

1992

Winfield D. Schoolcraft v. State of Utah, in the Interest of J.W.F., a person under eighteen years of age : Brief in Opposition to Certiorari

Utah Supreme Court

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Winfield D. Schoolcraft; Petitioner Pro Se; Jan W. Arrington; Guardian Ad Litem; Robert K. Hunt; Attorney for Adoptive Parents.

R. Paul Van Dam; Utah Attorney General; Carol L. C. Verdoia; Assistant Attorney General; Attorneys for Respondent.

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BRIEF

IN THE SUPREME COURT OF THE
STATE OF UTAH

#2

WINFIELD D. SCHOOLCRAFT :
Plaintiff and Petitioner, :
v. : BRIEF IN OPPOSITION
TO CERTIORARI
STATE OF UTAH, in the Interest :
of J.W.F., a person under :
eighteen years of age, : Case No. 920039
Defendant and Respondent. :

BRIEF OF RESPONDENT

From the Utah Court of Appeals
Case No. 910163
From the Second District Juvenile Court for Weber County
Judge VanDyke, Case No. 717256

R. PAUL VAN DAM
Utah Attorney General
CAROL L. C. VERDOIA
Assistant Attorney General
120 North 200 West, 4th Floor
P.O. Box 1980
Salt Lake City, Utah 84110-1980
Attorneys for Respondent

WINFIELD D. SCHOOLCRAFT
675 Green Street
Salt Lake City, Utah 84102
Petitioner Pro Se

JAN W. ARRINGTON
444 26th Street
Ogden, Utah 84401
Guardian Ad Litem

ROBERT K. HUNT
635 - 25th Street
Ogden, Utah 84401
Attorney for Adoptive Parents

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CLERK SUPREME COURT
UTAH

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R. PAUL VAN DAM
Utah Attorney General
CAROL L. C. VERDOIA
Assistant Attorney General
120 North 200 West, 4th Floor
P.O. Box 1980
Salt Lake City, Utah 84110-1980
Attorneys for Respondent

WINFIELD D. SCHOOLCRAFT
675 Green Street
Salt Lake City, Utah 84102
Petitioner Pro Se

JAN W. ARRINGTON
444 26th Street
Ogden, Utah 84401
Guardian Ad Litem

ROBERT K. HUNT
635 - 25th Street
Ogden, Utah 84401
Attorney for Adoptive Parents

TABLE OF CONTENTS

STATEMENT OF THE CASE	1
ARGUMENT	2
CONCLUSION	6
CERTIFICATE OF MAILING	7

TABLE OF AUTHORITIES

CASES CITED

	Page
<u>Dixon v. Stoddard</u>	
765 P.2d 879 (Utah 1988)	5
<u>In re J.W.F. v. Schoolcraft,</u>	
763 P.2d 1217 (Utah App. 1988)	1
<u>State of Utah in the Interest of J.W.F.</u>	
799 P.2d 710 (Utah 1990)	2, 4, 5

CONSTITUTIONAL PROVISIONS, STATUTES & RULES

Utah Rule of Civil Procedure 9.	4
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WINFIELD D. SCHOOLCRAFT	:	
Plaintiff and Petitioner,	:	
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STATEMENT OF THE CASE

This case involves Petitioner Schoolcraft's petition for custody of his former stepson, J.W.F., and Appellant's opposition to the petition for adoption filed by J.W.F.'s foster parents.

On August 28, 1986, Schoolcraft filed a petition in Second District Juvenile Court for Weber County seeking custody of J.W.F. On September 5, 1986, a petition for Permanent Termination of Parental Rights was filed with respect to the natural parents of J.W.F. After a hearing, the parental rights of J.W.F.'s natural parents were terminated on December 16, 1986.

On February 10, 1987, the Second District Juvenile Court found that Schoolcraft was not the biological father of J.W.F. and had no standing to assert a claim for custody of J.W.F. On appeal, the Utah Court of Appeals affirmed the juvenile court's finding. In re J.W.F. v. Schoolcraft, 763 P.2d 1217 (Utah App. 1988). This Court granted certiorari and affirmed the court of appeals' ruling that

Schoolcraft was not the biological father of J.W.F. but found that he did have standing to petition for custody of J.W.F. This Court then remanded the case for a hearing to determine whether it would be in J.W.F.'s best interest for Schoolcraft to have custody. State of Utah in the Interest of J.W.F., 799 P.2d 710 (Utah 1990).

On November 14, 1990, Schoolcraft filed an amended petition for custody of J.W.F. On December 31, 1990, the Crittendens, foster parents of J.W.F., filed a petition for adoption of J.W.F. The matter came before the Honorable Stephen A. VanDyke in a hearing held February 14, 1991. The Court filed its Findings of Fact and Decree on February 26, 1991 denying Schoolcraft custody of J.W.F. and granting the Petition for Adoption of J.W.F. filed by the Crittendens. In addition, by order of the same juvenile court dated May 2, 1991, the adoption of J.W.F. was finalized. Schoolcraft sought review of the Findings of Fact and Decree, and filed a Notice of Appeal on March 21, 1991. The Court of Appeals affirmed the juvenile court's decision. Petitioner Schoolcraft now seeks review from this Court.

ARGUMENT

The State opposes Petitioner's "Writ for Certiorari" based upon the issues Petitioner appears to be raising in the section entitled "Questions Presented For Review" in Petitioner's brief.

For the Court's convenience said questions are listed below:

(1) Can "Due Process", in this case, omit trial upon the facts?

(2) Is just any action under Rule 1 (liberally construed courts) lawful?

(3) Are slander and libel proper tools for the State to use?

(4) Is it proper for the State to contrive unsubstantiated material as evidence? To fabricate an entity in Michael Ford and bestow upon him the rights of biological father?

(5) Was it error for the Juvenile Court to deny me the right, or the ability, to enter all my objections so they could be responded to?

(6) Does "Case Law" on Family, Husband and Wife, and etc. actually apply to this case? A case with no family involvement?

(7) With all the undue activity on the part of those who have conspired with the Crittenden family; is it actually possible to consider any aspect of the State's case against the Winfield Schoolcraft family as fact?

(8) Does the Court ordering of two Psychologicals done by PHD's for Schoolcraft, both good, and none for the Crittendens, constitute prejudicial and unequal treatment?

(9) Is it proper for the State to deny a relationship and then argue that because of that lack of relationship custody cannot be granted?

(10) Is it proper in a state that is predominately Mormon, for a Mormon family to have an advantage in gaining custody over the child of someone else? By being Mormon, are they considered to be better parents?

In general, very few of the issues raised by Petitioner are

relevant to the issue remanded by this Court and upon which Petitioner's Writ of Certiorari now rests. This Court remanded this case "for a hearing to determine whether it would be in the best interest of J.W.F. for Schoolcraft to have custody." Interest of J.W.F., 799 P.2d at 716.

With respect to Questions (1), (2) and (7), these issues are framed so broadly and vaguely that it is difficult for the State to determine how they are relevant to the present case or to provide a meaningful response. Furthermore, Petitioner's attempt to address these issues, including any due process concerns, is not supported by any factual or legal bases that the State is able to discern.

The issues set out in Question (3) are, again, framed so vaguely that it difficult to determine what relevance these issues have to the case at hand. Petitioner appears to set out his argument regarding slander and libel on page 5 in the section entitled "Rule 9", which apparently relates to Rule 9, Utah Rules of Civil Procedure (attached to Petitioner's brief). Rule 9 is a rule entitled "Pleading special matters" and contains a section referring to libel and slander. First, this rule is a rule containing procedures to follow with respect to filing an action for libel or slander. The State is not aware of any actions for libel and slander filed by Petitioner in conjunction with this

action in the juvenile court. Second, this rule is not a statement of the substantive law regarding libel and slander. Petitioner's attempt to raise issues of libel and slander in this case are not supported by any factual or legal bases that the State is able to discern.

The issue raised in Question (4) has previously been decided by this Court in Interest of J.W.F.. With regard to the paternity of J.W.F., this Court stated:

We conclude that the evidence before the trial court was sufficient to support its conclusion that the presumption of paternity was rebutted beyond a reasonable doubt. We therefore affirm that portion of the court of appeals' ruling for the reasons given by the trial court.

Id. at 714. This Court's ruling on the issue of paternity has become the law of the case and, therefore, this issue need not be revisited. Dixon v. Stoddard, 765 P.2d 879, 881 (Utah 1988). Furthermore, the issue of paternity is irrelevant to the issue remanded by this Court and upon which Petitioner's writ of certiorari now rests, i.e. whether it would be in the best interest of J.W.F. for Petitioner to have custody. Interest of J.W.F., 799 P.2d at 716.

With respect to Question (5), Petitioner had the opportunity but did not attempt to raise this issue before the Court of Appeals. In addition, Petitioner's attempt to address this issue is not supported by any factual or legal basis that the State is

able to discern.

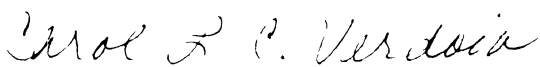
With respect to the issues raised in Questions (6), (8), (9) and (10), Petitioner has failed to provide any factual or legal bases for these issues and, therefore, the State is unable to provide any meaningful response.

CONCLUSION

The State opposes the granting of certiorari in this case on the grounds that the issues Petitioner raises for review are either irrelevant to the issue previously remanded by this Court or are not supported by any factual or legal bases.

RESPECTFULLY submitted this 18th day of February, 1992.

R. PAUL VAN DAM
UTAH ATTORNEY GENERAL



CAROL L. C. VERDOIA
Assistant Attorney General
Attorneys for State/Respondent

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of February, 1992, I caused to be mailed, postage prepaid, four (4) true and exact copies of the above and foregoing Brief of Appellee to Winfield D. Schoolcraft, 675 Green Street, Salt Lake City, Utah 84102, Jan W. Arrington, 444 26th Street, Ogden, Utah 84401, and Robert K. Hunt, Gridley, Echard & Ward, 635 - 25th Street, Ogden, Utah 84401.

Carol L. C. Verdoia