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State of Utah v. Jackson : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH in the :
interest of :
:
JACKSON, Rose Marie (01-16-68): Case No. 15386
JACKSON, Harold Pratt (11-11-72):
JACKSON, Dollie Ann (07-31-74):
:
Persons under eighteen years :
of age. :

BRIEF OF RESPONDENT

Appeal from the District Juvenile Court
in and for Salt Lake County, State of Utah
The Honorable Judith F. Whitmer

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AUG 31 1978

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BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

This case involves the termination of the parental rights of Marvin and Ruby Jackson as to Rose, Harold, and Dollie Jackson, and the provision for continuing contact between Rose and her natural parents subsequent to such termination. Parental rights as to a fourth child, Carol, were also at issue in the trial court, but are not an issue in this appeal as said rights were not terminated by the juvenile court. Termination was sought pursuant to Section 78-3a-48, Utah Code Annotated (1953, as amended), for the reason that the parents are unfit or incompetent by reason of conduct, or condition which is seriously detrimental to the children.

DISPOSITION IN THE JUVENILE COURT

The Second District Juvenile Court, the Honorable Judith Whitmer presiding, after a trial before said Court, entered an order placing the child Carol in foster care and denying the petition for permanent deprivation. The court ordered the termination of parental rights with regard to Rose, Harold, and Dollie Jackson, but provided in the case of Rose for limited contact with her natural parents should she desire it.

RELIEF SOUGHT ON APPEAL

The respondent State of Utah asks that the order of the Juvenile Court be affirmed.

STATEMENT OF FACTS

Respondent disagrees and takes exception to the Statement of Fact made by Appellants in the following particulars.

1. Appellant states on page 2 in paragraph 2 of their Brief that counsel for the parents (Appellants) objected to psychological examinations of themselves at a hearing on March 8, 1977. In fact Appellants were not represented by counsel on March 8 and no objection as to said proposed psychologicals was made on their behalf at said hearing. (R. pg. 3).

2. Appellants state on page 2 in paragraph 3 of their Brief that at a hearing held on March 17, 1977, the parents (Appellants) objected to the State's motion for psychologicals except as to the completion of psychologicals already commenced by Dr. Tomb. In fact parents counsel did not object to said psychologicals, but only requested that she be given opportunity to have some input as to the naming of the psychologist should Dr. Tomb not complete his existing evaluations. (Record at page 11, lines 9-13).

3. Appellants' Statement of Facts is inadequate in that it speaks only of the procedures followed in the juvenile court and does not relate sufficient collateral information concerning the family circumstances to afford a complete understanding of the case in the context of terminating parental rights. For this reason respondent State of Utah accepts and adopts the Statement of Facts set forth in the Brief filed by the Guardian Ad Litem.

ARGUMENT

POINT I

THE EVIDENCE FULLY SUPPORTS THE DECISION OF THE JUVENILE COURT TO ORDER THE TERMINATION OF PARENTAL RIGHTS WITH REGARD TO ROSE, HAROLD, AND DOLLIE JACKSON.

A statutory test for termination of parental rights is a finding "that the parent or parents are unfit

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or incompetent by reason of conduct or condition seriously detrimental to the child..." (Section 78-3a-48(1)(a), U.C.A. 1953, as amended.) Proof must be by a "preponderance of evidence." (State v. Lance, 23 Utah 2d 407, 464 P.2d 395 (1970)).

In the present case the Juvenile Court found:

(1) That the natural parents are socially and emotionally retarded and unable or unwilling to stimulate their children psychologically, emotionally, or socially, and as a result the children, to their serious detriment, are failing to develop properly and are exhibiting serious mental disorders.

(2) That Mr. Jackson has a serious personality disturbance that renders him unable to cope with the problems of everyday living. Further, that tests and reports of past behavior indicated that he is subject to virtually uncontrollable aggressive impulses threatening the children's physical welfare.

(3) That Mrs. Jackson, a deaf-mute, functions on a child-like level and is minimally able to make a marginal life adjustment. She is completely lacking in parenting skills and is unable to relate to her children except as a playmate.

(4) That Harold and Dollie progressed developmentally only when they were removed from the home of their

natural parents and given treatment at the Children's Center.

(5) That Rose and Carol, though entitled to some limited contact with their natural parents, could not receive proper training at home.

Testimony indicated that the Division of Family Services had made efforts to teach Mr. and Mrs. Jackson basic parenting skills, but because of their own personality disorders they were unable to implement such teachings; expert witnesses testified it was doubtful that there would ever be improvement in their parenting roles. (R. 31-32, 116-118).

The record is replete with evidence of parental unfitness and the nexus between the parents' unfitness and the serious personality disorders of their child. For example, Cyril Weisner testified concerning a home visit where he observed Carol performing "very inappropriate attention-getting behavior to attract...boys' attention." Mr. Weisner stated:

I talked very specifically with Marvin-- this was the kind of limit setting I was talking to him about.... [H]e needed to deal with this, and I got down to the point of offering...suggestions, talk to her, get her attention, do something, and Marvin, as he would do time and time again across these fifteen months would not and agreed that I have a good idea and probably something like that ought to be done, but it seemed like he was paralyzed. He just

could not act and did not act through the whole visit to interfere, restrain, set a limit on, in any way modify the behavior of Carol. [As to Ruby] though showing some very giggly laughy affect herself again, [she] did not intervene to in any way modify what was going on and I got the definite impression she was at that moment relating to the situation as a fifteen-year-old.

And of course, we can generalize from that tremendous concerns here it tells me and confirms fears I've had for a long time that the--number one, Marvin, I think --well, both parents want, I think, certainly Ruby, to have their children and to do what's correct by them, but they're not able to. Marvin was paralyzed in that situation. He was unable to react even with my very direct kinds of promptings. Ruby was so in touch with the situation, and I suppose experiencing what Carol was doing vicariously to the extent that her affect was right down on Carol's level, and I got the idea that we had two fifteen-year-olds at the moment, laughing and giggling and doing those things. (R. p. 70-71).

Although it is true that termination of parental rights is an extreme example of state intervention in family life, the facts of the present case show that the statutory requirements for such action have been met and that the welfare of the Jackson children involved herein requires that they be removed permanently from a home that cannot contribute to their development in any way.

This Court has developed certain tests or guidelines to determine the legal sufficiency of a termination order. In the case of In re the Interest of Winger, 558 P.2d 1311 (1976), the court adopted with approval the test enunciated

in an Oregon case under an identical termination statute, to the effect that a termination order must be supported by a preponderance of the evidence to the effect that (1) the parent is presently unable to supply physical and emotional care for the child and that (2) this condition will probably continue for time enough to render the integration of the child into a suitable family improbable. (Ibid.) In the case of State in the Interest of Walter B., 577 P.2d 119 (1978), this court held that to sustain a termination the characteristics ascribed to the mother must represent such a substantial departure from the norm as to constitute a condition seriously detrimental to the child. In the case of State in the Interest of E.B., 578 P.2d 831 (1978), the court stated that as a condition to termination a parent must be advised of appropriate remedial action, and that it must be clearly manifested that the home cannot or will not correct the deficiencies which exist there.

The ultimate and most important test in applying the statutory standard must be the interest and welfare of the child, which concern must outweigh any right or privilege of the natural parent. In the case of State v. Dade, 14 Utah 2d 47, 376 P.2d 948 (1962), this court stated:

"Quite beyond and more important than the rights and privileges of the parents is the welfare of these children and their prospects for becoming well-adjusted, self-sustaining individuals. This is the consideration of paramount importance." (376 P.2d at pg. 949).

In the termination case of In re Interest of Jennings, 432 P.2d at pg. 879 (1967), this court stated:

"While ordinarily the parents have a right to the custody of their children, the State also has an interest in the welfare of children, which is paramount thereto."

In the termination case of State in the Interest of A, 514 P.2d at pg. 799 (1973), this court stated:

"While one feels deeply for a parent who is deprived of a child that feeling must not overcome the duty placed upon the courts to act in the best interest of the child."

In the termination case of In re Interest of Winger, (Supra at pg. 1313, 1976), this court stated:

"There is a presumption of great strength, that it is in the best interests of the child to be reared by its natural parents. This presumption is only overcome when the trier of facts is convinced by a preponderance of the evidence the welfare of the child requires termination."

And in the termination case of In re the Interest of S.J., H.J. and S.J., 576 P.2d 1280 (1978), this court stated:

"It was also fair and reasonable to further conclude that the rights of the parents were secondary in importance since they were in direct conflict with and contrary to the best interest of the children."

Applying these tests and guidelines in the instant case results in the following analogy:

The parents are unfit or incompetent by reason of conduct or condition seriously detrimental to the children because

1. They are presently unable to supply physical and emotional care for the children.

2. This circumstance will probably continue beyond the time in which these children could otherwise be integrated into a suitable substitute home.

3. The conduct and condition of the parents is a substantial departure from normal parental relationships.

4. The parents have been advised of their inadequacies and advised of appropriate remedial action, but no change in the circumstances has taken place.

5. The preponderance of the evidence dictates that it is in the best interests of the children to terminate the parental relationship.

POINT II

TESTIMONY CONCERNING PSYCHIATRIC AND PSYCHOLOGICAL EXAMINATIONS WA PROPERLY CONSIDERED BY THE COURT.

Appellants argue that they had no notice concerning a hearing prior to the ordering of psychiatric or psychological examinations. It is true that Section 78-3a-23, U.C.A. (1953, as amended), provides that there shall be "due notice and a hearing set for the specific purpose" when the Court finds that the parents' "physical, mental, or emotional condition may be a factor in causing the neglect, dependence or delinquency of the child." The facts of this case make it clear that the parents did have notice of the request for psychological testing and that they were not denied a hearing relating thereto.

The State requested psychological examinations at a hearing on March 8, 1977. The petition bringing the termination matter before the Court specifically alleged that the parents' emotional condition was a factor underlying the request for permanent deprivation of parental rights. An objection was made by Jonathan King, counsel for one of the Jackson children, based on a belief that the parents had already been tested in connection with a psychological examination of one of their sons. (R-4). A final decision regarding the testing was postponed until the pre-trial hearing on March 17, 1977, when appellants

were represented by Patricia DeMichele. After discussing the desirability of having any tests already begun completed for continuity's sake, counsel stated:

"Your Honor, the only thing that I would request at this point is, if it is not going to be Doctor 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 as to who is ultimately determined to be the ...
(R.- 11.)

That counsel did have input into the testing process is shown by State Exhibit #1, psychological evaluation. The following appears at page 183 of the record.

"...Patty DeMichele of Legal Services represents the parents. Because permanent rather than temporary deprivations of parental rights is in question, Ms. DeMichele expressed the condition that both parents be seen by two examiners. Repeating essentially the same test battery with no reasonable time interval was considered as invalidating the evaluation process. Instead, Ms. DeMichele agreed to another procedure; William H. Brown, a Ph.D. Clinical Psychologist was the other examiner. He conducted the testing with Mrs. Jackson and the bulk of the post-testing interview. He then made his test data available to this examiner [Malcolm L. Liebroder, Ph.D.] who had also been present during Dr. Brown's interview of Mrs. Jackson. The procedure was essentially reversed for Mr. Jackson. Each examiner independently prepared reports of their evaluation for each of these parents." (Emphasis added).

Not only were appellants fully represented by counsel in the selection of an appropriate and fair testing process, but there was no objection to the adequacy of notice

or to the nature of the hearing at which the order regarding psychological exams was made. Further, there was no objection to the order itself or, as discussed in Point III of the Brief of the Guardian Ad Litem, to the testimony of the two court-appointed examiners, Dr. Liebroder and Dr. Berensen. Inasmuch as Rule 4 of the Utah Rules of Evidence requires a timely objection on the record to evidence claimed to be erroneously admitted, appellants may not now seek a reversal of the judgment based on the testimony of Dr. Liebroder and Dr. Berensen.

Respondent State of Utah would argue that the hearing requirements were met where the order for psychological testing, vital to the determination of the issue before the Court, was made in a formal hearing setting where the parents were represented by competent counsel. Whether or not the hearing could be described as having been "set for the specific purpose" would not appear to control the validity of the hearing. It is clear from the record that the due process rights of appellants were fully protected. The parents had notice of the hearings where psychological examinations were discussed. They were represented by counsel at the March 17th hearing where the State made a specific motion to have such tests performed (R. 11.) No objection was made to that motion by counsel for appellants.

Should the court find that there was not compliance with the specific language of Section 78-3a-23, U.C.A. (1953, as amended), the order of the Juvenile Court based on evidence stemming from the psychological examination should nevertheless be upheld. Rule 61 of the Utah Rules of Civil Procedure supports this position. It states:

Harmless Error. No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or admitted by the Court or by any of the parties, is ground for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not effect the substantial rights of the parties.

In the present case there is amply uncontradicted evidence as to the unfitness of appellants to fulfill the parenting role. Sources of such evidence include observation of interaction in the home and observation and testing of the emotionally disturbed children, in addition to psychological tests taken voluntarily by parents who, though unable to function as parents, have been shown to possess sufficient intelligence to understand the nature of the proceedings in the present case.

In Thatcher v. Merriam, 121 U. 191, 240 P.2d 266 (1952), this court held that an error, even if conceded,

was harmless where ample evidence, other than that of a witness claimed to be disqualified, was sufficient to support the court's decision. In the instant case, although the psychological tests clearly describe the nature of appellants' disabilities, testimony of all the witnesses convincingly pointed to their serious parenting failures.

Appellants have not shown that the action of the Juvenile Court was inconsistent with substantial justice in this matter, nor have they suggested that given a "hearing set for the specific purpose" of considering evidence concerning the need for psychological testing of appellants, there would have been a different result from that reached by the Juvenile Court.

This Court should likewise reject appellants' argument that the order permanently depriving them of their children should be vacated because of alleged defects in the procedure for obtaining psychological examinations.

POINT III

THE ORDER OF THE JUVENILE COURT TERMINATING PARENTAL RIGHTS AS TO ROSE, BUT PERMITTING CONTINUING CONTACT WITH HER NATURAL PARENTS AS SHE DESIRES, WAS A VALID EXERCISE OF THE COURT'S EQUITABLE POWERS AND SHOULD NOT BE OVERTURNED.

As this court has stated, "the [juvenile] court is given broad and comprehensive latitude and discretion

determining the custody of the child...." (Deveraux v. Brown, 2 Utah 2d 334, 336, 273 P.2d 185, 196 (1954)). The legislature has recognized this principle in enacting Section 78-3a-39, U.C.A. (1953, as amended), which sets out in 19 subsections a variety of dispositions which may be made by juvenile court order. Subsection 17 states: "The court may make any other reasonable orders which are for the best interest of the child...."

The following statement of this court in State v. Dade, 376 P.2d at page 951 (1962) supports the disposition made by the juvenile court in the present case:

It is appropriate to observe that this proceeding, which has such a vital and permanent effect on the lives of those concerned, is not adversary in the usual sense, but is an inquiry into the welfare of the children; and is therefore equitable in the highest degree. Due to this fact and to the somewhat informal manner in which such proceedings are conducted, the Juvenile Court has even more than the usual advantages in judging the credibility of the witnesses, the personalities of the persons involved, and the correct solution to the problems confronted. For these reasons, and also because that court is staffed with judges and personnel who have special training, experience and interest in this field, and who are devoting their exclusive attention to such matters, it is proper to allow that court a wide latitude of discretion as to the judgment arrived at. Accordingly it is the well established rule that we will not disturb the findings and determinations made

unless they are clearly against the weight of the evidence, or it is plainly manifest that the court has abused its discretion.

In the instant case there was much evidence that it would be in the best interest of Rose to remove her permanently from her parents' home. Her school teacher testified that while living at home Rose was usually dirty, wore old, ill-fitting clothes, was unable to form relationships with her peers, and was usually depressed, although she was a bright child who could do good work. (R. 104-109). Dr. Claudia Berensen, while recognizing Rose's personality strengths and resiliency, recommended that Rose not be returned to a home where the parents are not "able to provide a nurturing, even minimally adequate environment..." (R. 132). Dr. Berensen recommended a termination of parental rights but added that she felt it would be important for Rose to see her natural parents "when she felt the need." (R. 133). Rose, at 8 1/2 years old, was described as an adoptable, socially skillful child, whose parents could not care for her.

The judgment of the court in this matter was supported by a preponderance of the evidence before it. It is true that it is unusual to preserve the right of contact with natural parents in a termination order, but given the Court's equitable powers and the rule that the best interest of the child must be served, the order

POINT IV

THE ORDER TERMINATING APPELLANTS' PARENTAL RIGHTS AS TO HAROLD AND DOLLIE JACKSON AND PLACING THEM IN CUSTODY OF THE UTAH STATE DIVISION OF FAMILY SERVICES FOR PLACEMENT IN AN ADOPTIVE HOME WAS SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE AND SHOULD NOT BE MODIFIED TO AFFORD THE APPELLANTS VISITATION RIGHTS.

Harold and Dollie are young children who have not lived in the home of their natural parents for many months. As set out in Point I, the evidence fully supports the termination of parental rights with regard to these children, and the Juvenile Court found from the evidence that they are adoptable and without strong ties to their parents. Counsel for appellants elicited the following response from Cyril Weisner, a parent therapist with the Children's Center, when she asked "What kind of emotional bonds [Harold and Dollie] had with their parents?"

This is again, a tough one for me to relate to, but my most solid feeling about this is that these two young children, if they have a relationship with these two individuals, it's almost although again, it's a child to child thing, that it's a -- they may be bigger kinds [sic] It's kind of hard in those ways to go into the mind of a small child of course, but I don't think there is a tremendously strong parent-certainly not in the areas we would expect at this age, because there has been little stimulation, Harold and Dollie both have been allowed to withdraw time and time again and limits have virtually not been set in any way, so I don't think there's anything there and especially looking at it from the standpoint of what I think would be

best for those two children, Harold and Dollie I'm talking about. There is nothing there in the way of a bond that I would be tremendously afraid to disrupt.

The facts of the present case support a termination of appellants' parental rights concerning Harold and Dollie. Such termination in the case of these two children correctly applies to "all the rights and duties, including residual parental rights and duties, of the ... parents involved." (Section 78-3a-48(3), U.C.A. (1953, as amended)), and is clearly within the power of the Juvenile Court to so order. (See Point III.)

POINT V

THE MINOR CHILDREN HAVE A CONSTITUTIONALLY PROTECTED RIGHT TO THE PRESERVATION OF THEIR BEST INTERESTS.

In the case of State in the Interest of A, supra, this court, after sustaining the termination of parental rights regarding three minor children similar in ages to the minor children involved in the instant case suggested that the children should be placed in a proper adoptive home "...where they can feel that they belong to a family group." (514 P.2d at 800).

It is obvious in the instant case that if the appellants' parental rights are perpetuated the minor children will spend their remaining growing up years in foster care, possibly transferred to a succession

of surrogate foster parents, without any permanent familial ties. Many of the courts of this land have held that such a circumstance is unconstitutional, that a child has a "liberty" right to the protection of his best interest, free from any parental possessory claim.

In the case of In re Roy, 393 N.Y.S.2d 515, (1977) the Family Court for New York City held that a natural mother's possessory claim to a 16 year old son who had lived with foster parents since one year old should be severed in the best interest of the child. The court stated:

"For this court to refuse to consider the child's best interest because of an adult's title to him, albeit a biological parent's, seemingly would be unconstitutional. To preclude a person by virtue of his birth from a benefit - from a measure promoting his interest - would be an anomaly in constitutional law.... The minor has an unequivocal and unquestionable interest in termination of his parent's title to him, and therefore he seemingly has a constitutional right to freedom from the parental possessory claim."

The integration of a child into a viable family unit is more important to the child than maintaining a non-custodial natural parent-child relationship. In the case of State v. Blum, (Or. App. 1970), 463 P.2d 367, which was cited with approval by this court in the case of In re Winger, supra, the Oregon Appeals Court, under a deprivation statute identical to ours, affirmed an order

that parental rights of a mentally ill mother could be terminated upon finding that she was unfit by reason of a condition seriously detrimental to the child. The court stated:

"It is important that the child have a sense of belonging to a family. This is one of the things we look for after we say that our prime consideration is the best interests of the child. It is not in the best interest of the child to keep him forever in a limbo--a limbo that is terminated, if at all, when on some uncertain date his mentally ill mother recovers and gives him a normal mother's care. For this child it may well be that at his present age of seven and one-half years it is already too late to successfully integrate him into a family. If it is not too late, it is important to get it done soon." (463 P.2d, p. 370).

The federal courts have placed a name tag on this right of a child to the least restrictive familial relationship. In the case of Organization of Foster Families v. Dumpson, 418 F. Supp. 277(1976), certain foster parents attempted to restrain the New York City Human Resources Administration from transferring foster children without affording a constitutionally appropriate fair hearing, claiming that both the foster children and the foster parents enjoyed a familial right of privacy similar to that recognized in a biological family relationship because of the psychological ties which had been

formed, which was protected under both the Equal Protection and Due Process clauses of the Fourteenth Amendment. The Federal District Court agreed with the foster parents that the pre-removal procedures employed by the New York agency were constitutionally defective, recognizing in the process that the minor children had a constitutionally protected "liberty interest to familial privacy" ; viz., a constitutional right to the preservation of the least restrictive familial relationship which can not be deprived without due process. The court disagreed with the intervening natural parent's contention that a hearing is superfluous when a foster child is to be returned to its biological parents, holding that if the evidence discloses that, despite the diligent efforts of the agency, the biological parent has failed for more than a year to maintain substantial and continuous contact with a child in foster care, permanent neglect proceedings may be instituted and the biological parent's presumptive rights to custody may be forfeited. (418 F. Supp. 277 at page 283). On appeal to the United States Supreme Court the Supreme Court reversed the District Court on the basis that the New York pre-removal procedures did meet due process requirements. Smith v. Organization of Foster Families, 431 U.S. 816, 87 S.Ct. 2094, 53 L.Ed.2d 14 (1977). Limiting its decision to this narrow ground the

Supreme Court did not affirm head on whether or not a child has a "liberty interest to familial privacy." The Supreme Court did recognize, however, that "the importance of the familial relationship to the individuals involved stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in promoting a way of life through the instruction of children, as well as from the fact of blood relationship. (97 S.Ct. at page 2110) Further the court recognized that "...emotional ties between foster parent and foster child are in many cases quite close, and undoubtedly in some as close as those existing in biological families." (97 S.Ct., footnote 52 at page 2110).

In the instant case there is no question of due process in regard the termination procedures which have been followed, nor is there a custody contest involved between natural and foster parents. The right of a child to have a secure and adequate family relationship in which he can develop to his fullest potential is, however, similarly involved. In this regard we think the following language of the Dumson court is relevant and significant:

"The time has long since passed when children were considered mere chattels of the adults with whom they lived. The foster care system itself, initiated in New York in the latter part of the nineteenth century, represented a large step forward from the prior practice of institutionalizing children with the poor and

feeble-minded or boarding them out as apprentices or indentured servants. In any event, it is by now well-settled that children are 'persons' within the meaning of the Fourteenth Amendment whose rights are entitled to protection against state abridgment. (Authorities omitted) Foremost among those rights, as the Supreme Court has repeatedly held, is the right to be heard before being 'condemned to suffer grievous loss'. (Authorities omitted) 418 F. Supp. at 282 (Emphasis added).

There seems to be no question that a continued parental relationship between appellants and the minor children will be detrimental to the children, even if non-custodial. Concern was expressed that Mr. Jackson would not be a resource but rather a handicap for the children as demonstrated by the fact that everyone of his children had severe problems. (R. 25, L. 18). Mrs. Jackson has real difficulty in functioning as an adequate parent, and is neither a positive nor stimulating resource for the children. (R. 32, L. 1). Even with outside resources and help it is doubtful that the parents can be helpful or any kind of a resource for the children. (R. 37-38). Mr. Jackson can afford no love and affection for the children and though Mrs. Jackson cares she can't do much for them. (R.37, L. 10). There was a marked improvement in the basic skills and performance of the children after receiving special care outside the home. (R. 44, L. 19). On being returned home from foster

care, Harold's speech regressed, he became isolated, his drooling increased, his bed wetting resumed, his toileting ability regressed and his I.Q. decreased. (R. 52-53). While residing at home Dollie was unkempt, improperly clothed and had a general apathy completely uncharacteristic for a little girl of 2 years old. (R. 79, L. 29). She received no stimulation in the home. (R. 42, L. 18).

One clinical psychologist testified that Mr. Jackson actually didn't want the children, didn't even want his marriage. (R. 32, L.21). A psychiatrist testified that Mr. Jackson had only a minimal interest in looking at the particulars of his children as a parent. (R. 114, L. 23). Mrs. Jackson wants her children with her, but on the child-like basis of a 15 year old having playmates. (R. 72, L. 3). After clinical assistance over a period of almost a year there was no significant improvement in the ability of the parents to stimulate or discipline the children. (R. 72, L.4). A well qualified psychologist testified that long term foster care was not the answer for the family difficulties and in fact would be harmful and detrimental. (R. 56, L. 14).

The continuation of a parental relationship between appellants and the children involved in this appeal

will condemn said children to suffer a grievous loss in relation to their right to a non-limiting familial relationship. Continuation of foster relationships which effectively keep these children in limbo and deny them a permanent family relationship would not be in their best interest. Termination of parental rights, and setting these children free for permanent adoptive relationships before it is too late, would be the least restrictive alternative regarding the "liberty" rights of these children, and consistent with the expressed legislative intent of this State. (Section 78-3a-9(19), U.C.A., 1953, Replacement Volume 9A).

CONCLUSION

The order of the Juvenile Court to terminate the parental rights of the appellants' herein was based on evidence that appellants, because of severe personality and emotional disorders, are unable to provide for the basic developmental needs of their children. Evidence further indicated that outside assistance or training given the parents did not and would not result in any improvement in their parenting abilities. Psychiatric and psychological examination of the parents, carried out pursuant to court order without objection by appellants, were properly considered by the court in determining the

Although the three younger children of appellants (Rose, Harold, and Dollie) are all considered adoptable, expert testimony persuaded the court that it was in the best interests of Rose, a child who exhibited unexpected personality strengths and certain ties to her parents, to be allowed contacts with her natural parents subsequent to the termination of the parent-child relationship. Such a provision in the order of the Juvenile Court is an acceptable exercise of the board discretionary powers vested in the court in juvenile matters. The court found that inasmuch as no emotional bond existed between Harold and Dollie and their parents, complete termination of parental rights was in the best interest of these children.

Recognizing the extreme need of three children for a home that can meet their psychological and social needs and save them from a future as emotionally deprived and anti-social adults, respondent State of Utah seeks the affirmance of the order of the Juvenile Court.

Respectfully Submitted,

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MAILING CERTIFICATE

This is to certify that I mailed two copies of the foregoing Brief of Respondent, postage prepaid, to David A. Goodwill, Attorney for Biological Parents and Appellants - Marvin and Ruby Jackson, at 366 South Third East, #130, Salt Lake City, Utah 84111, and to David E. Littlefield, Attorney and Guardian Ad Litem, at 707 Boston Building, Salt Lake City, Utah, 84111, on this the 31st day of August, 1978.

W. A. Goodwill