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NOTES

THE STATUS OF LEGAL ABANDONMENT IN WYOMING

Of the 75,000 annual adoptions in the United States,[1] an undetermined number are those in which a child has been adopted without the consent of one or both of its living parents. More than 275,000 not "up for adoption" are being cared for in public and private institutions.[2] Some will stay from six months to two years; others, whose parents are unwilling or unable to establish a home, will remain throughout their childhood. In situations such as this, consent of the natural parents, in most states, may be dispensed with where, at some stage of the adoption proceedings, a court finds that the child has been abandoned.[3]

In some jurisdictions, abandonment has been defined wholly or in part by statute. So, for example, it is provided in one jurisdiction that if, without excuse, neither parent contributes to the child's support for six months, the person who has its lawful custody may consent to its adoption.[4]

1. Dec. 1953 Ladies Home Journal, page 25.
2. Dec. 1953 Ladies Home Journal, page 25.
3. 1 Am. Jur. 643, Sec. 42.
4. See Watts v. Dull, 184 Ill. 86, 56 N.E. 303 (1900).

Although there are statutes in Wyoming that recognize abandonment,[5] there is no statutory definition, and the issue of abandonment becomes one of court interpretation.

In an early Wyoming case,[6] the court held that the parent who may relinquish the child or consent to its adoption is a parent who still possesses a right to take care, custody or control of the child. The mother had consented to the adoption. The court found that the father who had, nine months after the birth of the child, left his wife and their four children without means of support and in circumstances of extreme destitution, and who had never, up to the time of the adoption proceeding, (a period of three years and five months) contributed to the support of his wife and children except the sum of twenty dollars, had abandoned the child. Abandonment, said the court, is simply the evidentiary fact which proves the ultimate fact of relinquishment; in other words, the relinquishment of one's rights is the effect and result of one's abandonment of those rights either by deed or other instrument in writing, or by parol or by turning the child out of the house.

One other Wyoming case, decided in 1948, considered the question of what circumstances were sufficient to constitute abandonment.[7] The father of two girls left them in the care of his mother (the girls' grandmother). Just before leaving for Alaska, and upon visiting his mother, he found that the daughters were staying with neighbors. There was evidence that he visited the neighbors and made it known that he considered the girls to be only in the neighbors' temporary custody. For two years and two months thereafter he neither wrote nor sent money for the support of the children. During this time the neighbors served the father by publication and adopted the children.[8] The court held that the evidence was insufficient to show that the father had abandoned the children. By way of definition the court said:

> "Abandonment imports any conduct on the part of the parent which evinces a settled purpose to forgo all parental duties and relinquish all parental claims to the child.[9] . . . Abandonment involves more than a temporary absence or temporary neglect of

5. Wyo. Comp. Stat. 1945, Sec. 58-213, 58-215, 58-101, 58-108, 58-606, 9-801, 9-802 (Abandonment), 58-214, 58-113, 58-501 (Desertion). "Desertion" and "abandonment" will be considered as synonymous for the purpose of this article, but the writer recognizes contra authority. See Bowling v. State, 62 Ga. App. 540, 8 S.E.2d 697 (1940).
6. Nugent v. Powell, 4 Wyo. 173, 33 Pac. 23 (1893).
7. Lucas v. Strauser, 65 Wyo. 98, 196 P.2d 862 (1948).
8. The natural father re-opened the adoption proceeding under Wyo. Comp. Stat. 1945, Sec. 3-3802, which, at that time, (April, 1947) allowed any party against whom a judgment or order was rendered without service other than by publication in a newspaper, three years after the judgment or order, in which to re-open such judgment or order. The legislature changed this three years to six months effective on May 23, 1947. This was a good change so far as adoption is concerned, in that the time to attack the judgment or order is cut considerably, but note that an adoption decree is only as good as any other judgment. See: Wyo. Comp. Stat. 1945, Sec. 3-3801, Sec. 3-3805, Sec. 3-3810. Also, see Schmelling v. Hoffman, 111 Wash. 408, 191 Pac. 618 (1926).
9. Citing Winans v. Luppie, 47 N.J.Eq. 302, 20 A. 969 (1890).

> parental duties.[10] . . . There must evidence from which it may be inferred that the parent did not intend to reserve the right to retain the children.[11] . . ."
>
> "It was his (the father's) duty to decide where the children were to be kept and care for.[12] . . ."
>
> "Of course the failure of a parent to send money for the support of his children may in some circumstances be quite important in the issue of abandonment. . . . It is of little or no importance if the persons in temporary care of the children are volunteers, who expect no assistance from the parents."

Where the parent whose consent was not obtained *does not later object,* and where he had voluntarily absented himself from the child for a considerable period of time, had contributed little or nothing to the child's support during his abence, and had not attempted to assert any parental rights during his absence, a case of abandonment will be made out.[13]

But *Lucas v. Strauser* tells us that where the non-consenting parent *does* later object, then even if the notice required by Section 58-207 has been published, a finding of abandonment will not be sustained *unless*:

(1) Those asserting abandonment sustain the burden of proving it by "clear and convincing" evidence,

(2) The parent's conduct has evinced "a settled purpose to forego all parental duties and relinquish all parental claims to the child,"

(3) The parent's absence or neglect of parental duty is permanent rather than temporary,

(4) The parent did not intend to resrve the right to reclaim the child.

Lucas v. Strauser also tells us that the following circumstances, taken either separately or together, are *not* sufficient of themselves to constitute abandonment:

(1) Leaving a young child in the care of others,

(2) Not communicating in any way with the child, or those in whose care the child was left, for as long a time as twenty-six months,

(3) Completely failing to contribute to the support of the child for as long as twenty-six months, even though the parent was financially able to do so, especially when volunteers have agreed to care for the child without pay.

The *Lucas* case obviously makes it very difficult to prove abandonment in Wyoming. How do its result and reasoning compare with decisions in other jurisdictions?

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10. Citing Smith v. Smith, 67 Ida. 349, 180 P.2d 853 (1947); In re Snowball's Estate, 156 Cal. 240, 104 Pac. 444 (1909).
11. Citing 2 C.J.S. 21.
12. Citing Biggs v. State, 13 Wyo. 94, 77 Pac. 901 (1904).
13. Nugent v. Powell, 4 Wyo. 173, 33 Pac. 23 (1893).

This has been a problem in other states as well. Varying sets of circumstances have led to different results.[14]

The consent of the natural parent or surviving parent to an adoption proceeding is quite uniformly required in the statutes of the various states. The consent of the natural parents, it is said, "lies at the foundation of adoption statutes."[15]

According to some authorities, "abandonment" is not synonymous with "non-support" under adoption statutes,[16] although non-support may be an important factor in establishing abandonment.[17]

Some courts will find abandonment only in extreme cases. For instance, in an early Utah case,[18] a seventeen year old unmarried mother gave consent to an arrangement for giving her child, at birth, to third parties in order to avoid disgrace and because of importunings of the maternal grandmother. The court, in trying to give an expression as to the type of abandonment intended to exist in order to sever parental ties, said:

> "Abandonment ordinarily means that a parent has placed the child on some doorstep or left it in some convenient place in the hope that someone will find it and take charge of it, or has abandoned it entirely to chance or fate."

In a recent Idaho case,[19] the natural mother, after marital difficulties which resulted in a separation from her husband, voluntarily entrusted her minor children to their maternal grandmother. She then went to California and was not in contact with her parents either through the mails or by telephone, and they did not know where she was for about four months.

The grandmother became ill and delivered one of the children to the custody of third persons who were hopeful of adoption.

The mother, who was still in California, was indicted and pleaded guilty to a morals charge. The court placed her on probation to her parents in Idaho. Upon returning to Idaho, she learned, for the first time, of the

14. See: Yale L.J. Vol. 60, page 1240. Also, In re Sanders, 88 Cal. App.2d 551, 198 P.2d 523 (1948), in which the evidence established that mother of a minor child had "abandoned" the child by her failure to provide for, or communicate with, him for a period of one year. The Lucas v. Strauser case found no abandonment for failure to provide or communicate for over two years.
15. In re Jackson, 55 Nev. 174, 28 P.2d 125, 91 A.L.R. 1381 (1934).
16. Smith v. Smith, 67 Ida. 349, 180 P.2d 853 (1947).
17. Lucas v. Strauser, 65 Wyo. 98, 196 P.2d 862 (1948).
18. Jensen v. Early, 63 Utah 604, 228 Pac. 217 (1924). Although an early decision, it is still upheld. See Worthen et ux v. Walton, 259 P.2d 881 (Utah, 1953).
19. Moss v. Vest, 262 P.2d 116 (Ida., 1953). Supreme Court reversed the lower court's finding of abandonment, but allowed third parties to retain custody of the child, on the grounds that: "As a general rule where a parent seeking the custody of a child is guilty of immoral conduct of such a gross chraacter that the welfare of the child might be endangered in awarding such custody, it will be denied to the parent until at least such time as the parent has reformed to an extent sufficient to remove the danger to the best welfare of the child. 67 C.J.S., Parent and Child, para. 12, p. 61."

adoption proceeding and brought a habeas corpus for the return of her son.

The court said:

> "She did not desert and abandon her children when she placed them in the care of her own parents whom she knew had a good home and were able to properly provide for them. . . . She never, at any time, intended to entirely forsake, utterly renounce and absolutely give them up and evince a settled purpose to forever foergo her parental duties and relinquish all parental claims to her children.
>
> "There can be no abandonment without a specific intent to sever all correlative rights and duties incident to the relationship of parent and child. The evidence must be but, in this case, is far from clear, satisfactory, decisive or convincing that she intended to abandon and desert the children at the time the custody was given to her mother or at any time thereafter."

On the other hand, in a New York case,[20] where a mother left her child with a stranger, agreeing to pay its board, but did not do so, and was absent from the United States for over one year, she was held to have abandoned the child.

However, a heavy burden of proof rests upon those seeking to establish abandonment, and the court resolves all doubts in the natural parents' favor.[21]

The importance to the courts of preserving the natural parent-child relationship is clearly pointed up when one considers the well established concept that custody may be awarded to others in a proper case[22] and that the welfare of the child is of great importance, but quite immaterial in adoption cases until consent or an effective abandonment of parental rights is shown.[23]

It is understood that under the due process clause, serious constitutional impedimenta would loom if an indiscriminate sanction of dispossession of parental rights without consent were attempted.[24] On the other hand, there must be some type of finality to adoption proceedings in order that adoptive parents will not be put on an "anxious seat" or involved in a lawsuit. To strike a balance between these sometimes conflicting pressures in the law relating to abandonment challenges the best powers of our lawmakers and courts.

In conclusion, in Wyoming adoption through abandonment, dispens-

20. Matter of Larson, 31 Hun. 539 (1884); See, also, Richards v. Matteson, 8 S.D. 77, 65 N.W. 428 (1895).
21. See People ex rel. Cucuzza v. Cobb, 94 N.Y.S.2d 616 (1950). Those asserting abandonment failed to meet the burden of proof.
22. Morris, Jr. v. Jackson, 66 Wyo. 369, 212 P.2d 78 (1949).
23. 7 Wyo. L.J. 41 (Fall, 1952) Adoption Without Parental Consent, to Better the Children's Welfare.
24. Worthen et ux v. Walton, 259 P.2d 881 (Utah, 1953).

ing with consent, as it now stands, is of very doubtful value. There is no standard whatsoever by which one might have any reasonable assurance that once the child is placed, it won't be upset by a direct or collateral proceedings, resulting in the setting aside of an adoption based on abandonment.

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ADMINISTRATIVE PROBLEMS RELATING TO ADOPTION

There are three interests which are sometimes conflicting, and which vie for attention in adoption cases: the welfare of the child, the interests of the natural parents, and the interests of the prospective adoptive parents. From the viewpoint of those public officials who have the primary responsibility for administering our adoption laws (the District Judge, the County Attorney, and the County Welfare Department) the over-all problem of synthesizing thsee three sometimes conflicting interests subdivides itself into a number of puzzling administrative problems. The topics discussed in this article are those suggested as a result of conferences with the County and Prosecuting Attorney for Albany County, Mr. Gordon Davis; the District Judge for the second Judicial District of the State of Wyoming, Judge Glenn Parker; and the head of the Albany County Welfare Department, Miss E. Berniece Brown.

Before particular administrative problems are discussed it would be well to take a bird's eye view of the adoption process as a whole. Footnote references are to Wyoming Compiled Statutes, 1945, and pocket supplement, unless otherwise indicated.

Adoptions may be initiated in either of two ways: by the natural parents[1] or by the prospective adoptive parents.[2] Proceedings are commenced by the filing of a petition in the district court showing a desire to relinquish all right to the child on the part of the natural parents, or, when the adopting parents are the petitioners, a showing that they wish to adopt the child.

There are various statutory provisions covering the adoption of an abandoned child:

1. If the abandoning parents consent to the adoption of a child, then he may be adopted, assuming that the District Judge finds the welfare of the child will be promoted thereby. The word "parent" as used in Section 58-201 includes any children's home or society having custody of the child, and such organizations have the same privilege of consent as the natural parents whenever there are no known natural parents.[3]

1. 58-201.
2. 58-202.
3. 58-201 and 58-202.