

1983

## **The State of Utah, By And Through Utah State Department Of Social Services v. John Dick : Brief of Appellant**

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, by and )  
through Utah State Depart- )  
ment of Social Services, )

Plaintiff-Respondent, )

v. )

JOHN DICK, )

Defendant-Appellant )

Case No. 18988

BRIEF OF APPELLANT

INTERLOCUTORY APPEAL FROM AN ORDER OF THE THIRD  
DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH  
HONORABLE TIMOTHY R. HANSON, JUDGE

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FILED

MAY 1988

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	)	
v.	)	
	)	
JOHN DICK,	)	
	)	
Defendant/Appellant	)	

---

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This Interlocutory Appeal concerns the conflicting overlapping original jurisdictions of the juvenile and district courts where a minor has been charged with violations of the Utah Uniform Act on Paternity (Sections 78-45a-1 et seq., U.C.A. (1953)).

DISPOSITION IN THE LOWER COURT

In district court, the State of Utah filed a civil action against Appellant. The State sought child support from the Appellant pursuant to the Utah Uniform Act on Paternity. Appellant specially appeared to contest the district court's jurisdiction and to seek removal of the action to the juvenile court. Appellant's "Motion for an Order Releasing Jurisdiction to the Juvenile Court" was denied in an Order dated January 24, 1983 and signed by Judge Timothy R. Hanson of the Third Judicial District Court.



### RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the district court's Order on the grounds that the letter and spirit of the Utah Juvenile Court Act (Sections 78-3a-1 et seq., U.C.A. (1953)) require that the juvenile court exercise exclusive, original jurisdiction where a minor is accused of violations of the Utah Uniform Act on Paternity.

### STATEMENT OF FACTS

#### A. Absence of Record.

There is virtually no record in this Interlocutory Appeal other than the Complaint, Appellant's Motion for removal, and the district court's Order denying that Motion. No stenographic record was taken at the hearing on Appellant's Motion.

#### B. Minimal Facts.

On August 9, 1982, sixteen-year-old Renee Gentilin gave birth to an illegitimate son, Jeremy. Three months later, the State of Utah, through its department of social services, filed the Complaint herein. The Complaint alleges that the Appellant, John L. Dick, has violated the Utah Uniform Act on Paternity in the matter of Renee and Jeremy Gentilin. The Complaint charges the Appellant with the expenses of Renee's pregnancy and birth and with the ongoing support of her son, Jeremy.

Appellant has not yet answered the Complaint. However, he will admit to having had sexual relations with Renee approximately nine months before the birth of Jeremy. At that specific time--in the

autumn of 1981--the Appellant was barely fifteen years old.

C. Undocumented Assertions of Fact.

Appellant wishes to present to the Court certain undocumented assertions of fact relating to his personhood. Fully and openly labeled as such, they are as follows:

John Dick's father and mother were married in 1962. It was his father's first marriage and his mother's second marriage. The latter already had two sons by a previous husband.

John was born in August, 1966. Subsequently, a younger sister was born.

His parents' marriage was stormy. It was marked by tension and quarrels. John's mother allegedly was psychologically unstable. Allegedly she tried to commit suicide while John was an infant. During John's lifetime, his parents separated three times: in 1967, in 1974 and again in 1975. Although he was still quite young, John's school work and personality were affected: he constantly quarreled with his classmates.

In September, 1976, when John had just turned ten, his parents divorced. John's mother was awarded custody of the children. She moved with them to Farmington, Utah. A little over a year later, she remarried a divorced gentleman.

John's stepfather was a cruel disciplinarian. He repeatedly beat John (and John's older half-brother) with instruments such as saws and belts. John was affected. At school he had problems learning the basics; several tutors were required. Twice he ran

away from home.

Because of the repeated physical abuse of John by his stepfather, John's biological father obtained a Modification of the Decree of Divorce in September, 1979. At John's own request, custody was transferred to his father.

In the interim, John's father had remarried and had had two daughters. Barely thirteen years old, John moved into his father's household in West Jordan. [It may be noted that, in all, John has one "whole-sibling," five half-siblings and ten step-siblings.]

The move to West Jordan was traumatic. Although John got along well with his stepmother, he did not get along with his half-sisters. Moreover, within a short period, relations with his father grew strained. At school, the level of John's work, which was already poor, eroded further. A tutor was engaged. The boy received psychiatric therapy.

In April, 1981, when he was fourteen, John ran away from home. After four days, John's father discovered his son's whereabouts and prevailed upon him to return. It is alleged that John had first had sexual relations with Renee Gentilin during this interval.

That summer, John lived in a children's camp, where he helped with the horses and did odd jobs. Upon returning home in July, he immediately began attending rodeos across the state: he was away from home every weekend.

In August, when he turned fifteen, John again ran away from home. It was discovered that he was living with a friend, Scott.

John's father acquiesced and allowed the boy to remain there. For nearly two months, John lived with his friend and with his friend's three brothers and sisters and his friend's mother. John's parents contributed to his support.

Ultimately, however, the friend's influence was bad. Assertedly, petty crimes were being committed, and the boys' life-style was unruly. John's school work deteriorated further.

In October, 1981, John returned home. In early November he had a single encounter with Renee Gentilin. At high school he received extensive counseling. He would, nevertheless, fail a number of courses. On August 9, 1982, two days before John's sixteenth birthday, Renee gave birth to a child.

#### ARGUMENT

POINT I. The Utah Juvenile Court Act  
Unequivocably Mandates That  
The Juvenile Court Exercise  
Exclusive Original Jurisdic-  
tion in the Instant Action.

A. Section 78-3a-16(1) of the Act is clear and unequivocal.

Section 78-3a-16(1) U.C.A. (1953), reads as follows: "Except as otherwise provided by law, the [juvenile] court shall have exclusive original jurisdiction in proceedings: (1) Concerning any child who has violated any federal, state or local law or municipal ordinance . . . ." [The exception created by the first six words will be discussed below in Point II.]

The statutory language is straightforward and unambiguous. It

obviously means this: Whenever a child has violated any state law, exclusive original jurisdiction vests in the juvenile court.

B. Where statutory language is clear, that statute must be interpreted to mean precisely what it says.

"[T]here is nothing to construe where there is no ambiguity in the statute." State v. Archuletta, 526 P.2d 911, 912 (Utah 1974).

[A statute] carries with it the presumptions that it is valid, and that the words and phrases were chosen advisedly to express the legislative intent. . . . The statute should not be applied other than in accordance with its literal wording unless it is so unclear or confused as to be wholly beyond reason, or inoperable, or it contravenes some basic constitutional right. Gord v. Salt Lake City, 434 P.2d 449, 451, 20 Utah 2d 138 (1967).

See, also, Grant v. Utah State Land Board, 485 P.2d 1035, 1036, 26 Utah 2d 100 (1971).

C. A gloss that would limit the juvenile court's jurisdiction to only "criminal" laws should not be read into the statute.

(1) It is against policy. This Court has addressed the matter:

It is often said that it should be assumed that all of the words used in a statute were used advisedly and were intended to be given meaning and effect. For the same reason, the omissions should likewise be taken note of and given effect. Kennecott Copper Corp. v. Anderson, 514 P.2d 217, 219, 30 Utah 2d 102 (1973). [Footnotes omitted]

1. The second sentence in the Kennecott decision, above, is drawn from a 1929 California case which merits direct citation: "We [the California court] may not, therefore, under the guise of interpretation read into a statute matters which have been omitted by the Legislature particularly

(2) Other states have statutes similar to Utah's. Not only is it improper, pursuant to this Court's policy, to introduce a restrictive gloss into Paragraph 78-3a-16(1) of the Juvenile Court Act. Additionally, it would be senseless to do so, because other states operate under statutes worded very similarly to Utah's. For example:

In Hawaii the family court has exclusive jurisdiction over children who have committed "a violation or attempted violation of any federal, state or local law or municipal ordinance." Section 571-11, (F), Hawaii Code Annotated.

In Illinois the juvenile court has jurisdiction over children under seventeen who have "violated or attempted to violate any federal or state law or municipal ordinance." Section 37-702-2, Illinois Code Annotated.

In Louisiana the juvenile courts have exclusive original jurisdiction in proceedings concerning any child "who violates any law or ordinance . . . ." Section 13:570, Revised Statutes of Louisiana.

In Michigan the juvenile division of the probate court has exclusive jurisdiction in proceedings concerning any child under seventeen years of age "who has violated any municipal ordinance or law of the state or of the United States . . . ." Section 27.3178 (598.2(1)), Michigan Code Annotated.

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where it appears that the omission might have been intentional . . . ." In re Barnett's Estate, 275 P. 453, 455-56 (Cal. App. 1929).

In Minnesota the juvenile court has exclusive, original jurisdiction, with certain exceptions, in proceedings where a [delinquent] child "has violated any state or local law." Section 260.015, Minnesota Code Annotated.

In Pennsylvania the juvenile court has full and exclusive jurisdiction in proceedings affecting a [delinquent] child who "has violated any law of the Commonwealth or ordinance of any city, borough or township . . . ." Section 11-243(4) (a), Pennsylvania Code Annotated.

In South Carolina the family court system has exclusive, original jurisdiction, with certain exceptions, in proceedings concerning any child "who is alleged to have violated . . . any state or local law or municipal ordinance . . . ." Section 20-7-400 A. (1) (d).<sup>1/</sup>

Thus, the Juvenile Court Act should be read and applied exactly as it is written. Section 78-3a-16(1) requires that the juvenile court exercise exclusive original jurisdiction where a minor--such as Appellant herein--has violated any state law, in-

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1. Certain other states had statutes that read similarly to Utah's but have recently amended those statutes to restrict the juvenile court's jurisdiction to violations of specifically criminal laws. See, for example, Florida Code Annotated, §39.01(8) amended to §39.01(33); Iowa Code Annotated, §232.2(13) (a) amended to 232.2(11); Mississippi Code Annotated, §43-21-5 amended to §43-21-105. Such modifications support Appellant's argument that unmodified codes, such as Utah's, are intended to mean precisely what they say: i.e., that jurisdiction extends to violations of civil as well as of criminal laws.

cluding a noncriminal law like the Uniform Act on Paternity.

Unfortunately, however, section 78-3a-16 of the Juvenile Court Act is complicated by the inclusion of a limiting phrase: "Except as otherwise provided by law . . . ." It is to the meaning and application of this phrase that we now turn.

POINT II. Where the Juvenile Court Act and the Uniform Act on Paternity Establish Overlapping Jurisdictions, the Mandate of the Juvenile Court Act Must Prevail.

A. The Uniform Act on Paternity and the Juvenile Court Act set jurisdiction in conflicting courts.

The case at bar was brought against plaintiff pursuant to the Uniform Act on Paternity, Sections 48-45a-1 et seq., U.C.A. (1953). Section 48-45a-5(1) begins as follows: "The district court has jurisdiction of an action under this act . . . ."

On the other hand, the Appellant was, variously, fifteen and sixteen years of age when he allegedly violated the above state law. Pursuant to Section 78-3a-16(1) of the Juvenile Court Act, the juvenile court has exclusive, original jurisdiction where a child has violated any state law.

Thus, it must be decided which of two conflicting statutes prevails.

B. Precedents concerning traffic violations by minors support Appellant's contention that the juvenile court, and not the district



court, should exercise jurisdiction in the instant matter.

(1) Dimmitt v. City Court of Salt Lake City. A somewhat analogous pair of cases reached the Utah Supreme Court in 1968 and 1971. In Dimmitt v. City Court of Salt Lake City, 444 P.2d 461, 462, 21 Utah 2d 257 (1968), a juvenile defendant protested the jurisdiction of the city court following a traffic violation. The Utah Supreme Court focused on the introductory, limiting phrase of Section 78-3a-16 of the Juvenile Court Act, which phrase gives the juvenile court original exclusive jurisdiction "[e]xcept as otherwise provided by law." The Court phrased the issue thus: "The pertinent inquiry is whether it is in fact 'otherwise provided by law' that the juvenile court does not have exclusive jurisdiction of traffic violations."

The decision in Dimmitt was split: two justices signed the plurality opinion; one concurred in the result; one dissented; and one neither concurred nor dissented, suggesting that the case "stands for nothing." (p. 464) Three justices held that the city court did have jurisdiction to try juveniles charged with traffic offenses under city ordinances despite the fact that both courts, under statute, had been given exclusive original jurisdiction. Significantly, the plurality opinion reasoned from the fact that the Juvenile Court Act itself listed specific exceptions for traffic violations (§78-3a-44(4)) and for felonies (§78-3a-25).<sup>1/</sup> Addi-

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1. Today's section numbers are used. At the time of Dimmitt the act was otherwise designated in the code.

tionally, the Court put forward common-sense reasons why the legislature, in passing the Juvenile Court Act, might have intended traffic violations to be treated differently and to be handled in other courts. For example, such violations were in the nature of errors in violating traffic rules; minors had to be at least sixteen and one-half years of age before driving; and in doing so they were exercising the privileges of adults. (p. 462.)

The case at bar, on the other hand, is distinguishable from Dimmitt. The case at bar concerns, not a traffic-rule violation, but a violation of the Uniform Act on Paternity. Although the Juvenile Court Act makes a specific exception of traffic violations, nowhere does it assert that paternity or support matters may constitute an exception to its exclusive original jurisdiction over minors.

Moreover, whereas the juvenile courts are statutorily given exclusive, original jurisdiction, the Uniform Act on Paternity (unlike the City Court Act in Dimmitt) does not give the district courts specifically exclusive or specifically original jurisdiction.

To the degree that Dimmitt is relevant, that earlier case should guide this Court to hold that it is not "otherwise provided by law" that the juvenile court shall not have exclusive original jurisdiction in paternity actions.

(2) Nelson v. Green. Nelson v. Green, 479 P.2d 480, 482, 25 Utah 2d 219 (1971), concerned another traffic violation by a minor. The Utah Supreme Court reaffirmed the Dimmitt holding, again in a

split decision. Justice Henriod, dissenting and concurring in part, stated:

This case is about as confusing as Dimmitt v. City Court of Salt Lake City. It is high time that the legislature coordinate the functions of the courts as they apply to juveniles, and eliminate the overlapping inconsistencies between the juvenile court and general legislation . . . .

The Nelson decision reinforces Appellant's position that, whereas traffic violations may be adjudicated elsewhere than in the juvenile court, paternity actions involving a minor must be adjudicated only in the juvenile court. The implied test in Nelson and Dimmitt was this: Did the Juvenile Court Act itself provide for concurrent or alternate jurisdiction in some other court? If yes, then another court might hear the case. Applying that test to the case at bar, one concludes that, because the Juvenile Court Act does not provide for paternity actions' being adjudicated in some other court, paternity actions must be tried exclusively and originally in the juvenile court pursuant to Section 78-3a-16.

C. Practice indicates that certain statutory jurisdictional assignments must be disregarded where they conflict with the Juvenile Court Act.

Implicit in the Dimmitt case, above, and obvious from practice in this state is the following rule: Where a statute may assign jurisdiction to one court or another but fails to refer specifically to minors, that statute should not be followed when it conflicts

with the jurisdictional mandate of the Juvenile Court Act.

The Juvenile Court Act was passed in 1965. At that time, and for many years thereafter, the Justices' Courts and the City Courts were, by statute, given jurisdiction over class B and class C misdemeanors (§§78-4-16 and 78-5-4, U.C.A. (1953)). Nevertheless, such violations by minors were and have been commonly handled in the juvenile courts. Indeed, pursuant to Section 78-3a-18 of the Juvenile Court Act, such violations are specifically required to be transferred to the juvenile court where they have been started in any other court.

In 1977, when the state's judiciary was reorganized and the city courts were transformed into circuit courts, the latter's jurisdiction in criminal matters was specifically limited to persons eighteen years of age and older (§78-4-5(1) U.C.A. (1953)). In other words, the legislature formalized in writing what had been normal practice for already a dozen years.

Thus, it can be seen that the mere statutory assignment of jurisdiction to a district or circuit court (or to city or justices' courts) has not, historically, been followed where such assignments have conflicted with the Juvenile Court Act. Such broad jurisdictional assignments to the district or to lower courts have been interpreted--in practice--to mean nothing more than an intended division of authority between the senior and junior courts of this state.

D. Utah courts are required by law to construe a statute to effect the purpose of that statute.

"[U]nder the provisions of Section 68-3-2, U.C.A., 1953, we are required to construe liberally all statutes with a view to effect the objects of the statutes and to promote justice." State v. Hunt, 368 P.2d 261, 262, 13 Utah 2d 32 (1962). Application of Section 68-3-2 (and of its predecessor forms) is mandatory. (Hammond v. Wall, 171 P. 148, 151, 51 Utah 464 (1918).) "The fundamental consideration which transcends all others in regard to the interpretation and application of a statute is: What was the intent of the legislature?" Johnson v. State Tax Commission, 411 P.2d 831, 832, 17 Utah 2d 337 (1966).

[A] statute should be considered in the light of its background and purpose; and also in connection with other aspects of the law which have a bearing on the problem in order that its intent and purpose be fulfilled. Dimmitt v. City Court of Salt Lake City, 444 P.2d 461, 464, 21 Utah 2d 257 (1968).<sup>1/</sup>

Hence, the arbiter of the instant conflict must address the purposes or intents of the two conflicting statutes under review.

E. The purpose of the Juvenile Court Act is rehabilitative rather than punitive.

Section 78-3a-1, U.C.A. (1953), sets forth the purposes of the Juvenile Court Act. Those purposes include the following:

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1. Footnote omitted. This citation is drawn from Justice Callister's dissent wherein he asserts that the juvenile court should have exercised original jurisdiction in the matter of a traffic violation by a minor.

To secure for each child coming before the juvenile court such care, guidance, and control, preferably in his own home, as will serve his welfare and the best interests of the state . . . . To this end this act shall be liberally construed.

The Utah Supreme Court has refined upon these purposes:

"Embodied in [the juvenile court system] is a policy of allowing a person to enter adult life free of a record of youthful indiscretions." State v. McClendon, 611 P.2d 728, 729 (Utah 1980). "The main objective [of juvenile proceedings] is to inquire into bad behavior and its causes and to seek remedies and adjustments in the child, rather than merely to accuse, convince and punish him." In re Lindh, 359 P.2d 1058, 1059, 11 Utah 2d 385 (1961). "The [juvenile] court is sort of a substitute parent and the proceedings, as provided by our statutes, are not criminal in nature but are inquiries into the interest of the juvenile." Velasquez v. Pratt, 443 P.2d 1020, 1021, 21 Utah 2d 229 (1968).

Although the preceding citations bear upon criminal matters, they show, nevertheless, that the overriding philosophy behind the juvenile court system is to rehabilitate the child rather than to mechanically impose upon the child whatever punishment, retribution, amends or "civil responsibilities" may be felt by society to benefit that child's errant behavior.

F. The purpose of the Uniform Act on Paternity is to exact support from the parents of illegitimate offspring.

The purpose of the paternity act is, apparently, to oblige the

parents of illegitimate offspring to support these offspring on a par with their support of legitimate offspring. Although not technically punitive in nature, and certainly not criminal, the act is, nevertheless, fraught with references to liability, bonds, judgments and enforcement. Its overall posture is mechanistic and unyielding. Nowhere does it refer to the age, status or background of the parents. Because the underlying policy is society's determination that the parents--and not the state--shall support illegitimate offspring, the statute has, in practice, both administratively and judicially, been applied so as to impose the statutory liability solely on the basis of the parents' ability to pay.

G. By properly construing both relevant statutes, this Court should hold that the juvenile court must exercise exclusive original jurisdiction over the Appellant.

The liberal construction of a statute to effect its purposes, which construction is required by law (§68-3-2, §78-3a-1, U.C.A. (1953)), must begin, logically, with a jurisdictional analysis. A party denied entry to a court is denied, ipso facto, that court's remedies. Without access, a court is but a phantom court.

In the case at bar, let us assume that the Appellant is found to be the father.

Should the district court maintain its jurisdiction, then that court would respond within the rigid provisions of the Uniform Act on Paternity. It would impose ongoing liability upon the Appellant

for a period extending forward eighteen years from the birth of the child.

Stated otherwise, the district court would respond in a way that would automatically thwart the very purpose of the Juvenile Court Act, which is rehabilitative of youth.

On the other hand, should the juvenile court be allowed to exercise its jurisdiction, then the juvenile court would bring unique expertise and resources to the case. As mandated by statute (§78-3a-39, U.C.A. (1953)), the juvenile court might devise and apply a wide variety of dispositions, all in accordance with the perceived best interests of both the Appellant and society. Quite possibly, the court might require Appellant to shoulder his "civil responsibilities" and support the offspring. But unlike the district court, the juvenile court would not impose a procrustean, pecuniary formula. It would also consider the long adult life ahead of the Appellant; it would weigh the imposition of longterm civil amends against their likely effect on Appellant's psyche and future.

Stated otherwise, the juvenile court would not respond in a way that would automatically thwart the intent of the Uniform Act on Paternity.

Thus, jurisdiction in the instant matter should be placed in the juvenile court.

H. Implicit legislative policy militates in favor of extending the



juvenile court's jurisdiction to the Appellant.

Nowhere has the Utah legislature clearly announced an intent that parenthood occurring in a child should be treated with the same mechanical, monetary concerns that are applied to adult parents.

Nowhere has the Utah legislature clearly announced an intent that the disorders of juvenile crime are to be resolved by specialists with the goal of rehabilitation; whereas the disorders of juvenile sexuality are to be resolved precisely like those of adults.

Nowhere is there a clear basis to believe that the Utah legislature would intend the following disparate results. A disturbed fifteen-year-old boy rapes a fifteen-year-old girl. That boy may avoid criminal penalties and be rehabilitated by the juvenile justice system (pursuant to Section 78-3a-25, U.C.A. (1953)). A second, equally disturbed fifteen-year-old boy "makes love to" and impregnates the same fifteen-year-old girl. The second boy, absolutely and without fail, must now bear the civil, non-punitive responsibility of supporting the offspring during a period of eighteen years following the birth, until that second boy has become a thirty-four-year-old man.

On the contrary, the Utah legislature has made it its business to distinguish juveniles from adults in matters of sexuality. Recently, that same legislature has prohibited juveniles--and juveniles alone--from either receiving contraceptives or having an abortion unless their parents are informed. It is obvious that the legislature intends that, in matters of sexuality, juveniles

are to be treated differently--and therefore separately.

CONCLUSION

The Utah legislature intended that violations of the Uniform Act on Paternity are to be tried, exclusively and originally, in the juvenile court. It is not "elsewhere provided by law" that the juvenile court is not to resolve such matters; for to assert that proposition would be to subvert the spirit and purposes of the Juvenile Court Act.

DATED this 9th day of May, 1983.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

I certify that on the 9th day of May, 1983, I caused to be hand delivered to copies of Appellant's Brief to Sandy Mooy, attorney for respondent, at 431 South Third East, Salt Lake City, Utah, 84111.

  
John E. Harvey