

1980

Ryan and Lene Morford, Plaintiffs and Appellants,  
vs. State of Utah, Division of Child and Family  
Services;, Carolyn Nay, and Jane and John Does  
1-20, Defendants and Appellees : Reply Brief

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Bridget K. Romano; Assistant Attorney General; Counsel for Appellee.

Kristin B. Gerdy; Ron D. Wilkinson; Counsel for Appellants.

---

### Recommended Citation

Reply Brief, *Morford v. Utah*, No. 80400105 (Utah Court of Appeals, 1980).

[https://digitalcommons.law.byu.edu/byu\\_ca1/1](https://digitalcommons.law.byu.edu/byu_ca1/1)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

Case No. 080400105

---

IN THE  
UTAH COURT OF APPEALS

---

Ryan Morford and Lene Morford,  
Plaintiffs/Appellants,

vs.

State of Utah, Division of Child and Family Services,, Carolyn  
Nay, and Jane and John Does 1-20.  
Defendants/Appellees.

---

Brief of Appellants

---

Appeal from.

---

BARRY LAWRENCE  
Assistant Attorney General  
Attorney for State of Utah  
160 East 300 South, 6<sup>th</sup> Floor  
Salt Lake City, Utah 84111

KRISTIN B. GERDY (7208)  
RON D. WILKINSON (5558)  
Heritage Law Offices  
815 East 800 South  
Orem, UT 84097  
Telephone: (801) 225-604

Counsel for Appellee

Counsel for Appellants

---

Case No. 080400105

---

IN THE

UTAH COURT OF APPEALS

---

Ryan Morford and Lene Morford,  
Plaintiffs/Appellants,

vs.

State of Utah, Division of Child and Family Services,, Carolyn  
Nay, and Jane and John Does 1-20.  
Defendants/Appellees.

---

Brief of Appellants

---

Appeal from.

---

BARRY LAWRENCE  
Assistant Attorney General  
Attorney for State of Utah  
160 East 300 South, 6<sup>th</sup> Floor  
Salt Lake City, Utah 84111

KRISTIN B. GERDY (7208)  
RON D. WILKINSON (5558)  
Heritage Law Offices  
815 East 800 South  
Orem, UT 84097  
Telephone: (801) 225-604

Counsel for Appellee

Counsel for Appellants

---

## TABLE OF CONTENTS

|  |    |
|--|----|
| STATEMENT OF JURISDICTION .....  | 1  |
| STATEMENT OF THE ISSUES.....   | 1  |
| STATUTORY PROVISIONS AND RULES.....  | 3  |
| STATEMENT OF THE CASE .....  | 3  |
| STATEMENT OF FACTS.....  | 4  |
| SUMMARY OF ARGUMENT.....   | 5  |
| ARGUMENT .....   | 7  |
| I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT<br>TO THE STATE OF UTAH BECAUSE DCFS NEGLIGENTLY<br>VIOLATED ITS DUTIES TO THE MORFORDS BY FAILING TO<br>PROVIDE REUNIFICATION SERVICES AND BY ENCOURAGING<br>TERMINATION OF THE MORFORDS' PARENTAL RIGHTS. .... | 7  |
| II. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT<br>TO THE STATE OF UTAH BECAUSE DCFS ENTERED INTO AND<br>BREACHED MULTIPLE CONTRACTS WITH THE APPELLANTS.....   | 13 |
| III. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT<br>TO THE STATE OF UTAH BECAUSE DCFS BREACHED IMPLIED<br>CONTRACTS WITH THE APPELLANTS.....  | 18 |
| CONCLUSION.....  | 19 |

## TABLE OF AUTHORITIES

### CASES

|  |           |
|--|-----------|
| <i>Argyle v. Argyle</i> , 688 P.2d 464 (Utah 1984).....                                  | 15, 16    |
| <i>Bakanowski v. Bakanowski</i> , 2003 UT App 357, 80 P.3d 153. ....                     | 18        |
| <i>Blosch v. Blosch</i> , 2005 UT App 281 (unreported).....                              | 10        |
| <i>Davis v. Davis</i> , 2003 UT App 282, 76 P.3d 716.....                                | 18, 20    |
| <i>Kelley v. Kelley</i> , 2000 UT App 236, 9 P.3d 171.....                               | 19        |
| <i>Maisbitt v. Fink</i> , 1999 UT App 129 .....  | 10        |
| <i>Martinez v. Media-Paymaster Plus</i> , 2007 UT 42, 164 P.2d 384. ....                 | 9, 10, 11 |
| <i>Porco v. Porco</i> , 752 P.2d 365 (Utah Ct. App. 1988). ....                          | 22        |
| <i>Richardson v. Richardson</i> , 2008 UT 57 .....                                       | 19        |
| <i>Schaumberg v. Schaumberg</i> , 875 P.2d 598 (Utah Ct. App. 1994).....                 | 14        |
| <i>Smith v. Smith</i> , 751 P.2d 1149 (Utah Ct. App. 1988) .....                         | 14        |
| <i>State ex rel. E. R.</i> , 2001 UT App 66, 21 P.3d 680.....                            | 12        |
| <i>State v. Earl</i> , 2004 UT App 163, 92 P.3d 167.....                                 | 11        |
| <i>State v. Larsen</i> , 2000 UT App 106, 999 P.2d 1252.....                             | 9         |
| <i>State v. Moore</i> , 802 P.2d 732 (Utah Ct. App. 1990). ....                          | 9         |
| <i>Thomas v. Department of Workforce Services</i> , 2008 UT App 361<br>(unreported)..... | 10        |
| <i>Trubetzkoy v. Trubektzkoy</i> , 2009 UT App 77, __ P.2d __ (2009).....                | 15, 17    |
| <i>West Valley City v. Majestic Inv. Co.</i> , 818 P.2d 1311 (Utah Ct. App. 1991) .....  | 9         |

### STATUTES

Utah Code Ann. § 30-3-5(8)(a)(i)-(vii) (Supp.2008)..... 19

OTHER AUTHORITIES

Ryan D. Tenney, *The Utah Marshaling Requirement: An Overview*, Utah B.  
J. 22 (August/September 2004). ..... 10

RULES

Utah Rule of Appellate Procedure 24(a)(9)..... 8, 21  
Utah Rule of Civil Procedure 52(a) ..... 1

Case No. 080400105

---

IN THE  
UTAH COURT OF APPEALS

---

Ryan Morford and Lene Morford,  
Plaintiffs/Appellants,

vs.

State of Utah, Division of Child and Family Services,, Carolyn  
Nay, and Jane and John Does 1-20.  
Defendants/Appellees.

---

Brief of Appellants

---

**STATEMENT OF JURISDICTION**

This Court has jurisdiction under Utah Code Annotated § 78A-4-103(2)(h)  
(West 2008).

**STATEMENT OF THE ISSUES**

1. Did the trial court clearly err in granting summary judgment when it dismissed parents' claim of negligence against the State of Utah when a state agency failed to provide reunification services and encouraged termination of parental rights?

*Standard of Review:* This Court "review[s] the trial court's grant or denial of a motion for summary judgment for correctness and accord[s] no deference to the trial court's conclusion of law." *Parduhn v. Bennett*, 2002 UT 93, ¶5, 61 P.3d

982 (Utah 2002). Furthermore, in reviewing a summary judgment ruling, the Court “view[s] the facts and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party.” *Dowling v. Bullen*, 2004 UT 50, ¶7, 93 P.3d 915 (Utah 2004).

2. Did the trial court clearly err in granting summary judgment when it dismissed parents’ claims of breach of contract against the State of Utah when a state agency failed to provide a safe environment for, failed to properly supervise and monitor, and failed to allow therapist recommendations to the parents’ minor child, whom the State removed from the home?

*Standard of Review:* This Court “review[s] the trial court’s grant or denial of a motion for summary judgment for correctness and accord[s] no deference to the trial court’s conclusion of law.” *Parduhn v. Bennett*, 2002 UT 93, ¶5, 61 P.3d 982 (Utah 2002). Furthermore, in reviewing a summary judgment ruling, the Court “view[s] the facts and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party.” *Dowling v. Bullen*, 2004 UT 50, ¶7, 93 P.3d 915 (Utah 2004).

3. Did the trial court clearly err in granting summary judgment when it dismissed parents’ claims of breach of implied contract against the State of Utah when a state agency failed to provide reunification services and encouraged



termination of parental rights?

### **STATUTORY PROVISIONS AND RULES**

This Court has jurisdiction pursuant to Utah Code Ann. § 78A-4-103(2)(j).

The statutes and rules pertinent to this appeal are Utah Rules of Civil Procedure 54(b), and Utah Rules of Appellate Procedure 24(a)(9) and 33. The text of these provisions is included in the Addendum.

### **STATEMENT OF THE CASE**

In May 2007, Appellants Ryan and Lené Morford filed a complaint against the State of Utah, Division of Child and Family Services; State of Utah, Juvenile Justice Services; and Carolyn Nay alleging violations of Utah State law.

...

This case is an appeal from a final judgment of the Fourth District Court granting summary judgment dismissing Appellants' claims of negligence, breach of contract, and breach of implied contract against the State of Utah, Division of Child and Family Services.

## STATEMENT OF FACTS

In April 2002, Appellants Morfords' former foster child B.M., whom the Morfords adopted through the Division of Child and Family Services, was taken into the custody of the Division of Child and Family Services (hereinafter DCFS) when he and other youths were involved in an incident of sexual behavior. In June 2004, B.M. was placed in foster care with the Morfords. The Morfords are also the natural parents of a minor child, daughter H.M. When B.M. was placed in their home, the Morfords were only informed of the single instance of sexual misconduct and were further informed that B.M. did not pose a risk as a sexual offender. They were not informed of other instances of sexual misconduct that, in fact, existed. B.M. was in foster care with the Morfords from July 2004 until October 2005, when the Morfords adopted B.M. In the course of adoption, the Morfords were required to sign foster care and adoptive agreements with the State of Utah.

In February 2005, J.G. was also placed in the Morfords' home, and DCFS failed to report that J.G. had a significant history of sexual abuse and sexual misconduct. In November 2005, the Morfords caught J.G. in the act of sexually abusing their minor daughter, H.M. They later learned that B.M. was also

involved in sexually abusing H.M. B.M. was removed from the Morfords' home on December 1, 2005 and placed in Slate Canyon Juvenile Detention Center.

The Utah Juvenile Court subsequently signed orders and the parties entered into service plans that required DCFS to provide reunification services to the Morfords, which DCFS failed to do. DCFS also provided false information to the Morfords, asserting that B.M. did not desire to return to their home when he had, in fact, expressed a desire to return to their home. DCFS caseworker Tim McOmber admitted in open court that the State of Utah failed to provide reunification services.

Throughout the course of B.M.'s treatment, DCFS failed to keep the Morfords apprised of B.M.'s treatment and misrepresented the status of his treatment. Based on the representations made by DCFS and pressure placed upon them by DCFS, the Morfords relinquished their parental rights to B.M.

### **SUMMARY OF ARGUMENT**

In this matter the trial court erred in granting summary judgment to the State of Utah because DCFS negligently violated its duties to the Morfords by failing to provide reunification services and by actively encouraging the Morfords to terminate their parental rights.

DCFS has a duty to the Morfords to provide reunification services. DCFS determined that the proper permanency goal for B.M. was reunification of B.M. with the Morfords. The juvenile court affirmed DCFS' decision. Essentially the State is arguing that they are allowed to remove a child from the home of the parents, who committed no wrongdoing, and provide no assistance to reunify the child with his parents. Furthermore, even if the State of Utah was not required to provide reunification services, the goal of the placement was still to return B.M. to his parents' home. DCFS acted contrary to this goal by misleading the Morfords.

The Morfords had a protected liberty interest in their relationship with B.M. "The Fourteenth Amendment provides that no State shall 'deprive any person of life, liberty, or property, without due process of law.'" *Troxel v. Granville*, 530 U.S. 57, 65 (2000). This protected liberty interest created a duty between the State of Utah and the Morfords. The State of Utah violated this duty to the Morfords when they failed to provide reunification services and actively encouraged the Morfords to relinquish their parental rights.

The State of Utah, DCFS entered into Service Plans and Adoption agreements with the Morfords. By failing to provide B.M. with adequate

treatment, failing to keep the Morfords involved in B.M.'s treatment, and failing to provide reunification services in accordance with the DCFS Service Plans the State of Utah breached the above-mentioned contracts. As there were contracts between the State of Utah and the Morfords, implied contractual duties were created by the contracts between the parties.

### ARGUMENT

This Court should reverse the trial court's findings of facts and conclusions of law granting summary judgment to the State of Utah and find instead that DCFS was negligent and breached both its express and implied contracts with the Morfords.

- I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE STATE OF UTAH BECAUSE DCFS NEGLIGENTLY VIOLATED ITS DUTIES TO THE MORFORDS BY FAILING TO PROVIDE REUNIFICATION SERVICES AND BY ENCOURAGING TERMINATION OF THE MORFORDS' PARENTAL RIGHTS.

Summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Utah Rules of Civil Procedure 56(c). In

deciding a motion for summary judgment the Court “view[s] the facts and all reasonable interferences in the light most favorable to the non-moving party.”

*Dowling v. Bullen*, 2004 UT 50, ¶ 7, 94 P.3d 915. Appellants Morfords’ negligence claim presents genuine issues of material fact and summary judgment was not appropriate. This Court should find that DCFS acted negligently.

A . DCFS had a duty to the Morfords to Provide Reunification Services.

DCFS was negligent when it failed to provide the Morfords with reunification services with B.M. Pursuant to Utah Code 78A-6-312(2), “Whenever the court orders continued removal . . . and that the minor remain in the custody of the division, the court shall first: (A) establish a permanency goal for the minor . . . [and] determine whether, in view of the permanency goal, reunification services are appropriate for the minor and the minor’s family.”

In this matter, DCFS determined that the proper permanency goal for B.M. was reunification of B.M. with the Morfords. The juvenile court affirmed DCFS’ decision. *See* Out of Home – Foster Care Quarterly Progress Summary Court Report, “Exhibit A.” While reunification services may be a “gratuity provided to parents,” it is the decision of the court to determine if those services are to be provided and if reunification is the goal of the placement. In accordance with

Utah Code 78A-6-312(2), the juvenile court never terminated reunification services, nor otherwise stated that the Morfords were not entitled to reunification. In fact, DCFS acknowledged the need for reunification as the permanency goal for B.M. Following the juvenile court's determination, DCFS owed a duty to the Morfords because the juvenile court did not challenge the permanency goal or otherwise state that reunification was not necessary in this case. DCFS, therefore, failed its duty to provide reunification to B.M. and the Morfords.

In this matter, essentially the State is arguing that they are allowed to remove a child from the home of the parents, who committed no wrongdoing, and provide no assistance to reunify the child with his parents. Furthermore, even if the State of Utah was not required to provide reunification services, the goal of the placement was still to return B.M. to his parents' home. DCFS acted contrary to this goal by misleading the Morfords. DCFS negligently misrepresented the facts when it informed the Morfords that B.M. did not want to return to his parents' home; B.M. had, in fact, stated that he *did* desire to return to live with the Morfords. DCFS' negligent misrepresentations induced the Morfords to relinquish their parental rights to B.M. The State of Utah had a legal

duty to the parents and it negligently failed to uphold its duty under the law. As such, summary judgment was not appropriate as there is a genuine issue of material fact, and this Court should find that DCFS was negligent.

B. The State of Utah Waived its Sovereign Immunity and No Exception to the State's Waiver Applies in this Matter.

The State of Utah incorrectly claims that it is immune from suit because the injuries have arisen as a result of "incarceration of any person." The injuries of the Morfords do not "arise out of or in connection with" B.M.'s incarceration for his acts. The injuries arise out of the State of Utah's negligence in failing to support the Morfords' right to reunification with their child. The injuries did not arise "but for" B.M.'s confinement. The confinement did not cause the Morfords to relinquish their rights to B.M. The Morfords relinquished their rights to B.M. as a result of misrepresentations of the State of Utah regarding B.M.'s desires for reunification and other negligence of the State of Utah. The State of Utah showed complete disregard for the Morfords' parental rights, even to the extent of Timothy McOmber, an agent for the State, stated at the hearing to relinquish the Morfords' parental rights that DCFS had not provided the Morfords any support toward reunification. Further instances of the State's failures are detailed in the



Appellants' Complaint. *See* Complaint Paragraph 65. Additionally, other failures of the State of Utah, not related to B.M.'s incarceration, caused damages to the Morfords in this matter.

As the injuries did not arise "but for" the incarceration of B.M., a genuine issue of material fact exists as to the cause of the injuries in this matter. Therefore, summary judgment was not appropriate.

C. The Morfords' Constitutionally Protected Family Interest in their Child Created a Duty for the State of Utah.

The Morfords had a protected liberty interest in their relationship with B.M. "The Fourteenth Amendment provides that no State shall 'deprive any person of life, liberty, or property, without due process of law.'" *Troxel v. Granville*, 530 U.S. 57, 65 (2000). The Supreme Court held that the "liberty interest . . . of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Id.* Utah Courts have affirmed that parents have a fundamental liberty interest in the custody, care, and control of their children. The Utah Appellate Court, for example, held that "Of course, parents have a fundamental liberty interest in maintaining family relationships with their children." *In re J.D.M.*, 808 P.2d 1122,

1126 (Utah App. 1991). The Courts have also held that “the right to raise one’s children is a fundamental liberty interest protected by the Fourteenth Amendment to the United States Constitution.” *Campbell v. Campbell*, 896 P.2d 635, 641 (Utah App. 1995).

The State of Utah is essentially arguing that the Morfords can have their child removed by the State of Utah, due to no fault or wrongdoing of the Morfords, and the State can act in a manner that is contrary to the Morfords’ parental rights and provide no services to reunify the family. This proposal is certainly contrary to the parents’ constitutionally protected liberty interest in their children. In fact, the State of Utah did not just fail to provide reunification services—the State of Utah actually encouraged the Morfords to relinquish their parental rights and persuaded the Morfords to do so by misleading them to believe that B.M. did not want to return to their home. The State of Utah showed complete disregard for the Morfords’ parental rights by failing to keep them informed of B.M.’s treatment and progress, failing to respect the wishes of the Morfords for the treatment of their son, and failing in several other respects as alleged in the Morfords’ Complaint. The State of Utah had a duty to protect the liberty interest of the Morfords and failed in that duty.

The State of Utah, DCFS had a legal and constitutional duty arising out of both court order and existing parental rights to provide the Morfords with reunification services and to allow the Morfords the custody, care, and control of B.M. Therefore, the State of Utah should be held liable for negligence.

II. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE STATE OF UTAH BECAUSE DCFS ENTERED INTO AND BREACHED MULTIPLE CONTRACTS WITH THE APPELLANTS.

The State of Utah, DCFS entered into Service Plans and Adoption agreements with the Morfords. By failing to provide B.M. with adequate treatment, failing to keep the Morfords involved in B.M.'s treatment, and failing to provide reunification services in accordance with the DCFS Service Plans the State of Utah breached the above-mentioned contracts. Additionally, by failing to inform the Morfords about B.M.'s sexual history and by interfering with the Morfords' parental rights, DCFS violated the Adoption Agreement between DCFS and the Morfords.

A. The State of Utah, DCFS Breached the DCFS Service Plans for B.M.

The DCFS Service Plans placed responsibility on the State to cooperate with the Morfords to provide reunification services. Following B.M.'s removal

from the Morfords' home, the State of Utah, DCFS entered into the following contractual agreements with the Morfords as provided in B.M.'s Service Plan:

1. The State undertook the duty to place B.M. in an "adequately supervised, safe and secure . . . treatment facility." (Complaint, paragraph 57).
2. The State undertook the duty to use its "best efforts to return [B.M.] to the [Appellants]' home following his treatment, and to involve the Morfords by giving them regular and accurate status reports of [B.M.'s] treatment." (citation to complaint)
3. The State undertook the duty to "promptly notify [the Morfords] of any incident or injury during [B.M.'s] treatment plan." (Complaint, paragraph 94).

The state breached each of these duties when it failed to provide a safe environment for B.M. after his removal, failed to notify the Appellants of his treatment after the removal, failed to properly supervise and monitor him after the removal, and failed to allow his therapists' recommendations after the removal.

The Service Plans entered into in this matter state that the goal of the plan was reunification of B.M. with the Morfords. As such, the State of Utah entered into a contractual agreement, and their intent was to enter into an agreement to support the reunification of the Morfords and B.M. While the State of Utah may not have a statutory duty towards reunification, the State of Utah contracted

with the Morfords to provide reunification services. In direct violation of the agreement entered into between the parties, the State of Utah failed to provide any services and it even affirmatively persuaded the Morfords to relinquish their parental rights through misrepresentation. In fact, Tim McOmber even acknowledged to the Court that he failed to provide services to help the goal of reunification.

The State recognizes that it has several responsibilities relating to the removal of a child from a home and reunification efforts. It asserts, however, that to have reunified the Morfords with B.M. would be to violate Utah law. The State, however, has misinterpreted the implications of Title 62A. Utah Code Ann. § 62A-4a-203(1)(a) & (b) provides that the State must “make reasonable efforts to make it possible for a child in substitute care to return to the child’s home,” *that* child’s safety and protection being the “paramount concern.” 62A-4a-203(2). The statute further provides that “in cases where sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, the state has no duty to make reasonable efforts to, in any way, attempt to: (a) maintain a child in the child’s home; (b) provide reunification services; or (c) *rehabilitate the offending parent or parents*. Utah Code Ann. § 62A-4a-203 (4) (emphasis added). Finally,

subsection (5) states that “Nothing in Subsection (4) exempts the division from providing court ordered services.” Utah Code Ann. § 62A-4a-203(5).

Reunification was the goal created by DCFS and then ordered by the juvenile court. The State asserts reunifying B.M. with the Morfords would be directly contrary to the statute because it would be returning to B.M. to a place where sexual abuse occurred. However, the “child” referred to in the statute’s terms is a sexually abused victim, not a perpetrator; the statute assumes “a parent or parents” as perpetrator(s) Utah Code Ann. § 62A-4a-203. Because the juvenile court ordered reunification, it is clear that the court did not see permanent removal from the home as “necessary to protect” B.M. because B.M. was not being reunified with abusive parents. Furthermore, the statute provides that if ordered by the court, “Nothing in Subsection (4) exempts the division” from providing reunification. Utah Code Ann. § 62A-4a-203(5). Therefore, the State both could have and was legally required to provide reunification services.

This Court, in viewing the facts and all reasonable inferences in light most favorable to the Plaintiffs/Appellants, should find that the DCFS Service Plans created an enforceable contract, which the State of Utah breached. Furthermore,

as there was a contract between the parties, the contract gives rise to the implied contract theory.

The State argues that the Morfords cannot rely on a contractual duty to reunify when they terminated the contract voluntarily, in court, with representation by counsel. However, the Morfords relinquishment of parental rights was motivated by the State of Utah's misrepresentations about the progress of B.M. The State of Utah also misrepresented that B.M. did not want to return to live with the Morfords which largely motivated their decision to terminate their parental rights. The State of Utah's dilatory conduct was the reason that the Plaintiffs terminated their rights. The State of Utah is arguing that it can encourage the parties to terminate using false information and that the termination would relieve them of any contractual duties that they may have had.

B. The State of Utah Breached the Adoption Contracts both Prior to and After the Adoption.

It is significant to note that in this matter, the State of Utah failed to inform the Morfords of B.M.'s sexual history prior to the adoption. Said failure by the State of Utah constitutes a breach of contract of the Adoptive Foster Agreement,

Adoption Agreement, the Adoptive Parent Statement of Disclosure, and other contracts entered into by the parties (hereinafter "Adoption Contracts").

Furthermore, the State of Utah had an obligation under the adoption contracts to not interfere with the parental rights of the Morfords. The State of Utah interfered with the Morfords' parental rights by refusing to provide any services towards reunification. The State of Utah also improperly manipulated the Morfords into relinquishing their parental rights. As such, the State of Utah did breach the agreements entered with the Morfords.

Additionally, the State of Utah has continuing duties under the adoption contract including, but not limited to, providing required subsidy payments to the Morfords. The completion of the adoption does not relieve the State of Utah from all duties under the adoption contract. The State of Utah breached these additional duties when they improperly manipulated the Morfords into relinquishing their parental rights.

### III. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE STATE OF UTAH BECAUSE DCFS BREACHED IMPLIED CONTRACTS WITH THE APPELLANTS.

The trial Court dismissed the claims for implied contract on the basis that there was no underlying contract and that, therefore, as a matter of law, there



cannot be any duties that arise under an implied contract. As discussed previously herein, there is a genuine issue of material fact as to whether or not there was a contract between the Morfords and the State of Utah. Specifically, the adoptive services contract and the service plans created a contract between the Morfords and the State of Utah. If there is an underlying written contract, it will give rise to implied contractual duties. It Court erred in dismissing the implied contract claims because there is a genuine issue of material fact as to whether there is a contract between the Morfords and the State of Utah.

### CONCLUSION

For the foregoing reasons, the Court should reverse the trial court's grant of summary judgment on the issues of negligence, breach of contract, and breach of implied contract.

Respectfully submitted March \_\_ 2010.

---

RON D. WILKINSON  
Counsel for Appellants

# CERTIFICATE OF SERVICE



## ADDENDUM

### Utah Rule of Civil Procedure 54(b)

Rule 54. Judgments; costs.

(b) Judgment upon multiple claims and/or involving multiple parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross claim, or third party claim, and/or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination by the court that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Utah Rule of Appellate Procedure 24(a)(9)

(a)(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.