

1959

# State of Utah in the Interest of Charlyne Francis Mitchell : Brief of Appellants

Utah Supreme Court

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In the  
**Supreme Court of the State of Utah**

STATE OF UTAH IN THE INTER-  
EST

of

CHARLYNE FRANCIS MITCHELL,

Minor.

Case No.  
9003

**FILED**

APR 16 1959

Clerk, Supreme Court, Utah

**APPELLANTS' BRIEF**

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**APPELLANTS' BRIEF**

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**STATEMENT**

As used in this brief, unless otherwise indicated, the term (THE COURT) refers to The First District Juvenile Court of Weber County, Utah: the initial (R) refers to the Record on Appeal; the initial (T) refers to the Transcript of the testimony, and the initials (CR) refer to the Confidential Reports.

Shirley Mitchell Holland is a young woman that lived in Ogden, Utah, who had three children, two girls and a boy, all apparently born out of wedlock. The boy is with

its father in the State of Pennsylvania and is not involved in this proceeding. The two girls, Sharon, age 6, and Charlyne Francis, age 5, were kept by the mother in Ogden. In June, 1957 Sharon was brought under the jurisdiction of the Court and placed under the supervision of the Welfare Department but custody remained with the mother.

In January or February, 1956, the mother gave Charlyne to John Stelly and his wife, Berth, ostensibly for the purpose of adoption. The Stellys did not adopt Charlyne, as will more fully appear in this brief.

On July 25th, 1958 a Probation Officer filed Petitions with the Court, R-7 and R-22, alleging that these girls were neglected children and praying that they be placed for adoption. Notice was served on all interested parties and hearings were held, commencing August 26, 1958 and concluded December 10th, 1958. At the conclusion of these hearings the court dismissed the petition as to Sharon and returned her to the custody of her mother, but found the mother unfit to have the custody of Charlyne and awarded her to the custody of the Stellys for the purpose of adoption.

To reverse the ruling in regard to Charlyne, the mother and her parents, Mr. and Mrs. Coy Pruitt, prosecute this appeal and make the following assignment of errors:

1. Misconduct of the Welfare Officers by which appellants were prevented from having a fair trial.
2. Error of the Court in assuming jurisdiction over these children.
3. Error of the Court in depriving the mother of custody of Charlyne Francis.

4. Error of the Court in awarding custody of said child to John Stelly and his wife, Berth Stelly, with the right of adoption.

To sustain this appeal and reverse the trial Court, appellants rely on the following:

## STATEMENT OF POINTS

### POINT I.

THE PETITION DOES NOT ALLEGE FACTS SUFFICIENT TO CONFER JURISDICTION ON THE JUVENILE COURT.

### POINT II.

THE JUDGMENT IS CONTRARY TO THE EVIDENCE.

### POINT III.

THE JUDGMENT IS CONTRARY TO LAW.

## ARGUMENT

### POINT I.

THE PETITION DOES NOT ALLEGE FACTS SUFFICIENT TO CONFER JURISDICTION ON THE JUVENILE COURT.

*State in Interest of Johnson*, 175 P. 2nd 486;  
*Label vs. Sullivan*, 165 S. W. 2nd 639;  
*State in Interest of Graham*, 170 P. 2nd 172;  
*In Re Cranjaeger*, 140 N. E. 2nd 773.

In construing our statutes conferring jurisdiction on Juvenile Courts to protect children, this Court in the *Johnson* case, at page 490, Pacific citation, said:

“We recognize of course that there may be circumstances where a failure to take control of a child may do the child immediate injustice, such as contemplated in *the statute*. Under such circumstances the juvenile authorities should act swiftly and effectively.

“Our juvenile court procedure is sufficiently flexible to protect a child in an emergency against ill treatment, abuse, or injury to health or morals—where immediate and summary action is required. (Statute quoted.)

“However, throughout the juvenile code repeated warnings are given as to the preferential rights of the natural parent, and of course these emergency provisions are not intended as a convenient vehicle for nullifying that preference. This was not an emergency case. It was nothing more than an effort to show that the mother of the child was not a suitable or proper person to have the custody of her child—an issue that could have been tried in the ordinary course of judicial proceedings without resort to the emergency proceedings such as were taken here. The petition alleges no fact of an emergency nature.”

*Label vs. Sullivan* is a Missouri case wherein it is said:

“In order to justify committing minors to charitable institutions because of neglect of its parents as alleged in the complaint means that parent had failed to provide for children in such manner and to such extent as to make him a neglected child within the statute, that is, destitute or dependent on the

public for support, so as to give Juvenile Court jurisdiction of a cause which would not be supplied by entendment where the Court's findings were broader than the statute."

In New Hampshire the rule is stated as follows:

"The jurisdiction of the Juvenile Court is limited to neglected and dependent children, a neglected child being one who is abandoned by his parents, who habitually begs or receives alms, who is found in any disreputable place; associates with disreputable persons; engages in an occupation or is in such surroundings as may prove injurious to the child's physical, mental or moral well being." *Label vs. Sullivan*, supra.

In Ohio the rule is stated with this language:

"Where a mother of minors was confined to state hospital because of mental illness, and during her confinement she had no funds with which to support her children and was unaware of their whereabouts, she was not guilty of wilfull neglect and the children did not come within the statutory definition of a neglected child whose custody could be awarded to the Child Welfare Board." *Re, Cranjaeger*, supra.

No such state of affairs is alleged in the case at bar.

Now, let's examine the petition in this cause R-22; It alleges; (1) that the parents are not married. This does not bring the child within our statute. (2) The father abandoned the mother and child. Nor does this. (3) The mother placed the child with John Stelly. This is an allegation of care, not neglect. (4) The mother had not provided any



support. Here there is no allegation of wilfulness or ability on the part of the mother. There is no allegation of emergency, on the part of the child, such as suggested by the decisions cited herein. The Record shows affirmatively that the child, as a matter of fact, was well cared for and no emergency existed. In this, we respectfully submit that the Petition alleges no fact sufficient to confer jurisdiction on the Court.

In the *Johnson* case this Court held that, independent of some emergency giving the Court jurisdiction, Juvenile Courts have no jurisdiction to determine fitness of parents to have custody of their children. But notwithstanding the absence of any allegation in the petition as to the fitness of the mother, the Court found the mother to be unfit as to Charlyne, R-9, but denied relief as to Sharon, R-5, T-16. Here we challenge the State and counsel for the Stellys to reconcile these inconsistent findings. By what stretch of the imagination can it be said that a mother is a fit person to have the custody of one small child and unfit to have the custody of the other?

## POINT II.

### THE JUDGMENT IS CONTRARY TO THE EVIDENCE.

*State in Interest of Johnson*, 175 P. 2nd 486;

*State in Interest of Graham*, 170 P. 2nd 172;

*In Re Masters*, 137 N. E. 2nd 752;

*Label vs. Sullivan*, 165 S. W. 2nd 639;

*In Re Knight*, 31 So. 2nd 825;

*Hydock vs. Greenberg*, 79 N. Y. S. 2nd 389;  
*In re Galleher*, 84 P. 352.

Assuming the petition was sufficient to justify inquiry, the evidence is totally insufficient to sustain jurisdiction.

The substance of the evidence is to the effect that the mother has been in ill health for several years prior to the commencement of this proceeding and the Confidential Reports suggest that she is mentally ill, see page 2 L. R. Royance Report and last paragraph, page 2, California Report. Thus, under the decisions cited above, there is no basis for depriving the mother of her child on this ground.

Assuming, but not admitting, that the Court had jurisdiction, it is the position of appellants that the evidence does not disclose any neglect of Charlyne on the part of the mother. The undisputed evidence is that the mother placed the child with the Stellys for the purpose of adoption, T-8. Though it does not appear in the Record, counsel for the Stellys stated that the placement was made in his Office and that the mother signed a consent and waiver under oath, giving this child to the Stellys, CR-23. Such a consignment, in legal effect, is void.

“Document signed by mother of minor child born out of wedlock, reciting delivery of child to named physician to be delivered for adoption and that mother would execute formal papers necessary and appear before Surrogate Court when required, was insufficient to constitute a consent to adoption or render mother’s consent thereto unnecessary under Domestic Relations Law, since named physician was not an authorized agency under Social Welfare Law to which child could be surrendered for purpose of adoption.” *Hydock vs. Greenberg*, supra.

Syllabus 3 and 4 of the *Galleher* case reads as follows:

“3. An oral agreement, by which a father gave his child, when six months of age, to the child’s maternal aunt to raise, was revocable at the father’s election.”

“4. In a proceeding for the appointment of a guardian for a child under 14 years of age, evidence held insufficient to warrant a finding that the child’s father, who applied for the child’s custody, had either deserted or abandoned the child, or that he was profligate, indolent, intemperate, and an improper person to be awarded such custody.”

Utah statutes require waivers be made to licensed Child Welfare agencies.

Notwithstanding the legal effect of this placement, the mother acted in good faith and expected that the child would be adopted and had no reason to suspect otherwise until two years later when she was haled into court accused of neglect. The Stellys did not keep faith with the mother. They found themselves unable to adopt the child, or otherwise provide for it, and instead of returning it to its mother, they, undoubtedly, sought relief from the Welfare Department and thus brought the matter to the attention of the Court. During the period that the Stellys had custody of this child, the mother’s parents, Mr. and Mrs. Pruitt, contributed nearly \$2,000.00 towards the support of these two children, T-16 to 18, and if there was any neglect on the part of any one that neglect came from the Stellys. There is no evidence in the entire Record showing, or tending to show that this child ever, at any time, lacked the common necessities of life. And in this we respectfully submit that the judgment is contrary to the evidence.

## POINT III.

## THE JUDGMENT IS CONTRARY TO LAW.

Cases above cited;

*Hydock vs. Greenberg*, 79 N. Y. S. 2nd 389.

On October 7th the Court granted counsel access to the Social files for the purpose of examination, R-12, T-23. During the interim counsel made several calls at the Clerk's Office to see these reports but the Welfare Departments did not file them until the case was called for hearing December 10th at 1:30 p. m., see reports. After Court was in session the Judge recessed for ten minutes to allow counsel an opportunity to examine the reports, T-24. On the morning of December 10th counsel visited the Office of the Welfare Department in Ogden for the purpose of examining these reports but was refused access to them on the ground that they had not been filed with the Court and in this we respectfully submit that such conduct did not allow counsel a reasonable opportunity to be prepared to meet the contents thereof and, therefore, constituted misconduct prejudicial to the interest of appellants, and reversible error.

Assuming, but not conceding, that the Court had jurisdiction, and assuming further, but not conceding, that the Court was justified in depriving the mother of custody, it is the position of appellants that the judgment is contrary to the best interest of the child.

As pointed out by this Court in the *Johnson* case, the Juvenile Code is not intended as a convenient vehicle to

nullify the preferential rights of parents to the custody of their children. When the Stellys failed to carry out their end of the bargain and adopt this child, the right to the custody of that child reverted to the mother and upon learning of the ill treatment her children had received at the hands of the Stellys, it was her desire that her parents should have the children, T-9, 10.

The grandparents filed an application with the Court, R-14, 15, and thus, so far as the best interest of the children was concerned, there was a contest between the Stelly and Pruitt homes.

As between these two homes the record discloses that the Stellys were not able to pay the nominal expenses of adopting the child, CR-23. The only apparent reason for this case being before the Court was the inability of the Stellys to provide for the child. The Confidential Reports reflect cruel and harsh beatings inflicted on Charlyne by Mrs. Stelly and at T-32 it is revealed that Charlyne suffered a fractured hip with no explanation as to how the child happened to fall. Could the child have broken her hip in trying to escape a beating from Mrs. Stelly?

The Wright report shows that Mr. Stelly was addicted to intoxicating liquor but suggests that he has joined the church and his Pastor feels that he will straighten up and be all right. There is nothing in the report that shows when Mr. Stelly joined the church or that he has, in fact, quit drinking liquor. Thus we may assume that he joined the church subsequent to the commencement of this proceeding for the purpose of influencing its outcome rather than concern for his own soul. Another factor worthy of considera-

tion is the fact that not once, during the entire proceedings, did the Stellys appear in court and present themselves for examination and cross-examination concerning their treatment of the children and their fitness and ability to support them, but, like Peter, when his Lord was on trial for His life, they stood afar off, R-12, watching to see what happened but afraid to let their presence be known.

On the other hand we have the Pruitts present at every hearing; concerned about the welfare of their grandchildren; presenting themselves to the scrutiny of the Court and subjecting themselves to cross examination and showing their stake in the support of these children and ability to provide for their future; they own their own home and contemplate buying another; they have permanent employment with a monthly income of upward of \$800.00 and, if need be, Mrs. Pruitt is willing to give up her employment and devote full time to the rearing of these children and still have more than \$500.00 monthly income. The only objections voiced against the Pruitts is the feeling of welfare workers that they were not interested in adopting the children but only wished to restore them to their mother. Donald DeWitt, T-21, suggests that because Shirley (the daughter) has had her problems which her parents did not solve, that they, (the Pruitts) would not be able to properly raise these children. It does not take an expert to know, because it is a matter of common knowledge, that Black Sheep often appear in the best regulated families. These innuendos and insinuations are rebutted by sworn testimony in open court, T-30.

Looking at it from the standpoint of the children themselves, who are innocent victims of circumstances over which they had no control and for which they are in no way responsible, it is the position of appellants that the natural right of these children to the love, affection and welfare of each other, as sisters, transcends the desires, wishes and feelings of all the parties to this proceeding and in this we respectfully submit that it is the duty of the Court to respect the rights of these innocent children, of such tender years, by keeping them together in one family. As the record now stands before this Court it is quite apparent that the Pruitt home is a more suitable place to subserve this purpose.

## CONCLUSION

We have pointed out herein the failure of the Petition to allege facts sufficient to confer jurisdiction on the Juvenile Court; we have shown that the evidence is insufficient to confer jurisdiction on the Juvenile Court; we have shown that no emergency existed as contemplated by statutes, and wherein the judgments of the Court can not be reconciled with each other. As to fitness of the mother, we have cited the decisions of this Court holding that the fitness of parents to have the custody of their children is an issue triable in courts of general jurisdiction where the parties concerned may face each other face to face, introduce competent evidence, examine and cross examine witnesses and the court determine the issues on facts rather than assumptions, feelings and hearsay. We have pointed out wherein the interest of the children themselves was not given proper consideration, and in this we respectfully submit that the judgment of the Juvenile Court should be reversed and remanded with costs to appellants.

Respectfully submitted,

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