

EMBARGOED UNTIL TUESDAY, March 10, 2020 at 8:30 am Central

In 8th Cir. US District Court of Appeals, Oral Arguments Commence in Minnesota CPS “Kidnapping” case

Plaintiffs sue for civil rights violations and to stop child protection services from serial abuse of families

200 Parents will Gather in Support with Matching T-Shirts, Banners and Signs From 8 AM - Noon

Contact: Dwight Mitchell, 732-208-9950, ddm@familypreservationfoundation.org

Insider Edition – Justice In America Interview, <https://youtu.be/rtvAARDYXtE>

(*March 11, 2020 – St. Paul, Minnesota*) For the first time in modern history, an association of Minnesota parents brought a civil rights lawsuit against state and county agencies enforcing Minnesota’s child protection laws on April 24, 2018. Dwight Mitchell and the group Stop Child Protection Services from Legally Kidnapping Children, a 501(c)(3) association of 9,500+ parents, claim that Minnesota’s child protection laws are unconstitutionally vague and overbroad, triggering unnecessary investigations and putting children at risk for being removed from their homes unnecessarily based on mere allegations and social worker discretion. This is the first civil rights lawsuit in the nation to challenge the statutory definition of a Child in Need of Protection or Services (CHIPS).

To demonstrate these allegations, the founder, Dwight Mitchell said, “We selected one member, provided free legal aid services, and won our inaugural case against Minnesota Child Protection Services on September 11, 2018. The Judge ruled “disinformation” was used, ordered the return of the innocent mother Amanda Weber’s son after CPS unnecessarily removed him from the family home when he was 10-months old and retained him in foster care for 4 months when there was no harm to the child.” [Minnesota District Court Case # 49-JV-18-786]

The lawsuit details how Minnesota’s child protection standards illegally put children in the category of “child in need of protection or services” and place them in foster homes. The lawsuit also goes into detail that based on the Minnesota Out-of-Home Care and Permanency Report date October 2017, compared to white children, based on child population estimates: American Indian children were 17.6 times more likely to experience government care. Children identified as two or more races were 4.8 times more likely to experience government care. (59.2 percent identified at least one race as African-American/Black and 56.0 percent identified at least one race as American Indian), and African-American children were over 3.1 times more likely to experience government care.

Attorney Erick Kaardal, who is representing Mitchell, his children and Stop Child Protection Services from Legally Kidnapping Children, lays the blame for the breakdown of the family in Minnesota squarely at the feet of the government. “Minnesota’s child protection statutes authorize child protection services - not fit parents - to raise their children. It is an outrage,” he explained. “It’s not just fathers like Dwight Mitchell who are being railroaded. Minnesota is also using its unconstitutionally low standards to seize all children, both black and white, from their single mothers. Therefore, the plaintiffs have sued in federal court to stop child protection services from continuing its serial abuse of Minnesota’s families. It is clear that Minnesota’s child protection services is currently broken and can’t be fixed with the current unconstitutional statutes in place.”

The United States District Court ruled that neither Mitchell nor the group had legal standing to challenge the state's child protection laws.

Attorney Kaardal will be making the following arguments in the U.S. Court of Appeals;

- 1) “Stop CPS From Legally Kidnapping Children” is a legitimate association with standing to bring federal lawsuits on behalf of its members just like the NAACP and ACLU.
- 2) Per the Eighth Circuit decision of August 10, 2018, it is well-established law that it is unconstitutional to seize a child without reasonable suspicion of child abuse. (See Stanley v. Finnegan, Court of Appeals <http://media.ca8.uscourts.gov/opndir/18/08/172702P.pdf>)
- 3) Minnesota's child protection statutes have constitutional deficits in that they do not require the government to show parental harm to the child prior to seizing the child. (See Alsager v. District Court of Polk County https://scholar.google.com/scholar_case?case=10585920528981202132&q)
- 4) Minnesota's child protection statutes fail to follow the national trend of excluding "ordinary corporal punishment" from the definition of child abuse. This issue has not been addressed by federal courts, but should be. (See Com. v. Dorvil, 472 Mass. <http://masscases.com/cases/sjc/472/472mass1.html>)

- 5) Minnesota's child protection workers do not have immunity when they seize a child without evidence of child abuse.

WHAT: Oral Argument on *Stop Child Protection Services from Legally Kidnapping et al v. Dakota County Social Services et al*, a lawsuit against Minnesota state and county agencies over illegal and unconstitutional removal of children from their homes

WHEN: **Wednesday, March 11, 2020, Parent Gathering 8:00 am, Photo Op 9:00 AM, Court Hearing 10:00 am (Central)**

WHERE: Warren E. Burger Federal Building & United States Courthouse, 316 North Robert Street
100 Federal Building, St. Paul, MN 55101, Courtroom 5A, 5th Floor, before Judges Ralph R. Erickson - Fargo, ND, L. Steven Graszyk - Omaha, NE, Jonathan A. Kobes - Sioux Falls, SD.

MAP: <https://goo.gl/maps/z3YrX5tTTDA2>

WHO:

- **Erick Kaardal, Esq.**, partner at Mohrman, Kaardal & Erickson, P.A and attorney representing Mitchell and Stop Child Protection Services from Legally Kidnapping
- **Dwight Mitchell**, parent whose children were unconstitutionally removed from his home and plaintiff in the lawsuit
- **SCPSLKC Members**, parents whose children were unconstitutionally removed from their homes and plaintiffs' in the lawsuit

ONSITE CONTACTS:

- Dwight Mitchell, 732.208.9950
- Erick Kaardal, 763.486.5435

Mitchell, plaintiff and leader of Family Preservation Foundation 501(c)(3), dba Stop Child Protection Services from Legally Kidnapping, have experienced this illegal discrimination and racial profiling first hand. He stated, "For using the ordinary corporal punishment of bottom spanking on my 10-year old child, I was put in jail, my three children were taken away from me, and it took me 22-months to reunite my family based upon what I feel were illegal practices and fabricated evidence by CPS." Other states like Oregon, Hawaii and Oklahoma have enacted child protection laws to protect a parent's ordinary corporal punishment from child protection investigation and proceedings—but Minnesota has not.

As Minnesota statutes are currently written, when "talking to" and "time-outs" for misbehaving children do not work, any parent who uses any alternative form of discipline, such as ordinary bottom spanking, that causes any physical pain, any mental injury (whatever that means) or any threat of injury, puts their children into the category of "child in need of protection or services"—meaning the government will take the children away and put them in foster care." Further, the complaint identifies that Minnesota has provided vague and conflicting statutes to parents who seek to use ordinary corporal punishment to discipline their misbehaving children.

The case additionally notes that Minnesota has put itself in the odd position of prohibiting corporal punishment by parents, while authorizing corporal punishment in private schools.

While the state admits the disparate impact on Native American and African-American children, it does not address the unconstitutionally low standard that Minnesota uses to remove children from their homes. In Minnesota, fit parents are subject to child protection restrictions which include termination of parental rights as a result of any action which causes any "physical pain" or any "mental injury."

That low standard applies to every parent in Minnesota but puts a disparate onus on minority and low-income parents.

The lawsuit recounts social worker Susan Boreland's words to Mitchell, "Why are all black families so quick to spank their children? You are unfit to be parents and don't deserve to have children!" Shocked by the racially discriminative, negative, and generalized statement from the social worker, Mitchell responded, "First, this is not true, and you will never understand us because you are a White American and not African-American. You have no true concept of the underlying racism against African-Americans. Our children must learn to respect and adhere to authority because they are being unjustly discriminated against and killed by the police on a daily basis as seen on the TV and Internet. African American children fear the police and their parents are attempting to protect them from detrimental treatment. The same cannot be said about Caucasians."

Mitchell explained, “Even though everyone agreed I was a fit parent, even the county’s psychiatrists; it still took 22 months for me to get all my children back. Minnesota’s child protection agencies admit they are taking minority children away from their parents at an alarming rate; if Minnesota’s child protection agencies followed the federal constitution, the disparate impact on minority children would go away.”

Recounting his nightmare as a parent in testimony before the Governors Legislative Task Force on Child Protection last September, Mitchell shared, “I was denied all contact and visitation with my son for 22 months. It was hell on earth. If any of you have children, just think about that. Twenty-two months of no contact whatsoever, no phone calls no visits, no letters, nothing. Twenty-two months of lost smiles, lost hugs and lost time spent together as a family. Almost two years of not seeing or hearing from your child. Not even being told where he was, every night, not knowing where he was. The same feeling as in every parent’s worst nightmare, kidnapping! That is what I went through for 22 months.”

Xander Mitchell, the 17-year old son of Dwight Mitchell, was 11 when he was taken from his home for 22 months. He recalls the experience as “horrible and frightening.” He ran away from the foster family because he wanted to go home. The younger Mitchell shared, “I couldn’t be with my dad for almost two years. They wouldn’t let me talk to him, visit him or know where he was. I told my social worker, guardian ad litem and attorney I wanted to go home to live with my father and was told by all of them that my father abandoned me in Minnesota and no longer wanted me. I was scared and did not know what was going to happen to me. My dad loves me and I love my dad. They forced us to be apart. I can’t understand why the government would lie to me and be allowed to break up a loving family like that.”

While the lawsuit seeks damages for Mitchell and similar protection for other victimized families, the primary purpose of the action is to expose the legal problems and request changes in Minnesota law and practice. The Plaintiffs seek an extensive list of judicial orders and reforms including the following:

- A temporary injunction suspending all MN-DHS Child Protection Service proceedings.
- Emergency Recodification of all MN-DHS Child Protection Service statutes to conform to constitutionality.
- Federal oversight of all MN-DHS Child Protection Services.
- Jury Trials for all Termination of Parental rights proceedings and defense attorneys for people who cannot afford one.
- The appointment of an independent monitor and creation of an independent citizen MN-DHS and Dakota County Social Services Review Committee
- Conforming of the Minnesota Uniform Child Custody Jurisdiction & Enforcement Act procedures to the provisions of Minnesota Statute § 518D.101 – 317
- A requirement for MN-DHS and Dakota County Social workers to wear body video cameras and record all interactions with parents and children
- “Read Only” access to all social worker and guardian ad litem documentation for parents and guardians. This will allow defendants to properly prepare for their cases by preparing objections to social workers reports and Declarations of facts in support of defendants.
- A mandate that social workers, in concert with parents or guardians, develop and implement the legally required safety plan to prevent placement of children in foster homes
- Proper training of social workers on chain of command, prohibition of threats, inducements, or intimidation, plus timely and truthful preparation of reports and implementation of other best practices
- A mandate that doctors and schools distribute literature and educate parents on acceptable parental discipline practices that conform to constitutional law. Disseminating this mandatory educational information which defines abuse would significantly decrease the number of children in the child protection system. There would be no additional cost because of the current federal funding in place.

Read the full Appellant Brief complaint, *Stop Child Protection Services from Legally Kidnapping et al v. Dakota County Social Services et al*, filed May 9, 2019, in 8th Circuit United States Court of Appeals, by attorney Erick Kaardal on behalf of Dwight Mitchell, his children and Stop Child Protection Services from Legally Kidnapping, <http://familypreservationfoundation.org/appellantbriefkaardal20190509.pdf>

About Family Preservation Foundation, Inc. 501(c)(3) and its program “Stop Child Protection Services from Legally Kidnapping Children”

The Family Preservation Foundation was forged out of necessity in 2017 to provide free legal assistance and support, while defending the rights of children and families that were being traumatized by the government due to family separation. Everyone, especially the less fortunate and low-income who could not afford legal representation, were being unwittingly and unconstitutionally caught in the clutches of child protection services when there was no harm to their children because of unconstitutionally vague, overbroad and not narrowly defined statutes which are affecting children's and parent's rights alike. FPF also works to educate Minnesota communities and professionals about child protection matters, and advocates for state and federal policies which respect the universal rights of children and their families. The foundation started a fundraiser to hire staff lawyers in their effort of expanding their free legal services to minority and low-income families. Studies show that parents and families fair better, children remain out of and/or spend less time in foster care with good attorneys.
<https://familypreservationfoundation.org/ways-to-give/donation-options.html>

Throughout the United States, children are needlessly removed from parents for “infractions” that have traditionally been accepted practices in many homes. In Minnesota, unconstitutional enforcement has disproportionately targeted Native American and African-American families, dragging them through years of legal action and parental nightmares. The program Stop Child Protection Services from Legally Kidnapping Children seeks legal reform and restitution for victimized families.

For more information contact Dwight Mitchell at ddm@familypreservationfoundation.org.