

Act One

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Adoption in Child Time, Inc.

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ONE YEAR IS A LONG TIME IN THE LIFE OF A CHILD

ADOPTION IN CHILD TIME (ACT, INC) IS A NOT-FOR-PROFIT CORPORATION THAT

- PROMOTES EARLY PERMANENCY FOR FOSTER CHILDREN
- TRAINS ATTORNEYS IN ADOPTION LAW AND POLICIES
- PROVIDES INFORMATION AND ATTORNEY REFERRALS TO FOSTER PARENTS INTERESTED IN ADOPTION

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HIGHER COURTS CHOOSE BONDING OVER KINSHIP

by Mark Bontrager, Esq. Board Member

Bonding outweighs kinship. Significant long-term relationships matter more than blood ties in disputed adoption petitions. So say seven recent appellate court decisions.

PENNSYLVANIA Pennsylvania Supreme Court rules in favor of foster parents adopting their foster child over placement with the biological grandparents. The child was "failure to thrive" when she entered foster care and made dramatic gains while with the foster parents. The court reasoned that the risks in moving the child from the foster home where she is secure and attached are too great. (In the Interest of C.J.R., 782 A. 2d 568)(2001)

MISSOURI Missouri Appellate Court upholds ruling in favor of foster parents' adopting their foster child over the objections of the child's grandparents and their Indian tribe. The child had multiple medical needs that required special medical equipment and training on its use. The foster parents became very adept at providing for the child's medical needs and

a strong bond developed. Although there is a statutory preference for the child to be placed with a member of his family and tribe, the court reasoned that his foster parents' ability to provide

care for his special needs and the significant emotional bond between them overrides the statutory preference. (In re C. G.L. v. McDonald

County Juvenile Office, 63 S.W. 3d 693) (2002)

MAINE Maine's Supreme Court upholds lower court ruling that gave adoptive placement to the foster parents over the child's grandparents. The child had lived with the foster parents for two years while the grandparents had visited infrequently. The child had many developmental delays and the foster parents have a track record of meeting her needs. The court reasoned that significant bonding occurred between the child and her foster parents, and it is in her best interest to remain with them. (In re Annie A., 2001 ME 105; similarly In re Kayla M., 2001 ME 166) (2001)

ALASKA Alaska Supreme Court rules for grant of adoption of a foster child by his foster parents, while

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You Can Have Your Day In Court

by Peter Kenny Esq.

In their last session our Indiana legislature passed a new law of interest to foster parents. ACT had sponsored and worked for a bill to give long-term foster parents (those who had had their children for a year or more) legal standing. This bill would have given foster parents a full voice in court after the systems (the child welfare system and the courts) had failed the child by failing to find a permanent home within the time established by law.

ACT's bill failed due to opposition from many areas including the private agencies, the juvenile judges and the child welfare system. However, the legislature did give all foster parents the right to cross-examine any of the witnesses at periodic reviews and permanency hearings involving their foster child. (see IC 31-34-21-4.)

Foster parents who wish to exercise this right can hire an attorney to advocate for them. However, foster parents can also cross-examine on their own without

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REMEMBERING ANTHONY

by James A. Kenny, Board Member

Anthony Bars, 4, was murdered in Indianapolis two years ago by his adoptive aunt after being taken away from a foster family that had asked to adopt him. The newspapers described it as a “failed adoption.”

The caseworker had failed to do a proper home study on the adopting aunt, but lied in court saying that all the requirements had been completed. The caseworker has been charged with perjury. The aunt has been charged with murder. Fixing the blame is an American preoccupation, as if we have addressed the issue and can now forget about it. Far more important is to fix the problem.

What’s the problem? A major problem is the lack of accountability for the DFC. Accountability is vital not only after a tragedy has occurred, but more critically, before bad things happen. The Indiana DFC has excellent policies. In Anthony’s case the policies were not followed. It is important to see that they are.

How can we make tragedies less likely to happen in the future? Foster parents need the courage to speak their minds.

They need to quit being quiet out of fear of being blackballed. Foster parents have a right to call a case conference and to appeal any decision which they believe to be wrong. Foster parents have the right to present oral and written testimony directly to the judge and to cross-examine all witnesses.

Caseworkers need to listen to foster parents, those persons who know the most about the child’s day-to-day behavior and have come to care. They need to listen even when they think that their own plan is best and the foster parents are only slowing things down. They need to include foster parents in case conferences, in case plans, and in court.

No one of us has a lock on being right. When we are dealing with something so important as the future and life of a child who has been committed to our care, we need to hear fully all concerns and opinions before making a decision.

We need to ensure that the DFC follows its own excellent policies. We need to keep the best interests of the child as our basic guide. And we need to speak out when the child’s best interests are not being addressed.

Day In Court

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benefit of an attorney. For those who wish to pursue this option, here are some tips.

1) The first part of a witness’s testimony is called direct examination.

2) Cross-examination is asking questions of witnesses after they have been asked questions on direct examination.

3) The judge has discretion to control how cross-examination takes place. If a question you ask is objected to, wait for the judge to make a ruling then proceed as directed.

4) The questions you ask a witness on cross-examination must be related to something the witness talked about during direct examination or the questions can be about the credibility of the witness.

5) Although it is impossible to rehearse cross-examination, you can and should prepare yourself for what witnesses are likely to talk about. For instance, a week before the hearing you should ask for any written reports that are being submitted to the court by the Office of Family and Children or the CASA/GAL, and you should be familiar with these reports.

6) If you have a friend or relative who is an attorney, you may wish to ask for some help in getting accustomed to the procedure of cross-examining witnesses through role-playing exercises.

Remember that previous laws have given you the right to submit written testimony directly to the judge, not through the agency or county for whom you work. You also have the right to testify orally in court about your foster child.

Indiana law has given foster parents a means to advocate for the children in their care. If you feel that your presence in court will help the judge make the best decision about

In the Works: New Publications

ACT is working on two new publications for foster parents. ACT Executive Director Peter Kenny and ACT board member Mark Bontrager, both attorneys who handle adoptions from foster care, travel throughout Indiana presenting their workshop “Everything You Need To Know About Adopting Your

Foster Child.” ACT plans to publish a manual on the subject to accompany the workshop.

Keeping a journal about your foster child is an important part of your job. ACT intends to offer a book with tips about keeping a journal and space to record your information, all in one

HIGHER COURTS RULE ON BONDING

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denying the biological grandparents petition. The child had continuously resided with his foster parents from the age of seven months to three years. Although the child had a relationship with his grandparents, the court reasoned it is in the child's best interests to be adopted by his foster parents due to the significant bond with them and recognizing the child's need of "continuity of care." (In re Adoption of Bernard A., 77 P. 3d 4) (2003)

KANSAS Kansas Appellate Court rules a lower court erred when it granted an adoption by grandparents based solely on biological preference when the foster family had more of a relationship with the child. The child had resided with his foster family for over two years when the competing petitions were filed. The court reasoned that the bond between the foster family and the child is a critical factor when determining the child's best interest. (In re Interest of J. A., 42 P. 3d 215) (2002)

TENNESSEE Tennessee Appellate Court rules in favor of foster parents' adoption petition over that of the child's relatives - even though it permanently separates siblings. Siblings were initially placed together in the foster home, when the youngest, a four month old, was then placed in the custody of relatives while the older one remained in the foster home. This arrangement continued for nearly two years when the competing adoption petitions were filed. The court granted the foster parents' adoption petition of the older child thereby dismissing the relatives' petition. The relatives were able to adopt the younger child. The court reasoned that the continuity of

care preference outweighs the preference for placing siblings together due to the age of the children and their respective attachment to their caregivers. (In re S.B., Tenn. App. LEXIS 308) (2000)

INDIANA Indiana Court of Appeals recognizes the importance of parenting and bonding when it comes to adoption. The Appellate Court held that biology is not more important than a child's relationship with a man who has been a father in the terms that matter most. The court upheld the adoption of a girl to a man who has cared for her as his daughter for five years while dismissing the biological aunt and uncle's adoption petition. (Gerweck v. Schoenrad, 793 N. E. 2d 1054) (2003)

Disputed adoptions are the venue where the merits of biology vs. bonding are argued. Most of the above decisions considered competing adoption petitions between the foster parents and the child's biological grandparents. In particular, the courts weighed the length of time the child resided with the foster family and ruled that "continuity of care" is critical to the child's development. They found that any disruption of this continuity would be detrimental to the well-being of the child.

These rulings cited above are important for foster parents who file to adopt their foster child, only to have the adoption disputed by a similar petition of a suddenly-surfaced, long-lost blood relative. The recognition of bonding and continuity of care as significant factors in contested adoptions should provide guidance for trial court judges.

For information on bonding, see ACT's brochure available on our web site or from the ACT

THE ACT BOOKSTORE

ACT publishes and offers for sale the following books and pamphlets. Many are also available on our web site. See address on page 4.

The Right To a Permanent Home: Stopping Foster Care Drift. (2nd edition) 1998. 52 pages. \$11.50 ppd. The meaning of bonding; case law; DFC policy. For everyone involved in foster care.

Bonding and the Right To a Permanent Home. 1999. 16pp. \$4.00 ppd.

The following **ACT brochures** are **free** with a business size SASE. Up to four brochures per envelope. Brochures may be copied and distributed. Please credit ACT on all copies.

- ACT Information Brochure.
- Questions and Answers About Adoption by Foster Parents
- The Importance of Bonding in Legal Decisions.
- The Indiana Case Conference Policy.
- The Indiana Cooperative Adoption Law.
- Adoption Subsidies and Tax Issues For Adoptive Parents.
- How To Advocate For Your Foster Child.
- When Foster Parents Need An Attorney
- Who Is My Brother? My Sister? When Siblings

Bonding and continuity of care are significant factors in contested adoptions.



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In This Issue...

Courts support bonding over blood relationships...remembering Anthony...advocating in court

*Older Foster Children
They Are Waiting*

The waiting children. They are nine years or older. Some child advocates say they are “unadoptable.” Some, like New York’s Pat O’Brien, director of “You Gotta Believe,” says, “not true.” Pat devotes his entire time and expertise to seeking adoptive homes for the older child.

In many cases the older child is likely to face a “homeless” future. The national Adoption Promotion of 2003 hopes to remedy that injustice by offering the states an extra \$2000 bonus for each of these young people they get adopted.

The Indiana DFC earmarks these funds for programs that benefit special needs children. Deputy Director Jane Bisbee has indicated to ACT that the DFC is open to funding programs which would help make this new promotion a reality.

We invite any and all ideas from both individuals and agencies. Suggest programs and policies which would focus on aggressive home-finding for the older child. Send your ideas to ACT: by e-mail to act4adoption@hotmail.com or by regular mail to P O Box 305; Rensselaer IN 47978-0305.

We’ll publicize your ideas through ACT ONE and we’ll make sure they get a fair hearing with the DFC.