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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.

LEONARD J. GEORGES

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 these 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 parents¹ 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.

2. If the County Commissioners determine that the parents have abandoned a child without providing for its support and education, then the Commissioners may consent to the adoption of the child; but when the residence of the parents is known, notice must be given to them, and if they do not claim the child within three months, then the Commissioners may provide for the adoption of the child.⁴

3. If it can be proved to the District Court that a child has been deserted by his parents, he can be adopted as an orphan child.⁵ The adoption of an orphan child requires the consent of the County Commissioners according to Section 58-213, or the District Judge according to Section 58-609 (4).

4. If a minor child has remained in the Wyoming State Children's Home for a period of twelve months, the State Board of Charities and Reform may consent to the adoption of the child without the consent of the parents, this consent being legally effective.⁶

5. If the child has been committed to a "child caring agency" such as elaborately defined in Section 58-608, and the agency has been made guardian of the person of the child, the agency may consent to the adoption of the child in loco parentis.⁷ Dependent children may be committed to child-caring agencies (Section 58-609) and the definition of dependent children set out in Section 58-606 includes abandoned children. However, Section 25-101, as amended, also defines dependent children, and it is open to question whether abandoned children are included within this later definition.

It will be noted that in the case of abandoned or deserted children, under various circumstances the County Commissioners, the District Judge, the State Board of Charities and Reform, and child-caring agencies are empowered by statute to consent to the child's adoption in loco parentis.

6. If a petition is presented to the District Judge praying for the adoption of a child, and the petition is not accompanied by the written consent of the parents, a hearing must be held in order to permit the parents to show why the petition should not be granted and an order of adoption given.⁸ It may be presumed that if the petitioners successfully show why the child should be adopted, because of abandonment, and the parents fail to be present at the hearing, or fail to show why the order of adoption should not be made, then the order may issue. But it is understood that most District Judges will not decree adoption over the protest of the child's parents. In this proceeding it is probable that the burden of showing why the child should be adopted is on the petitioners.

4. 58-213.

5. 58-113.

6. 58-217.

7. 58-609.

8. 58-209.

Assuming that consent has been given by the parents or that abandonment has dispensed with the necessity of parental consent, the next fact to be noted is that the child must have resided in the adopting home for six months. Then, if the court finds that it is for the welfare of the child that he be adopted, the adoption order will be entered. In a case in which the abandoning parents have consented to the adoption, the court must approve the relinquishment of the parental rights as well as the suitability of the adopting parents, after the judge of the District Court has investigated such matters.⁹

Bearing in mind our special interest in abandonment, together with the adoption procedure just outlined, the following specific administrative problems may be considered:

1. *As the law now stands, there is a disturbing absence of finality about adoption proceedings based on abandonment.*

In *Lucas v. Strauser*¹⁰ an adoption proceeding was reopened more than two years after the decree had been entered, the adoption was set aside, and the adoptive-parent-adopted-child relationship was broken up just about the time the parties to it had completed their period of adjustment. The two young children involved had possibly forgotten their father by that time. They were thereupon transplanted into an entirely new family situation, involving a new period of adjustment, including a new step-mother. All this came about when the Wyoming Supreme Court found that the father had not in fact or in law abandoned the children. He attacked the adoption proceeding under Section 3-3802, the general statute relating to reopening a judgment rendered upon service by publication. At the time he filed his petition to reopen, 3-3802 authorized such reopening within three years after the date of the judgment. This period has since been shortened¹¹ to six months—a desirable change from the standpoint of adoption proceedings.

But Section 3-3802 is not the only avenue through which an adoption proceeding may be attacked. *Morris v. Jackson*¹² was a habeas corpus proceeding by a father against a husband and wife who had adopted his young son. The Supreme Court of Wyoming permitted this attack on the adoption decree with no indication that such habeas corpus proceeding would be subject to any time limitations, or to estoppel, laches, or other equitable defense.

In addition to direct attacks, collateral attacks can be made upon adoption proceedings, seemingly without time limitation. In *Nugent v. Powell*¹³ proceedings for distribution of the estate brought by the heirs at

9. 58-201.

10. 65 Wyo. 98, 196 P.2d 862 (1948).

11. Session Laws of 1947, Chapter 55, Section 1.

12. 66 Wyo. 369, 212 P.2d 78 (1949).

13. 4 Wyo. 173, 33 Pac. 33 (1893).

law of an intestate raised the issue of the validity of an adoption which had been effected seven years before. Without questioning plaintiffs' right to attack the adoption decree the court decided the case on its merits.

This absence of finality of adoption proceedings is bound to be seriously disturbing to adoptive parents and children, and a deterrent to couples who contemplate adoption. It obviously affects in an adverse way the efforts of the Welfare Department, the County Attorney, and the District Judge, to achieve the maximum benefits from adoption. The enactment of a statute of limitations applying to attacks upon adoption proceedings would seem eminently desirable.

2. *The tendency to overlook the welfare of the child and to emphasize the other interest involved.*

As we have already observed, the welfare of the child must be considered in the light of two other interests: the drastic nature of terminating the blood ties between the natural parents and the child,¹⁴ and the desires and feelings of the would-be adoptive parents. There is a conflict of authority as to whether in adoption proceedings the welfare of the child is paramount to the consent of the natural parents.¹⁵ Although the Supreme Court of Wyoming has not expressly so held, expressions of the court in the *Lucas* case¹⁶ strongly indicate that the welfare of the child is subordinate to the factor of parents' consent:

"Consent lies at the foundation of statutes of adoption. . . .
The first duty of the judge is to see that the necessary consents are given. If they are not, the proceeding is at an end. . . ."

If this interpretation of the *Lucas* case is correct, the administrative problems involved in adopting abandoned children in Wyoming are increased many-fold because of it. The whole proceeding may hinge, not upon the question of whether the proposed adoption will benefit the child, but upon the question of whether "delinquent parents" (if we can coin a phrase) can be persuaded to consent to an adoption. The alternative to consent is to prove abandonment, which, as Mr. Georges' article points out, may be very difficult in Wyoming. In the present article we have called attention to the lack of finality of an adoption based upon a finding of abandonment. Mr. Fisher, in his article, has pointed out that even a finding of abandonment may not dispense with the necessity of consent; all of which adds up to this: the Welfare Department, the County Attorney, and the District Judge must concentrate their attention and efforts not upon the child's present situation and the ability and desire of the would-be adopting parents to improve that condition, but instead upon the often stubborn problem of securing the consent of parents who have shamefully

14. 58-204 "Upon the approval of said court or judge being obtained as aforesaid, the parent or guardian of such minor child shall cease to have any control whatever over the person of such child so relinquished, or right to reclaim the same; . . ."

15. 7 Wyo. L. J. 41, 42 (Fall 1952).

16. *Lucas v. Strauser*, 65 Wyo. 98, 113, 196 P.2d 862, 867 (1948).

neglected their children and have permitted them to exist under deplorable conditions which can only prove to be a breeding ground for juvenile delinquency. The state has an important interest in its children in addition to the sentimental interest which parents have—or should have. Under the present state of our law, the whims of a drunken father and an immoral mother can outweigh considerations of the welfare of their children—either because the parents refuse consent to adoption or because, having ignored the notice given under Section 57-207 during the progress of the adoption proceeding, they can rise up years later to deny any intention of abandoning their children permanently. If the parents should appear in response to the 58-207 notice, and object to the adoption, then in view of the importance which the statutes and the court attach to consent, it is not likely, even if legally possible, that the District Judge would overrule their objections and decree the adoption.

As the law now stands, a child who has been abandoned in fact and now is wanted for adoption must instead remain in a state home or an agency or foster home indefinitely, simply because his parents will not consent to his adoption, or because they can at some future time easily reopen an adoption based upon a finding of abandonment.

In view of the statutes it is difficult to see how our Supreme Court could hold that the welfare of the child is paramount to the necessity of obtaining the parents' consent. It is submitted that the statutes should be amended so as to make it clear that the welfare of the child is the paramount consideration in adoption cases. A conscientious District Judge would always take into account, as one factor affecting the welfare of the child, the willingness of parents to consent to an adoption. If this were done a great deal of benefit would follow in its wake. Such a change in the law would help greatly to solve the problems of those who are "on the firing line" in adoption cases: the Welfare Department, the County Attorney, and the District Judge.

Even if the present law should remain unchanged, the welfare of the child should receive more thought and attention than is sometimes given to it. The vocal interests are those of the natural parents and the prospective parents. No child should be adopted just because someone is willing to take him, or in order to take him off public expense. Here is an area in which the District Judge should avail himself of all the helps he can get, such as social investigations.

3. *The procedure for adoption where abandonment is involved consumes a considerable period of time.*

At the minimum the proceeding will take over six months, including the time the child lives with the adopting parents, the time required to obtain the consent of the parents, or a determination that the child has been abandoned. This time schedule could be considerably lengthened if all does not go smoothly with the consent or the abandonment proceeding.

With respect to a child who is placed in the Wyoming State Children's Home it requires at least eighteen months (twelve months in the Home, and six months in the adoptive home) before the adoption order can be rendered. During this waiting period the prospective adoptive parents and the child may become more and more anxious about the adoption, with no assurance that the final order will ever be rendered. This waiting period is a factor which tends to make good prospective parents shy away from the adoption procedure, not to mention the adverse mental effect it has on the parents and child once the procedure is begun.

A possible solution to this problem would be a statutory requirement that a single state agency handle all adoption cases. Such an agency would tend to eliminate some of the lengthy formalities now present in the Wyoming law, thus shortening the adoption procedure.

Another partial solution is to provide, as some states do, for the entering of an interlocutory decree of adoption at the beginning of the six months' probationary period. This would have a good psychological effect, and throw the burden upon anyone who sought later to set the conditional adoption aside.

4. *The foster home "solution" for abandoned children is not adequate.*

Most children who have been abandoned by their parents are placed in charge of the County Welfare Department and this department places the child in a foster home. This is not always the most desirable solution to the problem of taking care of these children, the reasons being: (a) Foster homes are not necessarily the best homes, morally or financially, (b) Oftentimes those who take children into their homes as foster parents are only doing so for the motive of financial benefit received, (c) By placing a child in a foster home the county assumes a financial burden which can become quite large, the average payment by the county per month, per child, ranging from \$45 to \$50. By actual figures as of September 1953, in Albany County, Wyoming, seventeen children had been placed in foster homes. Of these seventeen children, two had been returned to the homes of their parents by November 1, 1953, while eleven of the children had no apparent possibility of ever returning to their natural homes. If it costs the county \$50 per child, per month, the burden upon the Albany County taxpayers would amount to \$750 per month or \$9,000 per year to keep the remaining fifteen children in foster homes. The failure of the parents to provide any financial support for their child, as is the typical situation, may be a big factor in determining the question of abandonment.¹⁷ Too frequently, however, parents will object to the petition for adoption of their child, and yet they will accept no responsibility in caring for the child.

These abandoned, foster home children are subject to various con-

17. See note 16, supra. "Of course the failure of a parent to send money for the support of his children may in some circumstances be quite important on the issue of abandonment."

tingencies. If the parents return and claim the child, he may be returned to them, provided that they have satisfied the proper authorities of their rehabilitation. But when the parents of such a child do not return to claim him, some other action must be taken. An abandoned child in a foster home may be adopted through the methods above described, upon a proper petition being presented to the court, and there is no statutory limit on the time a child must stay in a foster home before he may be adopted. Adoption would, of course, relieve the county of a financial burden under these circumstances. On the other hand, a foster home child may have parents who will not consent to an adoption, nor is their neglect of the child so complete as to constitute abandonment. Consequently, unless the parents subsequently return to claim the child, he may remain in the foster home until he is able to make his own way in life. During this time he is a financial burden on the county.

5. *There is a special problem in connection with children who are in the custody of "vicious or immoral" parents.*

Several statutes relate to children who are not abandoned, but who live in immoral surroundings. Section 58-501 provides that a guardian may be appointed for "any child having vicious or immoral parents or guardians, or in the custody and control of vicious or immoral people, or surrounded by vicious, corrupt or immoral influences, or the child of a reputed thief or habitual drunkard"; or the court may direct that such a child shall be surrendered to a child-caring agency. One of the statutes defining dependent children¹⁸ includes similar language. Dependent children, as we have noted, may be committed to the State Home or to private child-caring agencies. The Juvenile Court has jurisdiction over parents who engage in immoral practices and may refer the child to the County Welfare Department for placement in a foster home.¹⁹ It has already been pointed out that adoptions may take place through these avenues. The mere fact, however, that a child is living under vicious, corrupt or immoral influences does not constitute him an abandoned child, nor authorize adoption directly out of such surroundings. Children found in such environment may be adopted only by parental consent or through the abandonment route.

Here is another instance where children may be living in an environment greatly detrimental to their welfare, and where beneficial adoptions could be worked out, except for the existence of the consent hurdle and the clumsy, roundabout machinery which the law has provided which in itself discourages adoptions. It points up the desirability of a new statutory proceeding for "termination of parental rights" under such circumstances, through which an adoption would be directly and immediately possible.

18. 58-606.

19. 1-703(4).

6. *Another special problem arises in connection with children whose parent or parents are sent to prison.*

Such children are often left homeless or destitute, and must be cared for in some manner. If the parent's term in prison is not excessively long, it would be best for the County Welfare Department to place the child temporarily in a foster home until the parent is released from prison—or the homeless child could be declared dependent²⁰ and placed in one of the child caring agencies.²¹ But if the parent must remain in prison for an indefinitely long period, adoption of the child would be best, so as to have someone continually responsible for him. It is doubtful whether the consent of the parent to adoption could be obtained in the usual case, nor would there be such a termination of parental rights sufficient to find the child abandoned, especially since the desertion was not voluntary. However, if the child were placed in a child-caring agency or the Wyoming State Children's Home, the agency or, with respect to the Home, the State Board of Charities and Reform, could consent to the adoption, as previously noted.

7. *A "black market" or a "grey market" for babies may exist in Wyoming.*

It is common knowledge that in various places in the country individuals and agencies undertake, for a fee, to obtain babies for couples who for various reasons are unwilling to secure them for adoption through regular channels. Sometimes this takes the form of an outright clandestine sale of illegitimate babies, or babies whose mothers do not want them. This has been referred to as a black market in children. Recent publicity has indicated that one such "ring" was well organized, international in scope, and doing a large business. New "parents" acquiring babies in this way often do not (for obvious reasons) go thru any adoption proceeding whatsoever.

The practice of physicians who attend unwed mothers of arranging to place the child in the home of a couple desiring to adopt a baby has much to recommend it if no fee is charged for the baby and the parents go through regular adoption proceedings. Short-cuts and abuses may result in what we may call a "grey market" for children. To prevent abuses, the creation by statute of a single state agency through which all adoptions must be handled would be desirable. There would then be a uniformity in adoption practice throughout the state, rather than the haphazard practice now existing. The state organization with trained personnel would acquire expertness in such matters as proper investigations of the prospective adoptive parents, and the like, and could provide the District Judge with a complete and accurate picture to guide him in acting upon petitions for adoption. Better homes could be found, because

20. 58-606.

21. 58-609.

the selection would be state-wide rather than local and often secret. This agency would also facilitate the adoption of children from other sources such as the Wyoming State Children's Home, the State Home for Dependent Children, private child-caring agencies, Industrial Institutes for Boys and Girls, foster homes and private homes.

Under existing laws, if the parents do not want to care for their child, the court or County Commissioners should be informed in order that they might obtain the consent of the parents to have the child adopted, or declare the child abandoned and provide for its adoption.

In summary, looking at the adoption problem through the eyes of the Welfare Department, the County Attorney, and the District Judge, the following specific suggestions are urged:

1. That statutory changes be made so that finality in adoption proceedings based on abandonment will be achieved.
2. That the welfare of the child be made the primary consideration in adoption proceedings, with all else secondary.
3. That a proceeding resulting in a "termination of parental rights" be created in order to streamline adoption procedures in abandonment cases and "vicious and immoral environment" cases.
4. That a single state agency be created through which all adoptions must be channelled.

MERLE B. CASE

OBSERVATIONS AND SUGGESTIONS CONCERNING WYOMING STATUTES
RELATING TO ADOPTION BASED ON ABANDONMENT

Abandonment of children (or its equivalent, desertion) is mentioned in no less than ten different Wyoming statutes. Some of these directly relate to adoption and others do not. In order to get the complete statutory picture on abandonment of children we shall at the outset of this article mention and briefly characterize all of the statutes having to do with abandonment. References are to Sections of Wyoming Compiled Statutes, 1945, unless otherwise noted.

The following "abandonment statutes" directly relate to adoption: 58-213, 58-214, 58-113, 58-217 and 58-609.

The first of these provides that orphans and abandoned children may be adopted, and that the County Commissioners may provide for such adoptions in loco parentis. In the case of parents "abandoning their children, without providing for their support and education" the Commissioners are given the same authority as if the parents were dead, except that if the residence of the parents is known, the Commissioners are re-