

No: 09-612

DEC 30 2009

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In the  
Supreme Court of the United States

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Ariel King,

*Petitioner*

v.

Michael Pfeiffer,

*Respondent*

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On Petition for Writ of Certiorari to the  
Supreme Court of the Commonwealth of Virginia

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REPLY BRIEF FOR WRIT OF CERTIORARI

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December 30, 2009

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## **REPLY TO RESPONDENT'S BRIEF**

*Respondents Brief* is misguided in that it fails to address the core issue presented by the *Dr. King* before the Court. The core issue is whether the same due process and equal protection rights afforded in a "parental termination proceeding" should be the same as those afforded in a "custody" proceeding where parental rights are effectively terminated by the actions of the state through its court. The core issues include the human rights of a dual citizen, including her internationally mandated rights .

Besides missing the key point of the *Petition*, a careful reading of the *Respondent's Brief* reveals numerous assertions that are contradicted by, or not supported by its own attachments. This *Reply* will not waste the Court's time with the extensive list of all of those misstatements and misinformation, but will focus on only some new key points raised in that Respondents Brief.

### **This Is A Matter Of First Impression For The Court And The Issues Are Of Wide Spread Importance**

The widespread nature of the epidemic problem in family courts, and its relation to domestic violence and child abuse is well documented by the extensive facts and figures presented in the *Amici Brief* filed by *Stop Family Violence, et. al.*, Case No. 09-612 (December 16, 2009) There is a gorilla war going on in the family courts, where those courts have become the weapon of choice for abusers to promote their abuse through scorched

earth litigation to achieve what the psychological community calls “domestic violence by proxy.”<sup>1</sup> This is made possible because procedural safeguards are either scarce, non-existent, or completely ignored by many of these courts. The vicious and factually flawed attacks in Respondents Brief should give the Court the sense of the uncivilized, anarchy and viciousness of these “family court” proceedings, and the destruction they cause on a child’s relationship with their parent(s).

**Respondent’s Brief Manipulates the Facts to Make This Court Believe that Dr. King’s Concern and Love for Her Daughter Makes Her Crazy and a Threat to Her Child, When, Reports of Court Officers Show Otherwise.**

In fact, no court has made a finding based on an evidentiary hearing that Dr. King is an unfit parent, *and*, the only child custody study done by any court recommended that Dr. King have full physical custody of the child, with shared legal custody in spite of the financial void that Dr. Pfeiffer left them in. ***See, Recommendation And Summary Portions Of Evaluation, 10/24/2007, attached hereto at Reply App. 1***

A GAL in Georgia authored a similarly favor-

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<sup>1</sup> Professor Joan S. Meier, Esq. , George Washington University Law School *Research Indicating That The Majority Of Cases That Go To Court As "High Conflict" Contested Custody Cases Have A History Of Domestic Violence*, September 16, 2009 ([www.leadershipcouncil.org/1/pas/Meier.html](http://www.leadershipcouncil.org/1/pas/Meier.html) ); also, *Domestic Violence (DV) by Proxy: Why Terrorist Tactics Employed by Batterers Are Not "PAS,"* September 16, 2009 [www.leadershipcouncil.org/1/pas/DVP.html](http://www.leadershipcouncil.org/1/pas/DVP.html)

able report praising Dr. King's care of the child in February 2008 when Dr. King, an only child, dutifully went to Georgia to tend to her stroke-stricken ill Mother who was in the Hospital ICU. *GA GAL Report*, attached hereto *Reply App. 8*.

These evidence-based Court recommendations regarding Dr. King's superior parenting contradict the distorted claims of *Respondent's Brief*. Contrary to *Respondent's Brief*, there are no court findings (including any by the JDR court and the Montgomery County child protective services (which is not a court)) that "determined that the mother was not acting in the best interest of the child." *See, Resp. Brief at 23-24*. In fact, no such findings exist in either jurisdiction. Instead the JDR Court's evaluator found the mother to be committed, creative, fit and best to care for their daughter. *See. Reply App. 1*

**Contrary to Respondent's Brief at 24, Dr.  
King Completed and Noticed a Full Psy-  
chological Exam that Concluded that Dr. King  
Is Fit for Parenting**

A praecipe was submitted to that effect to the Virginia JDR court on August 21, 2008. *See, Reply App. 19*. Despite that submission, the JDR court took no action to allow contact for the child with her mother. Since then, Dr. King has presented two other psychological exams to various courts in the US that have also been ignored. In Germany, Dr. King fulfilled the required psychological exam for the fourth time in less than 2 years.<sup>2</sup> Thus, Respondent's claim that Dr. King

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<sup>2</sup> After November 20, 2009 hearing, the German Family Court concluded that Dr. King had once again met the VA



“always carried the keys to resolve this matter in her own pocket” has no basis in fact.

**Dr. King Sought Dismissal for Lack of Subject Matter Jurisdiction, Not Custody.**

Contrary to *Respondent's Brief at 5-6* -- and plainly explained in report to the JDR Court on 10/24/2007 -- it was Dr. Pfeiffer who sought sole legal and physical custody from the beginning, not Dr. King. *See, Recommendation And Summary of Evaluation, 10/24/2007, attached hereto at Reply App. 1.* Meanwhile, Respondent concedes, Dr. King sought dismissal for lack of subject matter jurisdiction. *See, Resp. Brief at 7.*

**Dr. King Clearly Represented Herself *Pro Se* Well Before the June 6, 2008 Hearing Date**

*Respondents Brief* falsely claims that Dr. King was not representing herself *pro se* at the time of the June 6, 2008 hearing and subsequent periods. *See, e.g., Respondents Brief at 17.* In fact, as displayed on the Arlington Circuit Court website, as early as April 25, 2008 Dr. King filed a Petition for Writ of Mandamus *pro se* (Arlington Circuit Court Case No. CL08000524-00) (*Resp. App. 18*), when she had no financial choice but to represent herself in Virginia. *See, Reply App. 1.* Even the attachments at *Resp. App. at 22-26* clearly state that the filing was made by Dr. King *pro se*. The last lawyer to represent Dr. King in Arlington Virginia filed his withdrawal for lack of payment

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Court conditions, yet contact had not been reestablished between this German-American child and her mother because of Dr. Pfeiffers opposition. *Order of Family Court, Bayreuth Germany*, Case No. 003-F-354/09 (12/18/2009).

on or about April 24, 2008. *See, Reply App 16.* Thus, as pointed out by the *Amici Brief at 31*, with the combination of threats of imprisonment without due process and representing herself *pro se*, “the court made it impossible for King to access any post-deprivation remedy by issuing an arrest warrant for her so that if she appeared to defend her rights you would be arrested.”

**Dr. King’s Appeal to the Circuit Court for Lack of Subject Matter Jurisdiction Was Timely, Its Notice Fully Processed As Such**

Respondent was incorrect that the time to appeal the June 6, 2008 Order was by June 16, 2008. *See, Respondents Brief at 22.* No Virginia court found this to be the case. Although labeled “final,” the June 6, 2008 Order could not be considered a *final order* under Virginia law because it failed to “dispose[] of the whole subject, give[] all the relief contemplated, provide[] with reasonable completeness for giving effect to the sentence, and leaves nothing to be done in the cause save to superintend ministerial the execution of the order.” *Daniels v. Truck & Equipment Corp.*, 205 Va. 579, 585, 139 S.E.2d 31, 35 (1964). (citations omitted)

The June 6, 2008 JDR Order by its own words called for subsequent proceedings to resolve further custody matters. There remained outstanding matters in pending motions that had not been ruled on. This is clearly illustrated by the subsequent *ex parte* hearing and subsequent orders on September 16, 2008, which Respondent’s brief notably omits to mention. A timely appeal to the Circuit Court was noticed and filed for those September 16, 2008 Orders with the JDR Court. In fact, had it not been timely, the JDR court

would not have forwarded the Notice to the Circuit Court and served it on the parties. There is nothing in the Circuit Court dismissal order that states that the appeal of the entire proceeding is untimely. As set forth in the Circuit Court's own notice, the earliest date set for a hearing in that appeal was to be October 20, 2009 (*See, Circuit Court Docketing Notice, Reply App. 20*), ten days after the *ex parte* hearing in which Dr. Pfeiffer went to court without clearing the date with Dr. King, and held a private hearing with the Circuit Judge, who then dismissed *ex parte* Dr. King's timely filed appeal.

**No Case Law Supports Respondent's Claim that the Mere Presence of a GAL Necessarily Protects a Child's Rights.**

No evidence is presented by *Respondent's Brief* that the JDR Court GAL had argued to the Court that it should not infringe the child's basic human rights to have contact with her mother, nor did that GAL present any sworn testimony, cross examine any witnesses, or submit any evidence during the entire proceedings below. *Respondent's Brief at 23-24*. In fact, exactly the opposite was true, which caused Dr. King to file a *Motion for Sanctions* against the GAL in the JDR Court. That motion was filed by mail June 5, 2008 and docketed June 9, 2008 and based on discovery withheld for weeks by Dr. Pfeiffer until June 2, 2008 (just four days before the June 6, 2008 hearing). That discovery revealed that the GAL violated the rules of the court and her duty to the child. The JDR Court has not held a hearing nor has it ruled on that *Motion for Sanctions* against the GAL.

**A Novel Version of the June 6, 2008 Order Attached to the Respondent's Brief Is Of Questionable Authenticity and Not the Same as the Version Served and Certified by the JDR Court to the Parties on June 6, 2008**

Respondent's Brief makes an issue of a new additional version of the June 6, 2008 Order found at *Resp. App. 31*. That version has never been previously seen by Dr. King, never been produced previously by the Dr. Pfeiffer in the many court proceedings since June 6, 2008, nor was it served by the Court on Dr. King. The version in *Respondent's Brief* was not the version identified as in the file when inquiry was made to the JDR Court clerk as of Sept. 24, 2008 (re: date of appeal notice filing). The only known true version, that was certified and served on June 6, 2008, is found in the *Petition*.

Regardless of whether one considers the additional version, *it changes none of the arguments merits in the Petition* because the "new" version attached to the *Respondent's Brief* does not change the facts relevant to the issues presented.

**The September 5, 2007 Order Was Not An "Agreed Order" As Claimed by Respondent**

There is nothing in the September 5, 2007 Order that indicates it was agreed to. *Resp. Brief* at 5. No oral or written agreement regarding the order was noted. To the contrary, Dr. King was justifiably stunned that an order was entered at a hearing that was *not* noticed as a hearing on custody, nor was any evidence or sworn testimony taken. The hearing was only for rescheduling to allow time to respond to the petition. Instead the

“rescheduling hearing” was turned into a “custody hearing”, one day earlier than scheduled --- with no opportunity to respond to the custody petition.

Finally, even if there were agreement on jurisdiction, it would not be determinative because subject matter jurisdiction cannot be consented to, waived or agreed to. *See Petition at note 1.*

**There Was No Notice Indicating that the  
June 6, 2008 Hearing Was for Final Legal  
and Physical Custody.**

Even Respondent effectively concedes that the June 6, 2008 was only noticed as a hearing having to do with “rules to show cause” carried over from the February 8, 2008 hearing. *Resp. Brief at 9.* Respondent’s Brief also effectively concedes that Dr. King, filing *pro se*, asked for a rescheduling of that hearing. *See, Resp. App. 22.* No action was ever taken by the JDR Court on that Motion. Proper notice includes advising as to the intended purpose of the hearing. Thus, there was inadequate notice, and thus lack of due process.

**Neither Dr. King Nor the GAL Asked for  
Transfer of Jurisdiction to Georgia**

The Georgia Guardian ad litem (GAL) identified at *Respondent’s Brief at 7* visited the child and gave a highly favorable independent report about the grandmothers home, child care and state of the child while, Dr. King, an only child, was in GA temporarily to make medical decisions for her elderly stroke-stricken mother in the hospital ICU. *See, GAL Report, attached hereto Reply App. 8* Neither Dr. King nor any of her representatives have ever suggested or asked that jurisdiction be moved to Georgia. Respondent misrepre-

sents the Georgia GAL having asked for such a transfer. She said nothing of the kind. *See, GAL Report, attached hereto at Reply App. at 8*

**The June 5, 2008 Maryland Order Relied on  
By Respondent As Quashing the June 2, 2008  
Protective Order Is On Appeal**

Respondent fails to point out that the Maryland Temporary Protection (TPO) for both Dr. King and their child (for “abuse of a child (both physical and sexual)”) was prematurely quashed in a unilaterally called hearing by the Respondent’s counsel, again four days before the scheduled hearing of June 9, 2009. The June 5, 2008 Order referred to at *Resp. Brief at 9 - 11* is on appeal. *King v Pfeiffer, Appeal from the Circuit Court for Montgomery Count, (Case No. 70620FL), No. 1007, Sept Term 2009, Maryland Court of Special Appeals* (Briefed Dec. 7, 2009). Transcripts of the hearing on June 2, 2008 show no false statements or omissions. The Judge who granted the TPO is the only judge who has interviewed and observed the mother and child.

**The DC Superior Court Order Cited by  
Respondent’s Brief Is On Expedited Appeal**

Respondent relies upon the DC Family Court Order that dismissed a medical neglect complaint against the Respondent. *Resp. Brief at 24, and Resp. App. 50-51*. Respondent failed to note that the Superior Court did not allow Dr. King any discovery and refused to allow any of her experts to testify, nor considered any of her exhibits. An expedited appeal of the case is now pending (*King v. Pfeifer, Case 09 DRB 1167, DC Sup. Crt (December 2, 2009), Appeal Pending*)).

**Respondent's Brief at 22 Inaccurately Implies that Dr. King Used "first class mail" to Serve Her brief to the Court of Appeals.**

As documented in the *Petition*, priority mail with signature confirmation was used, and an initial attempt at delivery was made by USPS the next day after mailing -- no later than it would have arrived with the fastest delivery offered by the USPS, Express Mail. *Petition at 11*. Interestingly, the US Supreme Court accepts only two methods of file-by-mail service as acceptable: Express Mail and *Priority Mail*. *Sup Crt Rules 29(a)(2)* *Respondent's Brief* cites no law excluding priority mail as compliant with Virginia mailing rules.

**Respondent's Brief's Claim that Parental Rights Were Not Effectively Terminated by the June 6, 2008 Order Rings Hollow**

Respondent claims that the June 6, 2008 Order "clearly established a regime by which Dr. King could regain *some* access to her child..." *Resp. Brief at 19*. However, Respondent's Brief notably appears unable to tell the court what "some access" is. In custody nomenclature, visitation is a form of physical custody, which Respondent claims was granted to Dr. Pfeiffer with "finality."

Respectfully submitted,	
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**APPENDIX**

**Recommendation And Summary Portions Of  
JDR Court Ordered Evaluation**

CUSTODY INVESTIGATION  
ARLINGTON JUVENILE AND DOMESTIC RE-  
LATIONS DISTRICT COURT  
ARLINGTON, VIRGINIA

NAME: [Name of Child]  
D.O.B.: 5/7/03 (4 YEARS OLD)  
RACE/SEX: AFRICAN/AMERICAN  
GERMAN FEMALE

MOTHER: DR. ARIEL ROSITA KING

FATHER: DR. MICHAEL HERBERT PFEIFFER

.....

**SUMMARY AND EVALUATION:**

This court was brought to the Court's attention as a result of Dr. Michael Pfeiffer filing a petition requesting sole custody of his daughter, [Childs Name Omitted].

[Childs Name Omitted] is a remarkable four year old with an outgoing and friendly personality. Since being assigned to this case, this counselor has had the opportunity to have several visits with [Childs Name Omitted] and her parents and was able to gain insight into this family's current situation. Throughout the investigation this family has been cooperative in allowing this counselor to visit in their respective homes and provide this counselor with the necessary infor-