1983

Gladys Fay Wells, Guardian Ad Litem For Dennis Edgar Wells, Jr., A Minor Over the Age of 14 Years, Plaintiffs and Respondents, v. Children's Aid Society of Utah, Successor in Custody of Kimberly Bronson, Mother of Baby Boy Bronson and Kimberly Bronson, Defendants and Appellants, John Doe And Mary Doe, and Robert D. Maack, Esq/. Guardian Ad Litem For Baby Boy Bronson, Inventors And Appellants : Respondent's Brief on Appeal

IN THE SUPREME COURT

OF THE STATE OF UTAH

GLADYS FAY WELLS, Guardian ad Litem for DENNIS EDGER WELLS, JR., a minor over the age of 14 years, Plaintiffs and Respondents, vs. CHILDREN'S AID SOCIETY OF UTAH, Successor in Custody of KIMBERLY BRONSON, Mother of BABY BOY BRONSON, and KIMBERLY BRONSON, Defendants and Appellants, JOHN DOE and MARY DOE, and ROBERT D. MAACK, ESQ., Guardian ad Litem for BABY BOY BRONSON, Intervenors and Appellants.	)	Case No: 18537

RESPONDENT'S BRIEF ON APPEAL

Appeal from a Judgment of the District Court for Grand County, The Honorable Boyd Bunnell, Judge

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RESPONDENT'S BRIEF

STATEMENT OF NATURE OF THE CASE

Plaintiff-Respondent commenced an action for the establishment of paternity and custody in the Seventh Judicial District Court for Grand County, State of Utah, on October 13, 1981. He is seeking to obtain custody of his infant son, born to Kimberly Bronson on September 23, 1981, in Weber County, State of Utah. Kimberly Bronson released the child to Children's

Aid Society of Utah on September 24, 1981, for the purpose of adoption, without obtaining the consent or release of the natural father.

DISPOSITION IN THE LOWER COURT

The case was tried to the Court without a jury and upon hearing sworn testimony from witnesses, and upon receiving into evidence exhibits and upon being fully advised in the matter, the Court found that the plaintiff, under the facts of this case, was denied a reasonable opportunity to file his acknowledgement of paternity prior to placement of the child by Children's Aid Society. The Court also found that Kimberly Bronson, by signing over her parental rights to a child placing agency, had abandoned the child; that the plaintiff is not unfit to have the custody of his child and, that it is in the best interest of the child that the child be awarded custody to his father; and, that Intervenor, John and Mary Doe, have no standing in this lawsuit as against the father of the child.

RELIEF SOUGHT ON APPEAL

Plaintiff-Respondent requests that this Court uphold the findings of the District Court and give the plaintiff-respondent custody of the child.

STATEMENT OF FACTS

Plaintiff-Respondent, Dennis E. Wells (hereinafter referred to as "Dennis") and Kimberly Bronson (hereinafter referred to

as "Kimberly"), at the time of the child's birth, were both minors of the age of sixteen (16) years. Dennis and Kimberly are both bona fide residents and domiciliaries of Moab, Utah. The child, however, was born in Ogden, Utah, since, unknown to Dennis, Defendant-Appellants, Children's Aid Society of Utah (hereinafter referred to as "Children's Society"), had Kimberly moved to Ogden approximately ten to twelve days prior to the child's delivery. (TR-14). Kimberly admits not telling Dennis that she was leaving Moab in order to have the child delivered in Ogden, Utah. (TR-22).

Baby Boy Bronson was conceived on or about December 23, 1980. It is undisputed that Dennis is the father of Baby Boy Bronson. Dennis, however, was reluctant to admit paternity since they had ceased to see each other during the month of January, as acknowledged by Kimberly (TR-30), and thought the baby could have been fathered by his friends Travis or Coffman. (TR-164). Kimberly admits that during the month of January, 1981, she told Dennis she thought she was pregnant, (TR-49), but, had no medical confirmation of pregnancy and Dennis could have thought it was an excuse to "lasso" him given the break-up in their relationship. (TR-50). Kimberly also admits that from said date in January up to the time of the child's birth she never again talked of the pregnancy with the father. (TR-50).

On August 31, 1981, Kimberly underwent a school physical

in connection with the school's athletic program. During course of said physical, Kimberly's pregnancy was medically confirmed for the first time. (TR-19). Sally Brock, Kimberly mother, had never discussed or been aware of her daughter's condition until that August day when she discussed the matter with Doctor Jay P. Muncey,the school's doctor. (TR-156).

Throughout the months of December, 1980, to August, 1981, Kimberly had told no one she was pregnant. (TR-17). She lived with her parents and engaged in summer sports. (TR-16). Dennis' mother, Gladys Fay Wells, played softball with Kimberly during the 1981 summer months. (TR-53). Gladys Wells recalls seeing Kimberly sliding belly and face first into the bases. (TR-54). Gladys Wells, upon learning that Kimberly was found to be eight months pregnant doubted Dr. Muncey's August findings since Kimberly was too little. (TR-58).

Following the examination by Dr. Muncey, Kimberly's then boyfriend, advises Dennis of the pregnancy and of Dennis' designation as putative father. (TR-56). Dennis told his mother, that same evening, that he had had intercourse with Kimberly on December 23, 1980. (TR-56). It was September 2, 1981, when Dennis found out that Kimberly was pregnant. (TR-56). On September 4, 1981, Gladys Wells told Kimberly that she and her husband were willing to financially support the birth of the baby, and to provide support to Kimberly and the baby, including personal care of the infant, as may be

required by her school schedule. (TR-62). Furthermore, Gladys Wells told Kimberly that if she did not wish to keep the infant, Dennis did want the child. (TR-66).

Dr. Muncey arranged for the Children's Society to contact Kimberly in order to discuss the relinquishment of her unborn child, after birth, for adoption. Gladys Fay Wells then arranged a meeting with Colleen Burnham, a social worker employed by the Children's Society, on September 14, 1981. (TR-70). At that meeting Gladys Wells told Colleen Burnham that Dennis and his family were willing to raise the child and wanted to do so if Kimberly planned to relinquish custody. (TR-73). Colleen Burnham sought to dissuade Gladys Wells of their desire to raise the child to no avail.

On instructions from the office of Coffman & Coffman, P.C., Gladys Wells contacted Walter Miller, a social worker in Moab, Utah with the Utah State Department of Social Services. Walter Miller could provide Dennis the required forms needed for filing with the Department of Vital Statistics, State of Utah, his acknowledgement of paternity of the unborn child. (TR-139). Walter Miller was unable to locate the forms locally so he called the Department of Vital Statistics that same day of September 14 or 15, 1981, and requested that the forms be mailed forthwith to him. (TR-139). On September 17, 1981, Gladys Wells picked up copies of the Acknowledgement of Paternity form mailed to Mr. Miller's office. Dennis executed the Acknow-

ledgement of Paternity form on September 18, 1981, leaving blank the date pertaining to the birth of the child. (Tr-

On or about September 17, 1981, Gladys Wells learned that Kimberly had left Moab to Ogden for the purpose of giving birth and relinquishing custody of the unborn infant. During the trial, Walter Miller testified that Gladys Wells, upon learning that Kimberly had left Moab, spoke to him relative to Kimberly's late and small pregnant showing. She was concerned over the possibility that labor might be induced. If labor was induced so that a normal birth, that might occur in October, 1981, was accelerated into September, 1981, then, in that event, Dennis might, in fact, not be the father and the filing of the forms would be premature and inaccurate. (TR-11 Gladys Wells felt that under the circumstances it would be best if the filing was delayed until the child's birth. Walter Miller had several conversations with Colleen Burnham during the period of September 16, 1981, through September 23, 1981, during which the desire of the Wells' family, for custody of the child was discussed. Walter Miller, also relayed Gladys Wells' concern of the change in circumstances an induced labor might create in the determination of whether Dennis might be the child's father. (TR-145). Dennis mailed the forms on September 23, 1981.

On September 24, 1981, Kimberly signed the child's relea form. In it, she agrees to the "surrender, release and forev

quit-claim", of the child. She also understood that signing the form constituted a "permanent, irrevocable surrender of her child." The child was placed in custody of the Intervenors, John Doe and Mary Doe, on September 25, 1981. In a letter dated November 17, 1981, John E. Brockert, Director of the Bureau of Health Statistics, confirms that Dennis's Acknowledgement of Paternity was sent to his office on September 23, 1981, but received September 30, 1981. He also states that he received a request from the Children's Society for search of registery of Acknowledgement of Paternity on September 24, 1981. A Certificate of Search was transmitted to the Children's Society on September 28, 1981. Children's Society placed the child in the Intervenor's custody four days prior to knowing whether Dennis had filed an Acknowledgement form. Had the mail taken two to three days to arrive to Salt Lake from Moab, as could reasonably be expected, his Acknowledgement would have been filed prior to Children's Society search being concluded. This action was filed on October 16, 1981.

ARGUMENT

The Honorable Boyd Bunnell, given the facts of this case, was correct in giving Dennis an opportunity to present evidence to show that he should be deemed to have complied with Utah Code Annotated, 78-30-4(3), (1953). In Ellis vs. Social Services Dept., 615 P.2d 1250 (Ut. 1980) this Court held the Utah registration scheme for putative fathers was constitutional

and stated, "due process requires that the father be permitted to show that he was not afforded a reasonable opportunity to comply with the statute."

Once paternity has been determined or been acknowledged according to the laws of the State of Utah, the father of a child born out of wedlock is liable to the same extent as the father of a child born in wedlock. State In Interest of M, 476 P.2d 1013 (Ut. 1970) states:

> "Since the father's duty to support and educate the child is to the same extent as if the child was born in lawful wedlock, it should follow that the father's right to custody should be almost as co-extensive. Thus, while his right is not as great as that of the mother, it is certainly far greater than that of a stranger." Supra.

The trial Court's findings are amply supported by the weight of the evidence and testimony introduced during the trial. The issue, before the trier of facts, was whether Dennis'termination of his parental rights was contrary to basic notions of due process. The issue is a factual one, and as stated in Hall vs. Anderson, 562 P.2d 1250 (Ut. 1977),

> "if the evidence is such that reasonable minds may differ as to the conclusion to be drawn therefrom, it is the prerogative of the trier of facts to make the determination; and this Court should not interfere with that prerogative by disagreeing with the determination thus made."

The Judgment of the Trial Court should not be reversed unless it is shown that the discretion exercised therein has been abused. Bambrough vs. Bethers, 552 P.2d 1286.

I. The Interest of a Father in His Child is Protected by the United States Constitution and Utah Constitution.

Parental rights in one's children have been variously classified as "essential rights", "basic civil rights," "fundamental rights" and "personal rights" more precious than those of property. May vs. Anderson, 345 U.S. 528, 533-4 (1953); Stanley vs. Illinois, 405 U.S. 645, 651 (1972); Skinner vs. Oklahoma, 316 U.S. 535, 541, (1941); and Meyer vs. Nebraska, 262 U.S. 390, 399 (1923).

The interest of the parental bond is the subject of constitutional protection under both the due process and equal protection clause. Meyer vs. Nebraska supra; Pierce vs. Society of Sisters, 266 U.S. 510 (1924); Skinner vs. Oklahoma, supra, Stanley vs. Illinois supra; and Wisconsin vs. Yoder, 406 U.S. 205 (1972). It is within the penumbra of the concepts of life and liberty.

The United States Constitution, Amendment IV, states in pertinent part:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor to deny any person within its jurisdiction the equal protection of the law." (Emphasis added).

See also the Utah Constitution, Art. 1, §7:

> "No person shall be deprived of life, liberty or property, without due process of law."

A. Father's Interest In His Children Is No Less Constitutionally Protected Merely Because He Has Not Been Married To The Child's Mother.

Stanley vs. Illinois, 405 U.S. 645 (1972) is the landmark case in which the court struck down an Illinois statutory scheme by which the state allowed a hearing and had to make a finding of proof of neglect before a child of married or divorced parents or an unmarried mother, could be made a ward of the state, but whereby children of an unmarried father could be made wards of the state without any hearing or parental fitness finding and without any proof of neglect. The court in Stanley acknowledged that the State has an interest in the welfare of minors and that neglectful parents could be separated from their children; but then the Court went on to say:

> "[T]he law [has not] refused to recognize those family relationships unlegitimized by a marriage ceremony. The Court has declared unconstitutional the state statute denying natural, but illegitimate, children a wrongful-death action for the death of their mother, emphasizing that such children cannot be denied the right of other children because familial bonds in such cases were often as warm, enduring, and important as those arising within a more formally organized family unit. . . . "To say that the test of equal protection should be that of 'legal' rather than biological relationship is to avoid the issue. . . ." Id., 405 U.S. 645, 651.

The Court then unequivocally stated its holding that:

> Stanley's interest in retaining custody of his children is cognizable and substantial. Id., 405 U.S. 645, 652.

The interest of an unwed father in his child was also

recognized by the Minnesota Supreme Court in In re Brennan, 134 N.W.2d. 126 (Minn. 1965). In that case which predated even Stanley, the court held that an unwed father must be afforded an opportunity to express his interest in his child when its natural mother has relinquished the child for adoption. In so holding, the court noted with language equally applicable to this case that on a nation-wide basis the more recent decisions demonstrated

> "a natural and understandable willingness to listen to a natural parent who asserts a sincere interest in and concern for his child. Certainly, in the case before us, where a mother seeks to relinquish the child and refuses marriage to legitimate it, a court cannot well look with indifference on the interest of the father who wishes to raise and provide for it. Even though the out-of-wedlock father does not appear before the court in the most favorable light, he should nevertheless be given an opportunity to express his interest when the mother has relinquished the child. A sincere concern which springs from a sense of responsibility to his own flesh and blood is reason enough to permit him to be heard. Although this policy may present some risk for the adoption process, it should nevertheless be permitted where the claim is asserted promptly and under circumstances so as to minimize the risk of trauma to the child or the adoptive parents which would accompany judicial acceptance of his assertion." Id., 134 N.W.2d 126, 131.

Similarly, in Miller vs. Miller, 504 F.2d 1067 (9th Cir. 1974), the Circuit Court of Appeals reviewed an Oregon statute which, under certain circumstances, provided that in connection with the adoption of his child, an unwed father was to be "disregarded just as if he were dead." In reliance upon Stanley, the court held:

> "The application of the statute in question would infringe upon the Federal constitutional rights of the appellant and natural fathers similarly situated. We declare that said statute is constitutionally null and void and, hence, unenforceable." Id., 504 F.2d 1067, 1068.

B. Due Process Requires That An Unwed Father Be Permitte To Show That He Was Not Afforded A Reasonable Opportunity To Comply With U.C.A. 78-30-4(3) (1953 as amended).

Defendant-Appellants contend that Dennis failed to compl with the provisions of Utah Code Annotated §78-30-4(3) (1953 as amended). This section provides that any unwed father who fails to file the required Notice of Paternity shall be forev barred from bringing any action to establish his paternity of the child, gain custody of the child, and/or adopt his child. The notice must be filed with the Bureau of Vital Statistics within the time period prescribed by subsection (b), which provides, in pertinent part, that:

> "The notice may be registered prior to the birth of the child but must be registered prior to the date the illegitimate child is relinquished or placed with an agency licensed to provide adoption services or prior to the filing of a petition by a person with whom the mother has placed the child for adoption..." §78-30-4(3) (b), Utah Code Annotated (1953 as amended).

In Ellis vs. Social Services Dept., Etc., 650 P.2d 1250 (Ut. 1980) this Court was previously asked to determine the constitutionality of U.C.A. 78-30-4(3). There the Court avoided overturning the statute itself by saying that the application of the statute could be looked at, and that:

> "It is conceivable, however, that a situation may arise when it is impossible for the father to file the required notice of paternity prior to the statutory bar, through no fault of his own. In such a case, due process requires that he be permitted to show that he was not afforded a reasonable opportunity to comply with the statute." Id., 615 P.2d 1250, 1256.

In the instant case the putative father, as stated by Judge Bunnell, in his decision, must be given some reasonable leeway in imposing that strict filing by the natural father of his claim of paternity, particularly where there might be some question as to paternity. (TR-277). He further states, "mail service most of the time takes one day from here to Salt Lake City. The envelope is here, the Vital Statistics received it, it's postmarked the 23rd. Under ordinary circumstances, that would have been filed on the 24th. And in that kind of a situation it's going to make it difficult as to whether he has rights or whether he doesn't." (TR-277, 278). He continues by referring to "The shortness of the time when the pregnancy was confirmed, the logistics of the fact that you have to file in Salt Lake City and these people are located down here in Grand County." (TR-278). He also refers to the efforts made by the Wells' family to comply with the statute. (TR-278). In keeping with Ellis, Judge Bunnell summarizes:

> "And in view of those things, it seems to the Court there's got to be some reasonable leeway given, so that they (referring to putative fathers) do have a reasonable opportunity to comply. And in this case the Court is going to find that they were not given that reasonable opportunity; and that therefore the filing (referring to the child's release)

as made was deficient." (TR-278).

It should also be noted that the strict time period in which an unwed father must file his Notice of Paternity was met by Dennis. U.C.A. §78-30-4(3) (b), provides:

> "The notice may be registered prior to the birth of the child but must be registered prior to the date the illegitimate child is relinquished or placed with an agency licensed to provide adoption services or prior to the filing of a petition by a person with whom the mother has placed the child for adoption."

Assuming the mail service would have taken one day, the notice would have been registered prior to the date the child was relinquished. The Acknowledgement form would have been received by the Vital Statistics Office on the same day the Children's Society made their request for a search of the records and the release form was signed. The Certificate of Search was transmitted to the Children's Society on September 28, 1981. The child was placed in custody of John and Mary Doe on September 25, 1981.

It is further argued that it would have been impractical for Dennis to comply with the statute since Dennis and Kimberly were both residents of Moab and Dennis had no way of knowing that Kimberly went to Ogden to deliver the child. Other intervening factors include the shortness of the time between the confirmation of the pregnancy and the child's delivery; and the fact that Dennis could not medically confirm that he was the father of the child.

II. When The Mother Has Abandoned The Child, The Natural Father Of An Illegitimate Child Has A Paramount Right Over Non-Parents To Custody Of The Child.

In State In Interest of M, 476 P.2d 1013 (Ut. 1970), the Appellants assumed, just as in this case, that since the mother's consent alone is required to authorize adoption of an illegitimate, by her act alone a dispute concerning the custody of her child is finally resolved. The Court disagreed with said view. The difference between said case and the one before the Court now is that a statutory parent-child relationship had been established by the public acknowledgement statute, Utah Code Annotated §78-30-12, whereas Dennis has established the parent-child relationship through Utah Code Annotated §78-30-4 (3). In arriving at their conclusion the Court explained:

> "if paternity has been determined or has been acknowledged according to the laws of this State, the liabilities of the father may be enforced in the same or other proceedings. The father of a child which is or may be born out of wedlock is liable to the same extent as the father of a child born in wedlock. . . for the education, necessary support and funeral expenses of the child. Since the father's duty to support and educate the child is to the same extent as if the child was born in lawful wedlock, it should follow that the father's right to custody should be almost as co-extensive. Thus, while his right is not as great as that of the mother, it is certainly far greater than that of a stranger." Id.

This Court in Robertson vs. Hutchinson, 560 P.2d 1110, 1112 (Ut. 1977), stated that abandonment of a child, by a

parent, will be found

> "only when the evidence is clear and convincing that the parent has either expressed an intention, or so conducted himself as to clearly indicate an intention, to relinquish parental rights and reject parental responsibilities to his child."

In State In Interest of M, this Court indicates that surrendering a child to an agency for adoption is abandonment. The Court states:

> "It is clear that the present trend of legal and popular thinking is that a willing father of an illegitimate child should have a right to custody if it is in the best interests of the child, particularly where the mother has abandoned the child, either actually or constructively by surrendering the child to an agency for adoption" Id., 476 P.2d 1013.

It is undisputed that Baby Boy Bronson's mother relinquished him to an adoption agency. The abandonment was done with full understanding of the rights she was waiving, as Baby Bronson's mother, and the full knowledge of the consequences of her action. The trial transcript, evidences that all her actions were done with her parent's knowledge, consent and approval. The release form clearly indicates that signing the form constitutes a "surrender of her child."

In Matter of Lathrop's Adoption, 575 P.2d 894 (Kan. App. 1978) the issue to be decided on appeal was whether the natural father of an illegitimate child had a paramount right over non-parents to custody of the child, and whether that portion of the Kansas adoption statute which required the consent of

the unwed mother but not the unwed father was constitutional.

In Lathrop the mother and father of the child were unmarried and had lived together for several months in Louisiana. Several months before the child's birth, the mother returned to Kansas and the father moved to Colorado. The child was born on August 16, 1976, and two days later the mother signed an adoption consent, waiving further notice of final hearing and entry of decree of adoption. She also stated in her consent that she did not know the whereabouts of the natural father. The child was placed with prospective adoptive parents pending a hearing of adoption. The father was not notified of the filing of the petition for adoption, nor was his consent to the adoption obtained. But the father did appear at the proceeding and filed his objection to the adoption and requested custody of the child. By both statute and case law in Kansas, at the time, the natural parents were to given preference over non-parents in a custody contest. The lower court awarded custody to the natural father and ordered that the Kansas Department of Vital Statistics prepare a corrected birth certificate showing the natural father as the father of the child and changing the child's surname to that of the father.

The prospective adoptive parents appealed, arguing that the natural parents by entering into an illicit relationship had waived their constitutional rights of due process and equal protection regarding custody of their child. They also

argued that Stanley vs. Illinois did not apply because Stanley had raised the children, whereas the Respondent had never had custody of his child. The Appellate Court rejected that argument, and stated:

> "Appellants attempted to distinguish the Stanley case, pointing out the father in Stanley had raised the children whereas the instant Respondent has never had custody of his child. However, appellants ignore the import of State ex rel. Lewis vs. Lutheran Social Services, 59 Wis.2d 1, 207 N.W.2d 826 (1973). That case was decided on remand from the United States Supreme Court with instructions to grant a putative father a "fitness" hearing in light of Stanley. The father in Lewis, as the father here, had not had custody of his child. The Wisconsin court found the father could not be faulted because the adoption agency and prospective adoptive parents had kept him from his child. Fitness determined, custody was given the father. See also: Miller vs. Miller, 504 F.2d 1067 (9th Cir. 1974); Vanderlaan vs. Vanderlaan, 9 Ill.App.3d 260, 292 N.E.2d 145 (1972); Poe. ex rel. Slawek vs. Covenant Child. Home, 52 Ill.2d 20, 284 N.E.2d 291 (1972); and Hammach vs. Wise, 211 S.E.2d 118 (W.Va. 1975).
>
> "Applying the case and statutory law discussed above to the facts of the case at hand, we hold that Leon Scott, Jr., has parental rights to the custody of his child and under those circumstances that those rights must be given preference and will prevail over those of the adoptive parents due to the parental preference rule. Stanley establishes his parental rights and Quilloin does nothing to diminish those rights in this situation, where he appeared and asserted his desire to have the custody of his daughter soon after her birth. We agree with the Lewis court that a father like Leon Scott, Jr., who has been prevented from bestowing parental care on his child from the time of its birth by outside agencies (such as adoption agencies, or in this case, adoptive parents), cannot be faulted, nor can his parental rights be lessened by virtue of his failure to perform his parental responsibilities. We think that due process requires that a putative father who appears and asserts his desire to care for his child

has rights paramount to those of non-parents, unless he is found to be an unfit father in a fitness hearing. The trial court found that he was a fit parent; therefore his right to have custody of his child is clear." (Emphasis added). Id., 575 P.2d 894, 897-8.

The trial transcript indicates that Dennis is a B student who has the possibility of getting a scholarship to enable him to further his education. He also works during the summer months and on weekends throughout the year. (TR-94-95). His parents are willing to help him raise the child. (TR-186). If he gets married he will have his wife's support to help him raise the child. (TR-185). As regards any testimony relevant to showing that Dennis is unfit as a parent, the Appellant's expert admits that "none of his answers to the attorney's questions were based on your observation of this man (referring to Dennis), but based on your general education, your general theory, and your general observation of young people and maturity levels as a class." (TR-273).

CONCLUSION

Appellants argue that since the facts surrounding the Wells' case are not as extreme as those presented in Ellis, the Judge erred in granting Dennis a hearing. Appellants forget that Ellis sets a guideline that will determine the outcome of future cases. Experience and logic tells us that no two cases will be alike. Taking these reasonable considerations into mind, Utah's Supreme Court Justices must have foreseen that there are situations that fall between the extreme

situation presented in Ellis and those situations that do represent meritorious plausible reasons for neglecting to file the Notice of Paternity. It is with said grasp for the real of life and it's many facets that the Supreme Court states in Ellis:

> ". . . It is conceivable, however, that a situation may arise when it is impossible for the father to file a required Notice of Paternity prior to the statutory bar through no fault of his own. In such a case, due process requires that he be permitted to show that he was not afforded a reasonable opportunity to comply with the statute." Ellis vs. Social Services Dept., et. al., 615 P.2d 1256 (Utah 1980).

The putative father must convince the trier of facts that he has a meritorious case. In order to determine what is reasonable and plausible the trier of facts looks at all documents and evidence brought before him prior to granting a hearing. If he determines that due process requires a hearing and the Appellants object, they may argue their objection on appeal. Appellants, however, should know that the Judge does not err just because he differs with the minds of Appellants as to the conclusion to be drawn from the facts before the Court. It is the Judge's prerogative, as the trier of facts, to make the determination and the Supreme Court should not disagree with said determination unless they find that the trier of facts has abused his discretion.

Granted, it is administratively convenient to have arbitrary lines to cut off the rights of unwed fathers who do not come forward. However, the procedure must take into account the

rights of unwed fathers who attempt to preserve their rights.

> "The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.
>
> Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore, cannot stand." Stanley vs. Illinois, 405 U.S. 645, 656-7.

Utah's Acknowledgement Statute can stand because it permits a putative father, who has failed to comply with the Statute's filing requirement, to have a hearing on the matter.

> "If he (the putative father) is successful in showing that the termination of his parental rights was contrary to basic notions of due process and that he came forward within a reasonable time after the baby's birth, he should be deemed to have complied with the statute." Ellis vs. Social Services Dept., et. al., 615 P.2d 1256 (Utah 1980).

The Intervenors fail to see that the holding of the United States Supreme Court in Stanley that an unwed father has a constitutionally protected interest in his children remains firmly intact. In Quilloin vs. Walcott, 434 U.S. 246, 54 L.Ed.2d 511, 98 S.Ct. 549 (1978), the United States Supreme Court emphasized that the case was distinguishable from Stanley

since the natural father was seeking, some 11 years after the birth of the child, merely to assert a "veto" to an adoption by the child's step-father. The Court pointedly observed that, in Quilloin, the natural father did

> ". . . not challenge the sufficiency of the notice he received with respect to the adoption proceeding . . . nor [could] he claim that he was deprived of a right to a hearing on his individualized interests in his child, prior to entry of the order of adoption. Although the trial court's ultimate conclusion was that the appellant lacked standing to object to the adoption, this conclusion was reached only after appellant had been afforded a full hearing on his legitimation petition, at which he was given the opportunity to offer evidence on any matter he thought relevant, including his fitness as a parent." 434 U.S. at 253, 54 L.Ed. 2d at 518-19.

The continued applicability of Stanley has been consistently emphasized in many subsequent state court decisions, including In re Adoption of Lathrop, 575 P.2d 894 (Ct. App. Kan. 1978). In that case, the court held:

> "It is clear that Quilloin does not abrogate the basic premise of the Stanley case: That is, that a putative father does in fact have parental rights in his child. The holding of the Quilloin case is actually quite narrow: The constitutional rights of an unwed father who merely seeks to veto the adoption of his child, without seeking custody of the child, are adequately protected by something less than a fitness hearing, and under the facts of that case his rights were protected by a "best interest of the child" hearing. 575 P.2d at 898.

See also, Willmott vs. Decker, 541 P.2d 13 (Hawaii 1975); People ex rel. Slawek vs. Covenant Children's Home, 52 Ill.2d 20, 284 N.E.2d 291 (1972); State ex rel. Lewis vs. Lutheran Social Services, 59 Wis.2d 1, 207 N.W.2d 826 (1973).

In Caban vs. Mohammed, 441 U.S. 380 (1979), the unwed father, who sought to adopt and have custody of his two children, appealed from decisions of the New York state courts that allowed his children to be adopted by their natural mother and her present husband without his consent and against his wishes.

> "[A]n unwed mother has the authority under New York law to block the adoption of her child simply by withholding consent. The unwed father has no similar control over the fate of his child, even when his parental relationship is substantial--as in this case. He may prevent the termination of his parental rights only by showing that the best interests of the child would not permit the child's adoption by the petitioning couple." Id.

In defense of the statute, New York contended that an unwed father was accorded full due process since he was given notice of the petition for adoption and a full opportunity to be heard and to establish that the interests of the child would be best served by a denial of the petition. Additionally, it was argued that various state interests, including the encouragement of the swift adoption or legitimation of illegitimate children, were served by the challenged statute. Nevertheless, the Court held the statute unconstitutional.

Standards under which Utah Court Judges may take a child away from a natural parent and give custody to a non-parent were set In re J.P. No. 17386 _____ P2d _____, Utah 1982. This Utah Supreme Court ruling held that the natural parent has a right to a presumption of fitness to care for the child and that presumption must be clearly rebutted in

each instance where custody is granted elsewhere. Judge Bunnell was therefore correct in declaring that if the natural parent has complied with the paternity notice statute, the testimony should be limited to a question of his fitness. (TR-258). Appellants were given the opportunity to question Dennis' fitness but failed to sway the trier of facts.

Respectfully submitted this 17th day of January, 1983.

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I hereby certify that I mailed two copies of the foregoing this _____ day of January, 1983, postage prepaid to the office of Jane A. Marquardt, Attorney for Defendants & Appellants, Children's Society & Kimberly Bronson, 635 Twenty-fifth Street, Ogden, Utah 84401, to Tim W. Healy, Attorney for Intervenors & Appellants, 863 Twenty-fifth Street, Ogden, Utah, 84401, and to Robert D. Maack, Guardian ad Litem for Baby Boy Bronson, 310 South Main Street, Salt Lake City, Utah 84101.

Paul Gotay