Mississippi College Law Review

Volume 2 | Issue 4 Article 7

1-1-1982

Irrevocability of Consent to Surrender of a Child for Adoption: C.C.I. v. The Natural Parents

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Custom Citation

2 Miss. C. L. Rev. 423 (1980-1982)

IRREVOCABILITY OF CONSENT TO SURRENDER OF A CHILD FOR ADOPTION: *C.C.I. v. The Natural Parents*, 398 So. 2d 220 (Miss. 1981).

In May, 1981, the Mississippi Supreme Court handed down a decision of first impression concerning the adoption of an infant. The court held that the biological parents of an illegitimate child were not entitled to revoke their consent to the surrender of the child to an adoption agency. In reversing the lower court decree granting adoption by the natural parents, the court acknowledged both their rights as the child's natural parents and the fact that they had married subsequent to the date of consent.[1]

In June, 1979, Jane Doe[2] learned that she was pregnant. At this time she was 20 years old, a single working secretary and bookkeeper who had completed two years of college and was living with her parents. John Doe, the father, was 17 years old and a senior in high school. Several times between June and August John attempted to make marriage plans, but Jane remained adamant in her desire to place the child for adoption. Prior to the birth of the child, Jane talked frequently with a representative from C. C. I.[3] concerning the adoption at the instigation of her mother. Mrs. Coe, Jane's mother, had already informed Jane that if she decided to keep the child she would have to move out of her parents' home. Mrs. Coe also informed John that she thought adoption was the best idea for all parties concerned.

The baby was born on February 12, 1980. Three days later, John and Jane decided to get married and raise the child, but Jane changed her mind the next day. February 20, eight days after the child's birth, Jane executed the surrender documents which entrusted care of the child to C. C. I. and consent for its adoption.[4] John consented on February 26 by signing an identical surrender document entitled "Adoption Placement Agreement" before a notary public and in the presence of Jane's mother and aunt. On February 27 John contacted an attorney who sent a letter to C. C. I. to revoke the consent agreement executed by John Doe.[5]

In the original adoption petition, John acted alone. He asserted that he had been coerced into signing the surrender instrument

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1. C.C.I. and N. and Mrs. N. v. Natural Parents, 398 So. 2d 220, 226 (Miss. 1981).

2. Pursuant to MISS. CODE ANN. §§ 93-17-25, - 29, - 31 (1972), all litigants are identified either by initials or fictitious names.

3. "C.C.I., a non-profit corporation, is a licensed maternity home and adoption agency providing foster care and related child services." *C.C.I.*, 398 So. 2d at 222.

4. Pursuant to MISS. CODE ANN. § 93-17-9(1972), a parent is required to wait three days after the child's birth before executing surrender of the child. Jane waited eight days.

5. *C.C.I.*, 398 So. 2d at 221.

by the undue influence of Jane, her mother and the adoption agency representative.[6] In her response, Jane denied that any undue influence had been exerted to force John to consent to the surrender of the child. Further, she stated "that the child's best interest would be served by permitting its adoption, not by John, but by 'a qualified couple'."[7]

John and Jane were married on April 5, 1980, and Jane joined with John to revoke consent for adoption of their child. C. C. I. had already placed the child with adoptive parents, the N's, who filed a cross-petition for adoption. The lower court determined that custody of the child belonged to its natural parents but was reversed by the Mississippi Supreme Court in a unanimous decision giving permanent custody to the N's on the grounds that the Doe's consent was irrevocable.[8]

HISTORICAL PROGRESSION OF ADOPTION

Although unknown at common law,[9] adoption existed in the earliest civilizations. Biblical reference[10] to the practice of adoption reflects acceptance by the Hebrew and Egyptian cultures. However, the Roman culture left detailed accounts of procedural and substantive aspects embodied in civil law[11] which served as a foundation for American statutes.[12] The original purpose for adoption was to prevent the extinction of a family,[13] but adoption was generally regarded as the method for changing the relationship between the adoptive parents and the adoptive child by terminating the adoptee's ties with his natural family and vesting him with the "rights, powers, duties, and liabilities of parents and children."[14] Today, these statutes are also instrumental in benefiting "children in need of a home and parental care."[15]

Common law adoption was quite different. Prior to civil enactments, blood lineage or *jus sanguinis*[16] prevailed. Foster parent arrangements were used extensively to maintain the "continuity

6. Construing MISS. CODE ANN. § 93-17-9 (1972), the court noted that consent to surrender is revocable only when signed as a result of fraud, duress, or undue influence. *Id.* at 226.

7. *Id.* at 223.

8. *Id.* at 220.

9. Green v. Paul, 212 La. 337, 343-46, 31 So. 2d 819, 821 (1947); Mayfield v. Braund, 217 Miss. 514, 519, 64 So. 2d 713, 714-15 (1953); Eggleston v. Landrum, 210 Miss. 645, 651-52, 50 So. 2d 364, 366 (1951).

10. *Exodus* 2:10.

11. Green v. Paul, 212 La. 337, 343-46, 31 So. 2d 819, 821 (1947).

12. *Id.* at 343-46, 31 So. 2d at 821. *See also* State v. Yturria, 109 Tex. 220, 224-25, 204 S.W. 315, 316 (1918); Huard, *The Law of Adoption: Ancient and Modern*, 9 VAND. L. REV. 743, 744 (1956).

13. M.L.H. v. Carroll, 343 S.W.2d 622, 625 (Mo. 1961).

14. W.R. Fairchild Construction Co. v. Owens, 224 So. 2d 571, 574 (1969), citing MISS. CODE ANN. § 1269 (1942).

15. 1 C.J.S. *Adoption of Persons* § 5 (1972).

16. "The right of blood." BLACK'S LAW DICTIONARY 775 (rev. 5th ed. 1979).

of the adoptee's family"[17]; however, an heir not related by blood could not inherit from his adoptive family.[18] The practice of adoption came slowly to the United States without precedence of English common law. Earliest influences came from Spanish and French law rooted in Texas and Louisiana where Roman civil law was the established practice reported in early cases.[19] "The rights of adoption . . . " being ". . . unknown to the common law of England . . . exists in this country . . . only by virtue of statute."[20]

Mississippi Adoption Law

In 1846, Mississippi became the first state to enact an adoption statute.[21] Entitled "An Act giving Power to the Circuit Court and Chancery Courts to Legitimating Bastard Children, Alter or Change Names, and for Other Purposes" this statute articulated the concept that the adoption proceeding would establish the adoptee as equivalent in all rights to a blood relative.[22] This trend away from the English preference for blood lineage was recognized and accepted in adoption statutes enacted by other states.

Adoption law provides uniformity in adoption procedure and enumerates the basic rights accruing to a person who is legally adopted. Early statutes acknowledged both the adoptee's ability to inherit from his adoptive family[23] and the legal change in his name. There was no consideration of the personal desire or interest of the child nor any criterion for ascertaining the person best suited to raise the child. Eventually, three schools of thought developed in the United States which broadened these early procedural statutes into a body of adoption law different from either English common law or Roman civil law.

Parental Rights

Nineteenth century concepts of custodial rights were centered on the parental rights premise.[24] Primarily, this custodial right

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17. Huard, *supra* note 12, at 745. *See also* M.L.H. v. Carroll, 343 S.W.2d 622, 625 (Mo. 1961).

18. 17 HALSBURY, LAWS OF ENGLAND, § 1406 (2d ed. 1935) ("[T]he rights, liabilities, and duties of parents are inalienable.")

19. *Green*, 212 La. 337, 343-46, 31 So. 2d 819, 821 (1947).

20. Eggleston v. Landrum, 210 Miss. 645, 652, 50 So. 2d 364, 366 (1951) (quoting 1 AM. JUR. *Adoption of Children* § 4 (1936)).

21. 1846 MISS. LAWS ch. 35, art. 2.

22. *Cf.* 17 HALSBURY, LAWS OF ENGLAND §§ 1406-23 (2d ed. 1935) (adoption pertaining to inheritance was not passed in England until 1926).

23. This was a qualified right. The 1880 Mississippi statute was interpreted as requiring the adoption petition to set out specifically the benefits to be conferred. *See* Beaver v. Crump, 76 Miss. 34, 58-60, 23 So. 432, 433-34 (1898). *See also* Leonard v. Weston Lumber Co., 107 Miss. 345, 348, 65 So. 459, 460 (1914).

24. COMM. ON THE FAMILY, GROUP FOR THE ADVANCEMENT OF PSYCHIATRY, NEW TRENDS IN CHILD CUSTODY DETERMINATIONS (1980).

was a property right in which the child was considered to be something in the nature of a chattel.[25] To adopt a child, one had to first overcome the presumption that the child belonged with his natural parents. Normally, in any contest between the natural parents and a third party, the child was placed with the natural parents. Interfamily disputes between the natural parents and collateral relatives were resolved in the same manner.

A transformation began to occur in legislative enactments. The welfare and rights of the parents and the child were embodied and protected by the law. These two concepts were totally unique to American law; Mississippi law encompassed them in the statute of 1857.[26] Thereafter, petitioners were required to obtain the consent of the natural parents prior to the filing of the petition for adoption, and the child's consent was also required provided he was over 14 years of age. The statute then specifically provided that an adoption would be decreed if "the interest and welfare of such infant will be promoted by such adoption."[27] Under this statute, the judiciary recognized and sanctioned the concept of promoting the welfare of the child. However, it did so in terms of the parental rights doctrine. The opinion of *Hibbette v. Baines*[28] upheld the natural father's rights to the custody of his children, expressing the two theories as one. "[T]he presumption naturally and legally is that he will love them most and care for them most wisely . . . and that custody of a child by the natural parent or parents . . . is best for the interest, not only of the parent and child, but also of society."[29]

The inadequacies of early adoption law required major substantive changes during the twentieth century. In 1938,[30] the Mississippi legislature began the first of three major revisions. This resulted in the addition of four specific provisions. Prior statutes had established the procedure for adoption and legitimation of children and the recordation of these facts on the petition and in the public records. The legislature changed this to eliminate the requirement of noting on the petition that the "child or person to be adopted is illegitimate."[31] As a consequence, it was also unnecessary to note the name or residence of the father. "For the

25. Katz, *Foster Parents v. Agencies: The Best Interests of the Child Doctrine*, 65 MICH. L. REV. 145, 151 (1966-67).
26. 1857 MISS. LAWS ch. 41, art. 41.
27. *Id.*
28. 78 Miss. 695, 29 So. 80 (1900).
29. *Id.* at 703-04, 29 So. at 81.
30. 1938 MISS. LAWS ch. 268, § 358.
31. *Id.*

purposes of this act, the father of an illegitimate child or person shall not be deemed to be a parent."[32]

Consent of the natural parents has been a requisite to adoption in Mississippi since 1857.[33] The parents were made parties to the proceeding either by joining in the petition or by being summoned as defendants. However, in *Roberts v. Cochran*,[34] Justice Anderson declared that "[a]lthough the father or mother may be unfit to have custody of their child, under our statute it cannot be adopted by another without the consent of both of them."[35] This gave parents an unlimited power to control the child's destiny. Section 358 of the Mississippi Revised Code of 1938 resolved this problem by stating for the first time that if the parents, singly or jointly, should object to the proposed adoption before the final decree, then the child could not be adopted, unless "the parent so objecting had abandoned and/or deserted such infant, or is mentally and/or morally unfit to rear and train it, in either [case] the adoption may be decreed notwithstanding the objection of such parents."[36] This was the first appearance of such a statutory provision in Mississippi.[37]

The 1938 Code revisions provided legislative guidelines in a relatively small area of unregulated adoption law. Many deficiencies remained. Despite the consensual requirement, there were no procedural provisions for presenting the natural parents' consent to the court. The statute merely required that the consent be obtained. Nor was the spouse of the person adopting required to consent to or participate in the petition. The potential for abuse by an adopting family from fraudulently acquired or false consent or the risk of placing a child in a home where only one parent welcomed him required strict regulatory control. Further interest in the welfare of the child supported the idea of taking notice of the child's preference even though he was under fourteen years of age.[38]

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32. *Id.*

33. 1857 MISS. LAWS ch. 41, art. 41.

34. 177 Miss. 546, 171 So. 6 (1936).

35. *Id.* at 553, 171 So. at 7.

36. 1938 MISS. LAWS ch. 268, § 358. This burden of proof on the petitioner to prove the inadequacy of the natural parents to rear the child was espoused nearly 40 years before the statute in Hibbette v. Baines, 78 Miss. 695, 703, 29 So. 80, 81 (1900).

37. *But cf.* MISS. CODE ANN. § 93-15-103(3) (Supp. 1981) (Termination of parental rights absent voluntary consent is permissible on five specific grounds: desertion of the child; abuse of the child; failure to make diligent efforts for the resumption of parental rights after surrender of the child to a child care facility; behavior of the natural parents rendering the return of the child impossible, i.e., alcoholism, drug addiction, severe mental illness, or extreme physical incapacitation; and an "extreme and deep seated antipathy by the child towards the parents." *Id.*

38. McFarlane, *The Mississippi Law on Adoptions*, 10 Miss. L. J. 239, 251 (1937-38).

Although public and private child care facilities existed, they were not regulated by statute nor were they endowed with the ability and authority to consent to adoption. At best, agencies could participate only as the guardian of a child. If a child was abandoned and his parents were unavailable to consent to adoption, the child would remain in the foster care relationships until majority. The psychological impact upon the child of this instability worked contrary to the promotion of the best interests of the child. Additional inadequacies in the system of agency care included the absence of any investigatory procedure for determining the acceptability of prospective parents or for a trial period in which the agency, child, and potential parents could be certain that the placement was in the best interest of all parties.[39]

Other problems existed in the recordation aspect of adoption. After the court had decreed that the adoption be allowed, there was no provision for notifying the local bureau of vital statistics of the change in name and status of the child. Additionally, adoption records were still open to the public. The potential for scandal resulting from the availability of this personal information necessitated confidentiality.[40] Finally, the right of a person adopted to inherit from his new family had not been sanctioned by statutory law. Therefore, it was still necessary to specifically provide for this in the adoption petition. Absent such a provision, the court at its discretion, could find evidence lacking for the child to inherit as a blood relative.

One of these inadequacies was corrected in the second revision of adoption law in the Code of 1942.[41] The parents were permitted to execute a sworn written statement which authorized a person other than the parents or a benevolent charitable or religious organization to act in lieu of the natural parents in court proceedings to consent to the adoption of the child.[42] In this manner it became possible for parents to completely surrender their rights and interests in the child and to vest them exclusively in a child care agency, severing the biological relationship.

The inclusion of the parental capacity to surrender a child to an agency created a problem for the courts—how to resolve the issue of whether consent for surrender is revocable or irrevocable. In the 1945 case of *Wright v. Fitzgibbon*,[43] the

39. *Id.* at 249-52.
40. *Id.* at 252.
41. MISS. CODE ANN. § 1269 (1942).
42. *Id.*
43. 198 Miss. 471, 21 So. 2d 709 (1945).

Mississippi Supreme Court held that the appearance of Mrs. Wright in contest of the proceedings and her objection to the adoption had the effect of revoking her consent given five years earlier in a written agreement signed by her and the two prospective parents.[44]

Mississippi judiciary and legislative opinion concurred on the issue of revocability of consent. However, a conflict developed in Mississippi law, as in many other jurisdictions, between the traditional parental right doctrine and the progressing standard of best interest of the child. As previously stated, the parental right doctrine was premised upon the superior right of natural parents to the custody of their children absent a showing of abandonment or mental or moral incapacity to raise the children. However, courts were beginning to recognize that in certain situations it was not in the best interests of all of the parties that the biological tie be accorded such preference.

Best Interest of the Child

The best interest of the child standard[45] is the second major school of thought advocated in judicial opinions and legislative enactments. Lying at its foundation is the concept of the psychological parent-child relationship. Instead of accepting the rebuttable presumption that the natural parents should be entitled to custody of a child, the court will look to see who the child regards as his "parent." Often, a child will have known only his surrogate parent and will violently oppose attempts to place him with his biological parents. The termination of this initial parent-child relationship may damage the child's sense of continuity at a vulnerable stage of life.[46] To subject the child to more than one change of parents will result in shallow emotional relationships and a pervasive sense of insecurity.[47] Consequently the implication is that the child should be placed as soon after birth as possible and that relationship should be made permanent and inviolable. For parents struggling with the decision to retain their child or to surrender him for adoption, the desire to postpone the decision for a few months after birth may seem inconsequential. But

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44. *Id.* at 471, 21 So. 2d at 709. *See* MISS. CODE ANN. § 1269-09 (1942) ("[N]o infant shall be adopted to any person if either parent, after having been summoned to sign the petition for adoption, shall appear and object thereto before the making of a decree for adoption.").

45. *See* J. GOLDSTEIN, A. FREUD, and A. SOLNIT, BEYOND THE BEST INTEREST OF THE CHILD (1973).

46. *Id.* at 31-40.

47. *Id.* at 33.

for an infant, two months can be the difference between relating to a person as a parent or as a stranger.[48]

Rights of the Parent v. Best Interests of the Child

Mississippi Courts struggled with the parental right and best interest of the child doctrines for ten years following the 1942 code revision but reached no conclusive decision. For eighty-five years, statutory language had remained unchanged "that the interest and welfare of the person sought to be adopted will be promoted by the adoption . . ."[49] Case precedence did little to clarify the ambiguity of the legislative language. The case of *Hibbette v. Baines*[50] held that "the pole star is the best interest of the child"[51], while twelve years later the supreme court relied upon the parental right doctrine to return two children to their natural mother's care.[52]

Four cases were presented to the court prior to 1955 concerning child placement. Of these, three relied on the best interest of the child doctrine.[53] However, as *Mayfield v. Braund*[54] reflects, the court was not willing to dispense with the parental right doctrine.

In January, 1955, the Mississippi legislature changed the provisions of this statute in a recodification of the laws of Mississippi. Section 1269 was repealed by present Mississippi Code Annotated section 93-17-9 (1972) which reads in part:

> Any person required to be a party to an adoption proceeding by section 93-17-5 may execute the surrender of a child to a home by sworn or acknowledged instrument which shall include the following: the name of the child and the home, that there is thereby vested in the home the exclusive custody, care and control of such child; that all parental rights to such child including the right of inheritance of the natural parents and the child shall not be affected until entry of a final decree of adoption; that the home is authorized to execute a con-

48. *Id.* at 40.

49. MISS. CODE ANN. § 358 (1930); 1910 MISS. LAWS ch. 185; MISS. CODE ANN. § 299 (1917); MISS. CODE ANN. § 492 (1892).

50. 78 Miss. 695, 29 So. 80 (1900).

51. *Id.* at 725, 29 So. at 89.

52. Kinnaird v. Lowry, 102 Miss. 557, 59 So. 843 (1912).

53. *See generally* Fowler v. Sutton, 222 Miss. 74, 75 So. 2d 438 (1954) (stepfather entitled to adopt boy after mother's death despite grandparents' opposition); Mayfield v. Braund, 217 Miss. 514, 64 So. 2d 713 (1953) (best interest standard is activated only after determination that the child has been abandoned); Eggleston v. Landrum, 210 Miss. 645, 50 So. 2d 364 (1951) (best interest of the child was promoted by placing him with adoptive parents who follow the beliefs of the Christian Science faith); Wright v. Fitzgibbons, 198 Miss. 471, 21 So. 2d 709 (1945) (best interest of abandoned child was to be adopted by its natural mother).

54. 217 Miss. 514, 64 So. 2d 713 (1953).

> sent to adoption as provided by this chapter and that process in any adoption proceeding is waived; that such surrender shall *be irrevocable* and that such person will not, in any manner, interfere with the custody of such child thus vested in the home. Said instrument shall not be executed until three (3) days after the birth of the child and shall effectually vest in the home all rights thus surrendered and all powers thus created, with the rights and power to execute the consent to adoption as required in this chapter authorizing the court to vest in the child and the adopting parent or parents the rights herein provided.[55] (emphasis added)

Notice the absence of language allowing revocation under circumstances of undue influence.

This extensive recodification resolved many of the problems cited in the 1938 and 1942 codes. Spousal consent was now required[56] and procedural rules for the general presentation of consent to the court were included.[57] Protection of the child and families were advanced by the addition of sections providing for the investigation of potential parents[58] and trial periods[59] before a final decree, notification of the local bureau of records for concealment of records[60] and reissuance of new birth certificates[61] and the definition of proper child care facilities.[62]

III. Regardless of what the statute expressed on its face, the court interpretation of Chapter Seventeen has added depth and a personal interest to the law. Rather than accept either the parental right doctrine or the best interest of the child standard, the court chose a middle of the road approach to adoption and custody disputes. The majority of the states, including Mississippi, leaves the matter to the discretion of the court. "Revocability of the surrender of a child and consent for another to adopt a child is not to be decided upon rigid or technical rules. Such a decision must be made upon sound judicial discretion."[63] In this standard, then, the court may draw upon both doctrines to render the most equitable result.

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55. MISS. CODE ANN. § 93-17-9 (1972).
56. *Id.* at § 93-17-3.
57. *Id.* at § 93-17-5.
58. *Id.* at § 93-17-11.
59. *Id.* at § 93-17-13.
60. *Id.* at §§ 93-17-25, - 29, - 31.
61. *Id.* at § 93-17-21.
62. *Id.* at § 93-17-9.
63. C.C.I. v. Natural Parents, 398 So. 2d 220, 226 (Miss. 1981). *See* J.C. v. Natural Parents, 417 So. 2d 529 (Miss. 1982).

The most steadfast rule favored by the court holds that in a contest between the natural parents and a third party, it is presumed that the best interest of the child will be best served by allowing him to remain with the natural parents.[64] In several cases, custody has been granted to the natural parents under less than ideal circumstances. It is not the court's responsibility to see all children placed where they can be exposed to the greatest economic benefits. Consequently, custody between the natural parents and a child has been restored even though the mother was too immature to provide perfect care,[65] and where the natural father had tried to kill the children's stepfather,[66] and where the children's natural mother was convicted in a military court of the death of her husband.[67]

Conversely, under the best interest of the child standard, the court has resolved that custody be denied to a natural father who was given life sentence for murdering his wife,[68] and to the natural parent unsuccessfully alleging undue influence.[69]

The three most recent cases decided within one year of the *C. C. I. v. Natural Parents*[70] decision are *Naveda*[71] which supports the best interest of the child standards while favoring the natural parents, *Brown v. Robinson*[72] which falls most readily under the parental rights doctrine, and *In re Adoption of a Minor Child J. C. and N. C. v. Natural Parents, Scott County Welfare Department, D. E. S. and J. A. S. Intervenors*[73] which espoused the use of judicial discretion in determining the placement of the child.

The Instant Case

Three contentions are made by the natural parents in their argument: that Mississippi Code Annotated section 93-17-9 (c)

64. Naveda v. Ahumada, 381 So. 2d 147 (Miss. 1980); Rodgers v. Rodgers, 274 So. 2d 671 (Miss. 1980); Newman v. Samples, 203 So. 2d 65 (Miss. 1968); Ford v. Litton, 211 So. 2d 871 (Miss. 1968).

65. Cook v. Cook, 267 So. 2d 296 (Miss. 1972).

66. Yerber v. Dearman, 341 So. 2d 108 (Miss. 1977).

67. Brown v. Robinson, 402 So. 2d 354 (Miss. 1981). *See also* Hall v. Hall, 202 So. 2d 641 (Miss. 1967) (mental capacity of the natural mother allegedly insufficient for her to care for her children); Schillereff v. Ademany, 240 Miss. 275, 127 So. 2d 392 (1961) (natural mother's alleged adulterous life style).

68. Shoemake v. Davis, 216 So. 2d 420 (Miss. 1968).

69. Miques v. Fountain, 203 So. 2d 483 (Miss. 1967) (not cited as precedent in C.C.I. v. Natural Parents, 398 So. 2d 220); *see also* Parish v. Stevens, 228 So. 2d 607 (Miss. 1969) (adoption by grandparents was in the best interest of the child).

70. 386 So. 2d 220 (Miss. 1981).

71. Naveda v. Ahumada, 381 So. 2d 147 (Miss. 1980).

72. 401 So. 2d 354 (Miss. 1981).

73. 417 So. 2d 529 (Miss. 1982).

(1972) is unconstitutional, that the consent was executed under conditions of undue influence and duress, and that these grounds constitute good cause to revoke the consent.[74]

The constitutional question results in part from the language in Mississippi Code Annotated section 93-17-5 which states that "[i]n the case of a child born out of wedlock, the father shall not be deemed to be a parent for the purpose of this chapter . . . ."[75] Elsewhere the statute refers to the surrender of the child to a home for adoption by "any person required to be a party to an adoption proceeding by section 93-17-5."[76] Recent decisions of the United States Supreme Court have held that state statutes declaring that a father has no rights in his child when it was born outside of the marriage relationship are unconstitutional under the fourteenth amendment as violative of the due process clause.[77] However, the Mississippi Supreme Court declined to determine the outcome of this case upon the constitutionality of these provisions of the Mississippi Code. Reversing the lower court the Supreme Court stated that it did "not hold statutes unconstitutional when the decision may rest on other grounds."[78]

Consent

Since 1955, the validity of parental consent to the surrender of a child to a child care agency has been regulated by the following language: "the home is authorized to execute a consent to adoption . . . and . . . process in any adoption proceeding is waived; that such surrender shall be *irrevocable* and that such person will not, in any manner, interfere with the custody of such child thus vested in the home."[79] (emphasis added). The issue before the Mississippi Supreme Court for the first time was whether parental consent to the surrender of a child to a licensed home is revocable on grounds of duress or undue influence. Answering this query in the affirmative, the court held that evidence of undue influence was insufficient to warrant revocation of the consent in this case.

Statutorily, such consent is irrevocable.[80] Despite reluctance

74. C.C.I. v. Natural Parents, 398 So. 2d 220, 222-25 (Miss. 1981).

75. MISS. CODE ANN. § 93-17-5 (1972).

76. *Id.* at § 93-17-9.

77. Stanley v. Illinois, 405 U.S. 645 (1972).

78. C.C.I., 386 So. 2d at 222 (citing Kron v. Von Cleave, 339 So. 2d 559, 563 (Miss. 1976)); *but see* John Doe and a Female Infant v. Attorney W., 410 So. 2d 1312 (Miss. 1982) natural father's rights can be terminated pursuant to MISS. CODE ANN. § 93-15-103 (Supp. 1981).

79. MISS. CODE ANN. § 93-17-9 (1972).

80. *Id.*

by the courts in other jurisdictions to allow natural parents to withdraw their consent, statutes generally provide for one of three options: absolute revocation prior to the final adoption decree; revocation during a grace period or at the discretion of the court; or, in the absence of fraud or duress, that consent is final and irrevocable. Court rendered decisions have rejected attempts to have consent revoked when the parents had been fully informed of the legal consequences and had subsequently executed the surrender voluntarily after considerable deliberation.

In reaching its decision, the Mississippi Supreme Court turned for guidance to Louisiana, a civil law jurisdiction containing a similar statutory provision.[81] The Supreme Court of Louisiana had unequivocally determined that the "act of surrender executed by both parents of a child to a licensed adoption agency . . . is irrevocable."[82] Accepting that court's rationale, the Mississippi Supreme Court held that under section 93-17-9, "revocation can be allowed only where sufficient legal grounds are established by clear and convincing testimony, and such evidence is lacking here. Consent is not to be arbitrarily withdrawn."[83]

Undue Influence

The question of whether agency and parental actions constituted duress or undue influence in this case was also an issue of first impression. In the absence of prior judicial opinion defining undue influence used in obtaining parental consent for adoption, the judiciary relied on legal treatises, case decisions resolved on grounds other than adoption and upon extraterritorial cases in order to formulate the requisite definition.[84]

"Execution of the surrender documents . . . without the free exercise of their own volition untainted by domination, threats

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81. Any parent of a child, whether the child was born in wedlock or out of wedlock and whether the parent is over or under 21 years of age, may surrender the permanent custody of his child to an agency for the purpose of having the child adopted by appearing before a notary and two witnesses and declaring that all of his rights, authority, and obligations, except those pertaining to property are transferred to the agency. This authentic act shall be signed by the agency and shall constitute a transfer of custody to the agency after which the agency shall act in lieu of the parent in subsequent adoption proceedings. No surrender of the custody of a child shall be valid unless it is executed according to the provisions of this part.

LA. REV. STAT. ANN. § 9:402 (West 1973).

82. Golz v. Children's Bureau of New Orleans, Inc., 326 So. 2d 865 (La. 1976).

83. *C.C.I.*, 386 So. 2d at 226 (citing CLARK, LAW OF DOMESTIC RELATIONS § 18.4 (1968).

84. Duress is any wrongful act or threat which overcomes the free will of a party. Generally this definition is associated with threats of violence, imprisonment, or economic hardship. Consent obtained through the use of duress renders a transaction voidable. J. CALAMARI AND J. PERILLO, CONTRACTS §§ 9 - 2, - 3, - 8 (2d ed. 1977). Undue influence is generally defined as being that

of coercion of another person"[85] constitutes duress and undue influence in the acquisition of parental consent for adoption in Mississippi. Four means of exercising such influence were recognized in this decision: overpersuasion,[86] threats of economic detriment or promise of economic benefit,[87] the invoking of extreme family hostility both to the child and the mother,[88] and undue moral persuasion.[89]

The burden of proof is placed with the party asserting the exercise of undue influence in obtaining consent.[90] "Such a burden of proof must be met by clear and convincing evidence"[91] according to the court, rejecting the lesser burden of a preponderance of the evidence. Any presumption that undue influence had been exercised prior to consent is rejected by the court since this defense must be pleaded affirmatively to receive court recognition.

In the present decision, the court held that there was no evidence of excessive influence or duress exercised against the young parents.[92] John and subsequently Jane Doe asserted that both the agency case worker and Mrs. Coe, Jane's mother, were primarily responsible for the coercive acts. Throughout Jane's pregnancy, the case worker pointed out the problems Jane would face as an unwed mother. Also, each young mother contemplating the surrender of a child underwent continual group therapy[93] with other women seeking agency help, and she was informed of the option to leave her child with the agency for no more than three

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influence which controls "the mental operations of the one influenced by overcoming his power of resistance and thus obliging him to adopt the will of another, thereby producing . . . the performance of some act [by the influenced person] which he otherwise could not have done." Four elements comprise this doctrine: "(1) a person is subject to influence, (2) an opportunity to exert undue influence, (3) a disposition to exert undue influence, and (4) a result indicating undue influence." In evaluating whether a person has been subject to undue influence the total factual situation must be examined. 25 AM. JUR. 2D *Duress and Influence* § 36 (1966).

85. C.C.I. v. Natural Parents, 398 So. 2d 220, 225 (Miss. 1981) (citing Allen v. Volunteers of America, 378 So. 2d 1030 (La. 1979)).

86. Sorentino v. Family and Children's Soc'y of Elizabeth, 72 N.J. 127, 367 A.2d 1168 (1976) (threats of harassment and litigation by agency officials against a sixteen-year-old unwed mother).

87. Downs v. Wortman, 228 Ga. 315, 185 S.E.2d 387 (1971) (natural mother offered plane fare in exchange for execution of the adoption agreement).

88. Allen v. Morgan, 75 Ga. App. 738, 44 S.E.2d 500 (1947) (family pressure emphasizing detrimental effect to social standing in the community). *In re* Adoption of Susko, 363 Pa. 78, 69 A.2d 132 (1949) (unwed mother accused of causing her mother's paralytic condition and the death of her grandmother).

89. Huebert v. Marshall, 132 Ill. App. 2d 793, 270 N.E.2d 464 (1971).

90. *C.C.I.*, 398 So. 2d at 223 (citing 8 P.O.F. 2D *Adoption—Undue Influence* § 10 (1976)).

91. *Id.*

92. *Id.* at 225.

93. Interview with Linda Raff, Social Worker at Catholic Charities, Inc., in Jackson, Miss. (October 28, 1981).

weeks before she made her final decision.[94]

Mrs. Coe's advice and actions during Jane's pregnancy, although favoring surrender of the child, did not constitute undue influence. Jane was found to be a mature woman with several years of college experience, holding a responsible job prior to the pregnancy. In the court's opinion, "[s]he was well aware of her options."[95] Additionally, both Jane's and John's testimony contradicted their assertion that parental pressure was excessive or coercive.[96]

The Mississippi Supreme Court further stated that any surrender of a child is "not [expected to be] free from emotions, tensions and inescapable anxieties . . . No doubt almost any person situated as they were would experience emotional trauma, but there is no law to the effect that surrender of a child is valid only if done without such distress. If such were the law almost any child surrender and subsequent adoption decree would be attacked."[97]

Analysis

Consent is an indispensible requisite if the court is to render a valid adoption decree. Usually the adoption procedure requires two steps which are separate and distinct:[98] the termination of the natural parents legal rights and responsibilities, and the creation of adoptive parents legal rights and responsibilities[99] in which all of the rights, powers, duties and obligations of the child vest in the adoptive parents and relatives as if the child had been born into the family.[100]

This consensual requirement is waived under five specific circumstances in Mississippi.[101] In all other circumstances, that consent must be voluntary. Generally, both parents must consent when they are married and desire to surrender the child. However,

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94. *C.C.I.*, 398 So. 2d at 223.

95. *Id.*

96. Jane testified as follows:

Q.: Is it your testimony that your mother told you that you should put the baby up for adoption?

A.: No, she didn't tell me that.

Id. at 225.

97. *Id.* at 224.

98. H. CLARK, DOMESTIC RELATIONS § 5.3 at 304 (1974).

99. *Id.* at 275.

100. W.R. Fairchild Construction Co. v. Owens, 224 So. 2d 571, 574 (1969).

101. MISS. CODE ANN. § 93-15-103 (Supp. 1981). *Cf.* Doe v. Attorney W., 410 So. 2d 1312 (Miss. 1982) (termination of a father's parental rights under § 93-15-103); Reyer v. Harrison County Dept. of Pub. Welfare, 404 So. 2d 1023 (Miss. 1981) (insufficient evidence to compel termination of parental rights).

when the child is illegitimate, the majority of state statutes requires only the natural mother's consent.

The integrity of the parent-child relationship is protected by the necessity for voluntary consent before a child may be surrendered. A voluntary consent is the execution of a statutory consent to adoption or a proceeding for the statutory relinquishment of the child. Statutory and case law generally accept undue influence and duress as the sole reason for revoking parental consent to surrender a child. "Legal consent to an adoption actually does not exist when obtained by such means."[102] However, this adoption standard has a high burden of proof, and it is the duty of the party advocating revocation to prove by clear and convincing evidence that the consent was given involuntarily as the result of this coercion.[103]

The view espoused by the supreme court in this case rests on a solid foundation of statutory law and judicial opinions throughout the nation. Finally, the vacillation exhibited by Jane Doe in considering the possibility of marriage and her early opposition to John's contest of the consent which subsequently turned into support of her husband's actions reflected a lack of commitment to the child's welfare that the court could not ignore. Even without such conclusive evidence against returning the child to its natural parents, section 93-17-9 supports such a decision by rendering consent to the surrender of a child irrevocable. The further opportunity provided by the court in allowing the Does to establish "either fraud, duress or undue influence by clear and convincing evidence"[104] as a means of avoiding their contractual obligation, was ineffectual to sway the court.

Considering the four classes of actions which comprise the Mississippi definition of undue influence, it is easy to see the degree to which appellees failed to meet their burden of proof. Overpersuasion has been held to include threats of harrassment and litigation,[105] while failure to apprise the natural mother of alternatives to surrender of a child has been denounced as undue moral persuasion.[106] Promises of plane fare home offered to the natural mother if she will execute the surrender document constitute undue financial influence[107] but arrangements for the payment of

102. 2 AM. JUR. 2D *Adoption* § 78 (1966).
103. C.C.I. v. Natural Parents, 398 So. 2d 220, 223 (Miss. 1981).
104. *Id.* at 226.
105. *Sorentino*, 72 N.J. 127, 367 A.2d 1168 (1976).
106. Huebert v. Marshall, 270 N.E.2d 464 (Ill. 1971).
107. Downs v. Wortman, 228 Ga. 315, 185 S.E.2d 387 (1971).

prenatal expenses do not.[108] These categories are not applicable to the present fact situation. However, the facts did allow application of the family hostility argument. The most compelling case recounts the pregnancy of a seventeen year old girl which resulted in members of her family leaving home and accusations that her predicament had caused both her mother's stroke and the death of her grandmother.[109]

Obviously, the pressure in the last case cited had reached the level of forceful harrassment vitiating the mother's consent, whereas the parental pressure in the present case merely constitutes persuasion. Reaching this conclusion, the court did not assimilate from other jurisdictions criterion which would distinguish each category of undue influence. Consequently a large area of the law is still unresolved and will have to wait on cases requiring specific classification.

Despite the strength of its decision based on legal principles, the court took one final step to fortify its position:

> Strong policy reasons support such a holding. If a parent is allowed an unrestricted right to challenge his act of surrender, uncertainty and confusion among adoption agencies would undoubtedly result, making placement more difficult [resulting in detriment] to the children involved as well as to the public welfare. The statutory safeguards are themselves sufficient to guard against a hastily made decision.[110]

The court does not elucidate this point any further in the text of the case. It adds a new dimension to the case, however, by drawing first on principles of contract law as a method of resolving the issue. Secondly, it reflects the importance which the court affords to factors totally extraneous to the immediate issue before it.

Conclusion

The unanimous decision by the Mississippi Supreme Court holding that consent for the surrender of a child is irrevocable is the correct decision. Its precedential value is reflected in three ways. It interprets statutory provision 93-17-9 to encompass an option of revocability if the high burden of proof can be met. This burden is clearly defined providing guidelines to be adhered to in lower courts. Finally, the court provides the necessary latitude

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108. Hendrix v. Hunter, 99 Ga. App. 785, 110 S.E.2d 35 (1959).
109. *In re* Adoption of Susko, 363 Pa. 78, 69 A.2d 132 (1949).
110. C.C.I. v. Natural Parents, 398 So. 2d at 226.

for decisions to be made "upon sound judicial discretion"[111] and not by rigid technical rules.

A simple analysis of the facts of this case without delving into legal principles reveals the logic behind the court's holding. Primarily, Mississippi statute 93-17-9 prevents revocation of the surrender agreement. The interpretive exception to this rule allowed by the court through proof of duress or undue influence could not support the lower court ruling since the appellees were unable to sustain their burden of proof. The appellees negated their own assertions by their own testimony. Jane's decisions to relinquish the baby, then to carry and raise the child, then again to relinquish with express disapproval of John as the parent, and her final act of marrying John and joining his petition to regain the child evinces instability contrary to the child's best interest. Such vacillation was condemned in *Golz v. Childrens Bureau of New Orleans, Inc.*,[112] a case relied on by the Mississippi Supreme Court in rendering its decision. Finally, the parents relied on case precedence in their defense established under a repealed section of the Mississippi Code.[113]

The court based its decision on established legal principles capable of precedential value. The major premise behind the unanimous decision of the Mississippi Supreme Court holding consent for the surrender of the child irrevocable lies in contract law. Language concerning revocation, duress and undue influence pervades the opinion as rationalization for the decision. The offer-acceptance-consideration trilogy of contract law is met by the adoption-surrender document. In consideration for placing the child with acceptable adoptive parents,[114] the natural parents offer to surrender their child to the child care agency.

Two additional factors support the court's decision. In the court's language, "strong policy reasons support such a holding."[115] However, the court provides only an enigmatic example of such a strong policy reason.[116] Secondly, the court concludes with a

111. *Id.*

112. 326 So. 2d 865 (La. 1976). This dealt with indecisive parents also. The child spent the first six months of life moving back and forth between the custody of the natural parents and the temporary foster care of the Children's Bureau. The court finally upheld placement with adoptive parents.

113. C.C.I. v. Natural Parents, 398 So. 2d 220, 225 (Miss. 1981).

114. The requirements of acceptable adoptive parents are stated in MISS. CODE ANN. § 93-17-3 (1972).

115. C.C.I. v. Natural Parents, 398 So. 2d at 226.

116. "If a parent is allowed an unrestricted right to challenge his act of surrender, uncertainty and confusion among adoption agencies would undoubtedly result, making placement more difficult which would be detrimental to the children involved as well as the public welfare." *Id.*

statement concerning the necessity for maintaining the integrity of the law through its decision.[117] In this particular case, the holding and these two factors receive mutual support from each other. Placing the child with the adoptive parents supports the status and reliability of child care agency action. It ensures conclusive and inviolable adoptions which will encourage people to utilize this procedure as opposed to private adoptions or blackmarket baby sales.

Prior to the *C.C.I. v. Natural Parents* decision, the court relied on the principles of parental rights, best interest of the child, statutory interpretation and their own judicial discretion in reviewing each case individually to assess the welfare of the parties concerned. In essence the opinions evidenced a humanistic approach to a difficult legal question and a molding of legal principles to aid in defining its parameters. However, the *C.C.I.* decision marks an attitudinal shift in the court's perspective of adoption cases. The emphasis on the welfare of the child has been subrogated to an emphasis on the contractual aspects of the surrender agreement and its impact on society as opposed to the individual. In this move toward contract law, policy reasons, and maintenance of the integrity of the law, the court is moving closer towards the mechanical formula that they denounced.[118]

A metamorphosis from the best interest of the child standard to contract law could be detrimental in the long run. An "act of adoption creates a status rather than a contract relation."[119] By transforming the custody decision process into a mechanical formula[120] the justices are acting to create the very situation they renounced in their opinion. "Revocability of the surrender of a child and consent for another to adopt a child is *not* to be decided upon rigid or technical rules. Such a decision must be made upon sound judicial discretion."[121] (emphasis added). As incapable of concrete definition as the best interest of the child standard is, it still supports both this decision and the court's desire to render its custody decision based on "judicial discretion."[122]

The best interest of the child standard is adopted by advocates in both the legal and mental health professions. The psycho-legal

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117. C.C.I. v. Natural Parents, 398 So. 2d at 227.

118. *Id.* at 226.

119. Green v. Paul, 212 La. 337, 31 So. 2d 819, 821 (1947) (citing 2 C.J.S. *Adoption of Children* § 1 at 367-68).

120. C.C.I. v. Natural Parents, 398 So. 2d at 226.

121. *Id.*

122. *Id.*

keystone lies in the best interest of the child standard expressed in numerous Mississippi decisions beginning with *Hibbette v. Baines.*[123] Supporting this theory is a treatise often cited in case decisions entitled *The Best Interest of the Child.*[124] As noted above this is not a purely psychological theory but is inextricably tied to the law of adoption and child custody determination.

The concept of doing what is best for the child and the necessity of the permanency of placement are the two important principles espoused. In this case of first impression, it was in the best interest of the child to be placed with the adoptive parents who had consistently shown a desire for the child and a dedication to care for him on a daily basis. With respect to permanency in the placement of the child, not only was the integrity of the adoption process maintained, but the best interest of the child was served by leaving him with the people he had come to know as his parents. The court as *parens patriae* had a duty to uphold the law to the protection of the infant. Any other decision would have been a failure to enforce this duty.

However, the court mentioned the best interest of the child only once in its decision.[125] This is inconsistent with prior Mississippi case law[126] in which the court has gone to great lengths to serve the best interest of the child. Similarly, the court failed to take notice of applicable statutory language advocating the best interest of the child standard.

Finally, the court's allusion to strong policy reasons and the integrity of the law moves the court further from the interest of the child whose destiny is to be determined by the court and closer

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123. 78 Miss. 695, 29 So. 80 (1900).

124. *See* Goldstein, Freud, and Solnit, *supra* note 45.

125. C.C.I. v. Natural Parents, 398 So. 2d 220, 226 (Miss. 1981).

126. *See generally,* Naveda v. Ahumada, 381 So. 2d 147, 149 (Miss. 1980) ("[T]he best interest and welfare of the child is the controlling consideration."); Yarber v. Dearman, 341 So. 2d 108, 110 (Miss. 1977) ("The court has the power . . . to determine what is best for the children insofar as their custody is concerned."); Hall v. Hall, 202 So. 2d 641, 642 (Miss. 1967) ("[A] trial judge . . . whose very office dedicates him to doing that which is in the best interest of children."); Schillereff v. Adamany, 240 Miss. 275, 278, 127 So. 2d 392, 393 (1961) ("[T]he good of the child is the chief concern of the court."); Brown v. Brown, 237 Miss. 53, 58, 112 So. 2d 556, 558 (1959) ("The paramount consideration is the child's welfare."); Brunt v. Watkins, 223 Miss. 307, 312, 101 So. 2d 852, 855 (1958) ("It is universally recognized that adoption laws have as their primary purpose the promotion of the welfare of the child."); Fowler v. Sutton, 222 Miss. 74, 76, 75 So. 2d 438, 439 (1954) ("[I]n adoption cases the test is whether the interest and welfare of the child sought to be adopted would be best promoted by the adoption. In other words, the criterion is the best interest of the child."); Mayfield v. Braund, 217 Miss. 514, 533, 64 So. 2d 713, 721 (1953) ("[I]t will be for the real best interest of the child that it should be and remain in the custody of the parents."); Eggleston v. Landrum, 210 Miss. 645, 652, 50 So. 2d 364, 366 (1951) ("Where the statutes provide for the adoption, there is unanimous agreement that the welfare of the child is the primary consideration."); Hibbette v. Baines, 78 Miss. 695, 725, 29 So. 80, 89 (1900) ("[T]he pole star is the best interest of the child.").

to a mechanical formula of custody determination. In these statements the court intimates the importance of maintaining the status of the child care agency and the subrogation of the child's welfare. Fortunately, in this case, the two concerns were not contraindicative. A recent case has been decided in which the court's desire to maintain the integrity of the agency did not act in the best interest of the child. The case of *J. C. v. Natural Parents* concerned a dispute over the obligations and rights under a *"Contract for Designation of Foster Home."* [127]

Foster parents, J. C. and N. C., appealed a decree of the Chancery Court dismissing their petition for adoption of a minor child placed in their home pursuant to a foster home agreement. The Scott County Welfare Department obtained temporary custody of the minor child in question and seven other children after an investigation into the home revealed parental negligence in the care of these children.[128] After a five day period of hospitalization, the two month old infant was placed with the appellants.[129]

Prior to the temporary placement of the child, the Welfare Department had obtained surrender of parental rights and consent from both parents while they were incarcerated. After obtaining the consent, the Welfare Department attempted to move the child to the prospective adoption home of the S's for permanent placement. At this point, the foster parents filed a petition for adoption.[130]

In reaching its opinion disallowing adoption by the C's, the chancellor relied on the contract between the Welfare Department and the C's designating their home as a licensed foster home, not an adoptive home, and the irrevocability of the natural parents' surrender of parental rights in favor of the Welfare Department. Despite the obvious attachment present between the child and the foster parents, the chancellor stated that he was "bound by the law to uphold [both] agreements."[131]

The supreme court stated that the paramount concern was the best interest of the child as reaffirmed in *Bloodworth v. Bloodworth.*[132] In applying this discretionary rule, the supreme court looked beyond the contractual agreements between all of the parties. The majority opinion rejected the chancery court's

127. 417 So. 2d 529, 531 (Miss. 1982).
128. *Id.* at 529.
129. *Id.* at 530.
130. *Id.*
131. *Id.*
132. 409 So. 2d 1336, 1337 (Miss. 1982).

mutually exclusive classification of foster homes and prospective adoption homes thereby reserving the opportunity for foster parents to adopt the foster child as determined by this court on a case by case basis.[133] Further, the court looked to the emotional ties that had grown between the C's and the minor child during the first fifteen months of its life. Recognizing the need for stability in the child's life, the court felt severing the relationship would not be in the best interest of the child.[134]

In a strongly worded dissent to the majority opinion in this case, Justice Broome[135] reaffirmed his reliance to the contractual obligations between parties stated in *C. C. I. and N. and Mrs. N. v. Natural Parents* as determinative of the rights and obligations of each party.

Prior to the placement of the minor child in the foster home of the C's, a *"Contract for Designation of Foster Home"* [136] was executed and signed by the appellants. In so doing, the C's were subject to the obligations and restrictions of that contract. As foster parents they did not gain custody of the child, they waived any right of custody in the child, and agreed not to attempt adoption "unless the child is made free for adoption by written decision and action of the State Department of Public Welfare."[137] Compliance with this contract and total cooperation with Welfare agency authorities was assumed by the foster parents. Finally, the C's were compensated for their services of caring for the foster children in their own home. Under this compensation agreement, the foster parents contracted that they waived all their rights to custody of the child and that they would not attempt to adopt the child.[138]

The dissent held the contract to be totally binding to the C's. Mississippi Code Annotated section § 43-15-5 (repealed 1981) endows the state welfare agency with the power to organize and administer an operative system for the placement of neglected children in permanent adoptive homes.[139] The majority opinion's failure to sustain the contract in this case is to negate the spirit of the statutes. Repercussions from this ruling could undermine

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133. J.C. v. Natural Parents, 417 So. 2d at 531.

134. *Id.*

135. *C.C.I. v. Natural Parents* was a unanimous decision written by Justice Broom. However, only Justices Sugg, Broom, and Patterson maintained this position in *J.C. v. Natural Parents.*

136. J.C. v. Natural Parents, 417 So. 2d at 532 (Broom, J., dissenting).

137. *Id.* at 533.

138. *Id.* at 534.

139. *Id.* at 533.

the orderly operation of all welfare department operations.[140]

Interpreting the *"Contract for Designation of Foster Homes"* on pure contract principles, the dissenting justices found further support for their view. The contract was entered into voluntarily by the C's after they read and stated their understanding of its terms.[141] Valuable consideration was present to complete the offer-acceptance-consideration trilogy necessary for a valid contract. This contract was breached by the C's not only by attempting to adopt the child, but also by a failure to cooperate with the Welfare Department and the laws of Mississippi. To allow them the permanent custody of the child would be to reward the C's for their unconscionable behavior.[142]

Expanding beyond contract law, Justice Broome found definite facts to support the contract. There was no evidence apparent to the foster parents that the child was free for adoption, nor was there a written consent from the Scott County Welfare Department stating that the child was free for adoption.[143] The C's were aware that the child had been surrendered to the Welfare Department pursuant to a surrender agreement. Citing *C. C. I. v. Natural Parents,* it appeared quite obvious to the dissent that the surrender agreement between the natural parents and the Welfare Department was irrevocable.[144] Therefore, the irrevocability of the surrender agreement and the denial of foster parents rights to adopt the child clearly supported the contention that the prospective parents, D.E.S. and J.A.S., should be entitled to the permanent custody of the child.

The dissenting justices also rejected the majority's affirmation of the principle which states that the paramount concern of the court is the best interest of the child.[145] The foster parents bore the burden of introducing this concept as an issue in the proceedings. There is no evidence that this was done. Even considering that the best interest of the child had been at issue, the C's had failed to meet the high burden of proof. The foster parents presented no evidence that the chancellor was not acting in the best interest of the child.[146]

The opinion in *J. C. v. Natural Parents* [147] has a dampening

140. *Id.* at 535.
141. *Id.* at 534.
142. *Id.*
143. *Id.* at 533.
144. *Id.* at 535.
145. *Id.* at 535-536.
146. *Id.*
147. 417 So. 2d 529 (Miss. 1982).

effect on the contractual approach of the court towards adoption proceedings. Although the dissent strongly reiterates the use of contract principles, the unanimous opinion of all nine justices in *C. C. I. v. Natural Parents*[148] has diminished to a minority of three justices. The majority opinion of the court reaffirms their use of judicial discretion in resolving disputes concerning the placement of children by contract as opposed to one concrete rule of law. *C. C. I.* is still a compelling precedence. To lose sight of the most important element in a custody controversy—that element being the welfare of the child—is to destroy the court's own integrity as *parens patriae* and the child's one hope of receiving protection from an impartial tribunal. The court now has its own interest in the child's placement to protect and foster, along with that of the two competing parties. Caught in this three way struggle, the child loses. However, its rigid parameters have been relaxed to include the prior principles of parental rights and the best interest of the child.

Elizabeth Kerr Woodruff

148. 398 So. 2d 220 (Miss. 1981).