

No. 17-129

IN THE
Supreme Court of the United States

M.C.,

Petitioner,

v.

C.M.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA

SUPPLEMENTAL BRIEF OF PETITIONER

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INTRODUCTION

Petitioner M.C. submits this supplemental brief pursuant to Rule 15.8 to bring to the attention of the Court facts material to the issues presented in her petition previously filed with this Court, scheduled to be conferenced on September 25, 2017.

None of the facts set forth in this brief were available to Petitioner at the time of the filing of M.C.'s petition. Petitioner only learned these facts when they were provided in an affidavit executed on Friday, September 15, 2017, by Respondent C.M.'s older sister, Melinda Burnett. Melinda Burnett is 55 years old, four years older than C.M. She has known C.M. his entire life. She lived with him during their childhood and she has always lived near him in Georgia, now living about twelve miles from their parents' home where C.M. lives with the babies.

These facts are relevant to the constitutional issues presented to this Court by Petitioner, as briefly discussed below on Page 11.

These facts could not have been discovered by Petitioner before the filing of the petition because: (a) Mrs. Burnett reluctantly came forward with information only now because of her deep concern for the well-being, safety and best interests of the three babies involved in this case; and (b) because the California court had declared that the court was not concerned with the welfare or the best interests of the children (stating that "what happens to these children is none of the court's business"), that court refused to hold a hearing or permit any of the normal discovery required to determine what is in the best interest of children.

It was previously known and reported to this Court that on the day of the birth of the triplets, February 22, 2016, M.C. was not permitted to see the babies and security guards were posted outside her hospital room for that purpose. For the nine weeks that the three babies needed special care in the Neonatal Intensive Care Unit, C.M. did not visit with them, but stayed in Georgia. Thus, at that critical point in the babies lives, their mother was prevented from being with them and their “intended” father stayed away, leaving the babies without any parent. *See*, Petition, P.14.

THE NEW FACTS

A. The Hospital Personnel had to Take the Babies to Georgia and Recommended that the Babies be Taken From C.M. Because He was Unfit

When C.M. went to pick up the children in California, the hospital would not release the babies to his custody, and required him to take parenting classes for a week. It is now known, as a result of the information provided on September 15, 2017, by C.M.’s sister, Melinda (who signed an affidavit), that Kaiser Hospital would still not release the babies to him. Instead, the hospital sent three nurses, and at least one doctor (the precise number of doctors is not known at this time) to fly across the country to Georgia with the children. C.M.’s incompetence and unfitness to care for the three babies was apparent. When the nurses arrived at C.M.’s home, the nurses found that they had to help him set up a nursery. The nurses stayed in Georgia for two or three days to assist getting the babies settled.

The head Kaiser nurse called the Georgia Division of Family and Children Services and told the department that C.M. was unfit to raise the children, and that the children should be taken from him.

B. C.M.'s Home and Living Conditions Are Deplorable

C.M. lives in the basement of the ranch house of his elderly parents. C.M.'s mother is 77 years old and she cannot walk. She is confined, full-time, to a bed set up in a room on the main floor of the house. She has a colostomy bag that contains her urine and she must wear diapers. The diapers are changed while she is in bed and she needs constant care. A home aid spends a few hours a day with her and changes her diapers.

The room where she stays used to be four small rooms, a living room, den, dining room and a kitchen. All of the interior walls were removed so it is now one room. The couple have become hoarders and there are large stacks of belongings all throughout that one room.

C.M.'s father is now 79 years old and in very poor health. He has a serious heart condition and his heart is functioning at only 25% of its normal capacity. He is incapable of walking up and down stairs. C.M.'s father is an habitual chain smoker and smokes in the house so heavily that the Kaiser nurses complained that they could not walk through the smoke. While the three babies live in the basement with C.M., they are often placed in playpens in this room exposed to the cigarette smoke.

C.M. has admitted that his parents should be in a nursing home, but does not want anyone outside the house to know that.

C.M.'s mother and father cannot assist with the care of the children, and C.M.'s mother, in fact, is another person who needs to be cared for. The home aid does not help with the babies, and C.M. can't afford a nanny.

C. The Heroin Use and the Sale of Heroin in the Home

C.M.'s sister certified that their nephew, Mitch, who is now about 28 years old, lived with C.M.'s parents for virtually all of his life. His mother, C.M.'s other sister, gave birth to him out of wedlock and could not care for him. As a result, Mitch grew up and lived in C.M.'s parents' ranch.

Mitch is a heroin addict who has been in and out of jail a number of times. He has sold heroin from the house where C.M. lives. The police were called to the residence a number of times.

Mitch lived at the house when the babies were born and was living there when the babies were brought there from California.

Mitch used the illegal drugs in the home with the knowledge and permission of C.M.'s parents. Most disturbing is that C.M.'s parents repeatedly gave money to Mitch so he could buy the heroin.

After the nurses from Kaiser Hospital called the Georgia Division of Family and Children Services, the department scheduled a couple of home visits. Mitch was told by C.M.'s parents that he had to leave the house before the state agents arrived so they would not see him there. He was told when to return. That was repeated each time the agents scheduled a visit.

D. C.M. Admitted that He Did Not Want the Three Children

On December 2, 2015, first disclosed to his two sisters, Illeen and Melinda, that he had entered into a surrogacy contract in California with M.C. He began the communication by writing that “I have a confession that you both would be difficult to believe suprisedly.”

C.M. is profoundly deaf and does not speak. His communication skills are extremely poor. He does not properly compose his written sentences and does not spell very well. While some people with his disability can communicate fairly well – his sister Illeen is also deaf – C.M. cannot. He does not even do well with sign language.

In his December 2, 2015 text in which he initially told his sisters that he had triplets coming, he wrote, in his own unique way, the following:

- (a) His “lawyer” (the surrogacy broker) told him to get the support of his relatives “ASAP,” because the surrogate “wants one of my triplets;” he was resisting letting her raise one of the babies, because, he wrote, “I won’t want to do that as jeopardize to my full custody.”;
- (b) C.M. wrote that his lawyer “said the trial would be concerned that criminal Mitch lives here that needs move out before the trial start.” Mitch is the nephew who is the heroin addict, who has lived in C.M.’s parents’ home;

- (c) C.M. did not want to tell anyone that his parents are so sick that they could be placed in adult protective services, because he thought he “could lose one or all of” the triplets if the court were to learn that;
- (d) He wrote that he prayed that there would be only one or two children and he was stressed because there were three healthy children. He had demanded that one of the fetuses be aborted, but the surrogate refused;
- (e) C.M. made it clear that he did not want three children; and
- (f) He also wrote that he had to pretend for awhile that he is “enthusiastic” to have all three triplets.

C.M. did not want all of the children, but his “lawyer” advised him that he had to pretend he wanted all three babies. C.M. believed that if he admitted that he did not want all of the children, that admission could jeopardize his getting custody of the children he did want.

When she read C.M.’s December 2, 2015 text, Melinda was horrified by the prospect that her brother, who has not been able to take care of himself, would attempt to take on raising triplets on his own while he lived in the chaos at their parents’ home. Melinda stated that C.M. is not fit to raise children.

On December 2, 2015, Melinda wrote back to him and stated:

“C.M., I am hoping that this is a joke, and you are trying it out to see how we would react if this really did happen. This is wrong on so many levels. Do not have your lawyer contact me or Doug. We will not participate in this. I’m very, very sorry. I have felt sorry for you for years because I can see how lonely you are. But you have to be happy inside your own skin. Children will not ‘make’ you happy.”

E. C.M. has Many Serious Personality and Mental Problems and is Not Capable of Raising the Three Babies in a Healthy, Safe Manner

Melinda explained that C.M. has always been a lonely person, and was often anxious and even depressed. He took medication for anxiety. He is socially awkward and has never developed any social skills. He can’t interact with people in a social setting. He cannot be a role model or a healthy father figure. He would not be able to teach the children about life. He stays hidden. He will not be able to instruct the children about integrating in society.

C.M. has personality problems which will prevent him from properly raising these three young children. For one, he has been paranoid his entire life. He thinks that people are always watching him. He constantly thinks that people are talking about him in a negative way. As a result, he always keeps the shades and blinds of the house where he lives completely drawn. He thinks people will spy on him. This problem has interfered with his ability to

interact with people. He has no friends. He is not capable of instructing children on how to behave or interact with others. His sister believes that C.M. will not be able to effectively communicate with the children.

Second, C.M. has a terrible anger problem. Because he is profoundly deaf, he does not speak, but he can make loud sounds. He has frequent anger fits. If something bothers him, he takes a childish temper tantrum and those around him cannot control his anger and he becomes irrational.

C.M. pulled all of the hair out of head because he thought his hair looked like the hair of an African American. He made himself bald. He was in his mid-thirties at the time. It took him a number of years to completely remove his hair. Since then, he has always worn a hat. He has scarring on his head. Melinda and her husband took C.M. to the Virgin Islands with them. When they were at the airport and had to go through security, C.M. got angry because he didn't want his hat taken off. To calm him down, Melinda convinced the security guard to let him keep his hat on. He always wears a hat, even in pictures taken of him.

C.M. also has a history of being cruel to animals. When he was young, he killed a family pet. His parents made an excuse and said it was an accident. However, the family pets continued to go missing. A few years ago he purchased two sugar gliders, which are small fuzzy gliding possums that fit in your hand. C.M. wanted them as pets. However, when he tired of them he deliberately placed them in a bucket, sprayed water into the bucket in the middle of winter, and deliberately froze them to death.

C.M. has a phobia about money. He is in constant fear of not having money. He is extremely insecure. C.M. works as a mail sorter at a postal facility, and he clears \$750 per week. He is afraid to spend money. Recently, C.M. bought a single toy for all three babies to share and play with. His sister, Illeen, who was visiting from Pennsylvania, saw the price tag still attached to the toy and removed it. When C.M. saw her remove the price tag, he had one of his anger tantrums. He indicated to her that he planned to return the toy to the store to get his money back after the children were done playing with it. He was angry at Illeen for ruining his plan, and wouldn't let her spend any further time with the babies.

C.M. does not change the babies' diapers as often as needed because he doesn't want to spend the money. His two sisters state that he is too lazy to change the diapers and he is too cheap to buy as many as necessary. His failure to timely change the babies' diapers when needed, resulted in severe rashes which alarmed the DFAC workers. Ultimately, the rashes became so bad, C.M. had to take the babies to the hospital.

C.M. will not be able to assist in the education of the children. He has never been around children and has no skills which can assist him to help them.

Perhaps most disturbing, is that he has been forcing the three young children (now 18 months old) to eat some of their food off of the dirty floor in the house. The floors are rarely vacuumed. He apparently does not know how to feed the children properly and he doesn't even know how inappropriate it is to have children eat food off of a dirty floor. C.M. does not understand social etiquette and will

be unable to teach proper behavior to the children. The house has not been “baby proofed” and there are no safety plugs in the electric outlets, and the babies constantly remove electric cords.

Melinda Burnett states that she knows from observing C.M. for almost 50 years, that if C.M. applied to adopt a child and a home inspection was conducted, he would never have qualified to be an adoptive parent. If he was required to take psychiatric examinations, he could never have qualified. Because she knew that he cannot properly care for the children, C.M.’s mother was urging C.M. to give the children up for adoption.

A dangerous aspect of C.M. having three children is that he has left them unattended. He has left the house and left them alone. His parents are incapable of looking after them. Sometimes C.M. just disappears without even letting his parents know he is leaving the house. He left the children alone for hours to see the recent eclipse.

About two weeks ago, Melinda observed the children at their parents’ home where the children live. The children were unnaturally quiet and did not speak and did not interact with the adults.

C.M. cannot teach the children values. He does not relate to people and has peculiar prejudices. He is prejudiced against virtually every class or group of people. Melinda believes that the children will be exposed to those mean spirited biases.

Melinda stated that she couldn’t conceive of a court determining that placing custody with C.M. was, in fact,

in the children's best interests. The California court exempted C.M. from testing, home study and a best interests hearing.

For a long time, Melinda Burnett did not want to come forward and volunteer the information found in this brief. She did not want to be perceived to be acting against a family member. But she came forward and risked ruining her peace with members of her family because she felt a deep moral obligation to take action to protect the three children and give them a chance in life.

Relevance of These Newly Discovered Facts

The deplorable conditions in which the three young children live and the unfitness of C.M. to raise them, directly relates to the violation of the Substantive Due Process Rights of Baby A, Baby B, and Baby C to be free from commodification and sale, and their right to keep their relationship with their mother, M.C., as well as their Equal Protection Right to be placed based upon what is in their best interests. *See*, Petition, pp.21-31.

These facts are also relevant to M.C.'s right to her relationship with the children and her own Equal Protection Rights. *See*, Petition, pp.31-35.

Dated: September 20,2017

Respectfully submitted,

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