1953

Betty M. Miller v. Claude Pratt : Brief of Appellant

Utah Supreme Court

William L. Beezley; Attorney for Appellant;

IN THE SUPREME COURT
OF THE STATE OF UTAH

IN THE MATTER OF THE APPLICATION FOR A WRIT OF HABEAS CORPUS in behalf of STEWART HALLAND, a minor child; BETTY M. MILLER, plaintiff and Petitioner,

Plaintiff and Appellant,

CLAUDE PRATT, Superintendent of the STATE INDUSTRIAL SCHOOL OF OGDEN, UTAH,

Defendant and Respondent.

Case No. 8006

BRIEF OF APPELLANT

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STATEMENT OF FACTS

The appellant filed in the Third Judicial District Court, Salt Lake County Utah an application for a writ of habeas corpus, which alleged the statutory grounds for such writ, and in addition thereto,

showed in substance that the minor child, Stewart Halland, then 13 years of age was on January 17th, 1952 committed by Judge Rulon W. Clark, judge of the Second Juvenile Court, Salt Lake County, Utah to the State Industrial School at Ogden, Utah until he reached the age of 21 years. That appellant attached to said application as exhibits "A" and "B" copies of order of commitment, decree and judgment, and that during all of said times the appellant was and is a fit and proper person as mother of said child to have the custody and control of said minor, and that she is able and willing to correct his delinquencies. That on the 15th day of May, 1952 the child was paroled to appellant; that on the 4th day of February, 1953 said parole was revoked without a legal hearing being had. That the Juvenile Court made no findings of fact to support its judgment.

The respondent's answer and return to writ of habeas corpus for all purposes here, admitted the material allegations of the application except fitness of appellant to have custody of child but never raised the question of the jurisdiction of the District Court.

Without any evidence or testimony being introduced at the hearing the District Court dismissed said proceedings for the reason, no jurisdiction. (See order entered by court.)

The reply to said answer of respondent alleged that the Industrial school at no time had legal custody of said minor child and that at no time had the legal right to return said child to said school after having been released on parole.

STATEMENT OF POINTS

1. That the Third Judicial District Court, Salt Lake County, Utah had jurisdiction to hear and determine the issues as framed by the pleadings herein and erred in dismissing said cause.

2. That the Juvenile Court had no jurisdiction in the premises.

3. That the Juvenile Court failed to make findings of fact to support its decree and judgment and as to whether or not appellant was a fit and proper person to have the custody and control of said minor.

4. That said child was denied the right of a hearing on the revocation of his parole.

5. That appellant was awarded the custody and control of said minor by Decree of the Third Judicial District Court, Salt Lake County and that at no time or at all has said custody been modified or revoked.

ARGUMENT

Point 1 and 2, Section 14-7-4 Utah Code Annotated 1943 sub-division 3 and 4 provides regarding Juvenile Court:

> "When jurisdiction shall have been acquired by the court in the case of any child, such child shall continue for the purposes of such case under the jurisdiction of the court until he becomes twenty-one years of age, unless discharged prior thereto or unless he is committed to the State Industrial School or to the district court as hereinafter provided."
>
> "Nothing herein contained shall deprive other courts of the right to determine the custody of children upon writs of habeas corpus, or when such custody is incidental to the determination of causes in such courts. Such other courts may, however, decline to pass upon questions of custody and may certify the same to the juvenile court for hearing and determination or recommendation."

It will be noted from sub-division three that when the juvenile court committed the child to the industrial school it forwith lost jurisdiction of the cause and child and the doors of said court was closed for all future purposes regarding such child and by way of relief the child was forced to seek the district court for the purpose of establishing his legal rights. The court in this matter didn't even attempt to function under sub-division four, but even if he had

such act would not have conferred jurisdiction in the juvenile court as its jurisdiction had been extinguished by sub-division three.

Point 3, 4, and 5. We refer to exhibit "A" wherein said decree and judgment states a conclusion, to-wit; "that father is divorced and Betty Miller, parents, guardian, custodian, should be deprived of his custody.

The above is a mere conclusion of law and a matter that should have been tried on the facts. The judgment and decree of the juvenile court is absolutely void, as the same is not supported by any findings, which to say the least are mere conclusions and of no avail in the proceedings. The appellant was entitled to her hearing and day in court for the purpose of determining the matters involved.

Corpus Juris Secundum Vol. 39, page 587, Section 47 holds that a writ of habeas corpus is a proper remedy by which to obtain the discharge of infants from juvenile asylums, training schools, reformatories, and other institutions to which they have been committed.

Flora vs. Flora, 84 Utah 143, 29 P. 2nd 498 holds that rights of parents to custody of children are to be respected and upheld.

In the case of *Jones vs. Moore*, 61 Utah 383, 213.

p. 191 it was held that a writ of habeas corpus for release of minor child that ordinarily inquiry in habeas corpus proceedings is legality of restraint, where such proceedings are brought for custody of children; inquiry extends far beyond the ordinary inquiry, since proceedings is one which is equitable in the highest degree.

Cook vs. Cook, 67 Utah 371, 248 p. 83, writ is available to parent to obtain discharge of child held in custody of probation officer as juvenile delinquent, in irregular proceedings beyond jurisdiction of juvenile court. As to jurisdiction of District Court see *Harrison vs. Harper*, 44 Utah 541, 142 p. 716.

In *Re interest of Bennett*, 77 Utah 247, 293 p. 963 held that parents are entitled to custody of minor child if they are fit and proper persons to have the care and custody.

A writ of habeas corpus may be resorted to in order to afford review of law question which cannot otherwise be raised or where ordinary proceedure would prove inadequate because of importance of issue involved. *Ex Parte Silverstein*, 126 p. 962 (Cal.)

In the case of *Sherry vs. Doyle*, 68 Utah, 249, p. 250, it was held presumption rights of custody of minor child is in favor of parents insofar as third parties are concerned.

Bedford vs. Anderson, 56 Utah 287 as to the question of guardianship of minor over the rights of third persons thereto read above case, which goes into the question involved herein in detail and decides the question as to the appellants rights of custody of child. To take custody from mother Court must find she is unfit to have care and custody.

See also *State vs. Butcher*, 74 Utah, 275, 279 p. 497 holds facts must be stated separately and distinctly.

The case of *Mill vs. Brown*, 31 Utah, 473, 88 p. 609, held that parents cannot be deprived of custody of child except on proper findings.

Ex parte Ridley, 106 Pacific, 549, (Okla.)

Ex parte Albori, 21 Pacific, 2nd, 423, (Calif.)

Zolantakis, 70 Utah, 296, 259 Pacific 1044.

As to the question of appellant's right to have been heard regarding the revocation of parole of said child, read above cases which hold that an alleged violation of parole is entitled to a hearing before a court of competent jurisdiction.

CONCLUSION

In conclusion we submit:

That the Third Judicial District Court erred in dismissing by order this action on the ground and for the reason as shown by said order of record, no jurisdiction.

That the appellant herein has been denied her day in court as provided for under the law.

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