

2010

The State of Utah v. B.W.H. and S.H. : Guardian Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, in the interest of
A.W.,
Child under the age of eighteen years,

Appellee.

vs.

B.W.H. and S.H.,

Appellants.

Case No. 1025019

Appellate Case No: 20101010-CA

GUARDIAN AD LITEM'S BRIEF

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UTAH APPELLATE COURTS

MAY 31 2011

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- Utah Code Ann. § 78B-6-110
- Appellate Order for Full Briefing, filed March 1, 2011

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GUARDIAN AD LITEM'S BRIEF

JURISDICTION

This Court has appellate jurisdiction over juvenile court orders. Utah Code Ann. § 78A-4-103(2)(c). The court entered its final order on December 1, 2010. Appellants filed their notice of appeal on December 16, 2010.

ISSUES

1. Whether the juvenile court improperly relied upon circumstances that did not exist at the time Appellants filed their petition to adopt in order to support its conclusion that the petition was brought in bad faith. This issue requires this Court to independently review section 78B-5-825, particularly the phrase "brought or asserted." *Matthews v. Olympus Constr. L.C.*, 2009 UT 29, ¶ 7, 215 P.3d 129. When construing a statute, this Court looks first to the plain language of the statute with the primary goal to give effect to legislative intent. *R.A. McKell Excavating, Inc. v. Wells Fargo Bank, N.A.*, 2004 UT 48, ¶ 8, 100 P.3d 1159. This Court assumes that each term was used advisedly. *Id.* Where statutes employ more than one term, this Court avoids conflating the two. *Still Standing Stable, L.L.C. v. Allen*, 2005 UT 46, ¶ 8, 122 P.3d 556. It is unclear whether the Harpers ever preserved this claim. If that is the case, this Court would normally review the claim under a plain error standard, but it cannot do so because the Harpers did not argue plain error in their opening brief. *State v. Weaver*, 2005 UT 49, ¶ 2, 122 P.3d 566.

2. Whether the juvenile court erred in finding that Appellants brought their petition for adoption in bad faith if Appellants were sincere in their desire to adopt

A.W. and no other petitions for adoption had been filed at the time they filed their petition. The issue of lack of good faith is a fact-intensive, subjective issue relying on numerous findings, which this Court declines to set aside absent clear error. Utah R. Civ. P. 52(a). So long as the record provides a basis for the lack-of-faith findings, this Court should decline to second guess the trier of fact. Utah R. Civ. P. 52(a); *In re B.R.*, 2007 UT 82, ¶ 12, 171 P.3d 435 (where there is reasonable record support, finding will not be set aside). Moreover, a party challenging a fact-intensive issue must marshal the supporting evidence and demonstrate that the evidence is legally insufficient to support the challenged finding. *Still Standing Stable*, 2005 UT 46 at ¶ 8, n.2.

3. Whether the Harpers perfected notice of their adoption petition in time to achieve standing in the Child's adoption. This issue requires this Court to independently interpret section 78B-6-110. *Matthews*, 2009 UT 29 at ¶ 7. When construing a statute, this Court looks first to the plain language of the statute with the primary goal to give effect to legislative intent. *R.A. McKell Excavating*, 2004 UT 48 at ¶ 8.

CONTROLLING PROVISIONS

- Utah Code Ann. § 78B-5-825 provides:
 - (1) In civil actions, the court shall award reasonable attorney fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith, except under Subsection (2).
 - (2) The court, in its discretion, may award no fees or limited fees against a party under Subsection (1), but only if the court:
 - (a) finds the party has filed an affidavit of impecuniosity in the action before the court; or
 - (b) the court enters in the record the reason for not awarding fees under the provisions of Subsection (1).
- The full text of the notice provision of Utah's adoption code, Utah Code Ann. § 78B-6-110, is in an addendum.

STATEMENT OF CASE

The underlying case is a child welfare/adoption case involving A.W., born January 2005. Child had been in Division custody since 2008. 6-30-10 Ord.p.1¶
2.¹ At the time of the July 2009 voluntary relinquishment, Child had been living with the Harpers, who were her foster parents. *Id.*¶ ¶2-3. On October 6, 2009

¹ Documents from the record will be referred to by date and descriptor, either in the text or in a citation.

Child was removed from the Harper placement for a number of reasons including inappropriate physical contact. 10-29-09 Not.Agency Actn. Two days later, on October 8, 2009, the Harpers petitioned to adopt Child, neglecting to perfect service on the other parties. On October 10, 2009, Child was placed with another foster family who has since adopted her.

Since the time of the removal, the Harpers began filing a number of motions, some pro se and some via counsel, again without proper notice to the other parties. 6-30-10 Ord.p.2 ¶ 5. On March 8, 2010, the court stayed proceedings ordering the Harpers to either perfect service or to brief whether service had been waived.² The Guardian ad Litem received notice of the Harpers' adoption petition on April 6, 2010, although the Division would not receive notice until June 4, 2010. *Id.* p.3 ¶14; p.10 ¶¶ 2-3. On April 21, 2010, the Division, making a special appearance in the Harpers' adoption matter, moved to dismiss for insufficiency of process. A week later, the Child's adoption by her current foster parents was finalized.

² On March 15, 2010, the Child's current foster parents petitioned to adopt her, perfecting service on those parties entitled to notice. *Id.* p.2 ¶¶10-11; p.11 ¶15. On April 28, 2010, their adoption was finalized.

Upon hearing of the adoption, the Harpers filed an objection and motion to vacate. *Id.* p.3 ¶5. The court set the motion for a two-day evidentiary hearing for June 14 and 15, 2010. Ten days prior to this hearing, the Harpers perfected service on the Division.

On June 30, 2010, the court entered its written order denying the Harpers' motion to vacate the Child's adoption on the basis that the Harpers never perfected service. This order was followed by a October 28, 2010 order granting the Guardian ad Litem's motion for attorney fees, and later a December 1, 2010 disposing of post-judgment motions.

On December 16, 2010, the Harpers filed their notice of appeal.

Upon receiving the parties' Appellate Rule 55 pleadings, this Court ordered full briefing, identifying two issues in particular to be briefed:

- (1) whether the juvenile court erred in finding that Appellants brought their petition for adoption in bad faith if Appellants were sincere in their desire to adopt A.W. and no other petitions for adoption had been filed at the time they filed their petition; and
- (2) whether the

juvenile court improperly relied upon circumstances that did not exist at the time Appellants filed their petition to adopt in order to support its conclusion that the petition was brought in bad faith.

3-1-11 App.Ord.

SUMMARY OF ARGUMENTS

The phrase "not brought or asserted in good faith," allows the trier of fact to assess lack of good faith at the bringing or initiation of the action, as well as during its assertion or course of litigation. In this case, the record provides ample support for bad faith from the bringing of the action to its conclusion. While the Harpers may have sincerely desired to adopt the Child, that desire was motivated by a desire to vindicate themselves and to bully and intimidate those that got in their way. The Harpers failed to marshal the evidence supporting this fact-intensive ultimate finding. The Harpers failed to timely perfect the requisite service of the adoption statute, resulting in their lacking standing in the prior adoption. This Court should affirm the juvenile court's orders.

ARGUMENTS

1. BAD FAITH IS A FACT-INTENSIVE ISSUE.

This Court asked the parties to focus on two areas of the attorney fee claim:

(1) whether the trial court could consider post-filing events to determine lack of good faith; and (2) whether a sincere desire to adopt could preclude a finding of lack of good faith. 3-1-11 App.Ord.

Brought or asserted. This Court asked "whether the juvenile court improperly relied upon circumstances that did not exist at the time Appellants filed their petition to adopt in order to support its conclusion that the petition was brought in bad faith." *Id.* This claim requires statutory construction, which this Court independently reviews. *Matthews v. Olympus Constr. L.C.*, 2009 UT 29, ¶ 7, 215 P.3d 129. The statute in question is from the judicial code:

(1) In civil actions, the court shall award reasonable attorney fees to a prevailing party if the court determines that the action or defense to the action was without merit and **not brought or asserted in good faith . . .**

Utah Code Ann. § 78B-5-825 (emphasis added).

When construing a statute, this Court looks first to the plain language of the statute with the primary goal to give effect to legislative intent. *R.A. McKell Excavating, Inc. v. Wells Fargo Bank, N.A.*, 2004 UT 48, ¶ 8, 100 P.3d 1159. This Court assumes that each term was used advisedly. *Id.* Where statutes employ more than one term, this Court avoids conflating the two. *Still Standing Stable, L.L.C. v. Allen*, 2005 UT 46, ¶ 8, 122 P.3d 556 (analyzing whether trial court conflated "without merit" with "not brought or asserted in good faith.>").

The two terms in question are "brought" and "asserted." Assuming the legislature used two different terms for a reason, and avoiding conflating the two, the most plausible distinction is that the term "brought" refers to initiating the action, while the term "asserted" refers to carrying the action forward even though good faith or the merits of the matter would suggest otherwise. Indeed if lack of good faith could be measured only at the initiation of an action, then the statute, despite the language "defense to the action" would not be operable.

The trial court likewise made this distinction: "While much of these circumstances did not exist at the time that the adoption petition was filed, nevertheless the petition was "brought or asserted" in bad faith due to the

development of these facts subsequent to the filing of the petition." 12-1-10 Ord, p.3 ¶ 3.

Thus, the trial could properly examine whether the Harpers brought or initiated their petition without good faith as well as whether they continued to assert it or litigate it without good faith. This Court should affirm the fact-intensive finding of lack of good faith.

2. THE ADOPTION PETITION WAS NOT IN GOOD FAITH.

Sincerity or bad faith. This Court also asked "whether the juvenile court erred in finding that Appellants brought their petition for adoption in bad faith if Appellants were sincere in their desire to adopt A.W. and no other petitions for adoption had been filed at the time they filed their petition." 3-1-11 App.Ord.

Preservation. It is unclear whether the Harpers preserved this claim. If they cannot demonstrate this, then this Court would normally consider the claim using a plain-error standard of review. However, where plain error is not argued

in the opening brief, this Court generally declines to consider the claim. *State v. Weaver*, 2005 UT 49, ¶ 12, 122 P.3d 566.

Standard of review. The question of the Harpers sincerity is a fact-intensive issue left to the trier of fact. Utah R. Civ. P. 52(a); *In re B.R.*, 2007 UT 82, ¶ 12, 171 P.3d 435 (where there is reasonable record support, finding will not be set aside). Where a party challenges a bad-faith finding, the party must marshal the evidence supporting that finding and then demonstrate that the evidence is legally insufficient to support the challenged finding. *Still Standing Stable, L.L.C. v. Allen*, 2005 UT 46, ¶ 8, n.2, 122 P.3d 556.

Here, the issue of sincerity is particularly subjective, particularly fact-intensive, and highly reliant on credibility findings. In any event, the issue of sincerity is one requiring a trial judge "to form a thoughtful, experience-based evaluation . . . in the drama of the courtroom. . . . The demeanor of witnesses, as has been said so many times by appellate courts, is nearly impossible to perceive from the written record." *In re Z.D.*, 2006 UT 54, ¶¶ 49, 51, 147 P.3d 401 (Wilkins, J., concurring in result)

Good faith defined. Good faith is defined as having (1) honest belief of the propriety of the activities in question; (2) no intent to take unconscionable advantage of others; and (3) no intent to or knowledge of the fact that the activities in question will hinder, delay or defraud others. *In re Discipline of Sonnereich*, 2004 UT 3, ¶ 48. To establish that an action was without good faith, one need only demonstrate that one or more of these factors is lacking. *Id.*

Here, the court rejected Mr. Harper's version of events, finding "his explanations for this conduct [lack of boundaries with the Child, other foster children, other foster parents, and refusing to comply with Division instructions] lacked credibility." 6-30-10 Ord. p.6 ¶ 23. Moreover, the record supports that Mr. Harper could not have had an honest belief in the propriety of his being an appropriate adoptive parent when he could not even be trusted to foster the Child, or any other child for that matter and when the court could not trust him to be in the presence of the Child and her foster/adoptive parents. *Id.* p.11¶6.

While it is entirely possible that the Harpers had a subjectively sincere desire to adopt, the desire was not backed by an honest belief of the propriety of the activities in question, a lack of intent to take unconscionable advantage of others. Moreover, the evidence supports that the adoption petition was brought in

part to hinder others. 2004 UT 3 at ¶ 48. More importantly, the desire to adopt was not fueled by good faith (or best interests)³ but by the desire to vindicate themselves, to harass and to foster "an unhealthy obsession" with the Child. 6-30-10 Ord. pp. 6-7, ¶¶ 25-26. Indeed behavior such as stalking Division employees,⁴ stalking the Child, stalking foster parents all indicate lack of good faith. *Id.* See *In re Sheville*, 2003 UT App 141, ¶ 6, 71 P.3d 179 (affirming lack of good faith where petitioner's "well-documented improper behavior" indicated she did not have ward's best interests in mind).

Appellants have not marshaled the evidence supporting the numerous factual bases in the December 2010 attorney fee order supporting the ultimate finding of not-in-good-faith. 12-1-10 Ord. p.3¶ 3.

Here, the Harpers knew the following prior to bringing the adoption petition:⁵

³ Indeed, the court found the Harpers had "no legitimate best interest arguments." 12-1-10 Ord. p.3.

⁴ The juvenile court characterized the frequency of Mr. Harper's contacts with the Division as "bizarre." 6-30-10 Ord. p.7 ¶ 26.

⁵ While some of this behavior had not yet been administratively affirmed, the behavior itself occurred prior to the adoption petition. The Harpers knew or should have

- Mr. Harper's conviction of disorderly conduct. 6-15-10 Tr.70:20-25.
- Child had disclosed to a caseworker that Mr. Harper regularly shared a bed with her. 10-29-09 NotAgencyActn.
- Mr. Harper interfered with the October 6, 2009 investigation of the sex abuse allegations. *Id.*; 12-3-09 Post Placement Report.
- The foster children reported that Mr. and Mrs. Harper openly discussed divorcing and dividing the children between them. *Id.*
- Mr. Harper told the Child not to talk about the sleeping arrangements. *Id.*
- Mr. Harper demanded massages from the foster children in exchange for privileges. *Id.*
- When asked about the investigation, Mr. Harper admitted he could have "accidentally" bitten the Child on the butt when he was wrestling with her. *Id.*

The Harpers' adoption petition was filed shortly after much of the above facts came to light. Also prior to the adoption petition, Mr. Harper demonstrated intimidating and bullying behavior, suggesting that any desire to adopt the Child was motivated by an unhealthy obsession with the Child, along with a desire to get back at the Division, to intimidate Division workers and to bully foster parents and foster Children. 6-30-10 Ord. p.11¶6.

known that such behavior was not in the Child's best interests and would render them factually or legally ineligible to adopt.

The Harpers knew the following after the bringing, but during the assertion, of the petition:

- Mr. Harper was supported for physical abuse of a child in his home, which was affirmed administratively. 6-14-10 Tr.34:10-15
- As a result, Mr. Harper is on the child abuse registry. *Id.* 34:19-20.
- Mr. Harper was supported for physical abuse of his daughter. *Id.*
- Since the time of the removal, Mr. Harper stalked the Child, asked the other foster mother for a sleep over and stalked the Division office. *Id.*
- The Division's post-placement report detailed ten major concerns as to why it would no longer support the Harpers' adoption petition. *Id.*
- An administrative law judge affirmed the Child's removal, essentially detailing the above factors. 1-29-10 Adm.Dec.
- Mr. Harper stalked other foster children. 6-14-10 Tr.37:12-18.
- Mr. Harper had a substantiation of physical abuse, which was affirmed in an administrative law hearing.

The record contains an ample basis for the fact-intensive finding of bad faith. Probably the most telling finding was that the court could not trust Mr. Harper to be in the presence of the Child, must less trust him as Child's adoptive father: "Mr. Harper's bizarre behavior as described in various pleadings made the

Court uneasy about the safety of the child and the adoptive parent." 6-30-10 Ord. p. 11 ¶ 6. This Court should affirm the attorney fee order.

3. THE HARPERS NEVER ACHIEVED STANDING PRIOR TO THE CHILD'S ADOPTION.

The Harpers never perfected notice until after the Child's April 28, 2010 adoption was completed, thus they never achieved standing. This claim turns on statutory interpretation, which this Court independently reviews. *Matthews v. Olympus Constr. L.C.*, 2009 UT 29, ¶ 7, 215 P.3d 129. When construing a statute, this Court looks first to the plain language of the statute with the primary goal to give effect to legislative intent. *R.A. McKell Excavating, Inc. v. Wells Fargo Bank, N.A.*, 2004 UT 48, ¶ 8, 100 P.3d 1159.

Utah law requires that notice be given to the person or agency whose consent is required. Utah Code Ann. § 78B-6-110(2)(a). The notice must:

- be served at least thirty days prior to the final dispositional hearing;
- specifically state that the person served must respond to the petition within 30 days of service if he intends to intervene in or contest the adoption;

- state the consequences of failure to request relief within 30 days of notice;
- state where the person may obtain a copy of the adoption petition.

Utah Code Ann. § 78B-6-110(5).

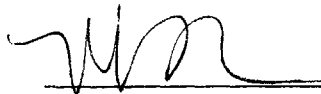
Here, the Harpers essentially concede they did not provide appropriate statutory notice until after the Child had been adopted. The Harpers rely on the doctrine of general appearance, which is to no avail, because any appearances made by the parties requiring notice was pursuant to related juvenile court cases and not to the Harper's adoption case and because the statutory adoption notices are unique. Indeed, the juvenile court found that appearance by motion "does not waive the right to the specific notice requirement in UCA 78B-6-110(5).

Therefore the earliest date the pre-hearing motions could have been considered was after the custodian of the child received notice which complied with UCA 78B-6-110, which was June 4, 2010," a date well after the Child's April 28, 2010 adoption. 6-30-10 Ord. p.10, ¶ 4.

CONCLUSION

This Court should affirm the order dismissing the juvenile court's orders.

Dated this 31st day of May, 2011.



Martha Pierce
Office of Guardian ad Litem

CERTIFICATE OF SERVICE


I hereby certify that on the 31st day of May, 2011, a true and correct copy
of the foregoing **Guardian ad Litem's Brief** was mailed/delivered to:

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A handwritten signature in cursive script that reads "Lori Brown". The signature is written in black ink and is positioned above a solid horizontal line.

ADDENDUM 1

78B-6-110. Notice of adoption proceedings

(1)(a) An unmarried biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman:

(i) is considered to be on notice that a pregnancy and an adoption proceeding regarding the child may occur; and

(ii) has a duty to protect his own rights and interests.

(b) An unmarried biological father is entitled to actual notice of a birth or an adoption proceeding with regard to his child only as provided in this section.

(2) Notice of an adoption proceeding shall be served on each of the following persons:

(a) any person or agency whose consent or relinquishment is required under Section 78B-6-120 or 78B-6-121, unless that right has been terminated by:

(i) waiver;

(ii) relinquishment;

(iii) consent; or

(iv) judicial action;

(b) any person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics within the Department of Health, in accordance with Subsection (3);

(c) any legally appointed custodian or guardian of the adoptee;

(d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the petition;

(e) the adoptee's spouse, if any;

(f) any person who, prior to the time the mother executes her consent for

adoption or relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother;

(g) a person who is:

(i) openly living in the same household with the child at the time the consent is executed or relinquishment made; and

(ii) holding himself out to be the child's father; and

(h) any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption.

(3)(a) In order to preserve any right to notice, an unmarried, biological father may, consistent with Subsection (3)(d):

(i) initiate proceedings in a district court of the state of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act; and

(ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i) with the state registrar of vital statistics within the Department of Health.

(b) If the unmarried, biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in trial pursuant to Section 78B-3-307.

(c) The Department of Health shall provide forms for the purpose of filing the notice described in Subsection (3)(a)(ii), and make those forms available in the office of the county health department in each county.

(d) The action and notice described in Subsection (3)(a):

(i) may be filed before or after the child's birth; and

(ii) shall be filed prior to the mother's:

(A) execution of consent to adoption of the child; or

(B) relinquishment of the child for adoption.

(4) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.

(5) The notice required by this section:

(a) may be served at any time after the petition for adoption is filed;

(b) shall be served at least 30 days prior to the final dispositional hearing;

(c) shall specifically state that the person served must respond to the petition within 30 days of service if he intends to intervene in or contest the adoption;

(d) shall state the consequences, described in Subsection (6)(b), for failure of a person to file a motion for relief within 30 days after the day on which the person is served with notice of an adoption proceeding;

(e) is not required to include, nor be accompanied by, a summons or a copy of the petition for adoption; and

(f) shall state where the person may obtain a copy of the petition for adoption.

(6)(a) A person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

(i) within 30 days after the day on which the person was served with notice of the adoption proceeding;

(ii) setting forth specific relief sought; and

(iii) accompanied by a memorandum specifying the factual and legal grounds upon which the motion is based.

(b) A person who fails to fully and strictly comply with all of the requirements described in Subsection (6)(a) within 30 days after the day on which the person was served with notice of the adoption proceeding:

- (i) waives any right to further notice in connection with the adoption;
- (ii) forfeits all rights in relation to the adoptee; and
- (iii) is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.

(7) Service of notice under this section shall be made as follows:

(a)(i) Subject to Subsection (5)(e), service on a person whose consent is necessary under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah Rules of Civil Procedure.

(ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court shall designate the content of the notice regarding the identity of the parties.

(iii) The notice described in this Subsection (7)(a) may not include the name of a person seeking to adopt the adoptee.

(b)(i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient.

(ii) If the service described in Subsection (7)(b)(i) cannot be completed after two attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.

(c) Notice to a person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics in the Department of Health in accordance with the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at the last address filed with the registrar.

(8) The notice required by this section may be waived in writing by the person entitled to receive notice.

(9) Proof of service of notice on all persons for whom notice is required by this section shall be filed with the court before the final dispositional hearing on the adoption.

(10) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.

(11) Except as to those persons whose consent to an adoption is required under Section 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person served to:

(a) intervene in the adoption; and

(b) present evidence to the court relevant to the best interest of the child.

ADDENDUM 2

MAR 01 2011

IN THE UTAH COURT OF APPEALS

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In the matter of the adoption of A.W.)
 _____)
 B.W.H. and S.H.,)
 Appellants,)
 v.)
 State of Utah,)
 Appellee.)

ORDER

Case No. 20101010-CA

Before Judges McHugh, Thorne, and Christiansen.

This court has reviewed the petition on appeal and all responses in the above case. The court has also reviewed Appellants' motion for summary disposition. However, the court notes that such motions are not allowed in child welfare proceedings. *See* Utah R. App. 1(f).

IT IS HEREBY ORDERED that the parties prepare briefs in accordance with rule 24 of the Utah Rules of Appellate Procedure. *See* Utah R. App. P. 58, 24. Appellants' brief must be served and filed in this court no later than thirty (30) days after issuance of this order. All Appellees' briefs must be served and filed in this court no later than thirty (30) days from service of Appellants' brief. Appellants' reply brief, if any, must be served and filed no later than thirty (30) days from service of Appellees' briefs. The court will only grant extensions to file briefs for good cause. In addition to any issues the parties wish to raise in their briefs, the court specifically requests that the parties address the following issues: (1) whether the juvenile court erred in finding that Appellants brought their petition for adoption in bad faith if Appellants were sincere in their desire to adopt A.W. and no other petitions for adoption had been filed at the time

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