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Norma E. Green and State of Utah v. Craig E. Green : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

NORMA E. GREEN, and the
STATE OF UTAH, by and through
Utah State Department of
Social Services,

Plaintiff and Appellant,

No. 14610

-v-

CRAIG E. GREEN,

Defendant and Respondent

BRIEF OF APPELLANT

Appeal from the judgment of the District Court
of the Third Judicial District for Salt Lake
County, Honorable Bryant H. Croft, Judge.

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R = Record

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-v-

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Defendant and Respondent.

Case No. 14610

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appellants asked the Court in an Order to Show Cause for a judgment on unpaid child support in the amount of One thousand, One hundred seventy-seven and 44/100 dollars (\$1,177.44) based on the premise that the Order of the Court entered the 24th day of January, 1974 relieving the respondent of his support obligation was void and that the obligation of support was in effect for the entire period of time since the order, not withstanding the order itself.

DISPOSITION OF THE LOWER COURT

After the lower court ruled against appellants and then vacated its order on a motion for reconsideration, it ruled that the order entered in 1974 was valid and should be reinstated.

RELIEF SOUGHT ON APPEAL

Appellants request this court to reverse the final order of the court sustaining the 1974 order and directing the lower court to make a determination as to the amount of support owed under appellant's order to show cause and directing the court to enter judgment in favor of the state for the amount determined to be owing.

STATEMENT OF FACTS

Co-plaintiff Norma Green and the defendant Craig Green were divorced the 15th day of November 1972 (R-17,18). There was one child of the marriage, Michael Brandon Green. Pursuant to the decree, the defendant was ordered to pay \$75.00 per month support for the child. As the record reflects, the defendant was not faithful in meeting his obligations and judgments were entered against him. (R. 27, R. 47)

The parties then entered into a stipulation relieving the defendant of all obligation of support and relieving him of all parental rights upon the signing of the consent to adoption. There is no dispute as to whether the defendant signed the agreement. The fact is, however, that the co-plaintiff has never remarried, and the child has never been adopted, and that the order was based on the supposition that "II. The plaintiff intends to remarry. . . ." (R. 52)

As per Exhibit "B" of the State of Utah with its order to show cause (R. 74) the child has been on public Assistance since the order referred to above. The court dismissed the

state's Order to Show Cause on the grounds that the Court had previously relieved the defendant of all parental rights and duties of support. (R. 82).

Counsel for the State noticed up a motion for Reconsideration based on the Utah Case of Riding vs. Riding 8 Utah 2d 136, 329 P. 2d 878 (1958) (R. 84). That matter came on for hearing on the 9th of April 1976 at which time the Court vacated its prior Order and continued the matter in order to have the co-plaintiff appear to discuss the situation (R. 87). That matter came on for hearing the 7th day of May, 1976 at which time the Court again reversed itself and reinstated the prior Order dated February 13, 1976 (R. 92) which terminated the defendants responsibility to pay support. (R. 91).

As a result of the Courts see-saw approach in light of the precedence of Riding, id., the appellants feel compelled to appeal for the sake of the child and for the support due and owing until the child turns 21 as ordered by the divorce decree. (R.18).

ARGUMENT

POINT I

A FATHER HAS A STATUTORY AND COMMON LAW OBLIGATION TO SUPPORT HIS CHILD AND MAINTAIN PARENTAL RIGHTS INCIDENT THERETO

The laws of the State of Utah, whether by Statute or by case point out the great concern of the courts over parenthood of children. Utah Code Annotated 78-45-3 states:

"Every Man shall support his wife and his child." Child, as defined by that chapter is a "son or daughter under the age of twenty-one years and a son or daughter of whatever age who is incapacitated from earning a living without sufficient means." (U.C.A. 78-45-2(4))

This court has also spoken on this subject in Jenkins vs. Jenkins 107 Utah 261, 153 P. 2d 262 where the court said a father has a positive duty to support his minor child. Further, in Rees vs. Archibald 6 Utah 2d 264, 311 P. 2d 788 (1957) this court emphasized:

"This court has invariably emphasized the father's obligation to support his children based upon the elementary principle that the law imposes upon those who bring children into the world the duty to care for and support them during their minority and dependency." (Emphasis added.)

These cases have been the standard which Utah courts have been required to follow. It seems only logical, that with such case law and statutory language, two people, as in this case, cannot stipulate away that right to parenthood which the child has.

In fact, this court held in Utah Fuel Company vs. Industrial Commission 83 Utah 166, 27 P. 2d 434 (1933) that a child cannot waive its support. Further, through Lopes vs. Lopes 30 Utah 2d 393 (1974) this court won't even allow testimony by parents to "bastardize" children because they are taking away from children a solid right they have. Thus, if this court won't allow children to be voluntarily bastardized through the acts of the "parents" and if this court takes the position that

children cannot give up that right, it would be totally inconsistent for this court to hold, as the lower court did, that the child is forever severed from his parental affection and relationship simply because the parents want to so stipulate presently. Under the lower court order, the child is fatherless simply because the mother had "intended to get married" and yet never did.

There are only two possibilities, known to the appellants where parental rights may be severed. Neither of those two procedures were followed in this case. The first is by having an actual adoption take place. The second is through deprivation hearings in the juvenile court. Any other attempt to sever the rights, as in this case, is VOID under the law and should so be declared. Each of the foregoing situations is discussed in the following arguments.

POINT II

ONLY UPON THE SIGNING OF THE ADOPTION ORDER AS
PRESCRIBED IN THE ADOPTION LAW ARE THE PARENTAL
RIGHTS TERMINATED

The lower court entered the order in this case that upon signing a "consent to adoption" the parental responsibilities, liabilities, and privileges were terminated from that time onward. What makes this matter even more repulsive is the fact that the order described above was done by written stipulation based on the premise that the plaintiff "intends to remarry." Such is void because no

adoption has taken place, no marriage has been entered by plaintiff and the poor child suffers bizzare consequences of the stipulation as being a "nobody's child".

This issue should easily be put to rest based on this Court's position in Riding vs. Riding, supra. Basically the same facts apply with a few minor changes. In Riding, id. the ex-wife remarried and the second husband entered into an agreement with the first husband to adopt the child and relieve the first husband of his obligations to the minor child. This was later incorporated into a court order so relieving the first husband of his rights and obligations. Thereafter the second husband failed to instigate adoption proceedings and the ex-wife sued the first husband for child support after she divorced the second husband. This court said relative to that Order:

"If the judgment entered on January 5, 1950, be construed as a final and unconditional judgment relieving defendant from any and all further obligation to support Robert Jay Riding then the same was and is absolutely void. There is not vested in any court of this state the right to make a final order relieving a father, permanently, of his obligation to support his child except under the Adoption Statute." (Emphasis added)

Further, the court continued:

" We are of the opinion that the order signed by Judge Ellett and filed in the divorce action was a conditional order. It recites that it is "based upon stipulation filed herein." The stipulation contemplated the adoption by Glen Offret of Robert Jay Riding. The stipulation recited that Offret consented to adopt the child and acknowledged "his desire and willingness to maintain the relationship of

parent and child and to support and maintain said minor child and to provide it with all those rights and privileges ordinarily existing in such relationship."

However, there was no compliance with the adoption statute. We must interpret the order as intended to go into effect after the adoption had been complete, which condition never occurred." (Emphasis added)

The court then cited Price vs. Price 4 Utah 2d 153, 289 P.2d 1044 (1955) as follows:

" Future child support effectively cannot be the subject of bargain and sale. Among other things, the State is an interested party in such matters since a child's welfare is at stake * * *."

At this, the order relieving parental obligations was voided, the Order to Show Cause reinstated, and the matter remanded to the District Court.

This court emphasized Utah Code Annotated 78-30-11 which states that:

"The natural parents of an adopted child are, from the time of the adoption relieved of all parental duties toward and all responsibility for the child so adopted, and shall have no further rights over it."

In the instant case, the woman has never remarried, and may never remarry. This would leave the child in limbo, not able to collect benefits from Social Security, inheritance, etc., not to mention the total cutting off of the parental relationship. The fact that the plaintiff " intended to marry" isn't conclusive, for ever after a remarriage, the new husband must wait one year before an adoption can take place pursuant to Utah Code Annotated 78-30-14 (4). In any event there is a one

year period of "bastardization" even if the adoption goes through.

The Washington Supreme Court in Gaidos vs. Gaidos 293 P. 2d 388, (Wash, 1956) came to the same conclusion as this court. Though the major portion of the opinion was directed in a different path, the court said:

"The fact that the stepfather is able and willing to contribute to their support does not relieve the father of his responsibility, which continues until such time as they are adopted, reach majority, or are otherwise emancipated." (Emphasis Added)

Thus we see that no adoption has taken place in this case. There hasn't even been a remarriage. In fact, there has been no mention of adoption except in the original stipulation. Appellants contend, that because of the facts and the law as here cited, Judge Croft's ruling sustaining the lower court's prior order should be reversed with the prior order being set aside as being VOID from its inception.

POINT III

THE PROVISIONS OF THE JUVENILE COURT ACT FOR THE TERMINATION OF PARENTAL RIGHTS WAS NOT FOLLOWED AND THEREFORE THE ORDER IS VOID

The only other provision of the law which appellants know of to terminate parental rights is found in Utah Code Annotated 55-10-109. Under this section the legislature has spelled out the grounds for such determination. These are (a) incompetence or unfitness of parents, (b) abandonment by parents of child, (c) refusal to give child proper parental care over a protective period, (d) upon voluntary petition of the parent(s)

if the court finds it in the best interest of the child.

The record is void of any of the foregoing. There has never been such an action filed in Juvenile Court. Even if there had been an action filed there, the law requires an in depth analysis of the facts before the court is permitted to terminate the rights.

This court should take notice that the statutory procedure was not followed and therefore, no termination of rights has taken place in accordance to law.

CONCLUSION

The welfare of children is of utmost importance to our society. To allow stipulated court orders to terminate parental rights upon the whim and feelings of parents is not only an abuse of discretion but also a tragedy in our society. The plaintiff "intended to marry," whatever that means, but in fact didn't. Utah law requires a father to support his children, stipulations to the contrary notwithstanding.

Therefore, this court should reverse the order of the lower court and remand this matter for a hearing to determine the arrearage accrued since the entry of the stipulation.

Respectfully submitted:

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