Notable U.S. Supreme Court Child Welfare Case Law

DEFINITION OF FAMILY
Moore v. City of East Cleveland, 431 U.S. 494 (1977)

DUE PROCESS – RIGHTS OF FOSTER PARENTS
Smith v. Organization of Foster Care Families, 431 U.S. 816 (1977)

DUE PROCESS – RIGHTS OF UNMARRIED FATHERS
Stanley v. Illinois, 405 U.S. 645 (1972)
Quilloin v. Walcott, 434 U.S. 246 (1978)
Lehr v. Robertson, 463 U.S. 248 (1983)

FUNDAMENTAL RIGHT TO PARENT
Meyer v. Nebraska, 262 U.S. 390 (1923)
Pierce v. Society of the Sisters, 268 U.S. 510 (1925)
Prince v. Massachusetts, 321 U.S. 158 (1944)

FUNDAMENTAL RIGHT TO PARENT AND VISITATION
Troxel v. Granville, 530 U.S. 57 (2000)

INDIAN CHILD WELFARE ACT (ICWA)
Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978)
Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989)
Adoptive Couple v. Baby Girl, 133 S.Ct. 2552 (2013)

TPR - EQUAL PROTECTION
Caban v. Mohammed, 441 U.S. 380 (1979)

TPR - PARENT REPRESENTATION
Lassiter v. Department of Social Services, 452 U.S. 18 (1981)

TPR - STANDARD
Santosky v. Kramer, 455 U.S. 745 (1982)

DEFINITION OF FAMILY

Moore v. City of East Cleveland, 431 U.S. 494 (1977)
Statute defined family only as nuclear family and made it illegal to live with others not from a "single family."

The right to live as a family unit is protected as a liberty interest by the Due Process Clause of the Fourteenth Amendment and the statute was found to be unconstitutional.

DUE PROCESS – RIGHTS OF FOSTER PARENTS

Smith v. Organization of Foster Care Families, 431 U.S. 816 (1977)
Foster parents may have some limited liberty interest in maintaining the foster family. The procedures used in New York to remove children from their foster parents were adequate enough to protect whatever limited liberty interest held by foster parents. These procedures included the right of the foster parent to request an independent review of the removal.

DUE PROCESS – RIGHTS OF UNMARRIED FATHERS

Stanley v. Illinois, 405 U.S. 645 (1972)
Due process requires an individualized determination of parental unfitness; unmarried father could not be presumed to be an unfit father and was entitled to a hearing prior to removal. State's treatment of unmarried fathers violated the Equal Protection Clause.

Quilloin v. Walcott, 434 U.S. 246 (1978)
Due Process would not be violated where father did not have veto authority for the adoption and there was no finding of unfitness. The adoption could be determined to be in the best interests of the child because the father had not legitimized his status as a father and also had not supported the child consistently. Furthermore, he did not have and did not seek legal or physical custody of the child and had not had any significant responsibility for the child, who was eleven years old at the time of the adoption. The adoption recognized an already existing family unit (mother and stepfather). Equal Protection Clause was not violated because father had the opportunity, similar to a married father, to assume parental responsibilities but did not.

Lehr v. Robertson, 463 U.S. 248 (1983)
Failure to provide notice of the adoption to the putative father did not violate the Due Process Clause or Equal Protection Clause. Father had not taken steps to guarantee he would receive notice of the adoption (i.e., file with the putative father registry), failed to "grasp the opportunity to develop a relationship" with his child, and did not accept some measure of responsibility for the child's future. Where he did not establish a relationship with his child, the biological link alone did not merit protection.

FUNDAMENTAL RIGHT TO PARENT

Meyer v. Nebraska, 262 U.S. 390 (1923)
Pierce v. Society of the Sisters, 268 U.S. 510 (1925)
Prince v. Massachusetts, 321 U.S. 158 (1944)
Parents generally have great latitude in raising their children and have a fundamental right to make decisions concerning the care, custody and control of their children. The state may intervene where the parent is unable or unwilling to protect the child's safety and well-being. While the parent generally may make decisions regarding the child's education and medical care, these decisions may be regulated to protect the public interest.

FUNDAMENTAL RIGHT TO PARENT AND VISITATION

Troxel v. Granville, 530 U.S. 57 (2000)
The right to have care, custody and control of one's child is one of the oldest fundamental liberty interests. The parent's decision regarding non-parental visitation is presumed to be in the child's best interests.

The Washington visitation statute, which allowed anyone to petition for visitation with a child at any time, infringed upon the right of a fit custodial parent to make decisions concerning his or her child's visitation where the state found such visitation solely to be in the child's best interests. The statute was ruled unconstitutional as violating the Due Process Clause of the Fourteenth Amendment.

INDIAN CHILD WELFARE ACT (ICWA)

Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978)
The tribe denied tribal membership only to women, not men, who married outside of the tribe and a female filed a lawsuit under the Indian Civil Rights Act of 1968.

Although the U.S. Supreme Court held that sovereignty prevented such a suit against a tribe, ultimately the case determined that tribes have right to self-govern and determine tribal membership.

Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989)

Twins born of parents who were members of the Choctaw Indian tribe and voluntarily placed for adoption were "domiciled" on the reservation although they had never physically lived there. Therefore, Mississippi Chancery Court lacked jurisdiction to enter an adoption decree because under ICWA, the tribal court has exclusive jurisdiction for child custody and adoption matters for reservation-domiciled Indian children.

Adoptive Couple v. Baby Girl, 570 U.S. 637 (2013)
A couple sought to adopt an Indian child where the Indian biological father signed papers stating he was not contesting the adoption. Prior to the entry of the order of adoption, the father contested the adoption and was awarded custody of the child by the South Carolina Supreme Court, determining the father's rights could not be terminated under ICWA.

The U.S. Supreme Court held that the serious emotional or physical damage finding (§ 1912(f)) and the active efforts finding (§ 1912(d)) under ICWA do not apply in a termination of parental rights proceeding where the parent never had physical or legal custody of the child. In addition, placement preferences (§ 1915) do not apply where no alternative party that falls within the ICWA placement preferences has formally sought to adopt the child.

The U.S. Supreme Court assumed the father met the definition of "parent" under ICWA and did not limit any other protections provided to a parent under ICWA.

TPR – EQUAL PROTECTION

Caban v. Mohammed, 441 U.S. 380 (1979)
Statute allowing unmarried mothers to withhold consent to adoption but not unmarried fathers was found to violate the Equal Protection Clause of the Fourteenth Amendment. However, for children past infancy and where the father had not taken a role in raising the child, the State could withhold the privilege of vetoing the adoption. Here the father had lived with his two children until they were two and four years old, financially supported them, and continued to communicate with them once he no longer lived with them.

TPR – PARENT REPRESENTATION

Lassiter v. Department of Social Services, 452 U.S. 18 (1981)
The Constitution does not require the right to counsel in every parental rights termination proceeding. There is a presumption under the fundamental fairness requirement of the Due Process Clause that an indigent litigant is afforded the right to counsel when threatened with the loss of physical liberty. This presumption must be weighed against "the private interest at stake, the government's interest, and the risk that the procedures used will lead to erroneous decisions."

In cases where the parents' interests are highest, the state's interests are weakest, and the risk of error is great, (see *Matthews v. Eldridge* test), due process would require the appointment of counsel. However, in this particular case, where no allegations had led or could lead to criminal charges, no expert witnesses were used, no complex legal questions were presented, and "counsel could not have made a determinative difference," due process did not require the appointment of counsel for an indigent parent faced with termination of her parental rights.

TPR – STANDARD

Santosky v. Kramer, 455 U.S. 745 (1982)
The fair preponderance of the evidence standard violates the Due Process Clause of the Fourteenth Amendment in a termination of parental rights matter; therefore, the allegations to support termination must be proven by at least clear and convincing evidence. The fundamental liberty interest at stake, the finality and irrevocability of the decision, and risk of error require a higher standard.