

1988

Steven H. Swayne v. L.D.S. Social Services, John Doe, and Jane Doe : Unknown

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

880384

September 8, 1989

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Clerk, Supreme Court, Utah

Geoffrey J. Butler
Clerk of the Court
Utah Supreme Court
332 State Capitol
Salt Lake City, Utah 84114

Re: Swayne v. LDS Social Services
Case No. 880384

Dear Geoff:

Pursuant to Rule 24(j), R. Utah S. Ct., defendant LDS Social Services hereby submits the following supplemental authority for Point III of its Respondents' Brief, pertaining specifically to the validity of the presumption of abandonment in U.C.A. § 78-30-4(3)(c).

In the recently decided case of Michael H. v. Gerald D., 109 S. Ct. 2333 (June 15, 1989), the United States Supreme Court upheld a statute that "conclusively presume[s]" a child born of a married mother to be the issue of her husband. The child's natural father challenged the statute as violative of both procedural and substantive due process. The Court held that the statute did not violate procedural due process because the conclusive presumption merely stated a valid substantive rule of law. Id. at 2340. The Court rejected the substantive due process claim on the grounds that an unwed father who lacks a substantial relationship with his child has no fundamental constitutional right to rebut the presumption of legitimacy. Id. at 2341-45.

Sincerely,

KIRTON, McCONKIE & POELMAN



Merrill F. Nelson

MFN:gt