

Blood Parents Vs. Real Parents

By Elizabeth Bartholet

The ties that bind are ties of blood. Or so says the law as defined by the highest courts of Michigan and Iowa. They have ruled that Jessica DeBoer (a.k.a. Baby Girl Clausen), now two and a half years old, must be removed from the parents with whom she has lived since birth, Roberta and Jan DeBoer of Ann Arbor, Mich., who want to adopt her. The problem is that Jessica's sperm father, Dan Schmidt of Blairstown, Iowa, has decided to assert his "parental rights," and they are all that count.

The courts say Jessica's interests can't even be considered. (The only court that did take them into account held that she should stay with the DeBoers.) The DeBoers' interests can't be considered either. For legal purposes, they are "nonparents," "third parties to the child." Dan Schmidt, who hasn't been part of Jessica's life since the sexual act that resulted in her conception over three years ago, is termed the "real" or "natural" parent and given an absolute right to claim his genetic product.

What we know about Mr. Schmidt's parenting is that he failed to provide any to two previous children. And he never bothered to inquire whether it was his sexual relationship with Jessica's birth mother that produced her subsequent pregnancy. But the courts ruled that his parental rights could not be cut off without powerful evidence of "unfitness" or "deliberate abandonment."

It takes a lot in this country to terminate birth-parent rights and to free children for adoption. A Massachusetts court recently ordered a child back to the birth parents, who had plunged his face into a pan of boiling water and held it there. The court found no evidence of present unfitness.

Children are paying a high price for the priority we place on blood ties. The foster care system is crowded

with children who live in limbo because we are unwilling to cut their ties to inadequate birth parents and free them for adoption. Today's politically correct programs promote family reunification and preservation. They count their successes in intact biological families, without regard to whether staying with birth parents helps children or subjects them to ongoing abuse.

This same biological bias results in legal barriers to adoption that drives prospective parents away from those children who *are* free for placement. The DeBoer decision threatens to create yet another barrier, raising the specter that children may be removed months or years after placement simply because a previously unknown father appears on the scene.

The law should stop defining parenting in terms of procreation and recognize that true family ties have

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little to do with blood. First, the Constitution should be interpreted to protect the interest that Jessica and the DeBoers have in preserving their relationship. Courts that may hear their case in the future should at least consider this interest before destroying their very real family. Second, Iowa should revise its laws to provide for termination of the parental rights of putative fathers known and unknown unless they demonstrate their desire and ability to act as parents shortly after the birth of their biological children.

Finally, lawmakers in states throughout the country should take the DeBoer case as a signal to rethink the way their policies define family. Courts, legislatures and welfare agencies ought to recognize that families are tied together not by blood but by the bonds of love. While many have expressed outrage at Jessica's plight, the law that her case reflects is, tragically, consistent with the law of the land. □

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