

ADVOCATING FOR ADOPTIONS

BY RONALD G. KIRSCHENHEITER, ESQ.



The Past Problem

Six years ago, while waiting in the courtroom for my cases to be called, I watched a woman with a young child patiently stand through the adoption proceedings with a puzzled look on her face. As she was leaving, I asked her if she understood what had just taken place and she responded that her English was not good enough to actually understand. I then asked her the same question in Spanish and she immediately reacted with a rapid torrent of responses and questions. In short, she explained that she had been trying to adopt 3-year-old Rosalita* for three years, but she did not understand why the adoption was taking so long, and she only knew that she had to keep returning to court every six months. She further explained that she was not seeking any compensation and did not care if Rosalita had any special needs or health problems (which are common in many adoptions), such as Reactive Attachment Disorder (RAD), Attention Deficient Hyperactivity Disorder (ADHD), Fetal Alcohol Syndrome (FAS), or bipolar disorder. The woman described her deep love for the child and the strong bond she shared with her, as the child had lived in the woman's home since birth (Rosalita was born drug-addicted). When the woman learned that I was an attorney with the Legal Aid Center of Southern Nevada and only represented neglected and abused children in the foster care system through the Children's Attorneys Project (CAP), she begged me to represent Rosalita. Thus, began my introduction to handling adoption cases against the Department of Family Services (DFS) in Clark County.

I took on Rosalita as a client and, after investigating the case, soon obtained a court order from Judge Hardcastle mandating that DFS get her adopted within 30 days of that court order. On Rosalita's adoption day, she lit up the courtroom in her little "First Communion" dress and dazzling smile. Her mother explained that Rosalita's adoption day was the equivalent to her birthday in her new permanent home. For a while, most of my client adoptions followed the same procedures, all were

adopted within the 30-day limit mandated by the court. Things came to a halt, however, when one adoption failed to be finalized within the prescribed time period.

Under subpoena, the DFS director at the time honestly and openly explained in court that his investigation revealed more than 240 children's adoptions had "fallen through the cracks." Thus, while the parental rights of the children's parents had been terminated, either the kids were not processed for adoption or their adoptions faced inexplicable delays, for months or often years. The court put DFS on notice and ordered that appropriate action be taken to immediately remedy the situation. Our office then decided to devote a significant amount of my time to rectifying this unjust situation.

Thereafter, CAP's investigation revealed that hundreds, perhaps more than a thousand, foster care children languished in adoptive-placement limbo for lengthy periods of time (no one seemed to know the exact number of children in this situation). The reasons for these delays were as varied as the children themselves. I had adoptions delayed for six months to a year or more because forms had not been stapled or, ironically, in some cases because the forms were stapled hindering copying. Rather than deny the accusation that adoption delays were due to stapled or unstapled forms, DFS caseworkers readily admitted to the court that these were normal operating procedures. Other adoptions were delayed because medical records were not obtained, although admittedly nobody from DFS actually went to the doctors' offices to obtain the records or to secure them through a subpoena. Some adoptions were delayed because DFS believed that the adoptive parents did not love the children, or that the children did not love the parents or, in one case, because the parents allegedly did not love each other despite their vehement assertions that they in fact loved each other dearly.

Perhaps the most interesting inexcusable delay involved a case where a loving couple wanted to adopt a special needs child who was extremely medically fragile and incapable of performing daily activities, including talking, bowel or bladder control or eating without a G-tube. DFS insisted that because of the child's risky medical condition, one caregiver was not sufficient, and the potential adoptive father would have to quit his job to adopt so that intensive care could be provided 24 hours a day, seven days a week. The father, a college professor, willingly gave up his job because of his love for and bonding with the child. At the next four court hearings, contrary to the positions of the child's caseworker and adoption caseworker, DFS management then insisted that these parents could not adopt because the father did not have a job! Though DFS maintained its position, the adoption was eventually finalized after much litigation and intense negotiations.

The most common question asked when people learn about these aforementioned situations is: why? – why do hundreds of foster children languish for months and frequently

years in viable adoptive placements? Tens of thousands of Americans fly to China, Cambodia, Guatemala or many other countries each year, pay millions of dollars in court costs, travel expenses and numerous other fees for the right to adopt and bring a child to the United States. Yet, here in Clark County, we have hundreds of children sitting in foster care begging to be adopted.

Resolving the Problem

One of the most common explanations given to me by parents who adopt abroad rather than locally is that it is too time-consuming and difficult to adopt in the United States. Fortunately, there have been drastic improvements here in Clark County within the last five years. Since CAP adopted this project, major progress in reducing the problems and wait times for adopting children from foster care has been made, a direct result of the concerted efforts by DFS and the Eighth District Judicial Court to clean up the adoption backlog. These improvements continue under the guidance of District Court Judges Frank P. Sullivan and Steven Jones.

Perhaps the most significant change with DFS regarding adoptions is a change in attitude. The DFS director initially compared this process to reversing the direction of the Titanic or changing the fan belt on a car while the engine is running. Rather than finding a reason to delay or prevent the adoption from going forward, DFS staff is now strongly committed to overcoming obstacles and getting adoptions finalized. Among other changes, DFS added additional staff to assist with its adoptions division, agreed through court motions to waive the adoptive home study for relatives within the third degree and increase the number of adoption cases per adoption caseworker.

The district court, for its part, has agreed to hold "Adoption Assessment Days," where 45 to 50 of the oldest cases are put on the calendar at a time and the court specifically addresses the reasons for the delays. Moreover, all cases are put on a special 60-day calendar, rather than the usual six-month calendar and, whenever possible, each case is assigned a CAP attorney or a volunteer attorney through our Pro Bono Project to move the case more quickly to completion.

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The Eighth Judicial District Court hearing masters have also supported these efforts.

For example, Hearing Master Jane Femiano has made a rule in her courtroom that it is no longer acceptable for anyone in court to blame any person not present in the courtroom for the adoption delay. Thus, it is no longer acceptable to say things such as the adoptive parents “have not completed their application,” or “are not cooperating” or “the doctor has not sent the medical records.” Instead, DFS staff must specifically state what concrete steps will be taken to correct the situation in a short period of time. Hearing Master Thomas Leeds consistently encourages parties to “think outside the box” and come up with specific solutions to problems holding up the adoption. For instance, when a recent case was delayed because the prospective adoptive mother could not obtain a 20-year-old, long-lost divorce decree, the parties submitted years of income tax returns showing the mother had consistently filed as a single mother and affidavits from the attorneys who

handled her divorce. In case after case, this type of creative thinking has led to the increase in finalized adoptions.

These efforts have produced impressive results. Adoptions of children in foster care have increased significantly since this CAP Adoption Project began. In 2007, 227 children were adopted; in 2008, 335 children were adopted; in 2009, 425 children were adopted; in 2010, 449 were adopted; and so far in 2011, we are on track to have more than 650 foster care children adopted and out of the foster care system. If the 2011 goal is met, this will mean almost 1,000 additional children have been adopted and removed from the foster care system since these efforts began.

Every adoption completed means one more child will have a better chance in life with the love and support of a forever family. It is common knowledge that former foster care children have extremely high rates of poverty, homelessness, unemployment, teen pregnancy, incarceration, and excessively low educational aspirations and achievements. Successful adoptions can create a real difference in the lives of these children and increase their chances at achieving loving, caring, meaningful relationships later in life.

CAP is constantly in need of volunteer attorneys who are willing to accept a referral of a foster care child who needs assistance and support in the adoption process. There are few occasions in life more fulfilling than watching former foster care youth be permanently accepted by their forever family. If you think you may be willing to volunteer, please contact Melanie Kushnir, Esq., Pro Bono Project Director for the Legal Aid Center of Southern Nevada, at (702) 386-1070, ext. 137 or mkushnir@lacs.org. ■



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**Names have been changed to protect confidentiality.*