

1994

## Bowcut v. Bowcut : Petition for Rehearing

Utah Court of Appeals

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Rosemond G. Blakelock; attorney for respondent.

Don Leslie Bowcut; pro se.

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UTAH COURT OF APPEALS  
BRIEF

**FILED**

Utah Court of Appeals

MAR 28 1995

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

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JANET BOWCUT : REQUEST FOR REHEARING  
Plaintiff and Appellee :  
v. :  
DON LESLIE BOWCUT, : Court of Appeals No. 940361-CA  
Defendant and Appellant :

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Comes now the appellant, Don L. Bowcut, to request that the Utah Court of Appeals consider a final constitutional issue in the above entitled case that has come up through the March 23, 1995 ruling. He would ask that the court consider the option of a rehearing to argue this very substantial constitutional issue that has now arisen. He outlines the constitutional issue that will be presented to the Utah Supreme Court should resolution not be available at the Court of Appeals in the following paragraphs.

**CONSTITUTIONAL ISSUE**

There has been one indisputable fact that has persisted throughout the case herein appealed--the appellant's parental rights to the custody and control of his child were abolished.

There has been some argument as to how that was accomplished, with the appellee's counsel arguing that a guardian was successfully placed and the Court (recognizing some procedural problems with the guardian's appointment) ruling that the Uniform Civil Liability For Support Act empowered the court to usurp the parent's rights. But there could certainly be no doubt that the parent stood with less than his full custodial rights as the court ruled that he was obligated to send support monies to the person with whom the child had chosen to live. U.C.A. 78-3a-2(14) outlines the parent's rights to include the right to demand his physical custody, the right to discipline and control him, and the right to determine with whom he shall live. The actions of the lower courts undoubtedly impacted (if not totally abolished) these rights.

The question that the appellant now brings to the court: is a parent protected from the termination or suspension of his parental rights absent a judicial determination of unfitness? According to Utah law (U.C.A. 78-3f), Utah Supreme Court case law (In re J.P. 648 P.2d 1364), Utah Court of Appeals case law (Nielson v Nielson 826 P.2d 1065), the Utah State Constitution, and the Ninth Amendment of the United States Constitution the parent is indeed protected from such usurpation of his rights. Utah law has very carefully outlined the procedure that must transpire before a parent's rights can be terminated--all designed to prevent the individual from unwittingly relinquishing his rights. Any court actions that circumvent the procedure must

be ruled void to insure that the parent's rights to due process of law are preserved.

The appellant agrees that he is obligated to support his child under the Uniform Civil Liability For Support Act. But this Act does not empower the courts to circumvent the laws protecting a parent's rights, it only serves as justification for a court ordered termination of rights. A parent is obligated to PROVIDE support for his child; but he is not obligated to force the child to utilize that support. If the child is removed from the custody and control of the custodial parent for any reason other than a court ordered termination of rights (such as the child's refusal to live with the parent, kidnapping or abduction) the parent is still seen as PROVIDING the support though it is temporarily not utilized by the child.

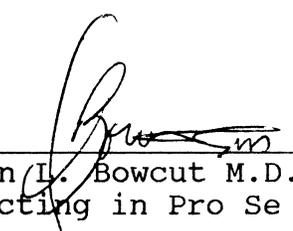
#### SUMMARY

The appellant is confident that the Utah Supreme Court is not going to reverse all of its previous rulings and find that a parent's rights are actually so easily abolished that they can be accidentally terminated by a court action that was not initiated with any such intent. He is equally confident that he is not going to held accountable to the 30-day rule for appeal because: 1) this is a substantial civil liberties issue, 2) the rule 60(b) relief as suggested by the court of appeals was timely, and 3) he could not have possibly been appraised of the ramifications of

the hearing when even opposing counsel had no idea of the ramifications (and thus could not possibly have informed him).

This issue is very substantial and embodies the very crux of the cases that the appellant has been forced to pursue in three separate appeals. He asks that it be reviewed a final time by the ruling Judges and a decision rendered before he petitions the Utah Supreme Court for a review. The Court might be inclined to immediately present the case to the Utah Supreme court to resolve this core issue, and if so the appellant would beg such action.

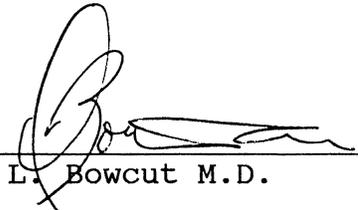
Dated this 27<sup>th</sup> day of March, 1995

  
\_\_\_\_\_  
Don L. Bowcut M.D.  
Acting in Pro Se

**CERTIFICATE OF MAILING**

I hereby certify that I mailed a true and correct copy of the forgoing **REQUEST FOR REHEARING**, this 27<sup>th</sup> day of March, 1995, postage prepaid to the following:

Rosemond G. Blakelock  
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37 East Center, 2nd Floor  
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\_\_\_\_\_  
Don L. Bowcut M.D.