

1997

Gentry Gamble v. Daniel R. Larsen and Catherine J. Wheeler : Reply Brief

Utah Court of Appeals

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Frederick N. Green; Green & Berry; Attorneys for Plaintiff/Appellant.

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**UTAH COURT OF APPEALS
BRIEF**

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DOCKET NO. 970454-CA

IN THE UTAH STATE COURT OF APPEALS

GENTRY GAMBLE,

REPLY BRIEF

Plaintiff/Appellant,

vs.

Appeal No. 970454-CA

DANIEL R. LARSEN and
CATHERINE J. WHEELER,

Priority No. 4

Defendant/Appellee.

REPLY BRIEF

APPEAL FROM AN ORDER IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH,
THE HONORABLE PAT B. BRIAN, PRESIDING

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FILED

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COURT OF APPEALS

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GENTRY GAMBLE,

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Plaintiff/Appellant,

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IN THE UTAH STATE COURT OF APPEALS

GENTRY GAMBLE,

REPLY BRIEF

Plaintiff/Appellant,

vs.

DANIEL R. LARSEN and
CATHERINE J. WHEELER,

Appeal No. 970454-CA

Defendant/Appellee.

ARGUMENT

Mr. Gamble seeks: 1) post-adoption visitation with his two sons consistent with the agreement of the parties and because it would be in the best interests of the children; 2) failing that, to set aside the Decree of Adoption due to fraud and its procurement and fraud upon the court; and, 3) to have the matter certified to the Juvenile Court.

The response of the Defendants may be summarized as follows: 1) the claim for post-adoption visitation or "open-adoption" was not raised below; 2) there was no consideration or agreement beyond that specified in the adoption consent; 3) furthermore, visitation with the children can only derive from Mr. Gamble's parental rights; 4) even if there was an agreement for post-adoption visitation, the term of that agreement fails for being too vague; 5) there are no allegations in the proposed Amended Complaint to support a finding of fraud or coercion; 6) rather

than certifying the matter to Juvenile Court, due to the pendency of the termination proceeding, the District Court case should have voluntarily dismissed and refiled in the Juvenile Court.

POINT I.

**THE ISSUE OF POST-ADOPTION VISITATION OR
"OPEN-ADOPTION" WAS RAISED BELOW.**

The Defendants acknowledge in their brief that the "concept of 'open adoption' may have merit in evaluating the best interests of a child in the context of an on-going adoption proceeding . . . " (Defendants' Responsive Brief, page 9.) However, the Defendants claim no less than seven times in their brief that this claim was never raised below. (Defendants' Responsive Brief, pages i, 8, 9, 11, 12, 14, and 26.)

In fact, Mr. Gamble's Complaint pleads in the alternative, in the second and third causes of action as follows:

"38. In the event that the Court does not rescind the adoption, it would be in the best interests of the children that the Court restore to the Plaintiff and provide formally and by way of order for the Plaintiff's visitation rights with Trevor and Baron.

39. The Plaintiff's visitation rights should correspond to the rights provided for in the Decree of Divorce referred to above, except as may have been modified by the parties' practice, if at all, since the granting of the Decree of Divorce . . .

41. The parties agreed for on-going visitation in consideration of the adoption. The Defendants have breached the agreement by unilaterally terminating the contractual visitation rights of the Plaintiff.

42. The only adequate remedy available at law is that of specific performance.

43. Defendants should be ordered, per the contract of the parties', to facilitate and permit on-going contact and visitation." (Plaintiff's Proposed Amended Verified Complaint.)¹

Additionally, the subject of post-adoption visitation and specifically "open-adoption" was extensively argued and briefed below. Mr. Gamble's "Memorandum of Points and Authorities in Opposition to the Defendants' Motion to Dismiss, and in Support of the Plaintiff's Motion" cites many of the cases relied upon by Mr. Gamble in his appeal, and specifically refers to open-adoption as a concept, and as the relief which he sought before the trial court in Point III, pages 14, 15, 16, 17, and 18 of that brief which is attached hereto as part of the Addendum to this brief and marked Exhibit "J".

Even if Mr. Gamble had not specifically used the words "open-adoption" below, which he did, the relief he sought in his Complaint and before the trial court is the same. Mr. Gamble seeks post-adoption visitation and contact with the subject children. By definition, any arrangement that permits communication or contact between the natural parent and the adopted child, after the adoption, or between the natural and

¹The Amended Complaint contains the third cause of action seeking specific performance. The trial court refused to grant the amendment stating: "Plaintiff's Motion to Amend the Complaint should be denied as futile since the Amended Complaint likewise fails to state a claim upon which relief may be granted for the reasons stated above." (Paragraph 9, Findings of Fact, Conclusions of Law and Order.) For purposes of this appeal, Mr. Gamble has treated that ruling as one granting a Motion to Dismiss as to the third cause of action seeking specific performance of the contract.

adoptive parents, constitutes "an open-adoption". In the matter of the adoption of Jeremiah Halloway, Navajo Nation, 732 P.2d, 962 (Utah 1986).

Lastly, Judge Brian in both the Minute Entry and his Findings of Fact and Conclusion of Law specifically refers to Mr. Gamble's claim for post-adoption visitation. (Trial court's "Minute Entry" attached hereto and marked Addendum Exhibit "K", and Findings of Fact 8-10, and Conclusions of Law 4, 5, 7, and 9, Trial court's Findings of Fact, Conclusions of Law and Order, Addendum Exhibit "A" attached to Plaintiff's principal Brief.)

Mr. Gamble first and foremost seeks on-going post-adoption visitation with the children. The matter was expressly framed, raised and ruled upon by the trial judge and is properly before this court.

POINT II.

THE TRIAL COURT NOT ONLY FOUND AN AGREEMENT FOR THE ADOPTION, BUT THAT THE TERMS OF THAT AGREEMENT WENT BEYOND THOSE SPECIFIED IN THE CONSENT FOR ADOPTION.

The trial court's Minute Entry states as follows:

"The Court finds that there was an agreement re: release by natural mother of all claims for child support arrearages and on-going child support in exchange for natural father's signing of the consent to adoption."
(Trial court's Minute Entry) (emphasis added)

It is undisputed that the parties stipulated and agreed that in consideration of Mr. Gamble's executing a consent in connection with the adoption of Trevor and Baron, Defendant Catherine Wheeler, the natural mother, would waive child support

arrearages. The letter from the Defendants' lawyer which identifies the consideration for Mr. Gamble's consent states as follows:

"When the adoption has become final, I will file a satisfaction of judgment regarding the Order on Order to Show Cause previously entered against you. In addition, if any negative credit history appears because of this judgment, we will arrange for that to be removed from your credit report. It is my understanding that Trevor and Baron will retain the surname Wheeler-Gamble during the period of their minority. Also, you may maintain the present visitation schedule with Trevor and Baron. Finally, once your parental rights are terminated, you are under no continuing obligation to provide any support for Trevor and Baron." (Kevin Fife letter, dated March 8, 1995, Addendum Exhibit "B" attached to Plaintiff's principal Brief.)

However, the "Certified Consent of Father . . ." ("the consent") makes no reference whatsoever to child support arrearages, the question of the children's surname, the issue of a negative credit rating, or, most importantly, the agreement for on-going post-adoption visitation. Nevertheless, the trial court looked beyond the consent and specifically found that the waiver of child support arrearages was part of the consideration for the consent even though it is mentioned nowhere in the consent.

It is clear that the court below determined that an agreement existed. The consideration for the agreement was Mr. Gamble's consent. In exchange he was to receive at least the waiver of any claim for child support arrearages which was not mentioned in the consent itself. Contrary to the Defendants' representation, the parties did have an agreement. However, the

court went on to find that the agreement for post-adoption visitation was simply too vague.

Even if this Court finds that there was no agreement for post-adoption visitation, the Court can still find that visitation should be permitted if it is in the best interests of the children. The Defendants acknowledge that the best interests of the children may be the basis for an open-adoption. (Brief of Appellees, page 9.) However, the Defendants claim that once a consent is signed and a Decree of Adoption entered there is no standing to assert post-adoption visitation. The Defendants do not address other situations where non-parent visitation is allowed including step-parent visitation, same-sex partner visitation, and grandparent visitation as well as the cases allowing post-adoption visitation which are referred to in pages 17 - 22 of the Brief of the Appellant.

Visitation rights may flow from either parental rights or the best interests of the children.

POINT III.

**THE PARTIES' AGREEMENT FOR POST-ADOPTION
VISITATION IS SUFFICIENTLY CLEAR AND WAS
DEFINED BY THEIR PERFORMANCE OF THE CONTRACT.**

For more than 22 months following the adoption, Mr. Gamble continued to visit the children just as he had prior to the adoption. His visitation prior to the adoption was based upon the visitation permitted under the Decree of Divorce and constituted "reasonable visitation". The visitation that Mr. Gamble expected would continue pursuant to his agreement with the

Defendants would permit the maintenance of "the present visitation schedule with Trevor and Baron". (Letter of Kevin J. Fife, dated March 8, 1995, Addendum Exhibit "B" attached to the principal Brief of the Appellant.)

The parties understood what the present visitation schedule was. That schedule continued for 22 months after the adoption. Even if the term of the contract for visitation is considered vague, the court may supply the missing term or other deficiencies based upon parole evidence. Messick v. PHD Trucking SERV., Inc., 678 P.2d, 791 (Utah 1984). Any terms applied by the court must meet the "reasonableness test". Allstate Enters, Inc. v. Heriford, 772 P.2d, 466, 468 (Utah Ct. App. 1989) and Olympus Hills Shopping Ctr. Ltd. v. Smith's Food, 889 P.2d, 445 (Utah Ct. App. 1994).

The term of the contract which would permit post-adoption visitation is found in the same document and in the same paragraph that the trial court relied upon in finding that the parties agreed for the waiver of child support arrearages. The trial court failed to enforce that provision of the agreement, finding that the visitation language was "insufficient" and, "the attorney's letter does not define the visitation schedule, explain how the visitation schedule could be modified, provide an enforcement mechanism, or preclude the Defendants from terminating the visitation schedule." (Paragraph 4, trial court's Conclusions of Law.)

The same deficiencies could be found in virtually any divorce stipulation or decree where the parties agree and the court orders "reasonable visitation" for the non-custodial parent. Few divorce stipulations or decrees explain how the visitation schedule could be modified or provide a specific mechanism for enforcement or expressly state that the custodial parent is precluded from terminating the visitation schedule. While many stipulations and decrees define the visitation schedule precisely, many do not. In this case, the agreement provided for the continuation of the "present visitation schedule with Trevor and Baron". The present schedule of visitation was defined by the parties' practice and the Decree of Divorce. The Decree of Divorce provided for specific visitation for Mr. Gamble in paragraph 2a.- 2g. (Wheeler v. Gamble "Decree of Divorce", Civil No. 884903729DA attached as Addendum Exhibit "L" and previously attached as Exhibit "A" to the Plaintiff's Proposed Amended Verified Complaint.)

Mr. Gamble's visitation under the Decree of Divorce and in practice satisfies all of the deficiencies cited by the trial judge. Even if this were not the case, parole evidence could be taken which would allow the court to determine the "present visitation schedule" for purposes of enforcement. The "present visitation schedule" in practice and pursuant to the Decree, did not permit Mrs. Wheeler to unilaterally terminate visitation between Mr. Gamble and the children.

POINT IV.

MR. GAMBLE'S COMPLAINT RAISES THE ISSUE OF FRAUD WHICH IS SUFFICIENT TO SET ASIDE THE DECREE OF ADOPTION.

In addition to the fact that the Defendants fraudulently represented to Mr. Gamble that he could maintain the present visitation schedule, the Defendants also failed to inform the court of that agreement. Mr. Gamble had every right to assume that all of the critical elements of the parties' agreement surrounding the adoption would be divulged to the court. Those terms include not only the on-going visitation, but also the waiver of child support arrearages. None of these terms were referenced in the adoption consent. The trial court found that some of these terms were part of the parties' agreement, nevertheless. The Defendants have not appealed that ruling. Additionally, Mr. Gamble's Complaint alleges that he was threatened by the Defendants with criminal prosecution if he did not sign the consent (paragraph 15, Plaintiff's Proposed Amended Complaint). This threat was particularly real in light of Defendant Larsen's position with the Utah Attorney General's office. While the Defendants dispute this allegation, at page 25 of the responsive brief, it should be assumed as true for purposes of the Defendant's Motion to Dismiss.

POINT V.

THE ENTIRE MATTER SHOULD HAVE BEEN CERTIFIED TO THE JUVENILE COURT.

As demonstrated above, the trial court considered and ruled upon Mr. Gamble's claim for post-adoption visitation. The

suggestion by the Defendants at page 26 of their responsive brief to the contrary is incorrect. Additionally, it is important to remember that the Plaintiff refiled the termination cause of action in the Juvenile Court only as a response to the Defendants' Motion to Dismiss. The Plaintiff was more than willing to have this matter determined by the District Court. The Defendants moved to dismiss the matter and specifically the termination of parental rights cause of action. Admittedly, the Defendants' motion in that regard was well taken.

The suggestion that the Plaintiff was "forum shopping" or "judge shopping" is unfounded. As set forth above, the Plaintiff's Juvenile Court proceeding was commenced in response to the Defendants' Motion to Dismiss. Likewise, the Juvenile Court proceeding and the Motion to Certify the case were both filed prior to learning of Judge Brian's ruling. Therefore, the suggestion of the Defendants', at page 28 of their brief, that the Motion to Certify the case to Juvenile Court was undertaken simply because the Plaintiff did not like the outcome of the law suit is illogical.

The Defendants suggest that the District Court case should simply have been dismissed and refiled. The effect of the Motion to Certify the matter to Juvenile Court is the same.

The Juvenile Court action is pending. Juvenile Court Judge Valdez has overruled the Defendants' Motion to Dismiss that action. See Addendum Exhibit "M".

POINT VI.

**FOR PURPOSES OF THIS APPEAL, THE ALLEGATIONS
OF THE COMPLAINT SHOULD BE CONSIDERED TRUE.**

The Defendants' memorandum frequently takes issue with the facts as set forth in the Plaintiff's Complaint. Among other facts, the Defendants contest the Plaintiff's allegation: 1) that the parties agreed for post-adoption visitation; 2) that the post-adoption visitation continued as it had before for approximately 22 months until unilaterally terminated by the Defendants; and 3) that the consent to adoption did not reflect the entirety of the parties' agreement.

Similarly, the Defendants disputed many facts before the lower court in the course of the Motion to Dismiss.

The standard of review as well as which facts the Court will rely upon in making its decision have been set forth repeatedly by Utah Appellate Courts.

"When reviewing a trial court's grant of a Rule 12(b)(6) motion to dismiss 'we accept the factual allegations in the complaint as true and consider them and all reasonable inferences to be drawn from them in a light most favorable to the plaintiff'. Because the propriety of a 12(b)(6) dismissal is a question of law, we give the trial court's ruling no deference and we review it under a correctness standard" Alvarez v. Galetka, 933 p.2d 987 (Utah 1997)(citations omitted).

CONCLUSION

At the time the Plaintiff consented to the adoption of his sons the parties entered into an agreement. The consideration for the Plaintiff's consent, was the parties' agreement that, among other things, the Plaintiff would continue the present

visitation with the children. That term, and other terms, are not reflected in the consent. The parties went on to partially perform that agreement until the Defendants unilaterally terminated any contact including visitation 22 months after the adoption. The parties' agreement should be approved and enforced. Continued contact, including visitation, is in the best interests of the children. If it is determined that such an agreement is contrary to public policy or unenforceable, then the adoption should be set aside. If the matter is remanded it should be referred to the Juvenile Court on remand at which time the Court may determine what on-going visitation would be in the best interests of the children.

DATED THIS 16 day of January, 1998.

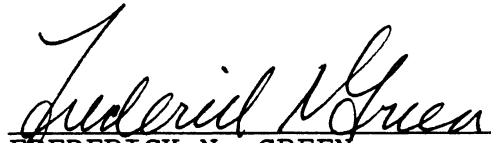
Respectfully Submitted,

GREEN & BERRY


FREDERICK N. GREEN
Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I, Frederick N. Green, certify that on the 19 day of January, 1998, I served a copy of the attached Brief of Appellant upon A. Howard Lundgren and Sheleigh A. Chalkley, counsel for Defendant/Appellee in this matter by mailing a copy by first class mail with sufficient postage prepaid to the following address: 257 East 200 South, #340, Mailbox 10, Salt Lake City, Utah 84111.



FREDERICK N. GREEN
Attorney for Plaintiff/Appellant

ADDENDA

ADDENDUM "J"

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Attorneys for Daniel R. Larsen
and Catherine J. Wheeler

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

In the Interest of	:	MEMORANDUM OF POINTS
	:	AND AUTHORITIES IN
TREVOR B. WHEELER GAMBLE and	:	SUPPORT OF RESPONDENTS
BARON G. WHEELER GAMBLE,	:	MOTION TO DISMISS
	:	
Persons under the age	:	Case Nos. 933163, 933164
of eighteen (18) years.	:	Judge Andrew A. Valdez

Catherine Wheeler and Daniel Larsen hereby submit their memorandum of points and authorities in support of their motion to dismiss petitioner's amended petition for termination of their parental rights.

FACTS

1. Baron Wheeler Gamble is the 12 year old son of respondents, Catherine Wheeler and Daniel Larsen.
2. Trevor Wheeler Gamble is the 10 year old son of respondents, Catherine Wheeler and Daniel Larsen.
3. On March 20, 1995, Gentry Gamble relinquished his parental rights to Baron Wheeler Gamble and Trevor Wheeler

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Gamble. A true and correct copy of Mr. Gamble's consent is attached hereto as Exhibit "A".

4. A decree of adoption was entered by the Honorable J. Dennis Frederick on April 27, 1995 forever terminating the parental rights of Gentry Gamble to Baron and Trevor Wheeler Gamble and declaring Daniel R. Larsen to have adopted the minor children. A true and correct copy of Judge Frederick's order is attached hereto as Exhibit "B".

5. Gentry Gamble reported his allegations of abuse to the State of Utah, Division of Child and Family Services. The Division of Child and Family Services carefully investigated the petitioner's claims of abuse. No referrals of the matter were made to Juvenile Court following an investigation by the Division of Child and Family Services.

6. Gentry Gamble seeks in his petition to terminate the relationship between Catherine Wheeler and Daniel Larsen and their two children, Trevor and Baron.

ARGUMENT

POINT I.

GENTRY GAMBLE LACKS STANDING TO PETITION THIS COURT FOR TERMINATION OF RESPONDENTS' PARENTAL RIGHTS.

In March of 1995, petitioner, Gentry Gamble, decided to freely and voluntarily relinquish his rights to his children. He understood following the adoption that he would be released from all future parental duties toward and all future respon-

sibilities for the children. He understood he would have no further rights with regard to the children. However, he seeks in his petition to terminate the relationship of Catherine Wheeler and Daniel Larsen to their 10 and 12 year old boys.

Part 4 of Chapter 3A, Title 78 provides that "any interested party may file a petition for termination of the parent/child relationship with regard to a child." Utah Code Ann. Section 78-3A-4(1)(a). The term "interested party" is not a defined term in Chapter 3A. Absent a definition of the term "interested party", the term should be construed consistent with the traditional test for standing. In order to commence a legal action, a party must be able to show that he or she has suffered a distinct and palpable injury that gives him or her a personal stake in the outcome of the legal proceeding. Jenkins v. Swan, 675 P.2d 1145 (Utah 1983); Stromquist v. Cokayne, 646 P.2d 746 (Utah 1982). The requirement that a petitioner have a personal stake in the outcome of a legal dispute is rooted in the historical and constitutional role of the judiciary in Utah. This requirement is intended to confine the courts to a role consistent with the separation of powers and to limit the jurisdiction of the courts to those disputes which are most efficiently and effectively resolved through the judicial process. Jenkins, supra.

Gentry Gamble has no legal interest in Trevor or Baron Wheeler Gamble. He voluntarily gave up his rights to these

children in 1995. Petitioner's interest in these minor children is no different from that of any other citizen in the state of Utah. As an unrelated person to these minor children, the petitioner lacks standing to prosecute the respondents in order to cause a termination of parental rights. Such actions should be brought by the Attorney General on behalf of the state of Utah.

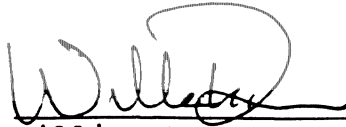
The Division of Child and Family Services of the State of Utah is empowered to promote and enforce state and federal laws enacted for the protection of abused, neglected and dependent children. It is directed to provide substitute care for such children. Utah Code Ann. Section 62A-4A-101, et. seq. The Division of Child and Family Services has investigated petitioner's complaints in this matter and has chosen to take no legal action. Petitioner is seeking to substitute his judgment for that of the Division of Child and Family Services and personally prosecute this action. Petitioner lacks the legal standing to do so.

CONCLUSION

Respondents respectfully submit that petitioner lacks standing to seek to terminate respondents' parental rights, and this action should be dismissed.

DATED this 31 day of July, 1997.

WINDER & HASLAM, P.C.

By 
William W. Downes, Jr.
Attorney for Daniel R. Larsen
and Catherine J. Wheeler

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Memorandum of Points and Authorities in Support of Respondents' Motion to Dismiss to be mailed, postage pre-paid, on the 31st day of July, 1997 to the following:

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

IN THE MATTER OF
THE ADOPTION OF:

TREVOR B. WHEELER GAMBLE and
BARON G. WHEELER GAMBLE,

minor children.

:
:
:
: CERTIFIED CONSENT OF FATHER
: GIVING UP RIGHTS TO
: CHILDREN CONCEIVED OR BORN
: WITHIN MARRIAGE AND WAIVER
: OF NOTICE

:
:
: Probate No. 952900102AD
: Judge J. Dennis Frederick

DO NOT SIGN THIS DOCUMENT WITHOUT READING IT. IF YOU HAVE ANY QUESTIONS
WHATSOEVER, MAKE SURE YOU CONSULT WITH AN ATTORNEY BEFORE SIGNING
THIS DOCUMENT. BY SIGNING THIS DOCUMENT, YOU ARE GIVING UP YOUR RIGHTS
AS A PARENT. YOU CANNOT REVOKE THE CONSENT TO YOUR CHILDREN'S
ADOPTION ONCE YOU SIGN THIS DOCUMENT.

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

Gentry Gamble, being first duly sworn upon oath, or affirmation, deposes and states as
follows:

1. He was born on September 19, 1957 at Bethesda, Maryland.

EXHIBIT "A"

2. He is the biological father of the minor children sought to be adopted, to wit: Trevor B. Wheeler Gamble, who was born on the February 10, 1987, Baron G. Wheeler Gamble, who was born on July 24, 1985.

3. He understands that a verified petition for adoption of the minor children has been filed and that pursuant to Utah Code Ann. § 78-30-4.7 (1990, as amended). He must respond to the petition within thirty (30) days of service if he intends to contest the adoption, and hereby waives all notices pursuant to that section.

4. He is not under the influence of alcohol, drugs, medication, or any impairment of ability to understand and appreciate the significance of giving his consent to adoption.

5. He signs this consent freely and voluntarily and not under any duress, coercion, or force.

6. He understands that pursuant to Utah Code Ann. § 78-30-4.3 (1990, as amended), his consent to adoption is effective when signed and may not be revoked.

7. He understands that from the time the final decree of adoption is entered, pursuant to Utah Code Ann. § 78-30-11 (1990, as amended), he will be released from all future parental duties toward and all future responsibilities for the adopted children, and have no further rights with regard to the children.

8. He understands that from the time the final decree of adoption is entered, pursuant to Utah Code Ann. § 78-30-9 (1990, as amended), that the children will be adopted by the petitioner and the children shall be regarded and treated in all respects as the children of the petitioner and Catherine Wheeler.

9. He understands that pursuant to Utah Code Ann. § 78-30-10 (1990, as amended), from the time the final decree of adoption is entered, the petitioner and the children shall sustain the legal relationship of parent and child and have all the rights and be subject to all the duties of that relationship.

10. He has had the opportunity to consult with and obtain the advice of an attorney of his choice.

11. He understands that pursuant to Utah Code Ann. § 78-30-4.2 (1990, as amended), that he is entitled to a copy of this consent.

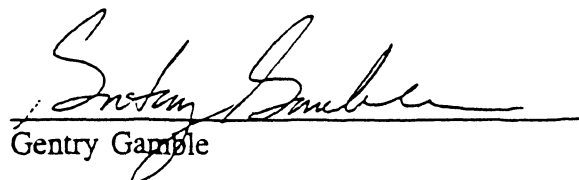
12. He consents to the granting of a petition for adoption and consents to the adoption by petitioner of the children.

13. He waives notice of pendency of these adoption proceedings pursuant to Utah Code Ann. § 78-30-4.7(4) (1990, as amended).

14. He has read and understands the foregoing consent to adoption, and signs it freely and voluntarily.

15. He states upon his oath or affirmation that all statements contained in this consent are true and correct to the best of the knowledge of the undersigned.

DATED this 20th day of March, 1995.


Gentry Gamble

CERTIFICATION

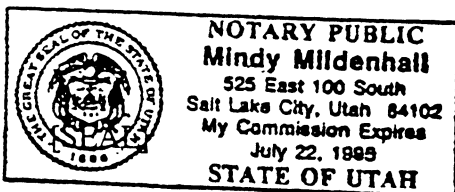
Pursuant to Utah Code Ann. § 78-30-4.2 (1990, as amended), I certify that on the 20th day of March, 1995, personally appeared before me, Gentry Gamble, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed above, and I certify to the best of my information and belief that said person has read and understood the foregoing consent and has signed it freely and voluntarily.

Where the above consent is signed by a birth mother, or the child sought to be adopted, or other person, I certify that I am a judge of a court that has jurisdiction over adoption proceedings, or a public officer appointed by that judge for the purpose of taking consents.

DATED this 20th day of March, 1995.

JUDGE OR JUDICIALLY APPOINTED OFFICER

In the case of persons signing the above consent other than a birth mother or an adoptee, I sign as a notary public as follows:



Mindy Mildenhall
NOTARY PUBLIC
Residing at: Salt Lake County, Utah

FILED IN CLERK'S OFFICE
Salt Lake County Utah

APR 27 1995

Kevin J. Fife (Bar No. 5962)
COHNE, RAPPAPORT & SEGAL P.C.
Attorneys for Petitioner
525 East First South, Fifth Floor
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Telephone (801) 532-2666
Facsimile (801) 355-1813

SALT LAKE COUNTY
BY *[Signature]*
[Signature]

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

IN THE MATTER OF	:	
THE ADOPTION OF	:	DECREE OF ADOPTION
	:	
TREVOR B. WHEELER GAMBLE and	:	
BARON G. WHEELER GAMBLE,	:	Probate No. 952900102AD
	:	
minor children.	:	Judge J. Dennis Frederick
	:	
	:	

The above-entitled matter came before the court for hearing on Thursday, the 27th day of April, 1995 at 9:00 a.m., the Honorable J. Dennis Frederick presiding, for consideration of the petition of Daniel R. Larsen to adopt Trevor B. Wheeler Gamble ("Trevor") and Baron G. Wheeler Gamble ("Baron"). Mr. Larsen was present in person and represented by counsel, Kevin J. Fife. Also present were Trevor and Baron and their natural mother, Catherine Wheeler. The court heard and considered the testimony of Petitioner, Trevor, Baron and Catherine Wheeler, considered the contents of the file and having heretofore made and entered its Findings of Fact and Conclusions of Law,

EXHIBIT "B"

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This court has jurisdiction over the subject matter and parties to this action.
2. Because Trevor and Baron were brought into Utah by Catherine Wheeler and Gentry Gamble, their natural parents, the Interstate Compact on Placement of Children, Utah Code Ann. § 62A-4a-701 (1953, as amended), is not applicable to this adoption.
3. Daniel R. Larsen is declared to have adopted Trevor and Baron and from this date forward shall owe to them all the rights and responsibilities of a natural father to natural children and Trevor and Baron shall owe to Daniel Larsen the responsibilities of a child to their natural father.
4. All rights and interests of Gentry Gamble with regard to Trevor and Baron are hereby and forever terminated.
5. Trevor and Baron shall continue to be known as Trevor B. Wheeler Gamble and Baron G. Wheeler Gamble.
6. The Clerk of this Court shall make four (4) certified copies of this Decree of Adoption which shall be delivered to Petitioner's counsel, and then shall seal this file and not permit examination of the file by any person or party without further order of the court.

DATED this 27th day of April, 1995.

I CERTIFY THAT THIS IS A TRUE COPY OF AN
ORIGINAL DOCUMENT ON FILE IN THE THIRD
DISTRICT COURT SALT LAKE COUNTY, STATE
OF UTAH

DATE

April 27, 1995

Stephanie L. Thurman
DEPUTY COURT CLERK

BY THE COURT:

J. Dennis Frederick
J. Dennis Frederick
District Court Judge

ADDENDUM "K"

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

GAMBLE, GENTRY	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 970901796 CV
	:	DATE 05/09/97
VS	:	HONORABLE PAT B BRIAN
	:	COURT REPORTER (NOT REPORTED)
LARSEN, DANIEL R	:	COURT CLERK BHY
DEFENDANT	:	

TYPE OF HEARING: MOTION TO DISMISS
PRESENT: PLAINTIFF DEFENDANT

P. ATTY. GREEN, FREDERICK N
D. ATTY. DOWNES, WILLIAM W

THIS MATTER IS BEFORE THE COURT FOR HEARING RE: DEFENDANT'S MOTION TO DISMISS. BOTH PARTIES ARE PRESENT WITH COUNSEL, AS SHOWN ABOVE. THE COURT HEARS ARGUMENT FROM BOTH COUNSEL.

THE COURT FINDS THAT THE NATURAL FATHER SIGNED A CONSENT TO ADOPTION ON 3/20/95. THE CONSENT CLEARLY STATED ON ITS FACE THAT ALL RIGHTS AND RESPONSIBILITIES OF THE NATURAL FATHER WERE PERMANANTLY TERMINATED. THE DECREE OF ADOPTION ALSO CLEARLY STATES THIS.

THE COURT FINDS THAT THERE WAS AN AGREEMENT RE: RELEASE BY NATURAL MOTHER OF ALL CLAIMS FOR CHILD SUPPORT ARREARAGES AND ONGOING CHILD SUPPORT, IN EXCHANGE FOR NATURAL FATHER'S SIGNING OF THE CONSENT TO ADOPTION.

THE COURT FINDS THERE IS ONE LETTER IN EVIDENCE BEFORE THE COURT TODAY THAT CONTAINS A BRIEF REFERENCE TO VISITATION FOR THE NATURAL FATHER. THE COURT FINDS THAT THIS IS TOO VAGUE FOR THE COURT TO ENFORCE.

THE COURT FINDS THAT THE PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED. THE DEFENDANT'S MOTION TO DISMISS (RELATING TO ALL THREE CAUSES OF ACTION) IS GRANTED. THE PLAINTIFF'S COMPLAINT IS DISMISSED WITH PREJUDICE.

THE PLAINTIFF'S MOTION TO AMEND COMPLAINT IS DENIED.

COUNSEL FOR DEFENDANTS IS TO PREPARE THE FINDINGS AND ORDER
FROM TODAY'S HEARING AND DELIEVER A COPY TO OPPOSING COUNSEL FOR
APPROVAL AS TO FORM, AND SUBMIT THEM TO THE COURT BY 5/23/97.

ADDENDUM "L"



THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY

APR 14 1989

By d. B. C. h.

MARY C. CORPORON #734
Attorney for Plaintiff
CORPORON & WILLIAMS
Suite 1100 - Boston Building
#9 Exchange Place
Salt Lake City, Utah 84111
(801) 328-1162

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

CATHERINE WHEELER,

Plaintiff,

-vs-

GENTRY GAMBLE,

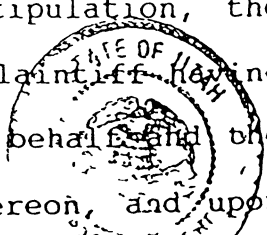
Defendant.

2147330
4-14-89-858-
DECREE OF DIVORCE

Civil No. 884903729DA

Judge Homer F. Wilkinson

THE ABOVE-CAPTIONED MATTER having come on for hearing before the above-entitled court on Friday, the 14th day of April, 1989, at the hour of 9:30 a.m., the Honorable Homer F. Wilkinson, Judge presiding; the plaintiff appearing in person and by and through counsel, Mary C. Corporon, and the defendant not appearing, either in person or through counsel, but the parties having stipulated to a full settlement of all issues raised and outstanding in this action and the Court having approved the same, the defendant having consented, among other things, that his default may be entered to the plaintiff's Complaint, pursuant to the terms and conditions of the parties' Stipulation, the default of the defendant was duly entered; the plaintiff having been duly sworn and having testified in her own behalf and the Court having reviewed the file herein; based thereon, and upon



motion of plaintiff's counsel, the Court being fully advised in the premises and more than 90 days having elapsed since the filing of the Complaint in this action, and the Court having heretofore made and entered its Findings of Fact and Conclusions of Law, now, therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Plaintiff is hereby granted a Decree of Divorce, dissolving the bonds of matrimony heretofore existing between the parties, the same to become final and effective immediately upon being signed by the Judge and entered by the clerk in the register of actions.

2. Plaintiff is hereby awarded the permanent care, custody and control of the parties' minor children, Barron and Trevor, subject to defendant's reasonable rights of visitation, to be defined as follows:

a. Plaintiff shall have the children with her the two weekends per month when she is off work and should advise the defendant at the beginning of the month which weekends she has off; the defendant should have visitation on the remaining two or three weekends in that month when the plaintiff is working, from Saturday at 6:00 p.m. until Monday at 6:00 p.m.;

b. For a period of two hours every Tuesday and Thursday afternoon;

c. Alternate state and federal holidays;

d. Father's Day, and, likewise, the plaintiff shall have the children on Mother's Day, irrespective of any other portion of this visitation schedule;

e. Two weeks during the summer, commencing with the

summer of 1989, and increasing to one month commencing with the summer of 1992 and thereafter. Said summer visitation should be agreed upon between the parties in advance. Further, plaintiff shall have a reciprocal right to vacation time with the minor children for an uninterrupted period of time without being deemed to have interfered with defendant's rights of visitation;

f. An additional period of time during the week of each of the minor children's birthdays, in which to celebrate the respective child's birthday;

g. Both parties shall have open telephone contact with the minor children.

3. Defendant is hereby ordered to pay to plaintiff the sum of Two Hundred Dollars (\$200.00) per month, per child, as and for child support, for the support and maintenance of the minor children of the parties, for a total support obligation of Four Hundred Dollars (\$400.00) per month, until each child has attained the age of 18 years or graduated from high school in due course, whichever last occurs. Said child support award shall be reviewable six months after the entry of this Decree of Divorce to determine if there has been any change in the defendant's income.

4. If the defendant falls thirty (30) or more days in arrears in his child support obligation, the plaintiff shall be entitled to mandatory income withholding relief, pursuant to Utah Code Annotated, Section 62A-11-401, et. seq. (Supp. 1988).

5. Neither party is awarded any alimony from the other party, and both parties are deemed to have waived any claim for alimony from the other.



6. Both plaintiff and defendant are hereby ordered to maintain in force health and accident and dental insurance for the benefit of the minor children of the parties, when it is available through his or her employment, until each child attains the age of 18 years or graduates from high school in due course, whichever last occurs. Further, each party is ordered to pay and assume one-half of all medical, dental, orthodontic, optical and psychotherapeutic expenses incurred for the benefit of the minor children which are not covered by insurance; however, plaintiff should be required to prove that she has paid her one-half share rather than having her half paid through complimentary care.

7. Plaintiff and defendant are each hereby ordered to maintain in force a policy of insurance on his or her own life, having a benefit payable on death in the minimum sum of Fifty Thousand Dollars (\$50,000.00), naming the minor children of the parties as the primary beneficiaries of such insurance, until each child has attained the age of 18 years or graduated from high school in due course, whichever last occurs.

8. Each party is hereby awarded all property currently in his or her own possession, as his or her sole and separate property.

9. Each party is hereby awarded all savings, checking and other banking accounts and IRAs held in his or her own name, free and clear of any interest of the other party.

10. Defendant is hereby awarded all right, title and interest in his bank accounts and holdings in the State of Louisiana which he has through inheritance and gift from his family, free and clear of any interest of the plaintiff.

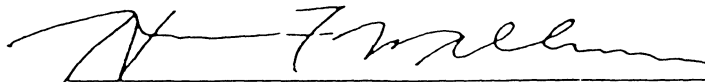


11. Plaintiff is hereby ordered to pay and assume her school loans and defendant is hereby ordered to pay and assume all debts incurred in connection with his business, and each party is ordered to hold the other harmless thereon. Further, each party is ordered to pay and assume any and all debts and obligations incurred in his or her own name since the date of separation of the parties.

12. Each party is hereby ordered to execute and deliver all necessary documents to transfer the title and ownership of the property of the parties pursuant to this Decree.

DATED THIS 17 day of April, 1989.

BY THE COURT


HOMER F. WILKINSON
District Court Judge

I CERTIFY THAT THIS IS A TRUE COPY OF AN
ORIGINAL DOCUMENT ON FILE IN THE THIRD
DISTRICT COURT, SALT LAKE COUNTY,
STATE OF UTAH
DATE APR 18 1989


DEPUTY COURT CLERK
THIRD DISTRICT COURT
SALT LAKE COUNTY

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am employed in the offices of Corporon & Williams, attorneys for the plaintiff herein, and that I caused the foregoing proposed Decree of Divorce to be served upon defendant by placing a true and correct copy of the same in an envelope addressed to:

TAMARA J. HAUGE
Attorney for Defendant
136 East South Temple
Suite 2100
Salt Lake City, Utah 84111

and depositing the same, sealed, with first-class postage pre-paid thereon, in the United States mail at Salt Lake City, Utah on the 1 day of April, 1989.


Secretary



ADDENDUM "M"

FILED

NOV 13 1997

3rd District
Juvenile Court

IN THE THIRD DISTRICT JUVENILE COURT
COUNTY OF SALT LAKE, STATE OF UTAH

IN THE INTEREST OF:

GAMBLE, Trevor B. Wheeler (02/10/87)
GAMBLE, Baron B. Wheeler (07/24/85)

FINDINGS AND
ORDER

Case No. 933163 & 933164

Persons under the age of eighteen (18) years.

This matter came before the Court for hearing on respondents, Daniel Larsen and Catherine J. Wheeler's Motion to Dismiss the Amended Petition for the Termination of Parental Rights filed by petitioner Gentry Gamble. Respondents submit that petitioner, the biological father, lacks standing to petition this court for termination of the respondents rights. Respondents assert that because petitioner, Mr. Gamble, previously consented to the adoption of the above named children by respondent, Daniel Larsen, spouse of the biological mother, petitioner relinquished his parental rights to his children and can not now claim "interested party" status under Utah Code Ann. 78-3a-404.

The respondents and petitioner proceeded to present memorandum evidence, and argument upon which the Court bases its Findings and Conclusions:

FINDINGS OF FACT CONCLUSIONS OF LAW

1. The applicable statute is U.C.A. 78-3a-404 (1997). Respondent cited to U.C.A. 78-3a-4(1)(a), a statute which does not exist.
2. In recent years the Utah Legislature has amended the statute in question and each time they seem to have expanded the number of people who may file petitions to terminate parental rights. In 1993 the legislature added "or district attorney" to subsection 2. This allowed for more individuals to file the petition for termination under subsection 2 of this statute.¹
3. In 1994 the Legislature again rewrote the statute, allowing more people to file this petition. Before this amendment, the statute cited to the specific individuals who could file this petition: "The Division, the child's guardian ad litem, blood relative, or adoptive relative of the child..." Utah Code Ann. 78-3f-104(1) (a) (1993). This was a very specific list of individuals who could file this petition. The change replaced this very specific list to a more general term (their term in question here): "Any interested party..." Utah Code Ann. 78-3a-404(1) (a). It seems clear that with this change the Utah Legislature removed a very rigid and explicit list and replaced it with a more general term. The interpretation one can extrapolate from this, is that they intended to grant more individuals the opportunity to file this petition. This makes sense if the purpose is to protect

¹Statute used to be cited as 78-3f-104 until 1994 when the legislature renumbered it to its current number 78-3a-404.

16
12/22/97
16

the welfare of a child.

4. The Legislature also changed subsection 2, which used to read:

“The Division may request either the Attorney General or an appropriate county attorney or district attorney to file a petition for termination of parental rights under this part.” Id at (2) (1993)

The change deleted appropriate county attorney and district attorney and left only the Attorney General. Although this second change does reduce the individuals allowed to file the petition on behalf of the division, the term interested party can be interpreted to include all individuals not cited.

5. The most recent changes² has been of deleting the condition of having at least one year of custody of the child before a foster parent could file for this petition. This change came in the latest legislative session, 1997. By removing this language they have allowed for foster parents to file this petition with less than a year of custody. This opens the door for more petitions of this kind by more people, in this case more foster parents. Again, it seems that the amendments done by the legislature have opened the doors for more people to prosecute these petitions.

CONCLUSION

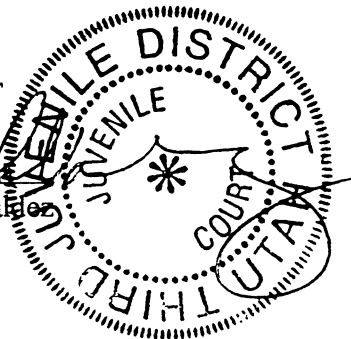
The revisions by the Legislature indicate the term “any person” is intended to be defined in its broadest meaning. Therefore the Court finds that Mr. Gamble does have standing to file this petition under this statute.

IT IS HEREBY ORDERED THAT:

1. The Motion to Dismiss filed by respondents Catherine J. Wheeler and Daniel R. Larsen is hereby DENIED.
2. The Court pursuant to 78-3a-44.5 U.C.A. appoints a Guardian ad Litem to represent the best interest of the above named children.
3. The Petition for Termination of Parental Rights filed by, Petitioner Gentry Gamble is hereby set for a Pre-trial Hearing on 2nd of January at 11:15am before Honorable Judge Andrew Valdez.

BY THE COURT


Judge Andrew Valdez



²Effective July 1, 1997 the statute no longer has subsection 1 (a) or (b). The statute now contains only subsection 1 with the term “including foster parents” added. Utah Code Ann. 78-3a-404(1) (1997)