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ORIGINAL

In the

Supreme Court of the United States

LEON WEBSTER QUILLOIN,	)	
	)	
Appellant	)	
	)	
vs	)	No. 76-6372
	)	
ARDELL WILLIAMS WALCOTT, et al.,	)	
	)	
Appellees	)	

Washington, D. C.
November 9, 1977

Pages 1 thru 50

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IN THE SUPREME COURT OF THE UNITED STATES

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LEON WEBSTER QUILLOIN,

Appellant

v.

ARDELL WILLIAMS WALCOTT ET AL

Appellees

No. 76-6372

- - - - - - - - - - - - - - - - - - -x

Washington, D.C.

Wednesday, November 9, 1977

The above-entitled matter came on for argument at 11:38 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

WILLIAM L. SKINNER, ESQ., Suite 485, One West Court Square, Decatur, Georgia 30030
For the Appellant

THOMAS F. JONES, ESQ., 250 Citizens Trust Building, 75 Piedmont Avenue, N.E., Atlanta, Georgia 30303
For the Appellees

C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 76-6372, Leon Webster Quilloin versus Ardell Williams Walcott.

Mr. Skinner, I think you may proceed whenever you are ready.

ORAL ARGUMENT OF WILLIAM L. SKINNER, ESQ.

ON BEHALF OF APPELLANT

MR. SKINNER: Mr. Chief Justice and may it please the Court:

This case involves the statutory scheme of the adoption laws of the State of Georgia. The statutory scheme of the adoption laws of the State of Georgia that presently exist -- and, of course, it should be noted that this is going to change effective January 1, 1978, provides that an adoption may be had of a minor child with only the consent of the mother where the child is illegitimate.

This is contrary to the first paragraph of the statute concerning consent which says that an adoption can only be had with the consent of all living parents.

QUESTION: You are referring now to the new statute.

MR. SKINNER: I am referring to the old statute which has --

QUESTION: So that we have it clearly before us,

tell us what the old statute is again and what the new statute is.

MR. SKINNER: All right. The old statute does start off with a provision that no adoption can be had of minor children without the consent of living parents. It goes on then to state exceptions.

One of the exceptions is the challenged statute here which is that the consent of the mother alone will suffice if the child is illegitimate.

This, of course, has been interpreted by the Georgia Supreme Court in Smith versus Smith to mean that the father must petition to ligitimate the child prior to the filing of any adoption action or he loses the right to legitimate the child.

That was applied in this case. It was clearly applied because in this case Mr. Quilloin had not filed a petition to legitimate the child prior to the filing of the adoption.

QUESTION: But he did file one afterwards, did he not?

MR. SKINNER: Yes, sir, he filed it as what I would consider defensive measures to the adoption proceedings.

QUESTION: And did not the Fulton County Superior Court judge find that it was not in the best interests of the minor child to grant the legitimation after the long

lapse of time?

MR. SKINNER: I do not think that that was the specific holding of the Trial Court.

QUESTION: Is that not one of his findings in the Appendix?

MR. SKINNER: That is, but I think that that was based upon the conclusions of law that Mr. Quilloin had no standing, based upon the challenge statutes which only give standing to object to adoption to the legal father; that is, the father who has married the mother or who has legitimated the child prior to the filing of the adoption action.

I would like to point out in that regard that in this case, the Appellees married each other in 1967.

Darrell did not come to live with the Appellees until 1969. The adoption action was not filed until 1976.

I see no real distinction in saying that the legitimation action is late when the adoption action is not. The adoption action, in my opinion, was filed purely and simply to eliminate Mr. Quilloin's rights under the adoption statute of the State of Georgia because I believe that the record is quite clear that apparently Mrs. Walcott had contacted counsel and had been advised at that point in time that Mr. Quilloin had no rights.

QUESTION: But for eleven years he could have legitimated, could he not?

MR. SKINNER: I think I addressed that issue in my brief as much as I could. That is true.

The Georgia statutes concerning birth certificates provide that the father of an illegitimate child shall not appear on the birth certificate nor shall the child have his name unless he consents to this. It is apparent from the record that Darrell Webster Quilloin has always been Darrell Webster Quilloin and not Darrell Webster Williams, which is the maiden name of Mrs. Walcott. So he had, in fact, signed the birth certificate.

QUESTION: Where was Darrell for that interval between marriage of the Walcotts and the time he entered their home?

MR. SKINNER: I think that he was -- it is somewhat disputed in the record, as Mr. Justice Blackmun will note. He was with the maternal grandparents part of the time, the paternal grandparents part of the time and with the Appellant, Mr. Quilloin, part of the time.

QUESTION: He was not in a home under state custody or anything like that?

MR. SKINNER: No, sir. No, sir.

And let me point this out, too, in that regard. Darrell has never been a deprived child. This is not a case involving what some people would stereotype an illegitimate child. Darrell has been loved and cared for by maternal and

paternal grandparents, by the mother, by the father and even though it may be somewhat contrary to our position, apparently the stepfather cares for Darrell. The stepfather did not file a petition to adopt Darrell until he had been married to the mother for nine years.

He could have filed immediately. Yes?

QUESTION: Mr. Skinner, on this question of timing, is it not correct that before the Trial Judge entered his order allowing the adoption and denying the petition to legitimate, that he would -- if he had concluded that it would have been in the best interests of the child to go with the natural father, he could then have legitimated the child?

MR. SKINNER: Under Smith versus Smith, I think that he could not fail to deny the legitimation because it was not filed prior to the adoption.

QUESTION: Do you think that as a matter of law?

MR. SKINNER: As a matter of law, yes.

QUESTION: As a matter of law. Well, then, why did he have the -- why did he not deny it at the outset of the proceeding, I wonder?

MR. SKINNER: I do not know, other than the fact that he interpreted Stanley to mean that he had to give Mr. Quilloin a hearing. Of course, at the conclusion of the hearing, he held that he had no standing which, to me, was quite puzzling.

QUESTION: What would have been the consequences of legitimation?

MR. SKINNER: All right, he --

QUESTION: That's all right, does it do more than entitle one to inherit?

MR. SKINNER: That is true. And it changes the name.

QUESTION: Does it do more or not?

MR. SKINNER: No.

QUESTION: So it does not entitle the person to veto an adoption?

MR. SKINNER: I think that it could be interpreted that way. I do not think there is a specific case in Georgia.

QUESTION: That is not what the statute says, is it?

MR. SKINNER: No, the statute only provides that in the event that the child is legitimated under that statute, he can inherit from the father, not --

QUESTION: Has there ever been a holding in the Kentucky courts that legitimation entitles a natural father to veto an adoption?

MR. SKINNER: No, none that I know of.

QUESTION: Not the Kentucky court.

QUESTION: I mean, whatever court we are talking

about.

MR. SKINNER: Georgia.

QUESTION: The Georgia Supreme Court.

MR. SKINNER: No, I know of no case where that has been held. It has factually been held against me where I--

QUESTION: Why was it such an issue in this case, then? Why was the Trial Judge asked to legitimate if it did not bear on the adoption?

MR. SKINNER: Because I was using that as, in my opinion, a defensive tactic. Also, of course, the new adoption statute which is effective January 1st, provides that this must be filed, that you must file a legitimation to protect yourself.

QUESTION: Mr. Skinner, as a practical proposition, this is mid-November almost. January 1 is just down the line a little bit. Suppose this Court does not get around to deciding this case before January 1, which it probably will not. Then what law attends upon this case?

MR. SKINNER: Your Honor, at page 24 of the Appellee's brief, I think the Appellee admits that this would amount to the right of a grant -- in substance, a grant to Mr. Quilloin of the right to veto the adoption.

The new adoption statute gives him that right.

QUESTION: And he complains bitterly about it.

MR. SKINNER: Yes. Because of the time sequence,

yes. And of course, I tried to point out in my brief that the State of Georgia was in the process of passing the new adoption statute while this case was in actual litigation, actual trial and I feel that it is clearly now -- or will be on January 1, 1978 -- the public policy of the State of Georgia to give fathers of illegitimate children the right to legitimate the children after the filing of the adoption and therefore have standing to object to the adoption.

QUESTION: It would not necessarily follow from that that he would get custody.

MR. SKINNER: No. The --

QUESTION: It just means that he would have visitation rights.

MR. SKINNER: Right. And of course, that is all that we are requesting in this case. We are not requesting custody.

QUESTION: Well, it really sounds as though you are requesting what a father being divorced requests.

MR. SKINNER: Very much so. We consider Mr. Quilloin -- or I consider him as a de facto divorced father. He was never married to the biological mother, of course but he has acted as if he had been married to her and divorced. He has seen the child. He has had the child visit with him. He has paid money for the child; he has directly and indirectly.

He has provided gifts for the child. He has done everything as far as a nurturing instinct is concerned that a normal divorced father would and I feel like that he should be treated like that.

I do not think that any court would say that merely because a divorce has been granted, the father of the child should be eliminated from the picture, unless he is unfit. Now, that can be done --

QUESTION: Under Georgia law, he would not be, would he?

MR. SKINNER: No, sir.

QUESTION: Well, calling him a de facto divorced man does not really change the legal issues in this case.

QUESTION: Are you taking the position that he has supported Darrell all through these years?

MR. SKINNER: Yes.

QUESTION: Fully?

MR. SKINNER: Not fully, in the sense that part of the support came from the mother, part of the support came from the maternal and paternal grandparents.

QUESTION: I certainly, in scanning the testimony there, get a different attitude from different people about what happened.

MR. SKINNER: That is true, but --

QUESTION: I realize he bought a ten-speed bike

but I am wondering what else he did?

MR. SKINNER: Well, I think he provided -- he testified that the child --

QUESTION: I know what he testified but what are the facts?

MR. SKINNER: I think that is the fact, just what he said, yes.

QUESTION: Superior Court finding number three on page 71 of the Appendix is that the father has provided support for the child irregularly in the form of medical attention, food, clothing, gifts and toys from time to time.

It seems to me you are putting a little bit of a favorable gloss on that finding in your answer, which I suppose any attorney is entitled to.

MR. SKINNER: All right, let me try to support that with the law, if I may. In Georgia, there is a presumption that a parent is fit and there is, in fact, a presumption that the parent has not abandoned the child, in my opinion. And therefore, the party that has the burden of proof must proceed and I feel that if there was enough evidence to constitute abandonment, we would not be here today; that the Trial Court could simply have held that he had abandoned the child or that he was unfit and the Trial Court would not then have had to reach for the constitutional issue.

QUESTION: What about total lack of support, though?

Suppose he had visited the child but never purported to support the child at all? Had been asked to and either said he would not or he could not?

MR. SKINNER: Then I think he would have been in a position to have his rights severed by adoption or by juvenile court proceedings to terminate his rights.

QUESTION: You do not contest that?

MR. SKINNER: That is not the case here. No, sir. It is neither a total act of support nor abandonment.

QUESTION: Well, suppose it is perfectly clear that he cannot support the child totally -- that he can, say, give $20 a month.

MR. SKINNER: Yes.

QUESTION: But that that is not anywheres near sufficient.

MR. SKINNER: He would not be deprived of the custody then because he would be doing the best he could and I think that no court would ever require somebody to do more than they would be able to do. And that is --

QUESTION: Well, a child is still very needy and the stepfather wants to adopt him and provide for him.

MR. SKINNER: Well, the fact is, of course, in this case, the stepfather and the biological mother are providing for Darrell in some degree.

QUESTION: Well, can Darrell inherit from the stepfather?

MR. SKINNER: No, sir.

QUESTION: Unless he is adopted, he cannot?

MR. SKINNER: No, sir.

There is a way, of course, Justice White. Of course, the stepfather can make a will and leave him his entire estate, if he so desires and of course --

QUESTION: That potentiality does not give the child any right in the terms that Justice White was addressing, does it?

MR. SKINNER: No, sir, it would not --

QUESTION: Anyone can make a will leaving money to the child.

MR. SKINNER: That is true. So could Mr. Quilloin. But in this case -- of course, under Trimble versus Gordon, it matters not to Darrell in this particular situation.

QUESTION: Who may claim him as a dependent on the tax return?

MR. SKINNER: I think the person that provides 50 percent of his support could.

QUESTION: If each provides provides 50 percent, could both of them or not?

MR. SKINNER: Of course, that would be a split proposition. I don't know how IRS would rule on that. But

if one provided 51 -- if Mr. Quilloin provided 51 percent of Darrell's support, he could claim him, I think, yes.

QUESTION: It is clear he does not give 51 percent.

MR. SKINNER: No, sir. The record is, of course, somewhat ambiguous about the amount of support that was involved in this case.

QUESTION: Well, I do not think the finding is very ambiguous. The finding, the one that Mr. Justice Rehnquist read to you, is that the principal or primary support on a regular basis has been the mother or the maternal grandparents. There is nothing ambiguous about that, is there?

MR. SKINNER: Well, that was the finding of the Trial Court. Of course --

QUESTION: Yes. Well, will you accept that here?

MR. SKINNER: To some extent I think you can but I think that the record should be looked at as a whole. There was no finding of abandonment, as I am pointing out.

Of course, Georgia has held that the failure of one parent to support a child where support is neither requested or needed is not an abandonment so there was no abandonment by Mr. Quilloin. And that is a pretty clear rule, a rule in law in Georgia that came out of a case involving custody of an illegitimate child where the mother lost custody.

QUESTION: Well, Mr. Skinner, is there any finding of non-abandonment?

MR. SKINNER: No. But I contend that that is not necessary.

QUESTION: Well, the finding is that he did not give the child support.

MR. SKINNER: No.

QUESTION: Except irregularly.

MR. SKINNER: That is right. Irregularly.

QUESTION: And you say we are not bound by that finding?

MR. SKINNER: I would say that this does not --

QUESTION: Well, give me a case that says we are not.

MR. SKINNER: I have not briefed that issue other than I can quote --

QUESTION: Well, there is a finding that the child has never been in an abandoned or deprived condition, whatever that means.

MR. SKINNER: Right. Right, there is -- I think it is Petterfield versus Mott -- it is a Georgia Supreme Court case that held that for a parent to lose his right to the custody of a child, that that child must be abandoned, period.

QUESTION: I said, what case do you have that says

we are not bound by the findings of fact of the Georgia Court?

MR. SKINNER: I think that you are bound by the findings of fact to some extent, yes.

QUESTION: All right. Thank you.

QUESTION: Mr. Skinner, while you are interrupted, you mentioned earlier that, as a matter of Georgia law, the filing of the petition to legitimate came too late because it came after the adoption petition had been filed.

Could you tell me where you cover that in your brief or the Georgia cases that so hold?

MR. SKINNER: It is Smith versus Smith.

QUESTION: Smith versus Smith.

MR. SKINNER: Which is 224 Georgia 442.

QUESTION: Thank you.

QUESTION: Do you have a Southeast citation to that?

MR. SKINNER: Yes, sir, 162 Southeastern 2nd 379.

QUESTION: Thank you.

QUESTION: Mr. Skinner, do you agree with Appellee's brief that if you prevail in this case, your client will have almost an absolute veto right over the adoption of a child by anyone?

MR. SKINNER: Yes, I do. I contend he does have that right.

QUESTION: Your client does not wish to assume custody of the child himself?

MR. SKINNER: To do that, he would have to take custody away from the mother.

QUESTION: Has he asserted that right yet?

MR. SKINNER: Sir?

QUESTION: Has he claimed custody himself up to this point?

MR. SKINNER: Only in the form of visitation rights and --

QUESTION: That is not custody.

MR. SKINNER: In Georgia, it is. It is a part of custody that is established by writ of habeas corpus as if a change of custody were --

QUESTION: I understand your client is a nightclub operator and a single man. Is that correct?

MR. SKINNER: That is true. That is true.

QUESTION: Do you think any court would give him custody?

MR. SKINNER: If the mother was found unfit. But we do not contend that the mother is unfit.

QUESTION: Right. But when he was visiting his biological father he stayed in a nightclub, did he not?

MR. SKINNER: On occasions, yes.

QUESTION: Where did he stay on other occasions?

MR. SKINNER: With the parental grandparent, Ms. Dawson.

QUESTION: Well, then he was not visiting his biological father.

MR. SKINNER: No, but I think that the record showed that the parties, Mr. Quilloin and his mother were living together at that time.

QUESTION: Right. What I am really driving at is, what have you got to gain, really, so far as the child is concerned by prevailing in this case?

What is your ultimate objective?

MR. SKINNER: My ultimate objective is for him to have some visitation rights with the child, which he had up until very recently before this adoption --

QUESTION: Does he have no visitation rights?

MR. SKINNER: Sir?

QUESTION: Does he have no visitation rights?

MR. SKINNER: Absolutely none.

QUESTION: Right.

MR. SKINNER: Absolutely none. Because he has not seen the child since the filing of this document.

But the record is quite clear that the purpose of the filing of this adoption action was not the purpose stated. The purpose of filing this adoption action was to get rid of Mr. Quilloin out of the life of this family. Of

course, they did not file this adoption because Mr. Quilloin had abandoned the child. They filed this adoption because they were concerned of the overbalance of things that were being received by Darrell from Mr. Quilloin as opposed to their seven-year-old biological child of the Appellees.

QUESTION: Now, when you characterize the adoption as being for the purpose you have just mentioned, is it not reasonable to say that the purpose of the adoption by the foster father was to give the child something that the biological father never gave him, namely, a home, the right to inherit. He has none of those things from his biological father, does he?

MR. SKINNER: It was not requested or needed at that point in time, as far as the home was concerned. As far as the right of inheritance, this Court held in Trimble versus Gordon that he had that anyway. There was no question of paternity of the minor child in question in this case.

QUESTION: Mr. Skinner, you said he did not abandon the child.

MR. SKINNER: I do not think he did.

QUESTION: How can you abandon something you never had? He never had custody, did he?

MR. SKINNER: No, he has never had custody.

QUESTION: Then how could he abandon something he never had?

MR. SKINNER: Well, I contend, Your Honor, quite -- maybe to the contrary of my own self that yes, he could abandon the child because he -- a divorced father, in my opinion, could abandon a child and I think that he should be treated as a divorced father. He is a father.

QUESTION: Do you contend that if he had been married and divorced and had treated the child exactly as he treated this child, as a divorced father, do you think your court would have come out differently?

MR. SKINNER: We would not be here now. I think that it would be a completely different case.

QUESTION: But I want to know, would the Georgia courts have treated him differently, the divorced father?

MR. SKINNER: Oh, yes.

QUESTION: Why?

MR. SKINNER: I think he would have had standing to object to the adoption.

QUESTION: Well, I know he would have standing, but would not the Georgia court have said, "Well, you have not paid a whole lot of attention to your child. You have only given him partial support and we say that you do not have the right to object to the adoption"?

MR. SKINNER: I think they would have to make a finding of total abandonment, that he just left the child without necessities.

QUESTION: Well, that is what I want to know. What would be the standard if your client had been a divorced father and attempting to object to an adoption by the husband of his ex-wife.

MR. CHIEF JUSTICE BURGER: You can ponder on that answer now until 1:00 o'clock, Counsel.

QUESTION: That is in SubSection two.

[Whereupon, a recess is taken for luncheon from 12:00 o'clock noon to 1:02 o'clock p.m.]

AFTERNOON SESSION

MR. CHIEF JUSTICE BURGER: Counsel, you may resume your argument. You have nine minutes remaining.

MR. SKINNER: Mr. Chief Justice and may it please the Court:

I would like to begin by trying to answer Mr. Justice White's question which I understood to be, what would be the result if --

QUESTION: Are you going to give me some Kentucky cases? Is that it?

MR. SKINNER: No, sir, I am going to try to give you a Georgia case.

What would be the result if Mr. Quilloin had married the mother and been divorced? Was that -- I think I understood Your Honor's question to be that.

He would have an absolute right to veto the adoption had that been the case because the Georgia adoption statute as it exists now provides that the failure of a divorced father to provide -- to support for a period of 12 months if he was ordered to do so by a Superior Court order would do away with the necessity of his consent.

There is no showing of that in this case.

QUESTION: But the major interest that he has shown in this child -- the major interest, not the only interest -- is to block this adoption.

MR. SKINNER: I think not. I think that he took the child to the doctor, to the hospital, sent the child to kindergarten. I think that he has shown very substantial --

QUESTION: He never tried to make the child his heir, as he could by legitimizing it.

MR. SKINNER: Your Honor, of course, under Trimble versus Gordon, that is not necessary. He had recognized the child as his.

QUESTION: I am talking about his attitude. I am not sure he knew about these cases.

MR. SKINNER: I am sure that he did not, no.

QUESTION: He certainly did not know about Trimble versus Gordon before last spring.

MR. SKINNER: I am sure he did not.

QUESTION: Suppose the father simply leaves home.

There is no divorce. He does not support the child very much -- sees him from time to time. No divorce. No court order. And then the child is put up for adoption by the mother. The mother wants to relinquish her rights over the child and somebody else wants to adopt. Has the parent then, the father, got an absolute veto?

MR. SKINNER: Where the mother has failed to provide the necessities for the child -- yes.

QUESTION: Well, the mother has been taking care of the child and she is just willing to relinquish to the state.

MR. SKINNER: I think that if they could show an abandonment in fact, yes,

QUESTION: Well --

MR. SKINNER: The father would have lost his rights under those facts but that is a -- total failure to pay support can be an abandonment but let me point out a particular case in Georgia which I did not point out in my brief and that is Pettiford versus Mott 230 Georgia at 692 and particularly at 694 which held: "This Court has many times held under facts similar to those in the instant case that the mere failure of a parent to provide support for a minor child when in the possession or custody of the other parent, a grandparent or other persons, when no support is requested or needed, is not such a failure to provide

necessaries or such an abandonment as will amount to a relinquishment of the right to parental custody and controls" and I think that perhaps this would answer Justice Marshall's questions concerning abandonment, too, in this issue.

QUESTION: Well, then I understand that if a man has a child and for fifteen years he did not give a red nickle to the child, he cannot be said to have abandoned the child.

MR. SKINNER: I think not, under this ruling. But that is not the case in this case with this man here.

QUESTION: Well, what would that be? Disowning?

MR. SKINNER: Under Georgia law it would not be an abandonment as per Pettiford versus Mott.

QUESTION: The parent of the child who gives nothing for a period of years, a long period of years, can suddenly appear and take over the child. Is that the Georgia law?

MR. SKINNER: I do not think that the enforcement of the law would be that, no. I think that having not shown an interest is discretionary with the trial court.

QUESTION: Well, the only thing this man has done is what the court found, that unregularly, he bought toys and paid for medical; not one word in there about food. Not one word about shelter. And that gives him some kind of rights or what?

MR. SKINNER: He sent the child to kindergarten when he was five years old, actually took him himself.

QUESTION: He carried the child?

MR. SKINNER: He carried the child himself.

QUESTION: Every day?

MR. SKINNER: There is a question about whether it was him or someone in his employ.

QUESTION: Yes, yes, I imagine so.

MR. SKINNER: But let me point this out, too. Under the present Georgia adoption scheme, it would not have mattered whether he had given the child a million dollars a day if he had not legitimated the child in the eyes of the state.

QUESTION: Well, all he wants to do is to decide who will pay the money.

MR. SKINNER: He is willing to pay the money.

QUESTION: He does not pay the money but he wants to see and decide who will pay it.

MR. SKINNER: To the contrary. The record is quite clear --

QUESTION: Does he not want to veto who the guardian shall be?

MR. SKINNER: Yes, he wants to veto that.

QUESTION: And would not the guardian be the one to pay the money?

MR. SKINNER: He would be one of the ones. The mother would have the responsibility, too.

QUESTION: Right. He does not pay the money so he wants the right to decide who will pay the money.

MR. SKINNER: No, Your Honor. The record is clear. He told the Court, "I am ready, willing and able to pay the money. I will pay the money. All you have got to tell me is how much to pay, where to pay it and when to pay it. And I will."

Of course, he has voluntarily done things -- of course, that is not really the issue in this case, anyway, because no support was ever requested and there was no father in the family in this case.

QUESTION: Well, does a father have to be requested to pay for his children?

MR. SKINNER: He never was requested in this case but he --

QUESTION: Yes, but I mean, does he not normally have a feeling that he wants to support his own child?

MR. SKINNER: Yes. Yes. I think Mr. Quilloin has that feeling. He has expressed it.

QUESTION: How much did he put in?

MR. SKINNER: I think it is substantial, considering --

QUESTION: How much? How much?

MR. SKINNER: The record is not clear on that.

QUESTION: I thought so. But the finding is here.

MR. SKINNER: Sir?

QUESTION: The finding of the Court is that he irregularly did a little.

MR. SKINNER: But the Court did not find abandonment.

QUESTION: We are concerned here, are we not, Counsel, only with the constitutional validity of Georgia Code Annotated Section 74-403(3).

MR. SKINNER: That is true.

QUESTION: Is that not correct?

MR. SKINNER: That is true. And --

QUESTION: So that these concerns are irrevelant to that statutory provision.

MR. SKINNER: I think that they are.

QUESTION: Well, Counsel, let me ask you a question. Where we are concerned with that statute is -- at least as I would state it -- as it was applied by the Georgia courts in this case. We cannot take cognizance of some peculiarity in the statute that did not affect the outcome of this case that we might find objectionable in some other circumstances.

MR. SKINNER: But it was applied in this case.

QUESTION: Okay. That is all I wanted to make

clear.

MR. SKINNER: It was applied in this case.

I would like to reserve whatever time I may have for rebuttal, if I may.

MR. CHIEF JUSTICE BURGER: Mr. Jones.

ORAL ARGUMENT OF THOMAS F. JONES, ESQ.

ON BEHALF OF APPELLEES

MR. JONES: Mr. Chief Justice and may it please the Court:

Appellant is here because he contends that the adoption of his child without his consent violates his due process rights.

We contend that this position is untenable in view of the existence of Georgia Code Section 74-103 which provides that the father of an illegitimate child can legitimate that child at any time. Once this child is legitimated, he is legitimate for all purposes, including inheritance, including the objection to adoption and perhaps most important --

QUESTION: Well, you and your colleague, then, do differ on the consequences of legitimation. You think that if a child is legitimated, the father who does the legitimating has the right to veto an adoption?

MR. JONES: Yes, this is our position, Your Honor.

Since Appellant did not take the step and legitimize the child, he cannot have the right to argue that he

has been denied due process. He had an opportunity for this due process for eleven years and he did not choose to do it.

As I stated previously, when a child is illegitimate, the father's consent is not required and Georgia Code Section 74-403 states that if the child is illegitimate, only the mother's consent is necessary.

Appellant has also contended that there is an equal protection violation here because he says that Georgia law burdens all unwed fathers. Our position is that this is not the case.

There are two classes involved here: fathers of legitimate children and fathers of illegitimate children. Appellant is in the second class because of his own choice. He could have investigated the situation, gotten an attorney and found out exactly what his rights were and what he needed to do to protect them.

Now, there is a distinction made between these two classes. We would submit that this distinction is made based on a valid state interest. That state interest is Georgia's interest in the welfare of its children and Georgia's interest in the protection and stability of the family unit.

In that connection, Your Honor, I would like to request that the Court consider the effects of a decision in the Government's favor and how it would affect adoptions

all over the country. If fathers of illegitimate children, if their consent was required, many adoptions which should take place would not take place.

There would be problems of locating the fathers. There would be problems of the father just not consenting. There would also be the potential problem of profit-seeking in order to obtain an adoption.

We submit that the most important factor here is the best interest of the child.

QUESTION: Is it relevant at all for purposes of this statute -- assuming the purposes then become important -- that it is relatively easy to identify the mother of any illegitimate child? It is not always so easy to identify the father.

MR. JONES: I believe the --

QUESTION: Does that not underlie the illegitimacy statutes?

MR. JONES: I agree totally, Mr. Chief Justice and this relates to the problems I was speaking of a little bit ago. If states had the burden of, number one, locating -- well, number one, determining who these fathers are and then locating them so that their consent could be obtained before any adoption of an illegitimate child could take place, many, many deserving children will not get their home environment that they deserve.

QUESTION: But that is not true in this case.

MR. JONES: No, that is not true in this case. In this case, Georgia has a policy which I believe reflects this Court's decision in Stanley versus Illinois.

The Georgia Department of Family and Children's Services makes every effort to locate the fathers of illegitimate children --

QUESTION: Well, in this case I thought he admitted it.

MR. JONES: He did admit it.

QUESTION: On the record, so that is not in this case at all.

MR. JONES: No, no, it is not in this case.

QUESTION: Is the Georgia Family and Children's Service Department that you just referred to brought in in most or all of the adoption cases in Georgia?

MR. JONES: Yes, they are, Your Honor. A report is submitted from this department to the Superior Court judge on all petitions for adoption in Georgia. This report contains the department's recommendations concerning the best interests of the child.

As I have stated previously, the courts of Georgia and the legislature of Georgia have stated that this adoption is in the best interest of the child. The father has not provided any significant support for this child for 12

years.

QUESTION: Are you defending a rule -- the automatic rule that the father of an illegitimate child is automatically not given standing to object to an adoption simply because he has not legitimated the child?

MR. JONES: Well, I would answer that this way, Your Honor. There may be somewhere a father who deserves consideration.

QUESTION: Well, suppose that there had been no finding in this case and no basis for finding that he had failed to support at all? That he had regularly seen the children and he had regularly supported them fully and completely. The only thing, the mother had remarried and they wanted an adoption.

MR. JONES: Your Honor, I would think that the only father who was deserving of consideration is one who has done all he can to legitimate or adopt that child.

QUESTION: So you say yes, you do defend the automatic rule, even though he has completely supported the child?

MR. JONES: I will say this, Your Honor, I believe that the interests of the child are more important and in a factual situation such as this, I would defend that broad policy.

QUESTION: Well, that is what the court held, is it not?

MR. JONES: Yes, it is.

I would also like to refer the Court to page 67 of the Appendix in this case which --

QUESTION: Mr. Jones, in that connection -- that is, with your last answer, is that reconcilable with your statement in the brief as I read it that if this case gets caught under the new statute, it is lost.

MR. JONES: Your Honor, that is -- or maybe I should say was my initial reading of that statute. In that connection, I would like to refer the Court to page 23 of Appellee's brief in which the relevant portion of the new section is stated.

This is the new section 74-405 which will become effective on January 1 next year. This section states that "The surrender or termination of parental rights by consent or otherwise shall not be required as a prerequisite in the case of a parent who has failed significantly without justifiable cause for a period of one year or longer immediately prior to the filing of petition for adoption, number one, to communicate or to make a bona fide attempt to communicate with the child or, number two, to provide for the care and support of the child as required by law or judicial decree."

It is uncontested in this case that Appellant has never supported the child. He is required to do so by Section 74-202 of the Georgia Code which requires that the

father of an illegitimate child is required to support that child.

Therefore, I see a potential question of fact here and the Georgia Court might have to decide whether he has failed significantly without justifiable cause. These words of qualification, as I say, may raise a question of fact but I would still hold to my initial impression that there is a very good chance that this adoption will not take place if it is decided under the new law which becomes effective January 1.

QUESTION: It will not take place, you feel?

MR. JONES: This is my initial impression. As I say, a question of fact may arise under the section I just stated.

QUESTION: Well, a question of fact would. But you say that there is a finding that he has failed to support the child.

MR. JONES: But there are words of qualification, Your Honor, whether he has "significantly and without justifiable cause."

The courts of Georgia might take the position, although I think it would be untenable, they might take the position that, well, since someone else was caring for the child, it was not necessary for him to support.

QUESTION: Well, what would be the place of

legitimation under the new statute? Just because he had legitimated the child would not automatically give him a right to object to the adoption if he had failed to support.

MR. JONES: I would have to agree with that, Your Honor. But we contend that this case should be decided under the present statute for two reasons:

Number one, the present statute adequately protects the rights of Appellant, both his due process and equal protection rights.

Secondly, it would be a manifest injustice in the strongest sense of the word to apply an adoption statute to a case to a new adoption statute which becomes effective 21 months, fully 21 months after the original filing of the petition for adoption.

I think there is adequate authority in the cases of this Court to allow you to decide under the present statute.

QUESTION: Well, I suppose you could support this judgment without defending the automatic rule.

MR. JONES: Yes, very easily.

As I was saying before --

QUESTION: Except that the judgment was based upon the simple fact that the child was illegitimate and this was the illegitimate father. That is what the trial judge very explicitly relied upon.

MR. JONES: That is correct, Your Honor, but --

QUESTION: Page 7, the trial court, his first conclusion of law, "The child in question being illegitimate, the consent of the mother alone to the adoption is sufficient," period -- citing the statute.

MR. JONES: That is correct, Your Honor.

QUESTION: And he never -- he thought, since the statute so provided that he could not even give the illegitimate father any opportunity to show anything further. And that is what the statute provides.

MR. JONES: That is correct, Your Honor.

QUESTION: But the trial judge did have a hearing on the legitimation petition at the same time as the adoption petition, did he not?

MR. JONES: He did. That is correct, Your Honor.

QUESTION: Did not -- in ruling on the legitimation petition, did not the trial court say that the best interest of the child would not be served by legitimation?

MR. JONES: This is correct. Findings of fact number 15 and 16 -- number 15 says, "The proposed adoption of the child by Appellee is in the best interest of the child and the proposed legitimation and habeas corpus is not in the best interest of the child."

So even though he decided based on the statutory scheme which we have been discussing, he has, we might say,

left the door open and found in accordance with the facts and circumstances of this case.

QUESTION: Well, it is not your fault, but would it not be "to the best interest of the child" not to have this public litigation all over the lot?

MR. JONES: Your Honor, that is a very interesting question and one that has troubled me, as a matter of fact. There is other litigation based on news reports of this.

But I would like to refer the Court to -- as I say, the most important thing here is the best interest of the child. Darrell himself has stated that he wants to be adopted. As a matter of fact, when I put that question to him, he said, "I want my name changed."

This is perhaps the most important thing to the child. Only he can understand the stigma of having to go through life with his last name different from --

QUESTION: Well, may I ask, Mr. Jones --

MR. JONES: Yes, sir.

QUESTION: -- assume you are right and assume that we agreed with you that this judgment could be supported on those findings as to the best interest of the child.

MR. JONES: Yes, sir.

QUESTION: Where does that leave us as to this new Georgia statute?

MR. JONES: Your Honor, I would have to be frank and say that I would hope that a decision would be based on the present statute. This is certainly the statute that Appellees relied on 21 months ago.

QUESTION: Well, the difficulty is that at least you suggest, as I read your brief -- as my brother Blackmun said earlier -- if we do not decide this case by the first of January and that new statute becomes effective, your brief seems to suggest that then this case would be controlled by the new statute.

MR. JONES: Your Honor, that position is taken in the brief. After further analysis since submission of the brief, I have concluded that there might possibly be that question of law which I referred to earlier based on --

QUESTION: Of course, I suppose, based on your point of view, if we decided in your favor and decided it within the 30 or 60 days, that solves all the problems.

MR. JONES: Yes, it does, Your Honor. It really does. But as I said, Darrell himself is the one who has to bear the stigma of having the different last name from his other family members.

We would submit that the child should not have to go through life bearing this burden to protect the rights of a person who has shown his lack of concern for the child. He has not supported the child. He is attempting to block the

adoption of the child when I think it is obvious that this adoption is in the best interest of the child.

QUESTION: Has the adoption been stayed?

MR. JONES: Your Honor, this is another --

QUESTION: Would the statute purport to apply to an adoption that has been ordered by the state courts when the state courts, for all intents and purposes, are through with it?

MR. JONES: Your Honor, Appellant has made the argument that his notice of appeal to this court acted as a supercedeas and there is no final judgment in this case.

QUESTION: Well, there may not be. The entire proceeding may be over but to what proceedings do -- does the new statute say to what it applies? Does it apply to adoption proceedings that have been begun before the --

MR. JONES: The statute is effective as of January 1, 1978. The only possibility of this case being decided under the new statute would be this Court's general policy of deciding cases under the law as it exists at the time of decision rather than the old law.

QUESTION: That is a matter of federal law, is it not, that the Georgia courts might or might not follow. In the cases like Bradley versus the Richmond School Board it has been the rule in the federal court since John Marshall's decision in the case I do not remember that we apply the law

that is in effect at the time we decide the case.

I presume the Georgia courts might be free to adopt that policy or not as they chose.

MR. JONES: I would assume so, Your Honor. I would, frankly, love to see the Court follow what I think to be adequate authority in the Bradley case and in the Greene versus MacElroy case, which states that where a "manifest injustice" would result from applying a new statute, then that statute should not be applied.

I think this is a classic example of a manifest injustice where a petitioner for --

QUESTION: Mr. Jones?

MR. JONES: Yes, sir.

QUESTION: Actually, an adoption decree has been granted in this case, has it not?

MR. JONES: Your Honor, the order which is listed which is given in the Appendix has been entered.

QUESTION: Well, I am looking at the opinion of your Supreme Court. The adoption was granted and a legitimation petition and visitation rights were denied. The natural father appealed. So he appeals from the granting of the adoption.

MR. JONES: This is correct, Your Honor.

QUESTION: And I suppose if you are right that it may be sustained on the best interests of the child approach

without reference to that section on veto.

MR. JONES: That is correct, Your Honor.

QUESTION: Then how would the new statute become effective anyway -- applicable at all?

MR. JONES: Well, Your Honor, I have sort of put a section in my brief in anticipation of a possible ruling by this Court. I am very much afraid that this Court may be tempted to remand this case to Georgia but I would prefer, and I think that the --

QUESTION: Well, I must say I do not see how we can say whether the new statute applies or does not apply. That, I would take it, would be something for the judge, of course, in the first instance, to consider. I do not see that we can say whether that does or does not.

That is a matter of Georgia law, is it not?

MR. JONES: But I think -- That is correct but I think this Court has control over its own decision and would have the authority to uphold this adoption, even if the decision is made after January 1 based on the Bradley and Greene line of cases.

Appellant in this case wants the best of both worlds. He wants the immortality -- if you can call it that -- of having a son with his name but at the same time he does not want to satisfy the obligations that are attendant with this relationship. He wants to have his cake and eat it, too.

QUESTION: Mr. Jones, I have been struggling through what I think is a copy of the new statute appended to the state's preliminary brief at the time the jurisdictional statement was filed here.

Am I correct in assuming there is nothing in the statute in so many words that excludes this application to pending adoption proceedings?

It merely says it shall take effect January 1, 1978.

MR. JONES: That is the only statement that I have been able to find, Your Honor.

QUESTION: So we have a problem with Georgia law on whether it affects pending proceedings.

MR. JONES: Well, I would have to agree with the Court but I would still state that this Court has adequate authority to uphold this adoption as it stands, even if the Court reaches its decision after January 1.

QUESTION: The adoption has taken place, has it ?

MR. JONES: The adoption already has been entered.

QUESTION: And there has been no stay?

MR. JONES: As I say, my opponent has made the argument that there has been a stay.

QUESTION: Well, either there has been or there has not been.

QUESTION: Well, that is by force of the notice

of appeal.

MR. JONES: This is correct. This is correct.

QUESTION: Well, what is the rule in Georgia? Was it final while it was on appeal to the Georgia Supreme Court? Under Georgia law, does taking the appeal operate as a supercedeas?

MR. JONES: Taking of an appeal does act as a supercedeas.

QUESTION: In the Georgia system?

MR. JONES: This is correct. This is correct. The child himself has been going by the name of Walcott, the adopted name, ever since the decision in this case.

QUESTION: Is he living with the Walcotts?

MR. JONES: He is still living with the Walcotts as he has for the last seven years. The child began using that name after the order of adoption was entered but before my opponent filed his appeal.

QUESTION: Mr. Jones?

MR. JONES: Yes, sir.

QUESTION: I understood from what Counsel for Appellant stated that his real objective is to obtain visitation rights. Did the Georgia court have the power, under Georgia law, to accord visitation rights under the present statute? I assumed that it did in view of the order entered denying those rights.

MR. JONES: I would agree. I believe that the court would have had the authority to allow visitation rights but the court found that these rights would not be in the best interest of the child.

QUESTION: Right. But would not a Georgia court have that same authority under the new statute?

MR. JONES: Your Honor, under the new statute, I believe that the primary emphasis is on the adoption.

QUESTION: But even so, take the case of an absolute divorce in -- certainly in my state of Virginia, the court would have full authority to allow visitation rights to the father after he no longer had any custody. It would depend on the best interest of the child, as you have said.

What I am driving at is, so far as visitation rights are concerned, under Georgia law, does it make any difference which statute is applied?

MR. JONES: Our position would be that no, it does not matter.

QUESTION: Under Georgia law you have no visitation rights are feasible if there has been an adoption.

QUESTION: No, not after an adoption.

QUESTION: How is that? Is that true under Georgia law?

MR. JONES: Excuse me, sir?

QUESTION: Is that true under Georgia law, if there

has been an adoption, there are no visitation rights?

That was my second question.

MR. JONES: Your Honor, my analysis of the statute does not reveal any statement regarding visitation rights if an adoption is granted either under the old or the new statute since all domestic relations actions involve the equity jurisdiction of the court. My initial reaction would be that the court certainly would have the jurisdiction to do anything it thought appropriate.

QUESTION: Even after an adoption to let -- after giving parental rights to the adoptive father, they would still have to allow visitation rights?

MR. JONES: No, no, I do not think they would have to allow visitation rights.

QUESTION: Or that they even could.

MR. JONES: I am not sure that they could. I have found my analysis of that statute does not --

QUESTION: Well, turning to the judge's order on page 72, the Fulton County Superior Court order, he first makes the finding in 14 that the proposed adopted father is a proper person to adopt the child and then finding in 15 that the proposed adoption of the child is in the best interest of the said child and in finding 16 that the proposed legitimation of the child is not in the best interest nor is the granting of the habeas corpus relief seeking visitation

rights in the best interest of the child.

Does that not sound as though he, at least, thought that you might have an adoption and still grant visitation rights?

MR. JONES: My reaction to that would be that the judge, in view of the lack of definiteness in this whole situation wanted to keep himself covered and rule on all of the facts. He has stated his conclusion that he thinks that any visitation rights are not in the best interest of the child.

QUESTION: Does Mr. Quilloin have visitation rights to Mr. Walcott? The child belongs to somebody else now.

MR. JONES: This is correct, Your Honor.

QUESTION: When does somebody get visitation rights to my child? That I do not understand.

MR. JONES: This is not done. I may have misunderstood Mr. Justice Powell's question in certain statements that I made.

QUESTION: These are alternatives. These were various proceedings that were consolidated and they were alternatives. One was to have adoption and the other one was to grant this habeas corpus petition or something else which would have carried with it visitation rights.

MR. JONES: This is correct.

QUESTION: But there are alternatives. Once a

child is adopted, he becomes the son or daughter of the father of the adoptive parents and all visitation rights by anybody else disappear.

MR. JONES: I would agree completely, Your Honor, in this particular case.

QUESTION: Mr. Jones, do you know if -- just to ask the same question in a little different form -- is there any precedent in Georgia of which you are aware where there is a divorce and then a remarriage by the mother who has custody of the child and then an adoption by the second husband of the mother and then after that, the natural father seeking visitation rights?

MR. JONES: Your Honor, the divorce situation is very different from the situation that we have here at bar. In a divorce situation the child is legitimate. He starts out --

QUESTION: I understand that. But is there precedent in Georgia, in the sequence I described, for allowing the natural father to retain visitation rights notwithstanding the adoption by the second husband of the mother?

MR. JONES: Well, Your Honor, my reaction to that would be that if the natural father contested the adoption, then it would never take place in the first place so --

QUESTION: Maybe he consented to the adoption. Assume he consented to the adoption.

MR. JONES: I am not aware of any authority on that proposition. I would request an opportunity to look for some for the Court.

QUESTION: Well, that is perhaps too far afield.

MR. JONES: Your Honor, as I have stated, this Appellant wants the best of both worlds. He does not want to assume the responsibility. He does not contest that the child is in a loving family environment. He only wants to keep the child from losing his name and I would just like to conclude by saying that he should not have that right in derogation of the rights of the child, which are the most important, which is the most important thing involved in this case.

Thank you.

MR. CHIEF JUSTICE BURGER: I think you have one minute left, Mr. Skinner.

REBUTTAL ARGUMENT OF WILLIAM L. SKINNER, ESQ.

MR. SKINNER: Mr. Chief Justice and may it please the Court:

The record is quite clear. Darrell said he wanted to continue visiting with Mr. Quilloin. That is terribly important in this case and it is quite clear in the Appendix that he said that. Also, if Mr. --

QUESTION: Well, the child was really very diplomatic. He did not want to hurt anybody's feelings.

MR. SKINNER: That is absolutely true. These are good people. They are all good people. I have a very difficult time saying that the Walcotts are not good people. They do not have that much trouble saying Mr. Quilloin is not, however. I think, though, Mr. Quilloin has performed admirably in this case. And he will continue to perform.

He actually told the court that he wants to support the child. He is willing to accept whatever court order is entered for the support of the child. He is willing to tender it voluntarily and for this reason, I do not think that he should be treated any differently from a divorced father.

In answer to the Court's question to Mr. Jones, there is no question -- the bedrock question in this case is, can the adoption be completed?

Once the adoption was completed, all the other matters became immaterial because he had no issue. He had no rights.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

[Whereupon, at 1:35 o'clock p.m., the case was submitted.]