

1976

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

Utah Supreme Court

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IN THE SUPREME COURT

STATE OF UTAH, in the interest of

BABY GIRL MARIE, A Person Under
Eighteen Years of Age,

NADINE MUNOZ,

Appellant

vs.

APPEAL FROM JUDGMENT OF
JUVENILE COURT, IN
CHARLES E. BRADY

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, in the interest of:)

)
BABY GIRL MARIE, A Person Under)
Eighteen Years of Age,)

)
NADINE MUNOZ,)

)
Appellant)

Case No. 14599

REPLY BRIEF OF APPELLANT

APPEAL FROM JUDGMENT OF THE FIRST DISTRICT
JUVENILE COURT, WEBER COUNTY, the HONORABLE
CHARLES E. BRADFORD PRESIDING.

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STATE OF UTAH, in the interest of:)
)
BABY GIRL MARIE,)
)
A Person Under Eighteen Years of Age)

BRIEF OF APPELLANT

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.

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.

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 takes exception to respondent's Statement of the Facts in the following respects:

1. The respondent's brief states of the appellant that "She appeared at Court intent upon giving up the baby. After a probing discussion with the Court she restated her previous decision that it was in the best interests of the child to give it up and voluntarily did so in open court." (Respondent's Brief, 2). Appellant asserts that this is simply not true. The transcript of the January 9, 1975, hearing clearly shows that the natural mother wanted to keep her child and that she thought it best that the child remain in a foster home where it had already been placed for a one (1) year period. (Tr. 3, January 9, 1975.)

2. Respondent's Statement of Facts also indicates that there is no direct testimony that either the DFS Social Worker or the appellant's parents were advising or, in the one case, demanding that she release her child for adoption. (Respondent's Brief, 2 & 3). Appellant asserts, to the contrary, that the transcript of the January 9, 1975, hearing could hardly evidence extreme parental pressure to relinquish a child for adoption with more clarity. As for the position of DFS, the

petition for termination of parental rights speaks for itself. All of these matters would have been completely supported by direct evidence had the Juvenile Court not refused to hear testimony on these very issues at the April 22, 1976, hearing on appellant's petition to vacate and set aside the termination of appellant's parental rights. This refusal was objected to by the appellant at the April 22, 1976, hearing. (Tr. 16, April 22, 1976)

ARGUMENT

POINT I

THE JUVENILE COURT HAD JURISDICTION TO VACATE ITS PREVIOUSLY ENTERED ORDER.

Respondent has argued that District Courts have exclusive jurisdiction over adoption proceedings. With this the appellant completely agrees. However, the respondent has submitted that once an adoption petition is filed the District Court's jurisdiction is "paramount in deciding all issues necessary to the adoption, including whether or not Appellant voluntarily consented to termination of the parental rights and whether or not she was afforded due process in the termination proceeding." (Respondent's Brief, 5)

In support of this contention respondent has cited In Re Trimble's Adoption, 16 Utah 2d 188, 398 P.2d 25 (Utah 1965). The appellant submits that there is a fundamental difference between the circumstances of that case and the matter now before this court. In Trimble the issue was whether or not it was first necessary to submit the issue of desertion to the Juvenile Court for a determination before the adoption proceeding could run its course to completion. Section 78-30-5, U.C.A.

1953, as amended, specifically covers the question and the decision in Trimble was correctly reached. However, in the appellant's situation the Juvenile Court already had jurisdiction over the child Baby Girl Marie; and although the Juvenile Court is a creature of statute, with limited jurisdiction, Section 55-10-65, U.C.A. 1953, as amended, specifically establishes the Juvenile Court as a court of equal status with the district courts of this state in those limited areas of its jurisdiction. So, while the district court may decide all issues pertinent to an adoption, it is submitted that once the juvenile court's jurisdiction has previously been invoked, that the district court may not oust the jurisdiction of the juvenile court simply because an adoption petition has been filed. Indeed, to hold otherwise would permit the district court, to which the juvenile court has equal status in its limited jurisdictional areas, to sit in review as a quasi-appellate body over juvenile court decisions. This is not permitted under Section 55-10-65.

By statute and prior case law precedent the Juvenile Courts have the inherent power to modify or vacate a previously entered erroneous order. (See Appellant's Brief, Point II). As a court of equal status with the district courts, should a juvenile court exercise the power granted to it by Section 55-10-106 and modify or vacate an erroneous order, its decision must be equally binding upon the district court because in those limited areas wherein the juvenile court has already established its jurisdiction, it has exclusive original jurisdiction under statutory law. Section 55-10-77 U.C.A. 1953, as amended. It is submitted that even though an adoption has intervened, a review of

and that, regardless of the nature of a proceeding in the district court, the district court may not sit as an appellate or review body over prior juvenile court decisions.

Respondent has further argued that the Juvenile Court in any event terminated its jurisdiction over the child on December 4, 1975, thereby mootng the issues of this appeal. However, appellant asserts that the issues raised in this appeal are indeed anything but moot. Appellant was not afforded due process at the termination hearing in that she was not informed of a right to appeal. The error was in the Juvenile Court, not the appellant; and at the very least, in a matter of this importance, she is entitled to a review of that decision by the highest judicial body in this state.

The respondent has also submitted that the petition to vacate the termination order was precluded by Section 55-10-108, U.C.A. 1953, as amended. However, appellant's petition was brought under Section 55-10-106 on the basis that the original order itself was improper and erroneous, not on the basis of changed circumstances which would have been prohibited by Section 55-10-108. On Section 55-10-106 there is no specific time period during which a modification or vacation of an order must be sought. Appellant's contention is that under the totality of the circumstances of this case the order of termination must be set aside and vacated.

POINT II

APPEAL AND APPEAL WERE TIMELY

Appellant and the trial judge have acknowledged that the appeal was timely filed at the conclusion of the January 9, 1975,

termination hearing that she had a right to appeal the termination order. (Respondent's Brief, 10). It is submitted that until the appellant knew of her right to appeal, which she did not, laches certainly does not apply, nor does the one month appeal time begin to run. Respondent has suggested two mitigating factors. First, that the appellant, although not represented at the termination hearing itself, had representation at prior hearings. Why would she have any need to know of a right to appeal from the other prior proceedings? This is a specious argument because at the other hearings appellant did not lose her child. Respondent asserts that the appellant could have had representation at the termination hearing; however, there is not a shred of direct testimony nor evidence from the record to support this statement, and it is somewhat ridiculous to suggest that although the trial judge "said nothing about appeal at the conclusion of the January 9 hearing. In any event it is probable that he did so before the hearing." (Respondent's Brief, 10). Respondent has also chosen to characterize the failure to inform the appellant of the right to appeal as "insignificant and unprejudicial." It is submitted that nothing could be farther from the truth, as is so tragically demonstrated by this very appeal.

Secondly, respondent asserts that the appellant was aware of her right to appeal because the notice is given on the summons she received requiring her attendance at the January 9, 1975, hearing. This argument meets neither the letter nor the spirit of the law as set out by either Section 55-10-96, U.C.A. 1953, as amended, or Rule 20, R.R.C. which says:

1. After the dispositional hearing, the Court shall enter an appropriate decree of disposition.

2. After entry of the decree, the Court shall explain to any party not represented by counsel his right to appeal the Court's decision.
(emphasis added)

POINT III

THE APPELLANT'S PARENTAL RIGHTS WERE IMPROPERLY TERMINATED BY THE JUVENILE COURT.

Respondent has raised the valid argument that Section

55-10-109(1)(a) U.C.A. 1953, as amended, not only permits termination when parents are unfit or incompetent, but also when conditions seriously detrimental to the child are in existence. Respondent's brief on page 14 lists five conditions thought to be seriously detrimental to the child:

- (1) The child in the care of appellant would be homeless.
- (2) The appellant could not provide financial support for the child.
- (3) The appellant's parents were unwilling to care for the child.
- (4) The natural father was unknown and had no interest.
- (5) And that after 15 months there was no indication the circumstances had changed.

The argument of "conditions seriously detrimental" to the child, however, skirts the real issues in regard to this juvenile mother. Were those conditions which existed on January 9, 1975, of the nature that they were permanent? Could the conditions not have been corrected over a relatively short period of time? Why was a termination of appellant's parental rights, based on detrimental conditions, necessary on January 9, 1975, when those very conditions had been eliminated by the juvenile court's decree of November 6, 1974, placing the child in the custody of the appellant's mother? What harm would have resulted to the child if it had remained in its foster home until it could have been determined whether or not the alleged "conditions seriously detrimental"

tragic situation could probably have been avoided. The permanency of a termination proceeding requires that it not be handled in a summary fashion, and appellant urges the Court to take this opportunity to establish specific guidelines for terminations of parental rights in the Juvenile Courts.

The respondent also stated in point (5) of POINT III (Respondent's Brief, 14) that at the April 22, 1976 hearing there was no indication the circumstances had changed permitting a revocation of the court's January 9, 1975, order. There was no such evidence only because the Juvenile Court refused to permit testimony from either the natural mother, or her parents, which would have supported the position and allegations of the appellant. Appellant objected, at the April 22, 1976 hearing, to this refusal of the Juvenile Court to permit testimony into the record in regard to the circumstances surrounding the relinquishment of the child and the natural mother's present qualifications to have custody of her child, and reasserts this as error on the part of the Juvenile Court. (Tr 16, April 22, 1976)

POINT IV

APPELLANT WAS DENIED HER RIGHT TO COUNSEL AT THE HEARING
ON THE PETITION TO TERMINATE HER PARENTAL RIGHTS.

Respondent has stated that appellant was not denied counsel because she had been represented at prior hearings and Attorney Daines stood ready to appear with appellant at the January 9, 1975 hearing. The latter statement by respondent is not supported by the evidence. The trial judge's recollection only went to the fact that he seemed to recall a discussion between the appellant, the County Attorney, a DFS worker,

and the court regarding the mother's appearance without counsel. The Juvenile Court refused to hear rebuttal testimony on this point, and the transcript of the April 22, 1976 hearing (page 12) clearly reflects the disagreement of the appellant. The appellant reasserts error on the part of the Court in refusing to hear testimony from the appellant on this issue.

Again, respondent asserts appellant received notice of her right to counsel because it was printed on the summons received by the appellant requiring her appearance at the January 9, 1975 hearing. Again, this is a specious argument meeting neither the letter nor the spirit of the law. Section 55-10-109(2) requires actual, verbal advice of right to counsel. The record indicates quite clearly that this was not done.

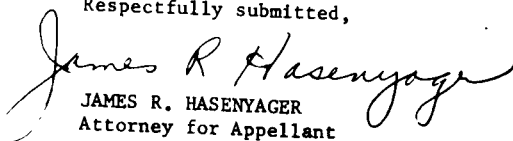
Appellant also submits to the Court that it should be held as a matter of legal policy that terminations of parental rights will not be permitted absent the appearance or appointment of counsel, particularly in circumstances as presented here, where the parent in question was a juvenile, whose own parents had refused to appear with her before the Court, and who had no guidance or advice upon which to rely in making such an important decision.

CONCLUSION

The appellant asserts that she has had her parental rights improperly and unlawfully terminated. This occurred because the Juvenile Court acted in a very casual manner when it so summarily terminated the parental rights of the appellant. We urge the Court to take this opportunity to formulate adequate guidelines for future termination of

that this type of appeal need not come before this Court again. We also urge the Court to look at the totality of the circumstances surrounding the termination of the juvenile mother's parental rights and rule that the termination order must be vacated, returning to the appellant her parental rights in Baby Girl Marie.

Respectfully submitted,


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