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IS THAT ART? BY TED ALLEN

JANUARY 2003

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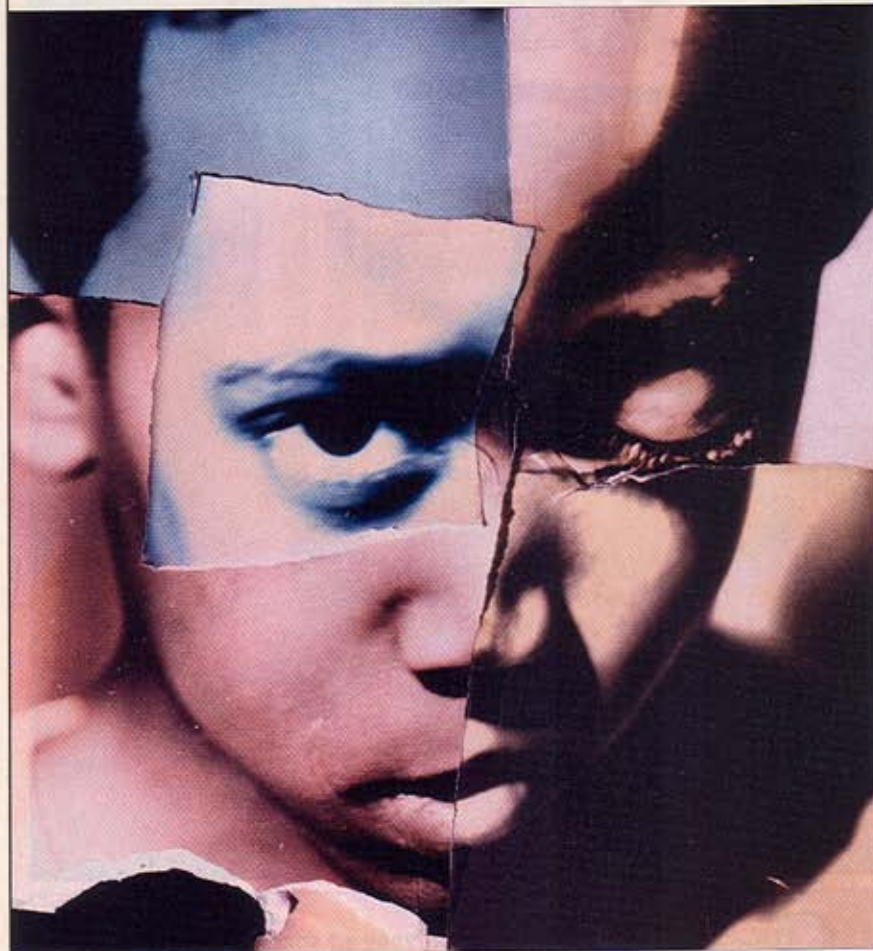
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Some kids in troubled families get caught between powerful rival principles: their need for a stable home, and the rights of their biological parents. The state supreme court is fed up with the confusion

Whose Child?



TEN YEARS AGO, STATE SOCIAL WORKERS GREW ALARMED when they looked into the case of a three-year-old Chicago boy named Ira, who had suddenly appeared with a black eye. At the time, Ira was living in a shelter with his sister, Tekela, then five, his brother, Kaylon, then four, and their mother, Wanda Cooper. Court records offer conflicting explanations of Ira's injury. At one point, Cooper said that someone in the shelter had thrown something that hit the boy. At another, she said that she didn't know what had caused the black eye. The Illinois Department of Children and Family Services (DCFS) alleged that Wanda Cooper herself had bruised her younger son, and DCFS worried that her other children were at similar risk. The agency took temporary custody of all three.

Cooper objected: She wanted her children back. So for the next three years,

she followed a DCFS plan for mothers (and fathers) who have lost temporary custody of their kids. She agreed to psychological evaluations and according to court documents received treatment for both depression and schizophrenia. At the same time, her children were in foster care, undergoing evaluations by child development experts who concluded that they had all been abused.

By 1997 a state therapist had found Cooper "highly disturbed," citing Cooper's belief that her television was directing "messages" at her and her refusal to admit to having a mental illness. Working under the principle that children should have stable, permanent homes, the state moved for termination of Cooper's parental rights, allowing the children to be adopted.

But Cooper continued to fight the termination of her rights. In 1998 her attorney filed an objection, along with statements from her new husband and a psychiatrist that raised questions about the allegations against her. (Cooper's ex-husband, the children's biological father, did not object to the termination of his parental rights.)

In 1999, a circuit court ruled for the state, paving the way for an adoption to take place. Cooper appealed that decision, arguing that she was not mentally ill—and that even if she were, it had not been proved that her mental illness prevented her from being a good mother. Among her evidence: Her new husband's two daughters had lived with the couple for nine months without incident. More important, Cooper continued to dispute the mental health findings. Although she conceded she

▲ "There is a terrible inherent conflict in the logic," says one judge. "Delay is the enemy. But you do not want to make a mistake."

SOCIETY

cases. They [usually] take very few. It is leadership that you seldom see."

DeLaMar is one of 14 judges named to the Special Supreme Court Committee on Child Custody Issues created last January (before the latest ruling concerning Tekela and Ira). Over the past year the committee has held public hearings and begun developing recommendations for reform on specific child custody issues, from termination of parental rights to custody during divorce. The first reforms to be discussed are those that apply to children who, like Tekela and Ira, are in the juvenile court and the foster care system. But across the board, the committee plans to heed the high court's suggestion to find ways to help adoption cases move through the system more quickly, while still with caution, so that children will not have to endure the trauma of having adoptions terminated.

Despite decades of watching kids sit in limbo while elected officials called for reform, Cheryl D. Cesario, general counsel for DCFS, is optimistic: "It is unprecedented that the supreme court would

have commissioned such a committee, and the only reason can be that they are firmly committed to reform in this area."

Some observers have already seen an impact from the ruling on Tekela and Ira's case: More attorneys are filing motions for stays in termination cases that are being appealed. But that is not a solution in itself. While stays may prevent the disheartening back-and-forth that marred the Cooper case, more stays will also prolong the adoption process, increasing the time during which children do not have a permanent home.

The Cook County public guardian, Patrick Murphy, hopes the Cooper ruling will advance a pet cause of his: moving adoption hearings from the county division of circuit court to juvenile court, where cases are heard regarding termination of parent rights. Murphy feels this consolidation would prevent the failure of communication that the supreme court justices decried.

But even that seemingly simple reform has its problems. "Juvenile [court] is not as pleasant a setting for the children, for the

parents, or for the attorneys," says Dana Cormann, chair of the Chicago Bar Association's adoption committee.

Robert K. Downs, an Oak Park lawyer who handles adoption cases, says that, rather than focus on a change of venue, the state should allow open adoption—that is, allow the biological parents to visit the children even after they have been adopted by others. Downs says many of his clients who contest an adoption would be willing to relinquish their parental rights voluntarily and let another family adopt their children if they could be assured of some contact with the children after their rights were terminated. Although some families arrange this on their own, it cannot be forced under Illinois law. "There is clearly a need to change the law. This is a pretty toxic area," Downs says. "But a lot of it is driven by necessity."

"All sides would benefit from reform," concedes Emily Eisner, Cooper's lawyer. "But I do not want to see [Cooper] become a martyr. The natural mother should not be punished for mistakes that were not of her making." ■

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