

1977

# State of Utah, In The Interest of Tamara Summers And Tina Summer v. Beatrice Wulffenstein : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, in the interest:  
of TAMARA SUMMERS and TINA  
SUMMERS, :

vs. : Case No. 15141

BEATRICE WULFFENSTEIN, :

Appellant. :

BRIEF OF RESPONDENT

An action to review an Order of the  
District Juvenile Court, the Honorable  
Larson, presiding.

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IN THE SUPREME COURT OF THE STATE OF UTAH

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Appellant. :

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BRIEF OF RESPONDENT

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An action to review an Order of the Second  
District Juvenile Court, the Honorable John Farr  
Larson, presiding.

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## CASES CITED

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IN THE SUPREME COURT OF THE STATE OF UTAH

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Appellant. :

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BRIEF OF RESPONDENT

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STATEMENT OF THE NATURE OF THE CASE

This is a case in which a grandmother appeals the granting of a Motion to Dismiss a Petition for Custody of her two grandchildren. The natural father of the children is the son of appellant. The father's parental rights had previously been terminated by the Juvenile Court, in an action upheld by this Court in State, In the Interest of Summers Children v. Wulffenstein, 560 P.2d 331 (1977).

DISPOSITION IN THE LOWER COURT

The Juvenile Court granted the State's Motion to Dismiss the Petition for Custody of her grandchildren brought by appellant.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have this Court affirm the decision of the Juvenile Court in granting the Motion

to Dimiss the Petition for Custody brought by appellant before the Juvenile Court.

#### STATEMENT OF FACTS

Respondent accepts appellant's Statement of Facts but wishes to add that no testimony was taken because the Motion to Dismiss raised only legal arguments relating to standing and jurisdiction.

#### ARGUMENT

##### POINT I

THE UTAH STATE JUVENILE COURT RULES OF PRACTICE AND PROCEDURE DO NOT REQUIRE THE ENTRY OF WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AFTER A HEARING ON A MOTION TO DISMISS A PETITION FOR CUSTODY.

Appellant cites several sections of the Utah Rules of Civil Procedure in order to support her argument that written Findings of Fact and Conclusions of Law should have been entered after the Juvenile Court granted the State's Motion to Dismiss the grandmother's Petition for Custody. However, appellant makes no mention of the Utah State Juvenile Court Rules of Practice and Procedures the only court rules applicable to any action arising in the Juvenile Court as did the instant case.

The Juvenile Court Rules provide that Findings of Fact may be announced at the completion of the adjudicatory trial hearing or may be reserved for entry by the Juvenile Court.

Judge at a later time (Rule 19). Juvenile Court Rule 22 deals specifically with findings, stating the Juvenile Court may announce findings of fact upon the conclusion of an adjudicatory hearing in which the material allegation of the petition are found to be supported. The Court is again given the option of reserving the entry of findings at a later time as Rule 19 provides.

There is no further requirement in the Juvenile Court Rules for the entry of written findings of fact and conclusions of law. The Juvenile Court, therefore, cannot be said to have committed reversible error in failing to enter written findings and conclusions after a hearing on a Motion to Dismiss a Petition for Custody.

It should here be noted that the official record does now contain the State's Motion to Dismiss Petition for Custody to grandmother, a document apparently inadvertently omitted from the official file when appellant prepared her brief. Appellant did have her own copy of this document since it is cited on page 3 of her brief. The State's Motion specifically sets forth three grounds upon which the State bases its Motion to Dismiss, namely that:

1. Appellant grandmother has no legal standing to petition the Juvenile Court for custody.
2. The Juvenile Court has no jurisdiction over the internal affairs of the Division of Family Services which will make an administrative decision as to where and with whom the children will be placed.



3. The petition for custody of appellant fails to state a cause of action on which relief may be granted.

The record of the hearing on the Motion to Dismiss Petition for Custody to grandmother reflects a spirited discussion among appellant's attorney, the State's attorney and Juvenile Court Judge Larson on the issues of standing and the jurisdiction of the Juvenile Court to hear grandmother's request for custody of the children (R.1-10). The record of the hearing contradicts appellant's argument that she was left unaware as to what the Court decided regarding her Petition. The hearing gave both sides ample opportunity to discuss the grounds raised in the State's Motion to Dismiss and the Court granted the Motion to Dismiss based upon the fact that grandmother lacked standing to appear before the Juvenile Court (R.9).

The Juvenile Court certainly could not have made findings on the merits of placing the children with grandmother, as she claims should have been done in her brief on appeal, since the Court made its decision solely on legal arguments relating to the question of standing and jurisdiction. Appellant's argument that reversible error was committed by the State in failing to enter written findings of fact and conclusion of law is simply without merit.

## POINT II

AFTER THE TERMINATION OF ALL PARENTAL RIGHTS TO A CHILD IS ORDERED BY THE JUVENILE COURT, A GRAND-MOTHER HAS NO STANDING TO COME BEFORE THE JUVENILE COURT AND PETITION FOR CUSTODY OF THE CHILD.

Appellant phrases her argument under Point II in her brief on appeal in the following manner: "Has the paternal grandmother the right to petition for [the children's] custody?" Grandmother then proceeds to list her qualifications for taking custody of her son's two minor children and further cites statutory and case law relating to the evolving custody rights of a grandparent after grandchildren become parentless.

Both the phrasing of the issue raised by appellant in Point II on appeal and the subsequent legal arguments go far beyond the narrow legal questions decided by the Juvenile Court. The record on appeal reflects the fact that the Juvenile Court ruled that appellant has no legal standing as a party in the proceeding before the Juvenile Court (R.9) to petition for her grandchildren's custody.

Respondent does not deny that a grandmother has a right at some point to petition for the custody of her grandchildren when the children become parentless, but respondent does strongly argue that neither grandmother nor any other person has standing to come before the

Juvenile Court after the Court has ordered the termination of all parental rights to children and has placed those children in the custody of the Division of Family Services for placement.

As a Court of limited jurisdiction, the Juvenile Court can hear only the actions brought by the specific parties enumerated in the Utah Juvenile Court Law. Wilson v. Family Services Division, Region II, 554 P.2d 227 (1976) cited by appellant, establishes the right of a grandparent to be heard on her petition for custody of parentless grandchildren if brought in the proper forum. The Juvenile Court is not the proper forum for any hearing of the question of custody of children after there has been a termination of parental rights decision relating to those children, and thus grandmother has no standing to petition the Juvenile Court for the children's custody.

A case which is quite similar on the facts and which states a rule of law that would be useful in the present case is In re People in the Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974). In that case a Colorado juvenile court adjudged minor children to be dependent and neglected and granted custody to the Adams County Welfare Department for the purpose of placing the children for adoption. A grandmother then petitioned to have the custody order set aside and custody granted to her. The Colorado Supreme Court held the grandmother had no preference.

status or "right" to custody, but as an "interested party" had a right to participate in the dispositional proceedings held in the Juvenile Court and remanded the case to the Juvenile Court for that purpose. The court warned, however, that a relative as an "interested party" must make timely application for custody prior to the dispositional hearing and that the court need not give notice, nor consider the rights of relatives, who have not made timely application. (In re C.P., 524 P.2d at page 319). The court further added that since the grandmother has no preferred status there must be something in the record as to her fitness for custody. (In re C.P., 524 P.2d at page 320). The court states:

"The trial court may ultimately delegate the responsibility of placing the children for adoption to the Welfare Department... Moreover, we would agree with the appellees that under most circumstances, once the final selection of disposition has been made by the court and custody has been placed in the Welfare Department for adoption purposes, it is not wise to interfere with the adoption process, even though the court has the power to do so." (In re C.P., 524 P.2d at page 320).

The Colorado case seems to set forth the steps which should be followed in this type of circumstances, to-wit:

1. Prior to the time of the dispositional hearing in the Juvenile Court relatives or any other interested parties should have the opportunity to file their petitions for the custody of the child.
2. If a relative has not so filed prior to the

dispositional hearing he or she is not entitled to notice or consideration at the dispositional hearing.

3. If he or she has filed then he or she is entitled to put on testimony and cross examine to establish fitness for custody at the dispositional hearing.

4. After the dispositional hearing the Juvenile Court can place the child for adoption with any person or agency it determines, including the welfare agency.

5. If the child is placed with the welfare agency for adoption it is not wise for the court to interfere with the adoption process, even if it had power to do so.

As additional argument for the proposition that a grandparent is not entitled under due process to a hearing before the placement agency after the dispositional court hearing we cite the case of State ex. rel. Juv. Dept. of Multnomah County vs. Hayes, 16 Or. App. 438, 519 P.2d 104 (1974) in which it was held that grandparents who did not have physical custody of a child and who did not attempt to intervene in termination of parentage proceedings were not persons whose rights or duties were adversely affected by order or disposition by the court and therefore did not have standing to appeal therefrom.

#### POINT III

THE JUVENILE COURT HAS NOT JURISDICTION TO  
CONSIDER GRANDMOTHER'S PETITION FOR CUSTODY  
OF HER GRANDCHILDREN AFTER ALL PARENTAL RIGHTS  
TO THE CHILDREN HAVE BEEN TERMINATED AND THE

CHILDREN HAVE BEEN PLACED IN THE CUSTODY OF  
THE DIVISION OF FAMILY SERVICES FOR PLACEMENT.

After the Juvenile Court ordered that all parental rights of the father of Tamara and Tina Summers be terminated the custody and guardianship of the two children was placed with the Utah Division of Family Services for any and all future planning regarding the two girls. Appellant now argues the the Juvenile Court has continuing jurisdiction to hear grandmother's request for custody of the two girls.

Appellant relies heavily upon Section 55-10-108 Utah Code Annotated (1953) as amended, which speaks specifically to modification or termination of a custody order or decree. Appellant cites that part of U.C.A. 55-10-108 which authorizes a next friend of a child whose custody has been transferred to an agency to petition the court for restoration of custody. However, appellant fails to quote the very next paragraph of U.C.A. 55-10-108 which states that:

"No petition by a parent may be filed under this section after his or her parental rights have been terminated in accordance with section 55-10-109."

To permit grandmother to come before the Juvenile Court and petition for custody of her grandchildren under the authority of U.C.A. 55-10-108 would undercut the legislative intent apparent in prohibiting a termination of parental rights action to be reopened.

Thus while appellant attempts to strain the applicable Juvenile Court Law sections to find some authority for grandmother to come before the Juvenile Court and seek custody of her grandchildren, it becomes clear that once

the parental rights to any children have been terminated, and the children placed in the custody of the Division of Family Services, the Juvenile Court no longer has jurisdiction to determine questions relating to placement of those children.

As a court of limited jurisdiction, the Juvenile Court can only hear those actions specifically authorized by the Juvenile Court Law. No section of the Juvenile Court Law gives the Juvenile Court jurisdiction to hear grandmother's petition for custody.

Again, it must be stressed that grandmother is not left without access to a hearing on her request for custody of the children in question. According to Wilson v. Family Services Division, Region II, 554 P.2d 227 (1976), a grandmother may have some due process right to be heard by the custodial agency or in the District Court. But the Wilson case confers no additional jurisdiction upon the Juvenile Court to hear such a matter. The Juvenile Court, a court of limited jurisdiction, has simply terminated its jurisdiction when the children are placed in the custody of the Division of Family Services after parental rights have been terminated.

#### CONCLUSION

Based upon the above requirements of the Utah Juvenile Court Law and the Juvenile Court Rules of Practice and Procedure, respondent argues that the Juvenile Court properly dismissed appellant's petition

for custody of her grandchildren. Respondent thus seeks to have the action of the Juvenile Court affirmed.

Respectfully submitted,

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#### MAILING CERTIFICATE

I certify two copies of the foregoing Brief of Respondent were mailed this 11<sup>th</sup> day of August, 1977, to Don L. Bybee, Attorney for Appellant, at 431 South Third East, Salt Lake City, Utah, 84111.

