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State of Utah, In The Interest of Evan Orgill And Bart Orgill, Persons Under 18 Years of Age v. Joyce Thomason : Respondent's Brief On Appeal

Utah Supreme Court

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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,)	
)	
vs.)	
)	
JOYCE THOMASON,)	Case No. 15140
)	
Appellant.)	

* * * * *

RESPONDENT'S BRIEF ON APPEAL

* * * * *

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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,)	RESPONDENT'S BRIEF
)	ON APPEAL
vs.)	
)	
JOYCE THOMASON,)	Case No. 15140
)	
Appellant.)	

* * * * *

NATURE OF THE CASE

This is the appeal of an Order entered on March 22, 1977 by the Second District Juvenile Court, the Honorable John Farr Larson presiding, permanently terminating the parental rights of Joyce Thomason, the natural mother of Evan Orgill and Bart Orgill in those boys pursuant to the provisions of Section 55-10-109, Utah Code Annotated, 1953, now Section 78-3a-48, Utah Code Annotated, 1953, as amended.

DISPOSITION IN THE LOWER COURT

After trial, the Juvenile Court determined that the parental rights of the appellant, Joyce Thomason, natural mother of Evan and Bart Orgill and their father, Leonard Orgill,¹ should be terminated on the grounds that their conduct created a condition seriously detrimental to Evan and Bart, the abandonment

1. The natural father of Evan and Bart Orgill has not appealed this decision.

of the children by appellant, and the emotional condition of appellant and the emotional condition of the children created a situation seriously detrimental to the children.

NATURE OF RELIEF SOUGHT ON APPEAL

The appellant seeks to have the decision of the Juvenile Court reversed and the children returned to their natural mother. This respondent, counsel for the children employed by the foster parents, seeks affirmation of the decision of the Juvenile Court.

STATEMENT OF THE FACTS

This respondent does not believe that the appellant has stated the complete facts in this matter and presents the following Statement of Facts:

Evan and Bart Orgill were born of the marriages of Leonard and Joyce Orgill (Record, 155), who were married twice and divorced twice. (Record, 222.) On July 6, 1973, after the second divorce, Joyce Orgill married Kenneth Thomason (Record, 155) and the appellant, Kenneth Thomason, and the five children resided together as a family living on public assistance from July of 1973 through February of 1974. (Record, 147, 156-57.)

Because of the drinking of Kenneth Thomason, financial pressures, her emotional inability to cope with the situation, and the desire to get the children into a stable environment, appellant placed all five of her children with the Division of Family Services for foster care in February of 1974. (Record, 138-139, 140, 156, 157, 158, 164, 165, 210-11.) Evan and Bart

were placed in one foster home and the other three children were placed in other foster homes. (Record, 151, 173-74.) Visitation with all of the children after they were placed in foster care was arranged first through Christine Calver (from February through September of 1974) and thereafter through Linnaea Bowles², the foster care workers assigned to the case by the Division of Family Services. (Record, 159, 161, 173, 174.)

After Evan and Bart were placed in foster care, appellant visited with them only twice. (Record, 63, 160.) The first visit, on March 12, 1974, was a disaster. Mr. Thomason was drinking and became intoxicated. He cornered Ms. Calver for a half hour and berated her about his desire not to have the children around when he had been drinking. (Record, 63-64.) He said he was in pain and wanted to lie down in the middle of Main Street and be hit by a car. (Record, 63.) The children witnessed this scene while the appellant just sat on a couch and watched. (Record, 64.) The second visit took place at the Division of Family Services Office just before Mrs. Thomason left for Denver. (Record, 160.)

In July of 1974, appellant moved to Denver (Record, 160) to improve her economic circumstances. (Record, 166.) She made this move without making any arrangements or plans to con-

2. Linnaea Work was married in 1976. She is referred to as Linnaea Work (her maiden name) in some of the exhibits and testimony. She will be referred to as Linnaea Bowles throughout this Brief.

tinue her relationship with her children or rehabilitate her to secure their return. (Record, 166-74.) She made no attempt to contact Evan and Bart after her arrival in Denver, believing that it was best that they be left alone to get settled into a foster home. (Record, 160, 161.) She did write to Evan and Bart once, on September 17, 1974. (Record, 266-267.)

Appellant has not written to Evan or Bart, sent them Christmas cards, birthday cards or spoken with them again from September 17, 1974 to the present. (Record, 160-161, 170.) She did request a visit with Evan and Bart when she came into Utah in December of 1974, but that request was turned down with the explanation that she should remain in town and settle herself before re-opening contact with Evan and Bart since, the caseworker believed, such contact would be disturbing to Evan and Bart (Record, 85-86) and appellant should be ready to follow through after the initial contact with the restructuring of her relationship with the boys. The social worker testified she felt the re-establishment of a relationship should be worked out first with the older children as the appellant had maintained contact with them before recontacting Evan and Bart. (Record, 85-87.) Instead of doing so the appellant returned to Denver. (Record, 87.)

After the appellant had an opportunity to think over what she had been informed by the case worker and how she had responded to that information in December of 1974, she wrote the

caseworker an apology and declared that she understood why she had been denied visitation with Evan and Bart. (Record, 268.) The appellant did not say what she would do to establish that relationship before re-opening contact with those children. (Record, 268.) In fact, after moving to Denver in July of 1974, the appellant took no action of any kind to establish or implement any kind of plan to secure the return to her of Evan and Bart. (Record, 166-74.)

Christine Calver, the social service worker who was working with the children wrote to the appellant on September 6, 1974, that if she did not do something to remain in contact and re-establish a relationship with her children the Division of Family Services would be forced to take action to implement a permanent deprivation of her parental rights in the children. (Record, 243.) Ms. Calver also advised the appellant to stop making promises to her children which appellant would then break; that is, promising to come to Salt Lake City to get them or to stay with them while failing to do so. (Record, 243.)³ Appellant was advised to contact Dave Christensen to establish a plan for the return of her children. (Record, 243.) The appellant responded by letter to Mr. Christensen on October 17, 1974, asking what she had to do to get the children back. (Record, 262-263.) Mr.

3. Appellant, in her letter to Evan and Bart of September 17, 1974, told them that she would return to Salt Lake City, reunite the family and never leave again as soon as she could raise the money to do so. (Record, 226.) She never did so.

Christensen responded to her on November 18, 1974, that if she was not going to return to Salt Lake City she should have the local welfare department do a home study and evaluation; to make a determination herself as to whether she really wanted the children to live with the step-father; to determine if she could adequately supervise the children and to obtain an adequate home. (Record, 254.)

Appellant's response, on December 7, 1974, was to advise the social service worker, Linnaea Bowles, that she would be returning to Salt Lake City on December 14 or 15, 1974, and would contact the Division of Family Services. She stated it would be her intention to get a job, establish a home and get the children out of foster care. (Record, 85-86, 253.) Appellant did return to Utah in December of 1974, did visit with the oldest three children, but instead of staying in Utah to re-establish relationship with the children, returned to Denver. (Record, 86-87.)

When appellant returned to Denver, she did have an evaluation made of her home. It indicated that her home was adequate and for the return of the children. (Record, 89.) Linnaea Bowles felt that the study was not accurate because the information she received from Josalyn, oldest daughter of the appellant, who had visited with the appellant in her home, was that Kenneth Thomason had not ceased his drinking and the marriage was not stable and could break up at any time. (Record, 89, 100.)

113, 116-117.) The evaluation of Mrs. Bowles was that while the appellant had moved into a home that was sufficient to accomodate the children (Record, 268), appellant had done nothing about determining the answers to the other questions, re-establishing a relationship with her children or honestly facing up to the problems which she had to face if she was to function as the mother of her children. (Record, 89.)

From the transmittal of the letter of February 18, 1975 to July 28, 1975, there was no contact by the appellant with the children or with the Division of Family Services. (Record, 90.) On July 28, 1975, the appellant suddenly appeared in Salt Lake City (Record, 90), informed Linnaea Bowles that she was going to obtain a job, stay in Utah, re-establish relationships with her children and divorce Kenneth Thomason. (Record, 90-91.) However, on August 5, without contacting Linnaea Bowles, she left Salt Lake City and returned to Kenneth Thomason. (Record, 91.) During this entire visit she did not request a visit with Evan and Bart. (Record, 90-91.)

Thereafter, there was no contact between the appellant and the Division of Family Services until February 9, 1976 when Linnaea Bowles wrote the appellant to inquire as to whether or not she had any desire to maintain contact with the children and still wanted them back. (Record, 91-92, 270.) The appellant and her husband responded that she had always the children back and to contact their attorney to discuss the matter further. (Record, 92-94, 269.)

The result of the failure of appellant to maintain contact with Evan and Bart, she admits, has resulted in the destruction of the parent-child relationship; there is no meaningful relationship in existence between herself and her sons, Evan and Bart. (Record, 167.)

Bart Orgill, the younger of the two children, has emotionally determined that his parents are dead and that the foster parents are his true parents. (Record, 15, 54, 251.) Evan has established very close emotional ties with his foster father (Record, 246), wants to stay with the foster parents and will, in the opinion of the examining psychologists, establish close emotional ties with his foster mother once he knows that the ambiguity of the situation is removed. (Record, 26-31, 41-42, 251.) Evan, who does recall life with the appellant, wants to stay with the foster parents (Record, 7, 11, 29-30, 41, 251) and views separation from the foster parents as abandonment. (Record, 44.) The fear Evan has about this situation is that he will be taken from his home which will destroy his structure again. (Record, 26-31, 40-44, 60, 248, 251.) In the opinion of both of the examining psychologists, Evan's ambiguity of feeling regarding women and emotional instability is a result of his experiences with the appellant. (Record, 30-32, 42, 45-46, 246, 251.) Both boys would be highly traumatized if taken from the foster home where they have a deep emotional investment and have established a psychological parent-child relationship with their foster parents. (Record, 26-31, 40-44, 60, 248, 251.)

The appellant's emotional condition is highly unstable. The psychological evaluation of the appellant performed by Gordon G. Wilson, Ph.D., lead him to diagnose her emotional state as being incapable of caring for someone with the special problems she has caused in Evan and to cope with the problems of removal from the foster home would cause both boys. The appellant married two men who she knew were alcoholics. (Record, 222.) She has a very limited range of emotional expression (Record, 223), is slow, indecisive, uncertain, (Record, 223) with a limited I.Q. (Record, 226). She denies that there is any problem on her part which requires treatment, even though she has suffered hallucinations, dillusions, has heard voices (Record, 224-25), and is a border-line psychotic who the examiner felt was a latent schizophrenic. (Record, 226.) She suffers from a lack of integrity in her thinking which is the result of her emotional distress. (Record, 226.)

ARGUMENT

THE JUVENILE COURT CORRECTLY DETERMINED THAT
THE APPELLANT SHOULD BE TERMINATED FROM HER
PARENTAL INTERESTS IN EVAN AND BART ORGILL

This Court has very carefully articulated the competing interests that must be considered in a case of the termination of parental rights pursuant to the Juvenile Court Code. State v. Dade, 14 Utah 2d 47, 376 P.2d 948 (1962). These are the parents, 376 P.2d at 949; the children, 376 P.2d at 949-50; and the public, 376 P.2d at 950. This Court articulated the over-riding policy in this type of cases as:

Inasmuch as the public must bear these burdens, [homes which produce maladjusted, deficient individuals] its functioning authorities are not required to always forebear in deference to the desires of persons incapable or unwilling to accept their own responsibilities. There is a point at which it is no longer consistent with the best interests of all concerned merely to continue picking up the wounded; and it becomes necessary to perform some social surgery to prevent a continuation of the evils that are producing the social harm. Doing so can, in the ultimate, best conserve human values and provide at least the hope of interrupting the self-perpetuating cycle of afflictions that fall upon the children and indirectly upon the public. Accordingly, the legislature has recognized that in cases where there is delinquency, dependency or neglect, deprivation of the parents of custody of the children is justified. (footnote omitted) We agree that this 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. 376 P.2d at 950.

In the instant case, the appellant has, through her own conduct both created a condition which is seriously detrimental to her children and abandoned them. In addition, her emotional condition when seen against the needs of her children reveals a situation seriously detrimental to the children. In these circumstances, the Trial Court has correctly determined that the appropriate response pursuant to Section 78-3a-48, Utah Code Annotated, is the termination of all parental rights of the appellant.

Point I

THE CONDUCT OF THE APPELLANT AND HER EMOTIONAL CONDITION HAS PRODUCED A SITUATION WHICH IS SERIOUSLY DETRIMENTAL TO HER CHILDREN AND IT REQUIRES THE TERMINATION OF ALL OF HER PARENTAL INTERESTS IN THEM.

The appellant in the instant case voluntarily placed her children in foster care in February of 1974. Thereafter, she visited them twice--in March and May of 1974, wrote to them once, on September 9, 1974, and has had no contact with either of them since that date. Her husband, their step-father, has had only one visit with them since February of 1974. That was in March of 1975, during which visit he either became or was highly intoxicated. His step-son Evan is afraid of him and wants nothing to do with him. (Record, 118.)

After Evan and Bart were placed in foster care, the appellant and her husband stated that they could not take them back because they had signed a contract to manage the Alta Motel in Salt Lake City for a year and the facilities there were not adequate to take care of the children. (Record, 62.) Despite this contract, appellant in July of 1974, moved with her husband to Denver, making no arrangements to take or to maintain contact with the children. In fact, after the move, appellant failed to contact anyone at the Division of Family Services about the children until Christine Calver, wrote to them in October of 1974 and told the appellant that she would be permanently deprived of her parental interests in all of the children if she did not take some action. (Record, 64-65, 243.) The appellant responded to letters from case workers from the Division of Family Services and visited Salt Lake City a couple of times thereafter, but failed to undertake any action to re-establish a relationship

with Evan and Bart. This is in clear contrast with her careful maintenance of contact with the older three children. (Records 86, 90-91, 112-13, 116-17, 170.)

As a result of these actions, Evan's and Bart's normal bonds to her as their biological mother have ceased to exist. She has become dead in the eyes of her youngest child, Bart, who views his foster parents as his psychological parents. The possibility of his return to the appellant serves only to block the risking of bonding by Evan with his foster mother. These acts of the appellant have created a situation seriously detrimental to her children. They need a stable fixed home that will be permanent. The appellant's failure to supply this home as produced this situation and her acts have destroyed her emotional ties to her children. This situation arose as a direct result of the deliberate choices and conduct by the appellant. It is in contrast to the situation presented to this Court in State of Utah in the Interest of Ricky Winger, 558 P.2d 1311 (1976), where the detrimental situation arose without fault on the part of Ricky's mother.

However, this is not the sole evidence of a seriously detrimental condition affecting Evan and Bart. She is a borderline psychotic functioning at a low intellectual level as a result of her emotional illness. As Dr. Wilson, the examining psychologist stated:

It was difficult to clarify with Mrs. Thomason how much she understands the nature

of reported adjustment problems that some of her children have. She tends not to be very psychologically minded and certainly is lacking in insight. (Record, 224-25.)

. . . She is probably poorly equipped to be a strong, appropriately controlling mother of adolescent children and it would be very difficult for her to cope with emotional problems in younger aged children.

When Mrs. Thomason was approached by the examiner about the possible wisdom of deferring attempts to have all of her children returned to her at the same time because of the possibility that she would have difficulty coping with that much stress, she tended to be rather oblivious to the realities of the situation. She tends to blandly deny that she will have any problem handling her children or that they will present any degree of stress for her in the mothering role, . . . The examiner judges that if her children have any even ordinary, no less extra need for control and limited setting, this woman is probably doubtfully capable of providing for those needs. (Record, 227.)

She seems to be a person who will sincerely attempt to do her best to cope with whatever difficulties arise, but a person who has grave limitations in coping skills. (Record, 228.)

After examining Mr. Thomason, the step-father of the children, Dr. Wilson stated:

In my professional opinion serious question has to be raised whether this man can cope with the stress of the frustration which adolescence and emotionally troubled children present to parents. In view of his wife's serious level emotional difficulties, it is certainly questionable whether he can contend with the stresses of raising children without needing to resort to heavy alcohol usage which could only serve to impair his capacity to cope. (Record, 234-35.)

Thus, neither the appellant or her husband are emotionally able to cope with the problems of raising Evan and Bart.

In sum, the record is clear that there is conduct on the part of the appellant which has created an emotional situation which is seriously detrimental to her children and because of her emotional condition, they cannot be returned to her. Evan and Bart require the stability that can only come from a termination of her parental rights and their permanent placement in a home where they can establish emotional bonds and sink roots. This is particularly true of Evan, who has a desperate need for stability as soon as possible. The Trial Court correctly analyzed this situation in his memorandum decision. (Record, 210-217.) He entered Findings of Fact (Record, 218-20) which are fully supported in the record and which justify the determination that there was both conduct on the part of the appellant and conditions in both the appellant, State v. Dade, supra, and the children, which is seriously detrimental to the children and which requires the permanent termination of all parental rights of the appellant in Evan and Bart.

POINT II

THE APPELLANT ABANDONED HER CHILDREN.

At the time the trial in this case was concluding, the decision of this Court in State in the Interest of Summers Children v. Wulffenstein, 560 P.2d 331 (Utah, 1977) was published. The principles enunciated in that case were applied by the Trial Court in determining that the appellant abandoned Evan and Bart.

The Trial Court followed the direction to be objective and take into account:

. . . not only the verbal expressions of the natural parents, but their conduct as parents as well. 560 P.2d at 334.

The Trial Court, using this objective test, applied it to the ruling of this Court that:

A better definition of abandonment, for these purposes, is that abandonment consists of 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. 560 P.2d at 334.

The children were voluntarily placed in custody by the appellant in February of 1974, visited with Evan and Bart only in March and May of 1974, wrote to Evan and Bart only once thereafter, in September of 1974. The Court found that while in the exchange of letters and oral statements the appellant always said that she wanted to maintain contact with and secure the return of Evan and Bart, no conduct was undertaken by her to carry through that expressed desire. While appellant did have her home evaluated by the Division of Family Services in Colorado, she did not articulate to the caseworkers in Utah a clear intention to take her children back. In fact, while she was indicating to them that the marriage was working and that Mr. Thomason was not drinking, she was informing Josalyn, her older daughter, that the marriage might very well break up and that Mr. Thomason was drinking. This was confirmed by Josalyn during visits with the appellant.

While appellant was failing to communicate with Evan and Bart, she was also carefully maintaining her ties with her older three children. While no support was offered for Evan or Bart. No birthday cards, Christmas presents or other forms of communication were sent to Evan or Bart, appellant did send such cards and presents to and maintain contact with her other children.

The Trial Court appropriately determined from this conduct that appellant had evidenced a conscious disregard for her parental obligations.

The testimony of the psychologists who examined Evan and Bart was equally clear that there has been a total destruction of the parent-child relationship in the younger child, Bart, while only a bitter residue remains in Evan; a residue which serves only the purpose of preventing the establishment of ties and bonding with his foster mother. Both of the testing psychologists stated their belief that it was conduct on the part of the appellant which has led to the ambiguity of feelings as to words that is evidenced in Bart, and it is only by the establishment of a permanent home where he can emotionally bond with a mother figure that will enable him to minimize or undo the damage done by the appellant.

The Trial Court correctly determined that each of the two factors involved in the test of desertion under Section 78-3a-48, Utah Code Annotated, 1953, had been met. That determination is appropriate and proper.


The statements of intention to take the minor children of the parties by the appellant were made only in response to direct inquiries by agents or employees of the Division of Family Services. None were made by her on her own. Her acts speak for themselves and they negate her words. Her words in fact evoked the reprimand from the Social Services worker not to make promises she would not keep. She did not heed this advice and now, under the provisions of §78-3a-48, Utah Code Annotated, 1953, as interpreted by this Court, the significance of her acts has become clear. While the record reveals an ongoing contact with her older three children, it is devoid of any such effort to maintain contact with Evan and Bart. The test of abandonment enunciated by this Court in State of Utah in the Interest of Summers Children v. Orin John Wulffenstein, 560 P.2d 331 (1977) has clearly been met.

CONCLUSION

The Trial Court correctly determined that there was conduct on the part of the appellant which has created a condition seriously detrimental to her children. It also determined that appellant's emotional condition is such that when placed in contrast with the emotional needs of her children, continued legal ties would be seriously detrimental to them. The Court also determined that the appellant had abandoned her children. Each of these determinations is fully supported by the evidence in the record and demonstrates the correctness of the determina-

tion to terminate all parental interest of the appellant in the
of her children, Evan and Bart. This Court should affirm that
decision by the Trial Court.

RESPECTFULLY SUBMITTED this 30 day of September
1977.


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CERTIFICATE OF MAILING

I hereby declare that I caused to be mailed two true and correct copies of the foregoing Respondent's Brief on Appeal in Case No. 15140, postage prepaid, this 30 day of September, 1977, to Robert B. Hansen, Attorney General, and Franklyn B. Matheson, Assistant Attorney General, at 236 State Capitol Building, Salt Lake City, Utah, 84114; to Olof Johansson, Deputy County Attorney, at 3522 South 700 West, Salt Lake City, Utah, 84119; to David E. Littlefield, Guardian Ad Litem for Evan and Bart Orgill, at 707 Boston Building, Salt Lake City, Utah, 84111; and to Don Blackham, Attorney for Appellant, at 3535 South 3200 West, Salt Lake City, Utah, 84119.


DAVID S. DOLOWITZ