

1965

# Anita Rae Wright v. Paul Dee Wright : Brief of Respondent

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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ANITA RAE WRIGHT,  
*Plaintiff and Appellant,*

vs.

PAUL DEE WRIGHT,  
*Defendant and Respondent.*

Case No.  
10262

FILED

MAR 24 1965

BRIEF OF RESPONDENT

Clerk, Supreme Court, Utah

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Appeal From the Judgment of the Third Judicial District Court  
for Salt Lake County, Utah.

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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ANITA RAE WRIGHT,  
*Plaintiff and Appellant,*

vs.

PAUL DEE WRIGHT,  
*Defendant and Respondent.*

} Case No.  
10262

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## BRIEF OF RESPONDENT

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### STATEMENT OF KIND OF CASE

This is an appeal by the plaintiff and appellant, resulting from an order to show cause served upon the defendant, in which an order in favor of the defendant awarding him the custody of two minor children of the litigant parties was made and entered by the trial court.

## DISPOSITION IN THE LOWER COURT

This case was tried to the court, sitting without a jury, on October 26, 1964, on an order to show cause served by the plaintiff upon the defendant resulting in an order in favor of the defendant awarding him the custody, care and control of the litigant parties two minor children.

## RELIEF SOUGHT ON APPEAL

The defendant and respondent seeks an affirmation of the order entered by the district court, dated November 12, 1964.

## STATEMENT OF FACTS

The plaintiff, Anita Rae Wright, and the defendant, Paul Dee Wright, were intermarried at Sterling, Utah, on the 25th day of May, 1956 (R-1). Two children were born as issue of said intermarriage, to wit, Leslie Rae Wright, a daughter, born November 15, 1957, and Terry Dee Wright, a son, born February 9, 1959. At the time of the hearing resulting in the trial court's order appealed from, Leslie Rae was six years of age and Terry Dee five years of age.

On the 2nd day of May, 1961, a decree of divorce was granted by said district court to Anita Rae Wright awarding her the custody of said two minor children (R-4). On the 11th day of August, 1961, the plaintiff and defendant stipulated to a modification of the above

mentioned decree of divorce, in which the plaintiff agreed to give the custody of the minor children to the defendant and child support was to be stricken from the original decree (R-9 and 10). The decree of divorce as modified was entered by the court on August 21, 1961.

On October 14, 1964, the plaintiff filed an affidavit in the lower court in support of an order to show cause why the original decree as modified should not again be modified to provide for an award of the custody of the minor children to herself, together with \$75.00 per month for each child as support and \$100.00 attorney's fee for such hearing (R. 14, 16). The defendant filed a counter-affidavit denying facts contained in paragraphs 4, 5, 6 and 7 of the plaintiff's affidavit and alleging that the defendant was then married; that his present wife gives the said minors all the attention and love as her own; that he has a home and is in a better financial position to care for them than the plaintiff and that it would be for the best interest of the children if they remained with their father.

After the hearing, the trial court entered its order on November 12, 1964, as follows:

1. That the plaintiff may have the right of visitation of both of the minor children from the 8th day of the closing of school in each June of each year up to the 8th day prior to the opening of school in the fall of each year, and that she shall return the children to the defendant herein on or before that time.

2. The plaintiff may remove the children from the State of Utah during the period of time heretofore mentioned and take them to her residence.

3. That the plaintiff may visit the children at all reasonable times and places when she is in Salt Lake City and may have the children with her on week-ends.

The court found that it is for the best interest of the minor children of the parties hereto that the order to show cause in the above entitled matter be dismissed, and that the two minor children, Leslie Rae Wright and Terry Dee Wright, remain in the care, custody and control of the defendant Paul Dee Wright, subject to the privileges of visitation granted the plaintiff.

From this order (R-20 and R-21) the plaintiff appealed to this court (R-22).

The defendant says that it is his desire to keep the children and that he loves them; that he has a three bedroom with a full basement and all of his and his present wife's children have separate beds (R-41, 10-21). That he has a gross income of \$8,400.00 per year (R-42, 4-5). That the defendant has had the custody, care and control of the litigant parties' two minor children for 3½ years, which is, at the time of the hearing, more than half of their lives.

His present wife testified she loved said minors as her own (R-47, 20-29), and that her own children love them and they get along well together (R-47, 30; R-48, 1-7).

## ARGUMENT

### POINT 1

**THE ORDER OF THE DISTRICT COURT DATED NOVEMBER 12, 1964, SHOULD BE AFFIRMED.**

The court in its order appealed from stated "that it is for the best interest of the minor children of the parties hereto that the Order To Show Cause in the above entitled matter be dismissed, and that the two minor children, Leslie Rae Wright and Terry Dee Wright, remain in the care, custody and control of the defendant, Paul Dee Wright."

Where divorce was granted to mother of children of tender age, and at such time children were placed in care, custody and control of paternal grandmother, with mother's consent, district court did not abuse its discretion in refusing to modify decree and award children to mother, notwithstanding (30-3-10 U.C.A. 1953) Sec. 3005 Compiled Laws of 1917. *Jaques v. Jaques*, cited below.

"In view of what has just been said, this court should not interfere with the judgment of the district court in such cases, unless it is made to appear with at least considerable clearness that the court abused its discretion in the premises. After a careful perusal of the record, and after *thoroughly* considering the plaintiff's contention, we are unable to say that the district court abused the discretion vested in it, and hence we may not interfere with the judgment." *Jaques vs. Jaques*, 58 Utah 265, 198 P. 770.

This court has held in numerous cases that the best interest of the child shall be controlling. *Walton v. Coffman*, 110 Ut. 1, 169 P.2d 97; *Anderson v. Anderson*, 110 Ut. 300, 172 P.2d 132; *Sampsell v. Holt*, 115 Ut. 73, 202 P.2d 550; *Smith v. Smith*, 1 Ut. 2d 75, 262 P.2d 283; *Steiger v. Steiger*, 4 Ut. 2nd 273, 293 P.2d 418; *Johnson v. Johnson*, 7 Ut. 2d 263, 322 P.2d 16.

The trial court was of the opinion that if the children were taken from their father and the custody awarded to their mother after they had lived so long with him it would "disrupt their emotional situation" (R-49, 22-24) and would not be for their best interest (R-49, 29 & 30; R-50, 1-11).

We believe that a thorough reading of the whole record in this case will convince this court that the judgment and order of the trial court, assayed from its advantaged position, was made for the best interest and welfare of the two minor children of the parties to this action.

## CONCLUSION

We conclude, therefore, that the order of the court, entered November 12, 1964, should be affirmed and that the custody, care and control of said minor children should remain with their father, the defendant and respondent herein.

Respectfully submitted,

**GLEN S. HATCH**

**ATTORNEY FOR RESPONDENT**