

2001

Geri Pasquin v. Candice M. Switter : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Brian W. Steffensen, William J. Middleton; Robin Ravert; attorney for appellant.

Robert Copier; attorney for appellee.

Recommended Citation

Reply Brief, *Pasquin v. Switter*, No. 20010717 (Utah Court of Appeals, 2001).

https://digitalcommons.law.byu.edu/byu_ca2/3437

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

Geri Pasquin,

APPELLANTS REPLY BRIEF

Petitioner/Appellant,

vs.

Civil No. 20010717-CA

CANDICE M. SUITTER,

Respondent/ Appellee.

Nature of Proceeding:

**Appeal from the Third District Court,
Salt Lake County, State of Utah**

**Honorable Ronald E. Nehring, Presiding
Argument Priority Classification: 15**

**Brian W. Steffensen, P.C. (3092)
William J. Middleton (7580)
Steffensen Law Office
2159 South 700 East, Suite 100
Salt Lake City, Utah 84106
Tel: (801) 485-3707
Attorney for Petitioner/Appellant
Geri Pasquin**

**Robert Copier
243 East 400 South, Suite 200
Salt Lake City, Utah 84111-2803
Attorney for Respondent/Appellee
Candice M. Suitter**

**Robin Ravert
Guardian Ad Litem's Office
450 South State Street, 2nd Floor
Salt Lake City, Utah 84114-0403
Attorney for the minor child, Torri Lynn Pasquin**

Petitioner/Appellant requests oral argument and a Published Opinion

FILED
Utah Court of Appeals

MAR - 8 2002

**Paulette Stagg
Clerk of the Court**

IN THE UTAH COURT OF APPEALS

Geri Pasquin,

APPELLANTS REPLY BRIEF

Petitioner/Appellant,

vs.

Civil No. 20010717-CA

CANDICE M. SUITTER,

Respondent/ Appellee.

Nature of Proceeding:

Appeal from the Third District Court,

Salt Lake County, State of Utah

Honorable Ronald E. Nehring, Presiding

Argument Priority Classification: 15

**Brian W. Steffensen, P.C. (3092)
William J. Middleton (7580)
Steffensen Law Office
2159 South 700 East, Suite 100
Salt Lake City, Utah 84106
Tel: (801) 485-3707
Attorney for Petitioner/Appellant
Geri Pasquin**

**Robert Copier
243 East 400 South, Suite 200
Salt Lake City, Utah 84111-2803
Attorney for Respondent/Appellee
Candice M. Suitter**

**Robin Ravert
Guardian Ad Litem's Office
450 South State Street, 2nd Floor
Salt Lake City, Utah 84114-0403
Attorney for the minor child, Torri Lynn Pasquin**

Petitioner/Appellant requests oral argument and a Published Opinion

TABLE OF CONTENTS

SUMMARY OF ARGUMENT	4
ARGUMENT	5-9
I. Pasquin properly marshaled the evidence in her appellant brief which supported her challenges to the Trial Court's findings and ruling	5-6
II. Pasquin's argument regarding the GAL's participation is proper because Pasquin raised the issue at the Trial Court	6
III. The legal standard advocated by Pasquin does not violate constitutional strictures, and Sutter's arguments therein should be disregarded	7-8
IV. The issue of whether Pasquin's appeal was defective for lack of a final order has already been dealt with, and Sutter's arguments herein on that issue should be ignored	8-9
V. There is no basis by which Sutter is entitled to attorney's fees and double costs under URAP 33- Pasquin's appeal is not frivolous but is made in good faith	9
CONCLUSION	10-11

TABLE OF AUTHORITIES

CASES

<i>Campbell v. Campbell</i> , 896 P.2d 635, 638 (Utah App. 1995)	5
<i>Troxel v. Granville</i> , 530 U.S. 57 (2000)	7, 8

STATUTES

U.C. A. 30-5-2	7
----------------------	---

RULES

Rule 10(a)(1) of the Utah Rules of Appellate Procedure	8
Rule 33 of the Utah Rules of Appellate Procedure	9

SUMMARY OF ARGUMENT

In their appellee briefs, Appellee Candace M. Sutter (“Sutter”) and the Guardian ad Litem’s office (“GAL”) argue that Appellant Geri Pasquin (“Pasquin”) did not marshal the evidence in support of her arguments. This is not true. In challenging the findings of the trial court, Pasquin, in her appellant brief, adduced facts that dealt with Pasquin’s attempts to visit with the minor child, showed that Sutter did not care about family disputes and indicated that visitation with Pasquin would be beneficial. Further, the issues raised with regard to the GAL’s involvement in the case are proper on appeal, because at trial at the trial court level, Pasquin objected to the GAL’s lack of involvement in the case and requested that the Court interview the minor child. The legal standard advocated by Pasquin and the possible result of the case being remanded to the Trial Court for further proceedings does not violate Sutter’s constitutional right because Grandparent visitation is a legal, constitutional remedy which Pasquin is entitled to seek. The issue of whether Pasquin’s appeal was defective due to a lack of final order has been dealt with on summary disposition within this appeal, and thus is not proper in an opposition brief. The arguments of Sutter on this issue should therefore be disregarded. Finally, there is no basis upon which to award fees and costs to Sutter in connection with her having to respond to this appeal, and thus Sutter’s request for fees and costs must be denied.

ARGUMENT

I. Pasquin properly marshaled the evidence in her appellant brief which supported her challenges to the Trial Court's findings and ruling

In her appellant brief, Pasquin argues that the trial court failed to make a finding that Sutter's reason for withholding visitation was reasonable, and that the Court's finding that Pasquin made only token efforts to see the minor child was in error. In support thereof, Pasquin adduced facts indicating that Pasquin was never given a reason why visitation ceased, that Sutter admitted that visitation stopped due to familial disputes about which Sutter did not care, and that Sutter was okay with Pasquin visiting the minor child and thought it would be beneficial. Further, Pasquin adduced facts demonstrating the efforts made by Pasquin to visit with the minor child. What's more, Pasquin set forth the appropriate legal standards- that the evidence did not support the trial court's findings and that the factual findings of the Trial Court were clear error.

Therefore, it is simply not true that, as Sutter and the GAL contend, Pasquin did not marshal the evidence. Pasquin stated her challenges to the Court's ruling, then supplied the facts that supported those challenges and demonstrated how said evidence did not support the trial court's findings. Campbell v. Campbell, 896 P.2d 635, 638 (Utah Ct. App. 1995).

(Sutter's contention that Pasquin's failure to provide an appendix harms her appeal is without merit. In her docketing statement, Pasquin provided the memorandum decision and the docket on the case. That, along with the record on appeal index, constituted the full record of the

case).

Indeed, it is not Pasquin's contention that insufficient evidence was before the Court. Rather, Pasquin's argument is that, given the evidence that was before the Court, the Court's finding was simply in error. And, as stated, Pasquin has set forth the factual evidence which contravenes the findings of the Court.

II. Pasquin's argument regarding the GAL's participation is proper because Pasquin raised the issue at the Trial Court

Contrary to the argument of the GAL, Pasquin does not take issue with the GAL because they did not provide enough evidence to help her side. Rather, the concern is that they did not adequately investigate the case and give the Court a full report. The Court's decision was thus based on incomplete GAL information.

What's more, again contrary to the GAL's argument, Pasquin did raise the issue of objection to the GAL's level of participation at and with the Trial Court. Pasquin did not receive the report and recommendation of the second guardian ad litem until the day before hearing. Thus it was not until the trial that the issue of the GAL's involvement came up. Given the incompleteness of the report, Pasquin asked the Trial Court to interview the minor child in order to get a better impression of her views, to help fill in the blanks created by the GAL (see record on appeal index page 55- from the May 31, 2001 hearing, at page 104, lines 17-25, and page 106, lines 17-20). As a result, this issue of GAL involvement was preserved for appeal.

III. The legal standard advocated by Pasquin does not violate constitutional strictures, and Switter's arguments therein should be disregarded

During the course of the trial court litigation, Switter attempted to have the case dismissed based on both the unconstitutionality of the Utah grandparent statute, Utah Code 30-5-2, and based on the U.S. Supreme Court decision in Troxel v. Granville, 530 U.S. 57 (2000). These motions were denied. Then, as Switter points out, the evidence was heard and a decision rendered. On appeal, Pasquin challenges this ruling and the findings that supported it by contending that the ruling was contrary to the evidence. There is nothing unconstitutional about this, or about what result may occur.

If this Court were to rule that the ruling and factual findings in support by the trial court was error, and that the case be sent back to the trial court, no constitutional right of Switter would be compromised. Grandparent visitation is an available, constitutional remedy in Utah. Troxel is a limited holding that has not invalidated grandparent visitation, and, most importantly, has not invalidated it in this state. What's more, this issue of constitutionality was not argued by Pasquin in her initial appellate brief, and Switter has not filed her own appeal. Thus, discussion of this issue is improper as it is not an issue on appeal and not an issue raised by Pasquin and requiring response by Switter.

As Pasquin has stated in various trial memoranda and at the trial itself, the laws on grandparent visitation give great deference to parental rights and the parents right to choose. However, the law does allow for grandparent visitation to be allowed where it would be in the best interests of the minor child. *See Utah Code 30-5-2*. In this case, Pasquin argues that because Switter actually has stated that visitation would be okay (that is, is not on record as saying no

visitation can occur) that the Court's ruling is in error. Again, for this Court to find that the trial court decision was in error based on the legal standard stated would not violate a constitutional right. Grandparent visitation can be granted, in the right circumstances. Thus, Switter's discussion of Troxel and other states cases should be disregarded. (Similarly, Switter's comments regarding media coverage of this case, comments suggesting how Pasquin could have better presented her case, commentary on the attitude of witnesses, pleas to Pasquin herself to take "no" as an answer with dignity and decorum, speculation about Pasquin's motives , and general suggestions as to how Pasquin should conduct herself with regard to the visitation issue should be entirely disregarded. These "issues" were not brought up by Pasquin and do not even pertain to any legitimate argument raised by Switter. They are merely off-hand comments, apparently thrown in to give Switter a forum to comment on the case in general, rather than stick to the legal, appeal-specific issues).

IV. The issue of whether Pasquin's appeal was defective for lack of a final order has already been dealt with, and Switter's arguments herein on that issue should be ignored

Following the notice of appeal and docketing statement filed by Pasquin on this appeal, Switter filed a motion for summary disposition wherein she argued that the memorandum decision, following trial, by Judge Nehring, was not a final, appealable order under Utah R. App. P. 10(a) (1). The Court of appeals, on October 17, 2001, denied the motion and ordered that the issues raised therein be deferred pending presentation of the briefs and consideration of the appeal.

Given this clear ruling by the Court of Appeals, discussion of this final order issue within Switter's appellee brief is not proper. The Court of Appeals denied the motion for summary

disposition, and deferred any discussion of the issue until the briefs were completed. Don't discuss the issue in your brief, the Court of Appeals was saying. Therefore, the discussion in Suitter's brief on this issue should be disregarded and not considered in any way, shape, or form. (In the event the Court herein does take up this issue, Pasquin will not burden the Court with a re-hashing of her argument on this issue, but would simply refer the Court to her opposition memorandum to the motion for summary disposition. Strangely, after arguing that a final order was not entered in the case, Suitter states that she accepts the memorandum decision as the final order, and later states that the memorandum decision is a clear, comprehensible and complete conclusion to the controversy).

V. There is no basis by which Suitter is entitled to attorney's fees and double costs under URAP 33- Pasquin's appeal is not frivolous but is made in good faith

Because, in Suitter's estimation, Pasquin and her attorneys should have taken "no" for an answer and not tried to appeal the trial Court's ruling, and, presumably, because Suitter is a mother with a young family, Suitter argues she is entitled to attorneys fees and double costs under Utah R. App. P. 33. Why Suitter's status as a mother with a young family enables her to costs and fees is not made clear. In any event, there is no basis for an award of fees and costs to Suitter. Pasquin has brought this appeal in good faith, challenging the trial court's findings. Pasquin's appeal is based on and is grounded in the facts of the case, which she contends merit a reversal of the trial court's decision. The appeal is within the bounds of existing law. Therefore, no award of costs and fees to Suitter is justified, and such request must be denied.

CONCLUSION

Pasquin has brought this appeal in part upon the argument that the decision rendered by the Trial Court did not comport with the facts adduced at trial. In support thereof, Pasquin has set forth those facts- “marshaled the evidence”- which contravene the Court’s order and the findings that support it. Pasquin has properly set forth the legal standards, and thus has properly brought appellate claims.

Pasquin’s claims regarding the GAL’s involvement in the case were properly preserved at the time of trial and are proper appellate claims. At the time of trial, and not before, Pasquin realized the incomplete nature of the GAL’s involvement in the case. Pasquin noted to the Court this incomplete involvement and, in an effort to help make up for it, asked the Court to interview the minor child, since the present GAL had not done so. Thus, presentment of the level of involvement of the GAL at the Trial Court level was a timely and proper appellate claim.

The legal standard set forth by Pasquin and the possible result of appellate reversal do not violate Sutter’s constitutional rights. Grandparent visitation, based on appropriate factual support, is a constitutional remedy provided by statute for grandparents in Utah. Thus, in arguing for a reversal and to assert grand parent visitation rights, Pasquin is not infringing on Sutter’s constitutional rights. In addition, though raised by Sutter, such constitutional issues are not issues on appeal, were not raised by Pasquin, and do not belong in Sutter’s appellate brief. Such discussion of these issues should be disregarded.

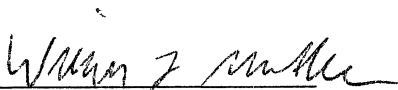
The issue of whether the memorandum decision by the Trial Court was a final, appealable order has already been decided by the Appeals Court. This court denied the motion of Sutter for summary disposition on this issue, and directed the issue deferred. Thus, it was improper for

Suitter to raise the issue in her appellate brief, and any and all mention of this issue in Suitter's brief should be disregarded.

Finally, Pasquin's brief was brought in good faith and was grounded in the facts of the case. Therefore, there is no basis, and Suitter has set forth none, which would entitle Suitter to receive costs and fees for having to respond to this appeal. Accordingly, the request for costs and fees made by Suitter must be denied.

Pasquin respectfully requests that the Court overturn the Trial Court's ruling that visitation by Pasquin of the minor child is not in the child's best interests, and remand the case to the Trial Court for further proceedings consistent thereto.

DATED this 8th day of March, 2002.



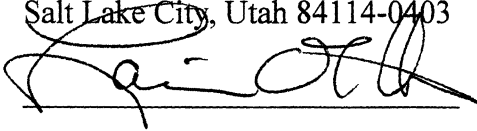
Brian W. Steffensen
William J. Middleton
Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March, 2002, I caused two true and correct copies of the foregoing instrument to be X mailed, postage prepaid; and/or hand-delivered by _____ fax and/or by _____ courier, addressed to:

Robert H. Copier
243 East 400 South, Suite 200
Salt Lake City, Utah 84111-2803

Robin Ravert
Guardian ad Litem
450 South State Street, 2nd Floor
Salt Lake City, Utah 84114-0403

A handwritten signature in black ink, appearing to read "Robin Ravert", is written over a horizontal line.