

# BEST INTEREST OF THE CHILD DO WE HAVE A CLUE? By Wright S. Walling

During the nearly quarter of a century that I have dealt with the legal issues surrounding families and children, I have encountered the term "Best Interest of the Child" on thousands of occasions. It is in the statutes; it is in the case law; it is in the literature of the social worker and the psychologist; it is in all of the materials written about children. In fact, "Best Interest" is the basis for every decision that any legal or social service system makes about children. Yet, I continue to be confused about what it means.

In the custody statutes there is a list that purports to define the factors which make up a child's "Best Interest." In shorthand form, a child's "Best Interest" includes: (1) the wishes of the child's parents; (2) the reasonable preference of the child, if the court deems the child to be of sufficient age to express preference; (3) the opinion of the child's primary caretaker; (4) the debate over intimacy of the relationship between each parent and the child; (5) the interaction and interrelationship of the child with a parent or parents, siblings and any other person who may significantly affect the child's "Best Interests"; (6) the child's adjustment to home, school and community; (7) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; (8) the permanence, as a family unit, of the existing or proposed custodial home; (9) the mental and physical health of all individuals involved; (10) the capacity and disposition of the parties to give the child love, affection and guidance, and to continue educating and raising the child in the child's culture and religion or creed, if any; (11) the child's cultural background; (12) the effect on the child of the actions of an abuser; and (13) the disposition of each parent to encourage and permit frequent and continuing contact by the other parent with the child. (See Minn. Stat. § 518.17).

The court may not use one factor to the exclusion of all others, and the primary caretaker factor may not be used as a presumption in determining the "Best Interest" of the child. Also, the court must explain how each of the factors led to its determination of the "Best Interests" of the child.

With all of this effort to quantify this concept in law, it seems to me that the idea of "Best Interest" of the child is much simpler and at the same time much more complicated. Shouldn't we as a society be providing each child with the best opportunity to develop physically, mentally and emotionally? What more can we offer or guarantee our children? As a society we seemingly cannot decide how to get there from here. Perhaps we have yet to accept the fact that kids are people too.

It seems clear to me that adults and kids relate to each other in three ways; biologically, psychologically and legally. The current controversy is and always has been which of the first two should have the greatest impact upon the third. Is the biological connection to a child equal, more, or less important than the psychological connection? Often this becomes whose rights and life are more important. Are children still "Chattel" to be

owned and manipulated to the benefit of the adults who control their lives; or are they people too?

I have a plaque in my office that says:

*Children are not things to be molded, but people to be unfolded.*

I have always felt that there was a bit of the prophetic in that statement; at least I hope so. Are we as a society able to recognize that children are not here to meet our needs, but rather the reverse? How are we as a society going to train the leaders of the future if the primary message we send them is that one needs to look out for only yourself and what you want? It is here that the conflict between the rights of the various adults in a child's life come into the clearest focus. While conflicts over children are argued in terms of the child's "Best Interest", a closer look usually reveals a conflict in the belief about the adults' rights.

Should it be the case that wealthy adoptive parents always win the battle against poor, single birth mothers? Of course not! Should it be the case that biological fathers always win the battle against long-term, psychologically important adoptive parents? Of course not! In extreme cases, the law nationally and in Minnesota has generally been clear.

The more difficult cases are the ones that are not extreme. The more difficult cases are the ones where the adults act in good faith based on their own beliefs about a child's "Best Interest." Is being raised in an African-American culture more important to the child's "Best Interest" than continued placement with long-term care givers who have become strong, supportive psychological parents of the child? Should placement with relatives always be preferred for an child regardless of the circumstances and facts about the child's life, background and relationship with the relatives? Very little in these cases is absolute. Rather, the determining factors go to the very heart of the belief systems of the judicial and social service agencies who make decisions about children's lives.

It is critically important to recognize that the law must define general parameters and factors to be used in determining a child's "Best Interest". Yet, at the same time, law must be flexible enough to determine the impact of those factors on each individual situation.

Children are not "Chattel". They are our future; they are our hope; they are our legacy; they are entitled to our commitment. As a society, we have done a poor job of contributing to our childrens' "Best Interest." We must, however, continue to struggle to determine in each situation, what is, in fact, in the child's "Best Interest."

It might be easier for us, as a society and as adults, to have decisions about children made easily, quickly, cleanly and with no emotion. That can not and will not ever happen. We are stuck with the fact that unique circumstances determine what is each child's "Best Interest." We have no choice but to continue to strive to provide the best for each of our children. Their "Best Interests" are at stake.