

1951

LaPriel Taylor v. George Q. Waddoupe and Marie Waddoupe : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

In the Matter of Habeas Corpus for
Howard Wayne, Linda Kay, Sheryl Rae,
and Karen Taylor,

Minors

By LaPriel Taylor,
Petitioner and Appellant
vs.

George Q. Waddoups and Marie Waddoups,
his wife,

Defendants and Respondents
and

In the Matter of the Adoption of Howard
Wayne Taylor, Linda Kay Taylor, Sheryl
Rae Taylor and Karen Taylor,

Minors

By George Q. Waddoups and Marie Waddoups,
his wife,

Defendants and Respondents
vs.

LaPriel Taylor,
Contestant and Appellant.

RESPONDENT'S BRIEF

CASE NO. 7720

FILED

L. E. NELSON

OCT 29 1951

Attorney for defendants,
and respondents.

Clerk, Supreme Court, Utah

Appeal from the District Court of the First Judicial District
of the State of Utah, in and for Cache County.

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----- STATEMENT OF FACTS

The defendants and respondents herein, are husband and wife, and they reside at 64 South 5th West Street, Logan, Utah. They were married on June 14, 1939. He is 54 years of age (R. 117) and she is 37 years of age and both are in good health. They reside about 1½ blocks from the 2nd Ward Church in Logan, and about 3½ blocks from

a grade school. (R. 116). There is also located in Logan a junior high and senior high school, as well as the college. Respondents have no children of their own. (R. 101).

They became acquainted with the plaintiff, LaPriel Taylor, on June 1, 1949, when she came to their home to inquire if respondents would take three of her children, Wayne, Linda and Karen. Sheryl, plaintiff's fourth child and next to the youngest was then living in Elsinore, Utah, with plaintiff's relative. (R. 27). At this time, Linda and Karen were in poor health. (R. 102, 103).

On June 2, 1949, respondents took Howard, Linda and Karren into their home, and plaintiff applied to the Welfare department at Logan, for their support. The plaintiff then departed for California to live with her husband, (R. 27) and the respondents kept these children under this arrangement until about January 15, 1950. The plaintiff and husband, Howard Taylor, returned from California about October 1, 1949, and brought Sheryl Rae from Elsinore with them. They lived with plaintiff's parents, Mr. and Mrs. Page, at Nibley, about four miles south of Logan, for a portion of the time and a part of the time at Ogden. (R. 34). On January 15, 1950, plaintiff was forced to take the children off the relief rolls in Cache County, in order to relieve her husband from a conviction in the Juvenile Court, of Cache County, because of his failure to support them. (R. 33). Plaintiff then took the children to Ogden, (R. 104) and was on relief in Weber County from January 15, to March 9, 1950. (R. 37).

About February 15, 1950, defendants, while returning from Salt Lake City, stopped at plaintiff's apartment

in Ogden to visit the children. (R. 151). The children were pleased to see the defendants, particularly Karen, the youngest. (R. 104, 105). The latter part of February, 1950, defendants had occasion to visit the plaintiff's parents, at Nibley, and Karen and Sheryl were there. They permitted defendants to take Karen to their home and she remained for a couple of days, and on March 1, 1950, it being her birthday, defendants took her to Ogden, (R. 105). When they arrived at plaintiff's apartment she asked defendants if they — "Wanted some children, she had some to give away," (R. 106, 152). Plaintiff informed defendants that — "She had written to the Welfare in Salt Lake and she hadn't received any answer as to the placement of the children." (R. 106). Defendants then informed plaintiff that if she intended to give the children away, the defendants wanted them, (R. 106, 152). Thereupon plaintiff consented to give the children to the defendants and told them to have a written adoption agreement prepared and requested defendants to return to Ogden on March 9, 1950, when her husband Howard would be there to sign the agreement, (R. 106, 152).

The defendants returned to Ogden on March 9th with the adoption agreement, and plaintiff and her husband were at the apartment. On this occasion the defendants were accompanied by the plaintiff's parent, Mr. and Mrs. Page, and the children Sheryl and Karen. (R. 106, 152). After their arrival defendants gave the adoption agreement to plaintiff and she examined it, and personally retained possession thereof for an hour or more and until the plaintiff and her husband were ready to leave for the bus depot, and enroute thereto, they stopped at the notary

public's office. There plaintiff and her husband entered the office, and defendants remained in the car, (R. 107, 154). After plaintiff and her husband had executed the adoption agreement they came out of the office and entered the defendants car and gave the agreement to Mr. Waddoups, (R. 108, 153). He examined it and observed their signatures thereon, and that it had been notarized, (R. 108). Enroute from there to the bus station plaintiff said that — "She was pleased because she knew that the children would have a secured home, something to look forward to in their future lives, and that she didn't think she was making a mistake in doing so," (R. 108, 153). The defendants returned to the apartment, where Mr. and Mrs. Page and the children were waiting, and the children were taken to defendants' home in Logan, where they have since resided with the defendants, (R. 109, 111). Defendant Waddoups identified the adoption agreement which he received from the plaintiff as defendant's Exhibit One. (R. 108, 109).

On March 9, 1950, the plaintiff appeared to have normal health, about the same as she appeared to have at the time of the trial. (R. 111). During the summer and fall of 1950, the plaintiff made three or four visits to the defendant's home, and on each occasion expressed satisfaction with the condition of the children, (R. 112), and during the summer and fall of 1950, the plaintiff wrote five letters to the defendants, and in all of them she expressed satisfaction with the manner in which defendants were taking care of the children, and also the home conditions and environment (R. 51). The last letter was written on November 9, 1950, (R. 53), in which

she offered to execute a relinquishment for adoption of her expected child, which was born on November 29th, 1950.

The defendants own real property in Logan and Preston, Idaho, valued at \$12,000.00, debt free. The defendants also have a bank account, which at the time of trial, was about \$1200.00; an automobile and household furniture. The defendants have enjoyed and do now enjoy good health, and defendant Waddoups has steady employment. (R. 112, 113).

The defendants have bestowed love and affection upon and, have taken the best of care of the children, (R. 112, 113, 144, 180-189), and have made corrections in their health conditions, and at the time of the trial, the children were healthy and in good physical and mental condition. The children are also living in a good wholesome environment, and will receive educational, religious, and moral training. (R. 116, 171-174). And the children love the defendants and show it by their reactions, and they frequently tell the defendants that they love them. (R. 155, 169, 180, 181-189).

ARGUMENT

POINT I. *The findings, conclusions, and judgment of the court, denying the plaintiff's writ of Habeas Corpus, (File, pages 30-37) and the findings, conclusions of law, and judgment, granting the plaintiff's petition for adoption, (File, pages 38-47) and the order of adoption, (File, page 48) are amply supported by defendant's Exhibit One, an irrevocable contract for adoption, as well as by a preponderance of the evidence adduced at the trial.*

The said consent to adoption, "Exhibit One," executed by plaintiff, LaPriel Taylor and Howard Taylor, natural parents of the children named therein, is in the usual form used in adoption proceedings and for the convenience of this court, said instrument is herewith set forth in its entirety:

IN THE DISTRICT COURT OF CACHE COUNTY
STATE OF UTAH

In the Matter of the Adoption of
Howard Wayne Taylor,
Lindsay Kay Taylor,
Sheryl Rae Taylor, and
Karen Taylor,
Minors.

} CONSENT TO
ADOPTION

We, the undersigned, parents of the following named children, to-wit:

Howard Wayne Taylor Age 9 years
Linda Kay Taylor Age 7 years
Sheryl Rae Taylor Age 2 years
Karen Taylor Age 1 year

hereby consent that the above named children may be adopted by George Q. Waddoups and wife, Maria A. Waddoups, of Logan, Utah, as prayed for in the petition for adoption to be filed in the above entitled court and cause and in pursuance to the statutes in such cases made and provided.

DATED this 9th day of March, A. D., 1950.

HOWARD C. TAYLOR
LAPRIEL PAGE TAYLOR.

STATE OF UTAH }
 } ss.
 County of Weber }

On this 9th day of March, A. D., 1950, personally appeared before me, Howard Taylor and LaPriel H. Taylor, the signers of the above and foregoing consent to adoption, who duly acknowledged to me that they understood the same and that the same was executed voluntarily and of their own free will and consent.

RHEAH B. POULTER,
 Notary Public.
 Residing at: Ogden, Utah.

My Commission Expires: January 17, 1954.

The defendants relied upon said adoption agreement, and on March 9, 1950, they took the children into their home with the express intention of adopting them. (Tr. 108, 191). The plaintiff was conversant with the intent of Exhibit One, because it is denominated as a "Consent to Adoption." It also mentioned the name of the court and cause, so plaintiff was put on notice that adoption proceedings were contemplated. "Exhibit One," also provides that the undersigned — "hereby consent that the above named children may be adopted by George Q. Waddoups and wife, Maria A. Waddoups of Logan, Utah, as prayed for in the petition for adoption to be filed in the above entitled court and cause." And in the acknowledgement it expressly provides that the plaintiff and her husband acknowledged to the notary public "that they understood — "the consent for adoption — "and that the same was executed voluntarily and of their own free will and consent."

It will thus be seen from the form and contents of "Exhibit One" that plaintiff was put on notice of the true intent, purpose, and finality of said contract for adoption. It will also be seen that there is no condition or qualification expressed therein. She was definitely advised that adoption proceedings would follow in accordance with — "the statutes in such cases made and provided."

This court has had occasion to determine the legal effect to be given to a written relinquishment and consent for adoption and in each case this court has held that parents may by contract legally transfer and surrender their child or children into the custody of another person to be adopted by the latter, if the child is not prejudiced by the transaction. The cases so holding are:

Stanford v. Gray, 42 Utah 228, 129 Pac. 423

Hummel v. Parrish, 43 Utah 373, 134 Pac. 898

Farmer v. Christensen, 55 Utah 1, 183 Pac. 328

Flora v. Flora, 84 Utah 143, 29 P 2d 498

In the Stanford case this court had under consideration a written consent for adoption, executed by the child's mother, the child having been born out of wedlock. Subsequently thereto, the child's mother having married, brought action against Mr. and Mrs. Gray, with whom the said child had been placed for adoption.

At the trial, the consent for adoption was offered and received in evidence, but the trial court held that the child's mother was not bound by said contract. On appeal to this court, the trial court was reversed. Construing the legal effect of a written contract for adoption, this court said:

“There are some authorities which hold that a contrat made by a parent in which he surrenders the care, control, and custody of his minor child to another is void as against public policy. The great weight of authority, however, sustains the position of appellants that a parent may by contract legally transfer and surrender his infant child into the custody of another where the interest of the child is not prejudiced by the transaction.”

In *Humel v. Parrish et. al.* 43 Utah 373, 134 Pac. 898; the child was born to appellant out of wedlock, at Budapest, Hungary, on February 13, 1903. When the child was about 14 months old appellant left the child with her mother, and about two years thereafter appellant's mother emigrated to the United States, bringing with her the child. Shortly thereafter the grandmother believing that her daughter was dead, signed a written relinquishment and consent for adoption of the child to Samuel J. and Caddie R. Parrish. Later the child's mother brought habeas corpus against Mr. and Mrs. Parrish, to obtain the custody of the child. The trial court denied plaintiffs writ, and she appealed to this court.

In referring to the theory adopted by the trial court, this court said:

“It seems that the court, in rendering its decision denying the writ, proceeded upon the theory; First, that the appellant had surrendered and delivered the child into the care and custody of its grandmother; and, second, that it would be for the best interest of the child for it to remain in the care and custody of the respondents.”

In the course of the opinion in *Humel v. Parrish*, supra, this court quoted what was thought to be the correct rule laid down by the Supreme Court of Iowa in the case of *Smidt v. Benenga*, 118 N. W. 440, in the following language:

“Generally speaking, the natural parents are entitled to the care, custody, and control of their minor children; but they may by agreement or conduct deprive themselves of this natural right and confer it upon others.”

In *Farmer v. Christensen*, 55 Utah 1, 183 P. 328, this court announced the rule which we think is applicable to the facts in the instant case, and we quote from 55 Utah, page 5:

“It is true, everything else being equal, that the natural parent of a child is entitled to its care, custody, and control. This court, however, by its former decisions, is committed to the more humane doctrine that in cases of this nature the natural parent may, by agreement or by conduct, deprive himself of his natural right and confer it upon others; that in cases where the parent has lost that right either by agreement or conduct the guiding principle will always be the best interests of the child for the present and its future. *Stanford v. Gray*, 42 Utah, 228, 129 Pac. 423 Ann. Cas. 1916A, 989; *Hummel v. Parrish*, 43 Utah, 373, 134 Pac. 898.

In the case of *Flora v. Flora*, 29 P. 2d. 498, at page 499, this court said: “Here the parents by written consent surrendered the custody of the children to the respondents.”

The case of *Legate v. Legate*, 87 Tex. 248, 28, S.W. 281 is cited and quoted in *Stanford v. Gray*, *Supra*. The following rule laid down by the Texas court is applicable to the facts in the instant case: We quote:

“Where, however, a parent, by writing or otherwise, has voluntarily transferred and delivered his minor child into the custody and under the control of another, as in the case at bar, and then seeks to recover possession of the child by writ of habeas corpus, such parent is invoking the exercise of the equitable discretion of the court to disrupt private domestic relations which he has voluntarily brought about, and the court will not grant the relief, unless upon a hearing of all the facts it is of the opinion that the best interests of the child would be promoted thereby.”

In the case of *Curtis v. Curtis*, 5 Gray (Mass.) 537, also cited in the *Stanford* case, the court said:

“And the courts are all of the opinion that, so far as the rights of the mother are concerned, she has relinquished them by this instrument which operates either as a contract or an estoppel — and it is immaterial which — to prevent her from now setting up her rights.”

The case of *Stanford v. Gray*, 42 Utah 228, appears to be the earliest case in this jurisdiction and the opinion deals exhaustively with the fundamental principles involved. In the next case, *Hummel v. Parrish*, 43 Utah 373, the principles laid down in *Stanford v. Gray*, were followed, and this court in the *Hummel* case said:

“This doctrine was recognized and approved in the case of *Stanford v. Gray*, 42 Utah, 228, 129 Pac. 423,

recently decided by this court. In addition to the authorities there cited we invite attention to the following cases in which the principle was adhered to and followed: In Re. Stockman, 71 Mich. 180, 38 N.W. 876; Jones v. Darnall, 103 Ind. 569, 2 N.E. 229, 53 Am. Rep. 545; United States v. Green, 3 Mason, 482, Fed. Cas. No. 15,256; Schneider v. Schwabe (Tex. Civ. App.) 143 S.W. 265, Stringfellow v. Somerville, 95 Va. 701, 29 S.E. 685, 40 L.R.A. 623; Kelsey v. Green, 69 Conn. 291, 27 Atl. 679, L.R.A. 471; Sturtevant v. State, 15 Neb. 459, 19 N.W. 617, 48 Am. Rep. 349; Fields v. Deming, 56 Wash. 259, 105 Pac. 466."

In the third case of Farmer v. Christensen, 55 Utah 1, the principles announced in the Stanford case and restated in the Hummel case, were reiterated again.

And in the latest case to be decided by this court, involving a written consent for adoption is Flora v. Flora, 84 Utah 143, 29 P 2d. 498, and it was declared in the opinion that — "Here the parents, by written consent, surrendered the custody of the children to the respondent A. B. Flora." And the Stanford, Hummel and Christensen cases herein reviewed were cited. And from the decisions in these cases it will be seen that the legal effect of a written consent for adoption, which is followed by a petition and order of adoption, casts the burden on the natural parent — "To show that the children are not receiving proper physical, moral, and intellectual training."

The facts in the following Utah cases are clearly distinguishable from the facts in the case at bar.

Harrison v. Harker 44 Utah 541, 142 P. 716.

Jones v. Moore 61 Utah 383, 213 P. 191.

Jensen v. Early 63 Utah 604, 228 P. 217.

Sherry v. Doyle 68 Utah 250, 249 P. 250.

Walton v. Coffman 110 Utah 1, 169 P. 2d. 97.

Baldwin v. Nielsen 110 Utah 172, 172, 170 P. 2d. 179.

Hardcastle v. Hardcastle 221 P. 2d. 883.

In none of the foregoing cases had the parent relinquished his or her rights to the child, by a written consent for adoption. And in most, if not all of those cases, the parent had parted with the custody of child, either because of illegitimacy, or leaving the child for board and lodging, or leaving the child with its grandparents or other relatives. And in some of these cases the parents had later entered into marriage, resulting in an improved condition, whereby the child could be returned to its natural parent, or parents, thus resulting in re-union of parents and child. And in one or more of the cases, the child was returned to the natural mother because of absence of a written consent; and where it was also shown that the parent had not abandoned the child.

The appellant first assigns error, (Point 1) contending that the consent for adoption was not executed in accordance with the provisions of Section 14-4-8. It seems to be appellant's contention that notwithstanding she and her husband executed the consent for adoption to meet the requirements of Section 14-4-4, it is also imperative that an additional consent be executed under Section 14-4-8, at the time of the hearing for adoption, where their written consent to adoption is again necessary and must be signed in the presence of the court.

This contention was rejected by the trial court, in view of the fact that the appellant had previously, to-wit, on March 9, 1950, executed a written consent for adoption. And for the further reason that the adoption order of January 8, 1951, was vacated and the plaintiff was given a hearing on the merits, where she was permitted to offer evidence in opposition to the petition for adoption.

Under appellants contention it would be necessary for a natural parent, who has executed a written consent for adoption, to meet the requirements of Section 14-4-4, to again appear in court when the petition for adoption is heard and sign another consent under Section 14-4-8.

This would seem to be a strained interpretation to place upon Sections 14-4-4, and 14-4-8. Section 14-4-4, provides that — “A legitimate child cannot be adopted without the consent of its parents, if living.” The converse of that provision is — that a legitimate child can be adopted by another if the parent’s consent to the adoption is procured.

Thus, as in the case at bar, the parents having executed a written consent under oath, the provision of Section 14-4-4, is legally complied with. If so, why should it be necessary for the parents to appear in court at the hearing to be held at least one year later, and sign a second consent. Section 14-4-4, does not so provide. This would be very impractical, as well as absurd, and in most cases impossible of performance.

Section 14-4-4 provides four methods to affect the adoption of children.

1. Consent of parents to adoption of legitimate child.
2. Consent of mother to adoption of illegitimate child.
3. Consent of parents not necessary where they have been judicially deprived of the custody of children on account of cruelty, neglect or desertion.
4. Where a parent or parents place the child with a child placing agency, and give such agency a written release of their control and custody of such child; and such agency subsequently executes a consent in writing to the adoptive parents in whose home such child has been placed for adoption.

When Sections 14-4-4 and 14-4-8, are carefully examined it would appear that the latter section has no application to adoption hearings petitioned under paragraphs one, two, and three of Section 14-4-4.

It is, however, the practice under sub-paragraph four, of Section 14-4-4, for an agent of a child placing agency to appear in court and give the agency's consent for adoption at the time of the adoption hearing, and this is no doubt what is intended by the language used in Section 14-4-8, where it provides that, the other person whose consent is necessary, must appear before the district court of the county where the person adopting resides and the necessary consent must thereupon be signed." When this language is read in connection with the last provision of Section 14-4-4, it will be seen that they harmonize. Appellants counsel has failed to cite a Utah case supporting their contention under point 1.

In 1 Am. Jur. 641, the rule is stated that notice of the petition is not necessary "where written consent thereto has been filed with the court." If notice of the hearing is not necessary a Fortiori the natural parents presence in court is not necessary.

The appellant next assigns error, (Point 2) that the trial court erred in finding that the consent of adoption as signed by the plaintiff was irrevocable. It was held in *Stanford v. Gray*, supra, that, — "So far as the rights of the mother is concerned, she has relinquished them by this instrument, which operates either as a contract or an estoppel — and it is immaterial which — to prevent her from setting up her rights."

And in *Flora v. Flora*, 29 P. 2d, 498, at page 499, this court said: "Here the parents by written consent surrendered the custody of the children to the respondents."

It would also appear that the consent to adoption in the instant case is irrevocable, under the rule adhered to by this court in the *Stanford*, *Hummel*, *Christensen* and *Flora* cases. The rule as stated in the *Stanford* case, on pages 242 of 42 Utah, is:

"What we do hold is that, Mrs. Hansen having voluntarily relinquished and surrendered her right to the care and custody of the child, the burden is on her to show that the parties who acquired the custody of the child by virtue and in pursuance of the relinquishment have in some way been derelict in their duty to the child, and that it would be better for the best interests of the child to take it out of their custody and return it to her. This she has wholly failed to do."

Plaintiff contends that the children were taken with the understanding that they would be returned if plaintiff's health improved. This was refuted by defendants since they testified that they took the children in pursuance to the written consent for adoption and relied upon it. And moreover the consent for adoption, "Exhibit One" contains no provision to that effect. Nor is there any such contention made in plaintiff's letters, (R. 51-53) and the last one was written on November 8, 1950, eight months after plaintiff relinquished her parental rights to the children.

Appellant next assigns error (Point 3) that the court erred in finding in the adoption proceedings that the plaintiff had abandoned her children for the reason that there were no allegations in the petition for adoption that the children had been abandoned by the plaintiff, etc.

The petition for adoption in the instant case was of course predicated upon the written consent for adoption, and that was sufficient for adoption purposes under the statute. However, in the various petitions filed by the appellant, (File, pages 7-8, 11-15) there are allegations that she was justified in signing the consent for adoption because of her ill health, and in the answer to the affidavit of appellant by the respondents (File, pages 23-27) it is alleged among other things that, "since the birth of Sheryl Rae and Karen Taylor, the affiant had lived very little, if any, with said children. That although plaintiff could have made a home for the children during the aforesaid period of time, she has preferred to seek employment and live separate and apart from them, thus satisfying her own selfish interests to the detriment of her children."

It will appear that the issue of abandonment was thus created by the pleadings and there is evidence in the record that for a number of years the plaintiff has lived away from the children, leaving them with her parents and later with the defendants, and that plaintiff has been more concerned about her personal pleasure and welfare than she has for the welfare of her children. This was evidenced when plaintiff left the children with defendants on June 2, 1949, and departed for the state of California, on the pretext that she was going to be reconciled with her husband, when as a matter of fact she actually went to California to be with her husband and enjoy his company without being burdened with the children. This is further evidenced by the fact that she did not return until about October 1, 1949, and although she returned with her husband to the home of her parents at Nibley, they did not then provide for these children, but permitted them to remain with the respondents. And for the next 2½ months she and her husband lived a portion of the time with her parents and the other portion in Ogden, while the children remained with the respondents.

And it is doubtful that the plaintiff would have taken the children from the defendants custody on January 15, 1950, had it not been for the fact that the Department of Public Welfare of Cache County had preferred a complaint against Howard Taylor, the father of these children for neglect and non-support, and in order to relieve him of a conviction in the Juvenile Court, plaintiff removed these children to Ogden. But between January 15th and March 9, 1950, or for a period of less than 2 months, the two younger children, Sheryl and Karen, spent a consid-

erable portion of that time at Nibley with their grandparents. And except for the fact that the two older children, Wayne and Linda, were in school at Ogden, they would likely have also been living for a portion of this time with their grandparents at Nibley.

It would thus seem that there was an issue created on the question of abandonment, and although the plaintiff was bound and controlled by defendant's Exhibit One, the consent agreement for adoption, the court also had a right to make a finding on the question of abandonment, in view of the plaintiff's neglect and absence from the children for considerable periods of time as shown by the pleadings and evidence.

Point 2. The plaintiff and appellant having by agreement (Exhibit One), relinquished her natural right to to the children, she is not entitled to regain their custody and control, unless she can establish that the children are being neglected and mistreated by the defendants.

The foregoing rule was laid down in the case of Stanford v. Gray, 42 Utah at page 242, and as it was applied in that case against the mother of the child, where the court stated the rule in the following language:

“What we do hold is that, Mrs. Hansen having voluntarily relinquished and surrendered her right to the care and custody of the child, the burden is on her to show that the parties who acquired the custody of the child by virtue and in pursuance of the relinquishment have in some way been derelict in their duty to the child, and that it would be better for the

best interests of the child to take it out of their custody and return it to her. This she has wholly failed to do."

The foregoing rule was re-affirmed and applied against the parent in the later cases of Humel v. Parrish, 43 Utah 373, Farmer v. Christensen, 55 Utah 1, and Flora v. Flora, 84 Utah 143, that when the natural parent has relinquished his right to the control and custody of the children, in order to regain their custody and control which he has lost, he must show that the child is being neglected and mistreated by the adopting parents. The trial court, found at the conclusion of the trial in the instant case, that the appellant had relinquished her right to the custody and control of all four children by virtue of defendants Exhibit One, but owing to the fact that Wayne was ten years of age and had elected to return to the appellant, the court granted the writ of Habeas Corpus as to him, but denied the writ as to Linda, Sheryl and Karen. The court also granted the petition for adoption in the case of Linda, Sheryl and Karen, and denied it without prejudice as to Wayne because of his election. Thus the court held that the plaintiff relinquished her rights to the custody and control of Linda, Sheryl, and Karen, because of her execution and delivery of the written consent for their adoption. It was therefore necessary for the plaintiff to establish, which she failed to do at the trial, that Linda, Sheryl and Karen were being neglected and mistreated by the defendants.

The appellant not only failed to prove that the children were being neglected but the evidence shows that the interest, welfare and happiness of the children has been

improved during the time that they have lived with the defendants, from March 9, 1950, to the time of the trial on May 14, 1951, or for a period of 14 months.

The witnesses Henry R. Cooper, school principal at Woodruff school which Linda and Wayne attended (R. 171-173), and Lela Nelson (R. 168, 187, 188, 189), Ella C. Spillman (R. 181, 183), and Blanch Smith (R. 183-185), and Jess Bouwuis (R. 176, 181, 188, 189), all testified that they were acquainted with the defendants, had frequently visited their home and, that they had observed the conditions of the children, both in the home, in school, and in public. Their testimony is proof of the splendid manner in which the defendants were taking care of these children, making a good home for them and being good, faithful, devoted and loving parents. The children are living in a modern home, and have access to religious, and educational advantages, and that the children's future security, and moral welfare will be promoted by remaining with the defendants. The above witnesses testified that they had observed mutual love and affection exhibited by the children towards the defendants and by the defendants towards the children, and that Mrs. Waddoups was invariably at home taking care of the children when the witnesses called to visit them.

The children have lived with the defendants from June 2, 1949 to the present time, or for a period of approximately 28 months, with an interruption of about 7 weeks, from January 15 to March 9, 1950, and during which time the children have enjoyed all the advantages that could come to children by devoted and loving parents, and that

may be contrasted with the treatment the children were receiving when under the control of the plaintiff when they were moved around from one place to another.

And consider further the fact that the children would return to a strange mother and step-father. The advantages pointed to by Mr. Justice Latimer, in the majority opinion of this court in *Hardcastle v. Hardcastle*, 221 P. 2d. 883, are all in favor of the children in the case at bar, provided they are permitted to remain with defendants. And moreover, as the trial court found, the appellant now has two of her children and will likely give birth to others.

What is herein stated under defendants point 2, also sufficiently answers appellant's point 4 and 5. The cases therein relied on viz, *Jones v. Moore*, 213 P. 191, *Baldwin v. Nielson* 170 P. 2d. 179, and *Hardcastle v. Hardcastle*, 221 P. 2d. 883, are not in point. In none of those cases did the parent execute a written consent for adoption. And in all of those cases this court held that the natural parent had not abandoned the child. However, in the *Hardcastle* case, the question involving where the best interests of the child would be promoted was very close, and by a three to two decision, the mother was awarded the custody of the child. But as hereinbefore stated the advantages claimed for the child in the majority opinion in the *Hardcastle* case, by being awarded to the mother, argue in favor of the children remaining with respondents in the instant case.

At the trial defendants counsel asked plaintiff —
“You would have the court understand that from March 9th, up to the 29th of November, (1950) you had always

felt it was for the best interests of the children to be adopted by the Waddoups?" (R. 50). Plaintiff said "No" and testified that she changed her mind in July 1950. (R. 50). Evidently, plaintiff had forgotten the letters she wrote to defendants before and subsequent to July 1950.

On May 10, 1950, two months after plaintiff executed the written consent for adoption and relinquished her parental rights to the custody and control of the children, she wrote a letter to the defendants in which she stated — "I'm satisfied that the best thing for the babies has been done and am grateful that people as yourselves will have the blessings and reward of this life and eternal in watching the development of these little souls into useful citizens." (R. 51).

On October 2, 1950, about three months after plaintiff is supposed to have changed her mind, she wrote to the defendants and greeted them as "Dearest George and Maria," and in the course of the letter she said: "I don't want to shake their security. It means peace of mind and contentment to me." Then she refers to her unborn child which she expected in November 1950, and continued as follows: "Being full brothers and sisters, they should be together, having what you afford them, the hopes, advantages, environment that I could not give as natural parent." (R. 52).

On October 25th, plaintiff wrote a third letter to defendants and greets them as, "Dearest Maria and George." "I am fine and in better condition than I was prior to last week. Time is close. Any day I had thought about the paper (Consent for adoption of unborn baby)

to be drawn up before the child is born. Howard will have to send it when he comes to the hospital. I am to telegraph him when it happens. His consent and signature to both adoption and operation permit is mandatory. So I will call you from the hospital and tell you the details of when to come for the baby." (R. 52, 53).

The foregoing letter was followed by another letter, dated November 6, from plaintiff to defendants: "Dear Maria and George; I have a mixture of feelings, but I'll keep you informed, at any rate. Did you see about the paper? (consent for adoption). Howard came and went back but will return at the time, as it is mandatory that he sign paper too." (R. 53).

Two days later, on November 8, "Dear Maria and George: "You write and tell me, I will have the baby within eight days now, so we should be satisfied as what was done before and would be now." Then the letter goes on to arrange for delivery of the baby to the defendants at Beth's place. And she requested defendants to, "Bring the paper and Howard and myself can sign. I don't know how else it can be arranged." (R. 53).

The foregoing letters are important as they portray the true feelings of the plaintiff. They also definitely prove that plaintiff was continuously from March 9, 1950, to November 8, 1950, or for a period of eight months, highly pleased and contented because she had relinquished the children named in defendant's Exhibit One, to defendants for adoption. She was high in her praise of the care, nurture, advantages and environment the children were receiving and enjoying in the defendants

home — and plaintiff wanted her unborn baby to have the same care, nurture, advantage, and environment by being adopted by the defendants.

Yet after expressing herself as aforesaid, in about one month thereafter, she decided to take legal action against the very people whom she had so recently praised. And, either forgetting the letters, or believing that the defendants had destroyed them, plaintiff wanted the court to believe that she had changed her mind as early as July 1950. (R. 50).

Plaintiff offered in evidence "Exhibit A," copy of divorce decree entered in the Third District Court, on December 13, 1950, in which action she procured a divorce from her husband Howard Taylor. The court found (File, page 44) that the award of the children Linda, Sheryl and Karen to plaintiff in the divorce action, was not binding upon these defendants, because they were not parties to, nor aware of said action.

Attention is directed to the court's Exhibit A, the report from the Department of Public Welfare. From said report it will be seen that plaintiff has shown more interest for her own welfare than for her children. This conclusion is also supported by the record in this case. The Department of Public Welfare also expressed the opinion that the best interests of the children will be subserved by remaining with the defendants.

CONCLUSION

The plaintiff had a fair trial on the merits in this case, and the court had the opportunity to observe the appear-

ance of the plaintiff and defendants, and also had an opportunity to observe the appearance of the children and their condition with respect to their welfare.

At the conclusion of the trial, the court indicated that the plaintiff had relinquished her rights to the children by reason of having executed the written consent for adoption, and viewed the case as being a proceeding of an equitable nature, and that the controlling principle must be the best interests of the children. This view fully accords with the views expressed by this court on numerous occasions.

Considering the fact that the plaintiff had relinquished her right to the children and that the defendants relied thereon, and in good faith took the children into their custody, and have given these children the best possible care, and nurture, and will be able to afford them with educational, intellectual and moral training. It is respectfully submitted that the findings, conclusions and judgment of the court and the order of adoption made and entered by this court on June 18th and 19th, be affirmed.

Respectfully submitted

L. E. NELSON
Attorney for defendants
and respondents.