

SUMMARY OF THE CASE

The Coons love their son {child's name}. Like every parent they want the best for their child. R58(¶4). After struggling through first grade and failing second grade, {the child's} mother, a teacher, decided to home school her son. R58(¶¶5,6,18-21).

During the 2001-2002 school year, Mrs. Coon turned to West River Academy, an Internet based school, for {their child's} curriculum. R62(¶42). Mrs. Coon wrongly believed that she did not need to file the paperwork required for home schoolers with the Lake George School District. R62(¶43-44). Because they neglected the mandated paperwork, Mr. and Mrs. Coon were charged by D.S.S. with neglecting {their child's} education. R12-55. Upon D.S.S.'s motion, the Warren County Family Court ordered the Coons to stop home schooling {their child} and send him to public school. R4-7. The Coons are appealing Family Court's temporary order.

There is one simple and undisputed truth in this case. D.S.S. absolutely made no allegation that the Coons ever failed to educate {their child} at home. The reason for the lack of any such allegation is simple - {the child's} mother has taught him at home and has carefully provided for his education. R63(¶53-55). D.S.S. investigated {the

child's} educational status and found that he was being home schooled - the social worker, after an investigation at the Coons' home told Ms. Coon, "I can see that you are home schooling {the child} ." R63(¶52)

Nevertheless, D.S.S. swooped in and seized control of the Coons' the right to decide how their son is to be educated. Did D.S.S. flex its power to disrupt {the child's} young life because the Coons neglected {the child's} education? NO! All the Coons did was neglect paperwork that the local school district requires of parents who home schooling their children.

The question before the Court is whether neglect of paperwork standing alone without any proof that {the child's} education has been neglected constitutes sufficient grounds for D.S.S. to strip the Coons of their constitutional liberty to direct {the child's} education before trial.

For the State to deprive any person of parental liberty, the State must prove that deprivation is necessary and narrowly tailored to serve a compelling state interest. D.S.S. has not come forth with evidence of educational neglect. Moreover, D.S.S. cannot show that holding the Coons' parental rights hostage is a narrowly tailored

method to obtain their compliance with filling out paperwork.

Respondents wish also to make clear what they are not challenging. Respondents are not challenging the constitutionality of D.S.S.' s authority to investigate, to bring charges, and to make them stand trial based on neglect of paperwork. The question is whether, before trial and without proof of actual neglect, can the government interfere with parent's constitutional rights to direct their child's education.

Therefore, for the reasons set forth below, the Coons ask the Court to reverse and vacate the temporary order of the Family Court dated December 17, 2002, restore their liberty to them, and allow them, not D.S.S., to decide what type of educational experience is in {the child's} best interest.

FACTS

{Child's name} Coon is 10 years old and is in the fourth grade.¹ R58(¶1). Bonnie Coon is {the child's} Mother. R58(¶2). Bonnie loves {her child} and wants the best for him. R58(¶3). She has taught {her child} at home since the 1999-2000 school year. R63(¶53). {The

¹ {The child} failed the second grade while in the public school and therefore is a year behind his age group.

child} at all times has received an appropriate education from Mrs. Coon at home. Id. D.S.S.'s own investigation showed that {the child} was receiving schooling from his mother. R63(¶52).

A. {The child's} Public School Experience

{The child} attended first grade in Warrensburg Central School for the school year 1998-1999. R58(¶5). {The child} had academic problems that year. R58(¶6). At the end of the school year, {the child's} first grade teacher suggested that Mrs. Coon home school {the child}. R58(¶7).

This suggestion made some sense to Mrs. Coon because of her educational background and work experience. R58(¶8). Mrs. Coon is a graduate of Hesser College in New Hampshire where she received an A.A. degree in Human Services and an A.A. degree in psychology. R59(¶9-11). She also has received a certificate from the Prospective School in Queensbury, New York certifying her to be a teacher's aide in New York State Public Schools. R59(¶12).

In New Hampshire, after graduating Hesser College, Mrs. Coon taught at Epping High School in Epping, New Hampshire. R59(¶13). At Epping, among her other duties, she taught ten students in high school English. R59(¶14)

Mrs. Coon also taught public school in New York State. R59(¶15). She was a teacher's aide in the Hudson Falls School District where she worked one on one with kindergarten and first grade students. R59(¶16).

Despite her educational background and her work experience, Mrs. Coon rejected the suggestion that she home school {her child}. R59(¶17).

In the school year 1999-2000, Mrs. Coon decided to send {her child} to the second grade at Warrensburg. R59(¶18). {the child's} second grade experience was a disaster. R59(¶19). In June 2000, {the child's} second grade teacher informed Mrs. Coon that {her child} was struggling in school and that he would not be promoted to third grade. R60(¶20). Mrs. Coon was devastated. R60(¶21). She knew that she had to do something to help her son; his future was at stake. R60(¶22). Mrs. Coon felt that the public school environment was harmful to her son's intellectual, emotional, and spiritual growth. R60(¶23). Mrs. Coon, like most parents, made a tremendous individual sacrifice for {her child}. She gave up her teaching, immediately removed {her child} from public school, and provided home education to him. R60(¶24). Sadly, Mrs. Coon found that the public school had harmed her son's academic progress. R60(¶27).

B. {The child's} home school experience.

In June 2000, Mrs. Coon filed a letter of intent to home school {her child} with Warrensburg Central School. R61(¶30). Mrs. Coon also provided an Individualized Home School Instruction Plan ("IHIP") to Warrensburg Central School. For the school year 2000-2001, Mrs. Coon had {her child} repeat second grade at home. See also R23-26 (the actual IHIP for {the child} for the 2000-2001 school year).

In August 2001, the Coons moved from Warrensburg to Glens Falls. R61(¶35). Mrs. Coon filed with the Glens Falls School District a letter of intent to home school {her child} and an IHIP for the school year 2001-2002. R61(¶36). See R52 and R53 (Glens Fall School District acknowledging receipt of intent to home school and IHIP). Thus, {the child} was home schooled for his third grade year.

In January of 2002, Mrs. {Coon} decided to switch {her child} from home schooling to West River Academy, a private school located in Colorado that provides curriculum and education through the Internet. R62(¶41-2). Mrs. Coon did not submit quarterly reports to the Glens Falls school

district once {her child} began his online education. R62(¶42-44). As required by West River Academy, Mrs. Coon provided West River with a detailed report of {the child's} educational program and progress for the third grade. R62(¶46). See R66-69 (West River Academy review).

For the fourth grade, the 2002-2003 school year, Mrs. Coon switched {her child} from the West River program to the Grace Academy program, another Internet based school. R63(¶47). Mrs. Coon did not file any paperwork with the Lake George School District (the school district in which they currently reside).

C. D.S.S.'s investigation.

On or about October 15, 2002, Mrs. Coon received a letter from D.S.S. indicating that they were starting an investigation concerning an allegation of educational neglect. R63(¶48). In late October, Leslie Arone from D.S.S. visited the Coon home. R63(¶49). Ms. Arone talked with {the child} about his schooling. R63(¶50). {The child} showed Ms. Arone his study area and learning materials. R63(¶51). Ms. Arone told Mrs. Coon that "I can see that you are home schooling your son." R63(¶52).

D. Neglect Allegations.

{The child} has been and continues to be educated properly by his parents at home. Nevertheless, on November 1, 2002, D.S.S. filed a petition in the Warren County Family Court alleging that the lack of the timely filing of paperwork placed {the child} at "imminent risk" of neglect and that neglect "would be eliminated by the issuance of a temporary order of protection directing Respondent to ensure the child's attendance to [sic] school." R13(¶7), R18(¶7). The petition did not allege, nor could it, that {the child} had not received an education; the petition only alleged that the proper paperwork was not filed with the school district. Moreover, the remedy D.S.S. sought was not the filing of the neglected paperwork but the intercession into the Coons' educational choice for {their child}.

E. Proceedings below.

On November 1, 2002, D.S.S. filed the above-mentioned petition. The Family Court issued a temporary order dated November 12, 2002, ordering that the Coons "within 24 hours, take the necessary and proper steps to enroll and ensure {child's name} Coon's attendance at the Lake George School District." On December 4, 2002, the Coons asked

Family Court to modify its temporary order and to allow {their child} to be home schooled. The Family Court issued a modified temporary order on December 24, 2002 that allowed {the child} to attend either public or private school but not home school. The Clerk of the Family Court received and filed the notice of appeal on January 15, 2003.

F. The Coons' desire.

The Coons wish to keep home schooling {their child}. {The child} made a significant turn around once he left the public educational system. To send him back would be cruel, and against the Coons' wishes. It is the Coons' opinion that home schooling is the best academic environment for {their child}.

To secure the best educational environment for their son, by letter dated November 25, 2002, Mrs. Coon advised Sherman Parker, Superintendent of Schools for the Lake George School District that she intends to educate {her child} at home for the school year 2002-2003. R22. Additionally, by letter dated November 25, 2002, Mrs. Coon provided Mr. Parker with an IHIP for the school year 2002-2003. R70-71. This paperwork fulfills all requirements for parents to home school their child.

Family Court entered a temporary order that forced the Coons to stop home schooling {their child} and to send him to a public or private school. R4. Family Court entered this order despite D.S.S.'s investigation revealing that {the child} was being home schooled, and the Coons' submission of all necessary paperwork to the Lake George School District. The Coons have filed a Notice of Appeal with Family Court appealing the Court's order of December 24, 2002. The Coons are asking this Court to reverse and vacate the order.

Appealability

By the time this case reaches the Court for argument it will be moot because either (1) Family Court's Temporary Order has expired, see R5 (Temporary Order expires May 8, 2003); (2) the trial on the merits has been completed; or (3) a plea agreement has been reached. Nevertheless, the Court should still reach the merits of this case.

The Court of Appeals has stated that a court should rule on an issue even though it is moot as to those who seek relief when there is: (1) a likelihood of repetition, either between the parties or among other members of the public, (2) a phenomenon typically evading review, and (3) a showing of significant or important questions not

previously passed on, i.e., substantial and novel issues *Matter of Hearst Corp. v. Clyne*, 50 N.Y.2d 707, 715 (1980). See also *People ex rel. Maxian v. Brown*, 164 A.D.2d 56 (1st Dept. 1990).

This case meets all three criteria. In reverse order, first, this case raises important constitutional issues that have not been raised regarding a pre-trial order of deprivation of parental rights. Second, because this issue involves a temporary order before trial, the temporary order will always expire before a complete appellate review; this issue is a classical example of a issue that is capable of repetition yet evading review. Finally, this is extremely important to home school families who have a philosophical disagree with state regulation of their parental right and duty to educate their children and will likely arise again.

Therefore, because this novel and important constitutional issue is capable of repetition yet evading review, the Court should hear the appeal even though moot.

ARGUMENT

SUMMARY OF ARGUMENT

The Coons will make three arguments to the Court in support of the right to direct their son's education. The

Coons will argue that (1) the Due Process Clause guarantees them the fundamental liberty to direct {the child's} education which includes the right to home school {their child}. *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); (2) where a fundamental liberty interest is involved, the government cannot infringe on that liberty "unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993). In this case, all the government (D.S.S.) has proved is the neglect of the required home schooling paperwork. Proof of neglect of paperwork without proof of actual educational neglect does not supply D.S.S. with the authority to destroy the Coons' liberty and allow the government to seize control of their son's education; (3) to the extent that the school district has a compelling interest in the Coons' supplying it paperwork, holding the Coons' parental rights hostage is not a narrowly tailored method to obtain their compliance with paperwork requirements. The solution that is narrowly tailored to missing paperwork is for the Superintendent of the Lake George School District to bring an action in New York State Supreme Court to compel the Coons to file the paperwork. In any event, the Coons have completed and submitted all paperwork to the Lake George School District.

Thus, the very thing that allegedly was causing {the child} "imminent risk" of neglect has been cured.

Therefore, at this early stage of the litigation, since the Coons have provided a home education for their son, the Coons ask the Court to stay the temporary order of the Warren Court Family Court dated December 17, 2002, restore their liberty to them, and allow them, not D.S.S., to decide what type of educational experience is in {the child's} best interest pending the outcome of this appeal.

1. The United States Constitution secures the Coons have a right to direct the educational up bringing of their children.

The Due Process Clause of the 14th Amendment to the United States Constitution guarantees more than fair process. The Due Process Clause protects individual liberty against "certain government actions regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). The Due Process Clause protects those fundamental rights and liberties which are deeply rooted in this Nation's history and tradition. *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934). "In addition the specific freedoms protected by the Bill of Rights, the 'liberty' specifically protected by the Due Process Clause includes the right[] ... to direct the

education and upbringing of one's children." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citing *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925)).

The Supreme Court has characterized this right - the right to direct the education and upbringing of one's children - as "perhaps the oldest of the fundamental liberty interests." *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Moreover, the right of parents to direct the education of their children forms the foundation upon which our freedom rests. "The fundamental theory upon which all governments in the Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers [and schools]." *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925)

Therefore, the Coons ask this Court to recognize that they have a fundamental liberty interest in deciding where and how {their child} is educated.

- 2. DDS must prove a compelling state interest before they can restrict the Coons' liberty to direct {the child's} education and that prove the restriction on the Coons' liberty is narrowly tailored to serve the proven compelling state interest.**

Where a fundamental liberty interest is involved, the government cannot infringe on that liberty "unless the

infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993).

For the purposes of this appeal, the Coons concede that the government has a compelling state interest in ensuring that parents provide an appropriate education to their children. But see *Yoder v. Wisconsin*, 406 U.S. 205 (1973) (Wisconsin's compulsory education law held unconstitutional as applied to religious group belief that education beyond the eighth grade violated their religious tenants). Although the government does not have a compelling interest in how the parents choose to provide for their child's education. See *Pierce*, 268 U.S. at 535 (the government has no "power to standardize its children by forcing them to accept instruction from public teachers [and schools]").

The issue in this case is not whether D.S.S. has a compelling interest in the Coons providing their son an education, but rather whether when D.S.S. is aware that the Coons' are educating their son at home (which it discovered during its investigation) does the lack of filing paperwork (which has been cured) provide the D.S.S. with a compelling state interest to strip the Coons of their constitutional liberty to direct their son's education.

The entire foundation of our liberty rests of the proposition that parents, not the government, know how best to educate their children. *Pierce*, 268 U.S. at 535 Thus, the Constitution enshrines "a presumption that parents [like the Coons] act in the best interests of their child." *Troxel*, 530 U.S. at 68. Without proof to destroy this Constitutional presumption, there is "no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *Id.*

D.S.S. does not allege and the Family Court did not find that the Coons actually failed to provide {their child} with an education. R12-18. To the contrary, upon investigation, D.S.S. found that {the child} was being home schooled. R63(¶52).

The Coons are acting in {the child's} best interest. {The child} struggled in public school - he had failed the second grade. R60(¶20). {The child} made a significant turn around once he left the public educational system, and to send him back would be cruel and against the Coons' wishes. R64(¶60). See also R66-69 (Outlining {the child's} academic accomplishments while being home schooled). More importantly, it is the Coons' opinion that home schooling

is the best academic environment for {their child}.
R64(¶61).

In the absence of any proof of educational neglect, D.S.S. argued to Family Court that it could presume neglect of education from neglect of paperwork before trial. See *Matter of Christa H.*, 127 A.D.2d 997 (4th Dept., 1987), ("Proof that a minor child is not attending school ... makes out a prima facie case of educational neglect."). This presumption stemming from lack of paper work only makes out a prima facie case and will not sustain a conviction. Failure to provide paper work, assuming adequate instruction, is not child neglect, though it may needlessly lead to a time-consuming court proceeding that could be emotionally stressful to the children. See *Matter of Blackwelder*, 139 Misc.2d 776 (Sup.Ct., Cayuga Co., 1988).

Although the presumption that neglect of paperwork equals neglect of education is recognized under State case law, Respondents, in a case of first impression, argue that such a presumption violates both the procedural and substantive aspect of the Due Process Clause. This is so because there is no rational connection between the fact proved [here neglect of paperwork] and the ultimate fact presumed [here neglect of {the child's} education], and

because the presumption is insufficient to justify the deprivation of the Coons' right to home school {their child} before trial. Cf. *Matter of Blackwelder*, 139 Misc.2d 776 (Sup.Ct., Cayuga Co., 1988).

A.

First, The Due Process Clause of 14th Amendment requires that there must be a rational connection between the fact proved [here neglect of paperwork] and the ultimate fact presumed [here neglect of {the child's} education] when a liberty interest is at stake. *O'Leary v. United States*, 395 U.S. 6, 33-35 (1969). Thus, the presumption fact must more likely than not flow from the proved fact. The Supreme Court has required that proof of the connection between the presumed fact and the proved fact must be based on history and experience. See *O'Leary, supra*.

D.S.S. can exalt government paperwork and imbue it with grave significances, but there is no proof of a rational basis for making the presumption that neglect of paperwork proves neglect of education. There is no historical basis for the presumption that neglect of education flows from neglect of paperwork. History counsels that there is no basis for the presumption that

the Coons' neglected their beloved son's education just because they failed to fill out all the state required paperwork. To the contrary, "history recognize[s] that natural bonds of affection lead parents to act in the best interests of their children." *Troxel*, 530 U.S. at 68. Thus, the presumption that neglect of paperwork proves neglect of education lacks the necessary historical basis to uphold its constitutionality.

Moreover, D.S.S.'s presumption that neglect of paperwork proves neglect of education lacks a basis in common sense. One can hate filing out paper work and still love their child. This is not a case where an unexplained broken bone leads to a presumption of physical abuse. Likewise, this is not a case where a small child is constantly out on the streets unsupervised late into the night, leading to a presumption of parental neglect.

Here there is no natural correlation between neglect of paperwork and neglect of a child's education. D.S.S. has offered no proof of a correlation. They produced no statistical study to show that lack of paperwork means lack of education.

The final nail in D.S.S.'s coffin is that D.S.S.'s presumption that neglect of paperwork proves neglect of education runs smack into the wall of protection that the

Supreme Court afforded parents in *Troxel*. In *Troxel*, the Supreme Court explained: "there is a presumption that parents act in the best interests of their child." *Troxel*, 530 U.S. at 68. This constitutional presumption trumps D.S.S.'s presumption. See United States Constitution Art. VI ("The Constitution ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby").

Thus, there being no basis in common experience or history to support D.S.S.'s presumption, D.S.S. has not proven a compelling interest sufficient to interfere with the Coons' decision on how to best educate their son. Therefore, the Coons ask this Court to stay the Family Court's order and to clothe them with their constitutional right to direct {the child's} education.

B.

Even assuming that the Court finds that educational neglect usually flows from neglect of paperwork (which it does not), D.S.S. cannot rely on a presumption of educational neglect alone to hijack a fundamental liberty from parents. D.S.S. bears the burden of not only identifying a compelling state interest sufficient to justify a deprivation of liberty, but also must prove the

existence of that compelling state interest in a particular case. D.S.S. must prove educational neglect by clear and convincing evidence based on the totality of the evidence.

D.S.S. has come nowhere near meeting their burden of proof. The facts upon which the temporary order was based are not in dispute. {The child} has been educated at home since failing the second grade. He repeated the second grade at home with his mother in 2000-2001. He completed third grade at home with his mother for the 2001-2002 school year. A detailed report of {the child's} third grade education was provided to West River Academy. R66-69. For fourth grade (2002-2003 school year) {the child} was educated at home. This October after conducting her investigation, Ms. Arone, a social worker with D.S.S., told Mrs. Coon that "I can see that you are home schooling your son."

D.S.S. would sweep these facts away like insignificant specks of dust. They are not. These facts show that at this early point in the case there is no basis for ripping the Coons' parental rights from them. The truth, which must count for something, if not everything, is that the Coons love {their child} and provide for his education. {the child's} mom gave up the pursuit of her career to provide an education to her son because the public schools

had failed {her child}. There is no proof offered by D.S.S. to show that the Coons neglected their son's education.

Therefore, based on the facts, the Coons ask this Court to vacate the temporary order of the Warren County Family Court.

3. Stripping the Coons' of their parental rights is not a narrowly tailored method to ensure they fill out the appropriate paper work required of home schoolers.

Even the school district² has a compelling interest in the Coons supplying it paperwork³, holding the Coons' parental rights hostage is not a narrowly tailored method to obtain their compliance with paperwork requirements. See *Reno*, 507 U.S. at 302 (A law that infringes on fundamental liberty recognized by the Due Process Clause must be "narrowly tailored to serve a compelling state."). The solution that is narrowly tailored to missing paperwork is for the Court to order the Coons to provide the Superintendent of the Lake George School District, D.S.S.,

² D.S.S.'s jurisdiction extends only to matters touching on neglect and abuse as defined by the Family Court Act. D.S.S.'s is not the agency that the State Legislature placed in charge of ensuring that parents fill out paperwork for the local school district. Its mission is more narrowly defined and confined. The school district, not D.S.S., is the proper party to enforce the paperwork requirement.

³ The Coons will assume for purposes of this appeal only that a school district may have a compelling state interest in the filing of the State mandated paperwork, although respondents seriously doubt it.

the law guardian, and Family Court with all necessary the paperwork. Family Court could order the paperwork to be filed and enforce its order with the threat of contempt. To suggest that stripping the Coons of their fundamental liberty is the least restrictive means to enforce paperwork requirements cannot withstand constitutional scrutiny.

In any event, the Coons have completed and submitted all paperwork to the Lake George School District. Thus, the very thing that allegedly was causing {the child} "imminent risk" of neglect has been cured.

Respondents are not challenging the constitutionality of D.S.S.' s authority to investigate, to bring charges, and to make them stand trial based on neglect of paperwork. The question is whether, before trial and without proof of actual neglect, can the government interfere with parent's constitutional rights to direct their child's education.

Therefore, the Coons ask this Court to vacate the Warren County Family Court's temporary order.

CONCLUSION

Can proof of neglect of paperwork without proof of educational neglect supply D.S.S. with the authority to destroy the Coons' liberty and allow the State to size control of their son's education before a trial? Maybe the

apparatuschik of some countries embrace a severance of parental rights for neglect of paperwork, but not in the United States of America. We are a free people who find the smell of State control of intimate family decision odious to our being and repugnant to our senses. For D.S.S. to deprive any person of liberty, especially a liberty so deeply rooted in our history as parental rights, D.S.S. must come forth with compelling proof. They have not done so.

Therefore, for the reasons set forth above, the Coons ask the Court to vacate the temporary order of Family Court, restore their liberty to them, and allow them, not D.S.S., to decide what type of educational experience is in {the child's} best interest.

Submitted this 14th day of March, 2003

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NOTE: This document has been edited to protect the privacy of the Coon's child. All changes from the original are enclosed in {curly brackets}.