

1967

In the Matter of the Adoption of: Lonny Lea  
Jameson and Julie Rae Jameson, Minors, Arthur  
Lea Jameson v. Peggy Arlene Marshall Jameson :  
Respondent's Brief

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IN THE SUPREME COURT  
of the  
STATE OF UTAH

IN THE MATTER OF THE ADOPTION OF

LONNY LEA JAMESON and  
JULIE RAE JAMESON,

*Minors*

Case No.  
10809

ARTHUR LEA JAMESON, Appellant  
PEGGY ARLENE MARSHALL  
JAMESON, Respondent

RESPONDENT'S BRIEF

STATEMENT OF THE CASE

DISPOSITION OF LOWER COURT

The appellant filed a petition for adoption in the District Court in the Third Judicial District, asking that the minor children be declared to be deserted and abandoned children for the reason that the mother had been committed to the Utah State Prison for issuing fictitious checks. Upon hearing the case, the Honorable Stewart M. Hanson dismissed said petition.

STATEMENT OF FACTS

The respondent seeks to have the decision of the lower court sustained for the reason that the said decision was in accordance with the laws of the State of Utah and for the best welfare and interest of the minor children.

A decree of divorce was granted to the father, Arthur Lea Jameson from Peggy Arlene Marshall Jameson in Ogden, Utah in February, 1963 and the custody

of the minor children was awarded to Arthur Lea Jameson. The said Arthur Lea Jameson then placed the children in the custody of Lois Marshall Knight, an aunt of Peggy Arlene Marshall Jameson. The children remained with the aunt from October, 1963 until June, 1966.

The appellant, Arthur Lea Jameson married Julie Rae Jameson on the 21st day of August, 1965. The children continued to live with the aunt until June, 1966 for the reason that Julie Rae Jameson, the present wife of the appellant, refused to have the children in her home.

From February, 1963 until February, 1964, the appellant denied the respondent the right to visit the said children and a proceeding was filed in the Second Juicial District Court to set certain times for the respondent to visit said children and the respondent was given one day a week to exercise said visitation. The respondent continued to visit said children weekly until July, 1965, at which time she was apprehended for issuing fictitious checks.

That throughout the time the respondent was in the Utah State Prison she frequently forwarded gifts to the minor children, clothing etc. She also sent them Christmas and birthday cards.

## ARGUMENT

### POINT I

**THE DECISION OF THE LOWER COURT SHOULD BE SUSTAINED FOR THE REASON THAT THE SAID CHILDREN HAVE NOT BEEN ABANDONED BY THE RESPONDENT.**

That the statutes of 78-30-4 state that a legitimate child cannot be adopted without the consent of the parent unless the child has been declared to be an abandoned child. This court has repeatedly interpreted this statute.

The first case being *Jensen vs. Earley*, 228 Pac. 217, an illegitimate child was placed with the defendant with the understanding that they were to be permitted to adopt said child. The mother filed a Writ of Habeas Corpus to regain the custody of the child and the defendant pleaded that the mother had abandoned said child. The court in that case made the following statement:

“Abandonment in such cases ordinarily means that the parent has placed the child on some doorstep or left it in some convenient place in the hope that someone will find it and take charge of it, or has abandoned it entirely to fate or chance. To make arrangement beforehand with some proper and competent person to have the care and custody of the child is not abandonment of it, as that term is ordinarily understood.

In the case of *Taylor vs. Waddoups*, 121 Ut. 279, the mother placed the children with the Waddoups in March of 1950 and also signed a consent of adoption before a notary public. The children remained with the Waddoups until December, 1950 when the mother requested that they be returned to her. The Waddoups refused and a Writ of Habeas Corpus was filed. The District Court found that the mother, by her acts, had abandoned said children. This court held that there was no abandonment and reaffirmed the decision of *Jensen vs. Earley*.

In the case of *Hardcastle vs. Hardcastle*, 221 Pac. (2d) 887, this court restated the law as laid down by *Harrison vs. Harker*. In the case of *Hardcastle vs. Hardcastle* a woman left her child with the grandmother. Evidence showed that on two occasions she attempted to take the child from the custody of the grandmother but was prevented from doing so.

The mother then went to Portland where she worked and had an income of approximately \$80.00 per week as well as an allotment from her husband in the sum of \$80.00 per month.

During that time and for the next seven years she sent no money whatsoever for the support of the child and only visited the child once.

In 1944 she came to Salt Lake to obtain a divorce from her husband but did nothing to regain the custody of the child, and the court in awarding the divorce decree awarded the custody of the child to the grandmother.

The plaintiff then remarried and twenty-three months after the decree of divorce was granted she returned and asked for the custody of the child. The court in deciding this case held it was the best welfare and interest of the child that should guide the court in awarding her custody and that this presumption was so strong that the neglect of seven years was not strong enough to overcome.

In the case of *Lucas and others vs. Strausser*, 196 Pac. (2d) 862, the father had placed his motherless children with his mother in January, 1944. In October, 1944 the father visited the children who were then with the plaintiff and stated he had come to make some arrangements to care for the children and that he was then going to Alaska. The father went to Alaska where he earned from \$110 to \$135 per week. From October, 1944 until April, 1947 he paid nothing whatever for the support of the children or his mother.

In 1946 he returned to Butte, Montana, but did not contact the children, who were in Wyoming, until April, 1947. He found that the children were adopted and the

court had held that the children had been abandoned by him. The Wyoming court held in that case in order to show an abandonment the evidence must be clear that the parent did not reserve the right to re-claim the children and there must be conduct on the part of the parents which evidences a settled purpose to forego all parental duty and relinquish all parental claims to the children.

From the foregoing case, it is apparent that the law in Utah is well settled. In order that there be an abandonment, there must be a clear intent to abandon said children. This can be shown by the same statement that was made in the case of Jensen vs. Earley:

“Abandonment in such cases ordinarily means that the parent has placed the child on some doorstep or left it in some convenient place in the hope that someone will find it and take charge of it, or has abandoned it entirely to fate or chance. To make arrangements beforehand with some proper and competent person to have the care and custody of the child is not abandonment of it, as that term is ordinarily understood.

Where the custody of the children has been awarded to the father and that there is no evidence that he was an unfit and improper person to have the custody of the children, we must assume that the children were being well cared for. There is no evidence here that the children had been left in some convenient place with the hope that some suitable person would find them and care for them, but by the court, what we must assume to be a suitable home.

#### POINT II

IT IS FOR THE BEST WELFARE AND INTEREST OF THE CHILDREN THAT THE MOTHER SHOULD NOT BE PERMANENTLY DEPRIVED OF THE CHILDREN.

The laws well settled in this jurisdiction that the

presumption is that the best welfare and interest of the children is to be with their natural parent. The mother has at all times exhibited an interest in the children and although she was committed to the Utah State Prison, she did have the right to have the children visit with her.

The appellant argues that it would be for the solidarity of the children that they be adopted, however, from the 21st day of August, 1965, until June, 1966, Julie Rae Jameson, the present wife of the appellant, refused to have the children in their home, although she was married to their father and at the time of the marriage knew of the existence of the children and that the custody was with the husband. With such an attitude, it would be impossible to conceive how the children's psychological development and care would be furthered by being adopted by the person who refused to have them in her home.

Following out the appellant's reasoning, this mother could remarry and it could then be argued that it is for the best welfare and interest of the children that they be adopted by the mother and her husband for the solidarity of the children.

It is well settled that the person who has the greatest interest in the children, is the natural parent and often times, natural parents make mistakes. But we cannot assume that because this mother was committed to the Utah State Prison, she is an unfit person to have the custody of the children and that she has abandoned them and displaced any interest whatsoever to forego her claim on said children. The evidence is to the contrary. She sent gifts and cards to the children during her time of incarceration. She objected to the petition for adoption and maintained her interest and concern for said children.

This respondent, therefore, submitted that the decision of the lower court is correct and that the decision should be sustained.

It is for the best welfare and interest of the children that the rights of the mother be reserved in the children and she has not abandoned them.