1965

State of Utah In the Interest of Cindy Cooper and Tracy Caine and Marvin Lentini and Judith D. Lentini v. the State of Utah : Brief of Respondent

IN THE SUPREME COURT
OF THE
STATE OF UTAH

STATE OF UTAH, in the Interest of
CINDY COOPER and TRACY CAINE

MARVIN LENTINI and JUDITH D. LENTINI,
Petitioners and Appellants,

— v —

THE STATE OF UTAH,
Defendant and Respondent.

Case No. 10352

BRIEF OF RESPONDENT

Appeal from the Judgment of the
District Juvenile Court for Utah County, State of Utah
Honorable Monroe J. Paxman, Judge

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TABLE OF CONTENTS

CASES CITED

STATUTES CITED

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STATEMENT OF NATURE OF THE CASE

The appellants Marvin Lentini and Judith D. Lentini, aunt and uncle of Cindy Cooper and Tracy Caine, appeal from a decision of the Juvenile Court for Utah County denying their petition for custody of the minor children.

DISPOSITION IN LOWER COURT

On February 5, 1963, a petition was filed with the Juvenile Court for Utah County, alleging that the children of Linda Davis Fixel were neglected children within the meaning of Section 55–10–6, Utah Code Annotated, 1953. An amended petition was filed on February 21, 1963, and the parents of the children duly served. On April 5, 1963,

the court entered findings and decree determining
Tracy Caine, Cindy Cooper, and other children
neglected children. Cindy Cooper and Tracy Caine
placed with the Utah County Department of We
On May 21, 1963, a petition for a permanent depri
of custody was filed, and on August 30, 1963, the ch
were permanently removed from the custody of the
ents. On September 30, 1963, Marvin Lentini and Ju
Lentini, of Elko, Nevada, filed a petition for custody o
children, along with a copy of the mother's consent t
having custody over the children. A hearing was held
the 19th of November, 1963, and an order denying the pe
tion entered on the 29th of January, 1964. Subsequent
rehearing was granted and set for September 28, 1964
the 26th of January, 1965, the court entered its findings
fact and decree denying the petition of the Lentinis. T
instant appeal was thereafter taken, and on the 17th da
May, 1965, this court heard a motion of the State to dism
the appeal. On August 2, 1965, the court denied the Sta
motion to dismiss the appeal.

RELIEF SOUGHT ON APPEAL

The respondent submits that the decision of the Juvenile
Court should be affirmed.

STATEMENT OF FACTS

Respondent submits the following statement of facts

Judith D. Lentini and Marvin Lentini are the aunt and
uncle of Cindy Cooper and Tracy Caine. They are hus
band and wife and have been married for approximately
five years (T. 5). At the time of the hearing, Mr. Lentini
was an employee of the Nevada Bank of Commerce

... and was in the process of moving to Battle Mountain ... the bank manager in that town (T. 5). Mrs. Lentini ... sister of the children's mother. The children have not ... with the Lentinis since two years prior to the time of ... hearing, which was held in December of 1964 (T. 7). ... mother of the children had been in the Lentinis' home ... approximately four or five times in the previous five years ... Mrs. Lentini indicated that there were communications with her sister and with her mother and father, but ... they were not frequent (T. 12).

Both of the Lentinis indicated they had a good relationship with the children when the children had been in their home, and that they wanted to adopt the children (T. 6, ... and 15). There was no dispute as to the competency and qualifications of the Lentinis apart from the relationship with the children's mother and the children's grandparents.

At the time the children were declared neglected, it appeared that the children's mother, Mrs. Fixel, was a highly promiscuous and immoral woman and could not adequately care for the children. The only evidence of record as to her wishes is a signed paper containing the mother's consent to the custody of the children by the Lentinis (R. 18).

Subsequent to the initial deprivation of Mrs. Fixel of her children, they were placed in foster homes and have resided in foster homes since that time. Mrs. Rochelle Augustine, a social worker with the Utah Welfare Department, Child Welfare Division, testified in opposition to the position of the Lentinis. She felt it was in the best interest of the children not to grant the petition (T. 27). Her position was based on the relationship between the Lentinis and

the children's mother and the children's grandparents noted a substantial conflict between the two children was in excess of that deemed normal (T. 26). She indicated that Tracy suffered serious personality problems when confronted with her mother (T. 26, 29). Tracy, upon seeing her mother, would become completely disorganized (T. 29).

Dallas C. Thompson, a Child Welfare worker with the Utah County Department of Welfare, had known Cindy since 1962, and was aware of the relationship between Cindy and her foster parents (T. 32). He felt the petition should not be granted because of possible conflicts which could arise within the family, and felt that the children had made a good adjustment to their foster homes. He indicated that Cindy desired to stay with her present foster parents (T. 35). He further indicated that where children had established good relationships, that it is a difficult traumatic situation when they are shifted (T. 35). He felt that the anxiety in severing the present foster parental relationship should be avoided (T. 36).

The court entered its findings that it would be in the best interests of the children to remain with the present foster parents. The court found (R. 38):

> "* * * The children have done well in their present foster homes and there is evidence that they have adjusted better apart from each other than together. The court concludes that said children will have greater opportunity for stability and an absence of upsetting experience, and that the best interests will be served by adoptive placement with non-relatives."

The record before the Juvenile Court disclosed that the grandparents have had a serious influence upon the chil-

... that they suffered from psychological and psy... problems (R. 60). It further appears from the ... that there is substantial friction between the various ... of the children's natural family (R. 62).

Based upon the above evidence, it is submitted that the ... of the Juvenile Court should be affirmed.

ARGUMENT

POINT I.

THE EVIDENCE IS SUFFICIENT TO SUSTAIN THE DECREE OF THE JUVENILE COURT.

The appellants in three points attacked the decree of the Juvenile Court. The position of the appellants is simply that the decision of the Juvenile Court is contrary to the evidence, and that the court erred in weighing testimony and evidence presented before it. Since the points raised in the appellants' brief are, in fact, one, the respondent will answer as one point only.

It is well settled that this court will not reverse a decision of the Juvenile Court unless there has been an abuse of discretion. Thus, in *Deveraux v. Brown*, 2 U.2d 334, 237 P.2d 847 (1954), this court observed:

> "* * * The court is given broad and comprehensive latitude and discretion in determining the custody of the child and its orders may range from mere temporary custody pending an investigation or hearing or to meet a temporary emergency, to an order intended to permanently deprive the parent of the custody of his child by committing the child to the custody of a child placement society to be placed in a family for adoption without the consent of the parents. * * *"

In *State in the Interest of K——*, 7 U.2d 398, 326 P.2d 95 (1958), this court observed that the objective of Juve-

nile Court proceedings is to safeguard the welfare of children involved, and that the court necessarily is powered to make whatever orders are necessary interest of the children. In *State in Interest of* U.2d 345, 344 P.2d 981 (1959), it was stated:

> "Hearings in the juvenile court involving ques as to the custody of children are equitable, and court is charged with the responsibility of re the evidence and will not disturb the findings determination made unless they are clearly against weight of the evidence or there has been an abus discretion."

See also *State in the Interest of L.J.J.*, 11 U.2d 393 P.2d 486 (1961). Consequently, if there is any reasona basis for the Juvenile Court decision in the instant case, t court should affirm.

It is clear the evidence in this case supports the Juven Court's determination. Although the Lentinis are peo of unquestioned character, they have not had the custo of the two minor children for over two years since th were removed from their mother. During that time t children have formed new and positive relationships foster homes. The removal of the children from their cu rent environment could recreate trauma and stress. T testimony of social workers who were acquainted with t children was to the effect that the disruption attendant removing the children from their foster homes was su that the petition should be denied. Further, one of the soc workers observed a substantial conflict and abnormal je ousy between Tracy and Cindy, and noted that the childr had improved while living apart. By placing both childr in the custody of the Lentinis, the conflicts and jealous

which existed in the past could be reawakened. The trial court in its discretion could, therefore, properly find it in the best interests of the children that they remain apart. In addition, it appeared that the children reacted in a negative manner when confronted with their mother. Her mere presence caused extreme stress and anxiety. Since the children's mother is the sister of Mrs. Lentini and has on occasion visited in the home, the likelihood of exposure to the stress occasioned by the presence of the mother would be enhanced if the Lentinis were granted the children.

In *State v. Sorenson*, 102 Utah 474, 132 P.2d 132 (1942), this court considered an appeal from the Juvenile Court of the Sixth Judicial District, challenging the decision of the Juvenile Court not to grant a minor child to the natural father but to leave the child in the custody of grandparents. In holding the Juvenile Court had acted within its discretion, it was stated:

> "It thus appears that where an order of the court has been made awarding custody of a minor child to a particular individual such order will not thereafter be modified without a showing of a change of conditions or circumstances meriting such modification. * * *"

In the instant case, the evidence does not disclose circumstances requiring a change of the court's previous decree which grants the custody of the minor children to the State Welfare Department. To the contrary, it appears that the children have adjusted well to their new foster homes, and substantial progress is being made in giving them a happy and adequate life. By placing the children with the Lentinis, this environment could be interrupted with possible dangerous results, in view of the relationship of the Lentinis to the children's mother and grandparents.

Further, by allowing the children to be removed to N[illegible] the court's jurisdiction is necessarily impaired, and future welfare of the children is not subject to as [illegible] scrutiny as it would be were the children left as the [illegible] decree provides.

The appellants' contention that the Juvenile Court [illegible] in not giving substantial preference to the wishes [illegible] mother is not well taken. First, the children's mother [illegible] not express any deep and compelling desire that the [illegible] dren be awarded to her sister and brother-in-law. Rather, she merely signed a general consent which would acquiesce in their obtaining custody. Further, it does not appear that the children's mother is the type of person whose preference should be accorded great weight. She has obviously demonstrated little concern for the children in the past, and has led an immoral and socially disreputable life. Consequently, the weight to be accorded the parental preference, which necessarily must be like the weight accorded to any evidence and thus dependent upon the credence of the person making the recommendation, is not great in the instant case, and the court properly relied upon the circumstances relating to the welfare of the children in general.

The cases, *In Re State in the Interest of Black*, 3 Utah 2d 315, 283 P.2d 887 (1955), and *In Re Bradley*, 109 Utah 538, 167 P.2d 978 (1946), give no great weight to the appellants' argument, since they merely recognize the [illegible] tory admonition to the Juvenile Court found in Section 10–30(4), Utah Code Annotated, 1953, that in selecting a guardian the court shall "give due consideration to the preference of parents."

In the instant case, the court weighed the issues carefully and decided that it was in the best interests of the [illegible]

... leave them in the custody in which they had been ... previous two years. It cannot be said that this deter- ... ation is unsupported by the evidence, and consequently ... no basis to overturn the Juvenile Court's decree. ... *In re Interest of K——*, 7 U.2d 398, 326 P.2d 395 ...

CONCLUSION

This court has noted on many occasions that decisions ... Juvenile Court will not be disturbed in absence of a ... abuse of discretion. See infra, page 6. The evi- ... in the instant case supports the determination of the ... nile Court that it is in the interests of the children in- ...ved that they remain in their current foster homes and ... be removed and placed into the custody of the peti- ...ers. Although the Lentinis are interested and qualified ...sons to have the custody of the children, the possible ...xposure to circumstances which would endanger the tran- ...quility of the children and the need for the children to ...maintain some form of consistency in the pattern of their ...ves supports the determination of the Juvenile Court.

This court should affirm.

Respectfully submitted,

PHIL L. HANSEN
Attorney General

Attorney for Respondent