

1959

# In the Matter of the Estates of William Robert Williams and Sarah Corless Williams, Gladys Williams aka Tania Karol : Brief of Appellant

Utah Supreme Court

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# In the Supreme Court of the State of Utah

FILED

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In the Matter of the Estates  
of

WILLIAM ROBERT WILLIAMS, also  
known as WILLIAM R. WILLIAMS,  
and SARAH CORLESS WILLIAMS,  
*Deceased.*

Clerk, Supreme Court, Utah

Case No.  
9093

GLADYS WILLIAMS, also known as  
TANIA KAROL,  
*Petitioner and Appellant.*

## BRIEF OF APPELLANT

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## TABLE OF CONTENTS

	Page
STATEMENT OF FACTS .....	3
STATEMENT OF POINTS .....	7
ARGUMENT .....	8
I A TRIER OF FACT COULD FIND THAT A CONTRACT TO ADOPT APPELLANT WAS ENTERED INTO BY DECEDENTS WILLIAM ROBERT WILLIAMS OR SARAH CORLESS WILLIAMS OR BOTH.....	8
II A CONTRACT TO ADOPT, WHEN FULLY PERFORMED BY THE NATURAL PARENTS AND THEIR CHILD, WILL BE SPECIFICALLY ENFORCED. ....	12
CONCLUSION .....	17

## AUTHORITIES CITED

### CASES

Bedal v. Johnson, 37 Idaho 359, 218 Pac. 641 .....	16
Burns v. Smith, 21 Mont. 251, 53 Pac. 742 .....	16
Chehak v. Battles, 133 Iowa 107, 110 N.W. 330 .....	13, 17
Ezell v. Mobley, 160 Ga. 872, 129 S.E. 532 .....	15
Fisher v. Davidson, 271 Mo. 195, 195 S.W. 1024.....	15

	Page
Furman v. Craine, 18 Cal. 41, 121 Pac. 1007 .....	11
Biehn's Estate, In re, 41 Ariz. 403, 18 P.2d 1112.....	16
Garcia's Estate, In re, 45 N.M. 8, 107 P.2d 866 .....	10
Stoiber's Estate, In re, 101 Colo. 192, 72 P.2d 276 .....	16
Mc Elvain v. McElvain, 171 Mo. 244, 71 S.W. 142 .....	16
Monahan v. Monahan, 14 Ill. 2d 449, 153 N.E. 2d 1.....	9
Randall v. Tracy-Collins Trust Co., 6 Utah 2d 18, 305 P.2d 480 .....	16
Roberts v. Roberts, (8 Cir.) 223 Fed. 775.....	9
Taylor v. Waddoups, 121 Utah 279, 241 P.2d 157 .....	16, 18
Van Cott v. Brinton, 8 Utah 480, 33 Pac. 218 .....	16
Van Natta v. Heywood et al., 57 Utah 376, 195 Pac. 192 .....	16, 19
Van Tine v. Van Tine (N.J.) 15 Atl. 249 .....	11
Radovich's Estate, In re, 48 Cal. 2d 116, 308 P2d 14.....	14
Wooley v. Shell Petroleum Corp., 39 N.M. 256, 45 P.2d 927 .....	16
Wright v. Wright, 99 Mich. 170, 58 N.W. 54 .....	16

## MISCELLANEOUS

2 A.L.R. 1190 .....	15
33 A.L.R. 741 .....	15
69 A.L.R. 35 .....	15
2 Cal. Jur. 2d 424 .....	14
2 C.J.S., Adoption, P. 399 .....	12

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## BRIEF OF APPELLANT

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### STATEMENT OF FACTS

On September 12, 1958, William Robert Williams died intestate in Salt Lake City, having been predeceased by his wife, Sarah Corless Williams, who also died intestate. On September 26, 1958, Inez Williams Warshaw filed a Petition for Letters of Administration (R. 1-4) in which she claimed

to be the only heir of William Robert Williams (R. 3); and on October 28 she was appointed administratrix of the estates of both William Robert and Sarah Corless Williams (R. 8). On February 27, 1959, appellant filed a verified petition alleging, *inter alia*, that as the adopted daughter of decedents she was entitled to inherit from William Robert Williams on an equal basis with Inez Williams Warshaw (R. 31). The trial court thereafter permitted an amendment to the petition setting out that appellant was entitled to inherit from decedents by virtue of a contract in which they promised to adopt her; thereafter the parties proceeded as if an amended petition had been filed. In her petition appellant also described the contents of an holographic will written by William Robert Williams in September of 1956, read by appellant, and believed by appellant to have been in existence at the time of death of William Robert Williams. The Administratrix filed an answer denying those allegations in appellant's petition (R. 23). On June 5, 1959, the administratrix's Motion for Summary Judgment was granted by the Hon. Stewart M. Hanson (R. 54). The order, in addition to dismissing the petition, purported to find facts as follows:

"1. That there was no valid holographic will existing at the time of the death of the Decedents William R. Williams and Sarah Corless Williams or either of them.

"2. That the Petitioner Gladys Williams, also known as Tania Karol, was not and never was the adopted daughter of Decedents William R. Williams and Sarah Corless Williams or either of them.

"3. That during all times mentioned herein there was no valid and enforceable agreement by Decedents William R. Williams and Sarah Corless Williams, or

either of them, to adopt Petitioner Gladys Wililams, also known as Tania Karol.” (R. 53-54).

It is well settled that on a Motion for Summary Judgment the moving litigant must show that there is no genuine issue in respect to any material fact and that he is entitled to a judgment as a matter of law; also that all substantial doubts are to be resolved against him. Accordingly, the facts to be considered in determining whether the trial court's action was proper are those found in the pleadings, appellant's answers to interrogatories, and the deposition of Inez Williams Warsaw. The facts the trial court was obligated to consider are set out below.

When appellant was about three weeks old she was taken by members of the Relief Society of the Church of Jesus Christ of Latter-day Saints, with permission of her natural mother, Mrs. Carroll, to the home of the Williamses to be cared for until such time as Mrs. Carroll was physically and financially able to care for the child (R. 44). When appellant was about one year old, Mrs. Carroll felt capable of caring for the child and went to the home of the Williamses for the purpose of taking the child back (R. 44). On her arrival at the Williams home Mrs. Carroll was told that Mrs. Williams' health had been delicate, that she had previously lost a child and could bear no more children, that she had come to love appellant as her own child, and that if appellant were taken from her, medical complications might result (R. 45). Mrs. Carroll was asked to consent to the Williamses' keeping appellant and raising her as their own. She was told that if she gave this consent the Williamses would love appellant, give her the same schooling and opportunities as their own daughter, and

raise her as their own child (R. 45). Mrs. Carroll then consented to such an arrangement but at first did not want to sign any papers in connection with release of her child (R. 42).

When she was about two years old, appellant's natural father and mother were divorced in a proceeding in the District Court of Salt Lake County, State of Utah. The Court in this action found that the Williamses were raising appellant in their own home with the knowledge and consent of both the Carrolls. Money was awarded to Mrs. Carroll for support of appellant's natural sister but not for appellant (R. 46).

At about this time Mrs. Carroll, in the company of her teenage son, went to the office of Ben Johnson, a Salt Lake City attorney, for advice regarding appellant (R. 42). The Williamses were insisting upon adoption of appellant (R. 42), and Mr. Johnson told Mrs. Carroll that this was the "best way" (R. 42). Shortly after this meeting with the attorney Mrs. Carroll, upon her return home one day, said she had "signed [appellant] away" and had been required to promise not to try to see appellant or tell her, if they ever met, that she was appellant's mother (R. 42).

During appellant's infancy her natural mother came to the Williams home on at least one occasion for the purpose of taking back the child, whereupon appellant was hidden by the Williamses (R. 67, p. 9). However, Mrs. Carroll went away, apparently satisfied, and there is no indication that any legal action was commenced to regain the custody of her child.

When appellant was eight or nine years old she was told by a neighbor's child that she was not the child of the Wil-



liamses but was adopted (R. 45). She was comforted by the Williamses and the Warshaws and assured that she was not adopted but was the child of the Williamses (R. 45).

A certificate of birth (R. 41) was entered of record May 5, 1918, by the Church of Jesus Christ of Latter-day Saints, certifying, among other things, that appellant was born March 18, 1910, at Salt Lake City, Utah, and that her parents were William R. Williams and Sarah Corless Williams.

After appellant was an adult decedent William R. Williams purchased a burial plot for her adjacent to that of a son who had previously died (R. 45).

Appellant was held out to the world as the daughter of the Williams and was regarded as a sister by the administratrix, Inez Williams Warshaw (R. 67, p. 3). Appellant did not know that she was not the natural daughter of the Williamses until she was fourteen year old at which time she was told by a schoolmate that she had been adopted (R. 46).

From appellant's infancy until the decedents' deaths there were close parent-child relationships, and during that time decedents continually held appellant out to the world as their child, referring to themselves as her "loving parents" (R. 46).

## STATEMENT OF POINTS

1. A trier of fact could find that a contract to adopt appellant was entered into by decedents William Robert Williams or Sarah Corless Williams or both.

2. A contract to adopt, when fully performed by the natural parents and their child, will be specifically enforced.

## I

A TRIER OF FACTS COULD FIND THAT A CONTRACT TO ADOPT APPELLANT WAS ENTERED INTO BY DECEDENTS WILLIAM ROBERT WILLIAMS OR SARAH CORLESS WILLIAMS OR BOTH.

The development of facts evidencing occurrences of almost 50 years is a difficult and time-consuming task. It may be facilitated and shortened by the use of discovery procedures; but in this instance the administratrix and the court have insisted that appellant prove her case *now*—not at a trial. To place this burden upon appellant the administratrix has not even been required to submit affidavits as to what she contends the true facts to be. It is an odd procedure and an unusual burden; even if it were proper appellant has shown facts sufficient to establish a contract to adopt: the “signing away” of the infant child; the lawyer’s advice; the final acquiescence of the natural mother. Time may make other proof available (if weight is the problem); but facts already in the record tend to prove the contract: assumption of custody and control of appellant by the Williamses; relinquishment of custody and control by the natural parents; the Williamses holding appellant out to the world as their child and telling appellant throughout childhood that she was their natural, not even adopted child; giving appellant their name; causing her to be baptized as their own child; a continual pattern of the

relationship of parents and child throughout the Williamses lifetime.

1911-1912.

Many cases have dealt with the validity of and the quantum of proof necessary to establish contracts to adopt; and the courts have realistically recognized that such a contract usually must be proved by evidence other than a parchment scroll—signed, sealed and tied with blue ribbon.

In *Monahan v. Monahan* (1958) 14 Ill. (2d) 449, 153 NE 2d 1, the Supreme Court of Illinois approved the finding of an oral contract to adopt, the finding having been based upon evidence quite similar to that before the trial court in the instant case.

Testimony showed that the natural mother "gave" the *quasi* adopted child to the adoptive parents when the child was six years old. The adoptive parents had the child baptized in their own name when the child was nine years old. They entered the child in school as their "adopted child," continually referred to the child as their son, and in turn were by the child referred to as his "mom and dad." The child conducted himself as a loving and dutiful child and the adoptive parents continued to hold themselves out as his parents. The question, in this case, was whether or not a contract to adopt could be established purely by circumstantial evidence. The Court said:

"Certainly a contract to adopt as any other fact may be proved by circumstantial evidence, provided that evidence meets the requisite tests of sufficiency."

The same viewpoint was adopted in *Roberts v. Roberts*

(1915), 223 Fed. 775, by the United States Court of Appeals for the Eighth Circuit, the Court saying:

"The argument by which we are asked to reverse the decree is that there was no direct or clear evidence of an agreement to adopt at the time Myra J. Roberts was received into the family of Charles Roberts. There is good reason why such evidence is wanting. All of the parties to the transaction are dead, and Myra J. Roberts was herself a babe at the time of the adoption. It seems to us that in such a case it is not necessary that the court first have direct proof of the making of the contract, and then proceed forward from the contract thus established to the conduct evidencing its existence. We think it is possible to reverse that process, and if the statements and conduct of the adopting parents are such as to furnish clear and satisfactory proof that an agreement of adoption must have existed, then the agreement may be found as an inference from that evidence."

In *In re Garcia's Estate* (1940) 45 N. M. 8, 107 P.2d 866, the plaintiff had been taken into the home of the decedents when she was about seven years old. The decedents had promised the plaintiff's uncle, who stood *in loco parentis*, to adopt her. From this time on she was continually held out to the world both as the decedents' daughter and as their adopted daughter, was baptized with the name of the decedents, entered in school by the decedents and given away in marriage by the decedents in conformance to a Spanish custom. The promise to adopt was never fulfilled. The question, in this case, was one of sufficiency of proof, a New Mexico statute requiring corroboration in suits against heirs. In upholding the decree for specific performance of the contract to adopt, the Court said:

" \* \* \* the agreement may be established either as an express or implied contract provided the proof offered is of the convincing character required in cases of this kind \* \* \* . It is not necessary that the corroboration of the plaintiff's testimony be afforded by direct evidence. If this is not available, the corroboration required by the statute may arise from circumstances."

In *Van Tine v. Van Tine* (N. J.) 15 Atl. 249, there was no written agreement of any kind, but the *quasi* adopted child's father gave the child to the adoptive parents when the child was only a few months old. The child was raised by the *quasi* adoptive parents, baptized by them and given their name, by which name the child was always called, both by the adoptive parents and neighbors and relatives. The child was raised in the belief that she was the natural child of her adoptive parents, and did not learn differently until she was over the age of 18. The adoptive parents left a will, giving to the virtually adopted child much of their property, but leaving other property not disposed of. The Court held that the parol agreement to adopt would be enforced, and the child entitled to inherit the property as if she had been adopted according to the statutes.

*Furman v. Craine* (1912) 18 Cal. 41, 121 Pac. 1007, involved an alleged written agreement to adopt, wherein the parents forever surrendered to adoptive parents the control, custody and society and relinquished all claims and rights to the child, but the complete instrument was not found or entered in evidence. Only "a mutilated copy, containing little of the substance of the agreement" was introduced. Further testimony showed that the natural parents released the control, custody

and society of the four-year-old child and from that time on, the *quasi* adoptive parents took charge of the child and raised her as a member of the family, and that the child, throughout her life, until the death of the *quasi* adoptive parents, conducted herself at all times as a dutiful child. The Court decreed specific performance of the contract and held that the child was entitled to inherit the decedents' property as if a natural child.

The record in the instant case contained sufficient evidence to support a finding that there was a contract to adopt. Moreover, it also contained material from which it should have been apparent to the trial court that other evidence might be obtained by appellant prior to trial time. Accordingly, the judgment should be reversed since, as shown below, contracts to adopt are specifically enforceable.

## II

### A CONTRACT TO ADOPT, WHEN FULLY PERFORMED BY THE NATURAL PARENTS AND THEIR CHILD, WILL BE SPECIFICALLY ENFORCED.

The above point is a paraphrase of a legal rule accepted by the great majority of courts that have been asked to enforce contracts to adopt. The view is referred to in 2 C.J.S., Adoption, § 27(6), p. 399, as follows:

" \* \* \* Under the principle that equity will consider that done which ought to have been done, the authorities very generally establish the proposition that a contract by a person to adopt the child of another as his own, accompanied by a virtual, although not a

statutory adoption, and acted upon by both parties during the obligor's life, may be enforced, upon the death of the obligor, by adjudging the child entitled to a natural child's share in the property of the obligor who dies without disposing of his property by will."

This court has not specifically considered the enforceability of contracts to adopt; but enough courts have found them enforceable that the numbers—even without the reasons—might tend to establish the soundness of the view that such contracts should be enforced. The following cases are representative, not exhaustive.

A leading and frequently cited case is *Chehak v. Battles* (1907) 133 Iowa 107, 110 N.W. 330, in which a *quasi* adopted child claimed a right in the estate of the deceased *quasi* adoptive parents, pursuant to a written agreement signed by the child's natural mother, and the deceased *quasi* adoptive parents, which contract recited that the natural mother gave the *quasi* adoptive parents her child for the purpose of adoption, and stated that such child "shall be named as they shall seem fit, and bear the name of Battles", and the *quasi* adoptive parents covenanted "that they and each of them accept the rights, duties and relations of a parent to this child, and shall in all respect be that of a child born to themselves in the state of wedlock, and that the same shall include all of the rights of inheritance by law." A statutory adoption was never attempted. The Court decreed that the contract should be specifically enforced regardless of the statutory requirements for a completed adoption. In its opinion, the Court said:

"Though a contract of adoption could not be sustained in common law, the courts of equity enforce

such contracts whether oral or in writing with respect to property rights involved \* \* \* . The obligations of such a contract as of others are mutual, and the peculiarities of it, such as emphasize the right of him who has faithfully performed his part of it to that portion stipulated by the other party. It is impossible to estimate by any pecuniary standard the value to the parties receiving a child, nor is there any design of so measuring the service and solace bestowed. The nature of the contract necessarily precludes all thought of returning the consideration, and after the mother has yielded the possession of her child with all that this means, and it has lived until majority as a dutiful and loving son or daughter with those who have promised to cherish him or her as their own, and that he or she shall share their estate, it is beyond the power of the adopted parents or the courts to place the mother or child in the situation in which they were before the agreement was entered into. There is no such thing in cases like this as placing the parties in *status quo*, and the remedy must be specifically enforcing the contract or the denial of rights which have been fully earned, and in good conscience and justice ought to be enforced."

California courts will enforce contracts to adopt. See 2 Cal. Jur. 2d 424; also, *In re Radovich's Estate* (1956), 48 Cal. 2d 116, 308 P. 2d 14, in which the Court said:

"There can be no question but that the agreement was valid, and that Judge Clark correctly decided George is entitled to distribution of all of the estate of the decedent."

This case was concerned directly with the question of whether or not, for inheritance tax purposes, the *quasi* adopted child was entitled to the exemption granted by statute to a



natural or adopted child, but the Court expressed no concern over the lower court decreeing specific performance of an oral agreement to adopt a seventeen-year-old child, where there had been no statutory adoption but the agreement had been fully performed on the part of the child, and the natural parents had relied on this agreement.

In *Fisher v. Davidson* (1917) 271 Mo. 195, 195 S.W. 1024, a husband and wife had assumed possession and control of a three-year-old child under an agreement to take and raise her as their own child, the child to assume the name of the adoptive parents. They took the child into their home, changed her name and thereafter until death, a considerable period of time, treated her as their child, she being commonly known in the circle in which they moved as their child. The Court held that in equity she would be deemed to be the adopted child and entitled to inherit the property of her adoptive parents.

In *Ezell v. Mobley* (1925) 160 Ga. 872, 129 S.E. 532, the Court held that a parol obligation to adopt a child of another accompanied by a virtual, though not a statutory, adoption, is sufficient to warrant the enforcement of such obligation in equity by decreeing the *quasi* adopted child to be entitled to a natural child's share in *quasi* adoptive parents' estate, in the event of the latter's intestacy, and upheld the right of a virtually adopted child to contest the will of her foster parents.

Many other cases, in a substantial number of jurisdictions, recognize and enforce contracts to adopt, both written and oral. See 2 A.L.R. 1190; 69 A.L.R. 35; 33 A.L.R. 741; *In re*

*Biehn's Estate* (1933) 41 Ariz. 403, 18 P.2d 1112; *Wooley v. Shell Petroleum Corporation* (1935) 39 N.M. 256, 45 P.2d 927; *Bedal v. Johnson* (1923) 37 Idaho 359, 218 Pac. 641; *In re Stoiber's Estate* (1937) 101 Colo. 192, 72 P.2d 276; *Wright v. Wright* (1894) 99 Mich. 170, 58 N.W. 54; *McElvain v. McElvain* (1902) 171 Mo. 244, 71 S.W. 142; *Burns v. Smith* (1898) 21 Mont. 251, 53 Pac. 742.

It takes an Alice-in-Wonderland type of imagination to conceive any reasons of public policy that would prevent a child from sharing in his *de facto* adoptive parents' estate merely because the parents had failed to do what they promised to do. The right of a child to inherit has nothing to do with the formalities necessary, under our adoption statutes, to foreclose natural parents from reclaiming their children; and *Taylor v. Waddoups* (1952) 121 Utah 279, 241 P.2d 157, involving a dispute between natural and adoptive parents over custody of a child, does not touch our problem.

We are concerned with property rights here. Where does the parents' property go, and how? Should the promises and expectations of the decedents be given effect, or should a non-participant in the transaction receive a windfall because of a failure to act as promised? This court has not hesitated to specifically enforce contracts under which property is to be disposed of in a certain way upon death. See *Randall v. Tracy-Collins Trust Company* (1956) 6 Utah 2d 18, 305 P.2d 480; *Van Cott v. Brinton* (1983) 8 Utah 480, 33 Pac. 218; and *Van Natta v. Heywood* (1920) 57 Utah 376, 195 Pac. 192.

If contracts to leave property may be enforced specifically,

why not contracts to adopt, at least insofar as they affect disposition of property. As the Court said in *Chehak v. Battles*, cited supra, p. 333:

"If a contract with an adult to convey or will property in consideration of services rendered may be enforced by such an adult, and one for whose benefit a contract has been made may enforce it [in this state], upon what tenable theory shall the Court, upon demand of a child who has met all the obligations imposed, deny specific performance of the solemn agreement of a deceased person who, upon the ample consideration of the surrender of such child by its natural parent, with the privilege of naming it and the benefits derived from its care, custody, and services, has promised that such child shall share in or take all of his estate, and has died without providing for the execution of his promise? To so decree is not to award the right to inherit, which depends on status, but to enforce a contract for the disposition of property, and there is no reason for denying an infant the right to such relief when it is freely accorded to an adult."

## CONCLUSION

It is not clear from the record just what the basis of the trial court's ruling was. We would have felt safe in presuming that the basis was a belief that contracts to adopt are not enforceable against the estate of the deceased promisor; but the court's inclusion in its order of what appear to be findings of fact has raised some question in our minds as to whether the court weighed the various evidence or meant to indicate in its order that the matters before it made it appear to a certainty that there could be no satisfactory proof of a contract

to adopt. We submit that the evidence outlined would be sufficient to make out a contract to adopt; and if it is not, the petitioner's answer to interrogatories makes it appear that there is or may be additional evidence of a written contract to adopt—evidence which the petitioner was not given an opportunity to obtain. Accordingly, it would appear that the court has not interpreted the rules, particularly the summary judgment rule, in such a manner as to obtain substantial justice.

On the other hand, if the court's ruling was based upon a view that contracts to adopt are not enforceable, we submit that the view is erroneous and opposed to a substantial weight of judicial authority. Admittedly the state's adoption statutes require that certain formalities be followed in order to accomplish a valid adoption. But the adoption statutes are primarily for the protection of children and natural parents. It is appropriate that the legislature would not wish to have the rights of the natural parents, and the right of the child to live with its natural parents, taken away except under closely guarded procedures. That the interest of the child is of paramount importance is pointed out in *Taylor v. Waddoups supra*. But here, we are not concerned with the rights between the natural parents, the adoptive parents and the child. The adoption was an accomplished fact, whether the formalities were followed or not. It is a fact that the child lived out her childhood with the adoptive parents, that the natural parents relinquished control, that there was no dispute as to the right to custody. The parties concerned recognized the adoption. The only person who does not recognize the adoption is one who stands to benefit, monetarily, by taking refuge in technicalities of an adoption statute and in the passage of time. Throughout their

lifetimes Mr. and Mrs. Williams received the benefits of the *de facto* adoption. Mrs. Williams had the affection that she needed and filled the void left by the loss of her own child and her inability to bear another. Throughout childhood and adulthood the appellant continued in her relationship as a child and was considered to be a child by the only other principals involved.

Whether the petitioner can prove a completed *de jure* adoption or not, and it is not certain at this point that she cannot, the contract to adopt ought to be enforced and the expectations of the decedents fulfilled. As this court said in *Van Natta v. Heywood et al.* (1920) 57 Utah, 376, 195 Pac. 192, *supra*:

“ \* \* \* If the courts were powerless, as a matter of equity, to carry out the intent and purposes of the deceased to fulfill his expressed promise in agreement with the plaintiff, so repeatedly admitted and always acted upon by the plaintiff, then indeed would they be helpless to award that which the inherent justice of a case demands.”

The judgment of the District Court should be reversed and the case remanded for trial.

Respectfully submitted,

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