

In Re Clausen

Natural v Adoptive Parents

442 Mich 648 (1993)

Photo by John Zich/Time Life Pictures/Getty Images

In 1993, the Michigan Supreme Court brought to an end a bitter child-custody fight that garnered nationwide attention. After an Iowa woman gave up her daughter for adoption and then decided she wanted her back, the Michigan adopters of “Baby Jessica” fought to keep her. After nearly two years of litigation, the Michigan Supreme Court, in a decision that struck a major blow to the rights of adoptive parents, ordered that the baby be returned to her natural parents.

Jan and Roberta DeBoer, unable to conceive a child of their own, sought to adopt one in the early 1990s. Michigan, unlike most states, did not allow private adoption. The process of adopting a child through the state system was long and difficult, so the DeBoers sought a child in another state. In a small town in Iowa, Cara Clausen found herself pregnant and unmarried. Her mother and their family physician began the process of finding parents to adopt Cara’s baby; they located the DeBoers. Shortly after giving birth on February 8, 1991, Cara signed the legal documents to give the baby to the DeBoers, including a waiver of her right to a 72-hour period in which to change her mind. Though the child’s father was in fact Daniel Schmidt, Cara named Scott Seefeldt as the baby’s father, and he signed away his paternal rights. The DeBoers filed an adoption petition in an Iowa court, which granted them custody of the child during its consideration of the petition. The DeBoers named the baby Jessica and took her back to their home in Ann Arbor, Michigan.¹

In the meantime, Cara Clausen had come to regret her decision to give up her baby, apparently influenced by Concerned United Birthparents (CUB), a “secretive radical organization” founded in 1976 by birth parents who wanted to end the closed-adoption system in which natural parents could not recover their children. CUB viewed the adoption system in class terms, in which wealthy and educated couples were able to use “fast-talking attorneys” to take the children of poor and working-class people like Cara Clausen. (Though the DeBoers were in fact not much wealthier than the Clausens, their residence in the university town of Ann Arbor added to the class-conflict cast of the controversy.) CUB stalked and harassed adoptive parents, some of whom formed a counter-organization, the Pro-Adoption Coalition of Iowa, for pro-



Dan Schmidt comforting his tearful wife, Cara, as they sit at a press conference table covered with mikes, after the court ruling in their favor in the battle for custody of their 28-month-old biological daughter, Jessica, with her would-be adoptive parents, Jan and Roberta DeBoer.

tection against CUB’s “terror tactics.” The national media eventually depicted this adoption contest as a cultural clash.

Cara claimed to have been coerced by the DeBoers’ lawyer and to have waived her parental rights while under the influence of post-partum drugs. She also confessed to having lied about the child’s father, whom she now identified as Dan Schmidt. Dan asserted his paternity rights. Cara and Dan soon married. Schmidt had had a short and unhappy previous marriage and had abandoned the son he had begotten. He later refused to have any contact with a daughter by another woman, refused to pay court-ordered child-support, and had his wages garnisheed for it. Nevertheless, like most states, Iowa law privileged the rights of natural parents over those of adoptive parents, and in order to keep the baby, the DeBoers had to prove that the Schmidts would be unfit parents. The DeBoers were unable to do so in Iowa courts, and were ordered to return the baby to the Schmidts. They refused to appear before the Iowa court in December 1992, and an arrest warrant was issued. On the same day, the DeBoers won an order from the Washtenaw County Circuit Court to prevent the Schmidts from taking custody. Two state courts were now locked in a conflict of laws.

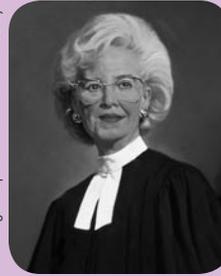
Article IV of the U.S. Constitution provides that “Full faith and credit shall be given in each state to the public acts, records, and

judicial proceedings of every other state; and the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." Toward the end of establishing uniformity in state child-custody proceedings, Congress enacted the Parental Kidnapping Prevention Act (PKPA) in 1980. Along the same lines, the National Conference of Commissioners on Uniform State Laws induced all 50 states to adopt the Uniform Child Custody Jurisdiction Act (UCCJA). The question in the DeBoers' case was whether Michigan courts could use these acts to affirm their adoption or whether the acts compelled Michigan courts to enforce the Iowa courts' rulings. The Washtenaw County Circuit Court denied a motion for summary judgment by the Schmidts in December 1992, and allowed the DeBoers to retain custody of Jessica during the litigation. In March 1993, the Michigan Court of Appeals reversed, ruling that Michigan had no jurisdiction under the PKPA and UCCJA. The DeBoers then appealed to the Michigan Supreme Court.

In 1993, the Michigan Supreme Court had returned to the partisan balance of the 1970s, with Independent Justice Charles Levin as the swing vote. "Soapy" Williams had died in 1988, Justice Ryan had been appointed to the Sixth Circuit Court of Appeals, and Thomas "the Good" Kavanagh had been defeated in his 1984 reelection bid. Kavanagh was defeated by Republican Dorothy Comstock Riley, the second woman to serve on the Court. After Riley's election in 1984, she was joined by Republican Robert Griffin and Democrat Conrad Mallett.²

All the justices but Levin voted to sustain the Court of Appeals order to return Jessica to the Schmidts.³ The Court observed that the DeBoers, to whom it icily referred as "the third-party custodians with whom the child now lives," had no claim to the child that was not contractual or conventional. The couple knew that their rights were contingent on Iowa legal proceedings, and the adoption had begun to be challenged only days after it took place. The adoption had never taken place under Iowa law, the majority concluded, and the Michigan courts were bound to observe Iowa's determination under the PKPA and UCCJA. Michigan courts could make no independent determination as to the best interests of the child. Congress' only goal in writing PKPA and UCCJA was

Image courtesy of the Michigan Supreme Court Historical Society



Official Court portrait of Dorothy Comstock Riley

Riley had lost her 1982 election bid for a seat on the Michigan Supreme Court. Shortly after her defeat, Governor William Milliken, who was leaving the governor's office, appointed her to the Court to fill the vacancy created by Justice Blair Moody's death. Many observers believed that Governor-elect James Blanchard should have made the appointment. He filed a *quo warranto* petition, asking the Supreme Court to nullify Milliken's appointment. Riley sat on the Court for 69 days; she recused herself from the proceedings regarding her tenure. After an initial 3-3 tie, one justice switched and the Court ousted Riley by a 4-2 vote. Blanchard then appointed Patricia Boyle to the seat.

predictability and uniformity, regardless of substantive differences as to adoption policy. Iowa law may have given more preference to the rights of biological parents than to the "best interests of the child," but this did not give Michigan the power to refuse to enforce Iowa policy. Iowa's law was not "so contrary to Michigan public policy as to require us to refuse to enforce the Iowa judgments." The majority noted that their decision was a difficult one. "To a perhaps unprecedented degree among the matters that reach this Court, these cases have been litigated through fervent emotional appeals, with counsel and the adult parties pleading that their only interests are to do what is best for the child, who is herself blameless for this protracted litigation and the grief that it has caused." But a decision had to be made, and an end put to the struggle. The Court's decision would accomplish this "with minimum disruption of the life of the child." "Custody litigation is full of injustice," the Court conceded, "let there be no doubt about that. No system of law is perfect. Consistency in the application of the laws, however, goes a long way toward curing much of the injustice."⁴

Justice Levin entered a lengthy and impassioned dissent. He held that Michigan, not Iowa, was the home state, and Michigan's policy was that the best interests of the child should prevail over the rights of natural parents. The DeBoers had not "purchased a carload of hay" in Iowa, he noted; the child whom they adopted had developed significant psychological ties to her adoptive parents. He pointed out that "every expert [in the circuit court] testified that there would be serious traumatic injury to the child at this time." He concluded that "The superior claim of the child to be heard in this case is grounded not just in law, but in basic human morality."⁵

Levin denied that Congress was interested only in procedural uniformity in the PKPA; rather, it had adopted a best-interests-of-the-child standard that was closer to Michigan policy than it was to Iowa's preference for the rights of natural parents. "This Court, by ignoring obvious issues concerning the welfare of the child and by focusing exclusively on the concerns of competing adults, as if this were a dispute about the vesting of contingent remainder, reduces the PKPA to a robot of legal formality with results that



Headline from July 3, 1993, edition of *The Ann Arbor News*.

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Congress did not intend.”⁶ He noted that New Jersey and West Virginia courts had held up their own adoption standards against those of other states.

Levin also called attention to the fact that the DeBoers had taken Jessica on the good-faith assumption that Cara Clausen had told the truth about her paternity. “The sympathetic portrayal of the Schmidts in the majority’s opinion ignores that it was Cara Schmidt’s fraud on the Iowa court and on Daniel Schmidt that is at the root of this controversy.” After the fraud had been exposed, the DeBoers “discovered that Schmidt had a dismal record as a father,” which record was substantiated in the Washtenaw County Circuit Court. But the majority decision was driven by a “philosophical preference for the rights of biological parents.”⁷

Finally, Levin condemned the majority for ordering the instant execution of its order, requiring the immediate return of Jessica to the Schmidts. He found it “extraordinary” that the Court denied the DeBoers the possibility of any stay, rehearing, or appeal of their decision. Levin suspected that the majority was in a rush because it feared that the state legislature might amend the Child Custody Act in reaction to its decision.⁸ The DeBoers did make a last-minute appeal to United States Supreme Court Justice John Paul Stevens, but he denied their application to stay the enforcement. Stevens said that he was “convinced that there is neither a reasonable probability that the [full U.S. Supreme] Court will grant certiorari nor a fair prospect that, if it did so, it would conclude that the [Michigan Supreme Court] decision below is erroneous.”⁹ Indeed, four days later, the United States Supreme Court denied the DeBoer’s application to delay the enforcement order. Justices Blackmun and O’Connor dissented, however. “This is a case that touches the raw nerves of life’s relationships,” Justice Blackmun wrote. “While I am not sure where the ultimate legalities or equities lie, I am sure that I am not willing to wash my hands of the case at this stage, with the personal vulnerability of the child so much at risk.”¹⁰ This determination was in keeping with the United



Photo by John Zich/Time Life Pictures/Getty Images

Jan DeBoer looking distraught as he sits by his tearful wife, Roberta, after the court ruling giving custody of Jessica, the 28-month-old girl they hoped to adopt, to her biological parents, Dan and Cara Schmidt.

States Supreme Court’s preference, like that of most states, for the rights of natural over adoptive parents.¹¹

The Michigan Supreme Court decision attracted a good deal of criticism. One legal scholar noted, “The failure of both the Iowa and Michigan courts to consider what would be in Jessica’s best interests was repugnant to both public policy and a long line of case law.” The emphasis on biological parental rights “comes dangerously close to treating the child in some sense as the property of his parent,” said another.¹² But the decision was in line with the law and policy of the United States. The Schmidts renamed Jessica Anna and, while they divorced in 1999 and Dan Schmidt again fell on hard times, no evidence of the predicted psychological trauma had surfaced in the child.¹³ The DeBoers also divorced in 1999, but remarried each other two years later.¹⁴

FOOTNOTES

1. Background of the case can be found in Franks, *The War for Baby Clausen*, *New Yorker*, March 22, 1993, p 56.
2. *Michigan Supreme Court Historical Reference Guide* (Lansing: Michigan Supreme Court Historical Society, 1998); Winter, *Appointee agony: Michigan lame-duck muddle*, 69 ABA J 267 (1983); Boyle, *New Michigan justice*, 69 ABA J 580 (1983).
3. *In re Clausen*, 442 Mich 648; 502 NW2d 649 (1993).
4. *Id.* at 674.
5. *Id.* at 693–697.
6. *Id.* at 698.
7. *Id.* at 731.
8. *Id.* at 736.
9. *DeBoer v DeBoer*, 509 US 1301; 114 S Ct 1; 125 L Ed 2d 755 (1993).
10. *DeBoer v DeBoer*, 509 US 938; 114 S Ct 11; 125 L Ed 2d 763 (1993).
11. Weinberg, *DeBoer v Schmidt: Disregarding the child’s best interests in adoption proceedings*, 23 Cap U L R 1106 (1994).
12. *Id.* at 1134; quoting Homer H. Clark, *The Law of Domestic Relations in the United States*.
13. Smith, “Baby Jessica’s” Parents Divorcing, *Chicago Sun-Times*, October 7, 1999, p 4; *Baby Jessica’s Dad in Trouble*, *Detroit Free Press*, March 6, 2001; Dickerson, *A Child’s Life Shows Folly of Adults, Media*, *Detroit Free Press*, February 24, 2003.
14. *Couple Who Lost Baby Jessica Also Divorce*, *St. Petersburg Times*, October 24, 1999, p 64; *Baby Jessica Couple to Remarry*, *Detroit Free Press*, February 4, 2001. The DeBoers tell their story in *Losing Jessica* (New York: Doubleday, 1994).



Photo by Michael L. Abramson/Time Life Pictures/Getty Images

The case made national headlines. Here, Jessica appears on the cover of the July 19, 1993, issue of *Time Magazine* with the DeBoers.