

2008

# Hannah Covington v. Jonathan Johnson, Pamela Johnson : Brief of Appellant

Utah Court of Appeals

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Kathleen G. Arnovick; Attorney for Appellees.

Brian W. Steffensen; Larry G. Reed; Attorneys for Appellant.

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IN THE UTAH COURT OF APPEALS

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HANNAH COVINGTON, a minor,  
by and through her guardian ad  
litem,  
Daniel Covington,

Plaintiff/Appellant,

vs.

JONATHAN JOHNSON and  
PAMELA JOHNSON, individuals,

Defendants/Appellees.

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**BRIEF OF THE APPELLANT**

**Case No. 20080626-CA**

**District Court No. 080902220**

**Appeal**

VS.

## Appeal

**Defendants/Appellees.**

---

Brian W. Steffensen #3092  
Larry G. Reed #2708  
Attorneys for Appellant  
2159 South 700 East, Suite 240  
Salt Lake City, UT 84106

HANNAH COVINGTON, a minor,  
by and through her guardian ad  
litem,  
Daniel Covington,

**VS.**

**Defendants/Appellees.**

## Appeal

Brian W. Steffensen #3092  
Larry G. Reed #2708  
Attorneys for Appellant  
2159 South 700 East, Suite 240  
Salt Lake City, UT 84106

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### Rules

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1.  
JURISDICTION OF APPELLATE COURT

The Court of Appeals has jurisdiction of this appeal pursuant to the provisions of §78A-4-103(j), Utah Code, in that this case was transferred to the Court of Appeals from the Supreme Court.

2.  
STATEMENT OF ISSUES  
AND STANDARD OF REVIEW

ISSUE 1: Whether the natural father of a minor child, who is divorced from the child's birth mother and does not have custody of the child, may bring suit on behalf of that child to recover for personal injuries suffered by the child either as a "general guardian" within the meaning of Rule 17(b), Utah Rules of Civil Procedure, or as the child's parent.

STANDARD OF REVIEW: This is a question of law, presented in the context of a Motion to Dismiss. The question of law is reviewed for correctness. (*Citizens for Responsible Transportation v. Draper City*, 190 P.3d 1245, 1247-48 (Utah 2008), 2008 UT ¶ 8).

ISSUE 2: Whether a ruling by the trial court that the natural parent of a child may not bring suit on behalf of that child to recover for personal injuries either as the child's parent or as her "general guardian deprives the court of jurisdiction, thus necessitating dismissal.

STANDARD OF REVIEW: This is a question of law, presented in the context of a Motion to Dismiss. The question of law is reviewed for correctness. (*Citizens for Responsible Transportation v. Draper City*, 190 P.3d 1245, 1247-48 (Utah 2008), 2008 UT ¶ 8).

3.  
DETERMINATIVE STATUTES  
AND RULES

Rule 17(b), Utah Rules of Civil Procedure, is determinative. That Rule provides:

(b) Minors or incompetent persons. An unemancipated minor or an insane or incompetent person who is a party must appear either by a general guardian or by a guardian ad litem appointed in the particular case by the court in which the action is pending. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted expedient to represent the minor, insane or incompetent person in the action or proceeding, notwithstanding that the person may have a general guardian and may have appeared by the guardian. In an action in rem it shall not be necessary to appoint a guardian ad litem for any unknown party who might be a minor or an incompetent person.

Section 78B-3-102, Utah Code, is also determinative. That section provides:

**78B-3-102. Injury or death of child -- Suit by parent or guardian.**

(1) Except as provided in Title 34A, Chapter 2, Workers' Compensation Act, a parent or guardian may bring an action for the death or injury of a minor child when the injury or death is caused by the wrongful act or neglect of another.

(2) A civil action may be maintained against the person causing the injury or death or, if the person is employed by another person who is responsible for that person's conduct, also against the employer.

(3) If a parent, stepparent, adoptive parent, or legal guardian is the alleged defendant in an action for the death or injury of a child, a guardian ad litem may be appointed for the injured child or a child other than the deceased child according to the procedures outlined in Section 78A-2-227.

4.

**STATEMENT OF THE CASE**

Plaintiff/Appellant Hannah Covington (hereinafter, "Hannah"), a minor, brought suit, through her natural father Daniel Covington (hereinafter, "Daniel") against defendants/appellees, i.e. her mother, Pamela Johnson (hereinafter, "Pamela") and her stepfather Jonathan Johnson (hereinafter, "Jonathan"), to recover for personal injuries.

Pamela and Jonathan moved to dismiss, arguing that Daniel lacked standing to assert claims on behalf of Hannah.

The Third District Court in and for Salt Lake County, the Honorable L.A. Dever, presiding, granted the Motion to Dismiss.



The Order Dismissing Plaintiff's Complaint states, in pertinent part:

1. That jurisdiction runs through the party bringing the action and, in this case, specifically, Daniel Covington, as guardian ad litem of Hannah Covington.
2. That Daniel Covington is not the guardian or guardian ad litem of Hannah Covington.
3. That because Daniel Covington is not the guardian or guardian ad litem of Hannah Covington, he does not have standing to bring the action . . .
4. That because Daniel Covington does not have standing, the Court does not have jurisdiction.
5. That because the Court does not have jurisdiction the Defendants' Motion to Dismiss the Complaint . . . is granted.  
(Record on Appeal, p. 99)

Hannah and Daniel appeal the grant of that motion to dismiss.

5.  
SUMMARY OF ARGUMENT

A noncustodial natural parent of a minor may bring suit on the child's behalf to recover for personal injuries sustained by the child, either as a general guardian within the meaning of Rule 17(b), Utah Rules of Civil Procedure, or pursuant to §78B-3-102, Utah Code.

A ruling that a noncustodial natural parent may not bring suit on behalf of his minor child does not deprive the trial court of subject matter jurisdiction of a pending case and thus does not justify dismissal of the action.

6.  
ARGUMENT

A.  
Parent's Standing to  
Assert Claims for Minor Child

Daniel and Hannah concede that the caption of the case below was inaccurate. Rather than stating “Hannah Covington, a minor, by and through her guardian ad litem, Daniel Covington v. . . .”, it would have been more appropriate and correct to state either “Hannah Covington, a minor, by and through her general guardian, Daniel Covington v. . . .” or “Hannah Covington, a minor, by and through her natural parent, Daniel Covington v. . . .”.

However, the failure to properly denominate the parties plaintiff cannot form the basis for the dismissal of an action to recover for personal injuries suffered by the child.

The real issue is whether Hannah could assert claims through her father.

Courts have long recognized that a parent may assert claims on behalf of his or her minor children.

In *Lee v. Gaufin*, 867 P.2d 572 (Utah 1993), the court stated:

. . . lawsuits asserting a violation of a minor's rights may be brought by parents, general guardians, or next friends as guardians ad litem . . .  
(867 P.2d at 578)

The court, in *Skollingsberg v. Brookover*, 26 Utah 2d 45, 484 P.2d 1177 (Utah 1971) held that an action to recover for injuries suffered by a minor may be brought by either the child's mother or father even though §78B-3-102, Utah Code, then §78-11-6, states that a father may sue for the injury of his child and the mother may bring such an action only in the event of the death of, or desertion of his family by, the father.

Hannah and Daniel submit that for the purposes of Rule 17(b), Utah Rules of Civil Procedure, a natural parent stands in the shoes of a general guardian and for this reason, suit may brought on behalf of the minor child by a parent.

Even more directly on point, the provisions of §78B-3-102, Utah Code clearly provide that “. . . a parent may bring an action for the . . . injury of a minor child when the injury . . . is caused by the wrongful act or neglect of another.”

Hannah and Daniel have brought an action to recover for the injuries suffered by Hannah which were caused by the wrongful acts and negligence of Pamela and Jonathan.

Under the law, Daniel may assert those claims for his daughter.

B.  
Jurisdiction

Candidly, despite extensive research, appellants have not been able to locate any decision which stands for the proposition that a ruling that a parent may not bring an action on behalf of his injured child deprives the court of subject matter jurisdiction.

Simply stated, there is no connection between the standing of one to assert claims for a child and the trial court's subject matter jurisdiction over an action to recover for personal injuries.

An analogous situation was addressed by the court in *Ballard v. Buist*, 8 Utah 2d 308, 333 P.2d 1071 (1959). In that matter, a minor commenced an action for damages resulting from an assault and battery. Subsequent to the filing of the complaint and service of the summons, plaintiff moved for the appointment of a guardian ad litem. That motion was granted.

Plaintiff then moved to amend the summons and complaint to reflect that plaintiff was suing through a guardian ad litem. The trial court denied the Motion for Leave to Amend and granted defendant's motion to quash service and to dismiss the complaint. In reversing the trial court, the *Ballard* court stated:

Although the court obtained jurisdiction when the summonses were properly served, such summonses were subject to motions to quash . . . under the provisions of Rule 17(b) . . . However, the fact that a minor must appear by a guardian ad litem in a pending suit does not mean that process issued in initiating a suit by a minor makes such process void. It is a mere irregularity which can be cured by the appointment of a guardian ad litem and by an amendment. (333 P.2d at 311)

Thus, the absence of a guardian ad litem at the time of the initiation of litigation does not support dismissal of the plaintiff's claims.

The decision of the trial court that Daniel could not assert claims for Hannah did not deprive the court of jurisdiction.

## CONCLUSION

A parent owes his or her child a duty to protect the child's interests. This extends to asserting claims on the child's behalf. For this reason, a parent stands in the shoes of a general guardian with respect to his child.

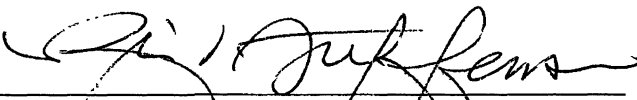
Thus, a parent may bring an action on behalf of his child as a general guardian within the meaning of Rule 17(b), Utah Rules of Civil Procedure.

In addition, §78B-3-102, Utah Code, specifically authorizes a parent to bring an action for the injury of his minor child.

Even should this court find that Daniel was not authorized to assert claims on behalf of Hannah, the dismissal of those claims by the trial court for lack of jurisdiction was error.

For these reasons, Appellants Daniel Covington and Hannah Covington request that this court reverse the grant of Appellee's Motion to Dismiss and remand this case to the trial court for further proceedings.

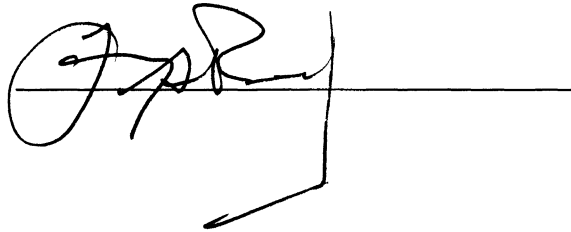
Dated this 26 day of November, 2008.

  
\_\_\_\_\_  
Brian W. Steffensen  
Attorney for Appellants

### CERTIFICATE OF SERVICE

This is to certify that on the 2 day of December, 2008, a true and correct copy of the foregoing BRIEF OF APPELLANTS was mailed, first class postage prepaid, to:

Kathleen G. Arnovick  
Attorney for Defendants/Appellees  
4625 South 2300 East Suite 211  
Holladay, UT 84117

A handwritten signature in black ink, appearing to read 'K. Arnovick', is written over a horizontal line. The signature is stylized with a large initial 'K' and a trailing flourish.

# ADDENDUM

CASE NO. 20080626-CA



FILED DISTRICT COURT  
Third Judicial District

JUN 16 2008

SALT LAKE COUNTY

By

Deputy Clerk

Kathleen G. Arnovick, #8968  
KATHLEEN G. ARNOVICK, PLLC  
Attorney for Defendants  
4625 South 2300 East, Suite 211  
Holladay, UT 84117  
Telephone: (801)272-2373  
Facsimile: (801)424-9137

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

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HANNAH COVINGTON, a minor, by	:	
and through her guardian ad	:	
Liteam, Daniel Covington,	:	ORDER DISMISSING PLAINTIFF'S
	:	COMPLAINT
Plaintiff,	:	
	:	
Vs.	:	
	:	
JONATHAN JOHNSON, and	:	
PAMELA JOHNSON, individuals,	:	
	:	Case No. 080902220
Respondent.	:	Judge Sandra Peuler
	:	

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Defendant's Motion to Dismiss Complaint came on regularly before this Court on the 28<sup>th</sup> day of May, 2008, before the Honorable Judge L.A. Dever. The plaintiff not being present and represented by counsel, Larry Reed, and the Defendants not being present and represented by Counsel, Kathleen G. Arnovick, and proffers of evidence having been made to the Court and the Court having reviewed the pleadings and file and having made its recommendations and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That jurisdiction runs through the party bringing the action and, in this case, specifically, Daniel C. Covington, as guardian ad litem of Hannah Covington.

2. That Daniel Covington is not the guardian or guardian ad litem of Hannah Covington.

3. That because Daniel Covington is not the guardian or guardian ad litem of Hannah Covington, he does not have standing to bring the action in the above-entitled matter.

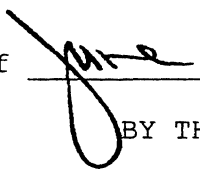
4. That because Daniel Covington does not have standing, the Court does not have jurisdiction.

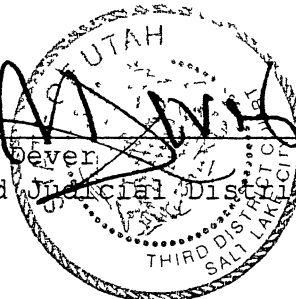
5. That because the Court does not have jurisdiction, the Defendants' Motion to Dismiss the Complaint in this matter is granted.

6. Defendants' request for attorney's fees is denied at this time.

DATED this 15 day of June, 2008.

BY THE COURT

  
L.A. Cever  
Third Judicial District Court Judge



NOTICE: TO THE PARTIES ABOVE NAMED

Pursuant to Utah R. Civ. P. 7(f)(2), this proposed Order will be filed with the Court five days after service upon you. Your objections, if any, must be filed with the Court within five days after service.

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing ORDER DISMISSING PLAINTIFF'S COMPLAINT, by depositing the same in the United States Mail, postage prepaid, this 28<sup>th</sup> day of May, 2008, to the following:

Brian W. Steffensen/Larry Reed  
Attorney for Plaintiff  
2159 South 700 East, Suite 240  
Salt Lake City, UT 84106



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