

1978

# State of Utah v. Jackson : Brief of Respondent on Appeal

Utah Supreme Court

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David A. Goodwill; Attorney for Appellants;

David E. Littlefield; Franklyn B. Matheson; Attorney for the State of Utah;

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

\* \* \* \* \*

STATE OF UTAH )  
in the interest of, )  
)  
)  
JACKSON, Rose Marie )  
(01/16/68) )  
JACKSON, Harold Pratt )  
(11/11/72) )  
JACKSON, Dollie Ann )  
(07/31/74) )  
)  
)  
Persons under eighteen )  
years of age. )

Case Number

\* \* \* \* \*

RESPONDENT'S BRIEF ON APPEAL

GUARDIAN AD LITEM

Appeal From An Order  
Of The Second District Juvenile Court  
For Salt Lake County, State of Utah  
The Honorable Judith F. Whitmer, President

\* \* \* \* \*

DAVID E. LITTLEFIELD  
LITTLEFIELD, RITCHEY, et al  
Guardian Ad Litem  
Suite 707 Boston Building  
Salt Lake City, Utah 84111  
Telephone: (801) 531-0435

DAVID A. GOODWILL  
Attorney for Biological  
Parents and Appellants

FRANKLYN B. MATHESON  
Attorney for the State of Utah

FILED

AUG 17 1978

IN THE SUPREME COURT  
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DAVID A. GOODWILL  
Attorney for Biological  
Parents and Appellants

DAVID E. LITTLEFIELD  
LITTLEFIELD, RITCHEY, COOK & PETERSON  
Guardian Ad Litem  
Suite 707 Boston Building  
Salt Lake City, Utah 84111  
Telephone: (801) 531-0435

FRANKLYN B. MATHESON  
Attorney for the State of Utah

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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STATE OF UTAH	)	
in the interest of,	)	
JACKSON, Rose Marie	)	
(01/16/68)	)	
JACKSON, Harold Pratt	)	Case Number: 15386
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(07/31/74)	)	
Persons Under	)	
Eighteen years of age.	)	

\* \* \* \* \*

STATEMENT OF THE NATURE OF THE CASE.

This is an appeal from the Judgment of the Second District Juvenile Court in and for Salt Lake County, State of Utah, the Honorable Judith F. Whitmer, presiding. After trial, the Court entered an Order terminating all parental rights of the Appellants in the above-named children, but providing in the case of Rose, that she be allowed to have limited contact with her natural parents if she desires it. (Record. 174-7) The Court found that both parents are unfit or incompetent by reason of conduct or conditions seriously detrimental to the Children.

DISPOSITION OF THE LOWER COURT

entered an Order terminating all of the parental rights of the Appellants in Harold and Dollie Jackson. It further terminated all rights of the Appellants in Rose Jackson, but ordered that she be allowed to visit her parents if she desires it.

#### NATURE OF RELIEF SOUGHT ON APPEAL

Appellants seek a reversal of the Order of the Second District Juvenile Court. The Guardian Ad Litem seeks affirmation of the decision of the Juvenile Court regarding Harold Jackson and Dollie Jackson. The Guardian Ad Litem seeks a remand and reversal of the decision regarding Rose Marie Jackson.

#### STATEMENT OF THE FACTS

The Guardian Ad Litem does not agree with the Statement of Facts set forth in Appellants' Brief, and therefore submits the following Statement of Facts:

This case involves the lives of Harold Jackson, Dollie Jackson and Rose Jackson. All are the natural children of Appellants. Harold Jackson was born on November 11, 1972, Dollie Jackson was born on July 31, 1974, and Rose Jackson was born on January 16,

1968. Other members of the Jackson family were not involved in the case before the Court, but were well known to the Court because of prior involvement with the Court by Marvin, John, Jerry and Howard, other children of the Appellants. (Social File).

DOLLIE JACKSON

Dollie Jackson was admitted to the Children's Center in Salt Lake City, State of Utah, in June of 1976. At that time, she was twenty-two (22) months old. Dr. Agnus Plenk, the Executive Director and Chief Psychologist at the Children's Center, testified she examined Dollie and found she:

"did not reach out to explore new things, but she was rather quiet and she needed adults to introduce her to new experiences. She had no speech, she did not imitate speech. She did not mind just plain leaving her mom on the first day, which is a little unusual for children of that age, usually, they are a little more fearful. She did try to make physical contact. Herself care skills were poor and she had a very hard time chewing and she drooled when she was eating. She didn't eat very much, and her muscle coordination was awkward. (Record, 42 ).



Dr. Plenk testified that Dollie's problems were probably due to "lack of stimulation in her home." Some gross and fine motor coordination problems were present, which were attributed to early deprivation. (Record, 57). Dr. Janice Sargent also evaluated Dollie in June of 1976. Dr. Sargent stated, "I think the most profound characteristic of all her functioning as I tested her, was her lack of spontaneity, which was due to a lack of stimulation." (Record, 80 ).

A course of treatment was executed for the next Nine (9) months. Dollie spent the mornings at the Children's Center, was transported to a day care home by the Division of Family Services, and then returned to the home of her natural parents. (Record, 43 ).

While in treatment, Dollie made good progress. Dollie should not be returned to her parents' home, according to Dr. Plenk, "(b)ecause I feel that Dollie needs a chance to make it, to maintain the changes she has made and this I think needs a stimulating and continuously consistent warm and positive environment." (Record, 45).

HAROLD JACKSON

Dr. Plenk first saw Harold Jackson on March 18, 1976. At that time, he was almost Three and One-half (3½) years of age. He had no speech, was drooling, was not toilet trained, and had poor large and small mouth coordination. At the age of Three and One-half (3½) years, he was at least One (1) year retarded in his development. (Record, 46 ). Harold Jackson was treated in the day treatment facilities of the Children's Center from March 18, 1976 until May of 1976, when he was transferred to the Group Home. (The Group Home is a residential facility operated by the Children's Center, where the children receive constant training and stimulation.) He lived in the Group Home from May 20, 1976 until November 26, 1976. During that time, he improved in almost all areas. He learned to show emotion, his drooling decreased, and he learned toilet skills. (Record, 49-50 ).

Harold Jackson returned home on November 26, 1976. Although there was constant continuing intervention by the Children's Center personnel during that time (Record, 61 - 77 ), Harold digressed markedly. As Dr. Plenk testified:

"Nor, his speech regressed again, became isolated, and unable to accept out-reach from adults. His drooling increased,

his eating habits became very messy, almost as to admission. In January his wetting increased and his messing increased. (Record, 52 ).

He was readmitted to the Group Home on May 2, 1977. During the time he was home, Harold's IQ decreased and the gains he made were, in the main part, lost. This reversion was attributed to "less stimulation and less reinforcing conditions that must have prevailed in the home during those six (6) months." (Record, 52-53).

#### CAROL JACKSON

Carol Jackson was also originally involved in the Petition. She was Fifteen (15) years of age at the time of trial, and has lived with her parents. Her foster mother, Mrs. Stout testified that Carol acts like a Five (5) year old child. She had no information about personal hygiene, she wet the bed, and she was afraid of the dark. Her teeth were in terrible condition. When given shampoo to wash her hair with, "she put the shampoo on her hair, and was attempting to wash it, with no knowledge of putting water with it." (Record, 85 - 91).

Carol is not mentally retarded. Dr. Claudia Berensen, Child Psychiatrist at the University of Utah Medical Center, and Assistant Professor of Psychiatry and

and Pediatrics, testified that Carol Jackson's intellect was within normal range. Carol's handicap, while severe, is not due to organic problems, but is from a severe personality disorder. The cause of her condition is "inconsistent inadequate parenting, so that they are long term and chronic and develop out of a home situation." Her lack of general information is due to lack of stimulation and inability to use the stimulation that is provided. (Record, 126 - 127). Carol's mental condition is due, at least in part, to the mental condition of her parents. (Record, 142 ).

Because of the severity of her disability, it was felt that Carol Jackson is not adoptable. (Record, 140 ). The State dismissed its Permanent Deprivation Petition insofar as it related to Carol. (Record, 155-156 ).

#### ROSE JACKSON

Although Eight (8) year old Rose Jackson has been involved in some delinquency, she is essentially a healthy child and has no psychiatric disabilities. This, Dr. Berensen attributes this to the fact that "once in a while, one can find children who have tremendous personality strength and resiliency (sic) even in fact of an environment which seems to be devastating for other children in the family."

(Record, 129-130). Although she recommended a termination of parental rights regarding Rose Jackson, she indicated that it would be important for Rose to see her parents when Rose felt the need. (Record, 133).

#### MARVIN AND RUBY JACKSON

Marvin and Ruby Jackson put on no evidence in their own behalf. (Record, 152).

Testimony specifically relating to them was placed in evidence involving their ability to parent and the lack of improvement with Social Services intervention.

Mr. Jackson has made two (2) suicide attempts and has had one (1) psychiatric hospitalization. (Record, 24). He has a severe personality disturbance and is subject to rapid mood shifts and aggressive impulses without the ability to show good judgment. (Record, 20). He is unable to give much of a history on his children. Dr. Bernesen testified that he "infact really did not distinguish one from the other, he just referred to them as the 'kids'. His description of the four (4) older boys, which I attempted to pursue one by one was all the same, they ran, they stole, they would not go to school." "That suggests to me

that Mr. Jackson really has minimal investment in looking at the particulars of his children as a parent." (Record, 114). Dr. Berensen concluded that Mr. Jackson suffers from an inadequate personality with impulse disorder and a border line IQ, factors which made him a "minimally invested and poor parent." (Record, 118).

Dr. Malcolm Liebroder found aggressive tendencies in Mr. Jackson and related several incidents where these tendencies resulted in actual physical abuse:

"Mr. Jackson actually, or rather freely acknowledged a number of incidents. I've cited some in the report I've prepared. There were actually more. References to his temper I noted had appeared in several of his test responses and then during the interview he said, "I get quite hot and upset. I've broken down windows, when my kids don't mind me, I've got to admit this, I smack them, I hurt one of my boy's, Jerry, I shoved him, the kid's scared of me, I try to give my boy--(and here he was referring to Harold, who's age four) some medicine and he wouldn't take it and I knocked him down and hit him across the face and he slid down." This apparently not just fairly recent behavior, but very chronic behavior as according to Mr. Jackson's own statements quote, "when Gene was born, my oldest boy, when he was born, then I lost my temper and beat him" and I asked him more about that, he was about a year old, asked him more about that and he said, "I almost killed him a few times, I used a hammer, I almost did it, but I didn't want to go to jail for hitting a child." According to Mr. Jackson's own statements, his daughter's were also

beaten. In trying to get a better understanding of the provocation for such actions, I interviewed Mr. Jackson and he acknowledged that it was often a child crying that would upset him and provoke him into some act of physical abuse." (Record, 23).

There is a profound lack of communication between Mr. and Mrs. Jackson. They have been married for Nineteen (19) years and Mrs. Jackson is deaf. In spite of that fact Mr. Jackson did not learn how to use sign language to communicate with his wife. (Record, 115).

Mrs. Jackson has poor impulse control, poor social functioning and behaves in childlike ways. (Record, 27-29). She, like her husband, is unable to give a developmental history of her children. (Record, 121). She also has an inability to deal with concepts such as "good or bad", and suffers from either organic brain damage or schizophrenia. (Record, 122 - 123). She is unable to use appropriate discipline. When asked by Dr. Berensen the question, "when Rose does something naughty, what do you do?", her answer was, "That when Rose refuses to get out of bed in the morning, she throws a bucket of water on her." (Record, 124).

The Jackson family has received Social Services intervention for years (Social File). Oril Wiesner.

a Social Worker with the Children's Center, was personally involved with the family for Eighteen (18) months in 1976-1977. He attempted to help them to emotionally and intellectually stimulate their children on a very basic level, has worked on parenting skills, and limit setting. (Record, 62-63). In addition, the Group Home Staff worked with the family. (Record, 65). Assistance was also offered by the Division of Family Services with no positive results. (Record, 124-125, 137). The Jacksons have been unable to use any of the assistance to help them better raise and train their children, and their situation has not improved. (Record, 65-68).

The expert testimony indicated little possibility of change in either Mr. or Mrs. Jackson. (Record, 32, 39, 41, 116, 117). Even extensive and long term intervention would not improve the situation, as Dr. Liebroder testified:

"But they would really be services to replace, not to just support...and it would be the parents, the natural parents who would then be adding on a little bit of fluff while someone else is doing the job of parenting."  
(Record, 38).

Harold and Dollie Jackson are both adoptable children. (Record, 54, 55). Long term foster care would be inappropriate. Dr. Plenk stated:

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"I feel that long term foster care is absolutely detrimental. The child does not belong any place. He doesn't belong to the foster parents because it is unresolved, and the child does not belong at home. I think that this is an inhuman prolongation of a child's living in limbo...." (Record, 55, 56).

Termination of parental rights would have little effect on Dollie. There would be some adjustment for Harold, but this could be overcome by consistent, warm and responsible parenting on the part of adoptive parents. (Record, 56).

Rose is also adoptable, but she is also well aware of her prior home situation and her relationship with her parents. (Record, 130, 131).

#### ARGUMENT

#### POINT I

THE JUVENILE COURT CORRECTLY DETERMINED THAT ALL PARENTAL RIGHTS IN DOLLIE JACKSON AND HAROLD JACKSON SHOULD BE TERMINATED.

Section 78-3a-48, Utah Code Annotated, 1953, as amended, provides:

of all parental rights with regard to one or both parents if the Court finds:

(a) That the parent or parents are unfit or incompetent by reason of conduct or a condition seriously detrimental to the child."

The interests which must be weighed in such a determination are those of the parents, the children and the public. In State v. Dade, 14 Utah 2d 47, 376 P.2d 948 (1962), the Court stated:

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

resorted to only in extreme cases  
and when it is manifest that the  
home itself cannot or will not  
correct the evils which exists.  
376 P.2d at 950.

The record in this case overwhelmingly indicates the following facts:

1. The Appellants suffer from severe psychological and social problems.
2. The Appellants lack even the most basic knowledge of parenting skills.
3. The parents have been either unwilling or unable to correct their problems, in spite of mass intervention by the Children's Center and the State of Utah.
4. The parents' condition has created severe problems in the children.
5. Intervention improved Harold's and Dollie's conditions, but risk relapses when returned to their parents.

There is not one scintilla of evidence that the Jacksons will ever be capable of raising their children to emotional and intellectual maturity. Harold and Dollie, like all human beings, enjoy the right to health and happy lives.

This Court has zealously protected the interests of the family and has provided that its relationships,

should be judicially terminated only in extreme cases.

Fronk v. State, 7 Utah 2d 245, 322 P.2d, 397 (1958);  
State v. Lance, 23 Utah 2d 407, 464 P.2d, 395 (1970);  
State in the Interest of Winger, 558 P.2d 1311, (1976);  
State in the Interest of Walter B., 577 P.2d 119 (1978);  
and State in the Interest of E & B, 578 P.2d 831 (1978).

In each case where this Court has refused to affirm a judicial termination of parental rights, there have been some facts or circumstances which weighed in favor of the preservation of the family relationship. No such facts are present here, and no evidence whatsoever was produced at trial to justify a preservation of the Jacksons relationship with Harold and Dollie.

It is conceded that the law requires a condition precedent to termination that the conduct or condition which is seriously detrimental to the child cannot be corrected, "after notice and opportunity implemented, by reasonable efforts of assistance." State in the Interest of Walter B., 577 P.2d at 124; State v. Lance, 23 Utah 2d 407, 413 464 P.d, 395 (1970). The assistance and notice was given, and extensive efforts were made to provide an implitment treatment. However, either because the Jacksons could not or would not act on the assistance given, the seriously detrimental condition remains.

Of further importance is the fact there is no evidence that the condition of the Appellants will change even if they desire it. This Court has held that simple lack of training will not justify a termination where "(t)he mother's alleged inability to care for the child is not analogous to the condition of a psychotic mother with poor prognosis." State in the Interest of Walter B., 577 P.2d at 125. The situation in this case involves deficiencies resulting from more than a lack of training and where the prognosis for both parents is extremely poor.

Unlike State in the Interest of Winger, 558 P.2d 1311 (1976) the conduct or condition of the Appellants here as resulted in actual harm to the children and may certainly involve a question of fault.

It is simply unacceptable to leave Harold and Dollie in long term foster homes without the benefit of a real family, commitment, or sense of belonging. The long term interests of the child should supercede the immediate emotional needs of the parent. State in the Interest of Mario A., 30 Utah 2d 131, 514 P.2d 797 (1973).

## POINT II

THAT PART OF THE JUVENILE COURT'S ORDER TERMINATING PARENTAL RIGHTS IN ROSE, BUT MAINTAINING THE RIGHTS OF CONTACT IS INVALID AND SHOULD BE REVERSED.

The proceedings in Juvenile Court are equitable in nature, and this Court can substitute its judgment for that of the Juvenile Court if the evidence preponderates against the results or if the Court abused its discretion. State in the Interest of K. B., 7 Utah 2d. 398, 402, 326 P.2d 395 (1958). There is no evidence that the condition of the parents has had a devastating effect on Rose, even though the fact of effect may have been due to exceedingly strong personal characteristics in Rose. Further Rose, unlike Harold and Dollie, has a relationship with her parents.

By statute, a termination of parental rights terminates all rights, including residual rights. 78-3a-2, Utah Code Annotated, (1953, as amended). "Residual parental rights and duties" is defined as:

"those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person, or agency, including, but not limited to, the responsibility for support, the right to consent to adoption, the right to determine the child's religious affiliation and the right to reasonable visitation"

less restricted by the Court..." Section 78-3a-2(10), Utah Code Annotated, 1953 as amended.

The Order regarding Rose, is invalid on its face because it purports to grant a right of visitation and association. There is no statutory authorization for a partial termination of parental rights, even if the underlying facts justified such a finding.

Further, the Order as written would have the effect of binding prospective adoptive parents to its terms -- a result which is not legally justifiable.

### POINT III

THE PSYCHIATRIC AND PSYCHOLOGICAL  
EVALUATIONS AND TESTIMONY WERE  
PROPERLY RECEIVED INTO EVIDENCE.

Rule 4 of the Utah Rules of Evidence provides:

"A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless (a) there appears of record *objection to the evidence timely interposed* and so stated as to make clear the specific ground of objection, and (b) the court which passes upon the effect of the error or errors is of the opinion that the admitted evidence should have been excluded on the ground *stated and proved to be a substantial in-*

fluence in bringing about the verdict or finding. However, the court in its discretion, and in the interests of justice, may review the erroneous admission of evidence even though the grounds of the objection thereto are not correctly stated. (*Italics added*).

No objection was interposed at trial to the testimony of either Dr. Liebroder or Dr. Berensen, the Two (2) court-appointed examiners. (Record, 17, 112). Counsel for Appellants did object to testimony of Dr. Liebroder regarding certain admissions of mistreatment of the children by Mr. Jackson, but that objection was on grounds of relevancy and related solely to the admissions. (Record, 22).

Since the testimony of Dr. Liebroder and Dr. Berensen was received at trial without objection or claim of privilege, Appellants cannot now complain of the results.

Appellants' brief incorrectly states the facts underlying the original order of psychological and psychiatric evaluations. At the Pre-Trial hearing held on March 8, 1977, Jonathan King represented Rose Jackson only. He appeared because he had been appointed to represent Rose



on a criminal charge pending before the Juvenile Court of the Second Judicial District. He indicated that "a lot of information has been disclosed that I really don't feel that I can effectively represent the parents. At the same time -- at first, I felt that I should at least represent Rose in this Petition....." (Record, 3). An objection to the psychological evaluations were interposed by Mr. King because previous examinations had been apparently made and new evaluations would presumably be burdensome. After some discussion, Mr. King concluded that "(p)erhaps that decision should be postponed (sic) until such time as the Jackson parents have counsel here to represent them." (Record, 4-5). At Mr. King's request the hearing was reset to March 17, 1977, at which time the issue of psychiatric and psychological evaluations was to be considered. (Record, 4-5).

Mr. King's associate, Patricia De Michele appeared on behalf of Appellants on March 17, 1978. She did not object to the evaluations or to notice or adequacy of the hearing, but merely stated as did Mr. King, that they should not be duplicative:

"Your Honor, the only thing that I would request at this point is, if it is not going to be Dr. Tomb, and it's determined that he can't or won't, doesn't feel comfortable following through, that I be able to have some input to who is ultimately determined to be the ....." (R.11)

This statement clearly implies that final approval or input into the issue of who was to perform the evaluations would be made by Ms. De Michele out of court and off the record. Since she did not subsequently object on the record to the introduction of the testimony of Dr. Liebroder or Dr. Berensen, it must be assumed that the conditions were met.

Under the circumstances, it cannot be sustained that the evaluations were ordered in violation of the Juvenile Court statutes. In fact, great deference was paid to the rights of the parents before ordering the psychiatric and psychological evaluations and they were represented by competent counsel at the Pre-Trial hearings and Trial.

Finally, additional professional testimony was presented by Dr. Plenk, Dr. Sargent, and Dr. Wieser. Their testimonies support the conclusions of the Court appointed evaluators and are sufficient, in themselves, to justify the findings of the Court.

#### CONCLUSIONS

The Order of the Juvenile Court terminating all parental rights in Dollie Jackson and Harold Jackson are

correct and should be affirmed. The Order of the Court terminating rights in Rose Jackson, should be reversed and remanded to the Juvenile Court for further consideration.

Respectfully submitted this 15th day of August, 1978.

LITTLEFIELD, RITCHEY, COOK & PETERSON

A handwritten signature in black ink, appearing to read "David E. Littlefield", written over a horizontal line.

DAVID E. LITTLEFIELD, ESQ.  
Guardian Ad Litem