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State of Utah in the Interest of Charlyne Francis Mitchell : Brief of Respondent

Utah Supreme Court

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Walter > Budge; Earl S. Spafford; Attorneys for Respondent;

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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

JUN 19 1959

Clerk, Supreme Court, Utah

RESPONDENT'S BRIEF

WALTER L. BUDGE,
Attorney General,

EARL S. SPAFFORD,
Assistant Attorney General,

Attorneys for Respondent.

ARROW PRESS, SALT LAKE

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RESPONDENT'S BRIEF

STATEMENT

Respondent is in substantial accord with the statement of facts as contained in appellants' brief.

It should be particularly noted from an examination of the transcript and reports contained herein that Shirley Mitchell Holland, the mother, has for some considerable period of time, been under close scrutiny by the Department of Public Welfare and the custody of one child has been subject to supervision by the Welfare Department, and the Juvenile Court acting in its behalf. It should further be

noted that the Stellys are not parties to this appeal, and any arrangement made by the mother with the Stellys concerning an ostensible adoption is not a matter of proper consideration for this court. While appellants' attorney does in his statement make four assignments of error, we note that nowhere in his brief does he argue directly to the assignments, but directs his attention purely to other statement of points.

In answer to appellants' brief on appeal and in opposition thereto, respondent makes the following statement of points.

STATEMENT OF POINTS

POINT I.

THE PETITION DOES ALLEGE FACTS SUFFICIENT TO CONFER JURISDICTION ON THE JUVENILE COURT.

POINT II.

THE JUDGMENT IS SUPPORTED BY THE EVIDENCE.

POINT III.

THE JUDGMENT IS SUPPORTED BY THE LAW.

ARGUMENT

POINT I.

THE PETITION DOES ALLEGE FACTS SUFFICIENT TO CONFER JURISDICTION ON THE JUVENILE COURT.

Appellant suggests that the petition (R. 22) does not allege facts sufficient to confer jurisdiction on the Juvenile Court. In this regard respondent cannot agree. We refer the Court to the provisions of the Utah Code Annotated, 1953, Title 55-10-6, as follows:

"* * * The words 'neglected child' include:

"A child who is abandoned by his parent, guardian or custodian.

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

"A child whose parent * * * neglects * * * to provide proper or necessary subsistence * * *."

A cursory examination of the petition discloses a recital of facts abundantly sufficient to confer jurisdiction. By the language of the petition itself, there is a declaration of neglect strengthened by the allegations of the following facts:

"The parents of said child are not married, *certainly an element of irresponsibility*. The father of said child has never contributed to the support and maintenance of said child and has deserted and abandoned said mother and said child. *This clearly adopts the language and intent of the statute.* (2) The

mother of said child placed said child in the home of John Stelly, located at Ogden, Utah, and since July, 1955, has failed to support and maintain said child in any manner. Therefore said child is dependent upon the charity of others for her care, supervision and maintenance." *Again a declaration of lack of proper parental care, as contemplated by the statute.* (Italics ours.)

Respondents' position is unyielding in regard to conferring jurisdiction under the Utah statute above cited. The attention of the Court is further directed to Utah Code Annotated, 1953, 55-10-5, entitled "Jurisdiction of Juvenile Courts." We make particular mention of subparagraph (1) of said section, which provides:

"In any case in which the court shall find a child neglected, dependent or delinquent, it may, in the same or in any subsequent proceedings, upon the parents of such child being duly summoned or voluntarily appearing as hereinafter provided, proceed to inquire into the ability of such parents to support the child or contribute thereto, or into the fitness of such parents to continue in the custody and control of such child. The court may enter such order or decree as shall be according to law and/or equity in the premises, and may enforce the same in any way in which a court of law or equity may enforce its orders or decrees."

Thus jurisdiction is clearly granted in the case here presented. Respondent cites the following case: *In Re Olson*, 111 Utah 365, 180 P. 2d 210. In the *Olson* case, the fact that a third person was providing care for a child did not deprive the Juvenile Court of jurisdiction to inquire into the welfare of the child and to fix responsibility and de-

termine custody for the child within the scope of statutory authority. It is fundamental that where statutes govern a situation conferring jurisdiction, considerations of jurisdiction are limited to the language of the statute and dicta from other jurisdictions can in no way alter the clear and convincing meaning as set forth in the statutes.

Appellant suggests that because the Court made a finding in the case of Charlyne contrary to the finding in the case of Sharon, that this apparent inconsistency works in support of the Court's error. On the contrary, even if such an argument were material herein, it could only serve to strengthen respondent's position for the reason that separate findings in each of the two separate cases show careful and considered judgment on the part of the Court, and show the evident concern which the Court had in arriving at a fair conclusion. Appellant's conclusion cannot be supported by the transcript and record herein. It is apparent that the evidence in the two separate cases was different and the treatment of the child in each case by the mother was as different as no doubt the personality of the child itself.

We emphasize the fact that the argument concerning the two separate cases would in no way alter the conferring of jurisdiction by the Court upon the case of Charlyne Francis Mitchell.

POINT II.

THE JUDGMENT IS SUPPORTED BY THE EVIDENCE.

Appellant asserts that even were the Court to assume the petition was sufficient to justify inquiry, notwithstanding

ing the evidence was totally insufficient to sustain jurisdiction. Such is not a requirement of the law. Under Utah law the petition need only allege facts sufficient to confer jurisdiction. As to the evidence itself, this becomes a matter for determination by the Court and in no way affects jurisdiction.

The record presents clear and convincing evidence sufficient to justify the judgment of the Court.

We refer the Court to the findings of fact and conclusions of law as contained in the record at R. 9. The findings of fact present the basis upon which the Court ruled and found judgment against appellants. The findings of fact make no mention of the mentality or mental health of the mother of the children. The argument of appellant in this regard is therefore without merit.

Appellant argues that the placement of the child with the Stelly family shows evidence of proper care rather than of neglect. With this we do not agree. Certainly where a parent shifts his responsibility to that of another, and thereafter fails to recognize any parental care, it would be unreasonable to believe that by so doing they are not neglecting said child. Our Utah statute at 55-10-6 provides that a neglected child shall be "a child who lacks proper parental care by reason of the fault or habits of the parent, guardian or custodian." The facts in this matter are clear that the child was placed in the home of another person in order to avoid the parental responsibilities imposed by law upon the mother. It is interesting to note that until this matter was brought formally before the Court, at no time did the ap-

ellants, either the mother or Mr. and Mrs. Pruitt, show any real, prolonged or substantial interest in the welfare of the child. Even the mother by her actions preliminary to the hearing and thereafter upon interrogation in Court, showed a lack of responsibility to the child. We refer the Court to the transcript, page 9, in this regard. In answer to the Court's question:

"THE COURT: Well, what do you think would be the best for them? Do you think it would be better to go on like it has been going on or do you think that it would be better to have them in someone else's home?"

"SHIRLEY MITCHELL HOLLAND: I don't know.

"THE COURT: Looking at it from the standpoint of the children, not how you may feel about it, what do you think?"

"SHIRLEY MITCHELL HOLLAND: I guess they would be better off with someone else. I don't know."

In the above exchange, it is apparent that the mother herself felt that the best interests of the child would be served were they placed in the home of another for rearing.

Appellant makes reference to the law on adoptions in Utah. Respondent fails to see the application of this principle in the case at hand. The question of adoption is not the real issue in this case. The paramount consideration in this case is the neglect of a child by a parent.

Respondent wishes to state affirmatively that, contrary to the position taken by appellants, the judgment is

supported by the evidence and the Court did act well within its discretion in making findings such as are contained in the record. Based upon such argument as appellant sets forth, this Court should not lightly turn aside the considered opinion of the trial judge based upon a careful review of the evidence and records.

From our examination of the record, there appears to be no substantial attempt on the part of the appellants to restore the child to the custody of the mother, but rather to restore the child to the custody of the grandparents. We refer the Court to the transcript, (T. 30), where the grandmother in answer to a question by Mr. Oliver, states:

“That isn’t correct because Shirley has had the children. It is due to the fact that she has been negligent to an extent that has brought me forward to try to make a home for the children so that they can be together and be raised and live a long life. They haven’t been because they have been back and forth from one place to another.”

We refer the Court to the Welfare Department reports which have been made a part of this record and to the comment of the Los Angeles case worker on page 2 of the confidential report of the County of Los Angeles Bureau of Adoptions, dated December 5, 1958, and regarding Pruitt, Mr. and Mrs. Coy.

The situation as presented by Mr. and Mrs. Pruitt is as follows: Charlyne was placed in the Stelly home by the natural mother approximately two years ago, and the Stellys have had full custody and control of the child since that time. The natural mother apparently, though they did not state this,

left the child with the Stellys with the understanding that the child would be adopted by them. Until the time the Pruitts were notified of the matter pending in court, they assumed Charlyne had been adopted by the Stellys. Upon learning that the adoption had not been completed, they countered the Stellys petition for adoption of Charlyne with one of their own. I would judge from our conversation with the Pruitts that their main point of interest is not in adopting Charlyne, but rather in keeping the two children together. Their feeling as to the Stellys appears to be mixed. On the one hand they covertly admit that they are providing a good home for the child; however, overtly they told of rumors none of which have been verified by them, as to the neglect of the child by the Stellys. It might be significant to note that while they knew these rumors to exist, they did not go to any lengths to either verify or discount these rumors. Neither did they take action to determine the exact status of the child until they were informed of the instant legal proceeding."

See the report of December 9, 1958 regarding Charlyne Mitchell and signed by L. R. Roylance, commencing at the last paragraph of page 1.

"The child has remained in the Stelly home for a goodly length of time. She has come to accept Mr. and Mrs. Stelly as her significant persons. They have acted in the full meaning of the parental role for her and give ample evidence of love and solicitation in the best interests of Charlyne. It is my professional belief that Shirley Mitchell is a full bloom schizophrenic with all the ramifications involved in such a close diagnosis. Her behaviour over the past is indicative of this. Some of her behaviour is a matter of court record in previous years. Much of it is contained in records maintained at the various agencies

in this city and hospitals and agencies in other localities. To return the child to the mother would be very detrimental. To authorize the Pruitts to adopt the child would in effect return the child to the care of the mother."

We refer the Court to the body of these reports and to the general tenor of the recommendations contained therein.

POINT III.

THE JUDGMENT IS SUPPORTED BY THE LAW.

Respondent fails to see where the conduct of the Juvenile Court in allowing a ten minute recess to examine the Welfare Department records was in anyway prejudicial to the rights of the appellants. We find nothing in the transcript of record in which counsel objected to the length of the recess or asked for additional time to examine the reports. Further, counsel had the parties to this proceeding present to testify concerning the reports insofar as such reports applied to said individuals.

The reports constituted Welfare Department records and were records of investigations which had previously been made. Counsel had adequate opportunity to inform himself concerning the substance of the reports and thereupon examine his witnesses with reference thereto. It is interesting to respondents to note that a continuance had previously been granted on the hearing of this matter by the Juvenile Judge in order to give both the appellant and

the court an opportunity to examine the Welfare Department reports.

In this proceeding, it appears to the respondent quite evident that the Court is not being used as a convenient vehicle to nullify preferential rights of parents. The rights of parents to the custody of their children are preferential, it is true, but are in no way absolute where it can be shown by competent evidence that the parent is not capable of providing or willing to show such parental care as the statute requires. We submit that the preferential rights of parents do not, upon being properly subordinated pass to the grandparents. No doubt in a proper case relatives would, by assuming custody of a child, aid in protecting the best interests of the child. It is for the Court to determine, however, what is a proper case. In the instant circumstance, the Court has not made such a determination.

It should be emphasized that the Court has made a specific finding that it is detrimental to the interests of the child to change the existing placement (R. 9, Finding No. 7).

It is apparent to the respondents that this proceeding in no way should be construed as a trial of the Stelly household. The Court's action in awarding custody to the Stellys was quite secondary to the Court's action of depriving the mother of such custody. Appellant appears to be dwelling in speculation when it is suggested that the Stelly household is not suitable or when it is suggested that any reformation on the part of Mr. Stelly was motivated by some ulterior motive in connection with this proceeding.

Yes, the Pruitts were present at the hearings following the commencement of this action, and yes, they have shown some superficial concern for the welfare of their grandchildren, and yes, they have presented themselves to the scrutiny of the Court and subjected themselves to cross examination. All of this they have done, but they have done none of these in any substantial or continuing fashion until such time as this proceeding was instituted. The record is replete with suggestions that the Pruitts have heretofore exercised little, if any, continuing interest in the child, or that they are motivated by anything other than a desire to restore the physical custody of the child to their daughter. We once again refer the Court to the confidential reports heretofore mentioned. In respondent's opinion, the judgment is entirely supported by the law.

CONCLUSION

We are here considering the future welfare of a child who thus far in her short period of life has experienced upheaval after upheaval in being moved from place to place and subject to evident parental neglect. It was this circumstance that brought the matter to the attention of the Juvenile Court, and it became incumbent upon that Court to take whatever steps were lawfully within its power to restore some order to the life of this child. The Juvenile Court, recognizing its moral and legal responsibility to solve the dilemma which had been presented to it, caused a hearing to be held in which fair, careful and adequate consideration was given to all of the allegations and charges which were

rought before it. Based upon such well considered evidence and being completely mindful of its responsibility to the child and not at all unmindful of the paramount rights of the parent, the Court thereupon made findings of fact and conclusions of law and entered a judgment according to the evidence presented. The Court has found in substance that the best interests of the child can only be served by allowing it to continue in the home in which it had been placed by the mother and in which common bonds of affection and ties of parental love had been established. The paramount rights to be considered in matters of this sort are not those of the parent, but are those of the child. It is respectfully submitted that this case is a classic example of what necessarily must be done by courts of proper authority in disposing of problems involving parental neglect of minor children.

The Court should not quickly be inclined to set aside the judgment rendered herein.

Respectfully submitted,

WALTER L. BUDGE,
Attorney General,

EARL S. SPAFFORD,
Assistant Attorney General,

Attorneys for Respondent.