

1977

State of Utah, In The Interest of E. And Persons Under Eighteen Years of Age : Appellant's Brief On Appeal

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Utah v. J.T.*, No. 15140 (Utah Supreme Court, 1977).
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IN THE SUPREME COURT
OF THE STATE OF UTAH

STATE OF UTAH, in the interest)
of Evan Orgill and Bart)
Orgill, persons under 18)
years of age.)

v.)

Case No. 15140

JOYCE THOMASON,)
Appellant.)

APPELLANT'S BRIEF ON APPEAL

Appeal From An Order Of
The Juvenile Court, Salt Lake County,
The Honorable John Farr Larson, Juvenile Court Judge

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FILED

SEP 2 1977

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OF THE STATE OF UTAH

STATE OF UTAH, in the interest)
of Evan Orgill and Bart)
Orgill, persons under 18)
years of age,)

Case No. 15140

v.)

JOYCE THOMASON,)

Appellant.)
)
)

APPELLANT'S BRIEF ON APPEAL

STATEMENT OF NATURE OF CASE

A petition was filed in the Juvenile Court of Salt Lake County seeking to deprive the Appellant, natural mother of Evan Orgill and Bart Orgill, of her parental rights pursuant to the provisions of 55-10-109, Utah Code Annotated, 1953, as amended.

DISPOSITION IN THE JUVENILE COURT

The case was tried before the Honorable John Farr Larson, Juvenile Court Judge, Salt Lake County Juvenile Court, who entered an Order depriving the Appellant, Joyce Thomason, of her rights as the natural parent of Evan Orgill and Bart Orgill.

RELIEF SOUGHT ON APPEAL

The appellant, Joyce Thomason, seeks a reversal of the Order of the Juvenile Court and recovery of her costs.

STATEMENT OF FACTS

The Appellant, Joyce Thomason, and Leonard Orgill are the natural parents of Evan Orgill, born March 8, 1967, and Bart Orgill, born January 4, 1971. Joyce and Leonard are also the natural parents of three other children, Joslyn Orgill, born November 12, 1957, Bryan Lee Orgill, born July 18, 1960, and LaRue Orgill, born October 2, 1962, which three children are not involved in this appeal.

Joyce and Leonard were married, divorced, remarried and again divorced, with Joyce having custody of the five (5) children of the marriage (Exhibit K, R-222).

Appellant married her present husband, Kenneth Thomason, July 6, 1973 (R-155). After her marriage to Kenneth Thomason, the Appellant and her five (5) children lived with him (Kenneth Thomason), receiving public assistance, until February, 1974 (R-156 and 157). Financial pressure, a drinking husband, contacts by her ex-husband and difficulties in controlling her children, resulted in the Appellant's voluntary placement of her five (5) children with the Division of Family Services (R-156, 157, 158, 164, and 165).

Evan and Bart were placed in the same foster home, but in a separate foster home from the other three (3) Orgill children. Visitation with

appellant's children was arranged through the childrens' case worker.

The record discloses only two (2) visits between appellant and Evan and Bart between February, 1974 and July, 1974, when appellant followed her husband to Denver, Colorado to make a home (R-158 and 160). After leaving Salt Lake City, in July, 1976, to live in Denver, appellant has had no further visitation with Evan and Bart.

In the latter part of October, 1974, a new foster care case worker was substituted for the original foster care case worker (R-83 and 84). Appellant returned to Salt Lake City from Denver, and in a visit with the new foster care case worker on December 17, 1974, requested visitation with her (Appellant's) children (R-85 and 86). Appellant's visitation with the three (3) older children was granted, but was not allowed with Evan and Bart (R-86). Appellant was in Salt Lake City from July 28, 1975 to August 5, 1975, visited with the three (3) older children, but did not visit with Evan and Bart, since they were not in town and appellant had not advised the foster care case worker ahead of time that appellant would be in Salt Lake City.

On February 9, 1976, the foster care case worker wrote to appellant concerning appellant's interest in the children of appellant (Exhibit I). A reply to the foster care case worker's letter of February 9, 1976 was made by appellant in a letter dated February 14, 1976 (Exhibit J) in which expression was made by appellant and her husband to regain custody of appellant's children.

On August 18, 1976, a Petition was filed by the foster care case worker of Evan and Bart (R-265), which Petition was modified by a Pre-Trial motion

and Order for a more definite statement (R-255), seeking to deprive appellant of her parental rights in Evan and Bart pursuant to the provisions of 55-10-109, Utah Code Annotated, 1953, as amended.

ARGUMENT

Point I

THE EVIDENCE DOES NOT SUPPORT THE FINDING THAT EVAN ORGILL AND BART ORGILL CAME WITHIN THE PROVISIONS OF 55-10-109, UTAH CODE ANNOTATED, AS AMENDED.

The Petition to deprive appellant of her rights as the natural parent of Evan Orgill and Bart Orgill was made pursuant to the provisions of 55-10-109 (1) (a) (b), Utah Code Annotated, 1953, as amended which provides

"(1) The court may decree a termination of all parental rights with respect to one or both parents if the Court finds:

- (a) That the parent or parents are unfit or incompetent by reason of conduct or condition seriously detrimental to the child; or
- (b) That the parent or parents have abandoned the child. It shall be prima facie evidence of abandonment that the parent or parents, although having legal custody of the child, have surrendered physical custody of the child, and for a period of six months following such surrender have not manifested to the child or to the person having physical custody of the child a firm intention to resume physical custody or to make arrangements for the care of the child."

Does the evidence disclose an abandonment of Evan and Bart by the Appellant?

This Court in The State of Utah, In the Interest Of Summers Children v. Orin John Wulffenstein, 560 P2d 331, cited with approval the construction

of the term "abandonment" as expressed by the Supreme Court of Alaska in the case of In The Matter Of D. M., a Minor v. State of Alaska, 515 P2d 1234, and further refined by The Alaska Supreme Court in the case of In The Matter Of B. J., a Minor, 530 P 2d 747, wherein the Alaska Court stated "an abandonment finding cannot be predicated solely on the best interest of the child . . . the test for abandonment is whether there is conduct on the part of the parent which implies a conscious disregard of the obligations owed by a parent to the child, leading to the destruction of the parent-child relationship. The test focuses on two questions -- has the parent's conduct evidenced a disregard for his parental obligations, and has that disregard led to the destruction of the parent-child relationship? The best interests of the child are relevant to the latter question, because it is indicative of a breakdown of the parent-child relationship if the child's best interests are promoted by legal severance of the relation. But the child's best interests may not always be directly relevant to the parent's disregard of his obligations. This part of the test can only be satisfied by proof that the parent's conduct evidences a conscious disregard of his obligations".

In relation to the foregoing determination of the elements of abandonment, lets examine the evidence as it relates to the appellant and her conduct toward Evan and Bart. It would seem that it was concern for, rather than a disregard for, the well being of her children that prompted appellant's voluntary placement of her five (5) children with the Division of Family Services. Appellant was asking for help for her family (R-157, 158 and 164),

but was in effect left to her own devices.

Two visits with Evan and Bart was the extent of appellant's contact with those two children from February, 1974, when appellant placed her children with the Division of Family Services, to July, 1974, when appellant moved to Denver to join her husband. Yet, the record does not show one instance in which appellant did not make an attempt to visit Evan and Bart during the times when she was in Salt Lake City. And if the Juvenile Court is counting the times when appellant was in Salt Lake City attending the trial of this case as among the "six to eight" times appellant visited Salt Lake City since her move to Colorado, as recited in its Findings of Fact then, the Juvenile Court should count two more refusals of appellant's request to visit Evan and Bart -- once when she appeared at trial in December, 1976 and again when she appeared at trial in February, 1977.

The record reeks with frustrations of appellant's efforts to be reunited with her children -- the letter of September 6, 1974 (Exhibit C) which would seem to imply that appellant could not get her children and remain in Colorado with her husband -- appellant's letter of October 17, 1974 (Exhibit D) and the reply letter (Exhibit F).

As set forth in 55-10-63, Utah Code Annotated, 1953, as amended, the very existence of the Juvenile Court Act is predicated "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 this end this Act shall be liberally construed." If the foregoing

statute means what it would seem to say, the Juvenile Court system has a responsibility in making it possible for the appellant and her children to be together as a family. Yet, no affirmative steps were taken to reunite appellant with her children.

Another stone is cast at the appellant by the finding of the Juvenile Court that appellant had not supported her children although she had been employed since October, 1974. But there is nothing in the evidence of appellant's ability to support, and certainly the Juvenile Court made no order of support in exercising its powers under 55-10-110, Utah Code Annotated, 1953, as amended.

Point II

THE EVIDENCE DOES NOT SUPPORT THE FINDING
THAT APPELLANT IS UNFIT OR INCOMPETENT
BY REASON OF CONDUCT OR CONDITIONS SERIOUSLY
DETRIMENTAL TO EVAN AND BART.

Linea Bowles, foster care case worker who came into the case after appellant moved to Colorado, filed the Petition to deprive appellant of her (appellant's) parental rights with Evan and Bart (R-265). The Petition was filed August 18, 1976. How Miss Bowles, having only met with appellant on two occasions prior to August 18, 1976 (R-85, 89 and 90), had the qualifications to make the allegation set forth in the Petition, as tempered by A More Definite Statement (R-255) is still a mystery to this writer and is certainly made no clearer by the record.

This Court in the case of State of Utah, In The Interest Of Ricky Winger, 558 P 2d 1311, held that to sustain an order terminating the parent-child

relationship, the court must be convinced by a preponderance of the evidence that the conduct or condition is seriously detrimental in its effect on the child.

In the instant case, no showing is made in the evidence that there is any causal connection between any detrimental effect on Evan and Bart by conduct or condition of the appellant.

CONCLUSION

The appellant voluntarily sought the help of Utah's Juvenile Court system for a helping hand with a family situation with which appellant was finding it difficult to cope. Rather than extending a helping hand to appellant, the Juvenile Court system burdened appellant with more frustrations with barriers which were placed between appellant and a parent-child relationship with her two youngest children, Evan and Bart. Appellant was never reunited with Evan and Bart in a parent-child relationship, after she placed them into the Juvenile Court system in February, 1974. Then, after trial upon a Petition to deprive appellant of her rights as the natural parent of Evan and Bart, in which the evidence did not sustain the allegations of the Petition, the Juvenile Court deprived appellant of her parental rights with Evan and Bart and, in effect, gave its (Juvenile Court's) blessing upon the break up of a family to which the Juvenile Court system had made a significant contribution by failure to discharge its responsibilities.

The Juvenile Court should be reversed, and appellant's parental rights with Evan and Bart restored. Costs should be awarded to appellant.

Respectfully submitted,

A handwritten signature in cursive script that reads "Don Blackham". The signature is written in dark ink on a white background.

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