

1978

# State of Utah, In The Interest of E. And Persons Under Eighteen Years of Age : Petition For Rehearing

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

\* \* \* \* \*

State of Utah, in the )  
interest of E. and B., )  
persons under eighteen )  
years of age, )

vs. )

J. T., )

Appellant. )

PETITION FOR REHEARING

Case No. 15140


\* \* \* \* \*


The Guardian Ad Litem and counsel for the above-named minors hereby petition the above-entitled Court to rehear the above-entitled matter on the grounds that in the decision filed on April 11, 1978, this Court erred in misapplying §78-3a-48(1)(a), Utah Code Annotated, 1953, by considering the conduct of the appellant without applying the full test for termination of parental rights as set forth in that section; to-wit, that if there is a condition seriously detrimental to the children it forms an independent basis for termination of parental rights and the evidence in this case clearly demonstrated a seriously detrimental condition existed in regard to the above-named minors which was not properly considered by this Court in its decision.

FILED

MAY -1 1978

DATED this 28 day of April, 1978.

  
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Petition for Rehearing  
State of Utah in the Interest  
of E. and B. vs. J.T.  
Case No. 15140

IN THE SUPREME COURT  
OF THE STATE OF UTAH

\* \* \* \* \*

State of Utah, in the	)	
Interest of E. and B.,	)	
persons under eighteen	)	
years of age,	)	
	)	BRIEF IN SUPPORT OF
vs.	)	PETITION FOR REHEARING
	)	
J. T.,	)	Case No. 15140
	)	
Appellant.	)	

\* \* \* \* \*

Guardian Ad Litem and counsel for the above-named children, having heretofore filed a Petition for Rehearing of the above-entitled matter, hereby submit the following Brief in support of said Petition.

POINT I

THE OPINION OF THIS COURT FILED APRIL 11, 1978 FAILED TO PROPERLY APPLY THE MANDATE OF SECTION 78-3a-48(1)(a), UTAH CODE ANNOTATED, 1953.

Section 78-3a-48(1)(a), Utah Code Annotated, 1953, provides for permanent termination of parental rights if the Court finds:

"...that the parent or parents are unfit or incompetent by reason of conduct or condition seriously detrimental to the child;"

The evidence in the instant matter clearly demonstrated that the Appellant is not emotionally or psychologically able to be the parent of either of the above-named children. (R. 224-225, 227,

13.) This is a result of her inability, because of her emotional and intellectual condition, to understand their problems (R. 167), which have been compounded by their establishment of a parent-child relationship with their foster parents. (R. 7, 11, 15, 29-30, 41, 54, 246, 251.) In the April 11, 1978 opinion of this Court it was determined that the severing of the emotional ties between the appellant and these children occurred because of the conduct of social workers from the Utah State Division of Family Services. Whether this is true or not true, the Court has failed in its opinion to consider the condition of the children which it must do under Section 78-3a-48(1)(a), Utah Code Annotated, 1953.

This Court's opinion has failed to focus on the language of the statute which states "or condition seriously detrimental to the child." The words "conduct OR condition" are in the disjunctive. The April 11, 1978 opinion examines the conduct of the appellant and finds no conduct supporting the Trial Court's determination of conduct seriously detrimental to the child, but did not examine the disjunctive "OR condition seriously detrimental to the child" which is precisely the case now before the Court.

As appellant admitted, all parent-child relationships between the children and herself have terminated. (R. 167.) The children have established a parent-child relationship with their foster parents. (R. 7, 11, 15, 29-30, 41, 54, 246, 251.) It

ould be seriously detrimental to the children to have these ties disrupted. In fact, Evan lives in fear that his home with his "parents" will be destroyed. (R. 26-31, 40-44, 60, 248, 251.) This condition was not created by the children. It was created by the appellant and/or the Division of Family Services, yet the failure of this Court to apply the mandate of Section 78-3a-48(1)(a), Utah Code Annotated, 1953, to this case punishes the children. The children are now in a situation seriously detrimental to them. This Court, as did the Legislature, should recognize the needs of the children as people, independent of the needs of their parents.

From the report of Dr. Wilson it is clear the appellant cannot function as the mother to the children. (R. 224-225, 227, 228.) This is similar to the situation in State in the Interest of Winger, 558 P.2d 1311 (1976), where this Court ruled that the mother must be given another chance. After that decision Ricky was returned to his mother and since then has been subject of four protective service referrals, has been removed from her home on three occasions because of injuries to the child, has been placed in two separate educational programs and has been unable to settle in any one home. That is the fate this Court's failure to properly apply Section 78-3a-48(1)(a), Utah Code Annotated, 1953, will have on the children in this action.

This Court should have the matter set for briefing, argument and reconsideration to consider the disjunctive meaning

the statute and whether or not once the children have been placed in a situation which is highly detrimental to them the court should apply the statutory mandate to terminate the parent-child relationship.

RESPECTFULLY SUBMITTED this 28 day of April, 1978.

  
DAVID S. DOLOWITZ

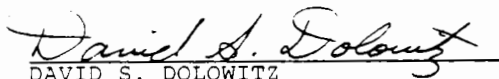
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#### CERTIFICATE OF MAILING

I hereby declare that I caused to be mailed two true and correct copies of the foregoing Petition for Rehearing and Brief in Support of Petition for Rehearing in Case No. 15140, postage prepaid, this 28 day of April, 1978, 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; and to Don Blackham, Attorney for Appellant, at 3535 South 3200 West, Salt Lake City, Utah, 84119.

  
DAVID S. DOLOWITZ