & Families, 994 So. 2d 496, 497 (Fla. Dist. Ct. App. 2008) (reversing a lower court's decision to terminate parental rights of a mother to her infant twins because there was no evidence that she had or would harm the twins; evidence of abuse in the past was not enough to prove she would abuse again).

[56] *See* In re George Glen B., Jr., 532 S.E.2d at 72.

[57] *See id.*

Virginia Supreme Court reviewed the procedures used by the Department and created a clear roadmap for courts reviewing termination petitions in cases involving parents who lost parental rights to another child in the past.

The facts of *In re George Glen B., Jr.* illustrate the precise scenario that raises constitutional concerns about the procedures in ASFA and its West Virginia progeny. George was born on January 20, 1999, and was removed from his parents' custody in the hospital two days after his birth.[58] The sole basis for his removal was the fact that his parents lost parental rights involuntarily to other children in the past.[59] There were no allegations that George had ever been abused or neglected. Three days after he was removed from the hospital, on January 25, 1999, the Department began proceedings to terminate the parental rights of George's parents.[60]

On March 12, 1999, the circuit court decided that it could not terminate George's parents' parental rights and dismissed the abuse and neglect petition the Department had filed against the parents.[61] The Department appealed to the West Virginia Supreme Court, which remanded the case to the circuit court after determining that it had erred in dismissing the abuse and neglect petition without permitting the Department to present evidence to support its allegations that George would be in danger if he were returned to his parents' custody.[62] The Supreme Court held that the Department had the right to submit evidence that the parents had not made efforts to remedy their parenting deficiencies that caused the prior terminations.[63] In the remand hearing, the circuit court heard nine hours of evidence and a week later issued a ruling stating that the Department had failed to show any abuse or neglect of George at any point in his life, and that the parents had made efforts that "substantially remedied the circumstances surrounding the prior terminations."[64] The Department appealed again to the West Virginia Supreme Court.[65]

The West Virginia Supreme Court reviewed the statutory requirements in cases such as this and affirmed the circuit court's ruling that George's parents' parental rights should not be terminated on the basis of the prior terminations.[66] It first looked at the plain meaning of the statute and found that it did require the Department to start the termination of parental rights process when the parent lost her parental rights to another

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58 *See id.* at 68.

59 *See id.*

60 *See id.*

61 *See id.* at 68–69.

62 *See id.* at 69.

63 *See id.*

64 *See id.*

65 *See id.* at 70.

66 *See id.* at 72.

child in the past.[67] It then looked at the procedural provisions that must be applied in all abuse and neglect cases.[68] Those provisions require that the Department prove abuse and neglect petitions by clear and convincing evidence and base its evidence on the conditions that existed at the time the Department filed the petition. In addition, the Department must retain the burden of proof throughout the process.[69] This particular portion of *In re George Glen B., Jr.* appears to have gone unnoticed by a court many years later, however, when it decided a very similar case.

On June 5, 2014, the West Virginia Supreme Court decided a case that once again overturned a lower court determination to terminate the parental rights of a parent solely on the basis of a past termination of her parental rights.[70] The facts of *In re K.L.* paint a troubling scenario for any person whose parental rights have been terminated in the past and who looks to change her life and build a new future for herself. On July 17, 2012, the Department filed an abuse and neglect petition against Ashley L., regarding her child, K.L.[71] There were no allegations that Ashley or her husband Curtis had harmed K.L. in any way; the petition was based on the allegation that Ashley had lost parental rights to other children in the past.[72] When, during a hearing on the matter, Ashley admitted that the past involuntary termination had happened, the court ordered that the Department take legal custody of K.L., but that K.L. could remain in her mother's physical custody at that time.[73]

In February 2013, Ashley called the police to report that her husband (and K.L.'s father) had beaten Ashley; the police arrested Curtis.[74] Despite the fact that she was the victim of domestic violence and filed for divorce from her abuser, the Department intervened and removed K.L. from Ashley's physical custody on the basis of Curtis's domestic violence.[75] When, a full six months later, the circuit court held the disposition hearing on the abuse and neglect petition, the court declared that Ashley and Curtis were required to carry the burden of proof and submit evidence that there had been a substantial change in circumstances from the last time Ashley's parental rights were involuntarily terminated.[76] The court then held that Ashley had not carried her burden in proving that the circumstances had changed and that she would be a good parent to K.L.[77]

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67 *See id.* at 70–71; W. VA. CODE 49-6-5b(a)(3) (2013).

68 *See In re George Glen B., Jr.*, 532 S.E.2d at 71–72; W. VA. CODE 49-6-2(c) (2013).

69 *See In re George Glen B., Jr.*, 532 S.E.2d at 72.

70 *See* In re K.L., 759 S.E.2d 778, 785 (2014).

71 *See id.* at 781–82.

72 *See id.*

73 *See id.* at 782.

74 *See id.*

75 *See id.*

76 *See id.*

77 *See id.*

The West Virginia Supreme Court heard the case upon being asked to consider whether the circuit court had properly decided to terminate her parental rights.[78]

Despite having been asked to review the order that terminated Ashley's parental rights, the West Virginia Supreme Court decided, sua sponte, to review the procedures employed by the circuit court instead.[79] The court, properly relying on *In re George Glen B., Jr.*, looked at how the circuit court shifted the burden of proof to Ashley to prove her changed circumstances instead of keeping it on the Department.[80] The circuit court made clear that it believed the burden of proof must be shouldered by Ashley: "I believe it's West Virginia 49-6 and 5; burden is upon, not the Department, being represented by the Prosecuting Attorney, but upon the parents in this instance, Curtis and Ashley [L.] to prove substantial change in circumstances."[81] The *In Re K.L.* court made clear that the burden rests with the State, not the parents, and reversed the lower court's order for termination and remanded for proceedings consistent with the court's decision.[82] So while the West Virginia Supreme Court has been catching the constitutional and procedural flaws in the statutes, the risk remains that lower courts will continue to misapply the statutes and terminate parental rights improperly.

IV. LOWER COURTS MUST PROCEED WITH CARE

The West Virginia Supreme Court twice now has been in the position of needing to correct serious misapplications of the law by circuit courts in West Virginia that have terminated parental rights on the basis of past involuntary terminations without due process of law. The court in *In re K.L.* appeared frustrated with the Department and the Guardian Ad Litem for arguing that despite any problems with the lower court's ruling, the outcome was in the best interests of K.L.[83] The court elucidated the well-settled process requiring that parents be declared unfit before moving on to a best interests of the child analysis.[84] The fact that the Department was attempting to conflate those long-standing procedural safeguards makes it all the more important that courts avoid falling into the same traps of overprotection and be on alert for due process errors that can happen in the mad rush to judge parents who have abused other children in the past.

The statutes that allow these mistakes to happen in lower courts have been operating for almost twenty years, which raises concerns for the parents whose parental rights have been improperly terminated and do not have the resources to challenge those decisions in the appellate courts. Lower courts must be very careful to heed the

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78 *See id.* at 783.

79 *See id.*

80 *See id.*

81 *See id.* at 782.

82 *See id.* at 786.

83 *See id.* at 785.

84 *See id.*

constitutional requirements of due process in cases such as these, and to err on the side of caution when weighing what will likely be flimsy evidence of abuse and neglect when a child is removed from the custody of a parent on the sole basis of a past involuntary termination. The combination of a statutory scheme that is light on constitutional guidance and a court system that operates in relative secrecy makes it all the more dangerous for parents who find themselves in the system without knowledge or resources to correct any wrongs that may befall them.

V. CONCLUSION

As has been evidenced by the preceding case discussions, it is not impossible for lower courts to misapply the legal standards in cases where parents have lost parental rights in the past and have been hauled before the court again on the allegation that the past terminations suffice to start abuse and neglect proceedings regarding later-born children. The fact that parents who have ever lost parental rights will forever more be required to appear in court and disprove allegations that they cannot be good parents in the future is bad enough; to endure that process without proper constitutional protections is inhumane. The stakes are as high as they can get. The fear of losing a child is a nightmare for parents; presumably parents who have abused and neglected their children suffer mightily for their crimes. But to improperly subject those parents with the burden to prove, every time another child is born, that they are different people than they were when they committed their past crimes is a burden too heavy.