

ADOPTED CHILDREN HAVE RIGHTS TOO

by
Lisa Dimitroff

French Major
Merrillville High School, Merrillville, IN

The welfare of children has been an important issue throughout the years. A family life is essential for the upbringing of a child. If for any circumstance a child does not have a healthy biological family, it can be placed in foster care or put up for adoption. For decades adoption has been an effective way to find families for children who need them. Up until recently, the adoption process has not had many major problems. But there have been recent cases where children have been torn away from adopted families and returned to their natural parents. The welfare and rights of the adopted children were overlooked to satisfy the law. Adopted children have the right to a happy and healthy life and should not unnecessarily be psychologically and physically traumatized by being returned to their biological parents.

Adoption has been practiced throughout recorded history. Until about the twentieth century, children were being adopted to benefit the family. Some families were adopting children to be workers and apprentices. Fortunately, adoption has changed in favor of the children. Adoption is now seen as a beneficial experience for children. Normally, the children's "best interests" are taken into consideration during the adoption process (CQ 1042).

A majority of children are given up for adoption or put into foster care because they are not wanted by their birth parents. Adopted children are less likely to receive prenatal care because they are unplanned, unexpected, and unwanted by their birth mothers. In some cases, younger mothers have abused their bodies with drugs and alcohol while trying to ignore or hide their pregnancy (1042).

Children should not have to find themselves in abusive relationships with their birth parents. A great increase in foster care has arisen due to abusive parents. According to the American Public Welfare Association, 460,000 children are in foster care, which is a 75 percent increase from 1982. The parents' drug habits, usually involving crack-cocaine, have sent these children into foster care (1037). Malcolm S. Forbes, Jr. of *Forbes* magazine states that it is startling to discover that state agencies continue to return abused children to their birth parents ("Real Care" 24).

It has become very difficult for couples to adopt children in recent years because of "perverse laws and bureaucratic decrees" ("Real Care" 24). Couples who are interested in adopting must often spend huge amounts of money at private agencies (24). On the other hand, biological parents are gaining more rights. According to Lucinda Franks of *The New Yorker*, the courts have given biological parents even more protection these past two decades (59). In most states, a period of several weeks to six months is given to the biological mother to change her mind about giving

up her child. This, however, is not fair for the adoptive parents. Malcolm S. Forbes, Jr. feels that when a mother decides to give up her child for adoption, that's it. She should have no visitation rights or second thoughts. It is "grossly unfair" for the adoptive parents to receive a baby and then lose it after a custody trial (24).

The courts have also shown a bias towards the birth father. The birth mother must have the consent of the birth father to go through with the adoption. This is, in fact, the first question adoption agencies ask the birth mother. If the mother does not know who the father is, some agencies will not allow the child to be adopted in order to avoid court battles. Private agencies, such as in the case of "Baby Jessica," who was taken away from her adoptive parents after two years, are more lenient (Gibbs 49).

The period of time that birth parents can regain custody of their child varies from state to state. In some states, however, the waiting period is much too long. For instance, the birth parents have up to two years to reclaim a child in some states (Gibbs 49). It is very unfortunate that some states allow the birth father to reclaim his child after such a long period of time. Some states allow a father, who has not signed his paternal rights away, to appear and state that he did not know the child existed. He then has the right to sue the adoptive parents for custody of "his" child (Franks 59). In Iowa, where the birth parents of "Baby Jessica" live, the father has the right to come back and reclaim his child at any point in its life (49).

The rights of the father are the key arguments in two custody battles, those involving "Baby Jessica" and "Baby Richard." The controversy of the Baby Jessica case was the fact that her biological father, Daniel Schmidt, was not informed of her birth. Jessica was born in Cedar Rapids, Iowa, and her 28 year-old mother, Cara, gave her up for adoption forty hours after she was born. Cara identified the father as her current boyfriend, Scott, who consented to the adoption. Six days after Jessica's birth, Cara began to have second thoughts and informed David that he was the father of her child. At this time, Jessica was beginning her new life with the DeBoers in Michigan. Daniel Schmidt immediately launched a case to terminate Jessica's adoption. (Hull 48).

The Baby Jessica custody battle lasted two years and resulted in a victory for the biological parents. The DeBoers and Schmidts presented their cases in the courts of two states, Iowa and Michigan. According to Geoffrey Cowley of *Newsweek* magazine, the Schmidts had a clear advantage from the beginning. Regardless of where Jessica was better off, two Iowa courts ruled that she still belonged to the Schmidts because Daniel had never signed away his parental rights (54). According to Forbes, a child should not be treated as a piece of property, such as a car or an article of clothing, "dependent on vacillating adult whims of whether they're wanted or not" ("Barbaric" 24). A mother has nine months to make a decision about her child and should stick to it (24). In Baby Jessica's case, the courts said her interests did not count. She was, in fact, a piece of property and the Schmidts were her "rightful owners" (54).

The DeBoers appealed the Iowa courts' decisions in a lower Michigan court and won. In Michigan, the best interests of a child are paramount in the outcome of a custody battle. With this in mind, a Michigan judge ruled that Jessica should remain in the custody of the DeBoers. The Schmidts then appealed to the Michigan Supreme Court, where this decision was overruled because it was in violation of the Uniform Child Custody Jurisdiction Act. The Supreme Court ruled that it could intervene since the Iowa courts had already decided to return Jessica to the Schmidts, her natural parents (CQ 1037).

Granted, Daniel Schmidt's paternal rights were violated, but how could the law overlook the best interests of the child? According to the *Time* article, "In Whose Best Interest?" the Iowa court "could not and should not pay attention to the best interests of the child, that the only issue at hand in this case was the father" (Gibbs 49). The law is supposed to protect the children and make sure that they have a permanent home early in life where they are wanted. In the 1973 landmark work, *Beyond the Best Interests of the Child*, psychiatrists Albert J. Solnit and Anna Freud and Yale Law School professor Joseph Goldstein argue that stability and continuity are the primary need of a child. This need can be fulfilled by the adult who acts as a parent to the child. The parent does not necessarily have to be the child's biological parent (CQ 1042). In Baby Jessica's case, the courts could only consider Jessica's rights if Daniel Schmidt were determined to be an unfit parent. Harvard law professor Elizabeth Bartholet states that "When you're dealing with a child who has had a two-and-one-half year relationship with a set of *de facto* parents, it's outrageous to say the only issue that can be thought about is whether Dan Schmidt's rights were appropriately terminated or not" (qtd. in Gibbs 49).

The Baby Jessica case opened the eyes of millions of adoptive parents. According to the National Council for Adoption, less than one percent of the 50,000 annual adoptions in the United States are ever contested (Hull 48). Michele Ingrassia of *Newsweek* states that the Baby Richard case was even more stunning because it "raised the chilling prospect that even a completed, legal adoption could be upended" (44). Once again the best interests of the child were ignored by the courts when Baby Richard was returned to his biological father, Otakar Kirchner, after four years ("Real Care" 24).

The Baby Richard case was much more deceptive than Baby Jessica's case. Baby Richard's birth mother, Daniela Kirchner, was angry at her then boyfriend Oto because he went to Czechoslovakia two weeks before Baby Richard was born. Daniela heard rumors that Oto ran off with one of his old lovers and she was very angry with him. She would not admit that Oto was the father and told him that the baby died. According to Ingrassia, Oto "failed to search for his son as thoroughly as some thought he should have" because he lived with Daniela for eight months of her pregnancy (44). Therefore, Oto should have been a little bit more suspicious of the death of his child.

The battle began two months later when Daniela and Oto got back together. Oto challenged the adoption eighty days after the birth of Baby Richard. Adoption laws vary from state-to-state, so Oto had different rights than Daniel Schmidt. In Illinois, the law states that a birth father

must show "interest" within thirty days of the child's birth (Ingrassia 44). Once again, the father argued that he couldn't claim a son that he never knew he had. Two lower Illinois courts ruled in favor of the adoptive parents. They stated that Oto had abandoned any rights that he had to his son. The Illinois Supreme Court, however, overturned the rulings of the lower courts. It even condemned the adoptive parents, a firefighter and a paralegal, for not attempting to find the birth father. Baby Richard was removed from his adoptive family, with whom he had lived from four days after his birth, and custody was given to his biological father (44).

The adults involved in child custody battles fail to realize that these children suffer great psychological trauma. Despite the fact that a majority of adopted children do well in their new environments, researchers find that adopted children are more likely to get psychological treatment than an average child (CQ 1044). Lucinda Franks states that adopted children "suffer deep emotional scars and are condemned to be 'amputees,' missing a piece of themselves, which they look for all of their lives" (59). No matter how loving the adoptive home may be, some children are ultimately disturbed because of their adoptions. According to the *CQ Researcher*, 20-30 percent of adopted children require psychological counseling, compared to 15 percent of the general population (1044). David M. Brodzinsky, a Rutgers University psychologist, states that "research now is suggesting that kids are more resilient than we have given them credit for and there's a wide range of adjustment among children" (qtd. in CQ 1045). But what happens in cases like Baby Jessica and Baby Richard?

During the Baby Jessica battle, Baby Jessica was in a fragile state of her mental development. In an *amicus* brief to the courts, Professor Solnit, a senior research scientist at Yale Child Study Center, wrote that "moving the baby now could pose a grave risk to her development" (qtd. in Gibbs 49). From his clinical work, Solnit also discovered that removing such a young child from a home and placing it with strangers, even though they are loving and caring, can lead to "a loss of intellectual capacity" (49). A child's personality begins to develop during the first two or three years of its life. Professor Solnit also states:

One of the basic capacities that children develop in that period is the ability to trust an adult so that they can look ahead to a world that seems to them safe and reasonable, rather than a world that is unpredictable and unstable. (49)

How can the courts discredit such evidence and return Baby Jessica to her biological parents? Baby Jessica was old enough to have created a bond with her adoptive parents, but she was too young to comprehend why they disappeared (Frank 59).

In Baby Richard's case, he was taken away from his adoptive family after four years of living and bonding with them. Baby Richard was traumatized even more than Baby Jessica because he was older than her during the custody battle. How tough is it for a young child like Baby Richard to be handed down from one set of parents to another? Dr. Robert Gatson, director of Child Development at Chicago's Cook County Hospital, feels that children see the loss of a parent as their fault because

they see the world in a self-centered way. "This child will know that his parents didn't die. In his eyes, they will have given him away. He must have done something wrong" (qtd. in Ingrassia 45).

After such evidence, the biological parents and courts should have seriously thought about the child's psychological well being. Even though research is beginning to show that adopted children will eventually get adjusted to their new families, they should not have to endure such trauma. The law must be followed, but some changes should be made to benefit the children in custody battles. According to Cowley of *Newsweek*, the Baby Jessica case shows "how vulnerable custody laws leave children" (54). Following an outcry by the public, legislatures are attempting to reform adoption laws. According to Howard Davidson, director of the American Bar Association's Center on Children and the Law in Washington, "if the law works to the disadvantage of the children, it's incumbent upon the legislatures to change the law. The courts can't change the law" (qtd. in Gibbs 49).

Some courts have started to favor nurture over nature in custody battles. In the Denver courtroom of Judge Dana Wakefield, a child's needs are considered over the parents' demands. Wakefield states:

In my courtroom they [children] stay where they've been nurtured. You have to consider who the child feels is the psychological parent. If they have a good bond in that home, I'm not about to break it. (qtd. in Gibbs 49)

Judge Wakefield's beliefs that a child's interests come first during a custody battle shows that there is hope for adopted children. The law must be reformed to guarantee that children's best interests are fulfilled. After all, in some cases, like those involving Baby Jessica and Baby Richard, nurture is better than nature.

Despite laws that favor biological parents, adopted children should remain with their adoptive families to avoid unnecessary trauma. The rights of children must be taken into consideration during custody battles. In order to avoid situations like the Baby Jessica and Baby Richard custody battles, birth mothers must seriously consider the consequences of giving their children up for adoption. When birth parents decide to reclaim children they have given up for adoption, they have to realize that their children already have families. Families are what children need most and adopted children should never unnecessarily have to be torn away from their adoptive families.

Works Cited

CQ *Researcher*. Congressional Quarterly, Inc., 1993.

Cowley, Geoffrey. "Who's Looking After the Interests of the Children?" *Newsweek* 16 August 1993: 54-55.

Forbes, Malcolm S. Jr. "Barbaric." *Forbes* 30 August 1993: 24.

----. "Real Care for the Kids." *Forbes* 11 September 1995: 24.

Franks, Lucinda. "The War for Baby Clausen: Annals of Law." *The New Yorker* 22 March 1993: 58-59.

Gibbs, Nancy, Andrea Sachs, and Sophronia Scott Gregor. "In Whose Best Interest?" *Time* 19 July 1993: 49.

Hull, Jon D. "The Ties that Traumatize." *Time* 12 April 1993: 48.

Ingrassia, Michele. "Ordered to Surrender." *Newsweek* 6 February 1995: 44-45.