

No. 18-6410

In The
Supreme Court of the United States

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MICHAEL E. MCKINZY, SR.,

Petitioner,

v.

CARLETHA R. GASTON,

Respondent.

—————◆—————
**On Petition For Writ Of Certiorari
To The Supreme Court Of Missouri**

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PETITION FOR WRIT OF CERTIORARI

—————◆—————
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QUESTION PRESENTED

The Missouri Division of Child Support Enforcement (“DCSE”) was required under sections 454.470.5 and 454.475.5 RSMo (2000) to mail a copy of its final Order to Father’s last known address and serve him notice of its pending judicial proceedings.

Here Missouri (DCSE) failed to mail a copy of its final Order to Father’s last known address, never provided Father timely notice of its pending judicial proceedings, and never informed Father of his right to file a Petition for Judicial Review of its final Order in the Jackson County Circuit Court within 30 days of mailing.

Did Missouri (DCSE) violate Father’s United States Constitutional Rights to Due Process of Law and Equal Protection of Laws under the Fourteenth Amendment of the United States Constitution by failing to provide Father timely notice of its pending judicial proceedings and failings to serve its final Order on Father at his last known address?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.



OPINIONS BELOW

The opinion of the highest state court to review the merits appears at App. 1 to the petition and has been designated for publication but is not yet reported.

The opinion of the Missouri appeals court appears at App. 3 to the petition and is unpublished.



JURISDICTION

The date on which the highest state court decided my case was September 25, 2018. A copy of that decision appears at App. B.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).



**CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

The Fourteenth Amendment to the United States Constitution states:

No State shall make or enforce any law which shall abridge the privileges or immunities of

citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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STATEMENT OF THE CASE

On June 24, 2002, Michael E. McKinzy, Sr., Petitioner, provided his residential address, “last known mailing address” as being: “8609 E. 87th St., Raytown, MO 64138” to Missouri Division of Child Support Enforcement (“DCSE”), on its DCSE’s Form CSE-600A-1 (8-91). (LF at 40). On July 2, 2002, DCSE issue an administrative child support order (“final Order”) on Petitioner without serving him with its final Order at his last known address as required pursuant to section 454.470.5.

On July 10, 2002, DCSE filed its final Order and an “Affidavit of Mailing” of its final Order to Petitioner in the Jackson County Circuit Court of Missouri (“Court”) therein attesting to the act that DCSE had mailed its final Order on July 3, 2002, by U.S. Certified Mail to Petitioner addressed to: Michael E. McKinzy, 3743 Flora Ave., Kansas City, Missouri 64109. DCSE never mailed its final Order to Petitioner’s actual correct physical address.

DCSE’s final Order was docketed in the Court’s judgment journal by the Court’s clerk as a judgment of the Court without judicial review under Case No.

02-MC201872, pursuant to section 454.490 RSMo (2000). (LF at 13).

On November 8, 2002, the Court issued Petitioner a Decree of Dissolution of Marriage (“Decree”). (LF at 27). Under the Decree, Petitioner’s obligation of \$1165.00 per month was imposed pursuant to DCSE’s final Order under the docketed Case No. 02-MC201872. (LF at 30).

On September 15, 2015, Petitioner, through hired counsel, filed a Motion to Modify the Decree and Motion for Declaratory Judgment. (LF at 33).

On January 9, 2017, Petitioner moved to set aside the Court’s docketed judgment under Case No. 02-MC201872 as a void judgment due to lack of personal jurisdiction and due to DCSE’s failure to serve its final Order on Petitioner and him being deprived of his right to file a timely Petition for Judicial Review in Court within 30 days of DCSE’s final Order pursuant to section 454.475.5 RSMo. (2000).

On August 11, 2017, the Court issued its judgment denying Petitioner’s motion to set aside the Court’s docketed judgment as void under Case No. 02-MC201872. (LF at 66).

On August 17, 2017, Petitioner filed his Notice of Appeal.



REASONS FOR GRANTING THE PETITION

Non-contested cases do not require formal proceedings or hearing before the administrative body. As such, there is no record required for review. In the review of a non-contested decision, the circuit court does not review the administrative record, but hears evidence, determines facts, and adjudges the validity of the agency's decision. Under the procedures of section 536.150, the circuit court conducts such a hearing as an original action. In either a contested or a non-contested case, the private litigant is entitled to challenge the governmental agency's decision. *Furlong Co. v. City of Kansas City, Missouri*, 189 S.W.3d 157 (Mo. 2006). Judgments have been declared void for lack of due process when litigants have been denied notice of critical proceedings or were subjected to involuntary waiver of claims. "Copies of the hearings officer's order shall be mailed to any parent, person having custody of the child, and the division within fourteen days of issuance." § 454.475.5 RSMo. (2000). A parent who is adversely affected by the Order may obtain judicial review by filing a petition for review in the trial court within thirty days of the Order's mailing. *John v. March*, 376 S.W.3d 26 (Mo. Ct. App. 2012). Petitioner was deprived of his right to challenge DCSE's order and Mo. Const. Art. 5, § 18, and thereby denied Due Process at Law as guaranteed under the U.S. Const., Amend. XIV, § 1, and under Mo. Const. Art. 5, § 18, and Mo. Const. Art. 1, § 10.

The administrative final Order issued by DCSE in this case deprived Petitioner of proper service of the

Order at his correct physical address and his right to timely file his Petition for Judicial Review within 30 days of mailing. *Worley v. Worley*, 19 S.W.3d 127 (Mo. 2000); *Pennoyer v. Neff*, 95 U.S. 714, 733 (1877).

“And in States bound together by a Constitution and subject to the Fourteenth Amendment, great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact.” *McDonald v. Mabee*, 243 U.S. 90 (1917); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 309 (1950); *Jones v. Flowers*, 547 U.S. 220, 223 (2006).

Personal jurisdiction refers to the power of a court to require a person to respond to legal proceedings that may affect the person’s right or interests. *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 253 (Mo. banc 2009).

The Court should consider the future problems that may arise in these types of cases as well as the fact that Petitioner’s reliance on Missouri statutes in effect at the time DCSE issued its final Order.

A void judgment is entitled to no respect and may be impeached at any time in any proceeding in which it is sought to be enforced or in which its validity is questioned by anyone with whose rights or interest it conflicts. *La Presto v. La Presto*, 285 S.W.2d 568 (Mo. 1955).

Only by service of process authorized by statute or rule (or by appearance) can a court obtain jurisdiction to adjudicate the rights of a defendant. When the requirements for manner of service are not met, a court

lacks power to adjudicate. Actual notice is insufficient. *Taylor v. Taylor*, 47 S.W.3d 377 (Mo. App. 2001).

A judgment is void if the trial court: (1) lacked subject matter jurisdiction, (2) lacked personal jurisdiction, or (3) entered the judgment in a manner that violated due process. *Bates v. Greenwich Ins. Co.*, 464 S.W.3d 515, 517 (Mo. banc 2015).

Finally, this Court should consider the fact that DCSE's Order was mailed to Petitioner's parents' residence instead of Petitioner's martial residence.



CONCLUSION

For the foregoing reasons, the Missouri Supreme Court's decision should be summarily reversed and this case be remanded for vacating of a void judgment in light of due process violations committed by DCSE and the protections of the Fourteenth Amendment of the United States Constitution.

The petition for writ of certiorari should be granted.

Respectfully submitted,

MICHAEL E. MCKINZY, SR.

Originally filed: October 18, 2018

Re-filed: January 25, 2019