1964

Ray J. Robinson v. Kathryn B. Robinson : Brief of Respondent

Utah Supreme Court

Phillip V. Christensen; Christensen, Paulson & Taylor; Attorneys for Respondent;
Dallas H. Young, Jr.; Attorney for Appellant;

In the Supreme Court of the State of Utah

RAY J. ROBINSON,
Plaintiff and Respondent,

vs.

KATHRYN B. ROBINSON,
Defendant and Appellant.

CASE NO. 10022

RESPONDENT'S BRIEF

Appeal from Judgment of the Fourth District Court
of Utah County
HON. MAURICE HARDING, Judge

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RESPONDENT'S BRIEF

STATEMENT OF THE CASE

Respondent adopts appellant's Statement of Case.

STATEMENT OF FACTS

Respondent adopts appellant's Statement of Facts.

POINT I

WHERE BOTH PARTIES HAVE REMARRIED, CUSTODY OF CHILDREN WILL NOT ORDINARILY BE TRANSFERRED FROM THE ONE TO WHOM IT WAS ORIGINALLY AWARDED, UNLESS A SHOWING IS MADE THAT THE HOME OF SUCH PARENT IS UNSUITABLE OR THAT THE CHILD IS NOT RECEIVING REASONABLE AND PROPER CARE. NO SUCH SHOWING EXISTS HERE.

In 43 ALR 2d, commencing at pge 389, the foregoing general rule is set forth. The most recent case cited there, Eickerman v. Eickerman, 253 P2d 962 (Wash. 1953) is particularly in point in this present case. There, as here, both parties remarried and had nice homes. As there, also here, "Actually, respondent's capability of giving these children the care, training and security of a home, to which they are entitled, was much better at the time of the hearing . . . than when the decree was entered which the appellant seeks to have modified."

The record in this case shows as clearly as cold words can that the trial court was proceeding on a plan whereby the appellant's visitation rights could be gradually increased, if circumstances warranted.

Certainly, the record is replete with proof of stability of respondent's home environment, as shown by depositions of several neighbors and acquaintances.

POINT II

THE CHILDRENS' BEST INTEREST IS SERVED BY THE TRIAL COURT'S ORDER.

Again, the Eickerman case is in point. There, the children were left with an ex-wife who bore no blood relationship to the children, because the Court believed their interests best served thereby. Appellant's authorities are not in point, not being cases where both have remarried. More in point are the cases collected beginning at page 393 of 43 ALR2nd.

The facts are in dispute as to which party brings on the arguments, when they occur. (Tr 37, 71, 85) The trial court is the trier of disputed facts. Thorley v. Kolob Fish

& Gun Club, 13 Utah 2nd 294; 373 Pacific 2nd 574. No substantial change in condition has been alleged by appellant since the 1962 hearing. (R. 33,34)

POINT III

THE CHILDREN ARE FINE WHERE THEY ARE.

Such testimony as "I wish you had borned me mommy" (Tr 83) substantiates this point better than an advocate's verbiage. Much is made by appellant of respondent's ineptness with dates. Suffice it to say he is honest enough to admit this shortcoming. (Tr 25)

POINT IV

CONSIDERATION OF THE PARENTS' ATTITUDE WAS GIVEN BY THE COURT.

Appellant has a false impression of the 1962 order. At R 24, the Court says "visited with her children for a period of only a few hours . . ." It does not say she was only "permitted to see them for but a few hours." There is also no showing that she was denied visitation, but that she was not afforded visitation, obviously by virtue of the distance involved.

Again, the trial Court apparently found adverse to appellant concerning the conflicting stories surrounding the "Battle of the Bathroom."

As to appellant's contending respondent quibbled over visitation, it is submitted that the Court's minute entry (R 30) certainly stated what plaintiff's counsel contended for in their motion (R 27) to clarify the holiday visitation privileges.

CONCLUSION

Appellant's points are ill taken. The trial court should be sustained in his well-considered 1962 order, and should be allowed to retain the authority he retained in that order, to modify visitations as new changes of condition might warrant. This appeal should be dismissed.

Respectfully submitted,

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