

1987

Matter of Adoption v. : Brief of Appellant

Utah Court of Appeals

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BRIEF

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DOCKET NO. 870415-CA

IN THE COURT OF APPEALS

STATE OF UTAH

* * * * *

IN THE MATTER OF
THE ADOPTION OF:

INFANT ANONYMOUS.

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)

APPELLANT' S BRIEF

Case No. 87-0415CA

* * * * *

AN APPEAL FROM THE DECISION OF THE THIRD JUDICIAL
DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH
THE HONORABLE RICHARD H. MOFFAT PRESIDING

* * * * *

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March 16, 1988



MAR 17 1988

Ms. Julia Whitfield
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COURT OF APPEALS

Re: In the Matter of the Adoption of Infant Anonymous
Court of Appeals No. 870415-CA
Trial Court No. A87-229

Dear Ms. Whitfield:

On the 400th reading of this Appellate Brief I noted the following typographical error.


On page 24, the first full paragraph, first line, reads: "Respondent's Motion to set aside Judge Moffat's ruling. . ." It should read: "Respondent's Motion to set aside Judge Murphy's ruling. . ."

Eight copies of this letter are being sent so that they may be attached to the Appellants' Brief to alert the Judges of the error and avoid any confusion caused thereby.

I apologize for any inconvenience.

Sincerely,

COHNE, RAPPAPORT & SEGAL, P.C.


Julie A. Bryan

JAB/sk

Enclosures

cc: Mr. Richard Johnson

IN THE COURT OF APPEALS

STATE OF UTAH

* * * * *

IN THE MATTER OF)	
THE ADOPTION OF:)	APPELLANT' S BRIEF
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INFANT ANONYMOUS.)	

* * * * *

AN APPEAL FROM THE DECISION OF THE THIRD JUDICIAL
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THE HONORABLE RICHARD H. MOFFAT PRESIDING

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ARGUMENT PRIORITY CLASSIFICATION: CATEGORY 7

PARTIES

* * * * *

THE PARTIES TO THIS ACTION ARE:

THE ADOPTIVE PARENTS. (APPELLANT)

vs.

THE NATURAL MOTHER OF INFANT ANONYMOUS. . . (RESPONDENT)

* * * * *

The Parties' names have remained confidential throughout the proceedings leading to this Appeal.

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IN THE COURT OF APPEALS

STATE OF UTAH

* * * * *

IN THE MATTER OF)	
THE ADOPTION OF:)	APPELLANT' S BRIEF
)	
	)	Case No. 87-0415CA
INFANT ANONYMOUS.)	

* * * * *

JURISDICTION OF THE COURT OF APPEALS

The Utah Court of Appeals has jurisdiction to hear this matter pursuant to the provisions of Utah Code Ann. Section 78-2a-3(2)(g) (1987) and Rule 4(a) of the Rules of the Utah Court of Appeals.

NATURE OF THE PROCEEDINGS

This is an appeal from the judgment of the Third Judicial District Court for Salt Lake County, the Honorable Richard H. Moffat presiding, reversing the ruling of Judge Michael R. Murphy and allowing the natural mother of infant anonymous to revoke her consent to the adoption of the child and dismissing the appellant's petition for adoption.

ISSUES PRESENTED ON APPEAL

1. Once a district court judge has held that consent is voluntary, pursuant to the requirements of Utah Code Ann. Section 78-30-8 (1987), can another district court judge reverse

that decision and allow consent to be revoked upon the grounds that it was not voluntary?

2. May a trial court permit a party to revoke consent to adoption, given in open court, based upon the consenting party's unilateral mistake?

3. In the face of conflicting affidavits, may a trial court, without holding an evidentiary hearing, grant a motion for revocation of consent to an adoption upon the grounds that the consent was not voluntarily given.

STATUTES

Utah Code Ann. 78-30-8 (1987):

Procedure - Agreement of adopting parents. The person adopting a child and the child adopted, and the other persons whose consent is necessary, must appear before the district court of the county where the person adopting resides, and the necessary consent must thereupon be signed and an agreement be executed by the person adopting to the effect that the child shall be adopted and treated in all respects as his own lawful child; provided, that if a person whose consent is necessary is not within the county the court may, in the same manner as is or may be provided for the taking of depositions in civil cases, appoint a commissioner to examine such person upon his deposition and to take his written consent and to certify the same to the court. The commissioner shall explain to such person the legal significance of such consent, and shall certify to the court his findings as to whether or not the consent is freely given. Where such person is within the state of Utah the commission shall issue to a judge of the district court of the county in which such person is located.

STATEMENT OF THE CASE

Infant anonymous was born on June 23, 1987, at 4:19 am. (R. 116; Addendum "A" at p. 2)¹ On or about March 31, 1987, approximately three months prior to the child's birth, the natural mother (the "respondent") visited the Utah Women's Health Center to "determine the duration of her then-existing pregnancy." (R. 41; Addendum "B" at p. 2 paragraph 4) Thereafter, Susan Bagley, a counselor at the Utah Women's Health Center, counseled respondent extensively "respecting her decision to place her child for adoption."² (R. 41; Addendum "B" at p. 2 paragraph 5) At no time did she advocate adoption over the other alternatives available to respondent. (R. 41; Addendum "B" at p. 2 paragraph 6) During the course of the counseling, respondent remained resolute in her desire to place the child for adoption. (R. 41-42; Addendum "B" at p. 2-3 paragraphs 7 & 8) Dr. Cynthia Jones, respondent's obstetrician, also informed respondent of her options with regard to the pregnancy, including the option of retaining the child, without advocating any of the alternatives.

¹ Copies of the portions of the court's record of central importance are attached to this brief as addenda. Thus, the facts set forth in this brief are cited both to the court's record and to the addendum in which that part of the record is reproduced. In the interest of preserving the confidentiality of the parties' identities, the names of the parties, which may be found in several of the documents in the court record, have been concealed in the copies attached in the addenda.

² Susan Bagley is the Assistant Director of the Utah Women's Health Center. She has a bachelor of science degree in Behavioral Science and Health and specializes in counseling pregnant women about various matters including the decision to place a child for adoption. (R. 41; Addendum "B" at p. 1 paragraph 2)

(R. 48; Addendum "C" at p. 2 paragraphs 3 & 6) Although she habitually notes any sign of hesitancy on the part of a woman who has indicated a desire to place a child for adoption, the doctor's records do not reflect, nor does she recall, that respondent ever demonstrated any reluctance whatsoever about her decision to place her child for adoption. (R. 48; Addendum "C" at p. 2 paragraphs 7-10).

After it became apparent that the respondent's decision was final, Ms. Bagley and respondent made an appointment to consult with Lincoln W. Hobbs, former attorney for the adoptive parents (the "petitioners"), to discuss the possibility of a private adoption. That meeting took place on June 5, 1987 at approximately 11:00 a.m. (R. 42; Addendum "B" at p. 3 paragraph 9) During the meeting, Mr. Hobbs informed the respondent that he was the attorney for the adoptive parents and that if she had a legal question she should direct it to her own counsel as he had a conflict of interest in advising her of her legal rights. (R. 42; Addendum "B" at p.3 paragraph 10a) Mr. Hobbs also informed respondent that she would have to sign a consent to the adoption in front of a judge and that, after she signed the consent her rights to the infant would be irrevocably terminated. (R. 42; Addendum "B" at p. 3 paragraph 10b) After that meeting, Ms. Bagley had several conversations with respondent in which they discussed the finality of her decision to relinquish her rights to the child. (R. 42; Addendum "B" at p. 3 paragraph 11)

During labor, respondent repeatedly stated that she wished that she could have the baby and return home to her "normal" lifestyle; she wavered as to whether she wanted to see the baby after the delivery or even know its sex. (R. 43; Addendum "B" at p. 4 paragraph 13) At no time did she express reservations about her desire to place the child for adoption. (R. 43; Addendum "B" at p. 4. paragraph 14.)

On June 24, 1987, approximately thirty hours after the child's birth, respondent, Ms. Bagley and Mr. Hobbs met at the Third Judicial District Court for the purpose of executing the consent to adoption in the manner proscribed by Utah Code Ann. Section 70-30-8 (1987). (R. 43; Addendum "B" at p. 4 paragraph 15) Prior to the hearing, Mr. Hobbs provided respondent with a copy of the Affidavit Relinquishing Parental Rights and Consenting to Adoption and asked her to review the document, which she did. (R. 43; Addendum "B" at p. 4 paragraphs 16-17)

Judge Michael R. Murphy presided over the hearing on Consent to Adoption. Mr. Hobbs opened by noting that he had provided respondent with a copy of the affidavit relinquishing her parental rights and that she had indicated that she understood the document. (R. 117; Addendum "A" at p. 3). Respondent was sworn and, under oath, testified that she had read the affidavit and that she believed that the best interests of the child would be served if she relinquished any parental rights and consented to the adoption because she could not financially support the child. (R. 117; Addendum "A" at p. 3) Judge Murphy

then asked respondent: "Do you understand -- for want of a better word -- the finality of this? That if it goes forward, that you relinquish all parental rights forever." Respondent replied "Yes, I do." (R. 117; Addendum "A" at p. 3) Respondent further testified that she acted freely, and voluntarily, without force from anyone and in accord with her "own decision." (R. 117; Addendum "A" at p. 3) She testified that she had seen the child and that it did not impact upon the fact that she had "decided all along to have this adoption go through." Respondent reiterated that she understood "there [would] not be any further rights" for her. Judge Murphy, apparently convinced, acknowledged her statement. (R. 117-18; Addendum "A" at pp. 3-4)

Mr. Hobbs then asked the respondent if she was under the influence of any drugs that would impair her ability to make a knowing consent. She replied that she was not. (R. 118; Addendum "A" at p. 4) Respondent further assured Judge Murphy that she was only on medication for her stitches and that it did not interfere with her ability to know and understand what she was doing. (R. 118-19; Addendum "A" at pp. 4-5). This fact was confirmed by respondent's doctor, who noted that respondent had not been prescribed any medication that would have impaired her ability to make an informed decision about the consent at the time of the hearing. (R. 48; Addendum "C" at p 2 paragraph 5.)

Respondent was then permitted to execute the Affidavit Relinquishing Parental Rights and Consenting to Adoption (the "Affidavit". The Affidavit states:

I hereby relinquish all of my parental rights which exist to and with Infant Anonymous. . . and I expressly consent to the adoption of the child by persons appearing before the Court, with full knowledge that by so doing I forfeit each and every right which might otherwise exist with reference to the custody and parental relationship of the child.

(R. 9; Addendum "D" at p. 2 paragraph 4) In the Affidavit, respondent further attests that she has read the document and fully understands the impact of its terms. (R. 9; Addendum "D" at p. 2 paragraph 5).

On the same day that the Affidavit was signed, the petitioners filed their Petition For Leave To Adopt and For Temporary Custody. (R. 2-5; Addendum "E") Having reviewed the Petition and witnessed the signing of the Affidavit, Judge Murphy held that the consent of the mother had been given in accordance with the Utah Code Ann. Section 78-30-8 and specifically found that:

the [respondent's] consent was given with the knowledge that by the execution of the consent she thereupon relinquished all parental rights as well as parental responsibilities in and to the child.

(R. 7; Addendum "F" at p. 2 paragraph 3). Consequently, Judge Murphy granted temporary custody to the adoptive parents and the child was released from Holy Cross Hospital to their custody. (R. 6-7; Addendum "F")

Several days after signing the Affidavit, respondent contacted Ms. Bagley and stated that she had spoken with her mother, who had been ignorant of respondent's pregnancy.³

³ Respondent was over 18 years old at all times relevant to this appeal. (R. 41; Addendum "B" at p. 2 paragraph 4.)

Respondent's mother had, apparently, expressed reservations about respondent's decision to place the child for adoption. Consequently, respondent informed Ms. Bagley that she had "changed her mind" about her consent to the adoption. (R. 45; Addendum "B" at p. 6 paragraph 23)

On July 22, 1987 respondent filed a Motion "pursuant to Rule 60(b) of the Utah Rules of Civil Procedure for an Order setting aside the Findings of Fact, Conclusions of Law and Decree of Adoption and allowing the [respondent] to withdraw her consent to the adoption." (R. 11; Addendum "G") In support of that Motion, respondent submitted an Affidavit stating that she should be allowed to withdraw her consent because, at the time she gave the consent, she was under the influence of pain medication and so weakened by the childbirth that she was left "without sufficient will and strength to properly evaluate the matter." (R. 22; Addendum "H" at paragraph 3) Respondent further alleged that she was "informed and believed" that the consent was not final for six months and that she had that period of time in which to change her mind. (R. 22; Addendum "H" at paragraph 6) In opposition to the respondent's Motion, the petitioners submitted the affidavits of Susan Bagley and Dr. Jones, which are attached hereto as addenda "B" and "C" respectively.

The respondent's Motion came on for hearing on August 31, 1987, the Honorable Richard H. Moffat, presiding. The court's Minute Entry, filed September 1, 1987, recites Judge Moffat's ruling that the respondent "did not freely and voluntarily given

[sic] an unconditional release of her parental rights." (R. 57; Addendum "I" at p. 2). Judge Moffat supported his conclusion with two findings. First Judge Moffat expressed his belief that the language found in the transcript of the hearing before Judge Murphy, specifically, the fact that Judge Murphy asked the respondent if she understood that "if it goes forward" she relinquished her parental rights forever, supported the respondent's allegation that she believed that she had six months in which to revoke her consent. (R. 57; Addendum "I" at p. 2). Next, Judge Moffat noted that he was "impressed by the fact that the natural mother did not consult with members of the family, including her own mother, until after the birth of the child, but was consulted only by a counselor at the Utah Women's Health Center." (R. 57; Addendum "I" at p. 2) Consequently, Judge Moffat ordered that custody of the child be returned to the respondent. (R. 58; Addendum "I" at p. 3) Shortly thereafter, Mr. Hobbs withdrew as counsel for the petitioners and David S. Dolowitz entered his appearance. (R. 60 & 62)

The petitioners filed a Motion for Stay of Judge Moffat's Order and a Protective Motion for New Trial on the basis that the court had erred in setting aside the consent given in front of, and accepted by, another district court and in ruling upon the conflicting affidavits submitted by the parties without holding an evidentiary hearing. (R. 66-68)

The petitioners' Motions were heard by Judge Moffat on September 23, 1987. The court denied the Motions on the basis

that neither party had initially "expressed a desire to have the judge who took the consent hear the matter" nor requested an evidentiary hearing. (R. 87-88; Addendum "J")

Petitioners requested Judge Moffat to stay his Order pending an appeal. (R. 64) A copy of the Motion for Stay was mailed to respondent's counsel. (R. 65) That Motion was denied and on September 25, 1987, petitioners perfected the instant appeal and filed a Motion for Stay in this Court, which was also mailed to respondent's counsel. This Court entered an Order of Stay of Execution pending a hearing on petitioners' Motion for Stay, which was scheduled for hearing on October 17, 1987. No response to petitioners' Motion for Stay was filed and the matter was stricken from the Court's calender.

On September 30, 1987, respondent filed a proposed Findings of Fact and Conclusions of Law and Judgment and Order, which were intended to encompass the ruling set forth in both of Judge Moffat's minute Orders. (R. 93 & 100) Petitioners promptly objected to the form of the Order (R. 105). Acknowledging the importance of expediting the matter, petitioners' counsel offered to resolve the objections in a phone conference between Judge Moffat and the parties' counsel. (R. 103) Respondent's counsel did not respond to petitioner's objections. Consequently, on or about October 14, 1987, petitioners moved this Court for an Order delaying the filing of the docketing statement until a final

order was entered in the District Court. That Motion was granted on or about October 16, 1987.⁴

On or about December 3, 1987, without contacting petitioners' counsel regarding petitioners' objections, respondent's counsel submitted another set of proposed Findings of Fact, Conclusions of Law and Order and Judgment to the District Court. (Addendum "K") The documents were not mailed to petitioners' counsel of record as required by the Rules of Practice in the District Court. (See mailing certificates on pleading attached as Addendum "K") Nonetheless, they were executed and entered by the District Court on December 3, 1987.

Upon discovery of the entry of the Findings of Fact, Conclusions of Law and Judgment and Order, petitioners refiled their Objections thereto and set the Objections for hearing on January 15, 1988. (Addendum "L"). Upon request from respondent's counsel, petitioners agreed, at the last minute, to continue the hearing on their Objections to February 5, 1988. (See Addendum "M" and "O") However, because neither party appeared at the hearing on January 15, 1988, the District Court dismissed petitioners Objections. (Addendum "N").

⁴ The record hereinafter cited by petitioners is either found in the record in the Court of Appeals or is part of the record of the District Court made after the index on appeal was transmitted to the Court of Appeal, which has not as of this writing, been numbered for reference. To avoid confusion, all district court documents submitted after the index on appeal was drafted are attached as addenda. Petitioners apologize for the fact that the need to attach these documents as addenda has made this brief somewhat voluminous.

Consequently, petitioners were forced to file a Motion to Vacate Ruling, Findings of Fact and Conclusions of Law and Order and Judgment. (Addendum "O") That Motion was heard on February 5, 1988 at which time counsel for the respondents acknowledged his errors and the District Court held that respondent had violated the Rule of Practice requiring that the pleadings be submitted to opposing counsel. (Addendum "P") The District Court heard the objections to the proposed Findings of Fact, Conclusions of Law and Judgment and Order and penned in modifications which are reflected in the copies attached hereto as Addendum "K" Petitioner's counsel prepared an Order reflecting the District Court's ruling and submitted the Order to respondent's counsel for approval. Respondent's counsel has not, at the time of this writing, either returned the Order to petitioners or filed it with the court. Consequently, petitioners have prepared a duplicate original Order (Addendum "P") and submitted it to the trial court.

As a result of the multiple complications, this appeal is being processed and this brief submitted although the matter has not been fully concluded by the District Court. The child, now approximately nine months old, remains in the petitioners' custody.

SUMMARY OF ARGUMENTS

POINT I

One judge cannot reverse the decision of another co-equal judge. That rule governs unless it results in a manifest

injustice. In this case, the respondent filed a motion for relief from Judge Murphy's ruling and the only facts offered in support of that motion are contained in respondent's affidavit, in which she directly contradicts the testimony that she gave before Judge Murphy. Under these circumstances, a manifest injustice occurred when respondent was not required to bring her motion before Judge Murphy. Consequently, Judge Moffat erred by reversing Judge Murphy's ruling that respondent had voluntarily relinquished her parental rights and consented to the child's adoption.

POINT II

Once consent to adoption is duly executed and accepted before a court in conformity with the requirements of Utah Code Ann. Section 78-30-8 (1987), it cannot be revoked absent a finding that the consent was procured through fraud, undue influence or misrepresentation. In the instant case, the trial court did not find that respondent's consent was procured by fraud, undue influence or misrepresentation. Further, the record is devoid of any facts that would support such a finding. Consequently, the trial court erred in allowing respondent to revoke her consent to the adoption.

In addition, a trial court cannot make determinations of fact based upon conflicting affidavits. The only evidence before the trial court in this case was the affidavits submitted by the parties, which directly contradicted one another. Consequently,

the trial court erred in ruling on the factual issues raised by those affidavits without holding an evidentiary hearing.

ARGUMENT

POINT I

ONE DISTRICT COURT JUDGE CANNOT REVERSE THE RULING OF ANOTHER DISTRICT COURT JUDGE. CONSEQUENTLY, JUDGE MOFFAT ERRED IN OVERRULING JUDGE MURPHY'S HOLDING THAT RESPONDENT'S CONSENT TO ADOPTION WAS VOLUNTARILY GIVEN.

Embedded firmly in Utah law is the edict that, absent extraordinary circumstances, one district court judge cannot reverse the ruling of another district court judge. See e.g. Conder v. Williams & Ass'n, 739 P.2d 634, 636 (Utah Ct. App. 1987) ("a court should not reconsider and overrule a decision made by a co-equal court."); State v. Saunders, 699 P.2d 738, 740 (Utah 1985); Peterson v. Peterson, 530 P.2d 821, 823 (Utah 1974); State v. Morgan, 527 P.2d 225, 226 (Utah 1974); Tanner v. Meacham (In the Matter of Meacham), 537 P.2d 312, 314 (Utah 1975) ("one judge of one division of the same court cannot act as an appellate court and overrule another such judge")

The evolution of that edict has been accredited to the need to "avoid the delay and difficulties that arise when one judge is presented with an issue identical to one which has already been passed upon by a coordinate judge in the same case." Conder, 739 P.2d at 636 citing Sittner v. Big Horn Tar Sands & Oil, Inc., 692 P.2d 735, 736 (Utah 1984) Equally supportive of the need for judicial restraint where an issue has been ruled upon by another co-equal judge is the possibility that, absent such restraint, any time parties were unsatisfied with the ruling of a trial

court there would be a temptation to redirect the problem to a new judge in hopes of obtaining a more desirable ruling. Such a state of affairs would be unacceptable. Thus, it is well established that an unhappy litigant cannot attack the ruling of one district court judge by applying to another district court judge for relief therefrom. "If a person feels aggrieved by one judge's doings he may attack such conclusion in a proper [proceeding -different than bringing a motion for relief before a co-equal judge-] usually by the extraordinary writ route." State v. Morgan, 527 P.2d at 226.

The maxim that one district court judge cannot reverse another is not without exception. When the rule would work a manifest injustice, such as where it is impossible to bring the matter before the judge who made the initial decision there may be a meritorious argument for allowing another judge to address the issue. See Daly v. Sprague, 742 F.2d 896, 900 (5th Cir. 1984) Moreover, the rule does not bar another judge from hearing a subsequent motion on an issue of law that has already been decided if the case is presented in a "different light," such as where additional discovery has revealed new facts. Richardson v. Grand Central Corp., 572 P.2d 395, 397 (Utah 1977) Neither exception applies to the instant case.

In this case, the issue of whether respondent was voluntarily relinquishing her parental rights and consenting to her child's adoption came before Judge Murphy in the hearing required by Utah Code Ann. Section 78-30-8. In that hearing

respondent testified, in no uncertain terms, that she understood the meaning and implication of the Affidavit Relinquishing Parental Rights that she was to sign. She testified that she believed her actions to be in the best interest of the child and that she was relinquishing her parental rights freely and voluntarily, without force from anyone and in accord with her own decision, a decision that she had adhered to "all along." She testified, not once but twice, that she was not on any medication that impaired her ability to make a knowing decision and to understand her actions. She acknowledged that she understood the finality involved and that she knew that she would have no further rights to the child.

After hearing this testimony and observing respondent's demeanor, Judge Murphy allowed respondent to execute the Affidavit Relinquishing Parental Rights and Consenting to Adoption and held, specifically, that her "consent was given with the knowledge that by the execution of the consent she thereupon relinquished all parental rights as well as parental responsibilities in and to the child." Based upon that holding the child was released from the hospital to the petitioners' custody.

Thereafter, the respondent brought a Rule 60(b) Motion for relief from Judge Murphy's ruling. In that Motion she directly attacked the Judge's finding that her consent had been knowingly and voluntarily given. In support of her Motion, respondent submitted an affidavit expressly contradicting the testimony she

had given before the court. Specifically, respondent attested: (1) that she had not understood the meaning or implications of her relinquishment of parental rights or the finality of that relinquishment but "was informed and believed" that her consent could be revoked for six months after the consent was executed; and (2) that, in any event, she had significant doubts about consenting to the adoption at the time the consent was executed and would not have signed the Affidavit Relinquishing Parental Rights had she not been under the influence of medication and so weakened by the birth that she was left without the strength to properly evaluate the matter.

Certainly this affidavit did not bring the issue into a "different light." The facts at issue were exactly those that were explored by Judge Murphy. The only "different light" shed on the hearing before Judge Moffat was created by respondent's affidavit, which directly contradicts her prior testimony. Certainly a party cannot earn an opportunity to have an issue decided by another judge simply by altering his or her testimony in a manner that they believe will change the new judge's ruling. Moreover, under these circumstances, requiring respondent to bring her motion for relief from judgment before the judge that rendered the judgment does not work a manifest injustice, it avoids one. Justice is not served by allowing respondent to rescind the testimony given before one judge by submitting contradictory testimony to another judge. At minimum, respondent should be asked to face the judge to whom she initially testified

and convince that judge that he erred when he accepted her initial testimony as true and released the child to the petitioners.

Judge Moffat held that the parties waived the right to have the Motion to Set Aside Findings of Fact, Conclusions of Law and Decree of Adoption heard by Judge Murphy because, although the matter was discussed at the time of the hearing, "neither party expressed a desire to have Judge Murphy preside." (Addendum "K", Findings of Fact and Conclusions of Law at paragraph 9) Petitioners have been unable to find any authority for the proposition that such a right can be waived and common sense dictates that it cannot. The rule that one trial court cannot reverse another is based upon "sound policy considerations," including the need to avoid the difficulties and delays inherent in allowing one co-equal judge to overrule another. Conder v. Williams, 739 P.2d at 636. The need for efficient, consistent administration of a case dictates that litigants adhere to the rule. It is not uncommon that the parties on both sides of an issue are not wholly satisfied by the ruling of a judge. Are they then allowed to present the issue to another co-equal judge so long as neither express a desire to have the first judge hear the issue again? If so, the policy behind the rule would be effectively undermined.

In summary, both this Court and the Utah Supreme Court have consistently held that it is reversible error for a trial court overrule the decision of a co-equal court. See e.g. Condor v.

Williams, 739 P.2d 634; State v. Saunders, 699 P.2d 738, 740 (Utah 1985). In this case, when Judge Moffat found that respondent did not voluntarily relinquish her parental rights and consent to the adoption of her child, he reversed Judge Moffat's prior ruling that respondent had acted voluntarily. Consequently, Judge Moffat's ruling should be reversed and his Order allowing the respondent to revoke her consent should be vacated.

POINT II

THE TRIAL COURT ERRED IN ALLOWING RESPONDENT TO REVOKE HER CONSENT TO THE ADOPTION OF THE CHILD, ON THE BASIS OF HER UNILATERAL MISTAKE AND WITHOUT HOLDING AN EVIDENTIARY HEARING.

A. The District Court erred in allowing respondent to revoke her consent based upon her unilateral mistake.

Assuming, for the purposes of argument, that Judge Moffat could entertain respondent's Motion to Set Aside Findings of Fact, Conclusions of Law and Decree although the issues to be decided therein had already been determined by Judge Murphy, the question remains: Under these circumstances, did the trial court err in allowing respondent to revoke her consent?

In resolving that question, "this Court may review the evidence and make its own findings" as "this proceeding is equitable (sometimes said to be so in the highest degree)". In re: Adoption of F, 488 P.2d 130, 133 (Utah 1971).⁵

⁵Furthermore, this Court is in as good a position as the District Court to evaluate the evidence as the only evidence before the District Court was the affidavits of respondent, her doctor and her counselor, which are attached as addenda to this brief.

Section 70-30-8 of the Utah Code requires that the party relinquishing his or her parental rights must go before a Court and consent to their child's adoption. That statute serves two purposes. First, it allows a Court to assure, to the highest possible degree, that the consenting party is acting voluntarily and knowingly. As importantly, it protects adoptive parents from the pain that is caused when party decides to withdraw their consent to the adoption. When the requirements of Section 78-30-8 are met "there is a presumption of regularity . . . which does not necessarily attach to a consent privately given." In re: Adoption of K, 465 P.2d 541, 543 (Utah 1970); See e.g. In the Matter of S, 572 P.2d 1370, 1373 (Utah 1977). In fact:

Although there is no specific statutory provision prohibiting a change of mind and revocation of a consent by a parent executing before a Court, such a proviso is unnecessary. 78-30-8 . . . certainly indicates that a consent so executed would be valid and binding. Under such circumstances the Court should be able to judge whether the consent should be given and whether it is given freely and voluntarily.

In the Matter of S, 572 P.2d at 1373 citing In re the Adoption of D, 252 P.2d 223, 230 (Utah 1953).

Thus, under Utah law, once a Court has accepted the consent of a party relinquishing his or her parental rights, which necessarily requires a finding that such consent is knowingly and voluntarily given, that consent cannot ordinarily be revoked.

The only exception to that rule is that: a consenting party may be allowed to revoke his or her consent if they can show that it was "induced through duress, undue influence, or under some misrepresentation or deception; or other grounds which would

justify release from the obligations of any contract". In the Matter of S, 572 P.2d 1374; In re: Adoption of K, 465 P.2d at 542.

A trial court commits reversible error if, after the child has been placed with adoptive parents, the court allows a party to revoke consent to the adoption without finding that the consent was obtained through fraud, undue influence or misrepresentation. See In re: Adoption of K, 465 P.2d at 542. Judge Moffat made no such finding. Instead he based his conclusion that respondent's consent was not voluntarily given upon a finding that the respondent was not "clearly apprised" of the finality of her consent and was "confused and indeed believed that though she signed the consent, she would still have six months" in which to revoke her consent. The fact that Judge Moffat did not find that there was no fraud, undue influence or misrepresentation is not surprising as the record is totally devoid of evidence that would support such a finding. Judge Moffat apparently based his conclusion upon respondent's statement that she was "informed and believed" that the consent was not final for six months. Nowhere does respondent state who informed her that the relinquishment was not final or where she received such information. In fact, the Affidavit of Susan Bagley states that respondent was told by Lincoln Hobbs, petitioners' attorney, that her relinquishment would be final upon signing of the document. Susan Bagley, who has extensive experience counseling women who are contemplating placing their

children for adoption, also stated that she had several conversations with the defendant in which they discussed the finality of the signing of the consent.

Moreover, respondent was given a copy of the Affidavit Relinquishing Parental Rights and Consenting to Adoption prior to the time that she signed the document. Respondent had the burden of understanding the document she was to sign. See Resource Management Co. v. Weston Ranch, 706 P.2d 1028, 1047 (Utah 1985). Indeed, respondent testified that she had read the document and that she did understand it. The document speaks in present terms; it states: "I hereby relinquish all of my parental rights which exist to and with Infant Anonymous." Judge Murphy specifically asked if respondent understood the finality involved. Respondent stated that she did and that she understood that she would have no further rights to the child.

Consequently, the record in this case indicates nobody misrepresented the consequences of signing the consent to respondent. In fact the petitioner's attorney, respondent's counsel and the judge tried to assure that respondent understood the finality involved. The only misrepresentation that is evidenced in the record is that of the respondent in testifying that she understood the implications of signing the consent, which she now claims she did not. The weight of the law holds that a party cannot revoke consent simply by alleging that they did not understand the seriousness or finality of executing the

consent. Anonymous v. Anonymous, 530 P. 2d 806, 899 (Ariz. Ct.App. 1975); Batton v. Masser, 369 P.2d 434, 437 (Colo. 1962).

The only other finding offered in support of Judge Moffat's conclusion that the mother did not knowingly consent to the relinquishment of her parental rights was the fact that she did not consult with "members of her immediate family, including her own mother" until after the birth of the child.⁶ Judge Moffat noted that he was "impressed" by this fact. That reaction is contrary to the law in this State. The legislature has determined that consent to adoption is valid, without the approval of the consenting party's parents, even if the consenting party is a minor. Utah Code Annotated, Section 78-30-4(2) (1987). If a minor is not required to consult with her family before relinquishing parental rights, it necessarily follows that an adult need not consult with her family. In this case, at the time consent was given, the respondent was at least 21 years of age. Whether or not she spoke with her family prior to consenting to the adoption is simply irrelevant.

Thus, because the trial court did not find that respondent's consent was procured through fraud, undue influence or

⁶In her affidavit in support of her motion to set aside Judge Murphy's ruling, respondent alleged that she had been on medication which impaired her ability to understand her actions. That allegation was controverted both by her prior testimony and by the affidavit of Dr. Jones who stated that the medication prescribed to respondent would not impair her ability to understand her actions. Neither the Minute Entry reflecting Judge Moffat's ruling nor the Findings of Fact drafted pursuant to that ruling indicate that Judge Murphy found that medication was a factor in this case.

misrepresentation, and because the record is devoid of facts that would support such a determination, the trial court erred, as a matter of law, by allowing respondent to revoke her consent to the child's adoption.

B. The Court erred by determining issue of fact based upon conflicting affidavits.

Respondent's motion to set aside Judge Moffat's ruling was supported only by her affidavit. In response to that motion, petitioners filed two affidavits containing facts which directly contradicted those set forth in respondent's affidavit. No further evidence was offered by either party. In essence, each party stood by the statement of facts found in the affidavits they submitted and asserted that, based upon those facts, they were entitled to judgment as a matter of law - rendering the proceeding the functional equivalent of a motion for summary judgment.


It has long been established that a Judge cannot summarily determine questions of fact on the basis of conflicting affidavits. Where a question of fact exists, a trial is required in order to allow the Judge to evaluate the demeanor of the witnesses. See e.g. Snyder v. Merkley, 693 P.2d 64, 65 (Utah 1984); Mountain States Telephone & Telegraph Co. v. Atkin, Wright & Miles Chartered, 681 P.2d 1258, 1261 (Utah 1984). Yet, in order to rule in favor of the respondent, Judge Moffat purported to resolve the issues of fact created by the conflicting affidavits in favor of respondent. Such a resolution directly violates the rule that a court cannot make factual determinations

based upon conflicting affidavits. Consequently, Judge Moffat's ruling should be reversed.

CONCLUSION

Based upon the foregoing points and authorities, petitioners herein respectfully request that this Court reverse the ruling of the trial court and reinstate petitioners' Petition for Adoption.

RESPECTFULLY SUBMITTED this 14th day of March, 1988.



DAVID S. DOLOWITZ
JULIE A. BRYAN
of and for
COHNE, RAPPAPORT & SEGAL, P.C.
525 East 100 South, Suite 500
Salt Lake City, Utah 84102
Telephone: (801) 532-2666
Attorneys for Petitioner/Appellant

ADDENDA

A - P

*** * * * ***

ADDENDUM "A"

REPORTER'S TRANSCRIPT DATED JUNE 24, 1987

1 IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
2 SALT LAKE COUNTY, STATE OF UTAH

3 In the Matter of the : Case No. A-87-229
4 Adoption of: : REPORTER'S TRANSCRIPT
5 INFANT ANONYMOUS :
6

7 BE IT REMEMBERED that on the 24th day of June,
8 1987, the above-entitled action came on regularly for
9 hearing before the Honorable Michael R. Murphy, Judge
10 in the Third Judicial District for the State of Utah,
11 and was reported by me, Gayle B. Campbell, a Registered
12 Professional Reporter and Notary Public in and for the
13 State of Utah.

14 A P P E A R A N C E S:

15 For Petitioners:

Lincoln W. Hobbs
WINDER & HASLAM
175 West 200 South, Suite 4004
Salt Lake City, Utah 84110

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21 FILED IN CL
22 Salt Lake City

AUG -7 1987

23 GAYLE B. CAMPBELL
24 CERTIFIED SHORTHAND REPORTER
25 SALT LAKE CITY, UTAH

H. DICKSON
Bj - *James Campbell*

1 Salt Lake City, Utah

June 24, 1987

2 P R O C E E D I N G S

3 THE COURT: This is in the matter of the adoption
4 of Infant Anonymous, Case No. A-87-229. Lincoln Hobbs
5 on behalf of the petitioners is present before the court,
6 along with the natural mother. Mr. Hobbs, why don't you
7 go head. Let's have the mother sworn in, and you put
8 on what you believe is necessary.

9 MR. HOBBS: I have brought before the court
10 today , who had an infant female born
11 at the Holy Cross Hospital yesterday morning at about
12 5:00 o'clock, or 4:19 a.m. She is before the court to
13 give her consent to the adoption of her infant child,
14 and I have met with her in the hall and provided her with
15 a copy of the document which she will be signing, the
16 affidavit relinquishing her paternal rights. She has
17 read the same and she indicated to me she understands
18 the same. If you would like to ask her any questions
19 respecting the knowing consent on her behalf.

20 THE COURT: Let me see your affidavit.

21 MR. HOBBS: It's among these documents.

22 THE COURT: Okay.

23 having been duly sworn, was examined and testified on
24 her oath as follows:

25 EXAMINATION

BY THE COURT:

Q

Mr. Hobbs has indicated that

1 you have read this affidavit. Is that true?

2 A Yes, I've read it.

3 Q And you are

4 A Yes.

5 Q And you are the natural mother of the child
6 in question, who was born on June 23, 1987.

7 A Yes, I am.

8 Q Why is it that you think it's in the best
9 interest of the child that you relinquish any rights you
10 have and consent to the adoption?

11 A I just cannot take care of her financially.

12 Q Do you understand -- for want of a better
13 word -- the finality of this? That if it goes forward,
14 that you relinquish all parental rights forever.

15 A Yes, I do.

16 Q And you are doing this freely and voluntarily.

17 A Uh huh. (Affirmative)

18 Q No one has forced you to do this.

19 A Nobody has. It's my own decision.

20 Q Did you see that child after the child
21 was born.

22 A Not right after she was born, but I did
23 later that day. I've been down there three times.

24 Q Did you make up your mind to relinquish
25 your parental rights after you had seen the child?

26 A What do you mean? I've decided all along
27 to have this adoption go through, and I know that there
28 will not be any rights for me to --

1 THE COURT: All right. Mr. Hobbs, is there
2 anything that needs to be a matter of record and under
3 oath for the Order to be signed?

4 MR. HOBBS: I would just have two matters
5 I would want on the record.

6 EXAMINATION

7 BY MR. HOBBS:

8 Q Are you under the influence of any drugs
9 that may impair your ability to make a knowing consent
10 at this time?

11 A No, I'm not.

12 MR. HOBBS: The other thing I would like
13 on the record, I would like the record to reflect that
14 I have brought a certificate of search for acknowledgment
15 of paternity by the father. As of 9:01 a.m. this morning
16 there have been no acknowledgment of paternity.

17 THE COURT: All right. , why
18 don't you go ahead and sign that affidavit. Fill in the
19 date, the 24th day of June, and sign it on the table there.

20 (Document signed)

21 THE COURT: Are you taking any pain medication
22 now?

23 THE WITNESS: Just for my stitches.

24 THE COURT; All right. And that doesn't
25 interfere with your ability to --

THE WITNESS: No, it doesn't.

Q -- know and understand what you're doing
here.

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THE WITNESS: No.

THE COURT: All right. The affidavit having been signed, and having heard the testimony, it's appropriate that the Order as submitted be signed, and I'll do it at this time. All right.

Good luck to you.

(Whereupon, the proceedings were concluded.)

REPORTER'S CERTIFICATE

State of Utah)
: ss.
County of Salt Lake)

I, GAYLE B. CAMPBELL, do hereby certify that
I am a Registered Professional Reporter and Notary Public
in and for the State of Utah;

That as such reporter, I attended the hearing
of the foregoing matter and thereat reported in stenotype
all of the testimony and proceedings had; that thereafter,
my notes were transcribed into typewriting under my direction,
and pages 1 through 5 constitute a full, true, and correct
report of the same.

DATED at Salt Lake City, Utah this 3rd day
of August, 1987.

Gayle B. Campbell
GAYLE B. CAMPBELL, R.P.R

My Commission Expires:
6 January 1988

ADDENDUM "B"

AFFIDAVIT OF SUSAN BAGLEY

FILED IN CLERK'S OFFICE
Salt Lake County Utah

AUG 24 1987

Dennis V. Haslam (#1408)
Lincoln W. Hobbs (#4848)
WINDER & HASLAM
175 West 200 South, Suite 4004
Post Office Box 2668
Salt Lake City, Utah 84110-2668
Telephone: (801) 322-2222

H. Dixon Hindley, Clerk 3rd Dist. Court
By *[Signature]*
Deputy Clerk

Attorneys for Petitioners

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In the Matter of the : AFFIDAVIT OF SUSAN BAGLEY
Adoption of :
 :
INFANT ANONYMOUS. : Case No. A-87-229

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

Susan Bagley, having been duly sworn, does depose and state that:

1. I am a counselor, employed by the Utah Women's Health Center, with various responsibilities in counseling patients of the Center, including the counseling of pregnant women who have made a decision to place a child for adoption.

2. I have a bachelor of science degree in Behavioral Science and Health from the University of Utah, and am Assistant Director of the Utah Women's Health Center.

3. I have, in the medical records of my patient,
 _____, a signed and notarized Consent to Release of
 Personal and Medical Information which authorizes me to re-

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lease to Winder & Haslam and to allow them to inspect and obtain copies of any and all of "personal or medical records, bills, notes, x-rays and medical reports pertaining to [her] physical or mental condition, past, present or future, upon a presentation of this consent or a photocopy thereof."

4. I first became acquainted with on or about March 31, 1987, when she came to the Utah Women's Health Center to determine the duration of her then-existing pregnancy. was at that time, and continues to be to the best of my knowledge, unmarried. She is 21 years of age.

5. Following initial consultation with me at the Center, I met with and counseled her on several occasions for a total of 12½ hours respecting her decision to place her child for adoption.

6. During the course of my counseling of , I did not advocate the option of adoption over any other of the alternatives available to her in her situation.

7. During the course of my counseling of she continually affirmed that her desire respecting her pregnancy was to place her child for adoption, and that an adoption would be in the best interests of her child, as she was unmarried and did not have the means to support the child.

8. At no time during my counseling of did she express any reservations respecting her decision to place

9. After [redacted] reached the final decision to place the child for adoption, we arranged an appointment and visited with Lincoln W. Hobbs, attorney for petitioners herein, and discussed the possibilities of a private adoption of her then unborn child. On or about June 5, 1987, at approximately 11:00 a.m., [redacted] and I met with Mr. Hobbs at his office at the law firm of Winder & Haslam.

a. He would be paid by and acting as attorney for the petitioners herein, and as such could not provide any legal advice to _____ He further advised her that should she have a legal question, she should direct the same to independent counsel, as he had an apparent conflict of interest in advising her of her legal rights.

11. Following that meeting, I had several other conversations with [redacted] in which we discussed the finality of a decision she was to make respecting relinquishment of her child for adoption.

12. On June 22, 1987, I was notified that had gone into labor and was expected to deliver at Holy Cross Hospital. I met her at the hospital and sat with and assisted her through labor and delivery of her child.

13. During a long labor, repeatedly stated her wishes to have the baby as soon as possible so she could return to her home and her "normal" lifestyle. During the labor, she waivered as to whether she wanted to know the sex of her child or whether she would want to see her child after its delivery.

14. At no time during labor did she ever express any reservations about her decision to place her child for adoption.

15. On or about June 24, 1987, approximately 30 hours after the delivery of her child, and I met with Mr. Hobbs at the Third Judicial District Court in and for Salt Lake County, prior to an appointed, scheduled meeting with Judge Michael R. Murphy of that Court, for the purpose of obtaining consent to the adoption and relinquishment of her parental rights.

16. At that time, and in my presence, Mr. Hobbs provided with, for her inspection, a copy of an Affidavit Relinquishing Parental Rights and Consenting to Adoption and asked her to review the same.

17. In my presence, read the Affidavit. Following her reading of the Affidavit, Mr. Hobbs asked

if she understood the contents of the document.

stated she did. Mr. Hobbs told her that, in the presence of the judge, she would most likely be read a copy of the consent, asked if she understood the contents, asked if she understood her relinquishment would be a final decision, and would further be asked if she were under the influence of any drugs which might affect her ability to make a decision.

18. Thereafter, Mr. Hobbs, and I proceeded to the chambers of Judge Michael R. Murphy, at which time, in the presence of a court reporter, signed the Affidavit Relinquishing Parental Rights and Consenting to Adoption.

19. Following the taking of consent in the judge's chambers, she and I went to lunch together in Salt Lake City. For approximately 2 hours we talked about her decision and about how she could now return to her normal activities. During our lunch, she appeared in full control of all of her mental facilities, and did not appear to be unduly tired or affected by stress.

20. During the course of my counseling of she advised me she did not desire her mother, with whom she resided in Lindon, Utah, to know of her pregnancy.

21. As a result of her request, and in light of the fact that I found her to be a mature, intelligent and sophisticated woman, I respected her decision and did not at any time allow

her mother to become aware of her pregnancy.

22. To the best of my knowledge, information and belief,
mother was unaware of her daughter's pregnancy
until several days following the delivery and
return home.

23. Several days after the consent was given, I was con-
tacted by who advised me she had spoken to her
mother about the pregnancy and the adoption, and that her
mother had expressed serious reservations about her daughter's
desire and decision to place the child for adoption.

then advised me she had "changed her mind" with re-
spect to the consent she had provided in the presence of Judge
Michael R. Murphy of the Third Judicial District Court in and
for Salt Lake County.

24. Since that conversation with , I have had
no further contact or communication with her.

DATED this 21 day of August, 1987.

Susan Bagley
Susan Bagley

SUBSCRIBED AND SWORN TO before me this 21 day of Au-
gust, 1987.

Notary Public
NOTARY PUBLIC
Residing in Salt Lake County, UT


My Commission Expires:

10/1988
Salt Lake County

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing AFFIDAVIT OF SUSAN BAGLEY to be mailed, first class, postage prepaid, this 21 day of August, 1987, to:

Mr. Richard B. Johnson
Attorney for
1327 South 800 East, Suite 300
Orem, Utah 84058

_____

ADDENDUM "C"

AFFIDAVIT OF CYNTHIA A. JONES, M.D.

H. Dixon Hickey, Clerk 3rd Dist. Court
By G. J. Lutz
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

2. I have, in the medical records of my patient, _____, a signed and notarized Consent to Release of Personal and Medical Information which authorizes me to re-lease to Winder & Haslam and to allow them to inspect and ob-tain copies of any and all of _____ "personal or medi-cal records, bills, notes, x-rays and medical reports pertain-ing to [her] phsyical or mental condition, past, present or

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future, upon a presentation of this consent or a photocopy thereof."

3. was a patient of mine from June of 1987, through the delivery of her infant child on June 23, 1987, at Holy Cross Hospital, Salt Lake City, State of Utah.

4. I have reviewed my medical records files for and am familiar with the contents therein.

5. The medical records of indicate that following her child's delivery on June 23, 1987, she was prescribed Tylenol #3 and no other medications for treatment of her pain. It is my medical and professional opinion that the drugs prescribed and administered to during and following delivery would not have adversely affected her ability to make an informed and knowing decision respecting the relinquishment for adoption of her child and release of parental rights on or about June 24, 1987, at approximately 10:30 a.m.

6. As part of my obstetrical practice, I deal on a frequent basis with unmarried and expectant women. When treating these women, it is my custom and practice to assure the women are aware of all possibilities respecting their pregnancy, including adoption, retention of the infant, and their rights to medical termination of the pregnancy. I do not, nor did I to in this instance, encourage any alternative over another.

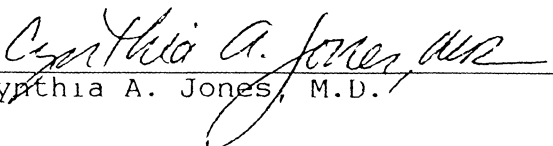
7. Also, as a customary and habitual practice in my profession, I will note in my medical records any statements or indications of hesitancy on the part of a woman who has previously indicated a desire to place her child for adoption. Furthermore, in the event of such concern, I always recommend a woman consult with a counselor or seek professional help regarding her decision.

8. In reviewing my medical records for _____, I have found no indication this patient, at any time during my treatment of her over the course of her pregnancy, indicated any reservations about her stated intention to place this child for adoption.

9. During my treatment of _____, I was informed and aware of the fact she was being counseled by Susan Bagley of the Utah Women's Health Center respecting her decision.

10. Throughout my treatment of _____, I do not recall at any time, up to and after the time of delivery, the patient indicating any hesitation whatsoever about her decision to place the child for adoption.

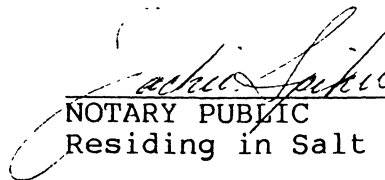
DATED this 21 day of August, 1987.


Cynthia A. Jones, M.D.

SUBSCRIBED AND SWORN TO before me this 21st day of August, 1987.

My Commission Expires:

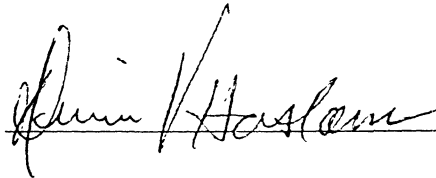
Oct. 15, 1989


NOTARY PUBLIC
Residing in Salt Lake County, UT

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing AFFIDAVIT OF CYNTHIA A. JONES, M.D. to be mailed, first class, postage prepaid, this 21 day of August, 1987, to:

Mr. Richard B. Johnson
Attorney for
1327 South 800 East, Suite 300
Orem, Utah 84058



ADDENDUM "D"

AFFIDAVIT RELINQUISHING PARENTAL RIGHTS
AND CONSENTING TO ADOPTION

Lincoln W. Hobbs (#4848)
Dennis V. Haslam (#1408)
WINDER & HASLAM
175 West 200 South, Suite 4004
Post Office Box 2668
Salt Lake City, Utah 84110-2668
Telephone: (801) 322-2222

Attorneys for Petitioners

FILED IN CLERK'S OFFICE
Salt Lake County Utah

JUN 24 1987

H. Dixon Hindley, Clerk 3rd Dist. Court

By James R. Reynolds
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In the Matter of the	:	AFFIDAVIT RELINQUISHING
Adoption of:	:	PARENTAL RIGHTS AND
	:	CONSENTING TO ADOPTION
	:	
INFANT ANONYMOUS.	:	Case No. <u>A-87-229</u>

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

, being first duly sworn, deposes and
states that:

1. I am the natural mother of a minor child, born out of
wedlock on June 23, 1987.

2. Because I have not the sufficient means to properly
care for said child, and because I feel the child's best in-
terests will be served, I hereby consent to the adoption of
the child by adoptive parents represented by Lincoln W. Hobbs
and Dennis V. Haslam, for adoption pursuant to Utah law and
with all the rights and obligations therewith.

3. I understand that this adoption proceeding will be
conducted without my being informed of the identity of the

adopting parents. I have consented and agreed to this means of adoption, and hereby consent to the adoption of my child by the individuals represented by Lincoln W. Hobbs and Dennis V. Haslam.

4. I hereby relinquish all of my parental rights which exist to and with Infant Anonymous, a minor, born June 23, 1987, at Holy Cross Hospital, Salt Lake County, Utah, herewith affirming that I am the natural mother of the child; and I expressly consent to the adoption of the child by persons appearing before the Court, with full knowledge that by so doing I forfeit each and every right which might otherwise exist with reference to the custody and parental relationship of the child.

5. I have read the foregoing affidavit and I fully understand the impact of the terms and conditions to which I have agreed and consented, and my action herein taken is of my own free will, executed voluntarily without any coercion, force or duress, and without any promises of any kind whatsoever, except that the best interests of the child will be served by the adoption.

DATED this 24 day of June, 1987.

WITNESS:

Michael R. Kinn
District Court Judge

ATTEST
H. DIXON HINDLEY
CLERK

Deanna Gaynor
Deputy Clerk

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UTAH DEPARTMENT OF HEALTH
 CERTIFICATE OF SEARCH
 FOR ACKNOWLEDGMENT OF PATERNITY BY FATHER

17-87-229

Name of Mother		
Place of Child's Birth Salt Lake City, Utah	Date of Child's Birth June 23, 1987	Sex of Child Female
This is to certify that a search has been made of the records of ACKNOWLEDGMENT OF PATERNITY BY FATHER filed with the State Office of Vital Statistics and no record was found to be on file		
JUN 24 1987 FILED IN CLERK'S OFFICE SALT LAKE CITY		John E. Brockert STATE REGISTRAR
If an acknowledgment of Paternity by Father is found on file a certified copy will be issued. If no record is on file a By <u>State Registrar</u> am June 24, 1987 DATE		

ADDENDUM "E"

PETITION FOR LEAVE TO ADOPT AND FOR TEMPORARY CUSTODY

Lincoln W. Hobbs (#4848)
Dennis V. Haslam (#1408)
WINDR & HASLAM
175 West 200 South, Suite 4004
Post Office Box 2668
Salt Lake City, Utah 84110-2668
Telephone: (801) 322-2222

JUN 23 1987

Hobbs & Haslam
By *[Signature]*
Attorneys for Petitioners

Attorneys for Petitioners

7702
22135

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In the Matter of the Adoption of: : PETITION FOR LEAVE TO ADOPT
: AND FOR TEMPORARY CUSTODY
: INFANT ANONYMOUS. : Case No. 77-87-229

Petitioners

and

respectfully represent and show:

1. Petitioners are husband and wife and reside at _____, Salt Lake County, State of Utah, are over the age of 21 years and are more than 10 years older than the minor child named in this petition. This Court has jurisdiction over this adoption pursuant to Utah Code Ann. §78-30-7.

2. The subject of this adoption proceeding is a female minor child, to-wit: Infant Anonymous who was born June 23, 1987, at Holy Cross Hospital, Salt Lake City, Salt Lake County, Utah, and who is in newborn infant care at that hospital.

3. The natural mother of said child is not and has not been heretofore married to the putative father of the child.

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4. The putative father's consent to the adoption is not required under the laws of the State of Utah by reason of his marital status or conduct.

5. Petitioners desire to adopt the child and fully understand the legal implications of an adoption.

6. Petitioners, and each of them, desire to perfect adoption of Infant Anonymous and stand ready to execute the necessary consent agreements in accordance with the laws of the State of Utah.

7. Petitioners are fit and proper persons to have custody of and to adopt the child; and it is reasonable and proper that the adoption be granted and that the Court preliminary thereto deprive the natural mother permanently and judicially of any rights in relation to the minor child pending a final adoption proceeding as required by law.

8. Petitioners and
are 36 and 31 years of age, respectively; they have been
married for over five (5) years and have one other child, age
4. is a fire fighter and paramedic for Salt Lake
County. is an emergency room nurse at Holy Cross
Hospital in South Jordan, Utah. The have an approx-
imate annual income of \$50,000.00 and are both active in a
Christian church.

9. The home of petitioners is a suitable and proper home to rear the child and petitioners are morally fit and finan-

cially able to support and educate the child and to have the care, supervision and training of the child, and petitioners desire to adopt said child and to make the child their own in all respects as authorized by law, including the rights of inheritance. The welfare of the child will be served and the child's best interests promoted by such adoption.

10. Petitioners request that the temporary and immediate custody of the child be placed with petitioners as soon as possible and that Holy Cross Hospital be ordered to release the child to petitioners' custody.

WHEREFORE, petitioners pray:

1. That the Court proceed to a determination of this adoption and that the natural parents be permanently and judicially denied any rights in relation to the minor child and that in full compliance with the laws of the State of Utah, the petitioners be granted a decree of adoption and the child from that time forth be known by the surname of petitioners.

2. For an Order placing with petitioners the temporary custody of the minor child.

3. For such other and further relief appropriate in the premises.

DATED this 23 day of June, 1987.

WINDER & HASLAM

By: Lincoln W. Hobbs
Attorneys for Petitioners

DATED this 23RD day of June, 1987.

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

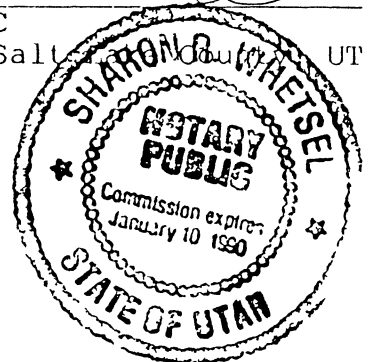
The petitioners above named, being first duly sworn under oath, depose and say that they have each read the foregoing Petition, know the contents thereof and that the same are true to their own knowledge except as to matters set forth on information and belief, and as to those matters they believe the same to be true.

On the 23rd day of June, 1987, personally appeared before me _____ and _____, signers of the foregoing Petition, who duly acknowledged to me that they executed the same.

My Commission Expires:

4/10/90


NOTARY PUBLIC
Residing in Salt Lake County, UT



ADDENDUM "F"

ORDER

Lincoln W. Hobbs (#4848)
Dennis V. Haslam (#1408)
WINDER & HASLAM
175 West 200 South, Suite 4004
Post Office Box 2668
Salt Lake City, Utah 84110-2668
Telephone: (801) 322-2222

Attorneys for Petitioners

JUN 24 1987

H. Dixon, Jr. J. Dix Court

By

Clerk

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In the Matter of the
Adoption of:

ORDER

INFANT ANONYMOUS.

:
:
:
:

Case No.

A-87-229

The above-entitled matter came on for hearing before the Court on application of Lincoln W. Hobbs, attorney for Petitioners. The Court reviewed the verified petition of the parties and was fully satisfied in the premises. Now for good cause shown and pursuant to the allegations of the verified petition:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction of this matter pursuant to Utah Code Ann. §78-30-7 in that the adoptive parents reside in Salt Lake County, State of Utah.

2. The petitioners in this cause are fit and proper persons to be granted and are hereby granted the temporary care, custody and control of Infant Anonymous, born June 23, 1987, to _____, at Holy Cross Hospital, with express

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instructions that petitioners should provide all necessary care and support for the child pending further Order of this Court.

3. Holy Cross Hospital is hereby authorized and directed to release the child to Lincoln W. Hobbs or Dennis V. Haslam, as attorneys for the adoptive parents, who have been approved by this Court, upon presentation to the hospital of a certified copy of this Order. The Court herewith acknowledges the consent of the natural mother, given before this Judge in accordance with Utah Code Ann. §78-30-8, to the adoption of the child, and further notes that the mother's consent was given with the knowledge that by the execution of the consent she thereupon relinquished all parental rights as well as parental responsibilities in and to the child. The father of the child has not filed an acknowledgment of paternity.

4. The adoption file commenced herein shall be sealed for all purposes except to be opened upon further Order of this Court for further proceedings herein.

DATED this 24th day of June, 1987.

BY THE COURT:

Michael D. Murphy
District Court Judge

ATTEST
H. DIXON HINDLEY
CLERK

By [Signature] or
Deputy Clerk

ADDENDUM "G"

MOTION TO SET ASIDE FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECREE AND MEMORANDUM IN
SUPPORT OF MOTION TO SET ASIDE FINDINGS OF FACTS, ORDER AND DECREE

FILED IN CLERK'S OFFICE
Salt Lake County Utah

JUL 22 1987

RICHARD B. JOHNSON #1722
Attorney for Movant
1327 South 800 East, Suite #300
Orem, Utah 84058
Telephone: (801) 225-1632

H. Dixon Hindley, Clerk 3rd Dist. Court
By *[Signature]* Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

IN THE MATTER OF THE	:	MOTION TO SET ASIDE
ADOPTION OF:	:	FINDINGS OF FACT, CONCLUSIONS
	:	OF LAW AND DECREE
	:	
Infant Anonymous.	:	Case No. <u>A87-229</u>

COMES NOW _____ and moves this Court pursuant to Rule 60(b) of the Utah Rules of Civil Procedure for an Order setting aside the Findings of Fact, Conclusions of Law and Decree of Adoption and allowing the movant, _____ to withdraw her consent to the adoption.

There is attached hereto and incorporated herein a Memorandum of Points and Authorities in support of the Motion.

DATED this 22nd day of July, 1987.

[Signature]
RICHARD B. JOHNSON
Attorney for Movant

MAILING CERTIFICATE

I hereby certify that on the 22 day of July, 1987, I mailed a true and correct copy of the foregoing, postage prepaid, to:

Lincoln W. Hobbs
Dennis V. Haslam
WINDER & HASLAM
175 West 200 South, Suite 4004
Post Office Box 2668
Salt Lake City, Utah 84110-2668

Ronda Bauholmen

FILED IN CLERK'S OFFICE
Salt Lake County Utah

JUL 22 1987

RICHARD B. JOHNSON #1722
Attorney for Movant
1327 South 800 East, Suite #300
Orem, Utah 84058
Telephone: (801) 225-1632

H Dixon Hancey, Clerk 3rd Dist Court
By [Signature]
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

IN THE MATTER OF THE	:	MEMORANDUM IN SUPPORT OF MOTION
ADOPTION OF:	:	TO SET ASIDE FINDINGS OF FACTS,
	:	ORDER AND DECREE
	:	
Infant Anonymous.	:	Case Number: <u>A87-229</u>

COMES NOW _____, by and through her attorney,
Richard B. Johnson, and submits the following Memorandum of
Points and Authorities in Support of _____ Motion
to Set Aside Findings of Fact, Order and Decree.

ARGUMENT

POINT I

THE THIRD DISTRICT JUVENILE COURT FOR UTAH COUNTY HAS
JURISDICTION TO GRANT PLAINTIFF THE RELIEF SHE REQUESTS.

In adoption cases the courts are given broad discretion to
formulate a decree which is equitable and consistent with public
policy. The Supreme Court of Utah in,
D P v. Social Service & Child W. Dept., 431 P.2d 547, 551 (1967),

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quoting prior case law said:

. . .the important phrase of the case is that it recognized the right of a natural mother to revoke written consent, and as pointed out, when the question of undue influence is an issue "the court should carefully scrutinize the evidence lest an honest, worthy and well-meaning natural parent be unjustly deprived of her child."

Therefore, the courts not only have jurisdiction to hear the facts and make a decision, but the courts are also held to a high level of scrutiny to protect the rights of the natural mother to be with her child.

The Utah Supreme Court further stated in In Re Adoption of F, 488 P.2d 130, 132 (Utah 1971):

. . .The mother of an illegitimate child has the right both to its custody and to relinquish that right if for any reason she so desires. If she so decides and freely and voluntarily signs a release and consent for adoption, it is binding the same as any other contract. It is, of course, true that if no rights or interests of third parties have intervened, the courts are quite liberal in permitting the withdrawal of such a consent.

The fact that did not understand and freely and voluntarily consent to the adoption of her daughter along with the fact that petitioner forthwith moved the Court within a few days to regain her daughter should weigh heavily in movant's favor.

POINT II

THERE ARE LEGAL GROUNDS WHICH JUSTIFY THE
REVOCATION OF THE PETITIONER'S CONSENT TO ADOPTION.

The standard for revocation of consent to adoption is set out in In the Matter of S., 572 p.2d 1370, 1374 (1977):

A duly executed consent can be avoided only by showing the agreement was not entered into voluntarily but was induced through duress, undue influence, or under some misrepresentation or deception; or other grounds which would justify release from the obligations of any contract.

It seems quite clear that petitioner signed the consent from with the belief that she had six months before the adoption was final and during that period of time she could revoke her consent. The belief that consent was not final as of June 24, 1987, was based on the representations and statements. When one applies the standard set out above, the consent agreement should be revoked based on the fact that there was a misrepresentation and the petitioner signed the agreement with the justifiable deception that she could regain custody of her daughter at any time within the next 6 months and while she was under the influence of pain medication.

In addition to misrepresentation, the persons involved exercised undue influence. The essence of undue influence is

unfair persuasion. See In Interest of Perry, 641 P.2d 641, 181 (Wash. App., 1982).

The ultimate question is whether the result was produced by means that seriously impaired the free and competent exercise of judgment. Such factors as the unfairness of the resulting bargain, the unavailability of independent advice, and the susceptibility of the person persuaded are circumstances to be taken into account in determining whether there was unfair persuasion.

1 Restatement (Second) of Contracts Section 177, comment b at 491 (1981).

Certainly the petitioner's judgment, at the time she signed the consent, was impaired by the drugs taken and the representations that there was a six month period before the consent agreement was final.

Additional light is shed on the issue by the court in In the Matter of Anderson, 589 P.2d 957 (Idaho, 1978). The standard the court applied in the case was whether the consent was voluntarily, knowingly, and intelligently made, and with full awareness of the legal consequences. Movant does not meet any of these requirements. She was relying on the misrepresentations of the effect at the consent. She was in no position to make a intelligent decision regarding the permanency of her consent.

Similar issues to the ones raised in this case were addressed by the Washington Court of Appeals in In Interest of Perry, 641 P.2d 178 (1982). The mother of an illegitimate child received aid from an agency. As a result of the advice of her physician and the agency she signed a consent agreement. The court further stated:

During that time everyone advocated that she place her child for adoption. She was never clearly informed by the agency that even though it had spent money on her behalf, she was nonetheless free to retain her child and return to Michigan. She was not encouraged to consider alternatives and had no opportunity to reflect or seek independent advice. Although she was told the relinquishment was final, she was also improperly advised that another mother changed her mind 7 months after relinquishment and recovered her child.

. . . Additionally, she challenged her relinquishment immediately upon returning to Michigan. The findings further show this environment created in Miss. Perry's mind an obligation without option, to repay the agency's expenses by relinquishing her rights to the child. In view of these findings, the close relationship that must have developed and Miss Perry's dependancy upon the agency, we hold the court's conclusion must stand and the relinquishment be set aside.

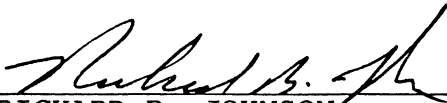
In light of the above case, petitioner should be allowed relief. In the Washington case as well as the case at issue the mothers were not fully informed by the agencies of their rights. Neither mother was encouraged to seek legal advice. Both mothers

mother to do so. The court in the above cited case stated that even though the mother was destitute and had no means of providing for the child, and that the adoptive parents could more adequately give the child the necessities of life, there still existed insufficient grounds for awarding custody to the adopting parents. Id. at 552.

CONCLUSION

therefore respectfully requests the Court to revoke the consent agreement and allow her child to be returned to her.

DATED this 22nd day of July, 1987.



RICHARD B. JOHNSON
Attorney for Movant

MAILING CERTIFICATE

I hereby certify that on the 22 day of July, 1987, I mailed a true and correct copy of the foregoing postage prepaid, to:

Lincoln W. Hobbs
Dennis V. Haslam
WINDER & HASLAM
175 West 200 South, Suite 4004
Post Office Box 2668
Salt Lake City, Utah 84110-2668

Rhonda Bartholomew

ADDENDUM "H"

AFFIDAVIT

FILED IN CLERK'S OFFICE
Salt Lake County Utah

JUL 22 1987

H. Dixon Hindley, Clerk 3rd Dist. Court
By *[Signature]* Deputy Clerk

RICHARD B. JOHNSON #1722
Attorney for Movant
1327 South 800 East, Suite #300
Orem, Utah 84058
Telephone: (801) 225-1632

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

IN THE MATTER OF THE
ADOPTION OF:

AFFIDAVIT

Infant Anonymous.

Case No. A87-229

STATE OF UTAH)
 : ss
COUNTY OF UTAH)

, after first being duly sworn, deposes
and says:

1. I am the natural mother of the child involved in this
matter.

2. I signed the attached Affidavit relinquishing parental
rights and consenting to adoption.

3. At the time I signed that Affidavit, I had been on pain
medication. Prior to going to the Court, I had significant doubts
about giving the child up for adoption. I believe that the pain

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medication together with the stress that I was under because of childbirth simply left me without sufficient will and strength to properly evaluate that matter.

4. After I left the hospital and got my strength back, I was resolute that I did not want to lose my child and wanted the rights to raise the child. I believe that had it not been for the medication and stress of childbirth, that I would have indicated to the persons involved that I did not want to give my child up for adoption.

5. I do not have monies to fight this matter legally, and it took me the time from June 24, 1987 to to the time that I hired Richard Johnson to raise sufficient monies to be able to file the appropriate documents with the Court to request that the consent to set aside and that the Decree of Adoption be set aside.

6. Aside from the medication and stress, I was informed and believed that the Decree of Adoption did not become final for six months and that I had that period of time in which some action could be taken. I do not understand that the giving of my consent and the signing of the Affidavit were the end of the matter and that there was in fact a period of time that could change my mind.

7. I want very much to raise my child and have my parental rights restored. The child means everything to me and I would greatly appreciate the assistance of the Court in allowing me to have my rights with the child restored.

DATED this 22nd day of July, 1987.

Movant

SUBSCRIBED & SWORN to before me this _____ day of _____, 198____.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

RESIDING AT:

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MAILING CERTIFICATE

I hereby certify that on the 22 day of July, 1987, I mailed a true and correct copy of the foregoing, postage prepaid, to:

Lincoln W. Hobbs
Dennis V. Haslam
WINDER & HASLAM
175 West 200 South, Suite 4004
Post Office Box 2668
Salt Lake City, Utah 84110-2668

Rhonda Bartholomew

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ADDENDUM "I"

MINUTE ENTRY DATED SEPTEMBER 1, 1987

K Grotelas

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE ADOPTION : MINUTE ENTRY
OF: : CASE NO. A-87-229
INFANT ANONYMOUS. :

The Court having considered the pleadings on file herein, together with the Affidavits and argument of counsel, hereby grants the Motion of to withdraw her consent to the adoption of her natural child known herein as Infant Anonymous, who was born June 23, 1987 at Holy Cross Hospital in Salt Lake City, Salt Lake County, State of Utah.

The Court recognizes that any decision that it makes in this matter is going to be emotionally disturbing to one or the other of the parties herein. The Court is convinced, however, that a reading of the transcript of the proceedings at which the natural mother's consent was taken is not inconsistent and, in fact, implies that her consent is not final, and that the proceedings would have to "go forward." While the Court does not find fault with the judge that took the consent, when the language used therein at that time, ~~it~~ is considered in view of the allegations of the natural mother that she was told that the adoption would not become final for six months, which she took to mean that she could withdraw her consent at any time during that six month period, it becomes apparent that she probably did not knowingly

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consent to the release of her parental rights on an unconditional basis. The language involved is found on lines 11, 12 and 13 of page 3, where the Court said, "Do you understand -- for the want of a better word -- the finality of this? That if it goes
the forward, that you relinquish all parental rights forever."
(Emphasis supplied).

The Court is further impressed by the fact that the natural mother did not consult with members of the family, including her own mother, until after the birth of the child, but was consulted only by a counselor at the Utah Women's Health Center. Again, not in any way to impune the capacity or capability of the said counselor, nevertheless, the natural mother, after consulting with her own mother, decided that she wanted her child back, and as evidence thereof, within three days after the consent had been taken (which was taken about 30 hours after the birth), she advised the counselor that she wanted the child back. She thereafter filed the Petition herein as soon as possible in view of her financial conditions, which was within 30 days of the date that she had given the consent.

Under the circumstances, it is the Court's opinion that the mother did not freely and voluntarily given an unconditional release of her parental rights, that she was acting under a mistaken belief that the adoption would not become final for six months, and that she had the right to change her mind within that

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six month period. The Court finds that if there was, in fact, less than a full, knowing, unconditional release of the parental rights, the equities in the matter weigh in favor of setting the consent aside, and the Court so orders.

The Court further orders that custody of the child be returned forthwith to the natural mother. The natural mother is ordered to repay to the adoptive parents the reasonable costs they have incurred in this matter. She may have a period of two years to pay those costs in equal monthly installments.

The natural mother's attorney will prepare the Order.

Dated this 1st day of September, 1987.



RICHARD H. MOFFAT
DISTRICT COURT JUDGE

ATTEST
H. DIXON HINDLEY
CLERK
By K. Grottepas
Deputy Clerk

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MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, postage prepaid, to the following, this 2ND day of September, 1987:

Lincoln W. Hobbs
Dennis V. Haslam
Attorneys for Petitioners
175 West 200 South, Suite 4004
P.O. Box 2668
Salt Lake City, Utah 84110-2668

Richard B. Johnson
Attorney for Movant
1327 South 800 East, Suite 300
Orem, Utah 84058

K Cystepas

ADDENDUM "J"

MINUTE ENTRY DATED SEPTEMBER 25, 1987

FILED IN CLERK'S OFFICE
Salt Lake County Utah

SEP 25 1987

H Dixon Hindley, Clerk 3rd Dist Court
By H. J. [Signature]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE ADOPTION : MINUTE ENTRY
OF: :
INFANT ANONYMOUS. :

The "Protective Motion for New Trial, Or, in the Alternative, Amendment from Judgment or Relief From Judgment" of the petitioners in the above-entitled matter came on for hearing before the Court on September 23, 1987. The Court heard argument, and has carefully examined the Memoranda and cases cited to it by counsel for both the petitioners and the natural mother, and now denies the above-described Motions.

The reason for said denial is that while the matter should perhaps have initially been heard by the judge that took the consent, this Court discussed that matter with counsel for the parties at the time of the initial hearing herein, and neither party expressed a desire to have the judge who took the consent hear the matter. In addition, the matter was submitted on Affidavits and oral argument, without any request for the entry of additional evidence. It is the Court's opinion that had the parties asked either to have the original judge hear the matter, or have an evidentiary hearing, both of said motions would have been granted. However, having not done so, this Court is of the opinion that those matters have been waived. It has been urged

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that the question of having the matter heard by the judge who took the original consent cannot be waived. However, this Court is of the opinion that is not a correct statement and that, in fact, such waiver did take place herein. Therefore, this Court rules as above set forth, and the provisions of the Minute Entry, dated September 1, 1987, will remain in full force and effect.

The Court orders that the custody of the child be returned forthwith to the natural mother. The natural mother's attorney will prepare the Order. *IK*

Dated this 25 day of September, 1987.



RICHARD H. MOFFAT
DISTRICT COURT JUDGE

ATTEST

H. DIXON HINDLEY
CLERK

By K. Grotelas
Deputy Clerk

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MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, postage prepaid, to the following, this 28 day of September, 1987:

Richard B. Johnson
Attorney for Movant
1327 South 800 East, Suite 300
Orem, Utah 84058

David S. Dolowitz
Attorney for Petitioners
185 S. State, Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147-0898

K Godepas

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ADDENDUM "K"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

AND

ORDER AND JUDGMENT

FILED IN CLERKS OFFICE
SALT LAKE COUNTY UTAH
AUG 31 1987
BY [Signature]
[Signature]

RICHARD B. JOHNSON, #1722
Attorney for Movant
1327 South 800 East, Suite #300
Orem, Utah 84058
Telephone: (801) 225-1632

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

IN THE MATTER OF	:	FINDINGS OF FACT AND
THE ADOPTION OF:	:	CONCLUSIONS OF LAW
	:	
INFANT ANONYMOUS,	:	
	:	Civil No. A-87-229
Defendant.	:	

This matter having come on for hearing before the Honorable Richard H. Moffat on the 31st day of August, 1987. The natural mother was present and represented by her attorney, Richard B. Johnson. The adoptive parents were not present nor represented by their attorneys Lincoln W. Hobbs and Dennis V. Haslam. The natural mother having filed a Motion to Set Aside the Findings of Fact, Conclusions of Law, and Decree of Adoption in this matter and to withdraw her Consent and the parties having submitted affidavits and memoranda in support of their position and having argued the matter before the Court

and submitting to the Court for decision based upon the memoranda and affidavits and in addition, having considered Petitioner's protective Motion for New Trial or in the alternative amendment from judgment or relief from judgment which came on for hearing before the Court on September 23, 1987. The natural mother was again present and represented by her attorney, Richard B. Johnson. The adoptive parents were not present but were represented by their attorney, David S. Dolowitz. The Court, having carefully examined the memoranda, affidavits and arguments presented by counsel and the Court being fully advised in the premises, now makes and enters the following:

FINDINGS OF FACT

1. The Court finds that _____ is in fact the natural mother of a minor child born out of wedlock on June 23, 1987.

2. The Court finds that on June 24, 1987, that the natural mother, _____, appeared before Judge Michael R. Murphy and was questioned concerning the Consent.

3. The Court finds that the natural mother was not clearly apprised of the finality of signing the Consent. Specifically, the Court finds that the natural mother was confused and indeed believed that even though she signed the Consent, she would still have six months, during which time the Decree of Adoption, would not be final and at any time during that six month period she could withdraw her Consent.

4. The Court finds that the natural mother did not knowingly consent to the release of her parental rights on an unconditional basis.

5. The Court finds that the natural mother did not consult with members of her immediate family including her own mother until after the birth of the child and that the only consultation received by the natural mother was from a counselor at the Utah Women's Health Center.

and the consultation set forth in the affidavit of Cynthia A. Jones M.D. APR

6. The Court finds that after the natural mother had consulted with her own mother that the natural mother decided she wanted her child back and within three days advised the counselor that she wished to withdraw her Consent.

7. The Court finds that a Petition to withdraw the natural mother's Consent was filed as soon as practical in view of her financial condition which was accomplished within 30 days of the date she had given consent.

8. This Court finds in response to Petitioner's Protective Motion for New Trial or in the alternative Amendment from Judgment or Relief from Judgment that this Court discussed the matter of whether the case should be heard by Judge Murphy who originally took the Consent of the natural mother and finds that neither party expressed a desire to have Judge Murphy hear the matter.

9. The Court finds that since neither party expressed the desire to have Judge Murphy preside that said parties waived that right.

10. The Court finds that the Protective Motion for New Trial or in the alternative Amendment from Judgment or Relief from Judgment was submitted on affidavits and oral argument without any request for the entry of additional evidence and further finds that the parties waived their right to offer any additional evidence by neglecting to make said request.

11. The Court finds that the natural mother did not make an informed knowing unconditional release of her parental rights and is entitled to revoke her Consent.

From the foregoing Findings of Fact, the Court now makes and enters the following:

CONCLUSIONS OF LAW

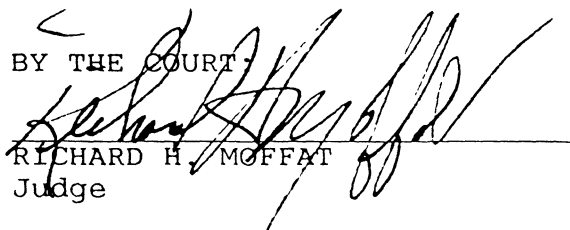
1. The Consent to adoption is hereby set aside and the adoptive parents are ordered to return the minor child to the natural mother forthwith.

2. The right to have Judge Murphy who took the original Consent preside over these proceedings has been waived by the parties to this action.

3. The right to offer additional evidence relative to these proceedings has been waived by the parties by their failure to timely assert said right.

DATED this 3rd day of November, 1987.

BY THE COURT:


RICHARD H. MOFFAT
Judge

-5-

ATTEST
H. DIXON HINDLEY

CLERK
By 
Deputy Clerk

MAILING CERTIFICATE

I hereby certify that on the 24th day of November, 1987, I mailed a true and correct copy of the foregoing, postage prepaid, to:

Lincoln W. Hobbs
Dennis V. Haslam
Attorneys for Petitioner
175 West 200 South, Suite 4004
P.O. Box 2668
Salt Lake City, Utah 84110-2668

Caryl Rawlings

FILED IN CLERK'S OFFICE

SALT LAKE COUNTY

Dec 3, 1987

At Docket Hearing, Clerk of District Court

By W. E. Dwyer
Deputy Clerk

RICHARD B. JOHNSON, #1722
Attorney for Movant
1327 South 800 East, Suite #300
Orem, Utah 84058
Telephone: (801) 225-1632

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

IN THE MATTER OF	:	
THE ADOPTION OF:	:	ORDER AND JUDGMENT
	:	
INFANT ANONYMOUS,	:	
	:	Civil No. A-87-229
Defendant.	:	

This matter having come on for hearing before the Honorable Richard H. Moffat on the 31st day of August, 1987. The natural mother was present and represented by her attorney, Richard B. Johnson. The adoptive parents were not present nor represented by their attorneys Lincoln W. Hobbs and Dennis V. Haslam. The natural mother having filed a Motion to Set Aside the Findings of Fact, Conclusions of Law, and Decree of Adoption in this matter and to withdraw her Consent and the parties having submitted affidavits and memoranda in support of their position and having argued the matter before the Court

and submitting to the Court for decision based upon the memoranda and affidavits and in addition, having considered Petitioner's Protective Motion for New Trial or in the alternative amendment from judgment or relief from judgment which came on for hearing before the Court on September 23, 1987. The natural mother was again present and represented by her attorney, Richard B. Johnson. The adoptive parents were not present but were represented by their attorney, David S. Dolowitz. The Court, having carefully examined the memoranda, affidavits and arguments presented by counsel and the Court, having entered its Findings of Fact and Conclusions of Law, now makes and enters the following:

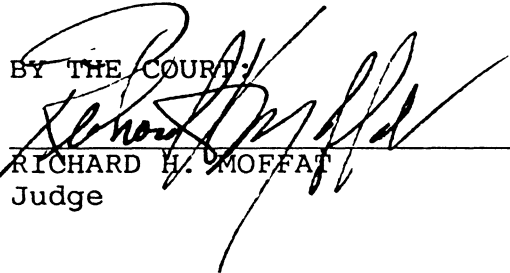
ORDER AND JUDGMENT

1. The natural mother, *ORDER of Temporary Custody filed & dated June 24, 1987* Motion to Set Aside & Findings of Fact, Conclusions of Law and Decree of Adoption is hereby granted.
2. The Consent of the natural mother in this matter is hereby set aside.
3. The adoptive parents are hereby ordered to return the minor child to the natural mother forthwith.


4. Petitioner's Protective Motion for New Trial or in the alternative amendment from judgment or relief from judgment is hereby denied.

DATED this 3rd day of December, 1987.

BY THE COURT:


RICHARD H. MOFFAT
Judge

ATTEST
H. DIXON HINDLEY
CLERK

By 
Deputy Clerk

MAILING CERTIFICATE

I hereby certify that on the 24th day of November, 1987, I mailed a true and correct copy of the foregoing, postage prepaid, to:

Mr. Lincoln W. Hobbs
Dennis V. Haslam
Attorneys for Petitioner
175 West 200 South, Suite 4004
P.O. Box 2668
Salt Lake City, Utah 84110-2668

Caryl Rawlings

ADDENDUM "L"

OBJECTIONS TO FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER AND JUDGMENT
AND
NOTICE OF HEARING

FILED IN CLERK'S OFFICE
Salt Lake County Utah

JAN 7 - 1988

DAVID S. DOLOWITZ (0899)
of and for
COHNE, RAPPAPORT & SEGAL
Attorneys for Petitioners
525 East 100 South, Suite 500
Salt Lake City, Utah 84102
Telephone: (801) 532-2666

H Dixon Hindley, Clerk 3rd Dist Court
By _____
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

IN THE MATTER OF)	OBJECTIONS TO FINDINGS OF
THE ADOPTION OF:	)	FACT, CONCLUSIONS OF LAW
	)	AND ORDER AND JUDGMENT
INFANT ANONYMOUS.	)	Civil No. A87-229
	)	Judge Moffat

* * * * *

The adoptive parents of Infant Anonymous hereby move the above-entitled court to withdraw the Findings of Fact, Conclusions of Law and Order and Judgment entered by the court on the 3rd day of December, 1987, on the grounds that, contrary to Rule 2.7 of the Rules of Practice of the District Courts of the State of Utah, no copy of the proposed Findings of Fact, Conclusions of Law or Order and Judgment were transmitted to counsel for the natural parents prior to their

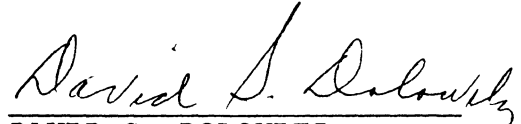
submittal to the court. Examination of those documents will demonstrate that, on the 24th day of November, 1987, they were mailed to Lincoln W. Hobbs and Dennis V. Haslam, attorneys for petitioners. Lincoln W. Hobbs and Dennis V. Haslam withdrew as counsel for the adoptive parents on the 3rd of September, 1987, and David S. Dolowitz entered his appearance as counsel of record for the adoptive parents on the 4th day of September, 1987, and communicated that to Richard B. Johnson, attorney for Movant. Thereafter, David S. Dolowitz appeared in the hearing held before the court on September 23, 1987, at the hour of 8:30 a.m., yet, Richard B. Johnson did not transmit copies of the proposed Findings of Fact, Conclusions of Law or Order and Judgment to David S. Dolowitz but, rather, sent them to Lincoln V. Hobbs and Dennis Haslam who did not forward them to David S. Dolowitz until late in December, 1987, at approximately which time David S. Dolowitz learned from Judge Moffat's clerk that they had been entered.

Having examined the purported Findings of Fact and Conclusions of Law, petitioners object to Finding of Fact No. 3, Finding of Fact No. 4, Finding of Fact No. 5, Finding of Fact No. 6, and Finding of Fact No. 7 on the grounds that there was no trial where evidence was presented and these

matters could be determined. Petitioners object to purported Findings of Fact Nos. 8, 9 and 10 as those are, in reality, conclusions of law, and are not appropriate, based on the findings that can be made in the status of this case and purported Finding of Fact No. 11 as this is a conclusion and there has been no evidentiary hearing upon which this could be determined.

Petitioners object to No. 1 of the Order and Judgment on the grounds that such pleadings were never entered.

DATED this 1 day of January, 1988.


DAVID S. DOLOWITZ
Attorney for Petitioners

CERTIFICATE OF HAND-DELIVERY

I hereby certify that I caused to be hand-delivered a true copy of the above and foregoing Objection, this 7 day of January, 1988, to:

Mr. Richard B. Johnson
Attorney at Law
1327 South 800 East #300
Orem, Utah 84058

and a true copy of the above and foregoing mailed to:

Mr. Lincoln W. Hobbs
Attorney at Law
175 West 200 South #4004
P.O. Box 2668
Salt Lake City, Utah 84110-2668.


DAVID S. DOLOWITZ

FILED IN CLERK'S OFFICE
Salt Lake County Utah

DAVID S. DOLOWITZ (0899)
of and for
COHNE, RAPPAPORT & SEGAL
Attorneys for Petitioners
525 East 100 South, Suite 500
Salt Lake City, Utah 84102
Telephone: (801) 532-2666

JAN 7 - 1988

H Dixon Hindley, Clerk 3rd Dist Court
By [Signature]
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

IN THE MATTER OF)
THE ADOPTION OF:) NOTICE OF HEARING
)
INFANT ANONYMOUS.) Civil No. A87-229
) Judge Moffat

* * * * *

PLEASE TAKE NOTICE that a hearing on Petitioners' Objections to the Findings of Fact, Conclusions of Law and Order and Judgment heretofore entered in the above-entitled matter will be held on Friday, January 15, 1988, at the hour of 9:00 a.m. or as soon thereafter as this motion may be heard, before the Honorable Richard A. Moffat at the District Courts Building, 240 East 400 South, Salt Lake City, Utah, 84111.

DATED this 7 day of January, 1988.

David S. Dolowitz
DAVID S. DOLOWITZ
Attorney for Petitioners

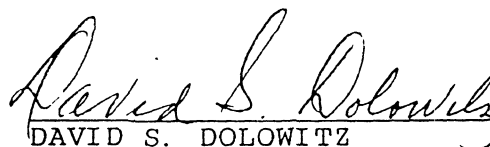
CERTIFICATE OF HAND-DELIVERY

I hereby certify that I caused to be hand-delivered a true copy of the above and foregoing Notice of Hearing, this 7 day of January, 1988, to:

Mr. Richard B. Johnson
Attorney at Law
1327 South 800 East #300
Orem, Utah 84058

and a true copy of the above and foregoing mailed to:

Mr. Lincoln W. Hobbs
Attorney at Law
175 West 200 South #4004
P.O. Box 2668
Salt Lake City, Utah 84110-2668.


DAVID S. DOLOWITZ

ADDENDUM "M"

NOTICE OF CONTINUANCE OF HEARING

DAVID S. DOLOWITZ (0899)
of and for
COHNE, RAPPAPORT & SEGAL
Attorneys for Petitioners
525 East 100 South, Suite 500
Salt Lake City, Utah 84102
Telephone: (801) 532-2666

JAN 15 1988

H. Dixon Hindley, Clerk 3rd Dist. Court
By [Signature] [Signature]
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

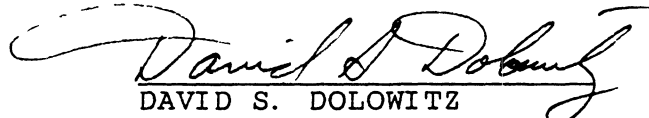
IN THE MATTER OF)	
THE ADOPTION OF:	)	NOTICE OF CONTINUANCE
	)	OF HEARING
)	
INFANT ANONYMOUS.	)	Civil No. A87-229
	)	Judge Moffat

* * * * *

PLEASE TAKE NOTICE that the hearing on Petitioners' Objections to the Findings of Fact, Conclusions of Law and Order and Judgment heretofore entered in the above-entitled matter, previously scheduled for Friday, January 15, 1988, at the hour of 9:00 a.m., has been rescheduled and is now set for Friday, February 5, 1988, at the hour of 9:00 a.m., or as soon thereafter as this motion may be heard, before the Honorable Richard A. Moffat at the District Courts Building, 240 East 400 South, Salt Lake City, Utah, 84111. This continuance was

at the request of counsel for the natural mother, Richard B. Johnson.

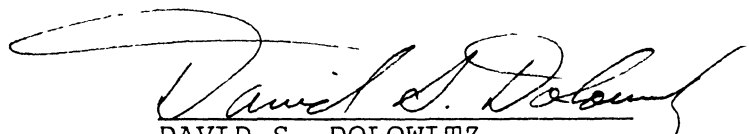
DATED this 14 day of January, 1988.


DAVID S. DOLOWITZ
Attorney for Petitioners

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed, postage prepaid, a true copy of the above and foregoing Notice of Continuance of Hearing, this 14 day of January, 1988, to:

Mr. Richard B. Johnson
Attorney at Law
1327 South 800 East #300
Orem, Utah 84058


DAVID S. DOLOWITZ

ADDENDUM "N"

MINUTE ENTRY DATED JANUARY 15, 1988

THIRD JUDICIAL DISTRICT

County of Salt Lake - State of Utah

In the Matter of the Adoption of
Infant ^{Plaintiff} Anonymous

CASE NO: A-87-229

Defendant

Type of hearing: Div. _____ Annul. _____ Supp. Order _____ OSC. _____ Other ☒
 Present: Pltf. _____ Deft. _____ Summons _____ Stipulation _____
 P. Atty: D. Dolowitz N/P Waiver _____ Publication _____
 D. Atty: R. B. Johnson N/P ☐ Default of Pltf/Deft Entered
 Sworn & Examined: Date: January 15, 1988
 Pltf: _____ Deft: _____ Judge: RICHARD H. MOFFAT
 Others: _____ Clerk: KATHY GROTEPAS
 Reporter: HAL WALTON N/P
 Bailiff: _____

ORDERS:

- ☐ Custody Evaluation Ordered ☐ Custody Awarded To _____
☐ Visitation Rights _____
☐ Pltf/Deft Awarded Support \$ _____ x _____ = _____ Per Month
☐ Pltf/Deft Awarded Alimony \$ _____ Per Month/Year ☐ Alimony Waived
☐ Payments to be made through the Clerk's Office: _____
☐ Atty. fees to the _____ in the amount of _____ ☐ Deferred
☐ Home To: _____
☐ Furnishings To: _____ Automobile To: _____
☐ Each Party Awarded their Personal Property
☐ Pltf/Deft. to Maintain Debts and Obligations
☐ Pltf/Deft. to Maintain Insurance on Minor Children
☐ Restraining Order Entered Against _____
☐ Pltf/Deft. Granted Judgment for Arrearage in the Sum of \$ _____
☐ 90-Day Waiting Period is Waived
☐ Divorce Granted To _____ As _____
☐ Decree To Become Final: ☐ Upon Entry ☐ 3-Month Interlocutory
☐ Former Name of _____ Is Restored
☐ Based on the failure of Deft to appear in response to an order of the court and on motion of Pltfs counsel, court orders _____ / _____ shall issue for Deft. _____
 Returnable _____ Bail _____
☐ Based on written stipulation of respective counsel/motion of Plaintiff's counsel, and good cause appearing therefor, court orders the above case be and the same is hereby dismissed without prejudice.

- ☒ ^{NON-appearances} Based on written stipulation of respective counsel/motion of Plaintiff's counsel, court orders
petitioners' objections to the findings of fact,
conclusions of law, order + judgment is
dismissed.

... Counsel

ADDENDUM "O"

MOTION TO VACATE RULING, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER AND JUDGMENT

JAN 26 1988

DAVID S. DOLOWITZ (0899)
of and for
COHNE, RAPPAPORT & SEGAL
Attorneys for Petitioners
525 East 100 South, Suite 500
Salt Lake City, Utah 84102
Telephone: (801) 532-2666

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

IN THE MATTER OF	)	MOTION TO VACATE RULING,
THE ADOPTION OF:	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW AND
	)	ORDER AND JUDGMENT
)	
INFANT ANONYMOUS.	)	Civil No. A87-229
	)	Judge Moffat

* * * * *

The petitioners in the above-entitled matter hereby move the court to vacate its ruling of January 15, 1988, denying their motion to vacate the Findings of Fact, Conclusions of Law and Order and Judgment entered in this matter on the 3rd of December, 1987, on the grounds that the procedure of the court has denied due process of law to the

petitioners and has violated the Rules of Practice of the District and Circuit Courts of the State of Utah contrary to the ruling of the Supreme Court of the State of Utah in Bigelow v. Ingersoll, 618 P.2d 50, 52 (Utah 1980), followed in Larsen v. Larsen, 674 P.2d 116, 117 (Utah 1983) as follows:


The Findings of Fact, Conclusions of Law and Order and Judgment entered by the court on the 3rd day of December, 1987, were entered without compliance with Rule 2.9 of the Rules of Practice of the District and Circuit Courts of the State of Utah, when copies of the proposed Findings of Fact, Conclusions of Law, Order and Judgment were not transmitted to counsel for the petitioners yet were entered by the court. When the failure to comply with the Rule 2.9 in violation of Bigelow v. Ingersoll, supra, became known to counsel for the petitioners, he immediately filed a Motion to Vacate the Findings of Fact, Conclusions of Law and Order and Judgment and scheduled the matter for hearing before the Court on January 15, 1988. Counsel for the natural mother called the office of counsel for the petitioners on several occasions requesting that the hearing be vacated as counsel for the natural mother could not attend a hearing before the 5th day of February, 1988. Counsel for the natural parents, desiring

to have this matter resolved as soon as possible, declined to continue the hearing until he was assured that, under no circumstances, could counsel for the natural mother attend the hearing nor could any counsel on behalf of the natural mother in the office of counsel for the natural mother attend a hearing scheduled on the 15th of January, 1988. At that point, as a matter of professional courtesy which has been stressed repeatedly to the attorneys in practice in the State of Utah by both the judges of the Third Judicial District Court and the judges and justices from the Court of Appeals and the Supreme Court of the State of Utah, agreed to extend that professional courtesy to counsel for the natural mother and continued the hearing to February 5, 1988. The secretary for counsel for petitioners thereupon called the judge's clerk to advise Judge Moffat of this procedure on January 14, 1988, but was advised that the clerk was attending a seminar, so left a message that the continuance had been accepted by counsel for petitioners and the appropriate notice would be prepared and filed.

On the morning of January 15, 1988, counsel for the petitioners received a call from Judge Moffat's clerk, advising him that his Motion had been denied as Judge Moffat

will not continue any matter after noon on Thursday, prior to the Friday Law and Motion Calendar. There is no published rule of the Third Judicial District Court or the Rules of Practice of the District and Circuit Courts or is there any place that could be discovered by counsel for the petitioners that such a rule exists. Counsel for the petitioners had continued the hearing as a matter of professional courtesy to counsel for the natural mother, whose conduct in violating Rule 2.9 of the Rules of Practice of the District and Circuit Courts of the State of Utah is the issue that was to be presented to the court. The petitioners' conduct does not form any basis for the action of the court in denying the Motion of the petitioners without giving the petitioners an opportunity to be heard.

DATED this 22 day of January, 1988.


DAVID S. DOLOWITZ
Attorney for Petitioners

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed, postage prepaid, a true copy of the above and foregoing Motion, this 25 day of January, 1988, to:

Mr. Richard B. Johnson
Attorney at Law
1327 South 800 East #300
Orem, Utah 84058


DAVID S. DOLOWITZ

ADDENDUM "P"

ORDER REGARDING MODIFICATION OF FINDINGS OF FACT AND
CONCLUSIONS OF LAW, ORDER AND JUDGMENT

DAVID S. DOLOWITZ (0899)
of and for
COHNE, RAPPAPORT & SEGAL
Attorneys for Petitioners
525 East 100 South, Suite 500
Salt Lake City, Utah 84102
Telephone: (801) 532-2666

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

IN THE MATTER OF	)	ORDER REGARDING
THE ADOPTION OF:	)	MODIFICATION OF
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW,
INFANT ANONYMOUS	)	ORDER AND JUDGMENT
	)	Civil No. A87-229
	)	Judge Moffat

* * * * *

The above-entitled matter came before the court, the Honorable Richard H. Moffat presiding, on Friday, the 5th day of February, 1988, to consider the objections of the adoptive parents to the proposed Findings of Fact, Conclusions of Law, Order and Judgment that had been accepted by the court and entered on December 3, 1987. Counsel for the natural mother agreed that Rule 2.9 of the Rules of Practice of the District and Circuit Courts of the State of Utah had not been followed

in this matter and agreed that it was appropriate for the court to consider the objections of the adoptive parents. The court then heard and considered the specific objections and ruled that the objection to Paragraph 1 of the Order and Judgment should be sustained, and, by interlineation, deleted the language "Findings of Fact, Conclusions of Law, and Decree of Adoption," and inserted the language "Order of Temporary Custody filed and dated June 24, 1987."

The court then considered the objections to the Findings of Fact and the court, examining the objection to the proposed Finding of Fact No. 3, determined that, although the adoptive parents objected to proposed Findings of Fact No. 3 on the grounds that there had been no trial and this could not be determined as a question of fact, there were conflicting affidavits, to-wit: those of Dr. Cynthia A. Jones and Susan Bagley, opposing the affidavit of the natural mother, and Judge Michael Murphy had made a determination directly contrary to this determination, the ruling of the court necessarily encompassed this finding and it was appropriate. The objection was overruled. On the same basis, the court overruled the objections of the adoptive parents to Findings of Fact, Paragraph 4, Paragraph 6, Paragraph 7 and Paragraph 11. The court determined that the objection should be granted in part as to Paragraph 5 and by interlineation at the end of

the existing provision, the court added the language ". . . and the consultation set forth in the affidavit of Cynthia A. Jones, M. D. "

The objections of the adoptive parents to Paragraphs 8, 9 and 10 were withdrawn.

Having thus ruled on the objections and by interlineation made the corrections that the court deemed appropriate to make, the court now ratifies, and by means of this order, confirms its entry of the the Findings of Fact, Conclusions of Law, and Order and Judgment as thus modified, as previously entered on December 3, 1987, to the extent that the objections of the petitioners are inconsistent with this ruling, they are overruled.

DATED this ____ day of _____, 1988.

RICHARD H. MOFFAT
District Court Judge

APPROVED AS REFLECTING
THE RULING OF THE COURT:

DAVID S. DOLOWITZ
Attorney for Petitioners

RICHARD B. JOHNSON
Attorney for Natural Mother

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed, postage prepaid, a true copy of the above and foregoing Order, this ____ day of _____, 1988, to:


Mr. Richard B. Johnson
Attorney at Law
1327 South 800 East #300
Orem, Utah 84058

DAVID S. DOLOWITZ

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed four copies of the above and foregoing Appellant's Brief, this 11th day of March, 1988, to:

Richard B. Johnson
Attorney at Law
Attorney for Respondent
1327 South 800 East, Suite 300
Orem, Utah 84058

_____