

1976

State of Utah in the interest of Baby Girl Marie v. Nadine Munoz : Brief of Appellant

Utah Supreme Court

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CASE NO. 252370 ¹⁴⁵⁹⁹

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JUL 12 1976

IN THE SUPREME COURT OF THE STATE OF UTAH

- - - - -

STATE OF UTAH, in the interest of:)	
)	
)	CASE NO. 252370
BABY GIRL MARIE,)	
)	
A Person Under Eighteen Years of Age)	

- - - - -

BRIEF OF APPELLANT

- - - - -

Appeal by Natural Mother From Judgment of the First District
Juvenile Court, Weber County, the Honorable Charles E. Bradford presiding.

- - - - -

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, in the interest of:)	
)	
BABY GIRL MARIE,)	CASE NO. 252370
)	
A Person Under Eighteen Years of Age)	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal by the natural mother from an Order and Judgment of the Juvenile Court entered on January 9, 1975, permanently depriving her of all parental rights in connection with her child, baby girl Marie; and from a decision of the Juvenile Court on May 4, 1976, refusing to vacate and set aside as null and void its order entered on January 9, 1975.

DISPOSITION IN LOWER COURT

The Juvenile Court, upon petition of the Utah Division of Family Services, found that the natural mother was unable to provide adequately for all the needs of said child and agreed that it was in the best interest of said child for parental rights to be terminated and for said child to be placed for adoption. On April 22, 1976, a hearing was held at which the Juvenile Court refused to vacate and set aside its Order of January 9, 1975.

RELIEF SOUGHT ON APPEAL

The appellant seeks to have the order of the Juvenile Court,

terminating the appellant's parental rights, set aside as null and void because it was entered beyond the dispositional power of the Juvenile Court under the particular circumstances of this case. Also, the appellant seeks reversal of the decision of the Juvenile Court, entered on May 4, 1976, refusing to vacate and set aside the Court's order of January 9, 1975.

STATEMENT OF FACTS

Appellant Nadine Munoz, on August 10, 1974, gave birth to a baby girl named Marie, when the appellant was sixteen (16) years of age. The natural mother's parents refused to permit her to bring the child home, so a temporary custody authorization was given by the appellant to the State of Utah, Division of Family Services (hereafter DFS) on the day the child was born. Appellant at no time wanted to give the baby up for adoption, but was receiving extreme pressure from her parents to do so and advice from the DFS Social Worker that she should give up her child for adoption.

An initial hearing was held on August 15, 1974, at which the baby girl was placed in the temporary custody of DFS because the juvenile-mother had not been permitted by her parents to bring the child home with her from the hospital. Another hearing was scheduled for August 22, 1974.

At the August 22, hearing the juvenile mother was advised by the Juvenile Court referee of her right to counsel. She desired to speak with counsel, so the matter was continued to October 3, 1974. The child was continued in the temporary custody of DFS. The October 3, arraignment was rescheduled for October 24, 1974, at which time counsel

for the appellant appeared before the court and entered a denial to a petition which had been filed by DFS alleging that the appellant did not want to, nor had she the capability to care for her child. At the October 24, arraignment, custody of the child was continued with DFS; the natural mother was granted twice-weekly visitation rights with her child which she exercised; and trial was set for November 6, 1974.

On November 6, the appellant appeared before the court, with counsel. The court was advised that the appellant wanted to keep her child but that her parents would not allow her to bring the child into their home. Thereafter, the court ordered that the child be placed temporarily with DFS, and set review in one year. This was done because the juvenile-mother was only sixteen (16) years of age and, at that time, unable to independently support the child. No evidence was introduced to the court that this problem would not rectify itself over time.

On December 2, 1974, DFS filed yet another new petition requesting permanent termination of the appellant's parental rights. A hearing was scheduled for January 9, 1975. No notice of this new proceeding was sent to counsel for the juvenile-mother. Summons by publication was entered for one John Doe, the unknown father of baby girl Marie.

The January 9, 1975, hearing was held, at which the juvenile-mother appeared in response to a summons. She was not represented by counsel, nor did her parents appear with her before the court, the parents having previously refused to have anything to do with the matter. The only other adult present was Ms. Marilyn Dale, the DFS Social Worker who had been advising the appellant to put her child up for adoption.

ever since the child was born. At this hearing the juvenile-mother agreed to the termination of her parental rights because her parents refused to permit her to bring the child into their home, which, of course, was where the appellant also lived at the time and indeed still lives.

For the next year the appellant made repeated visits to the Ogden DFS office, seeking knowledge about her child. No one would tell her anything -- not even that the child was adopted in August of 1975. Finally, the social worker told the appellant she should consult an attorney, which she did immediately in March of 1976. The result was the petition to the court, heard on April 22, 1976, requesting that the court, pursuant to Section 55-10-106, U.C.A. 1953, as amended, set aside and vacate its order entered on January 9, 1975, permanently terminating the appellant's parent-child relationship.

This appeal is taken from the decision of the court, entered after the April 22, 1976, hearing, denying the petition to vacate and set aside the January 9, 1975 termination order.

ARGUMENT

POINT 1

TERMINATION ACTIONS BEING EQUITY PROCEEDINGS OF THE HIGHEST DEGREE, THE SUPREME COURT MAY REVIEW THE EVIDENCE AND MAKE INDEPENDENT FINDINGS OF FACT.

This appeal has been brought because it is felt that the Juvenile Court exceeded its authority by making a disposition terminating the parental rights of the juvenile-mother without strictly constraining and following the substantive and procedural requirements of the

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termination statute. Section 55-10-109, U.C.A. 1953, as amended. This appeal, being an equity proceeding of the highest degree, In re Adoption of D _____, 122 Utah 525, 252 P.2d 223, at 226 (Utah 1953), the Court may review the evidence and make an independent determination of what the facts are. Walton v. Coffman, 110 Utah 1, 169 P.2d 97, at 103 (Utah 1946); and In re State of Utah, in the interest of Ronald Jennings and Donald Jennings, 20 Ut.2d 50, 432 P.2d 879 (Utah 1967).

It is submitted that the Juvenile Court, which is given a dispositional power to terminate parental rights under Section 55-10-100 (16), can only exercise that power "provided that the provisions of Section 55-10-109 are complied with." Section 55-10-100(16). And, in failing to follow statutory requirements, an order entered in derogation of the statute must be considered null and void as beyond the dispositional power of the Juvenile Court. It is further submitted that upon full examination of the facts and evidence of this case, that the order of the Juvenile Court, entered on January 9, 1973, was made without due regard for the high standard of care and diligence required in such cases; nor was it made with due regard for statutory requirements; nor with due regard for the rights of the juvenile-mother in seeing the natural parent-child relationship continued.

POINT II

THE JUVENILE COURT HAS THE INHERENT POWER TO, AT ANY TIME, MODIFY OR VACATE A PREVIOUSLY ENTERED ERRONEOUS ORDER, PURSUANT TO SECTION 55-10-106, U.C.A. 1953, AS AMENDED.

The petition to set aside and vacate the Juvenile Court's order of January 9, 1973, was brought under Section 55-10-106, U.C.A.

1953, as amended, requesting the Juvenile Court to vacate the termination order due to substantive and procedural mistakes in the January 9, 1975 hearing. Section 55-10-106 provides:

The Court may modify or set aside any order or decree made by it; but no modification of an order placing a child on probation shall be made upon an alleged violation of the terms of probation, until there has been a hearing after due notice to all persons concerned. Notice and a hearing shall also be required in any other case in which the effect of modifying or setting aside an order may be to deprive a parent of the legal custody of the child, or to make other change in legal custody.

In Utah it has been held that a Juvenile Court has the power to reopen a case and modify its order at any time after entry. Stoker v. Gowans, 45 Ut. 556, 147 P. 911 (Utah 1915). This decision was grounded upon Chapter 54, Laws of Utah 1913, which provided that:

All orders, judgments, and decrees so made and entered by the court shall be under its control, and may be modified, amended, or recalled at any time until the child reaches the age of twenty-one years.

The substance of this provision has been carried in the juvenile law of this state ever since (Utah L. 1-1-30, U.C.A. 1943, and Title 55-10-31, U.C.A. 1953) and constitutes the statutory forerunner of the present Section 55-10-106. Also, more recently in the case of Jacobs v. Public Welfare Commission, 7 Ut.2d 304, 323 P.2d 720, at 722 (Utah 1958) the Court stated:

That the Juvenile Court may modify its orders as to custody or other disposition of children properly under its jurisdiction because of delinquency, neglect, or dependency, where parents permanently have been dispossessed of their rights in such children seems undebatable.

It is submitted that not only does the Juvenile Court have

the inherent power under its governing statute

committed errors but that the Juvenile Court may do so under Section 55-19-106 at any time, even though the normal time in which an appeal would otherwise be allowed has lapsed.

POINT III

THE APPELLANT WAS NOT GUILTY OF LACHES IN PETITIONING THE JUVENILE COURT TO VACATE ITS PRIOR TERMINATION ORDER; THE PETITION TO THE JUVENILE COURT AND HER APPEAL FROM BOTH THE ORIGINAL TERMINATION ORDER AND THE JUVENILE COURT'S REFUSAL TO VACATE ITS ORIGINAL ORDER, ARE TIMELY.

Section 55-19-96, U.C.A. 1953, as amended, provides that in circumstances in which a party was not represented by counsel, the court "shall inform them at the conclusion of the proceedings that they have the right to appeal." (See also Rule 26, UJCRPP 1974). The Juvenile Court in its memorandum decision (Paragraph 7, Memorandum Decision, May 4, 1976) acknowledged that no such advice of the right to appeal was given to this juvenile-mother, appellant herein. However, the court went on to say that the juvenile-mother was guilty of laches in seeking to retain the custody of her child by waiting over a year to do so, during which year the child was adopted. Laches, however, is not applicable to the circumstances of this case.

Laches means that a party was aware of and sat upon her legal right or rights with knowledge of the existence of these rights or rights. It is well settled that laches cannot be imputed to one who was ignorant of the facts and for that reason failed to assert his right. Openshaw v. Openshaw, 105 Ut. 574, 144 P.2d 528, at 531 (Utah 1944); and Japantool Brothers Enterprises v. Sugarhouse Shopping

Center Associates, 535 P.2d 1256, (Utah 1975), at 1260 citing Archambault v. Sprouse, 215 S.C. 336, 55 S.E.2d 70, 12 A.L.R.2d 399 (1949).

Indeed it has been held that an unreasonable length of time in asserting one's legal rights or duties to which laches might otherwise apply, does not start to run until knowledge of one's legal rights or duties is shown to exist. Stephan et al v. Equitable Savings and Loan Association, 522 P.2d 478, at 490 (Sup. Ct. Oreg. 1974). In this particular situation, this was not the case. The court specifically stated that the appellant was not made aware of her right to appeal, and one can hardly expect an inexperienced sixteen (16) year old juvenile-mother, in the aftermath of such a traumatic experience to be aware of or even suspect the various technical points of the law.

Boruff v. United States, 310 F.2d 918 (5th Cir. 1962), a criminal case, provides an analogous situation. In that case the United States Court of Appeals for the 5th Circuit held that the time period in which an appeal of a conviction must be taken did not begin to run until the defendant was informed of his right to appeal, where the defendant had not been informed by the trial court that he had this right. The case here at issue involved a young, unsophisticated girl, acting under great stress, not represented by counsel nor informed by the court of her right to appeal at the conclusion of the hearing. The facts of this case certainly justify a re-application of that ruling. This is especially true when Section 55-10-96, U.C.A. 1953, as amended, and Rule 26 of the Juvenile Court Rules of Practice and Procedure specifically direct the judge at the end of the hearing to inform a party, unrepresented by counsel, of the right to appeal. It is submitted that

the petition to the Juvenile Court, requesting the setting aside of the termination order, was proper and timely whether thought of as either in the nature of a prelude to an appeal or as a request to the Juvenile Court for vacation of its January 9, 1975, order under its inherent power granted by Section 55-10-106, for the very reason that the Juvenile Court failed to fulfill its statutory duty under Section 55-10-96.

POINT IV

ANALYSIS OF THE TERMINATION STATUTE, SECTION 55-10-109 U.C.A. 1953, AS AMENDED.

Section 55-10-109(1) U.C.A. 1953, as amended, does not grant to the Juvenile Court a general authorization to terminate a parent's parental relationship with her child whenever the court suspects that a child might be afforded a better life with a new set of parents. Rather, the power granted to the court is a special, limited, dispositional power to be exercised only when the court finds, according to Section 55-1-104, that good cause exist from evidence presented to the court that the parent "are either generally unfit or incompetent to care for the child, or that the parent has expressed the desire to relinquish parental rights as shown "by clear and convincing evidence of intention to give up parental rights -- something almost akin to proof beyond a reasonable doubt." State of Utah, In the Interest of Pitts, 535 P.2d 1241, at 1248 (Utah 1975). Further, Section 55-10-109 contains rather specific procedural safeguards which must be met to assure that the parent fully and adequately has an understanding of the termination proceeding through access to legal counsel. The advice of right to counsel is a duty placed upon the court by Section 55-10-109(2). It is

asserted that when the record of a termination proceeding wholly fails to reveal such advice having been given, that this constitutes reversible error in and of itself. Unless each and every applicable provision of Section 55-10-109 is fully and completely satisfied, a disposition of termination cannot be permitted to stand. "Children are not realty and rights pertaining to them must be handled with care and proper procedure." State of Utah in the interest of Pitts, supra, at 1248.

Section 55-10-109 specifies only four circumstances under which a Juvenile Court may properly terminate the parental relationship and thereby overcome the very strong presumption in the law that a child is better off with its natural mother, D _____ P _____ v. Social Services, 19 Ut.2d 311, 431 P.2d 547 (Utah 1967). Under Section 55-10-109(1)(a) the court may decree termination when it finds "That the parent or parents are unfit or incompetent by reason of conduct or condition seriously detrimental to the child." This paragraph of the statute contemplates situations where a parent, through his or her own conduct causes conditions seriously detrimental to the child. Examples of the application of this paragraph have included where the mother was mentally unstable and essentially neglected her children altogether, In re State of Utah, In the Interest of Ronald Jennings and Donald Jennings, 20 Ut.2d 50, 432 P.2d 879 (Utah 1967); where a father killed his wife in front of his children, In re State of Utah, In the Interest of Robin D. Mullin and Kelley Lee Mullin, 29 Ut.2d 376, 510 P.2d 531 (Utah 1973); where the mother of the children lacked the necessary skills to supervise and train her children, coupled with poor housekeeping standards and very low moral standards of the mother, State of Utah, in the interest of L.G.

532 P.2d 997 (Utah 1975); and in other instances where the acts of the parents themselves are seriously detrimental to the welfare of the child, In re State of Utah, in the interest of Inez Pilling et al v. Donna Lance, 23 Ut.2d 407, 464 P.2d 395 (Utah 1970). The import of this paragraph of the statute is aimed at situations or conditions which are directly attributable to the actions or lack of actions on the part of the parents themselves. This paragraph of the statute is not directed at the situation of a sixteen (16) year old juvenile-mother, whose parents refuse to allow her to bring her child home. It is not aimed at situations where, as the December 2, 1978, petition for termination to the Juvenile Court alleged, the juvenile mother "through no fault" of her own was unable to temporarily care for her child. It is not meant to encompass situations where an otherwise fit and proper juvenile-mother was not permitted to bring her child home and no clear and convincing evidence was presented to the court that, given a little time, the home situation of the petitioner would not have corrected itself, which was indeed what happened in this particular case. This court has held:

Deprivation of the parents' custody of their children is a drastic remedy which should be resorted to only in extreme cases and when it is manifest that the home itself cannot or will not correct the evils which exist Inez Pilling et al v. Donna Lance, supra, at 397.

Section 55-10-109(1)(b) and (c) contemplate two of the remaining three circumstances whereby a Juvenile Court may terminate a parent-child relationship. They encompass circumstances where a parent has either abandoned a child or refused to care for the child after a trial period with the child in the home. These two paragraphs of the statute are not at issue in this matter nor material to the discussion herein

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and will not be discussed further.

The fourth, and last, circumstance wherein a Juvenile Court may assume the dispositional power to terminate a parent-child relationship is covered by Section 55-10-109(5) which specifies:

The parent-child relationship may be terminated upon voluntary petition of one or both parents if the court finds that such termination is in the best interest of the parent and the child. Such termination with respect to one parent does not affect the rights of the other parent.

This portion of the statute contemplates a situation whereby a parent or parents come voluntarily to the court and say, "Here is my child. I don't want it (or can't care for it) any more. Terminate my parental rights and find a home for the child." The voluntary nature of such an occurrence is preserved by the requirement in the statute that the parent perform an affirmative act demonstrating the desire for such a court disposition, by voluntarily petitioning the court for termination. This is a two-step process. First, the parent must affirmatively, and voluntarily request the termination. Secondly, the court must make a determination, from the evidence presented, and entered in it, that such a disposition would be in the interest of both the parent and the child.

Also, Section 55-10-109(6) specifically states that such a disposition on the part of the Juvenile Court only has the effect of terminating the rights of the parent or parents who personally and voluntarily appear before the court and request such a disposition. It specifically denies to the Juvenile Court the power to terminate the parental rights of a parent who does not voluntarily petition and appear personally before the court. Under such a proposal all dispositional power,
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it is clear that the parental rights of a father, whose name the petitioner chose not to reveal, could not be terminated upon publication of a notice of hearing in a newspaper. The Juvenile Court cannot hang a termination on both pegs; either the court terminates the relationship for cause, or does so upon a voluntary petition. It should not be permitted to terminate the rights of a parent who appears personally and voluntarily before the court on a voluntary petition, and at the same hearing attempt to terminate, for cause, the parent-child relationship of the non-appearing parent in the same proceeding. The processes are separate and distinct, requiring different evidence on both points. To allow otherwise would permit an unintended circumvention of the statute to occur.

POINT V

THE APPELLANT WAS NOT INFORMED OF AND WAS THEREBY DENIED HER RIGHT TO COUNSEL.

A hearing to terminate parental rights in a child is a most serious matter and should only be undertaken in extreme cases. That this type of hearing is quite serious when an adult parent's rights are sought to be terminated, goes without saying. However, when the parental rights of a juvenile-mother are sought to be terminated by the court, the duty of care and the necessity to follow proper procedure rises to a scale unprecedented even in adult cases. That this is especially true when parental rights of a juvenile-mother are sought to be terminated, in the absence of counsel for the juvenile-mother, simply cannot be denied.

the legislature acknowledged, and expressed a concern for, the rights of juveniles to adequate representation by counsel in all general juvenile court proceedings. However, Section 55-10-109(2) transfers the general to the specific. In each and every termination proceeding the court has the mandatory duty to inform the parties of their right to counsel. (See also Rule 33, UJCRPP 1974). In this particular case, the record of the January 9, 1975 termination hearing wholly fails to disclose any such advice being given by the court. The record discloses that the Juvenile Court merely began the hearing by reading the petition that had been filed with the court (Tr. 1, January 9, 1975). The record discloses that only the juvenile-mother, a Ms Marilyn Dale of DFS, and Ms Margaret Peterson of the court probation office appeared before the court on January 9, 1975. (Findings of Fact and Decree, January 9, 1975). The record discloses that when Ms Marilyn Dale of DFS made reference to representation by counsel at prior proceedings, the court did not even question the juvenile-mother as to the use of counsel at the January 9, 1975 hearing (Tr. 2, January 9, 1975). The record wholly fails to show that notice of the January 9, 1975 hearing was given to anyone other than the juvenile-mother.

In the memorandum decision of the court, issued after the April 22, 1976 hearing, the court indicated (Paragraph 5, Memorandum Decision, May 4, 1976) that the court's recollection was refreshed that the mother had been advised of her right to counsel prior to activation of the recorder. It is submitted that there is error here on two grounds. First, the record which was made of the hearing does not disclose any advice of the right to counsel having been given; nor does a

logical reading of the transcript of the January 9, 1975 hearing reveal
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convey the impression that such advice was given or that the recorder was inadvertently turned on late, after the hearing had commenced. Secondly, when discussion took place upon this issue at the April 22, 1976 hearing, the Court requested evidence from Mr. Jones of the prosecuting attorney's office (Tr. 11, April 22, 1976) as to whether or not he recalled a discussion prior to turning on the recorder. During this time the juvenile-mother was shaking her head in disagreement to the content of the court's discussion (Tr. 12, April 22, 1976) yet the court refused to allow testimony from the juvenile-mother herself as to whether or not she was advised of her right to counsel (Tr. 14, April 22, 1976). It is asserted that this was an abuse of the discretionary power of the court. Since evidence was heard from the County Attorney, the juvenile-mother should properly have been allowed to testify in rebuttal, as this went to a material allegation of error on the part of the court at the January 9, 1975 hearing.

Also, in its memorandum decision, the court indicated (Paragraph 4, Memorandum Decision, May 4, 1976) that even if there indeed was a failure to inform the juvenile-mother of her right to counsel at the January 9, 1975 hearing, this was not error because she had been advised of her right to counsel and indeed appeared with counsel at the prior hearings. However, it must be remembered that the January 9, 1975 hearing was a new, separate and distinct matter, before the court upon a new petition, the court having placed the child in the temporary custody of DHS for one year after the November 9, 1974 hearing. The court's argument, carried to its logical conclusion would mean that if, for example, it were applied to the criminal violations in Juvenile Court,

a juvenile need only be apprised of his right to counsel the first time the child ever appears in the juvenile court, and not thereafter. Advice of right to counsel is not a blanket statement given once and then waived for each new matter. Each and every time a child appears before the court on a new petition, the advice of right to counsel must be given anew.

POINT VI

THE APPELLANT DID NOT VOLUNTARILY TERMINATE HER PARENTAL RIGHTS

Section 55-10-109(5) sets out the requirements for a voluntary termination of the parent-child relationship. However, this appellant did not appear voluntarily before the Juvenile Court. Rather, she was summoned on a petition filed with the court by DFS. In its memorandum decision (Paragraph 7, Memorandum Decision, May 4, 1976) the court stated that this error was resolved when the juvenile-mother agreed to the termination in court on January 9, 1975 thereby ratifying the petition filed by DFS. The court's decision has two errors. First, no matter how the court tries to bend the facts to fit the statute, the mother was, in fact, not voluntarily before the court. The court has chosen to regard the termination as a voluntary relinquishment (Paragraphs 5, 7, Memorandum Decision, May 4, 1976). That being the case it would have been necessary for the natural mother to voluntarily submit the petition to the court rather than DFS. The mere fact that she appeared on January 9, 1975 indicates nothing more than that the juvenile-mother was answering the summons. That contains not even a hint of voluntariness. It is submitted that the lack of a voluntary petition, standing alone, is

the termination is characterized as a voluntary relinquishment. Further, that the summons to the termination hearing made it not a voluntary relinquishment but rather an adversary proceeding in which the child could only have been removed from the mother for cause. (Tr. 10,20, April 22, 1976). The Juvenile Court made much of the fact that the juvenile-mother "offered no defense or resistance hereto, legally or actually." (Paragraph 7, Memorandum Decision, May 4, 1976). However, a careful reading of the transcript of the January 9, 1975 hearing indicates that the mother could hardly even talk, let alone prepare or present a defense, nor should she have been reasonably expected to have done so. Indeed the summons only introduces an element of governmental coercion into a proceeding characterized as a voluntary relinquishment. It is submitted that it should be held, as a matter of law, that a juvenile-mother, here sixteen (16) years old, who was unrepresented by counsel and unaided by parental advice, was incapable of voluntarily assenting to relinquishment of her child; especially when the record of the case conclusively shows that the juvenile-mother wanted to keep her child. (Tr. 2, 3, January 9, 1975).

Secondly, since the court has chosen to characterize the proceeding as a voluntary relinquishment (Tr. 6, April 22, 1976, and Paragraphs 6, 7, Memorandum Decision, May 4, 1976) rather than a termination for cause, then by statute the court's action has no effect on the right of the natural father who did not appear before the court and whose identity the juvenile-mother chose not to reveal. Characterized as a voluntary relinquishment, the natural father still has, then, full parental right in the child in question.

POINT VII

THE EVIDENCE WAS WHOLLY INSUFFICIENT TO PERMIT A TERMINATION FOR CAUSE.

While characterizing the termination as a voluntary relinquishment, the Juvenile Court has tried to allow itself an out by also implying that sufficient cause existed for termination irregardless of the alleged voluntary nature of the termination (Paragraph 10, Memorandum Decision, May 4, 1976). The finding that the juvenile-mother was unable to adequately provide for her child was based solely upon the statement of the appellant that she could not keep her child because her parents refused to allow her to bring the child home. Termination was ordered, in spite of the fact that the court had previously entered the November 6, 1974 order placing the child with DFS for one year, which was in itself an adequate temporary solution to the problem. This juvenile-mother was unable to temporarily care for her child only in that she was impecunious in her own right, was dependent upon her parents for support, and her parents had refused to provide any financial support for the child. The December 2, 1975 petition, filed with the court by DFS, represented the exact situation contemplated by Chief Justice Henriod in his dissent in State of Utah, in the interest of T.C., 532 P.2d 997, at 999 (Utah 1975), where an impecunious mother, who was in this case impecunious "through no fault of her own" (December 2, 1975, petition to Juvenile Court) was denied the right of companionship with her child after the Juvenile Court had already entered an order placing the child in the temporary custody of DFS for one year during which the home situation of the appellant would have had a chance to correct itself. No

other reasons or evidence for termination were presented to the court, nor was testimony heard from any other party that the mother was in any way unfit or incompetent in a manner contemplated by statute, which was of her own doing. It is submitted that the evidence presented was wholly insufficient, as a matter of law, to deny custody of the child to its natural mother for cause. It is also submitted that both the evidence relating to voluntary relinquishment, and the evidence relating to the alleged termination for cause, both fail to meet even the standard set out by the court in regard to voluntary termination in State of Utah, in the interest of Pitts, 535 P.2d 1244, at 1248 (Utah 1975) wherein the court said:

We believe such language comes close to our thinking to the effect that a child should not be taken from its parents save by clear and convincing evidence of intention to give up parental rights -- something almost akin to proof beyond a reasonable doubt.

There was no showing whatever that the court had no alternative other than to remove the child from its mother. Nor was there any showing that the sole incompetency of the juvenile-mother was other than one imposed upon her by virtue of her temporary status in life at the time of the court hearing. A termination by the Juvenile Court based solely upon a juvenile's temporary status or station in life is not only an injustice to both parent and child but is simply offensive, not only to one's sense of justice but to the purposes of the Juvenile Act itself wherein it says:

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. Section 55-10-63

POINT VIII

THE APPELLANT ONLY AGREED TO TERMINATION OF HER PARENTAL RIGHTS BECAUSE OF COERCION.

The adamant refusal on the part of the juvenile-mother's parents at the time the appellant agreed to the termination of her parental rights on January 9, 1975 constituted a subtle, yet very strong element of coercion on the juvenile-mother's conduct. The appellant made a mistake by becoming pregnant, and such an occurrence of unwed motherhood had never occurred in her family before. As a result, the parents acted emotionally and without thought in placing the sole decision-making burden on a young girl who in the midst of a highly traumatic experience could be subject to over-persuasion on the part of DJS social workers and indeed the court itself. At the hearing the court failed to thoroughly examine the background and competing pressures and influences on the juvenile-mother. Rather, the Juvenile Court merely took the stance that an unrepresented, unadvised sixteen (16) year old girl could make any and all decisions in an immediate, yet rational fashion. It is submitted that this is simply too great a burden to expect a juvenile-mother, vulnerable to undue influence, to make on her own. At the very least, the court should have postponed the hearing until the young girl

a DFS worker who had consistently recommended termination. A simple analysis of the record indicates that the juvenile-mother was agreeable only because she felt she had no choice (Tr. 3, January 9, 1975). This is not a voluntary relinquishment, but per se coercion.

CONCLUSION

When one looks at the overall picture and views the extent and magnitude of the deviance from statutory requirements, the denial of due process to the petitioner is overwhelming. A child was taken from its natural mother because she was temporarily unable to care for her child because of her temporary status of being a juvenile. The Juvenile Court acted in haste and without due regard, indeed no regard for statutory requirements; and, as such, its actions must not be permitted to stand. The statute has a purpose, it has goals and requirements, and these standards must be met. The Juvenile Court should not be allowed to circumvent these standards through inattention to statutory requirements or simply through lack of diligence. A termination proceeding is far too serious to be handled with haste.

One last point which has been raised is the fact that the child has already been adopted. This is truly unfortunate, extreme grief will undoubtedly occur no matter how the question is finally resolved. However, justice has not been done to the juvenile-mother, the petitioner herein. She was the victim of a casual and unlawful taking of her child, clothed in a mere semblance of legal requirements. She was not afforded the benefits and protections accruing to her as a mother of right under the termination statute. And, in certain

circumstances, even the old adage, that the welfare of the child is all controlling, must yield to the requirements of due process under the law and equal justice in the courts as afforded by statute.

Appellant respectfully asks the Court to rule that the Juvenile Court lacked the dispositional power under the particular circumstances of this case to terminate the parental rights of the Appellant; that the evidence failed to support a termination for cause; that the relinquishment was not voluntary, therefore, that the order of the Juvenile Court should be vacated and set aside.

Respectfully submitted,

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