

1959

In the Matter of the Guardianship of the persons and estates of Ernes Hemingway O'Hare et al : Brief of Respondent

Utah Supreme Court

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In the Supreme Court of the State of Utah

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In the Matter of the Guardianship of
the persons and estates of

ERNEST HEMINGWAY O'HARE,
ELIZABETH TALBOT, NICOLLE
TALBOT, MICHELLE TALBOT,
and EMELINE IRENE TALBOT,
minors.

Clerk, Supreme Court, Utah

BRIEF OF
RESPONDENT

No. 8978

Appeal from the District Court of the First
Judicial District of the State of Utah
In and for the County of Cache

Honorable A. H. Ellett, District Judge

OLSON & CALDERWOOD
Attorneys for Respondent

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In the Supreme Court of the State of Utah

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BRIEF OF
RESPONDENT
No.

STATEMENT OF FACTS

The Statement of Facts contained in appellant's brief is essentially correct, except in the final paragraph of page 3 of his brief wherein it is claimed that the estate of the minors has been furnished by petitioner Charles Sweeny. This claim has no basis in the record. Further, the lower Court ruled that the guardianship of the minors was not incidental to the determination of another cause but was a basic purpose of the petition. Even a casual examination of the pleadings reveals this is the case.

STATEMENT OF POINTS

1. The District Court does not have jurisdiction of this cause.

2. The Court did not err in refusing to take testimony and make a decree appointing a guardian of the persons of said minors.

ARGUMENT

As indicated by appellant, a consolidation of points for purposes of argument seems better suited to the determination of the single question involved. Does the juvenile court have exclusive jurisdiction to appoint a guardian of the person of a minor in a case such as this?

The immediate statute involved in this matter is as indicated by appellant, Section 55-10-5, UCA, 1953:

“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, except in felony cases as hereinafter provided, and the custody, detention, guardianship of the person, trial and care of such neglected, dependent and delinquent children.”

If the legislature has the power to pass a statute granting such jurisdiction to the juvenile court, and the minors involved in this action are neglected, dependent or delinquent as defined by statute, then it is submitted that the lower court was correct in its ruling that jurisdiction lies exclusively with the juvenile courts.

Article VIII, Sec. 1 of our Constitution provides: “The Judicial power of the State shall be vested in the Senate sitting as a court of impeachment, in a Supreme Court, in district courts, in justices

of the peace, and such other courts inferior to the Supreme Court as may be established by law.”

The question of the right of the legislature to create juvenile courts and to define their powers was presented in *Mill v. Brown* (Utah) 88 P. 609 which held:

“The Constitution wisely refrains from conferring exclusive original jurisdiction upon any of the courts, but vests such original jurisdiction in all of the courts to be apportioned and exercised as the Legislature may direct.”

“Nor does the fact that in cities of the first and second classes juvenile courts are given exclusive jurisdiction over juvenile offenders in any way offend against any constitutional provision. The object is to relieve already overcrowded courts in such cities from this burden, and confer the power to deal with children belonging to the class defined in the act upon courts especially designed and adapted to carry into effect the provisions of the act.”

To the same effect is *Jensen v. Sevy* (Utah) 134 P 2d 1081, wherein it was stated:

“The legislature has power to give to the juvenile court exclusive jurisdiction of cases of neglect or delinquency of children.”

In view of the recognition that the legislature has the power to provide exclusive jurisdiction to the juvenile court, the only other question seems to be whether the minors involved in this proceeding come within the class of minors over which such exclusive jurisdiction has been granted by 55-10-5 UCA 1953 (*supra*).

Respondent cannot agree with appellant that this matter is only concerned with the category of dependency which is defined as "a child whose custody is in question or dispute". The case of *In Re State in Interest of Johnson*, (Utah) 175 P. 2d 486 merely held that where custody is conceded to be in a natural parent, the child is not dependent under the classification of "a child whose custody is in question or dispute". It leaves open to determination as to what other factors may make a child neglected or dependent.

Among the definitions of "Neglected Child" as set out in Section 55-10-6, UCA, 1953, are the following:

"A child who lacks proper parental care by reason of the fault or habits of the parent, guardian or custodian."

"A child whose parent, guardian or custodian neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care or other care necessary for his health, morals or well-being."

A "Dependent Child" includes, by definition of the same section,

"A child who lacks proper care by reason of the mental or physical condition of the parent, guardian or custodian."

The allegation of appellant, found in his petition, and set out in his brief (Page 4) was that the father of the minors was not a fit and proper person to have custody of his own children. Further in appellant's brief

(page 4), is set out in substance an offer of proof indicating the basis of appellant's attempt to take the children from their father. It is submitted that these allegations in plain and clear language reveal a claim of dependency and neglect as defined by 55-10-6 (supra), as the basis of the appellant's petition for the appointment of a guardian of the persons of the minors in the District Court proceeding. In clear and plain language it shows that the minors were children who fit squarely within the class of one or more of the definitions contained in 55-10-6 supra.

It is no argument for appellant to assert that the language of the Juvenile Court act has, if taken at its face value, denuded the District Court of all jurisdiction over juveniles. Such is obviously not the case. The district courts still have jurisdiction over juveniles who do not fall within the classes defined as "neglected", "dependent" or "delinquent" by the provisions of the Juvenile Court act. They have the power, when necessary or convenient, to appoint guardians of the persons of minors who do not fall within the juvenile court classification; they have, as well, jurisdiction as reserved in 55-10-5 (4) wherein it is 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.”

CONCLUSION

It is respectfully submitted therefore, that an examination and appraisal of the statutes involved, together with a reading of appellant's brief in respect to the grounds for his petition for appointment of a guardian of the persons of the minors could lead to no other conclusion but that the district court was correct in its determination that it did not have jurisdiction of the matter and in refusing to make a decree respecting the guardianship of the persons of the minors.

Respectfully submitted,

OLSON and CALDERWOOD
Attorneys for Respondent.