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State of Utah et al v. Barbara Bell : Brief of Respondent

Utah Supreme Court

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APR 16 1961

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, IN THE INTEREST
OF MARALEE LONDON.
ROBERT GEARY LONDON and
SANDRA CLEGG LONDON,

Petitioners and Appellants.

vs.

BARBARA BELL, Guardian ad Litem
for JEANNE BELL,

Objector and Respondent.

APR 16 1961

Supreme Court, Utah
Case

No. 10,002

RESPONDENT'S BRIEF

An appeal from an order of the Juvenile Court of the
First District Court in and for Weber County, Utah

E. F. ZEIGLER, *Judge*

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PRINTERS INC. - SUGAR HOUSE

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E. F. ZEIGLER, *Judge*

STATEMENT OF THE KIND OF CASE AND HOLDING OF TRIAL COURT

This is an appeal resulting from a judgment granted
in the Juvenile Court of the First District. The judgment
of the trial court was that the subject child be returned to

the natural mother. The Appellants, having been refused a consent by the natural mother, sought to have the child declared deserted and abandoned, to complete their adoption proceedings. After the Court's ruling in favor of the Respondent, the Appellants filed a motion to set aside judgment for a re-hearing. The decision of the trial judge was filed on July 30, 1963. The first notice of appeal was filed by Appellants on August 27, 1963. The motion to set aside judgment was apparently filed on August 30, 1963. The order denying the motion for rehearing was filed on September 24, 1963. The Appellants filed a second notice of appeal on October 11, 1963.

RELIEF SOUGHT ON APPEAL

The Respondent desires that the decision of the lower Court be affirmed and that this Court order that her minor child be returned to her, in accordance with the decision of the lower Court.

STATEMENT OF FACTS

The facts as stated by the Appellants are essentially correct. There are additional facts, however, that the Respondent considers essential. The document referred to under Appellants' Statement of Facts was prepared by the Appellants and all statements made therein were prepared, and the document was executed prior to the Appellants' arrival in California to accept delivery of the child. (T. 9)

Respondent further testified that she didn't want to give her baby to Appellants but was coerced by her doctor and relations to give the baby up. Respondent further believed that she could recover possession of her baby in accordance with the wording of the document wherein the right was reserved to her to refuse consent. (T. 7) Respondent further only signed the document only after she was told by the doctor, nurse and her mother, that she could not see the baby until the papers were signed. (T. 8) Respondent further made an attempt and started to recover her child approximately two months after it was delivered to the Appellants. She also testified that within three weeks to a month later that she decided to seek to recover her child. (T. 14) No attempt was made by the Appellants to obtain the consent of the natural mother, Respondent, until approximately ten months after Appellants received the child. Respondent had obtained counsel in Ogden to bring an action to recover the child when Appellants filed their petition with the Juvenile Court. (T. 22)

ARGUMENT

POINT I.

JEANNE BELL, NATURAL MOTHER, NEVER INTENDED HERSELF TO CONSENT TO THE PLACEMENT OF HER CHILD WITH APPELLANTS. HER ACTIONS WOULD NOT SHOW AN ABANDONMENT OR DESERTION OF HER CHILD.

From the testimony of Jeanne Bell, (T. 4), it is apparent that in her own mind Jeanne Bell wanted to keep her child.

Q. And did you discuss with them your desires in this matter?

A. I told them I wanted to keep my baby.

Q. But she wouldn't allow it at the time. Is that correct?

A. Yes, and especially when my doctor had told me I might have to go to Court.

Q. At the time that these discussions were had, did you advise anyone of your intent to place the baby out for adoption?

A. You mean, did I tell anyone I would have the baby adopted?

Q. Yes.

A. The doctor thought I should place the baby with the Londons.

Q. Now was this before the birth of the baby?

A. Yes.

Q. Did you advise anyone besides your doctor?

A. We didn't talk about it at home. We were planning to leave it up to the doctor.

Q. Were any provisions made for keeping the baby at the time of its birth?

A. No.

Q. None whatsoever?

A. My mother had made none, but I was planning on keeping it and fighting to get my baby back when I could and as far as I knew I had no legal way then of keeping it, so I planned some day I would try and get it back if I could.

It is apparent from this testimony that the natural mother never abandoned her child or intended to sever her desire to regain possession of her child. In *Taylor v. Waddoups*, 241 P. 2d 160, paragraph 6, our court defined abandonment to be as follows:

“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 some one will find it and take charge of it, or has abandoned it entirely to chance or to fate. To make arrangements before hand with some proper and competent person to have the care and custody of the child is not an abandonment of it as that term is ordinarily understood. True, the mere act of giving away the child by the parent into the care and custody of another may militate against him in reclaiming its custody.”

As also stated in *Taylor v. Waddoups*, the mere lapse of the time, without more, is not decisive. As stated in paragraph 2 of the trial courts decision, Jeanne Bell did, during the ten month period, exert efforts to investigate her rights and attempt to contact her child and was concerned about the child's welfare. It is further apparent from her testimony that during the ten months period she had done things on her own to attempt to regain possession of her child. (T. 22):

A. No. I did not know I would be allowed to until two weeks ago. I talked to the Legal Aid Society and I found out that according to California law I had the right to have my child returned and I didn't know what I could do. Then I got in touch with Attorney Murray. I wanted to but I didn't know I could.

Q. Didn't you say that you consulted some people at Welfare to find out what your rights were?

A. Yes, I found out that I should be able to care for the baby if I had her.

Q. Did you consult an attorney in California, Miss Bell?

A. I consulted Legal Aid at first.

Another case wherein the facts are similar to the case at bar is *In Re Guardianship of Rutherford*, 10 Calif. R. 270, wherein it was held that the mother had not surrendered her rights to her child where she had given it up for adoption only on the advice of other people and basically against her own convictions. *People v. Anonymous*, 210 N.Y.S. 2d 698.

From the wording of the document that was signed by the natural mother in the hospital, as stated in the next to last sentence.

I HAVE ALSO BEEN INFORMED AND UNDERSTAND THAT THIS STATEMENT IS PURELY A STATEMENT OF MY PRESENT INTENTION AND THAT I HAVE THE LEGAL RIGHT TO REFUSE TO SIGN MY CONSENT TO THE ADOPTION WHEN IT IS PRESENTED TO ME.

Jeanne Bell reserved her right to recover her child, and she relied upon said statement. It also appears from the testimony of Jeanne Bell that she signed the document because she was refused the right to see her child. (T. 8)

Q. Isn't it true that this exhibit No. 1 contains a statement of your rights with respect to this.

A. I know my rights, but I didn't know some things and there were things in there that I couldn't exactly remember that I didn't find at the time I signed it, things that I should have had the right of discussing with my family and as I say, some of the things I remember and then I re-read the paper when I got home from the hospital but I did read the paper there, but there were a few rights I feel I should have been told.

Q. But these rights that you are talking about were not rights that the Londons represented to you in any that you did not have, did they?

A. I think I should have had a chance to hold my baby and talk this over with my mother.

Q. Do you know whether or not the Londons were responsible for your failure to be able to hold your baby and talk these things over with your mother?

A. No, I think it was the doctor and nurse. The nurse told my mother that they had orders not to let me see my baby until the papers were signed.

It is also apparent from the testimony that the document was prepared by Appellants and therefore should be strictly construed against them.

POINT II

THAT THE PROCEDURE FOLLOWED IN OBTAINING THE CHILD IN CALIFORNIA AND BRINGING IT INTO UTAH WAS IN VIOLATION OF UTAH STATUTES.

Utah Statute 55-8-3 provides as follows:

PLACEMENT OF CHILDREN FROM WITHOUT STATE:

Every child brought into or sent into the State for placement or adoption in the State shall be sent to and placed by an agency licensed under the provisions of this Chapter.

It is apparent that the reason for this statute is to require that all children brought into the State of Utah to be placed for adoption, must be placed with a licensed agency as provided by law. The legislature knew that investigation should be made concerning the home for the child, the ability of the prospective parents to be able to adequately care for the children, and to have some control, supervision and regulation of the placement of children for adoption. It is obvious that this statute was intended to stop the baby traffic, and bringing of children from other states into the State of Utah without going through the licensed agencies.

If the procedure followed in our case is legal, then the Utah Statute would be circumvented and there would be no regulation or control over children brought into the

State of Utah and the protection and benefits of the statute would be completely annulled.

The Utah Legislature has seen fit to place rigid restrictions and regulations concerning the adoption of children in the State of Utah. If this practice is legal, there could be a substantial increase in children brought into the state through no control or regulation. It would be a means whereby any Utah couple, that did not desire or could not comply with the Utah Law concerning the adoption of children in Utah, could go to some other State and obtain a child through whatever means and bring it into the State, and accomplish what the legislature has sought to prohibit.

Utah Statute 55-8-5 further provides:

Every person, agency, firm, corporation, or association violating any of the provisions of this Chapter, or who intentionally makes any false statement or report to the State Department of Public Welfare with reference to the matters contained herein is guilty of misdemeanor.

It is very clear that the criminal penalty imposed by Statute for the failure to comply with Statute 55-8-3, concerning children brought into the State, that the legislature intended to put teeth into the law in requiring the children be placed with agencies when brought into this State.

POINT III

THAT THE NATURAL MOTHER CANNOT VOLUNTARILY RELINQUISH HER RIGHTS TO HER CHILD, UNLESS A CONSENT IS OBTAINED AS PROVIDED BY UTAH STATUTE.

Utah Statute 78-30-4 provides as follows:

That the parent or parents whose consent would otherwise be required have theretofore, in writing, acknowledged before any officer authorized to take acknowledgment, released his or her or their control or custody of such child to any agency licensed to receive children for placement or adoption under Chapter 8 Title 55 and such agency consents, in writing, to such adoption.

It is clear from the expressed statement of this Statute that the only means by which a consent can be taken from a parent is if it is given to a licensed agency. 78-30-8 further provides:

The person adopting a child and the child adopted, and the other persons whose consent is necessary, must appear before the district court of the county where the person adopting resides, and the necessary consent must thereupon be signed and an agreement be executed by the person adopting to the effect that the child shall be adopted and treated in all respects as his own lawful child; provided, that if a person whose consent is necessary is not within the county the court may, in the same manner as is or may be provided for the taking of depositions in civil cases, appoint a commissioner to examine such person upon his deposition and to take his written consent and to certify the same to the court. The commissioner shall explain to such person the legal significance of such consent, and shall certify to the court his finding as to whether or not the consent is freely given. Where such person is within the state of Utah the commission shall issue to a judge of the district court of the county in which such person is located.

As is stated in this statute, the law requires that any consent given must be given before a commissioner appointed by the court. Until this is done and this consent is freely given then there has not been a consent that would permit an adoption to be granted.

It is interesting to note that the statute says that the commissioner shall certify to the court, his findings as to whether or not the consent is freely given. It is apparent that the reason for this statute is that there shall be some formality to the signing of consents wherein people agree to release their own children and that this is for the protection of the natural parent so that these will not be hurriedly or unwillingly given.

There is no reason why the consent of Miss Jeanne Bell could not have been taken before a commissioner appointed by the court, prior to November of 1962. It would be a reasonable inference that the adopting parents knew or heard from Doctor Sloan that Miss Jeanne Bell had indicated that she wanted her child returned and would not sign the consent, and that the longer that the Londons could keep the child in their home the stronger their case would be in claiming permanent custody to the child.

As stated in *Taylor v. Waddoups*, 241 P. 2d 157, Utah Statute 78-30-9 no longer sanctions the relinquishment of a child for adoption before a notary public.

POINT IV

THAT, JEANNE BELL, WITH THE HELP OF HER MOTHER CAN PROVIDE A SUITABLE HOME FOR

THE CHILD AND HAS THE FINANCIAL MEANS OF
CARING FOR THE CHILD.

(T. 48, 49)

Q. Do you own your own home?

A. Yes, I do.

Q. What is its approximate value?

A. I had it appraised about five years ago and it was appraised at \$30,000, and since now the property has now gone up it would be between \$32,000 and \$35,000.

Q. How many rooms are there in the home?

A. It has eight rooms.

Q. And how large is it? How large is the lot?

A. We haven't had that

Q. Is there an apartment on this property too?

A. Yes, I have. It is built in a wing, as a lot of people do on their homes in that area and some people rent to a lady or a school teacher.

Q. Have you rented that before?

A. Oh, I rented it once when I was working. I had a lady help with the kids for part of the rent and baby sit with the girls.

Q. How much did it rent for?

A. At that time they rented for \$75.00 a month. She rented it for \$50.00 and then I took the other \$25.00 for baby sitting.

Q. What is the monthly income you have now?

A. We have it set up by the Glendale Court as our allowance, family allowance. They include a Social Security and Veteran's pay that we get and then they added \$100 a month.

Q. What is your total monthly income?

A. I bring it up to at least \$400 a month. Sometimes \$450. If necessary I can work all of the time, but I wanted to spend part of the time with the girls.

Q. Do you have any money in savings now?

A. Yes, I do.

Q. How much is that?

A. \$3,800 and I have my bank book here with me. I can give you the bank account.

Q. This is \$3,839.00 that is in your account. Is that true?

A. Yes, that is right.

Q. And according to this Jeanne has in her account \$1180.00 and Denise has \$1221.00?

A. That is right.

Q. I noticed on the books that in the last year these accounts have increased from about \$2,500 to \$4,000. Have you been able to save this much money in the last year?

A. Yes, I worked and some of that was stocks. The sum of \$2,500 were paid from them.

Q. Do you have any of that stock now?

A. No, they have been paid now.

Q. Do you have any other assets besides your savings accounts and your home?

A. No, I don't.

Q. Do you feel that you have sufficient funds to provide for the necessities of this child?

A. Yes, I do.

Q. Would you be willing to assume this obligation?

A. Yes, I would. Definitely.

POINT V

THAT IT IS BETTER FOR THE WELFARE OF THE CHILD THAT IT BE RAISED BY ITS NATURAL PARENT.

The common law and our decisions have consistently held that there is a strong presumption that it is in the best interest of a child that it be left in the home of the natural parent. In *Re Bradley*, 167 P. 2d 978. It is apparent from the record that an investigation of the home of the natural parent was made by the California Youth Authority and that the report was favorable. There is nothing in the record that would indicate that the natural mother is not of good moral character and in fact from her testimony it appears that she was of above average intelligence and maturity. The court, upon its own motion and with the consent of the parties, had the natural mother evaluated by a psychologist. Testimony given by the psychologist on page 102 indicates that she does have sufficient mental capabilities. (T. 102)

Q. Have you had occasion to talk with her?

A. Yes, I have.

Q. Was this pursuant to a request by the attorneys involved or by the Court?

A. By the Court.

Q. Was this in the form of an examination?

A. Yes sir, it was.

Q. Will you explain the nature of the tests that were given?

A. The request was that I give a battery of tests for a psychological examination. Do you want me to tell what tests were used?

THE COURT: Yes.

DR. SWANNER: We used the Wechsler-Bellevur (Form II), Bender-Gestalt, Memory for Design, Drawing, Rorschach, TAT, M.M. P.I.

A. Would you explain the procedure you used? (Procedures were not clear on tapes)

Q. Now, is this the standard approach in determining the level of security of the person?

CLERK: Dr. Swanner, please speak a little louder.

(Dr. Swanner explained the purpose of each test but did not speak loud enough for mechanical device to pick up.)

Q. Would you like to go ahead and tell the Court your opinion?

A. Well, my impression at this point is that she is as mature as a fifteen year old could be.

Q. Based on your tests, could you give an opinion that would indicate whether or not she could adequately raise a child of a little over a year old?

A. In my opinion, there was nothing to indicate that she couldn't.

Q. And what do you base your opinion on?

A. She has above average intelligence, attends school. She seemed to have made reasonable plans and is able to relate. My impression of her is she is quite mature.

POINT VI

THAT THE FINDINGS OF THE JUVENILE COURT, SHOULD NOT BE DISTURBED UNLESS THEY ARE CLEARLY AGAINST THE WEIGHT OF THE EVIDENCE.

It is apparent that the Juvenile Court took considerable time and gave this matter great consideration before the decision was rendered. The Court itself prepared the Memorandum Decision, Findings of Fact and Decree. Testimony and depositions were introduced from all available witnesses and sources of information. The Court on its own directed that an investigation of the home of the natural mother be made in California. The Court also, with the consent of the party, ordered that the natural mother be given the psychological and mental evaluation to de-

termine her abilities to assume the responsibilities of motherhood. The Court also stated on page 3 of the Memorandum Decision, as follows:

Another consideration in determining custody is the home in which the child will be living if returned to her mother. The child would live with its mother in its grandmother's home in California. An evaluation of that home made for the Court by

the California Youth Authority is favorable. Finally, the Court would like to note its own observations of the mother taken from her conduct in Court. She exhibited composure and maturity unusual to a girl her age and her responses to questions put by counsel and by the Court showed an insight into the responsibilities and difficulties of motherhood.

In light of this evidence the Court cannot conclude that the presumption in favor of leaving the child with the natural parents has been overcome. The Court recognizes that it will be difficult for the child to be acclimated to a new setting and environment. But it is also the Court's observation, as well as that of many professional writers, that in most instances adoptive homes present many problems to the children involved. The Court therefore finds that it would be in the best interest of Maralee London that she be returned to the custody of her natural mother, under the courtesy supervision of the California Youth Authorities.

Our Court has stated in the case of *State in the Interest of K-B-*, cited in 326 P. 2d, 395, as follows:

Hearings in the Juvenile Court as to the custody of children are equitable, and the Supreme Court is responsible for reviewing the evidence; and the

findings made will not be disturbed unless they are clearly against the weight of evidence or the Court has abused its discretion.

On page 3 of Appellants' brief, they mention that the order of the Juvenile Court was that the natural child should remain with Appellants pending the decision of the Supreme Court. It is only reasonable and logical that this arrangement should be ordered.

The child has been in the Appellants' home since February, 1962 and a few more months would not alter the situation to any degree. If the child had been removed from the State of Utah our Court would lose jurisdiction until the case was finally decided. As stated by the Courts, there will be adjustments for all parties concerned. In the opinion of the psychologists, Trial Judge and the California investigation, it was believed that considering all factors concerned that the child should be returned to its natural mother.

POINT VII

THAT THE LETTER REFERRED TO ON PAGE 12 OF APPELLANTS' BRIEF, SIGNED BY JEANNE BELL, WAS NEVER MAILED AND DID NOT EXPRESS HER TRUE DESIRES.

Through a misunderstanding with her mother, Jeanne Bell thought that her mother did not want to further assist her in attempting to regain her child. The letter was never mailed and was taken against the will of Jeanne Bell and delivered to Appellants. (T. 106-107)

Q. Miss Bell, I will show you what has been marked exhibit No. 7 and ask if you can identify it, please.

A. Yes, that's a letter I wrote to Mr. Murray.

Q. Now, was that letter written after the first hearing in this court room?

A. Yes, it was.

Q. And was it written after the examination by Dr. Swanner?

A. Yes, it was.

Q. You did, in fact, deliver it to Mr. Drennan to be mailed?

A. Not to be mailed. Well, Tom was on his way over and my mother was just leaving and he knew I had had some trouble and had written it.

Q. Can you tell me how he obtained possession of the letter?

A. Well, first of all it was one night after we got back from Court here. I talked to him on the phone one night and I was having it with my mother. I told him I had written the letter and he said he would come over. My mother was just leaving and because I had a misunderstanding with my mother, I wrote the letter and then Tom said he would come over to see me. Tom was on his way over and she was just leaving when he got there. He said "give me the letter and I will mail it." He took the letter and then he had to move his car so she could get out. She was very upset with me and she told Tom to leave and not come back until she was home. And then he ran. My mother censures our letters and I was going to leave it in a place

where she could read it. I didn't seal it. We had argued over our financial situation. I wrote this letter to see if she would understand my feelings. I really had no intention of mailing it. I think I wrote more as a threat. Just trying to show her that I would change my mind. I wrote the letter more for her. Then after I wrote it thinking she would realize how I felt. I wrote the letter. We were talking before she left and he said, "where is your letter and I will mail it," so my mother didn't read it. When he came back, I asked him for the letter and he said it was in the car and I thought he mailed it. And I asked him where the letter was. He said that it was right here in his pocket. I said, "give it back to me" and he said, "I'm going to mail it tomorrow morning" and I called Attorney Murray then and asked him to disregard it.

POINT VIII

THAT APPELLANTS KNEW THAT THE NATURAL MOTHER COULD REFUSE TO CONSENT TO THE ADOPTION, UNTIL A LEGAL CONSENT WAS OBTAINED. (T. 98)

Q. And you knew that as you told it, Jeanne could give you trouble until this was done?

A. Yes.

Q. By trouble you knew that she might have the right not to have to give her consent?

A. I knew she had to sign a paper.

Q. You knew she had the right not to give it if she didn't want to?

A. Yes.

Q. And you knew that when the papers were signed?

A. Yes.

Q. So when you took the baby in your possession, you knew that she had legal right not to consent to the adoption?

A. No. I knew that she had the legal right not to sign the paper.

POINT IX

FROM THE TESTIMONY AND CONDUCT EXHIBITED BY THE NATURAL MOTHER IN OPEN COURT IT WAS APPARENT THAT SHE WAS ABOVE AVERAGE INTELLIGENCE AND MATURITY FOR HER AGE. (T. 31)

Q. Speaking of yourself, are you actually trying to satisfy your own feelings, your own needs or what you really feel is best for the child?

A. I think I am doing what is best for the child. I am very concerned about what happens to her later on in life, her health and I want to be with her, helping her.

Q. In your discussion, I get the distinct impression that you think of the child as a baby?

A. I think of her as a child.

Q. You keep talking about her as a very young child. Have you thought about her in terms of a 6 year old, a 7 year old, 8, 9, 12, 13, 14, 16, 18 year old?

A. I've thought her as going to school.

Q. Have you thought of her in those terms, or are you thinking of something you can fondle, something you can hold.

A. Well, I feel that I might help her. I feel that I can help her and guide her and see that she gets religious training while she is growing. I would be able to comfort her and I could help her and guide her.

Q. What if she isn't interested in religion.

A. Well, I think that with the proper training, she will do what is best and with guidance and help she will learn what is right and wrong and have a conscious to do right.

Q. You don't anticipate your daughter then being injured or hurt by the fact that you and her father were not married?

A. I thought about that and that was one reason for my going to church.

Q. Will it help your daughter?

A. Yes, it will. She will learn about the Bible and God and to be good.

Q. The inquiry of the court as conducted has been quite broad, however, I think that under the allegations that the mother is not a proper person that inquiry would be within the confines of our discretion.

POINT X

THAT THE APPELLANTS DID NOT FILE A MOTION FOR A NEW TRIAL AND THEIR NOTICE OF APPEAL WITHIN THE TIME PROVIDED BY LAW.

Rule 59 of the U.R.C.P. provides that a motion for a new trial must be made within ten days after the entry of the judgment. The motion for the re-hearing or new trial was not filed until August 30, 1963. The judgment was entered on July 24, 1963. The first notice of appeal was filed on August 27, 1963. A second notice of appeal was also filed on October 10, 1963. It would appear that the Appellants have not perfected their appeal as provided by law. *Anderson v. Anderson* 282 P. 2nd 845 In Re Lynch's Estate 254 P. 2nd 454. Further, the designation of record on appeal, and cost bond, were not received by Respondent until December 6, 1963, several days beyond the ten day provision of Rule 74, U.R.C.P. *Holton v. Holton*, 243 P. 2nd 438.

CONCLUSION

It is unfortunate for all concerned that these situations develop. If the Utah laws and statutes had been complied with this situation would probably never have come about. If the formalities of obtaining a proper consent, as provided by Utah statutes, were initially followed, the Appellants would have known if they could effect a valid adoption. Also if the formalities regarding obtaining the consent of the natural mother were followed, then in all probability the consent would not have been given and the mother could have recovered the child shortly after its birth. If the natural mother would have given her consent, as provided for by Utah statute, then she could not later on revoke this consent.

It is apparent from the evidence that the parties intended this to be a temporary arrangement and that an adoption could not be effected until the natural mother had given a valid consent. This is why the Appellants initially had a commissioner in California. They did not claim that the child was neglected, delinquent or dependent until after they learned that the natural mother would not give her valid consent. It was then that this action was filed in the Juvenile Court to circumvent the proceedings for obtaining the consent. To permit children to be brought into our state, by this method, will foster and encourage baby traffic, without control. There will be no protection for the child and no investigation of the home or circumstances of the adopted parents as our legislature considered essential.

It is respectfully requested that the decision of the Trial Judge be affirmed and that the custody of the natural child be returned to her natural mother, as provided in the Decree rendered herein.

Respectfully submitted,

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