

A PUBLICATION OF
NATIONAL COUNCIL FOR ADOPTION

ADOPTION ADVOCATE

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June 2014

NO.
72

What are the Factors Leading to Broken Adoptions?

BY DAWN J. POST

Editor's Note: While it is often easier to focus on the majority of successful adoptions, it is important for adoption and child welfare advocates to look closely at the cases in which adoption did not result in the lasting permanency every child needs and deserves. As we work towards providing families for children in which they can be loved and thrive, we must remember that the goal is not permanency for the sake of moving children out of foster care or out of orphanages—the goal is the best possible placement for each and every individual child. For youth in foster care who have already experienced removal from their original homes and parents, it is particularly important to provide and plan for their long-term stability and success.

Introduction

In the field of child welfare, changes in policy goals and objectives to achieve expedited permanency for children in foster care has, in practice, resulted in increased adoptions. While there are no federal standards for data collection to track if an adoption fails, attorneys for children (AFC), child welfare workers, the courts, schools, and community programs working with children often see that the family court system is a revolving door for adolescents who have been adopted and are struggling with mental health issues, behavioral issues, conduct and attachment disorders, and identity exploration and formation.

It seems, from a family court practitioner's perspective, that the forever home that these children were promised can evaporate. They frequently



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return to family court under the umbrella of a different specialty, as subjects in new abuse and neglect, voluntary placement, delinquency, person in need of supervision (PINS), or custody and guardianship cases. Related factors associated with broken adoptions may include: age of the child or adoptive parent; the child's behavioral and/or emotional concerns; prior placement history; sexual abuse history; attachment to sibling groups; attachment to the birth parent; prenatal drug and alcohol exposure; and the lack of services and resources to properly address these issues.¹ They can also include organizational and institutional failures in the child welfare, mental health, education, health care, and legal communities.²

As I thought about the seeming lack of reported numbers on this issue, I discovered that no one in New York City was capturing these numbers, including my own office, the Children's Law Center of New York (CLCNY).³ Some of the difficulty lies in the fact that children's names may be changed and they are assigned different case numbers after they are adopted and return to court.⁴ Frequently, a broken adoption only becomes known as such if the information is volunteered by the adoptive parent or child, or if it is included in the text of the filed petition. Indeed, it appears that only the State of Florida now keeps track of children returned to the system during or after the adoption.⁵

The desire to obtain statistics on broken adoptions was multifold in purpose. In part, the statistics might confirm what I had already surmised based on anecdotal evidence: that broken adoptions are a significant and too often unaddressed issue, not only for the children whose lives are disrupted time and again, but for the child welfare system as a whole. In addition, the statistics could inform a more meaningful policy discussion that could minimize the number of broken adoptions. Unless one can identify the characteristics of such cases, one cannot determine what might have been done to avoid the broken adoptions. Thus, while statistics only reveal part of the picture, I believed it was critical to see what numbers I could find, even on a smaller scale.

As a result, CLCNY conducted a six-month case study to examine cases

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¹ EVAN B. DONALDSON ADOPTION INSTITUTE, WHAT'S WORKING FOR CHILDREN: A POLICY STUDY OF ADOPTION STABILITY AND TERMINATION 12-25 (2004), available at http://www.adoptioninstitute.org/publications/Disruption_Report.pdf.

² ID.; Judith S. Rycus et al., *Confronting Barriers to Adoption Success*, 44 FAM. CT. REV. 210 (2006), pp. 211-218

³ The Children's Law Center New York ("CLCNY") is a nonprofit law firm that represents over 9,000 children per year in custody, visitation, guardianship, family offense, paternity, and related child protective proceedings www.clcny.org.

⁴ E.g., *Adoption and IIS-Policy*, OR. DEPT HUMAN SERVICES (Sept. 17, 1996), http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-g18.pdf (declaring the protocol to be followed for assigning numbers to disrupted adoption cases).

⁵ Kelli Kennedy, *Experts Push Disclosure of Failed Adoptions*, YAHOO! NEWS, Aug. 22, 2011, <http://news.yahoo.com/experts-push-disclosure-failed-foster-adoptions-094112187.html>.

of broken adoptions and the children who return to Family Court in guardianship cases. Below are some of the results⁶ and descriptions of cases in the study.

Death or Infirmary of the Adoptive Parent

The underlying cause of the broken adoption in the vast majority of cases (75%) was due to death (53%) or infirmity (22%) of the adoptive parent. This is not particularly surprising, given the fact that young children are routinely placed with much older caregivers. The average age of the child at the time of the death of the adoptive parent was 12.5. Although the actual age of the adoptive parent was ascertained in only a minority of the cases, some of the specific ages of the adoptive parent in relation to the child at the time of the adoption were startling: a kinship 66-year-old resource adopting a four-year-old; a non-kinship 67-year-old resource adopting an infant; and a non-kinship 71-year-old resource adopting a nine-year-old. Many children described how they took care of their elderly adoptive parent when the parent's health declined; one child's adoptive mother was in and out of the hospital undergoing various treatments and surgeries, and was frequently on bedrest during the seven years following her daughter K.M.'s adoption at the age of six.

P.F.M. was born addicted to drugs and had been diagnosed with ADHD when he was five years old. In P.F.M.'s case, his 68-year-old maternal grandmother adopted him when he was an infant. P.F.M. often slept with his grandmother in the hospice bed when her health declined, and his daily activities were affected. Following the death of his grandmother, as he was dealing with untreated feelings of loss and grief, P.F.M. was passed from one adult to another amidst allegations of neglect. CLCNY represented P.F.M. on three separate guardianship petitions, and he lived with four different relatives over the course of four years.

When adoptive parents are over the age of 60, judges require that the foster or adoptive parent identify a "back-up" resource prior to the adoption. Considering the reliance on identifying and clearing a back-up resource in order to ensure stability and permanency for children adopted by older caretakers, it is significant that only 20% of the guardianship petitioners from the study were the actual identified back-up resource from the adoption in the CLC case study. It is right and natural for kinship placements and kin adoptions to follow after a child has been removed from his or her original parents. But if these placements are with older relatives, it is crucial to identify solid, committed "back-up" resource families in case they are needed.

⁶ Dawn J. Post and Brian Zimmerman, *The Revolving Doors of Family Court: Confronting Broken Adoptions*, 40 Cap. U. L. Rev. 437 (2012), available at <http://www.clcny.org/wp-content/uploads/2012/07/the-revolving-doors-of-family-court-confronting-broken-adoptions.pdf>.

Teenage Behavior Issues

Children adopted at older ages have often endured abuse or neglect, lived in several foster homes, or moved from relative to relative before finding a permanent family. Their sense of loss and rejection may be intense, and they may suffer, at the very least, low self-esteem—or, more seriously, severe emotional and behavioral difficulties as a result of early interruptions in the attachment process with their caregivers.⁷ Children who appeared loving and stable when they were young may develop intense feelings of anger and sadness, and often have resulting behavior issues when they reach adolescence. Post-adoption studies have shown that the most frequently identified problems in adolescence for which adoptive parents sought services were almost always related to the child, and specifically concerned behavioral and emotional problems.⁸

A few years ago I observed a custody case involving adoptive parents, a legal guardian, and a biological mother. It appeared that the child had been adopted from foster care when she was approximately three or four years old. When she reached adolescence, she began acting out, disobeying her adoptive parents' rules, and frequently staying out all night. The year before, the adoptive parents arranged for her siblings' adoptive mother to file for guardianship for her. The case returned to family court because the legal guardian was seeking to vacate the guardianship, as she no longer wanted the young woman in her home. While the three adults all argued and postured about how they did not want the teenager and should not be forced to take her back into their homes, a fourth woman—the biological mother—begged for the chance. She had overcome the addiction issues which originally resulted in her children being removed from her care, had a stable residence, and was in fact employed as a peer counselor in a drug and alcohol rehabilitation facility. However, the court advised her that she had no standing to seek custody, as her parental rights had been terminated. The court dismissed her custody petition. The court refused to vacate the letters of guardianship observing that the legal guardian had the right to decide where the teenager stayed and with whom, including the biological mother as an option.

The response of the Administration for Children's Services (ACS) in situations involving a teenager's misbehavior is often of particular concern. While allegations of abuse made by younger children are taken seriously, allegations of abuse made by teenagers with behavior problems are often

⁷ Christopher G. Hudson et al., *The Development of Postadoption Services in Massachusetts*, in THE POSTADOPTION EXPERIENCE: ADOPTIVE FAMILIES' SERVICE NEEDS AND SERVICE OUTCOMES 135, 144–45 (Martha Morrison Dore ed., 2006).

⁸ Susan Livingston Smith, *A Study of the Illinois Adoption/Guardianship Preservation Program*, in THE POSTADOPTION EXPERIENCE: ADOPTIVE FAMILIES' SERVICE NEEDS AND SERVICE OUTCOMES 67, 77, 79 (Martha Morrison Dore ed., 2006).

essentially brushed off or assumed to be lies. The child receives the message that the physical punishment was warranted, or that its use is acceptable, given the teen's unruly behavior. J.R., for instance, was a 16-year-old who was adopted out of foster care at age two. Her adoptive mother, Ms. T, routinely used excessive physical punishment to discipline her. When she was 12 years old, Ms. T began to deprive her of clothes, food, and a bed as punishment for bad behavior. After a particularly bad argument, Ms. T took her down to the ACS field office and signed her into care. J.R. is now 16, and living in a group residence. Despite being aware of the allegations, ACS did not investigate a neglect case—instead, Ms. T was allowed to simply sign her into care and walk away from her. After several court dates, in which Ms. T has refused to even speak to J.R. and has quibbled with the court about whether J.R. is actually her “daughter,” the ACS caseworker revealed that Ms. T's conduct disturbed him, and that perhaps they should have filed a neglect case. As it stands, however, J.R. is in foster care on a “voluntary instrument,” which alleges that her out-of-control behavior is the sole reason that she cannot remain in her adoptive mother's home.

Although behavior was not cited as the *primary* reason for the broken adoption, either due to the fact that we took a client-directed approach in information gathering or perhaps because adoptive parents did not want to acknowledge that it was their only reason for turning their child over to someone else, it was cited as a contributory factor in 43% of the cases in our study.

Biological Parent Involvement

All of the children that the CLCNY attorneys interviewed informed them that, notwithstanding how young they may have been when they were adopted, they always knew who their biological family members were and where to find them. Curiously, even parents whose rights were terminated and who had not overcome the issues that had originally brought the children into foster care were used by the non-kinship adoptive parent as babysitters and as a visiting resource for children as they grew up. On the one hand, biological family involvement is a positive thing—such involvement allows the child to keep the relationships with people he knows and loves, and minimizes the loss and grief inherent in being apart from one's biological family. Some argue, however, that in some cases biological family involvement was a destabilizing influence, impacting the adoptive parent's opportunity to grow and develop a relationship with the child as well as their ability to parent and make decisions. The courts generally do not consider ongoing biological involvement as a factor at all—if the paperwork states that the parent's rights are terminated, courts tend to assume that that parent is no longer an influence in the child's life.

A.M.H., like many adopted children in the study, was in consistent contact with her biological mother following her placement into foster care and adoption by her non-kinship foster parent. In addition, her six biological siblings, who ranged in ages from 15 to 22 years old and had likewise been adopted by other families, informally visited with their mother or had left their adoptive placements and moved back into their mother's home. A.M.H.'s eighteen-year old biological sister C.M.H., for example, was forced out of the adoptive home that she had shared with A.M.H. when she accused the adoptive mother's boyfriend of inappropriate sexual behavior, and returned to live with their biological mother. The adoptive mother continued to collect the adoption subsidy for both girls, receiving \$1,076.00 a month, but she provided C.M.H. with no support.

A.M.H. initially continued to live with her adoptive mother after her sister moved out. She reported that she was constantly berated, and told by her adoptive mother, "I can't wait until I wash my hands of you. I can't wait until I'm done." After 13-year-old A.M.H. got into a fight in school, her adoptive mother (who had been her caretaker for seven years) gave her a subway card, made her pack her belongings in a garbage bag, and sent her to her biological mother for the summer. Then A.M.H.'s maternal aunt stepped in and petitioned for guardianship, because she was concerned that A.M.H.'s biological mother was continuing to use crack cocaine and was unable to care for A.M.H. and the other children in her care.

The adoptive mother told the ACS worker that the reason she would no longer be caring for A.M.H. was because her older biological daughter had cancer, and that she was overwhelmed by time demands. She further represented to the court that she would take A.M.H. back into her care once her other daughter finished treatment. She continued to receive adoption subsidies for both A.M.H. and C.M.H. on the basis of this representation, despite the fact that there had been a complete breakdown of her relationship with both of them and she had no actual intention of reassuming their care.

In 75% of the cases involving a broken adoption, the immediate biological family (parent, sibling, aunt/uncle, or grandparent) remained involved in the child's life either consistently or intermittently. This figure was startling, as 58% of the cases involved non-kinship adoptions, and all of the adoptions would have taken place prior to the passage of the post-adoption contact agreements legislation in New York State, which allows for communication or visitation between the biological parent and child.

In guardianship proceedings, biological family members constituted the largest petitioning group at 65%, followed by adoptive family members or parents at 27%, and unrelated at 12%. In breaking the data down further, comparing the cases in which the children were adopted by non-kinship

adoptions in which there was no agreement for continuing contact between the child and biological parent but in which a biological family member was the petitioner in the guardianship proceeding, 44% of the cases involved a petitioning biological parent or family member.

Lack of Post-Adoption Services

One further contributing factor to broken adoptions is the lack of post-adoption services. When an adoptive parent and child are struggling, New York City Children's Services will step in only to find a new placement for the child. Children's Services' priority appeared to be focused on identifying a resource to file for guardianship of the children, and scant attention was paid to long-term stability. As a result, little to no effort was made to identify necessary services and offer referrals in the new homes.

Born with a positive toxicology, V.B. was placed in foster care at the age of two. She was adopted by her foster mother three years later. As V.B. reached adolescence, she began displaying suicidal and violent tendencies, which resulted in her adoptive mother dropping her off at a New York City Children's Services field office, claiming her needs were too great to care for her any longer. Rather than offering services to stabilize the adoptive placement, V.B. was hospitalized while Children's Services located a biological aunt and encouraged her to file for guardianship for V.B. The petitioner aunt terminated preventive and intensive case management services which had been put into place following V.B.'s hospitalization, raising concerns that she lacked the resources and skills to attend to V.B.'s mental health needs. The court ultimately finalized the guardianship after the petitioner aunt reenrolled in preventive and intensive case management services with the assistance of CLCNY. However, soon after finalization of the guardianship, the aunt terminated the intensive case management and mental health services, and V.B. entered foster care.

Post-adoption services, defined either as services such as mental health treatment that continued from foster care and beyond the adoption finalization, as a formal referral to an agency offering post-adoption services, were in place at the adoption finalization in 12% of the cases in the CLC case study. However, 27% of the children in the entire case study had a preexisting physical, mental or emotional condition prior to the adoption, suggesting that 15% remained underserved when the adoption was finalized. While New York City Children's Services was involved in a large number of cases in the study, their role was strictly limited to finding a new placement for the child. We did not see any efforts by Children's Services in any of the CLCNY cases to offer post-adoption services in order to stabilize adoptive placements.

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Recommendations and Solutions

Family Court is made up of many stakeholders from the legal and child welfare communities. Undeniably, all stakeholders approach this work with the best of intentions to achieve positive outcomes for the children who come through the doors of family court. Moving children to permanency, whether through return to a parent or through an adoption, is an important goal. However, while a majority of adoptions are successful, the results of the CLCNY study indicate that many children—the exact number of which is unknown—are returning through the revolving doors of family court as a result of broken adoptions.

During the last few years, citywide discussions in New York City have centered on streamlining the adoption process. I am not suggesting that efforts toward that end should not occur. To the contrary, I believe that facilitating these discussions will help improve the long-term outcomes for children who are adopted. In order to begin, however, it is critical to assess the number of children who were previously adopted returning to family court or to the foster care system as subjects in subsequent cases. Since adoptions are broken for vastly different reasons, there is no single solution that will eradicate the problem. Instead, each cause of broken adoptions invites different solutions.

As stated above, the majority of broken adoptions in our study resulted from the death or infirmity of the adoptive parent. Family court stakeholders should thus more critically evaluate adoptions of young children by elderly adoptive parents to ensure that they will be available to raise the children to their majority. Further, considering the reliance on identifying a back-up resource to ensure stability and permanency for children, more effort should be made to emphasize the importance of this commitment.

To address mental health and behavioral problems, pre-adoptive and adoptive parents should be provided with ongoing support and training on how to address children's physical, mental, and emotional disabilities in relation to adolescent behavior and development. In the CLCNY trend study, what may have been normal adolescent behavior was seen as problematic in some cases, and adoptive parents were either ill equipped or lacked the patience to properly address them. This was particularly true in cases in which the adoptive parent was older or had become infirm.

Services often cease completely once an adoption is finalized. To effectively serve adopted children and their families long after finalization, post-adoption service providers must be identified and made available to families—providers that understand the developmental impact of neglect,

abuse, and interrupted attachment on children, and the emotional and mental health needs of children who have been adopted.

Biological parent involvement in an adopted child's life is a reality that cannot continue to be ignored. Studies have shown that adoptions by family members can be confusing to a child, and families often need help with how to deal with parents who remain involved.⁹ As illustrated by the CLCNY trend study, it is no less confusing when the child is adopted by a non-kinship foster care resource and the biological parents or family is present. Families and children should be provided support, counseling, and services to navigate these challenging relationships.

In cases where the adoptive relationship is severed and the child returns to the biological parent, that parent has no ability to regain their rights if they were terminated. The Restoration of Parental Rights statute permits only a restoration prior to the adoption finalization. In addition, biological parents whose parental rights have been permanently terminated due to neglect lack standing to seek custody. This statute should be expanded to include children post-adoption if the biological parent is indeed an appropriate resource.

I believe that the results of the CLCNY study will help facilitate a discussion as we work to find a solution to broken adoptions, recognizing that it is the shared responsibility of the many service providers and disciplines involved in these children's lives, pre- and post-adoption, to understand and acknowledge the number of children impacted and provide appropriate support. This discussion is not limited to New York City, of course; nationally, other states and other courts face the same issue. Since the results of the CLCNY study were originally published as *The Revolving Doors of Family Court: Confronting Broken Adoptions*, a number of individuals and organizations have contacted us to speak about the issues they are facing in their own jurisdictions. Recently, the Washington State Department of Social and Health Services' and Office of the Family & Children's Ombudsman, citing our article, submitted a joint report to the Governor of Washington detailing cases of severe abuse of adopted children, identifying common elements and providing recommendations on abuse and broken adoptions.¹⁰ It is critical that these discussions continue. Only through meaningful dialogue can a shared commitment be made to modify or eliminate the conditions which lead to broken adoptions.

ABOUT THE AUTHOR

Dawn J. Post is the Co-Borough Director of the Brooklyn, New York office of the Children's Law Center New York (CLCNY). She is an expert in children's rights, advocacy, and litigation, and the central theme of her work is that children and adolescents are entitled to have a voice and representation in legal proceedings that have a significant impact on their lives. To that end, she promotes cultural competence to address the underlying issues of poverty and social exclusion based upon race and socio-economic status in the legal and foster care systems in the United States. Dawn provides various trainings on family law matters in New York City, focusing on trial skills, the role of the attorney for the child, custody and visitation, and child protection. Nationally, she has led panels and discussions about providing a voice to children in high-conflict custody and visitation cases and addressing broken adoptions. Internationally, she has lectured on the role and responsibilities of attorneys who represent children. Dawn may be contacted at dpost@clcny.org.



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⁹Smith, *supra*, note 9.

¹⁰ Severe Abuse of Adopted Children Committee Report, Prepared by Patrick Dowd, Office of the Family & Children's Ombudsman, September 2012.