

1986

State of Utah, In the Interest of C.Y., W.C.Y., D.J.Y., A.Y. v. William G. Yates : Guardian Brief

Utah Court of Appeals

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David L. Wilkinson; attorney general; Diane W. Wilkins; assistant attorney general; attorneys for respondent.

Louisa L. Baker; Utah Legal Services; attorney for appellant.

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

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| STATE OF UTAH, In the Interest | : | |
| of C.Y., W.C.Y., D.J.Y., A.Y., | : | |
| | : | Case No. 860293-CA |
| Respondent, | : | |
| | : | |
| vs. | : | |
| | : | |
| WILIAM G. YATES, | : | Priority 7 |
| | : | |
| Appellant. | : | |

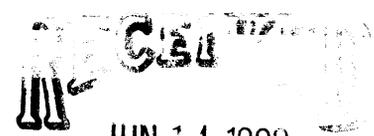
BRIEF OF GUARDIAN AD LITEM

APPEAL OF A FINAL JUDGMENT IN THE SECOND
DISTRICT JUVENILE COURT, SALT LAKE COUNTY,
STATE OF UTAH, THE HONORABLE SHARON P.
MCCULLY, PRESIDING.

DAVID E. LITTLEFIELD
ANN L. WASSERMANN
Guardian Ad Litem
426 South 500 East
Salt Lake City, Utah 84102

DAVID L. WILKINSON
Attorney General
DIANE W. WILKINS
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Attorneys for Respondent

LOUISA L. BAKER
Utah Legal Services
Attorneys for Appellant
124 South Fourth East
Salt Lake City, Utah 84111



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426 South 500 East
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Attorney General
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Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Attorneys for Respondent

LOUISA L. BAKER
Utah Legal Services
Attorneys for Appellant
124 South Fourth East
Salt Lake City, Utah 84111

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BRIEF OF GUARDIAN AD LITEM

SUMMARY OF ARGUMENT

The Guardian Ad Litem supports the decision of the Juvenile Court Judge in terminating the parental rights of William G. Yates with respect to his children. The Guardian Ad Litem supports the position of the State in this matter and agrees with the points set forth in Respondent's Brief previously filed in this matter. The best interests of the children require that the Order of the Juvenile Court be affirmed.

ARGUMENT

THE BEST INTERESTS OF THE CHILDREN WILL BE SERVED BY
TERMINATING THE PARENTAL RIGHTS OF THE APPELLANT.

The Juvenile Court, the Honorable Sharon P. McCully presiding, after six days of trial on the State's Petition, entered an Order terminating the parental rights of both natural parents. Only the father has appealed. The Court entered Findings of Fact on August 19, 1986 which are supported by clear, convincing and unequivocal evidence which was adduced at the time of trial. Appellant contends that the Court below erred in the manner of taking notice of the Appellant's homicide conviction. Even if the Juvenile Court erred in the method of taking notice of the Appellant's plea of guilty, conviction, and incarceration for the homicide of the natural mother's paramour, the decision is amply supported by competent evidence presented at trial in support of the termination. Such action constitutes harmless error at the most.

Some time prior to the filing of the Petition for Termination of Parental Rights, the Juvenile Court found the children to be neglected due to the habits of parents in the following particulars:

1. The Court finds by clear and convincing evidence that Cherilee Yates has been subjected to acts of sexual abuse, including vaginal fondling, by her father, William G. Yates. The most recent episode of said fondling occurred on or around March 14, 1984, and there had been several earlier episodes.

2. Cherilee Yates has been, in the past, sexually abused by her grandfather, who was subsequently allowed in the home for an extended period of time by the parents. The parents, despite previous Court findings, refuse to acknowledge any abuse by the grandfather or take steps to protect Cherilee or other children from further abuse.

3. Both parents continue to deny that any sexual abuse of Cherilee, including abuse by the father, took place. Such denials are indicative of their lack of understanding of the conditions and needs of their children, and present a danger to their children of future and continued abuse. The above-named children suffer from significant emotional problems attributable to the lack of emotional stability and parenting ability of the parents.

4. The above-named children have previously been placed outside of the home due to the lack of proper care by the parents, emotional instability of the parents, and marital discord between the parents. Said problems continue to exist within the home, placing the children at risk of further neglect, abuse, or lack of stimulation and nurturance.

5. Both parents suffer from emotional problems which render them presently incapable of properly caring for the above-named children. Both parents exhibit a lack of understanding of their children's problems, particularly Cherilee's condition and their role in creating said condition. Because of said lack of understanding, both parents are unable to properly care for the children.
(Order dated January 28, 1985.)

In its Order Terminating Parental Rights, the Court found each child to be damaged as a result of this neglect and mistreatment at the hands of those charged legally and morally with the duty to protect them:

Cherilee has been hospitalized at the Utah State Hospital for a substantial period of time since 1984. She has been sexually abused by her father and grandfather. She has been diagnosed as psychotic and neurologically impaired. She is severely emotionally disturbed and has a pervasive developmental disorder. There is absolutely no bonding with her parents. The sexual abuse she suffered and her chaotic family situation are seen as the two main contributing factors in her episodic progress and her extended stay at the State Hospital . . .

Cory also suffers from serious emotional problems which can be related directly to his instable and chaotic home life and the lack of appropriate care and nurturance. He has demonstrated aggressive behavior and sexual acting out which is a learned behavior for a child so young. He is seen as sad and lonely and in need of long term therapy.

Joseph Daron is seriously disturbed and very vulnerable. He is developmentally delayed, unhappy, lonely, feels dumb and that he does not belong. He tried to deal with life through fantasizing and avoidance. His social-emotional functioning is poor and he has difficulty coping.

Amanda is the least affected psychologically by her home environment and her parents' conduct or condition because she is so young and has had little time in the actual care and custody of her natural parents. However, experts testified that she too is in need of therapy. She is preoccupied with sexual matters, making references to "dick and pussy" and "humping" and simulating sexual acts with one of her brothers. Amanda is now five years old, and clearly her sexual behavior is learned. She also exhibits a lack of proper stimulation, language delay, and depression. (Memorandum Decision dated August 19, 1986 at 15 and 15.)

As a result of the severely disabled condition of the children and in an attempt to meet the requirements of law and

rehabilitate the family situation, the Utah State Division of Family Services developed treatment plans to offer services to the family. The Juvenile Court found that the Appellant's "actual progress toward resolving the problems which originally brought this family before the Court was minimal at best."

In State of Utah, in the Interest of J.R.T. v. Timerperly, 76 Utah Adv. Rep. 19, (1988), this Court noted that:

(A)lthough a best interest finding is no longer specifically required by statute, the best interest of the child remains a principal consideration in deciding whether to terminate parental rights.

The Court continued:

The second prong of the objective abandonment test, whether the parental disregard led to the destruction of the parent-child relationship, satisfies the need separately to consider the best interest of the child. If the parent-child relationship has been destroyed by the parent's conduct, or lack of conduct, it is usually in the best interest of the child to terminate that relationship and allow the child an opportunity to establish a meaningful relationship with loving, responsible parents. 76 Utah Adv. Rep. 19, 21-22.

That is exactly the situation in the instant case.

There is no reasonable basis for concluding that the children's child-parent relationship with the Appellant is worth preserving or that they will gain any benefit from a continued legal relationship with their father. The record is filled with instances of parental neglect and irresponsibility. These children deserve

the right to family relationships with recognize their rights and provide nurturing and loving environments.

CONCLUSION

For the foregoing reasons, this Guardian Ad Litem respectfully submits that this Court should affirm the Order of the Juvenile Court permanently terminating the parental rights of the Appellant to the minor children.

DATED this 14 day of June, 1988.



DAVID E. LITTLEFIELD
Guardian Ad Litem

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed, postage prepaid, four (4) true and exact copies of the above and foregoing Brief of the Guardian Ad Litem, to Louisa L. Baker, Utah Legal Services, 124 South Fourth East, Salt Lake City, Utah 84111 and to Sandra L. Sjogren, Assistant Attorney General, 236 State Capital, Salt Lake City, Utah 84114, this 14 day of June, 1988.



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