1977

James Reed Hall and Brenda M. Hall v. Thomas LeRoy Anderson : Brief of Appellants

Utah Supreme Court

IN THE SUPREME COURT

OF THE

STATE OF UTAH

In The Matter Of The Adoption Of KARLA JEAN ANDERSON, a minor,	:	
JAMES REED HALL and BRENDA M. HALL,	:	
Appellants,	:	Case No. 14705
v.	:	
THOMAS LeROY ANDERSON,	:	
Respondent.	:	

APPELLANTS' BRIEF

STATEMENT OF THE NATURE OF THE CASE

Appellants' appeal from the decision of the District Court of Uintah County, State of Utah, denying appellants' Petition for Adoption.

DISPOSITION IN THE LOWER COURT

On May 12, 1976 a hearing was held in the District Court in and for Uintah County, the Honorable J. Robert Bullock presiding, on appellants' motion to adopt Karla Jean Anderson without permission from Karla Jean Anderson's natural father on the grounds of abandonment. The Petition was denied on May 14, 1976.

RELIEF SOUGHT ON APPEAL

Appellants seek to have the lower court's decision vacated and judgment entered in appellants' favor declaring that Karla Jean Anderson's natural father abandoned her within the meaning of Sec. 78-30-1, Utah Code Ann., and that appellants' Petition to Adopt Karla Jean Anderson without her natural father's consent be granted.

STATEMENT OF THE FACTS

A Decree of Divorce was entered on March 13, 1972, granting a final Decree of Divorce between Thomas L. Anderson

and petitioner, Brenda M. Hall, formerly known as Brenda M. Anderson, parents of Karla Jean Anderson. Custody of the child was awarded to the then Brenda M. Anderson with visiting rights granted to Thomas L. Anderson and a further requirement of child support required of Thomas L. Anderson. In 1972 Brenda M. Anderson married James R. Hall.

From the time of the granting of the divorce decree until the present time Thomas L. Anderson made a total of $150 child support payments as the Court stated in its Findings of Fact. The Court further found that at all times pertinent to this case Thomas L. Anderson knew where petitioners were living. Finally, the Court found that the existence of the natural father is totally unknown to the child and that Karla Jean Anderson looks upon James R. Hall, petitioner, as her father.

ARGUMENT

THE DISTRICT COURT ERRED IN NOT FINDING THAT THOMAS L. ANDERSON HAD ABANDONED HIS DAUGHTER.

Sec. 78-30-5, Utah Code Ann., as amended in 1965, provides that when a child is deserted by its parents it may be adopted without the natural parent's consent. The obvious intent of the legislature is to allow a child the happiness and emotional stability provided by a warm and loving family unit without delay or undue anguish when parents abandon children. The

entire statute is structured to provide the greatest benefit to the child in circumstances where the child is receiving no emotional support or other kinds of support from its natural parents.

The circumstances envisioned by the statute are precisely the kinds of circumstances that exist in the case at bar. Petitioner, Mrs. Hall, testified (p. 4,5,7, TT) that Mr. Anderson had made no attempt, save one immediately after the divorce decree, to even see the child. Furthermore, she testified that Mr. Anderson had been in the area where the Halls were living and never made an attempt even to use the phone to call and inquire as to the child's well-being. This is supported by Mr. Hall's testimony, who testified that he lived in Dutch John, Utah, Arizona, and met Mr. Anderson while he too worked in the same town for the Forest Service (p. 11, TT). This testimony was not controverted by Mr. Anderson, nor indeed was any evidence introduced to show that when Mr. Anderson was in the vicinity of the Hall's he made any attempt to visit or call about the child's welfare. It is difficult, if not impossible, to understand how a parent can claim love and affection for a child and yet make no attempt when in the vicinity of the child's residence to make some physical contact, even if only a phone call. Certainly a medical problem that would not have prevented Mr. Anderson from traveling would not have prevented him from a simple phone call. Yet the record is devoid of any such attempts.

Similarly, Mr. Anderson testified that he has remarried. He has a wife and two children and supports them but still neglects

the child he claims to love and cherish. Irregularly and infrequently, insignificant and insubstantial gestures have been made, amounting over a three year period to virtually nothing in view of the paramount and pressing needs of a child in the very formative and crucial years of her life, when substantial and effectiv emotional needs must be met. During these years the Halls met all of Karla's needs. Mr. Anderson was never there.

Instead in the early part of January 1973, Mr. Anderson writes Mrs. Hall requesting permission to use his daughter as a "tax break." Certainly, this is communication to the mother, but the type of communication sufficient to warrant a finding of love and affection? In June 1973 another letter appears in the record written by Mr. Anderson arguing payments which were not made. The record will also show that up to May 26, 1973 communication can be said to be regular. But after the June 1973 letter from Thomas to Brenda there is a virtual dearth of communication.

No substantiation appears in the record for the alleged Christmas money of 12-16-75, and Mrs. Hall denied receiving it. Since the answers to the interrogatories were filed on the 23d day of February, 1976, and since Mr. Anderson kept meticulous records of his communications with the Halls, it must be presumed that this payment is an error. Consequently, from June 1973 until December 19, 1975, when this petition was filed, Mr. Anderson had sent only five insubstantial communciations to his

daughter yet claims to have saved $1500 for her (p. 17, TT) and again no verification appears in the record either by bank statement or letter for this amount of savings.

On the other hand, there are two letters written by Thomas Anderson's wife in 1975, one in May 1975 and one presumably after that, (Court record, p. 26). It is interesting to note that these are the only two communications in the record although Mr. Anderson by his testimony would have us believe that there were many communications. And at least the first of the two letters came with the May 9, 1975 gift. Consequently, the record before the Court shows six communications by the Andersons from June 1973 to the December 1975 filing of the petition.

Furthermore, the last four communications, the signing and writing of checks and letters had been handled, according to the record, by Mrs. Anderson and not by Mr. Anderson who is in fact the natural parent. We, therefore, have evidence that in that period she was interested in the child, but there is no evidence that the natural parent, Mr. Anderson, was interested in Karla.

In re Adoption of Walton, 123 Utah 380, 259 P.2d 881 (1953), and In re Adoption of Jameson, 20 Ut. 2d 53, 432 P.2d 881 (1967) state what the law is with respect to Sec. 78-30-5, Utah Code Ann. (1953), as amended in 1965. Appellants do not argue that these cases are in error, but simply that the case at bar does not fit within the rule of those two cases.

Utah case law does not require that the natural parent affirmatively state that he is abandoning his children. The two cases cited merely indicate that abandonment can be determined and inferred from the natural parent's actions. In Jameson, supra, for example, the Court held that incarceration is not abandonment. "We believe and so hold that the language of the statute means an intentional abandonment of the child rather than a separation due to misfortune or misconduct." 20 Ut. 2d at 54.

The misconduct in the Jameson case does not apply in the present instance and misfortune has not been defined though under whatever definition, appellants contend that this case does not fit the circumstances. It was not misfortune that kept Mr. Anderson from visiting or calling to inquire about his daughter when he was in her vicinity. It was lack of desire or want. It was not misfortune that kept defendant from writing to his daughter, but lack of interest. It was not misfortune that kept support payments from being sent to Karla, but lack of concern. Mr. Anderson supports a family now. Furthermore, if, in fact, Mr. Anderson saved $1500, that amount is equal to 2-1/2 years of child support. How can he claim inability to pay child support and at the same time allege that he saved it? Where is the money? Where, in fact, is the proof that he saved it?

Clearly, this case does not fit the Jameson rule because, in fact, Mr. Anderson had abandoned his little girl and left her to be cared for by others.

Similarly, with respect to the Walton, supra, case, the case at bar does not fit the facts of Walton. Effectively, from June 1973 to December 1975, Mr. Anderson abandoned his child. No support was paid during that time; no attempt at visiting the child or calling the child was made even when in the vicinity; no attempt was made to write to the child except for five gifts in nearly 2-1/2 years when the thought occurred to Mr. Anderson. In effect, others were left to care for Karla while Mr. Anderson might send a candygram for Easter. One is left to wonder whethere or not the circumstances would have changed had Mr. Anderson not married his present wife who seems to be pressing for the child.

Appellant submits that a line must be drawn somewhere if the statute is to have any meaning. Can five insignificant gifts over a 2-1/2 year period withstand an argument of no support, attempts at visiting, or even communication? What then does abandonment mean?

As in the lower court, apparently Mr. Anderson will plead repentance. But is that fair for the seven year old child? Her feelings in the present home, after four years, are deep and committed. She knows only one family and feels the security,

warmth, and tenderness of one family unit. The child was three when she entered the unit and is now seven. Her entire life is to be disrupted now because one man sent five gifts in 2-1/2 years? Are there not vested rights of happiness, peace, tranquility, security, and love present here that supersede the tenuous threads of repentance presented and the hollow ring of precious few gifts?

At no time did the Halls return these gifts. Furthermore, the record does not support the Andersons' contention that the Halls indicated that they no longer wanted the child support. The very closest the Halls came to such a pronouncement was a letter dated January 12, 1973 (C.R., p. 29):

> "As far as Karla goes she's taken <u>well</u> care of and has what she needs and is happy and contented, so why don't you just step out of the picutre!" (emphasis Mrs. Hall's)

But the very next paragraph reads:

> "Either pay your child support - or just forget the whole thing. If Karla would have had to depend on you she would have to starve to death long before this!"

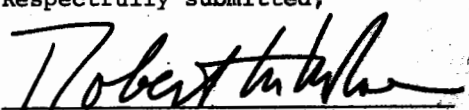
Six months later Mr. Anderson writes and discusses the payments without a hint of any disclaimer by the Halls.

Clearly this case does not meet the fundamental tests of <u>Walton</u> and, therefore, appellants contend that Mr. Anderson abandoned his little girl and this Court should so declare.

CONCLUSION

The evidence clearly indicates that Mr. Anderson 1) did not pay child support; 2) made no attempts to visit the child; 3) and made no attempt to communicate with the child except for five meager gifts in 2-1/2 years. Appellants, therefore, submit that Mr. Anderson had abandoned his little girl and that even though now he may be repentant, more harm than good would be done by dismissing appellants' petition. Therefore, appellants pray the Court to find that Mr. Anderson had abandoned his daughter Karla Jean and grant appellants' Petition to Adopt Karla.

Respectfully submitted,



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Mailed two copies of the foregoing Brief to Marc N. Mascaro, Attorney for Respondent, 7417 South State Street, Midvale, UT 84047, this 30th day of October, 1976, postage prepaid.

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