

2000

## Utah v. Davis : Petition for Rehearing

Utah Supreme Court

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David S. Dolowitz; Guardian Ad Litem.

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UTAH SUPREME COURT

BRIEF

14368 P.H.

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14 JUN 1977

BRIGHAM YOUNG UNIVERSITY  
J. Reuben School

STATE OF UTAH,  
in the interest of  
  
RICKY WINGER,  
  
GERALDINE M. DAVIS,  
  
Appellant.

\* \* \* \* \*

PETITION FOR REHEARING AND  
BRIEF IN SUPPORT OF PETITION FOR REHEARING

No. 14368

DAVID S. DOLOWITZ  
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Attorney for Petitioner-Appellant

FILED

DEC 27 1976

Clerk, Supreme Court, Utah

IN THE SUPREME COURT  
OF THE STATE OF UTAH

\* \* \* \* \*

STATE OF UTAH,                   )  
in the interest of               )  
                                  )  
RICKY WINGER,                    )  
                                  )  
GERALDINE M. DAVIS,             )  
                                  )  
Appellant.                        )

\* \* \* \* \*

PETITION FOR REHEARING AND  
BRIEF IN SUPPORT OF PETITION FOR REHEARING

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No. 14368

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

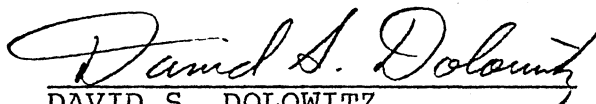
\* \* \* \* \*

STATE OF UTAH,	)	
in the interest of	)	
	)	PETITION FOR REHEARING
RICKY WINGER,	)	
	)	No. 14368
GERALDINE M. DAVIS,	)	
	)	
Appellant.	)	

\* \* \* \* \*

Ricky Winger, by and through his Guardian ad Litem, hereby submits the following Petition for Rehearing in the above-entitled matter on the grounds that the decision of this Court published on December 17, 1976, misconstrued §55-10-109, Utah Code Annotated, 1953, under the provisions of §55-10-63, Utah Code Annotated, 1953, in that it has condemned the above-named minor child to 16 years of foster care, thus denying said child a stable home and requiring the State to expend public monies for the support of said minor during said period of foster care.

DATED this 27 day of December, 1976.

  
DAVID S. DOLOWITZ  
Guardian ad Litem  
79 South State Street  
P. O. Box 11898  
Salt Lake City, Utah 84147  
Telephone: 532-1234

IN THE SUPREME COURT  
OF THE STATE OF UTAH

\* \* \* \* \*

STATE OF UTAH,	)	
in the interest of	)	
	)	BRIEF IN SUPPORT OF
RICKY WINGER,	)	PETITION FOR REHEARING
	)	
GERALDINE M. DAVIS,	)	
	)	No. 14368
Appellant.	)	

\* \* \* \* \*

Guardian Ad Litem for the above-named juvenile having heretofore submitted a Petition for Rehearing in the above-entitled matter now hereby submits the following Brief in Support of said Petition.

THE DECISION OF THIS COURT AS HERETOFORE PUBLISHED IN THIS MATTER WHEREIN IT CONSTRUED AND APPLIED §55-10-109, UTAH CODE ANNOTATED, 1953, IS CONTRARY TO THE PROVISIONS OF §55-10-63, UTAH CODE ANNOTATED, 1953.

The purposes of the Juvenile Court Act are stated in §55-10-63, Utah Code Annotated, 1953.

"It is the purpose of this act to secure for each child coming before the juvenile court such care, guidance, and control, preferably in his own home, as will serve his welfare and the best interests of the state; to preserve and strengthen family ties whenever possible; to secure for any child who is removed from his home the care, guidance and discipline required to assist him to develop into a responsible citizen, to improve the conditions and home environment responsible for his delinquency; and, at the same time, to protect the community

and its individual citizens against juvenile violence and juvenile law breaking. To this end this act shall be liberally construed." (emphasis added)

The construction placed on §55-10-109 by the opinion of this Court dated December 17, 1976 in the above-entitled matter is directly contrary to this provision in the following particulars. Ricky Winger was placed in the temporary guardianship and custody of the Division of Family Services pursuant to an order of the Juvenile Court on May 1, 1974 and has been continued in that status since that date. The decision of this Court published on December 17, 1976 does not modify or change that situation as it was not before the Court in this appeal. The decision of this Court reversing the permanent deprivation has now put Ricky Winger in the situation where the Division of Family Services has determined, (slip opinion pages 3-4), that the appellant, Geraldine Davis, is not able to care for or meet the needs of her son. The fact that this Court construed §55-10-109, Utah Code Annotated, 1953, as it did in the opinion does not change the fact that it is the judgment of Ricky's guardian (Division of Family Services) that Mrs. Davis cannot care for him and they will not return him to her home. Since this Court has reversed the trial Court, he may not be placed in an adoptive home. He is thus condemned to remain in foster care during his minority. He cannot be adopted and he cannot be placed in his own home. His need for stability and permanent roots

is well documented. Beyond The Best Interests of the Child, Goldstein, Freud and Solnit Free Press, McMillian Publishing Company, New York, New York (1973). The December 17, 1976 decision of this Court has denied that stability to Ricky Winger.

While Ricky remains in foster care, he does so at the expense of the State of Utah which must pay for that care. This would not be true if he could be placed in an adoptive home.

Consequently, this Court has now construed §55-10-109, Utah Code Annotated, 1953, in such a way as to be contrary to the best interests of the child by denying him a stable home and, since the State must pay for Ricky's foster care, in a manner contrary to the best interests of the State of Utah. This is directly contrary to the stated purposes of the Juvenile Court Act as set out in §55-10-63, Utah Code Annotated, 1953.

#### CONCLUSION

This Court should require a further hearing in this matter to consider the impact on the juvenile of the interpretation of the facts and law made by this Court in its decision of December 17, 1976.

DATED this 27 day of December, 1976.



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CERTIFICATE OF MAILING

I hereby declare that I caused to be mailed a true and correct copy of the foregoing document, postage prepaid, this 27 day of December, 1976, to Dale R. Kent, Attorney for Petitioner-Appellant, at Suite 404 Boston Building, Salt Lake City, Utah, 84111; and to Paul M. Tinker, Assistant Attorney General, Attorney for Respondent, at 236 State Capitol Building, Salt Lake City, Utah, 84114.

  
DAVID S. DOLOWITZ



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