

1982

Patricia Boals v. Jack Michael Boals : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

B. L. Dart; Attorneys for Plaintiff-Appellant;

David S. Dolowitz; Parsons, Behle & Latimer; Attorney for Defendant-Respondent;

Recommended Citation

Brief of Appellant, *Boals v. Boals*, No. 18172 (Utah Supreme Court, 1982).

https://digitalcommons.law.byu.edu/uofu_sc2/2827

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

---oooOooo---

PATRICIA BOALS, :
Plaintiff-Appellant, :
v. : Case No. 18,172
JACK MICHAEL BOALS, :
Defendant-Respondent. :

---oooOooo---

APPELLANT'S BRIEF

Appeal from the Judgment of the Third District Court
in and for Summit County
The Honorable Bryant H. Croft, Presiding

B. L. Dart
John D. Parken
DART & STEGALL
430 Ten Broadway Building
Salt Lake City, Utah 84101

Attorneys for Plaintiff-
Appellant

David S. Dolowitz
PARSONS, BEHLE & LATIMER
79 South State Street
Salt Lake City, Utah 84111

Attorney for Defendant-
Respondent

FILED

JUL 22 1982

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

---oooOooo---

PATRICIA BOALS,	:	
Plaintiff-Appellant,	:	
v.	:	
JACK MICHAEL BOALS,	:	Case No. 18,172
Defendant-Respondent.	:	

---oooOooo---

APPELLANT'S BRIEF

Appeal from the Judgment of the Third District Court
in and for Summit County
The Honorable Bryant H. Croft, Presiding

B. L. Dart
John D. Parken
DART & STEGALL
430 Ten Broadway Building
Salt Lake City, Utah 84101

Attorneys for Plaintiff-
Appellant

David S. Dolowitz
PARSONS, BEHLE & LATIMER
79 South State Street
Salt Lake City, Utah 84111

Attorney for Defendant-
Respondent

TABLE OF CONTENTS

	Page
NATURE OF CASE	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	6
 POINT I	
IN THIS EQUITABLE ACTION, THIS COURT MAY REVIEW ALL ASPECTS OF THE TRIAL COURT'S RULING.	6
 POINT II	
OTHER FACTORS BEING RELATIVELY EQUAL AND BOTH PARENTS HAVING BEEN FOUND FIT, CUSTODY SHOULD HAVE BEEN AWARDED TO THE MOTHER IN ACCORDANCE WITH THE PRESUMPTION THAT THE BEST INTERESTS OF A YOUNG CHILD ARE SERVED BY MATERNAL CUSTODY.	7
 POINT III	
THE FINDINGS OF FACT ENTERED BY THE TRIAL COURT ARE INSUFFICIENT AS A MATTER OF LAW TO SUPPORT ITS AWARD OF CUSTODY TO THE FATHER.	13
A. The Presumption Favoring Maternal Custody Was Not Rebutted and the District Court Erred in Awarding Custody to the Father.	14
B. The District Court's Failure to Enter Specific Findings of Fact Constitutes Reversible Error.	15
CONCLUSION	17

CASES CITED

	Page
Bingham v. Bingham 575 P.2d 703 (Utah 1970)	12
Chandler v. West 610 P.2d 1299 (1980)	16
Cox v. Cox 532 P.2d 994	8-9
D--P-- v. Social Service and Child Welfare Department 19 Utah 2d 311, 431 P.2d 547 (1967)	12
Dearden v. Dearden 15 Utah 2d 105, 388 P.2d 230 (1964)	10-11
Hutchison v. Hutchison -- P.2d -- (Utah June 14, 1982)	12
Hyde v. Hyde 22 Utah 2d 429, 454 P.2d 884 (1969)	12
Lembach v. Cox 639 P.2d 197 (Utah 1981)	14
McBroom v. McBroom 14 Utah 2d 393, 384 P.2d 961 (1963)	12
Smith v. Smith 564 P.2d 307 (Utah 1977)	11
Steiger v. Steiger 4 Utah 2d 273	9-10
Stoddard v. Stoddard 642 P.2d 743 (1982)	15
Wiese v. Wiese 24 Utah 2d 236, 469 P.2d 504 (1970)	7, 16

IN THE SUPREME COURT OF THE STATE OF UTAH

---oooOooo---

PATRICIA BOALS,	:	
Plaintiff-Appellant,	:	
v.	:	
JACK MICHAEL BOALS,	:	Case No. 18,172
Defendant-Respondent.	:	

---oooOooo---

APPELLANT'S BRIEF

NATURE OF THE CASE

This is a domestic relations action in which the sole issue on appeal is the custody of the parties' two-year old adopted daughter, Nicole Marie.

DISPOSITION IN LOWER COURT

Trial was held before the Summit County District Court, the Honorable Bryant H. Croft presiding, on Wednesday, September 9, 1981, and Friday, October 2, 1981. Thereafter, the district court entered its Memorandum Decision (R. at 364-69) on October 26, 1981. That ruling found both parents to be fit but nevertheless awarded "temporary custody" to respondent Jack Michael Boals "while plaintiff is pursuing her studies, reserving to the plaintiff the right to bring the question of final custody before the court upon termination of her attendance at

any university." (R. at 366.) Upon learning of the Court's ruling, appellant withdrew from the doctorate program in which she had been enrolled, retained new counsel, and moved the court to alter or amend its decision. (R. at 388-389.) That motion was heard on December 7, 1981, and the district court entered a second Memorandum Decision on December 8, 1981. (R. at 397.) By that ruling, the court left "temporary custody" of the two-year old child with respondent "for a period of eighteen months from January 1, 1982, following which period of time plaintiff may petition the court to examine then existing circumstances and to then determine the matter of permanent custody." (R. at 399-400.) The Decree (R. at 447-451) and Findings of Fact and Conclusions of Law (R. at 438-46) were entered on December 21, 1981. This appeal ensued.

RELIEF SOUGHT ON APPEAL

Appellant Patricia Boals respectfully requests that this Court reverse the award of custody (whether "temporary" or otherwise) and enter its order directing that she be awarded custody of her two-year old daughter.

STATEMENT OF FACTS

Appellant Patricia Boals (hereinafter "Mrs. Boals") and respondent Jack Michael Boals (hereinafter "Mr. Boals") were married in Steelton, Pennsylvania, on November 21, 1973. (Tr. at 162.) During their marriage, the parties formally adopted Nicole Marie Boals, who was born on November 14, 1979. (Id.) At the time of the conclusion of the

proceedings in the district court, Nichole Marie was just over two years of age.

The action was tried to the Honorable Bryant H. Croft on September 9 and October 2, 1981. A number of witnesses were called to testify concerning the respective relationships of the parties with Nicole Marie and their ability to care for her.

Without contradiction, the witnesses testified that Mrs. Boals appeared to be a good housekeeper, that she kept Nicole Marie clean, and that she cared properly for her physical needs. (Tr. at 11-12, 16, 28, 40, and 197.) Mrs. Boals's witnesses also testified that she appeared to have an exemplary relationship with her daughter, displaying love and affection to her freely and disciplining her in an able and constructive fashion. There was testimony that when hurt or distressed Nicole Marie turned to Mrs. Boals. (Tr. at 12 and 40.) The Record also demonstrates that Mrs. Boals had been employed as a school psychologist and that she held a Masters Degree. In her professional employment, Mrs. Boals was responsible for the counseling of children and their parents. (Tr. at 10-11.)

Mr. Boals is a traveling salesman, spending most of his working time in a county other than that of his residence and occasionally traveling out of state. The witnesses called at trial generally agreed that he was a good father and appeared devoted to Nicole Marie. However, Mr. Boals admitted, at trial, that he somewhat routinely engaged in the use of marijuana and that on occasion he had used it in

the presence of Nicole Marie. (Tr. at 44-45.) At a prior stage of the litigation, Mr. Boals had denied under oath the use of any illegal drugs. (Affidavit 15; R. at 25.) In attempting to justify his former untruthful testimony, Mr. Boals claimed that he did not know that the recreational use of marijuana was illegal in Utah. (Tr. at 44.)

Testifying as an expert witness on behalf of Mrs. Boals, Dr. Stephen E. Trotter expressed his opinion that she was an able and exemplary mother (Tr. at 28) and a stable individual (Tr. at 29). He also explained that a young female child would be best placed in the care of its mother. (R. at 432-33.)

On behalf of Mr. Boals, a custody evaluation was prepared by G. Blaine Webster. (R. at 344.) That report suggested that Nicole Marie should be placed in the custody of her father, because she appeared to have a more "spontaneous" relationship with him. (R. at 344.) Mr. Webster's professional qualifications are not impressive. He has only one year of graduate study in social work and possesses no degree. (Tr. at 88.) He had "just started doing" child custody evaluations and had completed only about a dozen and a half. (Tr. at 97.) The evaluation was based upon several meetings with Mr. Boals; whereas, the evaluator did not see fit to meet with Mrs. Boals on more than one occasion. (Tr. at 89.) He also cancelled a scheduled appointment with Mrs. Boals. (Tr. at 92.) Mr. Boals made several additional unsolicited telephone calls to Mr. Webster while the evaluation was being considered. (Tr. at 98.) Moreover, Mr. Webster's

own report indicates that Mrs. Boals is a good mother who cared well for Nicole Marie (R. at 344) and he admitted at trial that his investigation "may have been somewhat one-sided" (Tr. at 89). Finally, Mr. Webster admitted that the testimony concerning Mrs. Boals's parenting abilities presented at the trial was not consistent with his initial impressions, upon which his evaluation had been based. (Tr. at 99.)

The only other witness who testified as an "expert" at the trial was Richard B. Snyder, called by Mr. Boals. Mr. Snyder, who resides in Pennsylvania, holds a master's degree in Zoology, with a minor in psychology. (Tr. at 204.) His employment has been as a criminal clinical psychologist. (Id.) He testified that he felt Nicole should be placed in the custody of Mr. Boals. There existed, however, no basis whatsoever for his testimony. He acknowledged that he had never seen Mrs. Boals and Nicole Marie together (Tr. at 209) and he admitted that he had only seen Mr. Boals with Nicole Marie on two occasions. (Tr. at 220.) A review of the Record makes clear that his views were without substantial foundation and could be of no assistance in making a reasonable determination as to custody of Nicole Marie.

While in the custody of Mr. Boals during the pendency of the action, Nicole Marie spent most of her time with babysitters. This was recognized by Judge Croft in his original Memorandum Decision in which he noted that Mr. Boals would have to continue working, but would be able to continue the services of the babysitter. (R. at 365.) On the other hand, while Mrs. Boals candidly told the district court that she

intended to continue her professional education to acquire a doctor's degree, she had been able to arrange her class schedule so that the services of a babysitter would be needed only three days a week. (Tr. at 104-05.)

Following the district court's original Memorandum Decision, Mrs. Boals elected to sacrifice her doctor's degree and withdrew from all classes. The district court, however, denied her motion to alter or amend the original ruling, noting in his second Memorandum Decision that the original ruling "was not based solely" upon Mrs. Boals's plans to further her education and the constraints that would thus be placed upon her time. (R. at 399.) The district court cryptically noted that "other factors were involved" in the original ruling. (Id.) Neither Judge Croft's Memorandum nor the formal Findings of Fact prepared by counsel for Mr. Boals and entered by the district court gave the parties, their counsel, or this Court any insight into the nature of these "other factors" secretly harbored by Judge Croft.

ARGUMENT

POINT I. IN THIS EQUITABLE ACTION, THIS COURT MAY REVIEW ALL ASPECTS OF THE TRIAL COURT'S RULINGS.

While due deference must be extended to the views of the trial judge who had a personal opportunity to observe the witnesses, this Court is by no means bound by the express or implicit findings of fact reached by the trial court. This is a custody matter and, therefore,

highly equitable in nature. In such an action, it is the duty of this Court to review and consider questions both of law and of fact. As noted in Wiese v. Wiese, 24 Utah 2d 236, 469 P.2d 504 (1970):

This is an equitable matter, and upon appeal the binding effect of the findings made by the trial court differs from that in a law matter. We may here review questions of both law and fact; and after making due allowance for the advantaged position of the trial judge to observe the demeanor of witnesses upon the stand, we may be persuaded that a finding is against the preponderance of the evidence to such an extent that we would be justified in disapproving it or even making a finding of our own.

469 P.2d at 505 (numerous citations omitted). In that case, this Court rejected the trial court's determination that a child's best interests would be served by placing him in the custody of his father, reversed the trial court, and entered a decree awarding custody to the mother.

**POINT II. OTHER FACTORS BEING RELATIVELY EQUAL
AND BOTH PARENTS HAVING BEEN FOUND FIT, CUSTODY SHOULD HAVE
BEEN AWARDED TO THE MOTHER IN ACCORDANCE WITH THE PRESUMPTION
THAT THE BEST INTERESTS OF A YOUNG CHILD ARE SERVED BY
MATERNAL CUSTODY.**

The trial court clearly found both parents to be fit. (Findings of Fact ¶10, R. at 440.) The trial court also recognized that Mr. Boals had only limited time available to him for the care of Nicole Marie and would have to resort to the utilization of babysitters.

(R. at 365.) Under these circumstances, the factors weighing in favor of custody to each of the parties were relatively balanced.

When the factors relevant to a custody determination are approximately evenly balanced, this Court has long adhered to the principle that custody should be awarded to the mother. This proposition was clearly articulated by this Court in Cox v. Cox, 532 P.2d 994 (Utah 1975). In that case, the trial court found that both parents were "fit"; that the wife's conduct had been "less than exemplary" and that she spent more time away from home "than she should have"; but that the mother also managed a "well-ordered" home, kept her children clean, and provided good meals. Having found the factors to be relatively balanced between the husband and wife, this Court held that the wife should be awarded custody due to the presumption that the best interests of the child are served through maternal custody, noting:

[U]nder the modern and realistic trend of law, the mother has no absolute or invariable right to be awarded the custody of the children; and that the father's rights and interests are entitled to equal and just consideration. . . . But this does not mean that the law must pretend to be unaware of and blindly ignore obvious and essential biological differences.

In addition to and quite beyond the rights of the parents, there is the important principle that the paramount consideration is the long-term welfare and adjustment of the children. That being so, we think there is wisdom in the traditional patterns of thought that the roles of the mother and father in the

family are such that, all other things being comparatively equal, the children should be in the care of their mother, especially so children of younger years; and that this may be true even where the divorce is granted to the father.

532 P.2d at 996 (footnote citations omitted, emphasis added). In the present case, all relevant factors were "comparatively equal"; therefore, the trial court erred in failing to award Mrs. Boals custody of her two-year-old daughter.

This Court relied upon this presumption in reversing the trial court's custody determination in Steiger v. Steiger, 4 Utah 2d 273, 293 P.2d 418 (1956). The facts of that case are strikingly similar to those of the present. The trial court determined that neither the mother nor the father was a "fit" parent to have custody but noted that the father's parents would act as babysitters. Accordingly, the trial court awarded custody to the father on a "temporary" basis. Thus, as in the present case, the trial court found that both parents were equally qualified to have custody, determined that the father had access to a good babysitter, and made the award "temporary". This Court reversed, holding that custody should have been awarded to the mother:

[I]t appears that [the mother] has been in the past careless and indiscreet, but that her love for the child has caused her to work to provide for him, has caused her to spend her free time with him, and care for his needs, and has caused her to fight for his custody. In light of these facts it cannot be said that she is an unfit mother.

This court has stated that a divorced mother has no absolute right to the custody of minor children . . . but the policy of our decisions has been to give weight to the view that all things being equal, preference should be given to the mother in awarding custody of a child of tender years, notwithstanding the divorce is granted to the father. . . . And this view is based upon the oft-stated purpose of the award of custody to provide for the child's best interests and welfare

There is no proof in the record that this mother drinks excessively so as to render her unable to properly care for the child, nor is there any evidence of promiscuity. The trial court apparently felt that the child could be provided with a better home than that offered by the [mother] and made his order so that she would improve the conditions of the house and her associations, but in so doing, he has failed to give proper weight to other factors here involved.
.

293 P.2d at 420 (numerous citations omitted). Mrs. Boals is far more qualified for custody than the mother in Steiger; accordingly, the trial court erred in failing to grant her custody of her daughter.

Another case in which this Court reversed a custody award based upon the presumption or preference for maternal custody is Dearden v. Dearden, 15 Utah 2d 105, 388 P.2d 230 (1964). In that case, the trial court found that neither parent typified an exemplary parent but ruled that the interests of the parties' two-and-one-half-year-old daughter would be best served by placing her in the custody of the father. On appeal, this Court reversed, noting that the wife was a

"fine housekeeper", and that there was "no evidence that she ha[d] directly or intentionally mistreated the child." This Court also observed that the mother had

demonstrated that she love[d] her daughter by caring for her and providing for her needs. This is, of course, but natural to expect and is the reason for the universally recognized presumption that it is for the best interest and welfare of a child of such tender years to be with her mother. In such instance, the mother's right to custody should not be denied unless it is shown that she is such an immoral, incompetent or otherwise improper person that it would be contrary to the child's best interest and welfare to be in her custody. . . .

388 P.2d 232 (footnote citation omitted, emphasis added).

Not only has the proposition that there exists a presumption that a child, particularly of a young age, should be placed in the custody of its mother enjoyed the consistent approval of this Court, that approval has been recently reaffirmed. In Smith v. Smith, 564 P.2d 307 (Utah 1977), this Court noted that while the presumption or preference was not of statutory origin, it was nevertheless the "invariably declared policy" of this state:

[A]ppropriate to be considered . . . is the fact that, irrespective of any statute, the invariably declared policy stated in our decisions is that "all things else being equal, preference should be given to the mother in awarding custody of children of tender years (and this is true even when) the divorce is granted to the father."

564 P.2d at 309 (footnote citation omitted). Thus, the presumption or

preference finds firm support in the recent decisions of this Court. Other cases recognizing and approving the preference include Bingham v. Bingham, 575 P.2d 703 (Utah 1978); Hyde v. Hyde, 22 Utah 2d 429, 454 P.2d 884 (1969); D--P-- v. Social Service and Child Welfare Department, 19 Utah 2d 311, 431 P.2d 547 (1967); and McBroom v. McBroom, 14 Utah 2d 393, 384 P.2d 961 (1963).

A very similar preference or presumption was recently recognized by this Court in Hutchison v. Hutchison, -- P.2d -- (Utah June 14, 1982). In that case, this Court noted that in custody matters,

the paramount consideration is the best interest of the child, but where one party to the controversy is a non-parent, there is a presumption in favor of the natural parent. . . . [This presumption] is rooted in the common experience of mankind, which teaches that parent and child normally share a strong attachment or bond for each other, that a natural parent will normally sacrifice personal interest and welfare for the child's benefit, and that a natural parent is normally more sympathetic and understanding and better able to win the confidence and love of the child than anyone else.

-- P.2d at --. This Court, in that case, proceeded to articulate a comprehensive list of factors that could be considered in determining to whom custody should be awarded in the event that the presumption was rebutted. While the preference or presumption for maternal custody is not among the criteria enumerated, its absence is explained by its

inherent inapplicability to a parent/non-parent custody controversy and is not indicative of any departure by this Court from the "invariably declared" presumption of maternal custody.

Accordingly, unless the district court specifically found that for some specified reason the relative means or abilities of Mr. Boals to care for Nicole Marie were substantially greater than those of Mrs. Boals, the district court could not properly award custody to Mr. Boals.

POINT III. THE FINDINGS OF FACT ENTERED BY THE TRIAL COURT ARE INSUFFICIENT AS A MATTER OF LAW TO SUPPORT ITS AWARD OF CUSTODY TO THE FATHER.

In the formal Findings of Fact entered by the trial court, which were prepared by counsel for Mr. Boals, only two paragraphs relate to the custody issue. In the first, the trial court finds that "each of the parties is a fit and proper parent" to have custody of Nicole Marie. (Findings ¶10, R. at 440.) In the second, it is merely noted that "a custody evaluation was performed in this matter by Blaine Webster" and that Mr. Webster recommended that custody be awarded to Mr. Boals. (Findings ¶11, R. at 440.) Accordingly, there is not a single formal Finding of Fact sufficient to support an award of custody to Mr. Boals.

Even considering the two Memorandum Decisions entered by the trial court, no substantial findings of fact can be found. In his original Memorandum Decision, Judge Croft noted the plans of Mrs. Boals

to pursue her doctor's degree and observed that she would likely have to be employed to some extent in order to finance that endeavor. However, the court also accurately noted that Mr. Boals was employed and that his employment required the "substantial portion of his time" and that he would "have to rely upon the services of babysitters." (R. at 365.) Thus, at most, the "available time" factor was, by the court's own acknowledgment, evenly divided between the parties.

A. The Presumption Favoring Maternal Custody Was Not Rebutted and the District Court Erred in Awarding Custody to the Father.

Not only do the limited Findings of Fact entered by the district court not contain any express or specific finding that Mr. Boals is in some way better able to care for Nicole Marie, those Findings make clear that both parents are equally fit and capable of caring for Nicole Marie. Accordingly, the presumption or preference for maternal custody has not been rebutted and the district court erred in awarding custody of Nicole Marie to Mr. Boals.

It is true that the extent to which each parent may be able to care personally for the child is an appropriate criterion to be considered by the trial court. (See, Lembach v. Cox, 639 P.2d 197 (Utah 1981).) In this case, however, the district court made no determination that Mr. Boals would be able to spend more time with Nicole Marie or to care for her personally to a greater extent than Mrs. Boals. There is no formal Finding of Fact on this issue whatsoever. Moreover, Judge

Croft's original Memorandum Decision recognizes that Mr. Boals was employed as a traveling salesman and would have "to rely upon the services of babysitters." (R. at 365.) By contrast, Mrs. Boals contemplated attending class only three days per week and abandoned even that for the sake of her daughter. Thus, the trial court's custody award cannot be justified upon the basis that Mr. Boals would have a greater amount of time to spend with the child.

B. The District Court's Failure to Enter Specific Findings of Fact Constitutes Reversible Error.

This Court has consistently held that detailed, formal Findings of Fact are essential if the decision of the trial court is to be meaningfully reviewed on appeal. For example, in Stoddard v. Stoddard, 642 P.2d 743 (1982), this Court held:

Written findings and conclusions setting out the basis on which a court's decision rests are vital to the proper information of the parties and to the proper functioning of courts. Findings and conclusions aid the trial court in rational decision making . . . and aid the appellate court in the exercise of the discretion it enjoys to review, and, if necessary, to adjust the financial and property interests of the parties. . . .

642 P.2d at 744 (citation omitted). This court vacated the trial court's Decree and remanded the case for proper proceedings. A case such as the present strongly underscores the need for the trial court

to articulate the specific facts upon which it believes its decision rests.

Similarly, in Chandler v. West, 610 P.2d 1299 (1980), this Court again remanded a case to the trial court because of the absence of specific findings of fact. It was noted:

For this Court to be in a position to review the propriety of the trial court's order, it is necessary that proper findings of fact and conclusions of law be made pursuant to Rule 52(a), Utah Rules of Civil Procedure.

610 P.2d at 1301.

Moreover, conclusory generalizations cannot adequately fulfill the requirement of specific Findings of Fact. In Wiese v. Wiese, 24 Utah 2d 236, 469 P.2d 504 (1970), this Court noted that a so-called finding of fact to the effect that "the best interest of the boys would lie in their remaining with their father" was not, in reality, a finding of fact at all. Rather, this Court held it was "a conclusion and must be based upon the other findings". 469 P.2d at 505. Having determined that the award of custody to the father could not be supported by the trial court's other findings of fact, this Court reversed, awarding custody to the mother. Id. at 507.

In the present case, the trial court wholly failed to articulate any substantial findings of fact in support of its decision to award custody of two-year-old Nicole Marie to Mr. Boals. The trial

court's veiled reference to "other factors" is wholly insufficient to support its decision.

CONCLUSION

In this appeal from the trial court's award of custody, this Court must consider and review the questions of fact as well as the questions of law raised. This Court has long and firmly adhered to the proposition that, when other relevant factors are comparatively evenly balanced, there exists a strong and natural presumption that the best interests of a child, and particularly of a young child, are served by granting custody to the mother.

In this case, not only has Mrs. Boals the personal traits and stability to serve as an exemplary mother to her daughter, she possesses a high level of professional training and expertise as a school psychologist. She has manifest her devotion to her daughter through her willingness to sacrifice further professional advancement in order to provide an even better environment for her. Mr. Boals, on the other hand, as a traveling salesman, must rely upon the services of hired babysitters to care for Nicole Marie and has admitted at best demonstrating poor judgment in connection with his personal indulgences in the child's presence.

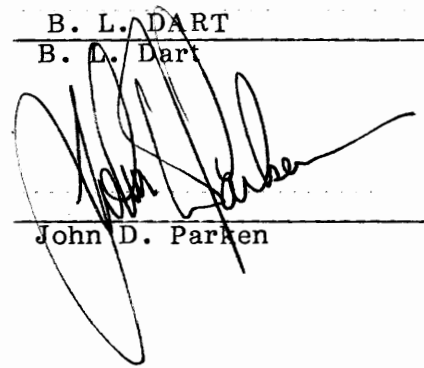
Without a single specific supporting Finding of Fact, the district court has awarded custody to Mr. Boals, thus failing to apply the relevant law of this State. That judgment must be reversed and

custody of two-year-old Nicole Marie must be awarded to appellant
Patricia Boals.

RESPECTFULLY SUBMITTED this 21st day of July, 1982.

DART & STEGALL

By B. L. DART
B. L. Dart

By 
John D. Parken

MAILING CERTIFICATE

I certify that on this 21 day of July, 1982, I mailed two copies of the foregoing Brief with postage prepaid to David S. Dolowitz, attorney for respondent, 79 South State Street, Salt Lake City, Utah 84111.

B. Blanchard