

1977

# 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 eighteen years of )  
age, )

vs. )

JOYCE THOMASON, )

Appellant. )

Case No. \_\_\_\_\_

\* \* \* \* \*

RESPONDENT'S BRIEF ON APPEAL

GUARDIAN AD LITEM

Appeal From An Order  
Of The Second District Court  
For Salt Lake County,  
The Honorable John Fair

\* \* \* \* \*

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STATE OF UTAH, in the	)	
interest of Evan Orgill	)	
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under eighteen years of	)	RESPONDENT'S BRIEF
age,	)	ON APPEAL
	)	
vs.	)	
	)	
JOYCE THOMASON,	)	Case No. 15140
	)	
Appellant.	)	

\* \* \* \* \*

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from the Judgment of the Second District Juvenile Court in and for Salt Lake County, State of Utah, the Honorable John Farr Larson, presiding. All parental rights of Joyce Thomason and Leonard Orgill, the children's natural parents were terminated. The Court found that the mother has abandoned the children in that her conduct evidenced a conscious disregard for her parental obligations and that this disregard has led to the destruction of the parent-child relationship. The Court further found that both parents are unfit or incompetent by reason of conduct or conditions seriously detrimental to the children. (Record, 210-220). Leonard Orgill, the natural father, has not appealed the decision. The Order terminating his rights, however, he has been stayed pending

a determination of this appeal. (Record, 200-201, 204.,

### DISPOSITION OF THE LOWER COURT

The Second District Juvenile Court after trial entered an Order terminating all of the parental rights of the Appellant, Joyce Thomason, and of Leonard Orgill, because their conduct created a seriously detrimental condition in the children, their abandonment by Appellant and the emotional condition of the children and their natural mother and father.

### NATURE OF RELIEF SOUGHT ON APPEAL

The Appellant seeks a reversal of the Juvenile Court decision. The Guardian Ad Litem of the children seeks affirmation of the decision of the Juvenile Court.

### STATEMENT OF THE FACTS

The Guardian Ad Litem submits that the Statement of Facts contained in Appellant's Brief does not set forth fairly and completely the facts which should be considered for appeal.

This respondent accepts the Statement of Facts submitted by David S. Dolowitz, attorney for the children employed by the foster parents, and specifically adopts that Statement of Facts. However, additional information adduced at trial regarding the emotional condition of the children should be presented to the Court:

Evan and Bart Orgill were placed in foster care in February of 1974. (Record, 61). At that time, Bart was three (3) years old and Evan was almost seven (7) years old. Since being placed in foster care, the boys have visited their natural mother only twice. (Record, 63,160.)

Bart Orgill believes his natural parents are dead. (Record, 10-11, 54). Bart's psychological parents - the persons from whom he obtains nurturing and whom he identifies as his real parents - are the foster parents with whom he has lived since being placed in foster care. (Record, 8, 53). It would be highly traumatic to remove Bart from his present home. (Record, 16).

Evan Orgill was almost seven (7) years old when placed in foster care. He is an "extremely disturbed young man" who is uncertain about where he belongs and has a great deal of anxiety over this fact. He exhibits hostility towards women although "he needs the mother figure, he needs someone to depend on but he is afraid to get to close for the fear that he may be abandoned that

he feels he was earlier..." (Record, 9, 41).

Evan does not believe he is physically attractive (Record, 48). He has a low self-image and fears possible abandonment in the future (Record, 9, 41). He tends to give up easily, anticipating failure, and to close himself off from others. (Record, 43, 46).

Testimony was offered by one psychologist that Evan suffers from some sort of chronic brain damage although he has a potential IQ in the superior range. (Record, 6). The damage is probably not of recent origin and did not occur during the period of time Evan was in foster care. (Record, 12-13).

This young boy was described as "walking a tight-rope" for the reason that during psychological testing he verbalized a desire to be with his natural mother, but the actual testing indicated that he strongly prefers to be where he is. The continued uncertainty over his future is detrimental to him. Unlike his brother Bart, he is afraid to trust and has no psychological parents. (Record, 16).

Evan and Bart are in the same foster home (Record, 151, 173-174). Bart is healthy and happy. Evan has superior potential but needs specialized training and parents who are strong and supportive and willing to spend time and effort with him. (Record, 17, 18, 44-45).

Gordan G. Wilson, M. D. a PhD. Psychologist,  
evaluated the Appellant. He stated:

"In all likelihood this woman's problems stem from the lack of appropriate adequate attachment to her mother, with attendant limitation and satiation of affectional and security needs. Hence, she is in a poor position to be able to give to her own children what she did not get from her own parents. This lady, of course, does feel an obligation to be a dutiful and consciencous mother even though it appears that she has grave limitations in parenting skills. Mrs. Thomason remains hopeful that somehow potential problems that might come up can be contended with, but she has not really planful or thoughtful approaches to how to cope with difficulties. 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).

#### ARGUMENT

THE JUVENILE COURT CORRECTLY TERMINATED ALL  
OF APPELLANT'S PARENTAL RIGHTS IN EVAN AND  
BART ORGILL

Juvenile Court proceedings are highly equitable in nature and concerned primarily with the welfare of the children. In re State in the Interest of Jennings, 20 Utah 2d 50, 242P.2d 879 (1967). Unlike other cases at law, the inquiry into children's best interests and welfare



must necessarily be a fluid one, which recognizes the emotional condition and needs of the children before the Court. As this Court stated in State in the Interest of Mario A., 30 Utah 2d 131, 514 P.2d 797 (1973):

While one feels deeply for a parent who is deprived of a child, that feeling must not overcome the duty placed upon the Courts to act in the best interest of the child. 514 P.2d at 799.

Clearly, Bart Orgill has no recognition of any relationship with his natural parents and believes that the family of which he is a part is his own family. To destroy his family or limit his relationship with the people he identifies as his parents would work a terrible injury to him. (Record, 59-60).

There is little question that Evan's welfare requires the certainty of a relationship with strong, highly motivated parents.

This Court interpreted the statutory purposes behind the Juvenile Court System, recognizing the importance of the family, in Fronk v. State, 7 Utah 2d 245, 322 P.2d 397 (1958) as follows:

The Juvenile Court is established to safeguard the youth of this state against conditions that would be likely to lead to their

loss as useful citizens. It was not created for the purpose of substituting persons, other than the natural parents, to take over the children. It should seek in every way, short of such a substitution, to preserve and maintain that *bond of parental affection which has been throughout the existence of mankind the most potent force for safeguarding the interest and welfare of the oncoming generations.* 322 P.2d at 402 (Emphasis added).

For Evan and Bart Orgill, the "bond of parental affection" was cut by the natural mother, and new bonds of affection have been substituted. More damage will be done to them by attempting to surgically repair the destroyed relationship.

#### POINT I

#### THE APPELLANT HAS ABANDONED HER CHILDREN

This Court has stated that:

...abandonment consists of conduct on the part of the parent which implies a conscious disregard of the obligation owed by a parent to the child, leading to the destruction of the parent-child relationship. State in the Interest of Summers Children v. Wulffenstein, 560 P.2d 331 (Utah 1977).

Conduct, and not just words, should be considered.

The lives of these children, and their biological and emotional development, did not cease in May in 1974, the date of Appellant's last visit with them. Their growth as indivi-

duals did not stop on September 9th, 1974, the date of her last letter to them. By her actions - or, rather, by her failure to act - Appellant has shown a conscious disregard for her parental obligations.

The statutory definition of abandonment has been met by clear and convincing evidence. Section 78-3a-48 (b), Utah Code Annotated. provides:

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.

## POINT II

### APPELLANT IS UNFIT OR INCOMPETENT BY REASON OF CONDUCT OR CONDITIONS SERIOUSLY DETRIMENTAL TO THE CHILDREN

In its Findings of Fact, the Trial Court listed several bases for its Conclusions that Appellant is unfit or incompetent by reason or conduct or conditions seriously detrimental to the children: Appellant has had no contact with the children for over two and one-half (2 ½) years, has not provided emotional support for the children, has not supported the children although she was regularly employed, that she has severe emotional disorders which make her inco-

able of providing for the children's needs, that the children have specific psychological needs which have not been met by Appellant, that Bart Orgill thinks his mother is dead, that Evan Orgill has extreme emotional problems. (Record, 215-216). The Record is replete with evidence of parental unfitness. Indeed, the situation has reached the point where "it no longer consistent with the best interest of all concerned merely to continue picking up the wounded" and where Appellant's home "cannot or will not correct the evils which exist." State in the Interest of F. D. and P. v. Dade, 14 Utah 2d 47, 376 P.2d 948 (1962).

This Court has adopted a policy of allowing judicial termination of parental rights only extreme cases. State v. Dade, supra; Fronk v. State, supra; State in the Interest of Winger, 588 P.2d 1311 (Utah 1976); State v. Lance, 23 Utah 2d 407, 464 P.2d 395 (1970); State in the Interest of Summers Children v. Wulffenstein, supra. The situation involving Evan and Bart Orgill is such an extreme case.

### CONCLUSION

The Trial Court correctly determined that Evan and Bart Orgill have been abandoned by their mother and that a condition or conduct exists which is seriously detrimental

to the children. The boys desperately need certainty in their lives which can be obtained only through completely cutting the valueless legal ties which bind them to their natural mother.

The Oregon Supreme Court, in the State v. Blum, 463, P.2d 367, 370 (Ore. 1970), could have been speaking about the needs of Evan and Bart Orgill.

It is important that the child have a sense of belonging to a family. This is one of the things we look for after we say our prime consideration is the best interest of the child. It is not in the best interest of the child to keep him forever in a limbo...for this child it may well be that at this present age of seven and one-half (7½) years it is already too late to successfully intergrate him into a family. If it is not too late, it is important to get it done soon.

The decision of the Juvenile Court should be affirmed.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of October, 1971

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CERTIFICATE OF MAILING

I certify that I mailed true and correct copies of the foregoing Brief, postage prepaid, this 12 day of October, 1977, to Robert B. Hansen, Attorney General, and Franklyn B. Matheson, Assistant Attorney General, 236 State Capital Building, Salt Lake City, Utah 84111; to Don Blackham, Attorney for Appellant, 3535 South 3200 West, Salt Lake City, Utah 84119; to David S. Dolowitz, Attorney for Evan & Bart Orgill, 79 State Street, Salt Lake City, Utah 84147; and to Olof Johansson, Deputy County Attorney, 3522 South 700 West, Salt Lake City, Utah 84119.



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