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# State of Utah In the Interest of: Ronald Jennings and Donald Jennings Minors v. Myrtle Jennings : Respondent's Brief

# In The Supreme Court of the State of Utah

STATE OF UTAH in the interest of Ronald Jennings and Donald Jennings, minors,
Respondent,

- vs -

MYRTLE JENNINGS,
Appellant.

Case No.

## Brief of Respondent

Appeal from the Judgment of the Juvenile Court for Salt Lake County, Utah,
Honorable Reginal Garff, Jr., Judge

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# Brief of Respondent

## STATEMENT OF THE NATURE OF THE CASE

This appeal is from a decree of the Juvenile Court terminating all appellants' parental rights to her two youngest children. Appellant challenges the basis of the decree.

## DISPOSITION IN THE JUVENILE COURT

In June of 1964, the children in question were adjudicated neglected and dependent children and were placed in the temporary custody of the Utah State Department of Public Welfare.

In July of 1966, a petition was filed by the Welfare Department praying for a termination of appellants' rights to the children and seeking to have

them placed for adoption.

In August of 1966, appellant petitioned for temporary or permanent custody of the subject children. In December of 1966, subsequent to a hearing in the Juvenile Court, a decree was entered denying appellant's petition for custody and permanently terminating all of her parental rights to the children. Appeal is made from that decree.

## RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the Juvenile Court's decree and the granting of her petition for custody of her two youngest children.

## STATEMENT OF FACTS

Ronald and Donald Jennings are the twin illegitimate sons of Myrtle Jennings and an unknown father. The children reached four years of age on June 27, 1967. In June of 1964, at approximately the age of one year, the twins were adjudicated neglected and dependent children by the Juvenile Court and they were placed in the temporary custody of the Utah State Department of Public Welfare. The children were placed in successive foster homes, including the present foster home at which the children have resided in excess of two years.

Prior to the above mentioned adjudication, the appellant had asked the Welfare Department to place Donald and Ronald Jennings, and her six

other children, in foster homes. Prior to action on the request, the appellant withdrew it. However, the Welfare Department instituted proceedings in its own behalf.

At the initiation of the proceedings, the appellant was on welfare. Subsequently, the appellant obtained employment at Hill Air Force Base. Contributions to the support of the twins have amounted to slightly over two hundred dollars since the middle of 1964. Appellant has had periodic contact with the children since the placement of custody in others.

She has a history of treatment for emotional disturbances.

## ARGUMENT

### POINT I

### THE EVIDENCE IS SUFFICIENT TO SUSTAIN THE FINDINGS OF FACT OF THE JUVENILE COURT.

Appellant asserts that the findings of fact of the Juvenile Court are bottomed on insufficient evidence. Challenge is first made by appellant to the finding that "the mother continues to be emotionally unstable" (Tr. 42).

It is urged by appellant that such a finding ignores the testimony of Mr. Mottonen to the effect that there has been improvement in the emotional stability of Mr. Jennings, the appellant (Tr. 17, 19). Respondent concedes improvement in the emotional stability of the appellant. However, it is submitted that an improvement in her condition in no way

negates a finding of emotional instability. Improvement of any kind must be considered in the light of the point from which progress has been made. If the initial condition is extreme, substantial change can be effected without there being a shift to the positive side of the scale. Mrs. Jennings' emotional instability has been severe. The appellant's psychological makeup was characterized in the latter part of 1963 as "an acute schizophrenic reaction in a person who is generally lacking in favorable psychological features." (Dr. Malcolm N. Liebroder, September 27, 1963.)

Thus, the Juvenile Court did not "ignore" the testimony establishing a degree of improvement in the emotional stability of the appellant. The court merely found that, though a "little" improvement may have been made, the point had not been reached at which the custody of Donald and Ronald Jennings could properly be returned to the appellant. Mr. Mottonen, on whose testimony appellant relies, recognized that even with the improvement evidenced by recent conduct, the appellant "feels a lot of hostility underneath" (Tr. 18), that "definitely she should receive counseling for herself" (Tr. 18), that if custody is returned to appellant "she would require help" (Tr. 18, 20), that "she doesn't completely understand about child care" (Tr. 18), and that she would need counseling for possibly two years or more (Tr. 22, 23). This testimony hardly characterizes emotional stability.

Appellant also challenges the finding that "she has failed to provide a suitable environment for the children" (Tr. 42). Reliance is placed on the fact that there is only minimal evidence regarding a possible unsuitable physical environment. Of course, even assuming no deriliction on the part of appellant in the care of her children's physical surroundings, this ignores the poor emotional environment indicated by the emotional instability of the appellant and the history of her improper care and supervision of her children, which is admitted by appellant (appellant's brief p. 7).

Finally, appellant attacks the finding that "the children, if returned to the mother, would be subjected to baby sitters and nursery schools and other unstable living conditions" (Tr. 42). It is argued that daytime placement of children by working mothers has become an accepted practice and that it would be ridiculous to deprive a mother of the custody of her children because of such a fact.

Respondent is in agreement that the use by working mothers of child care facilities, when considered alone, is insufficient justification for depriving a mother of the custody of her children. Such conditions have indeed become commonplace in modern society. However, when the use of baby-sitters or nursery schools is considered in the context of two child histories replete with emotional and physical instabilities, such a use becomes highly relevant in a determination of the proper custody of the children.

Respondent submits that there is not only sufficient evidence but abundant evidence to support the findings of fact of the Juvenile Court.

## POINT II

### THE JUVENILE COURT WAS CORRECT IN APPLYING THE STANDARD OF THE BEST INTEREST OF THE CHILD.

That the best interest of the child is the paramount consideration in child custody cases is the nearly universal rule repeatedly enunciated by the Utah Supreme Court. E.g., **In re Cooper,** 17 Utah 2d 296, 410 P.2d 475 (1966).

It is clear that in placing a child in the legal custody of an individual, the Juvenile Court must give primary consideration to the welfare of the child. Utah Code Ann. § 55-10-100 (12) (Supp. 1967). Apparently, the appellant is arguing that when, in addition to mere legal custody, a permanent deprivation of the rights of a natural parent is involved, the standard to be applied is not that of the best interest of the child. Appellant bases this argument on Utah Code Ann. § 55-10-109 (1) (a) (Supp. 1967) which provides:

> (1) The court may decree a termination of all parental rights with respect to one or both parents if the court finds:
>
> (a) That the parent or parents are unfit or incompetent by reason of conduct or condition seriously detrimental to the child.

Appellant contends that the Juvenile Court applied the best interest of the child test and that this is not the standard specified in the provision cited above. It is asserted by appellant that a termination of all parental rights may be decreed only upon a finding that the parent or parents are unfit or incompetent.

First, it must be noted that the Juvenile Court found specifically that the appellant "is unfit or incompetent to have the care of the children and their custody because of her conduct and the conditions enumerated above and in past hearings which would be seriously detrimental to the children's welfare . . ." (Tr. 43). This finding speaks in terms nearly identical to those of the above quoted statute authorizing a termination of all parental rights. Thus, it cannot be said that the Juvenile Court failed to recognize and apply the appropriate standard.

Further, respondent contends that the language contained in Utah Code Ann. § 55-10-109 (1) (a) is but a restatement of the best interest of the child test.

Any time the best interest of the child is found to reside with those other than the natural parents it would seem that, by definition, it has been found that the parents are unfit or incompetent for some reason or reasons. For if the parents are fit and competent, the presumption that the best interest of the child is with its natural parents would not be overcome and the natural parents would be entitled to custody. See D . . . P . . . v. Social Service and Child

Welfare Dept., No. 10892, Aug. 28, 1967; Walton v. Coffman, 110 Utah 1, 169 P.2d 97 (1947). That the "best interest of the child" standard is to be applied in cases involving a termination of parental rights is further indicated by reference to the stated purposes of the Juvenile Court Act found in Utah Code Ann. § 55-10-63 (Supp. 1967) wherein it is provided that "it is the purpose of this act to secure for each child coming before the juvenile court such care, guidance, and control, preferably in his own home, as will serve his welfare and the best interests of the state . . ."

## POINT III

### THE JUVENILE COURT DID NOT ABUSE ITS DISCRETION IN RULING THAT IT WAS IN THE BEST INTEREST OF THE CHILDREN TO PERMANENTLY DEPRIVE APPELLANT OF ALL PARENTAL RIGHTS.

The appellant claims that the decree terminating all her parental rights in Donald and Ronald Jennings amounted to an abuse of discretion. This conclusion is based, in part, on the fact that there was no evidence, including psychological evidence relating to the fitness of the foster parents, as to the desireability of the foster home. (Appellant's brief pp. 15 & 16).

Respondent submits that such evidence is not particularly relevant in a determination of whether the appellant is unfit or incompetent to have the custody of her children. State in Interest of K . . . B . . ., 7 Utah 2d 398, 326 P.2d 395 (1958). There may

be instances where evidence of the character of the foster home would be important, but where the fitness of the parent is in question and it is found that the parent is, in fact, unfit, a termination of parental rights is appropriate irrespective of the condition of the foster home. Stated another way, the unsuitability of the foster home does not make the natural home suitable. If the foster home is found to be undesirable it is then incumbant upon the State of Utah to effect placement elsewhere, not to return custody to an unfit parent.

That the appellant should have her rights in the children terminated because of her being unfit or incompetent by reason of conduct or condition seriously detrimental to her children is amply justified by the facts in this case. A review of those facts reveals the following: the appellant is emotionally unstable (see Point I); the children involved are the result of the sexual indiscretions of appellant; the children have been under foster care in excess of three years and in their present foster home in excess of two years; the appellant failed to reasonably contribute to the financial support of the subject children for substantial periods when she was financially capable of doing so; the appellant's lack of ability to adequately care for and discipline children is indicated by the conduct and attitudes of her other six children which variously include involvement with the juvenile authorities, an intense dissatisfaction with conditions in the home, and placement under foster care; a return of custody to the

appellant would result in a necessary use of child care facilities which is not consistent with the welfare of children whose lives have already been punctuated with physical disruptions and emotional crises.

Respondent asserts that the above facts inexorably led the Juvenile Court to the conclusion that the welfare of Donald and Ronald Jennings could best be served by terminating appellant's rights in the children.

## CONCLUSION

The evidence abundantly supports the findings and decree of the Juvenile Court. The Court was correct in applying the standard of the best interest of the child, and the welfare of the children involved dictated a termination of all rights of the appellant to Donald and Ronald Jennings.

Respectfully submitted,

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