

1964

State of Utah et al v. Barbara Bell : Brief of Respondent in Answer to Petition for Rehearing

Utah Supreme Court

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JUN 30 1964

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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-

BARBARBA BELL, Guardian ad
Litem for JEANNE BELL,
Objector and Respondent

FILED
MAY 18 1964

Clerk, Supreme Court, Utah

Case No.
10,002

RESPONDENT'S BRIEF IN ANSWER TO PETITION
FOR REHEARING.

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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RESPONDENT'S OBJECTIONS TO APPELLANTS' REQUEST FOR REHEARING.

Respondent respectfully petitions the Court to deny
the Appellants' request for rehearing for the reason here-
inafter set forth.

POINT I

THAT SINCE THE DECISION WAS RENDERED, JEANNE BELL, NATURAL MOTHER, HAS MARRIED. THAT HER HUSBAND IS VERY DESIRIOUS OF ASSISTING HER IN OBTAINING POSSESSION OF HER CHILD AND IN ACCEPTING THE RESPONSIBILITY OF REARING THE BABY AS ITS FATHER.

After the decision in this case, it appeared that the Appellants were willing to deliver the child to Jeanne Bell and not further contest the Court's decision. The natural mother was informed that because of statements made by Appellants that if she came to Utah she could recover possession of her child. She immediately left Los Angeles and was in Ogden, Utah, within twenty-four hours. She was driven to Ogden by her fiance, Mr. Robert O. Foster. When they arrived in Ogden they were then informed by the Appellants that they had decided to file a petition for rehearing and would not give the child to them. At that time Mr. Foster showed great concern for Jeanne Bell and expressed the deepest concern for the return of the child to Miss Bell. They were also accompanied on the trip by Mrs. Barbara Bell, mother of Jeanne Bell. On April 25, 1964, Jeanne Bell and Robert Foster were married in Los Angeles. Set forth herein is a copy of a letter received from Robert O. Foster, stating his feelings about accepting the responsibility and the desire to have the child returned to Jeanne Bell. It is apparent from his statements here that he appreciates the responsibility he would be accepting and that he is capable of being the father of Maralee Bell. It now appears that they have a

stable marital relationship and that this would be an appropriate and proper home for Maralee.

May 11, 1964

“Mr. Keith E. Murray
No. 10 Bank of Utah Plaza
Ogden, Utah

Dear Mr. Murray:

Should any question arise regarding my position in the legal action over Maralee, I would like to state my feelings and my relationship to the matter. Jeanne and I, as you know, were married as of April 25th of this year. This was the culmination of almost a year of continuous dating. I knew about Maralee and the circumstances surrounding her from the very beginning. I hold nothing but love and respect for Jeanne and a genuine desire to become Maralee's father. I fully realize the responsibilities, both legal and moral, and look forward to accepting them.

As for my personal history I'm twenty-five years old, employed by Universal City Studios and at present my income exceeds eight-thousand dollars per year.

I feel that Jeanne and I are in all ways capable of providing a healthy and happy home for Maralee. We both hope for a resolution in this long, mutually heartbreaking case.

Sincerely,
Bob Foster (signed)”

POINT II

THAT THE QUESTION OF ABANDONMENT AND DESERTION WAS CONSIDERED BY THE JUVENILE COURT AND WAS CONSIDERED BY THE SUPREME COURT FROM THE RECORD AND THE BRIEFS FILED BY THE PARTIES.

The trial judge, in his opinion, considered the issue of abandonment and desertion and stated as follows:

“On the basis of items 1 and 2 above petitioner has asked for a finding of neglect based on abandonment. Abandonment is generally defined as actual desertion with the intention to sever entirely and permanently the parental relationship (*In Re Guardianship of Rutherford*, 10 Cal. Rep. 270.) Respondent has quoted language from the case of *Taylor v. Waddoups* to the effect that abandonment means something more than surrendering possession of a child for a given period. Although that case was interpreting a different statute (14-4-5, now 78-4-5) than that with which this court must deal, the standards required of a parent by both statutes are similar. The *Taylor* case can, however, be distinguished successfully from the one at bar on its facts. (See petitioners reply brief, page 4.) The court finds in the case at bar that the evidence is not sufficient to support a finding that the child was abandoned. The intention to sever parental relationship has not been established satisfactorily as we have pointed out in item one above, nor does the mere lapse of ten months constitute desertion. In *In Re Guardianship of Rutherford* the court reversed a finding of neglect in circumstances similar to those of the case at bar. The mother had given up her child for adoption only reluctantly and on the advice of everyone concerned. soon after, she inquired after her daughter and after six

months tried to reclaim her child. (But cf. *People v. Anonymous*, 210 NYS 2d 698.)

In light of the above quoted authorities, the court finds that the evidence in this case is insufficient to support a finding of neglect.”

That the issue of abandonment and desertion was presented to the court of page 6 of Appellants’ brief. The argument that they present in their rehearing brief is substantially the same as was previously submitted and this question has therefore been considered.

CONCLUSION

It is respectfully submitted that there are no issues raised or new matters presented to the court in Petitioner’s brief for a rehearing. Now that Jeanne Bell has married, it would even be more appropriate that the decision of the trial court be affirmed.

Respectfully submitted,
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