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In re Sanders and the Resurrection of Stanley v. Illinois

Josh Gupta-Kagan*

A child's mother abuses her, state child welfare authorities file a petition in family court seeking custody of the child, and the mother admits her abuse. The child's father lives apart from the mother, has shared custody of his child, and is not responsible for the mother's abuse. The father seeks custody of the child. The father has not been proven unfit, so one would expect the court to grant the father custody. But under the "One-Parent Doctrine," adjudicating the mother alone unfit gives the family court authority to place the child in foster care, severely invading the father and child's constitutionally protected relationship.

As the Michigan Supreme Court said in its recent *In re Sanders* decision, "[m]erely describing the [one-parent] doctrine foreshadows its constitutional weakness."¹ Parents have the well-established constitutional right to the care, custody, and control of their children.² So long as an unwed father has seized his opportunity interest in being a parent, he has the same rights as a mother.³ And, as the U.S. Supreme Court ruled in *Stanley v. Illinois* in 1972, the State cannot constitutionally deprive a parent of custody, or make "the children suffer from [the] uncertainty and dislocation" inherent in foster care, without first proving the parent unfit.⁴ If the State thinks a parent is unfit, the State

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1. *In re Sanders*, 852 N.W.2d 524, 527-400 (2014).
2. *Troxel v. Granville*, 430 U.S. 57, 65 (2000).
3. *Lehr v. Robertson*, 463 U.S. 248, 262 (1983).
4. *Stanley v. Illinois*, 405 U.S. 645, 647-49 (1972).

should file a petition so alleging and prove its allegations at a trial.

This Essay begins by reviewing *Stanley v. Illinois*, and outlines how that foundational case originally recognized parental rights in foster care cases yet became understood primarily as a private adoption case. Second, it explains how, simultaneously, family courts developed the One-Parent Doctrine and a related doctrine making it difficult to transfer custody of a child from an abusive or neglectful parent in one state to a non-offending parent in another. Both doctrines violate *Stanley* by allowing the State to take custody of children without ever proving parental unfitness. Cases adopting these doctrines literally ignore *Stanley*. Third, this Essay argues that this trend may be changing with *In re Sanders*, which resuscitated *Stanley's* core holding in foster care cases. Finally, it suggests how *Sanders* and a revived *Stanley* can be an important tool to improve family court practice and better determine when State custody is necessary to protect children.

I.

STANLEY V. ILLINOIS: THE FOSTER CARE CASE THAT BECAME A PRIVATE ADOPTION CASE

The facts the U.S. Supreme Court reported in *Stanley v. Illinois* were sparse: Peter and Joan Stanley cohabited but did not marry and had three children. After Joan died, the State of Illinois took custody of the couple's two youngest children under a state law (later invalidated by the Supreme Court) that presumed unwed fathers unfit.⁵

The full facts were more complicated. The State initially filed a petition alleging that Peter Stanley had neglected his two youngest children.⁶ Stanley was an alcoholic⁷ who had already lost custody of his oldest child, who had alleged that "Stanley assaulted her and made sexual advances after the mother's death in 1969."⁸ The juvenile court concluded he had neglected her.⁹ But rather than prove Stanley unfit, the State amended its petition to rely on a statute that presumed his children dependent because he had not married their mother.¹⁰ The Supreme Court declared this "procedure by presumption"¹¹ unconstitutional and held that due process requires states to provide parents with hearings on their fitness before removing their children.¹²

5. *Id.* at 646.

6. Petition, *In re Stanley*, 69JO4773 (Ill. Cir. Ct. Cook County May 21, 1969) (on file with author).

7. Interview with Patrick Murphy, counsel for Peter Stanley (Apr. 27, 2014).

8. Joseph Sjostrom, *Unwed Dad Loses Right to Children*, CHICAGO TRIBUNE, Sept. 14, 1973, at A16.

9. Transcript of Oral Argument at 10, *In re Peter Stanley*, No. 69JO4773 (May 16, 1969); Transcript of Oral Argument at 10, *In re Kimberly Stanley*, No. 69JO4773 (May 16, 1969) (oral arguments for both cases were combined into the same transcript) (on file with the author.).

10. *Id.* at 3.

11. *Stanley*, 405 U.S. at 646.

12. *Id.* at 648.

Stanley was a foster care case, not a private family law case—the State acted to take Stanley’s children and make them wards of the State.¹³ Justice Byron White’s opinion unfortunately uses the passive voice in a key phrase, holding that Stanley had a right to a hearing on his parental fitness “before his children were taken from him.”¹⁴ But it is clear on the facts that a state agency did the taking. This holding should have formed an uncontroversial baseline: the State must prove parents unfit before removing their children.

Stanley, however, was twisted into something both more and less than the actual case required. Courts both applied it broadly to private adoption cases that were not at issue in *Stanley* and ignored it in child protection cases even though that was the case’s original context. Just seven weeks after the Supreme Court decided *Stanley*, the Illinois Supreme Court applied it to a private newborn adoption.¹⁵ The court described *Stanley* as broadly holding “that the interests of the father of an illegitimate child are no different from those of other parents.”¹⁶ Resulting media attention focused on how *Stanley* (as interpreted) “puts adoptions in legal limbo.”¹⁷ This was not a necessary interpretation; newborn adoption cases like *Slawek* involve disagreements between a mother who believes adoption is best for the child and a father who disagrees, not State invasions of family integrity. And the U.S. Supreme Court had recognized the powerful constitutional interest “of a man in the children he has sired *and raised*.”¹⁸ *Stanley* did not resolve whether an unwed father who had not raised his children had such rights, let alone the even more challenging question of what rights an unwed father may have regarding a newborn whose mother wishes to relinquish the baby for adoption.

Future litigation centered on unwed fathers’ rights in various adoption scenarios. *Stanley* thus became the first in a quartet of Supreme Court cases about unwed fathers and adoptions in private family law cases; none of the subsequent cases involved State actions to place children in foster care.¹⁹ The academy went along, treating *Stanley* as the earliest of this quartet, rather than as a leading case about State intervention in family life.²⁰ Casebooks present

13. *Id.* at 646.

14. *Id.* at 649.

15. *Slawek v. Covenant Children’s Home*, 52 Ill.2d 20, 22 (1972). The Supreme Court decided *Stanley* on April 3, 1972, and the Illinois Supreme Court decided *Slawek* on May 26, 1972.

16. *Id.*

17. Carol Kleiman, *Ruling Puts Adoptions in Legal Limbo*, CHICAGO TRIBUNE, Dec. 4, 1972, at § 2-17.

18. *Stanley*, 405 U.S. at 651 (emphasis added).

19. The next three cases of the quartet all addressed a biological father’s challenge to the adoption of his child by the child’s mother’s new husband, also known as a stepparent adoption. *Quilloin v. Walcott*, 434 U.S. 246, 247 (1978); *Caban v. Mohammed*, 441 U.S. 380, 381 (1979); *Lehr v. Robertson*, 463 U.S. 248, 249 (1983).

20. See, e.g. Laura Oren, *Thwarted Fathers or Pop-Up Pops?: How To Determine When Putative Fathers Can Block the Adoption of their Newborn Children*, 40 FAM. L.Q. 153, 157-58 (2006); David D. Meyer, *Family Ties: Solving the Constitutional Dilemma of the Faultless Father*, 41 ARIZ. L. REV. 753, 758-60 (1999).

Stanley as a case about adoption, when it really involved a father fighting the child protection agency for custody.²¹

II.

THE ONE-PARENT DOCTRINE: IGNORING *STANLEY* IN FOSTER CARE CASES

Meanwhile, in child protection cases around the country, the One-Parent Doctrine emerged, and *Stanley* strangely vanished from courts' analyses.²² As Vivek Sankaran has established, "[t]he overwhelming majority of states currently maintain child welfare systems that disregard the constitutional rights of non-offending parents."²³ Courts held that because they could take jurisdiction based on one parent's abuse, they could also infringe upon the other parent's rights.²⁴

At trial in *Sanders*, the State relied on that doctrine to deny a father his presumptive right to custody and did not try to prove him unfit. Tammy Sanders gave birth to her son, C., who had drugs in his system at birth. Acting on a petition from the child protection agency, the family court placed C. in the custody of his father, Lance Laird, who was raising an older child also born to Sanders. The agency then amended the petition to make allegations against Laird as well, and won a temporary ruling granting itself custody of the children pre-trial. Sanders pleaded no contest to the allegations that she was an unfit parent, but Laird insisted on a trial regarding the State's fitness allegations. Rather than prove its allegations at a trial, the State dismissed its allegations against Laird and convinced the court at a post-disposition motions hearing to keep the children in foster care without ever obtaining a court adjudication that Laird was unfit.

The State of Michigan took the same short cut that the State of Illinois had taken four and half decades earlier in *Stanley*. Just as Illinois had legitimate concerns about Peter Stanley's parenting, Michigan had reasons to question Laird's fitness as a parent. The State alleged Laird tested positive for cocaine use, was on probation for a domestic violence conviction, had violated a court order to keep the neglectful mother away from the children, and had been

21. See e.g., DOUGLAS E. ABRAMS, ET AL., CHILDREN AND THE LAW: DOCTRINE, POLICY AND PRACTICE 665 (5th ed. 2014) (placing *Stanley* in a chapter on "Adoption" rather than "Abuse and Neglect" or "Foster Care").

22. The history of the One-Parent Doctrine's emergence, why it was not challenged in family court until the 1990s and 2000s, and why courts endorsed it in spite of *Stanley* requires analysis beyond the scope of this short Essay. For present purposes it suffices to note that, in 2014, many family courts operate under a pre-*Stanley* mindset. The response to claims that fathers who have been involved in their children's lives and have not abused or neglected them should be treated as parents with protected rights is "we don't do it that way in juvenile court." Cyrenthia D. Shaw, *Creating a New Norm: Engaging Fathers through Direct Representation in Child in Need of Protection or Services Action*, 40 WM. MITCHELL L. REV. 1143, 1157 (2014).

23. Vivek Sankaran, *Parrens Patriae Run Amuck: The Child Welfare System's Disregard for the Constitutional Rights of Non-offending Parents*, 82 TEMP. L. REV. 55, 70 (2009). Sankaran was Laird's counsel in *Sanders*.

24. See *id.* at 70-73 (collecting and discussing cases).

arrested for selling cocaine (and, at the time of the appellate decision, was incarcerated after having been convicted of conspiracy to distribute more than five hundred grams of cocaine).²⁵ Laird denied the allegations of unfitness and, like Stanley, objected to the State taking custody of his children. Just as Illinois decided to drop its neglect allegations against Stanley, Michigan chose to dismiss allegations of unfitness against Laird, and declined to file a new petition against him. As in *Stanley*, the State's decision avoided a trial's rigorous testing of the evidence against Laird.²⁶ And the trial court kept the child out of Laird's custody because of the One-Parent Doctrine.²⁷

This One-Parent Doctrine fails to adequately address the *Stanley* holding. The Michigan case announcing the One-Parent Doctrine, overturned in *Sanders*, did not even cite or discuss *Stanley*.²⁸ One-parent cases in other states similarly ignore *Stanley*.²⁹

III.

THE ONE-PARENT DOCTRINE'S COUSIN—APPLYING THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN TO PARENTS

Courts' habit of ignoring *Stanley* and adopting flimsy logic extends to a close cousin to the One-Parent Doctrine—the Interstate Compact on the Placement of Children (ICPC). The ICPC is an agreement incorporated into state statutes governing the transfer of children across state lines for placement in foster or pre-adoptive homes.³⁰ Envision the same basic fact pattern—one unfit parent and one fit parent—but put the parents in different states (not uncommon in our highly mobile nation with many metropolitan areas straddling state lines). In such cases, state agencies routinely argue that the ICPC applies to a non-offending parent, and prevents children from living with him until he proves his fitness to a social worker.³¹ This application follows guidance first issued in 1976, which failed to discuss or cite *Stanley* just four years after it was decided.³² Such arguments have led to children remaining in

25. *In re Sanders*, 852 N.W.2d 524, 553 n.23 (Markman, J., dissenting).

26. *Id.* at 527.

27. *Id.*

28. *In re C.R.*, 646 N.W.2d 506 (Mich. Ct. App. 2001). *C.R.* did not cite *Stanley* a single time.

29. The dissent cites three such cases—*In re A.R.*, 330 S.W.3d 858 (Mo. App. 2011), *In re C.R.*, 843 N.E.2d 1188 (Ohio 2006), and *In re Amber G.*, 554 N.W.2d 142 (Neb. 1996). *Sanders*, 852 N.W.2d at 544 n.11 (Markman, J., dissenting). None of these cases cites or seeks to distinguish *Stanley*. The only citation to *Stanley* is on a different point. *Amber G.*, 554 N.W.2d at 150 (citing *Stanley* for the difference between custody or guardianship and adoption).

30. See, e.g., D.C. Code § 4-1422 (2001) (authorizing the District of Columbia mayor to enter a compact endorsed by the legislature). Article III(a) of the ICPC limits its scope to foster care and adoptive placements. *Id.* The ICPC's full text is also available at <http://www.aphsa.org/content/AAICPC/en/ICPCArticle.html>.

31. Vivek Sankaran, *Out of State and Out of Luck: The Treatment of Non-Custodial Parents Under the Interstate Compact on the Placement of Children*, 25 YALE L & POL'Y REV. 63, 65–66 (2006).

32. ICPC Secretariat Opinion No. 32 (Sept. 8, 1976), reprinted in AM. PUB. HUMAN SERVS. ASS'N, 1 COMPACT ADMINISTRATORS MANUAL 3.71, 3.71 (2002); ICPC Secretariat Opinion No. 34

foster care because, for example, a social worker deemed a two-bedroom home too small for the father, his mother, and the child.³³

The States' argument in these ICPC cases is weak,³⁴ and directly contrary to *Stanley*. It deprives a presumptively fit parent of custody without any finding or hearing on fitness as required by *Stanley*. It requires the parent to prove to social workers in his state that he can raise his child. It then applies the wrong standard to this determination—whether living in parental custody serves the “interests of the child”³⁵ rather than the constitutional fitness standard under *Stanley*. And if the social worker decides that the parental custody does not serve a child's best interests, there is no mechanism to force the State to prove that proposition at a trial.³⁶

Despite these arguments' weaknesses, at least eight state courts have upheld application of the ICPC against parents who the State did not allege or prove to have abused or neglected their children or to be otherwise unfit.³⁷ These courts' analysis rests on paternalistic assumptions directly contrary to the constitutional presumption that custody with fit parents serves children's interests: “Once a court has legal custody of a child, it would be negligent to relinquish that child to an out-of-state parent without some indication that the parent is able to care for the child appropriately.”³⁸ These cases do not find an exception to *Stanley*, they simply ignore it. None of the eight cases even mentions *Stanley*.

IV.

IN RE SANDERS: LEARNING AND APPLYING STANLEY'S LESSONS

After the trial court applied the One-Parent Doctrine and denied his request for custody of his children, Lance Laird appealed to the Michigan

(1976), reprinted in AM. PUB. HUMAN SERVS. ASS'N, 1 COMPACT ADMINISTRATORS MANUAL 3.71, 3.71 (2002); see also Sankaran, *supra* note 31, at 73 & n.47 (describing how Secretariat opinions expanded the ICPC's reach to include parents).

33. *In re D.-F.M.*, 236 P.3d 961, 963 (Wash. Ct. App. 2010). The trial court overruled this action, and placed the child with the father. That decision was upheld on appeal. *Id.* at 963, 967. This outcome, like *Sanders*, may indicate a trend back towards the *Stanley* holding.

34. The ICPC provides that it applies to state agencies sending children across state lines “for placement in foster care or as a preliminary to a possible adoption.” ICPC Article III(a), available at <http://www.aphsa.org/content/AAICPC/en/ICPCArticle.html>; see also, e.g., D.C. Code § 4-1422 (2001) (codified adoption of the ICPC). Living with a parent is, by definition, neither foster care nor “preliminary to a possible adoption,” so under the plain terms of the ICPC, it does not apply to parents.

35. *Id.* at art. III(4).

36. Sankaran, *supra* note 23, at 84–86.

37. *Faison v. Capozello*, 50 A.D. 3d 797 (N.Y. App. Div. 2008); *Green v. Div. of Family Servs.*, 864 A.2d 921 (Del. 2004); *H.P. v. Dep't of Children & Families*, 838 So. 2d 583 (Fla. Dist. Ct. App. 2003); *Ariz. Dep't of Econ. Sec. v. Leonardo*, 22 P.3d 513 (Ariz. 2001); *K.D.G.L.B.P. v. Hinds Co. DHS*, 771 So.2d 907 (Miss. 2000); *D.S.S. v. Clay County Dep't of Human Res.*, 755 So. 2d 584 (Ala. Civ. App. 1999); *Adoption of Warren*, 693 N.E.2d 1021 (Mass. 1998); see also *State ex rel. Juv. Dep't of Clackamas Co. v. Smith*, 811 P.2d 145, 147 n.4 (Or. Ct. App. 1991) (providing in dicta that “[t]he compact does apply to a child who is sent to another state for placement with parents or relatives, when someone other than a parent or relative makes the placement?”) (emphasis in original).

38. *Dep't of Children & Families v. Benway*, 745 So. 2d 437, 439 (Fla. Dist. Ct. App. 1999).

Supreme Court. That Court relied on the *Stanley* principles and declared the One-Parent Doctrine unconstitutional.³⁹

The Michigan Supreme Court did not articulate new ideas. The concept that the State must allege and prove a parent unfit before denying him custody has been a well-established principle of constitutional law since *Stanley*.

Rather, *Sanders*'s importance is that it resurrects *Stanley*. The *Sanders* majority cites *Stanley* twenty-two times, including two block quotes. Even the *Sanders* dissent acknowledges that *Stanley* requires a hearing on fitness, and disagrees only about the type of hearing required.⁴⁰ *Sanders*'s reliance on *Stanley*'s core principles is remarkable because child welfare agencies and family courts have often ignored those principles in the decades since the U.S. Supreme Court decided *Stanley*. *Sanders* is an important decision for the child welfare system in Michigan and nationally because it challenges the nearly universally accepted One-Parent Doctrine, and insists on basic due process protections before the State invades the fundamental right of family integrity.

V.

SANDERS AND STANLEY AS TOOLS TO REFORM FAMILY COURT CULTURE

The risk of horrific abuse to children very likely leads some courts to ignore constitutional rulings and authorize legally unjustified interventions in family life. Family court judges and lawyers form a cohesive decision-making group, somewhat separated from other courts, and socially distinct from the overwhelmingly poor, poorly educated, and minority families who come before them.⁴¹ These judges and lawyers are charged with the emotionally daunting task of protecting children from abuse or neglect. Conditions are thus ripe for groupthink.⁴² Add in large caseloads, limited accountability via public criticism or appellate review, cognitive biases hardwired into human brains, and family court decisions too often rely on mental short cuts rather than rigorous legal reasoning.⁴³

The unmistakably gendered element to the One-Parent Doctrine (and its ICPC cousin) contributes to these mental short cuts. Typically, when the State intervenes to remove a child from the primary custodial parent who is unfit, that parent is the mother.⁴⁴ Non-offending parents in these cases are generally fathers, and, given the demographics of families brought before family courts,

39. *In re Sanders*, 852 N.W.2d 524, 527 (2014).

40. *Id.* at 554 (Markman, J., dissenting).

41. Melissa L. Breger, *Making Waves or Keeping the Calm?: Analyzing the Institutional Culture of Family Courts Through the Lens of Social Psychology Groupthink Theory*, 34 LAW & PSYCHOL. REV. 55, 72–77 (2010).

42. See generally *id.* (arguing that groupthink is a core element of family court culture).

43. Matthew I. Fraidin, *Decision-Making in Dependency Court: Heuristics, Cognitive Biases, and Accountability*, 60 CLEV. ST. L. REV. 913, 916–17 (2013).

44. Melissa L. Breger, *The (In)visibility of Motherhood in Family Court Proceedings*, 36 N.Y.U. REV. L. & SOC. CHANGE 555, 556–57 & 556 n.3 (2012).

often poor, unwed, and black (or other minority) fathers.⁴⁵ Pious hand-wringing about the absence of such fathers in their children's lives is all too common, and reflects a system that presumes fathers are absent or otherwise unavailable to raise children. Family court sex stereotypes surely harm mothers,⁴⁶ but the harm extends to non-offending fathers. The dominant attitude towards fathers who do come forward to raise their children is one of disrespect and distrust. They are presumed irrelevant to the proceedings (or, at least, far less relevant than mothers). Rather than enjoying the constitutionally guaranteed presumption of fitness, these fathers are made to prove their fitness and are denied the right to a trial on any allegations against them.

Child protection cases are, of course, emotionally difficult because of the weighty interest in protecting children from abuse. But, as the *Sanders* Court observed, a child has a strong legal interest both in avoiding maltreatment and "in remaining in his or her natural family environment."⁴⁷ We cannot know which interest trumps without first determining if the child's parent is unfit. We hurt children by removing them from fit parents just as we hurt children by leaving them with unfit parents. Removals from parental custody and placement in temporary foster care, which often generate dislocations from school and a child's entire family and social network, are anxiety producing, destabilizing, and even emotionally traumatizing. And occasionally, in cases similar to *Sanders*, removing children from fit parents leads to devastating harm to children. In a recent case out of St. Louis, authorities removed Shakur Knight from his drug-abusing mother but refused to release him to his fit father, because the father lived with the mother and refused to make Shakur's mother (with whom he was raising other children) move out. Shakur was subsequently injured, and likely abused, in foster care, suffering multiple fractures, and retinal and subdural hemorrhaging.⁴⁸

The U.S. Constitution's focus on parental fitness does not elevate parents' rights over children's. The *Stanley* court recognized this, writing that the State "spites its own articulated goals" in child protection when it removes children

45. Although the causes are disputed, the existence of racial disproportionality in child protection cases is well established. See Tanya Asim Cooper, *Racial Bias in American Foster Care: The National Debate*, 97 MARQ. L. REV. 215 (2013) (discussing the debate over the causes of racial disproportionality). Poverty correlates with increased likelihood of abuse or neglect. U.S. DEP'T OF HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES, OFFICE OF PLANNING, RES., AND EVALUATION, FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4) REPORT TO CONGRESS 5-11-5-12 (2010). And single parenthood also strongly correlates with documented child maltreatment. Douglas J. Besharov, *Child Abuse Realities: Over-Reporting and Poverty*, 8 VA. J. SOC. POL'Y & L. 165, 186 (2000). Academics have long noted these demographic facts of child welfare cases. See e.g., Amy Sinden, "Why Won't Mom Cooperate?": A critique of *Informality in Child Welfare Proceedings*, 11 YALE J.L. & FEMINISM 339, 352 & n.59 (1999).

46. Breger's article is a relatively recent one in a long line of literature on stereotypes of mothers in child welfare cases. See Breger, *supra* note 44, at 556 & n.3 (collecting articles).

47. In re *Sanders* 852 N.W.2d 524, 535 n.11 (2014).

48. Nancy Cambria, *Safety Cracks in Missouri Foster Policies*, ST. LOUIS POST-DISPATCH, Mar. 31, 2012, at A1, available at http://www.stltoday.com/news/local/metro/safety-cracks-in-missouri-foster-policies/article_d2900118-de9c-5f22-abe3-33cce71104d8.html.

from fit parents.⁴⁹ Robust procedures to determine parental fitness are essential elements of a legal system that respects children's rights.

When child protection authorities believe a parent is unfit and a threat to his or her child, *Stanley* requires a straightforward process to protect the child: the State must plead its allegations and prove them at trial.⁵⁰ Efforts to evade this rule, like those tried by the State in *Stanley* and *Sanders*, are not acceptable.

CONCLUSION

Stanley adopted a formal legal rule that could be a strong antidote to the psychological and social pressures that can rush family courts to overly protective judgments. *Sanders* shows that courts are beginning, four decades later, to finally heed *Stanley*'s lesson in child protection cases. Although the One-Parent Doctrine continues to rule in some courts,⁵¹ other recent cases suggest a trend in favor of *Stanley*. For instance, the District of Columbia Court of Appeals held earlier this year that non-offending parents are presumptively entitled to custody.⁵² Further, the most recent cases involving the ICPC have ruled against its application to parents.⁵³ If this trend proves lasting, it will mark a new beginning for *Stanley*'s basic due process guarantee in child protection cases.

49. *Stanley v. Illinois*, 405 U.S. 645, 653 (1972).

50. The State argued that it was "unnecessary to hold individualized hearings to determine whether particular fathers are in fact unfit parents." *Stanley*, 405 U.S. at 647. The Court rejected that argument, holding that due process requires a hearing on parental fitness. *Id.* at 649.

51. *See e.g., In re B.R.*, No. 13-388, 2014 WL 1657558 (Ver. Apr. 25, 2014). The Vermont Supreme Court rather lamely tried to distinguish *Stanley*, suggesting incorrectly that so long as the State did not presume unfitness that *Stanley* posed no obstacle. *See id.* at *6.

52. *See In re D.S.*, 88 A.3d 678, 681 (D.C. 2014); *see also In re A.G.*, 295 P.3d 589, 590 (Nev. 2013).

53. *See In re Emoni W.*, 48 A.3d 1 (Conn. 2012); *In re D.F.-M.*, 236 P.3d 961 (Wash. Ct. App. 2010); *In re A.X.W.*, Docket No. 299622 2011 Mich. App. LEXIS 983 (May 26, 2011); *In re Alexis O.* 959 A.2d 176 (N.H. 2008).