2001

# Utah v. : Brief of Appellant

Utah Supreme Court

# In the Supreme Court of the State of Utah

STATE OF UTAH,
In the interest of
Terry G. a person
under 18 years of age.

Case No. 13728

## BRIEF OF APPELLANT

Appeal from an order in the District Juvenile Court for Cache County by the Honorable Charles E. Bradford, Juvenile Court Judge.



HILLYARD & GUNNELL
140 East Second North
Logan, Utah 84321

Attorneys for Appellant

TABLE OF CONTENTS

STATEMENT OF THE CASE . . . . . 1
RELIEF SOUGHT . . . . . 1
STATEMENT OF THE FACTS . . . . . 1
ISSUES PRESENTED . . . . . 5
ARGUMENT . . . . . 6

ISSUE 1

THE COURT BELOW COMMITTED REVERSIBLE ERROR IN RELYING ON THE RESULTS OF JUDICIAL ACTIONS WITHOUT PRESENTATION OF THE FACTS AND CIRCUMSTANCES UPON WHICH THESE ACTIONS WERE BASED AS A SUBSTANTAIL BASIS FOR HIS ORDER OF TERMINATION. . . . . 6

ISSUE 2

THERE IS INSUFFICIENT EVIDENCE AS A MATTER OF LAW ON THE RECORD TO SUPPORT THE FINDINGS OF THE COURT ON THE THREE ALLEGATIONS ACCEPTED AS TRUE THAT THE APPELLANT WAS AN UNFIT PARENT, THAT SUCH ALLEGATIONS WERE SERIOUSLY DETRIMENTAL TO THE CHILD, OR THAT APPELLANT COULD NOT CHANGE AND THEREFORE HER PARENTAL RIGHTS SHOULD BE TERMINATED. . . . . 9

ISSUE 3

DID THE DIVISION OF FAMILY SERVICES FAIL TO COMPLY WITH THE ORDER OF THE COURT AND THE PURPOSES OF THE JUVENILE COURT ACT IN FAILING TO ASSIST AND PROVIDE THE APPELLANT WITH THE HELP AND ASSISTANCE TO MEET THE REQUIREMENTS SET FORTH BY THE COURT SO THAT TERRY COULD BE RETURNED TO HIS MOTHER. . . . . 14

CONCLUSION . . . . . 15

CASES CITED

Fronk v. State, 7 Utah 2d 245, 322 P. 2d 397 (1958) . . . . . 6
State v. Lance, 23 Utah 2d 407, 464 P. 2d 395 (1970) . . . . . 7

STATUTES CITED

Utah Code Ann. sec. 55—10—68 (1953) as amended . . . . . 14
Utah Code Ann. sec. 55—10—109 (1953) as amended . . . . . 1

# In the Supreme Court
## of the State of Utah

STATE OF UTAH,
In the interest of
Terry G., a person
under 18 years of age.

Case No. 13728

---

## BRIEF OF APPELLANT

---

### STATEMENT OF THE CASE

This is an appeal from an order terminating the parental rights of Hilda Gullett, appellant, to her minor son, Terry Gullett, pursuant to Section 55—10—109 UCA 1953, as amended, in the District Juvenile Court For Cache County, State of Utah, before the Honorable Charles E. Bradford, Juvenile Court Judge.

### RELIEF SOUGHT

Appellant seeks the reversal of the order and the dismissal of the petition to terminate the natural mother's parental rights or, in the alternative, a remand to the lower court for a new trial.

### STATEMENT OF THE FACTS

Appellant is the natural mother of Terry Gullett, a minor male born May 28, 1971, who has

resided continuously with the appellant until April 27, 1973, when an incident occurred which precipitated this case. On the day in question, the appellant asked Patty Creger, a 14—year—old girl who had previously babysat for her, to tend Terry at the appellant's home. Miss Creger agreed and both she and the appellant attempted to contact her mother to inform her of Miss Creger's whereabouts (p. 73). As Miss Creger's mother was not home, they proceeded to the appellant's home, where Miss Creger and the child were left. A short time later, using a neighbor's phone, Miss Creger called her mother to tell he where she was (p. 74). Her mother advised Patty that she was not to babysit at appellant's home and that she was to abandon the child which Miss Creger refused to do (pp. 74& 84). Miss Creger's mother called Mr. Morgan, a social worker for the Division of Family Services in Cache County, who told Miss Creger to call the police which she refused (p. 75). A short time later, a friend of Miss Creger arrived and together they called the police who arrived a short time later and took the child with the babysitter to a shelter home.

The appellant upon returning home later that evening found that Terry had been removed from the home and, after contacting Miss Creger's mother and the police was informed that her child was being held in shelter care.

A petition was then filed by the Division of Family Services in Juvenile Court seeking to terminate the

appellant's parental rights to the said Terry Gullett upon four grounds, to—wit: (1) she had not acquired the necessary skills to properly supervise and train said child; (2) her housekeeping standards were so poor as to seriously jeopardize said child's physical and emotional health; (3) her moral standards were so low as to be a serious and damaging influence upon the morals and welfare of said child; and (4) she had left said child unattended or improperly attended.

A trial was held on June 18 and 19, 1973, at which time, the Juvenile Court Judge entered an order terminating the parental rights of the appellant to the child finding the first three allegations to be true and the fourth not true (p. 315). The court did not recite the specific testimony or facts upon which he found these allegations to be true but stated that even though finding these allegations to be true this did not necessarily require the appellant's parental rights be terminated (p. 315). He then ordered the termination because appellant had not shown a change from the conditions which caused her other children to be taken from her and, therefore, ruled there was no reasonable prospects that Terry's future would be brighter than the rest of the family's, and ordered the child to be placed for adoption(p. 321). After the conclusion of the hearing and after the attornies representing the State and the child, and appellant had left the Court room, the Judge reconsidered the order based on the extreme emotional condition of the appellant, and withdrew the

order and continued the matter for further disposition in six months with the appellant given specific requirements and conditions to be met prior to and during Terry's return to her summarized as follows: (p. 327).

(1) All other persons living either permanently or temporarily at the home were to leave.

(2) She was not to entertain men under inappropriate circumstances such as sleeping with her or engage in any kind of sexual activity at any time Terry was there.

(3) She was to live a good moral life as established by Utah law and community standards.

(4) She was not to maintain any condition or situation in the apartment that could be physically, morally or emotionally hazardous to Terry.

(5) She was to keep the apartment reasonably clean and tidy.

(6) When Terry was returned, she was to spend as much time as possible with him and when gone, she is to use a competent babysitter preferably in the family home.

During this period, custody of Terry was to remain with Division of Family Services even when Terry was returned to the appellant. The Division of Family Services was ordered to provide all appropriate support services that may be indicated for Mrs. Gullett and give her every opportunity to learn good housekeeping practices, good parental practices, not

to the extent of overriding her, but to provide what she might need to assist her in making the changes in her life that would be necessary for her to justify leaving Terry with her permanently

A second hearing was held on January 25, 1974, at which time the Division of Family Services acknowledged it had done nothing to assist appellant to meet the conditions as set forth by the Court (p. 397) and expressed hostility and prejudice towards the appellant and her attorney for the change in the order which they thought was obtained by unethical conduct by the appellant's attorney, (p. 388—89).

The Court found that the appellant had made some superficial changes in her habits and lifestyle but had shown no significant motivation to render herself fit to provide for the child. The Court further found that the child prospered in the current home and would likely suffer serious regression if returned to the natural mother and the termination order was entered.

## ISSUES PRESENTED

1. DID THE LOWER COURT ERROR IN RELYING ON JUDICIAL ACTIONS WITHOUT PRESENTATION OF THE FACTS AND CIRCUMSTANCES UPON WHICH THESE ACTIONS WERE BASED AS A SUBSTANTIAL BASIS FOR HIS ORDER OF TERMINATION?

2. IS THERE SUFFICIENT EVIDENCE ON THE RECORD TO SUPPORT THE FINDINGS OF

THE COURT WHICH FORMED THE BASIS OF THE TERMINATION ORDER?

3. DID THE DIVISION OF FAMILY SERVICES FAIL TO COMPLY WITH THE ORDER OF THE COURT AND THE PURPOSES OF THE JUVENILE COURT ACT IN FAILING TO ASSIST THE APPELLANT TO MEET THE REQUIREMENTS SET FORTH BY THE COURT SO THAT TERRY COULD BE RETURNED TO HIS MOTHER?

## ARGUMENT

### ISSUE NO. 1

THE COURT BELOW COMMITTED REVERSIBLE ERROR IN RELYING ON THE RESULTS OF JUDICIAL ACTIONS WITHOUT PRESENTATION OF THE FACTS AND CIRCUMSTANCES UPON WHICH THESE ACTIONS WERE BASED AS A SUBSTANTIAL BASIS FOR HIS ORDER OF TERMINATION.

In two leading Utah cases involving Juvenile Court proceedings on petitions to terminate parental rights, the Supreme Court has reviewed the appropriateness of the Juvenile Court in considering matters which were not properly evidence before the Court and found such action as reversible error. In *Fronk v. State* 7 Utah 2d. 245, 322 P. 397 (1958), the Juvenile Court Judge took judicial notice of the findings of the District Court in a divorce action upon

which no evidence was introduced at the Juvenile Court hearing. In *State v. Lance*, 23 Utah 2d 407, 464 P. 2d 395 (1970), the Juvenile Court Judge relied on a trial and conviction of the natural mother which occured after the Juvenile Court hearing and a social file, neither of which were properly introduced as evidence.

At the time of the initial hearing on the petition to terminate the parental rights, Judge L. Roland Anderson, Juvenile Court Judge, suggested he not hear the matter because of prior matters he had heard involving the appellant (p. 1), and upon the motion of appellant's attorney, withdrew as the Judge and transferred the matter to Judge Charles E. Bradford. At the beginning of the hearing before Judge Bradford, Attorney Zollinger representing the State, moved the Court to consider testimony given at a hearing involving other children of appellant (p. 14). The Court correctly ruled that those records were not admissable because he wanted to know what the situation was at the present time and how it applied to the child in question. During the hearing, the same question was again raised and the Court ruled the prior conduct of appellant was too remote(p. 68). During the hearing, it was admitted by the appellant that custody in many of her children had been involuntarily taken from her but there was absolutely no evidence on when, where, why and what this involuntary change in custody involved. The Court,

without stating the specific facts upon which he made his findings, found the first three allegations "substantially" proven and stated on pages 315 and 316.

> "Now, by finding these first three true doesn't necessarily require that I terminate the parental rights. I think the facts of the allegations are basically shown. What I've been listening for, frankly, and what I had expected really to hear on Mrs. Gullett's part is some sort of evidence, some sort of showing that whatever the many difficiencies may have been resulted in having all of these other children taken away from her have been changed. There's been a material change in circumstances. So that we could have some resonable expectation that Terry's future would or his prospects would be brighter than the rest of the famlies."

The Court further stated at page 321:

> "I realize that a person can change I even realize that a person can change late in life, but I don't see evidence of the kind of changes most recently in Mrs. Gullett's life that would indicate a real recognition that she needs to change or a willigness to set aside her own personal feelings and desires to make the sacrifice, to pay the price to do the extremely difficult job of being both mother and father to this little boy. To see that he gets the entire upbringing that her other children didn't have. Now, I don't. I haven't reviewed the evidentuary record as far as the other children are concerned, but I am obliged to take judicial

> notice of the Court's own records, I can only assume that the Court had just cause to remove the other children from the home, and there are some children that she has mentioned that she had given birth to that are not with her and their removal from the home has not been voluntary thing who were not mentioned in the Court's records. I don't know the circumstances and that to make my findings in respect to those other than what evidence is in the record and her testimony that they were removed other than a voluntary basis."

After attorney for the appellant responded to the Court's order by pointing out from his personal recollection as her attorney of the substantial changes in the appellant's conduct since the last hearing (pp. 322—324), the Court responded by acknowledging his lack of information on what had happened to cause the actions on which he was now basing his decision (p. 324).

The trial Court errored in basing his decision on assumptions without evidence to support those assumptions and upon court action that was not introduced into evidence by any party during the hearing and the underlying facts were expressly ruled by the Court to be inadmissable during the hearing.

## ISSUE NO. 2

THERE IS INSUFFICIENT EVIDENCE AS A MATTER OF LAW ON THE RECORD TO SUPPORT THE FINDINGS OF THE COURT ON THE

## THREE ALLEGATIONS ACCEPTED AS TRUE THAT THE APPELLANT WAS AN UNFIT PARENT, THAT SUCH ALLEGATIONS WERE SERIOUSLY DETRIMENTAL TO THE CHILD, OR THAT APPELLANT COULD OR WOULD NOT CHANGE THESE DEFECTS CAUSING HER PARENTAL RIGHTS TO BE TERMINATED.

The Court in the *Lance* case, stated the law and public policy consideration in termination of parental rights clearly as follows:

> "Deprivation of the parents' custody of their children is a drastic remedy which should be resorted to only in extreme cases and when it is manifest that the home itself cannot or will not correct the evils which exist. The cutting of family ties is a step of utmost gravity and is undesirable both socially and economically and should be avoided unless that is the only alternative to be found consistent with the best interests of the children. There is a presumption that it is generally for the best interest and welfare of children to be reared under the care of their natural parents. Under this presumption the burden of persuading the trier of the fact is always on the person who claims that it will be for the best interests of the child to be reared by someone other than the natural parents of such child. To support a decision to deprive the parent of its child the Court must first be convinced of such fact by a preponderance of the evidence.

The juvenile Court did not specifically state the testimony or facts which proved to him that the State had proven the three allegations he accepted as true: but by careful review of the record, it is clear that no such evidence or its importance by a preponderous exists.

*ALLEGATION ONE:* Appellant had not acquired the necessary skills to properly supervise and train the said child. The question of supervision was resolved in finding allegation four not true. All witnesses who testified on the child's alleged defects in training were involved with the child after he had been removed from his mother and familiar surroundings. Those witnesses who dealt with the appellant and the child prior to the termination especially Mrs. McWhirter (p. 162-181) are clear that the appellant had trained and supervised the child.

Mrs. McWhirter's position as a babysitter, licensed and paid by the Division of Family Services, who had Terry in her home every working day from Feburary 5, 1973 to April 27, 1973 except for a few days of sickness, is especially important. It should be noted that during this time to June 19, 1973, the Division of Family Services never contacted her about Terry's adjustment during the period. (p. 171).

*ALLEGATION TWO:* Appellant's housekeeping standards were so poor as to seriously jeopardize the said child's physical and emotional health. Despite the

dispute of when some of the mess occurred (p. 91) the Court rendered the problem moot by not placing much emphasis on the problem (p. 316).

Mr. Morgan from the Division of Family Services at the second hearing verified that the house was clean during his visits after the Court order (p. 380).

*ALLEGATION THREE:* Apellant's moral standards are so low as to seriously damage the morals and welfare of the child. Even accepting all the adverse inferences against the appellant from the few facts on the record and not accepting her explanations, there is no evidence that this was a seriously damaging influence on the said child. She denied ever having sex even with her husband in front of the children. If a woman's belief that sexual relations with a man who is not her husband but with whom she is planning marriage shows a person is unfit to care for the child that may result therefrom, there would be many children removed from homes especially from young couples. The only witness on Mrs. Gullett's reputation admitted her bias due to her present husband's dating Mrs. Gullett between their divorce and subsequent remarriage (p. 294).

Even accepting the allegations as true and that they substantially damage the child, there is no evidence on the record that the home cannot or will not correct the evils which exist as required in *Lance.*

The record shows that the appellant and the minor child lived together from his birth until April 27, 1973. Mr. Morgan claimed at the second hearing that his agency had spent many hours with Mrs. Gullett but at the first hearing he admitted there wasn't much done with Mrs. Gullett in the last little while (p. 16). There is nothing in the record of what was done, by whom, and the appellant's response. This coupled with how the case began with a false report that the child had been abandoned and the babysitter had been forced to come to the home, the police under the direction of Mr. Morgan removed the child from the appellant's home. The child was never returned to Mrs. Gullett nor was she given any supportive assistance from the Division of Family Services as ordered by the Court. Still she, on her own, removed the other children from the home, cleaned up the house, changed her conduct, and even moved to Orem in an attempt to establish a new life and home so that Terry could be returned to her. She visited Terry every week and waited for Mr. Morgan to help her after she requested Terry be returned to her after the first hearing. This she was able to do despite the prejudice against her without any clear basis on the record as expressed by the Division of Family Services. Her problem of lack of schooling and intellect are overcome by her love for Terry and willingness to do what she is told to do.

## ISSUE NO. 3

Did the Division of Family Services fail to comply with the order of the Court and the purposes of the Juvenile Court Act in failing to assist and provide the appellant with the help and assistance to meet the requirements set forth by the Court so that Terry could be returned to his mother.

Section 55—10—63, UCA(1953) as amended, state the purpose of the Juvenile Court Act:

> "It is the purpose of this act to secure for each child coming before the juvenile court such care, guidance, and control, preferably in his own home, as will serve his welfare and the best interests of the state; to preserve and strengthen family, ties whenever possible; to secure for any child who is removed from his home the care, guidance, and discipline required to assist him to develop into a responsible citizen to improve the conditions and home environment responsible for his delinquency; and, at the same time, to protect the community and its individual citizens against juvenile violence and juvenile law breaking. To this end this act shall be liberally construed."

The Court recognizing these purposes made as part of the order that:

> "We'll request, in fact, we'll order, the Division of Family Services provide all ap-propropriate support services that may be

> indicated for Mrs. Gullett and give her every opportunity to learn good housekeeping practices, good parental practices, not to the extent of overriding her, but to provide what she might need to assist her in making the changes in her life that would be necessary for her to justify leaving Terry with her permanently."

The final Court order was prepared by the Court and notice of its contents was given to the Division of Family Services by sending a copy of a letter sent to Bishop Maurice Welsh, Mrs. Gullett's LDS Bishop, (ex. A) Despite this, Mr. Morgan admitted that none of this was done, because of his pre—existing prejudices against the appellant. Mrs. Gullett was thus deprived the opportunity to acquire the skills and training that the Court believed she needed before allowing her to raise her son.

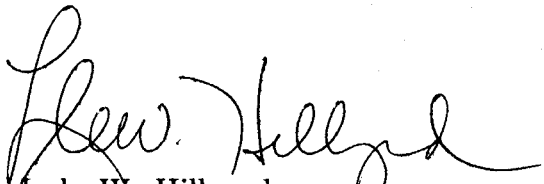
## CONCLUSION

The Court in relying on the results of previous judicial actions without having the full facts in evidence before him and in the failure of the state to prove Mrs. Gullett's actions were so substantially harmful as to damage the child or to be incapable of correction and to prove assistance to allow her to

correct the alleged defects constitute reversible error and this Court should dismiss the said petition or, in the alternative, grant the appellant a new trial.

Respectfully submitted,

HILLYARD & GUNNELL



Lyle W. Hillyard
Attorney for Appellant
140 East Second North
Logan, Utah 84321

I hereby certify that I delivered copies of the foregoing brief of appellant to the Utah Attorney General's office this ___ day of Oct. 1974.