ELLIOT, WILLIAM G. V HARGRAVE, SUSAN March term 1866 St Louis Circuit Court

OLD 644/14

545/5

DISMISSED

INVOLVED LEGAL GARDIANSHIP OF CHILDREN

HARGRAVE, VIZ ROBERT
HARGRAVE, JOSEPHINE S.
HARGRAVE, REBECCA
HARGRAVE, HARRIET ADELIA

State of Missouri
County of St Louis } Be it Remembered that here-
tofore to wit: On the Nineteenth day of April
Eighteen hundred and Sixty four there was
filed in the St Louis Circuit Court, a petition
in the words and figures following to wit:

Petition, To the Hon James C Moody Judge of
the St Louis Circuit Court.

The petition of William G. Eliot repre-
sents that Susan Hargrave is the mother of
the following named children. Viz Robert
Hargrave now aged about 15 years, Josephine
Hargrave now aged about 10 years, Rebecca
Hargrave now aged about 7 years & Harriet
Adelia Hargrave now aged about 5 years.

Your petitioner further represents that
the husband of Susan Hargrave and the
father of the above named children died before
the month of August AD 1863. And that the
said Susan on the 29 day of August AD 1863 was
not married and she at that time was residing
with said children in the City & County of St Louis
State of Missouri and she by the laws of Mis-
souri at that time was the Natural Guardian
of the said children and acting as such.

Your petitioner further represents that the
said Susan Hargrave then having the said
children in her custody & charge, made signed
& delivered to your petitioner a Writing in words
and figures as follows.

2.

St Louis Aug 22 1863.

This is to Certify that being myself unable to take care of my own children I hereby place them under the Care of Rev W. G. Elliot transferring to him all my authority over them and my legal right to their Services, On Consideration however of his providing for them the needful comforts of home and the proper means of education until they are of legal age and able to take care of themselves, The names and ages of said children are as follows Robert Hargrave fifteen years old, Josephine Hargrave ten years old, Mary Hargrave twelve years old. and Rebecca Seven years old & Harriet Adelia five years old.

(Signed) Her Susan X Hargrave mark

Witness

James E Yeatman }
J. G. Forman }

Your petitioner further represents that immediately after the said Susan executed the said writing she placed the said children mentioned in said writing in his charge and he immediately made a simple provision for their clothing Schooling, and maintenance and provided in every way for their Comfortable Support.

Your petitioner further represents that Some time in the month of April AD 1864

without the knowledge or consent of your petitioner the said Susan Harpave surreptiously gained possession of the persons of said Robert Harpave, Josephine Harpave, Rebecca Harpave, and Harriet Adelia Harpave. And the said Susan restrains the last named children of their liberty at some place in the City of St Louis unknown to your petitioner.

Your petitioner further represents that said Susan admits that she has said last named children in her custody and under her control in the City of St Louis but she refuses to inform your petitioner where they now are, or where either of them now is.

Your petitioner represents that the last named children and each of them are of tender years and too young and not of sufficient mental capacity to choose a guardian for themselves, And in as much as the said Susan Harpave has by her writing aforesaid transferred all her right authority & control of said children to your petitioner the said Susan now holds the said children in restraint and restrained of their liberty unlawfully in this that in and by said writing the said Susan transferred the custody and control of said last named children & each of them to your petitioner.

3.

Wherefore in consideration of the premises your petitioner prays that a Writ of Habeas Corpus may be granted directed to the said Susan Hargrave Ordering her to produce the said children, and that upon the hearing hereof and the return made to said writ the custody of said children may be committed to your petitioner.

W. G. Eliot.

William G. Eliot the petitioner in the foregoing petition being duly sworn on his oath says that the foregoing petition & the matters therein as stated he believes to be true.

W. G. Eliot.

Subscribed and sworn to before me this 19 day of April 1864. Seal. Witness my hand and Notarial Seal hereunto affixed the date last aforesaid

Nicholas A Mortet
Notary Public.

And on the filing of said Petition the following proceedings were had in said Court on said petition to wit:

April 19. 1864

In the Matter of Susan Hargrave.

Order to issue Writ. Now Comes William G. Eliot by his Attorney and files a petition for a Writ of Habeas Corpus, And the Court being

fully advised in the premises doth order that a Writ of Habeas Corpus issue to Susan Hargrave as prayed from said petition returnable on the 20th inst at two O'Clock P.M.

And thereupon a Writ of Habeas Corpus issued in tenor and form following to wit:

Writ. In the St Louis Circuit Court February Term 1864. April 19. 1864.

State of Missouri

To Susan Hargrave.

Whereas on this eighteenth day of April A Eighteen hundred and sixty four a petition was presented to the Hon. Judge of the St Louis Circuit Court setting forth that Robert Hargrave Josephine Hargrave Rebecca Hargrave and Harriet Adelia Hargrave are illegally restrained of their liberty by you

Now therefore you are hereby Commanded to have the bodies of the said Robert Hargrave Josephine Hargrave, Rebecca Hargrave and Harriet Adelia Hargrave, before the Hon Judge of the St Louis Circuit Court on Wednesday the 20 day of April 1864 at 2 O'Clock in the afternoon in the Circuit Court Room and then & there to show cause why said Robert Hargrave, Josephine Hargrave, Rebecca Hargrave and Harriet Adelia Hargrave are restrained of their liberties, And

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6. have you then and there this writ with your return endorsed thereon. Seal Witness Stephen Rice Clerk of said Court at Office City of St Louis with Seal hereto affixed this 18th day of April AD 1864.

Endorsed "By the Habeas Corpus Act" } Stephen Rice Clk.

April 20. 1864.

In the Matter of Susan Hargrave. } Until the 22d instant given respondent to make her return herein.

At which time said Susan Hargrave made return on said Writ as follows.

St Louis Mo. 22d April 1864.

Return In Obedience to the within Mandate I produce herein Court, the bodies of Robert Hargrave Rebecca Hargrave, Josephine Hargrave, and Hamit Adelia Hargrave under my Control as their Mother and Natural Guardian their father being dead And I deny that they are illegally restrained or that I restrain them against their will.

her
Susan x Hargrave
mark.

Sworn to before me April 22. 1864.
S. Rice Clk.

And thereupon on said 22nd day of April 1864 the following proceed

accordingly in said Cause.

In the Matter of Sultan Hargrave

Habeas Corpus.

Judgment. Now at this day Comes the petitioner William G. Eliot in person and by Attorney and also comes Sultan Hargrave in person and by her Attorney on the petition by the writ of Habeas Corpus issued herein, and the petitioner files a Traverse thereof, And the said Sultan Hargrave moves the Court to quash the writ herein and to dismiss the proceedings and the Court being fully advised in the premises doth Overrule the said motion. And the Court proceeds to hear the evidence herein And having duly heard and considered the same It is Ordered by the Court that the Children Robert Hargrave, Josephine Hargrave, Rebecca Hargrave and Harriet Adeline Hargrave be discharged from the Custody of Sultan Hargrave and be committed to the Custody and placed under the Control of the petitioner William G. Eliot until the further Order of the Court with leave to the said respondent Sultan Hargrave to visit the said Children at all reasonable times, And the said Sultan Hargrave is hereby Commanded to release the said Children forthwith, And it is further Ordered that the petitioner pay the Costs.

Said Traverse of said Answer is

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8. in the words and figures following to wit

Traverse. William G. Eliot Guardian of Robert Hargrave & others mentioned in the writ of Habeas Corpus. And in their behalf says that so much and such part of the return of the respondent as states that she is entitled to the Custody & Control of the said infants, and that they are not restrained of their liberty by her is untrue.

Krum & Decker.

Attys for Relator.

July 11. 1864.

In the Matter of Susan Hargrave } It is Ordered by the Court that the Order and decree made herein on the 22nd day of April last, last part giving to the petitioner William G. Eliot the Custody of the Children due Set aside and Vacated.

Judgt Set aside

July 11. 1864.

In the Matter of Robert Hargrave, Joseph Hargrave, Rebecca Hargrave, and Harriet Adelia Hargrave } Habeas Corpus. Now at this day Came William G. Eliot the petitioner in person and by Attorney And also the respondent Susan Hargrave, in person and by Attorney And the said Susan Hargrave Moves the Court to quash the Writ herein, and to dismiss this &c

Final judgt.

Appeal granted Bill Ex filed

proceedings. And the Court being fully advised in the premises doth overrule the said motion; And the Court proceeds to hear the evidence herein and having duly heard and considered the same: it is ordered and decreed by the Court that the said Children Robert Hargrave Josephine Hargrave Rebecca Hargrave and Hamet Adelia Hargrave be discharged from the Custody of Susan Hargrave and be remanded to the Custody and Control placed under the Control of the petitioner William G. Eliot, with leave to the said respondent Susan Hargrave to visit the said children at all reasonable times, And the said Susan Hargrave is hereby Commanded to release the said children forthwith The said Respondent Susan Hargrave files a motion for a new trial which motion being heard and fully Considered by the Court is Overruled. And the said respondent files a Bill of Exceptions and an affidavit for an appeal And an appeal is allowed her to the Supreme Court from the judgment herein rendered.

Which said Affidavit for an appeal is in the words and figures following to wit:

Appt for appeal. 9. State of Missouri County of St Louis } Be it Remembered that

10.

On this - Day of July 1864 before me the undersigned Came Susan Hargave who being duly sworn makes oath and says that her appeal herein is not made for Vexation or delay, but because the affiant believes that he is aggrieved by the Judgment or decision of the Court.

her Susan + Hargave mark

Sworn to and Subscribed before me this Eighth Day of July AD 1864.

Thomas Grace Notary Public
St Louis Co. Mo.

And said Bill of Exceptions is in the words and figures following to wit:

At the Trial of this Cause the following proceedings were had

Defendant moves to quash the writ

Mo to quash Writ.

Which Motion the Court Overruled. And thereupon defendant excepted.

Plaintiff then called

Test of Forman.

Forman who being duly sworn stated that he had gone with plaintiff to see defendants, that defendant was very poor and almost blind, that defendant stated that she could not take care of her children, and that on the condition the plaintiff would take the children off of her hands she would surrender them to him. That accordingly the agreement was drawn up which was read to her before signing, That she consented to it, signed it with her mark, and that he and Mr Seatman signed it as witness,

Test of J E Seatman.

Plaintiff then called James E Seatman who having been duly sworn on his oath stated, that the condition of the defendant had been called to him, as that of an Union Refugee, then at the Hotel opposite the Pacific R.R. on 7th. That as the Prest of the Sanitary Commission he went to see her, found her one of the most pitiable objects of charity he had ever seen, and that he had consulted with plff as one of the Commission what was to be done, That plaintiff said that he would get the children into the industrial School if the mother would surrender them, That plaintiff and himself went to see defendant

11.

12. And an agreement was drawn up read to Defendant and she then signed it. Witness attesting it as a Witness.

On Cross Examination

Defendant did not claim that the children should be returned to her when she was able to take care of them, When I went to see her at the Hospital afterwards and about a month ago, she asserted that such was the case, And asked me if I did not so recollect it, But I did not after the surrender of the children I sent the mother to the Sisters Hospital for treatment, The family were perfectly destitute when this agreement was signed

Agreement between Plf & Deft.

Plaintiff then read in evidence the agreement referred to by Messrs Foreman & Leatherman which is in these words ~~and~~

This is to Certify That being myself quite unable to take care of my own children I hereby place them under care of Rev W. G. Eliot Transferring to him all my authority over them and my legal right to their services, On Consideration however of his providing for them all the needful Comforts of home and the proper means of education until they are of legal age and able to take care of themselves.

St Louis Aug 29, 1863

The Names and ages of said Children are as follows, Robert Hargrave fifteen years old, Mary Hargrave twelve years old, Josephine ten years old, Rebecca Seven years old. & Harriet Adelia five years old.

Her Susan + Hargrave mark

Witness: James E. Yeatman
J. G. Forman.

To its being read the defendant objected that it had No Stamp but the Court Overruled the objection and defendant then & there excepted.

Test of Eliot

Plaintiff then called — Eliot who being duly sworn testified that he is Superintendent of The Minion School on 8th St near Locust. That the Children had been brought there very destitute, & No Clothing, became Sick, their blood in a bad wretched Condition, The itch breaking out, had had Medical Attendance, The Children had Vermin in their head, That after getting well they attended School at the Minion until they were carried off by their mother, And the oldest daughter had been placed out in a respectable family The other Children had remained at the School until they had been carried off by their mother. It was Admitted that the elder boy was over fourteen years of age.

13.

This was all the Testimony that was offered.

The Court thereupon gave judgment for the plaintiff that the Children sued for be returned to plaintiffs Custody, And that the mother be allowed from time to time to see them.

To which ruling of the Court the defendant then and there excepted.

Defendant then moved for a new Trial for these reasons.

Mo for New Trial

Because the Court permitted the agreement to be read

Because the judgment should have been for defendant.

Because the judgment was otherwise illegal and void.

Alex T. P. Gauesche
Atty of Deff.

Which Motion having been by the Court heard and Overruled defendant then and there excepted.

The following agreement was then filed in the Cause for an appeal.

Agt for Appeal.

And thereupon the defendant took her appeal tendering this her bill of Exceptions and prayed that it might be signed and sealed by the Court and allowed by the Court to be filed as a record in this Cause.

James C. Moodey Seal
Judge.

State of Missouri
County of St Louis ss.

I the undersigned Clerk of the St Louis Circuit Court Certify that the foregoing is a True Copy Transcript of the Record and Proceedings in the Case of Wm G. Eliot against Susan Hargrave as the same remain of record and on file in my Office.

In Witness Whereof I hereto Setting hand and affix the Seal of said Court at Office in St Louis the first day of October 1864.

J. Thornburgh Clk.

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16.	Petition	℘ 1.
	Or. to issue Writ	4.
	Writ	5
	Return	6.
	Judgt.	7
	" Set aside & Traverse	8.
	Final Judgt Appeal P.	8.
	Appt for Appeal.	9.
	Mo to quash Writ.	10.
	Test of S. E. Yeatman	11.
	Agreement	12.
	Test of Eliot	13.
	Mo for New Trial	14.
	Agt for Appeal	14.

(14) 86

March 7. 1866.

By the Habeas Corpus Act

William G. Eliot Res

vs

Susan Hargrave app

Appeal from Circuit Court

Filed October 1st 1864
A.W. McCady
Clerk

Krum & Decker
for Res

Garesche for app

Fee $4.75 Garesche Paid.
10$ paid by A. J. P. Garesche

1866
May 10 Taken as submitted.
" 14 Death of Appellee Sug & Case dismissed

Elliott Plaintiff
vs
Hargrave defendant

In the Supreme Court of the State of Missouri at St Louis —

And now comes Hex. X. P. Garesché who being one of the sureties of the cause asks leave of the Court to appear herein as amicus curiae and upon such leave suggesting the death of plaintiff before errors herein could be filed — And furthermore moves the Court that the appeal be dismissed at costs of plaintiff's sureties, inasmuch as no appeal lies from a writ of Habeas Corpus 9 Mo — 690 — Howe vs State — The appeal was taken at suggestion of the circuit Court and defendant's counsel, ~~as~~ that it lay, and against the opinion of the mover hereof, and because he finds no decision reversing said cause of Howe vs State he moves the Court for such dismissal —

Hex X. P. Garesché
Surety as amicus curiae —

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Elliott
vs
Hargrave

Mo by amicus
curiae in behalf of
pltff for dismissal
of appeal.

Filed May 14/66
O. S. Fishback
Clk
pr W C Ellis

Enstamm