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Leonard Black and Vera Johnson v. David F. Anderson : Brief of Appellants

Utah Supreme Court

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In the Supreme Court of the State of Utah

LEONARD BLACK and VERA JOHN-
SON, also known as Vera Johnson
Black,

Plaintiffs and Respondents,

vs.

Case No.
8234

DAVID F. ANDERSON, Judge of the
Juvenile Court of Washington County,
State of Utah, et al.,

Defendants and Appellants.

LED

SEP 22 1954

BRIEF OF APPELLANTS

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ARROW PRESS, SALT LAKE

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In the Supreme Court of the State of Utah

LEONARD BLACK and VERA JOHNSON, also known as Vera Johnson Black,

Plaintiffs and Respondents,

vs.

DAVID F. ANDERSON, Judge of the Juvenile Court of Washington County, State of Utah, et al.,

Defendants and Appellants.

Case No.
8234

BRIEF OF APPELLANTS

STATEMENT OF FACTS

Vera Johnson also known as Vera Johnson Black is the polygamous wife of Leonard Black and from this unlawful relationship there have been born eight children ranging, now, from eighteen to two years of age. Subsequent to the so-called "Short Creek Raid" by Arizona State authorities, these children, the eldest being seventeen years of age, were declared and adjudged in juvenile court to be neglected

children within the meaning of the laws of Utah (R. 7).
That court held, in part:

“That the home of Leonard Black and Vera Johnson Black at Short Creek, Utah, is an immoral environment for the rearing of said children.

“That Leonard Black, the father, and Vera Johnson Black, the mother of said children, have each knowingly failed and neglected to provide for said children the proper maintenance, care, training and education contemplated and required by both law and morals.

“That both the public welfare and the welfare of the children requires that the rights of custody and control over said children be taken from their parents” (R. 13, 14).

The parents, above referred to, were thereupon deprived of their custody and control over said children and the children made wards of the juvenile court and subjected to the *continuing jurisdiction* of that court. The right of custody and control over said children was awarded to the Utah State Department of Public Welfare, said department being authorized and instructed to place the children in suitable foster homes; provided, however:

“* * * that said children may remain in the actual custody of their parents upon the following conditions, and only upon said conditions, to-wit:

“(a) That the parents and each of them shall at all times comply with the laws of Utah relating to marriage and sexual offenses.

“(b) That the parents and each of them shall at all times refrain from counseling, encouraging and advising the children to violate the laws of Utah relating to marriage and sexual offenses.

*“(c) That the parents and each of them shall counsel and advise the children to obey the laws of Utah relating to marriage and sexual offenses. This requirement shall not be satisfied by the pretense of telling the children that they have ‘free agency’, but it is intended that the parents shall affirmatively encourage their children to abide by the laws of Utah, and that the children should do so in disregard to any religious doctrines to the contrary. * * *” (R. 8).*

Of the above recited conditions the parents complained by writ of habeas corpus, issued out of this Honorable Court and made returnable before the Fourth Judicial District Court in and for Utah County, State of Utah, the Honorable William Stanley Dunford presiding. There were other matters raised in the complaint for said writ but with which, in this cause, we are not concerned. *This appeal is being taken solely for the purpose of determining what the law is, in this State, as to the matters subject to review or collateral attack in habeas corpus proceedings.*

There is now in process an appeal from the ruling of the juvenile court in this cause which will concern itself with all other issues of which these respondents complain. Your appellants here seek only this Court’s guidance in the handling of similar cases, with which the juvenile courts of this State are now faced or in which they may hereinafter become involved. The Honorable Judge of the Fourth Judicial District ordered, adjudged and decreed:

“(a) That the judgment of the Juvenile Court of Washington County, State of Utah, made and entered on or about the 11th day of May, 1954, is null and void as in violation of the Amendments

One and Fourteen of the Constitution of the United States of America, and in violation of Sections 1-4-7 of Article One of the Constitution of the State of Utah, and in derogation of the plaintiffs' rights of freedom of speech and freedom of religion.

“(b) That the custody of the children of the plaintiffs is hereby restored to their parents, the plaintiffs, upon the conditions, pending the appeal of the above entitled case, that the parents do not live together as man and wife, that they retain the custody of the children within the geographic bounds of the State of Utah and return them to this court or to any other court which may have jurisdiction at any time that they are ordered by said court to do so” (R. 45, 46).

We concede that the writ of habeas corpus did lie and was properly made returnable before the district court and further that that court could properly consider and adjudicate the legality of the restraint. However, we think that the district court did err, after having considered the legality of the restraint and ruled thereupon, by proceeding thereafter to adjudicate questions going to the qualifications and fitness of the parents to retain custody of their children. Counsel for defendants made objection to this collateral attack and review of the findings of the juvenile court (R. 25, 26), and we here renew that objection. We complain of that portion of the findings of fact of the district court, made as follows:

* * * * *

“7. That the plaintiffs and parents of the said children, Leonard Black and Vera Johnson Black, are with the single exception of the alleged practice of plural marriage, people of high moral character

and integrity, and that the community in which they live is void from many of the evils that beset more populous communities such as smoking, drinking, divorce, unemployment, juvenile vandalism, thievery and juvenile delinquency and that it is for the best interest of the said children to be in their homes at Short Creek under the custody of their parents, the plaintiffs in the above entitled action" (R. 43).

* * * * *

for the reason and upon the ground that such a finding was made upon matters reviewable upon appeal from the order of the juvenile court, but not subject to review or collateral attack in habeas corpus proceedings.

It would serve no useful purpose to recite the facts presented to the Fourth Judicial District Court. We confine ourselves to the principle of law involved and need not impose upon this Court the onerous task of studying the transcript.

STATEMENT OF POINTS

POINT I

THE COURT ERRED IN DECLARING THE JUDGMENT OF THE JUVENILE COURT NULL AND VOID AS IN VIOLATION OF AMENDMENTS ONE AND FOURTEEN OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA AND OF ARTICLE ONE OF THE CONSTITUTION OF THE STATE OF UTAH.

POINT II

THE COURT ERRED IN REVIEWING IN HABEAS CORPUS PROCEEDINGS THE FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE JUVENILE COURT AS TO SUBJECT MATTER RELATING TO FITNESS OF PARENTS TO HAVE CUSTODY OF CHILDREN.

ARGUMENT

POINT I

THE COURT ERRED IN DECLARING THE JUDGMENT OF THE JUVENILE COURT NULL AND VOID AS IN VIOLATION OF AMENDMENTS ONE AND FOURTEEN OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA AND OF ARTICLE ONE OF THE CONSTITUTION OF THE STATE OF UTAH.

A companion case pending before this Honorable Court, titled "*State of Utah, In the Interest of Elsie Johnson Black, et al.*," seeks an adjudication of the constitutionality of the judgment of the juvenile court as declared void in the proceedings from which we here appeal. Therefore, appellants request the Court's permission to waive argument on this Point I for the reason that the said companion case will resolve that issue.

POINT II

THE COURT ERRED IN REVIEWING IN HABEAS CORPUS PROCEEDINGS THE FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE JUVENILE COURT AS TO SUBJECT MATTER RELATING TO FITNESS OF PARENTS TO HAVE CUSTODY OF CHILDREN.

The Utah statute, 55-10-5, U. C. A. 1953, provides in part:

“The juvenile court shall have exclusive original jurisdiction in all cases relating to the neglect, dependency and delinquency of children who are under eighteen years of age, * * *.”

And, also:

“Nothing herein contained shall deprive other courts of the right to determine the custody of children upon writs of habeas corpus, * * *.”

Section 55-10-34, U. C. A. 1953, makes a final judgment or order of the juvenile court depriving a parent, custodian or guardian of the custody of a child appealable direct to the Supreme Court; and, this Court has held that matters reviewable on appeal, but which do not go to the juvenile court's jurisdiction are not subject to review or collateral attack in habeas corpus proceedings. *Ex Parte S. H.*, ... Utah ... , 264 P. 2d 850. Our Court has also held:

“In habeas Corpus proceedings, nothing is inquired into except the legality of the restraint.”

Jones v. Moore, 61 Utah 383, 213 P. 191, 193.

Chapman v. Graham, ... Utah ... , 270 P. 2d 821.

From the case of *Jensen v. Sevy*, 103 Utah 220, 134 P. 2d 1081, confusion, if any there be, springs. That cause was before this Court on an application for writ of mandamus to compel the district judge to hold a hearing on a writ of habeas corpus in a child custody case. An alternative writ issued directing the court to hold such hearing, or to show cause why he did not do so. The court below filed an answer joining issue to show cause and justify. It was the conclusion and order of the district court that that court was without jurisdiction or authority to hear or consider the writ of habeas corpus or to make any determination therein with reference to the custody of the child. The opinion of Mr. Justice Larson, concurred in by Justice Moffat, holds, as the writer interprets that holding, that the district court *could* decline to pass upon questions of custody and leave the same for determination by the juvenile court under that portion of Section 55-10-5(4), U. C. A. 1953, which provides:

“* * * Such other courts may, however, decline to pass upon question of custody and may certify the same to the juvenile court for hearing and determination or recommendation.”

This leaves, by inference at least, the proposition that the district court might, within the exercise of its discretion, hear, consider, review and determine matters of custody theretofore decreed upon by the juvenile court. In the case at bar, the Honorable Judge William Stanley Dunford so proceeded, pointing out in his memorandum decision that three judges in concurring opinions held, in *Jensen v. Sevy*, supra, that where the juvenile court has obtained jurisdiction of a child because of neglect, dependency or delin-

quency, the district court must dismiss the writ and it is not discretionary, but distinguishing that case from the case at bar for the reason that the petitioner there had not exhausted his legal remedy by seeking modification of the conditional order of the juvenile court (R. 25, 26).

Let us again reiterate that we are not here complaining of the holding of the district court as to legality of the restraint, although we do not admit that such was not error. We contend that the finding as to the illegality of the restraint entitled the petitioners only to the relief sought within the scope of habeas corpus—the discharge of the children from custody. Such discharge of the children could have been made conditional by the court, either upon review of the holding of the district court or upon the outcome of an appeal from the finding, as to neglect, of the juvenile court. *Chapman v. Graham*, supra. However, we earnestly urge that further findings should not have been made, nor order thereon issued, depriving the juvenile court of its continuing jurisdiction over the children previously acquired by that court under authority of Section 55-10-5(3), U. C. A. 1953.

The case of *Jensen v. Sevy*, supra, also sustains the following propositions:

(A) That the Legislature has the power to give to the juvenile court exclusive jurisdiction of cases of neglect or delinquency of children.

(B) That the right to the writ of habeas corpus is in no way infringed by legislation giving the juvenile court exclusive jurisdiction of cases of neglect or delinquency of children.

(C) That subsection (4), 55-10-5, U. C. A. 1953, cannot be construed to apply to cases in which the State has become a party by intervention of the juvenile court.

As to (C) above, Mr. Justice Hoyt said:

“* * * To hold otherwise is to hold that by reason of subsection (4) * * * the district courts have concurrent jurisdiction with the juvenile courts in cases of alleged neglect of children.
* * *

Appellants here contend that if subsection (4) of 55-10-5, U. C. A. 1953, is to be construed as being applicable to the case at bar, the result of such construction would be the emasculation of subsection (3) of that statute, which provides:

“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.”

Therefore, the question presented here resolves itself to this—and we ask the Court:

On the writ of habeas corpus may the district court, after disposing of any question of the legality of the restraint of a neglected, dependent or delinquent child, disturb the previously acquired jurisdiction of the juvenile court by considering questions of fitness and custody of a parent or guardian of such a child which are reviewable on appeal to the Supreme Court, but which do not go to the juvenile court's jurisdiction and are not subject to review or collateral attack in habeas corpus proceedings?

CONCLUSION

Our Legislature, in its wisdom, has for all practical purposes conferred parental powers and duties upon the juvenile courts of this State over neglected, dependent or delinquent children. There have been vested no such responsibilities upon the district courts of this State. We think it now well settled in this State that if the juvenile court has jurisdiction in the premises, its judgment, order, or decree is final as to all parties to the proceedings, is not subject to collateral attack, and cannot be challenged except in a direct action brought in some appellate tribunal. Therefore, in the case at bar, it *may not* be successfully contended that the district court could utilize the writ of habeas corpus for the purpose of proceedings in error. There is no doubt in our mind that had there been no question raised as to the legality of the restraint of these children, the Honorable Court below would have dismissed the writ; and done so upon the ground that the issues raised (as to the parents' fitness, right to custody, neglect, delinquency, etc.) were not subject to review in habeas corpus proceedings. That is the well established law of this State.

For what reason then should the district court review such factual matters in this case? Did such review accomplish a desired result? We think not. Sufficient it would have been for the district court to have confined its findings to the issues raised within the scope of habeas corpus. As the record in the cause now stands, we have conflicting findings made by the juvenile court and by the district court, neither of which are final, which tend only to confuse the real issue as to the right to custody of these

children. That issue can only be determined through appropriate appeal to this Court. The question as to the legality of the restraint, on jurisdictional or constitutional grounds, is in no way related to the matters appealable directly from the juvenile court to this Honorable Court. Should we concede, for the purpose of argument, but not admitting the fact, that the restraint was unlawful, would not the discharge of the children sought by the petitioners for the writ, conditional or unconditional, have accomplished the object of, and satisfied the purpose of, the writ of habeas corpus. We so conclude.

The findings of the district court as to whether or not the persons subject to the proceedings in the juvenile court were neglected children within the meaning of the laws of Utah should be set aside and held for naught.

Respectfully submitted,

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