

IN THE UTAH SUPREME COURT [COURT OF APPEALS]

LARRY CONTRARY

Appellee

v.

FRANK FRANKERSON

Appellant.

No.

No.

APPELLEE'D ANSWERING BRIEF

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**THE DISTRICT COURT CORRECTLY GRANTED
CUSTODY TO APPELLEE**

1. Frank failed in his argument that he deserves joint custody because his name was on the Birth Certificate.

**THE DISTRICT COURT CORRECTLY ALLOWED APPELLEE
TO INTERFERE IN THE MOTION FOR JOINT CUSTODY.**

1. Appellant has failed to prove that the court had made a mistake when it found that appellee was interfering.

**THE COURT WAS CORRECT IN GRANTED MOTION FOR
SUMMARY JUDGMENT**

1. The appellant failed to prove the errors of the court’s decision by granting the motion for summary judgment

CONCLUSION.....

STATEMENT OF THE CASE

In 1995, Frank Frankerson committed himself to Matilda Contrary through marriage. 1998, Matilda stepped outside of her marriage and developed a relationship with Larry Contrary, soon after gave birth to her second child on September 21st, 1999. Although Franks name was on the Birth Certificate, not knowing the baby was not biologically his. December of 2000, Frank and Matilda filed for divorce and Frank also filed for joint custody. 2002 the divorce was granted but custody was still awaiting decision from the court. May of 2003 Mr. Contrary filed a motion under the matter he was the biological father. Mr. Frankerson and Mr. Contrary filed a motion for Summary Judgment. Franks request for joint custody was denied but he was granted visitation.

STATEMENT OF FACTS

Frank and Matilda were married June 16th, 2005. Toward the end of the duration of marriage, Matilda gives birth to her second child and that was about the time Frank found out that the baby wasn't biologically of his own. Knowingly that the baby was not his, he still considered that the baby was his own. The placing of his name was put on the birth certificate. December, 2000 they got a divorce.

ISSUE

1. Did the Court make the wrong decision in granting the summary Judgment for paternity?

REVIEW STANDARDS

A motion for relief under Utah Code Ann. § 78-45a we find that Frankerson concerns of the courts decisions or allowing the appellee to have custodial rights follows the appropriate procedures under Utah Code Ann. § 30-1-17.2. Granting the Appellee full physical guardianship while allowing the appellant standard visitation rights is intestates the child.

ARGUMENT

I. TRIAL COURT MADE CORRECT DECISION IN NOT GRANTING APPEALANTS MOTION FOR JOINT CUSTODY. APPEALANT GRANTED VISITATION RIGHTS.

A. Appellant failed to show the court made a mistake in its decision on the issue of Appellee's position..

Utah case law states that when dealing with standing to challenge a child's legitimacy are consistent with this approach. In Teece v. Teece, 715 P.2d 106 (Utah 1986), Roods v. Roods, 645 P.2d 640(1982), and Lopes, 30 Utah 2d 393, 518 P.2d 687 (1974) Applying these criteria to the present case, we reach the same results as the trail court he principle that children born in wedlock are presumed to be legitimate is universally recognized. Holder v. Holder, 9 Utah 2d 163, 340 P.2d 761 (1959); Peters v. Campbell, 80 Wyo. 492, 345 P.2d 234 (1959); Pierson v. Pierson, 124 Wash. 319, 214 P. 159 (1923). This presumption of legitimacy had it origins in English common law. While the presumption was originally rigid and arbitrary, it is now generally held that the presumption of legitimacy is rebuttable. In Utah the legislature has not repealed Lord Mansfield rule but has specified that certain nontraditional evidence is capable of conclusively rebutting the presumption of legitimacy. In Teece v. Teece, 715 P.2d 106

(Utah 1986), the court observed that Lord Mansfield's rule has eroded the enactment of Utah code Ann. § 78-25-18. Which state " The results of a blood test shall be received in evidence where the conclusion of all examiners, as disclosed by the tests, is that the alleged father is not the actual father of the child, and the question of paternity shall be so resolved. " Utah Code Ann.§ 78-25-21 (1987 & Supp. 1990)

CONCLUSION

Frank Frankenson failed to convince the courts they had made a mistake in their decision in dismissing his motion for Joint Custody.

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Appellant Brief