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Baby Jessica's plight touches businessman

By Jill Vejnaska

STAFF WRITER

He sells cowboy shirts for a living, but on Tuesday, Doug Newton seemed to be wearing his heart on his sleeve.

Billy Martin's, an upscale Manhattan western clothing boutique owned by Mr. Newton, weighed in on the "Baby Jessica" custody battle in a New York Times ad.

And the only side the ad took was Jessica's.

"I am Jessica. Then who?" began the quarter-page ad, which carried the store's logo and may have cost as much as \$15,000 to run once in the Times's national edition. Lamenting how "black-robed judges and courts," instead of "hearts," decided the 2½-year-old's fate, the ad ended by posing another question about Jessica: "Then who speaks for me? Not me."

While Mr. Newton has no personal experience with adoption, he closely followed the battle for Jessica, which began when the child's birth mother changed her mind about the adoption and the birth parents began trying to get the baby back from the Michigan couple who had planned to adopt her. On Monday, Jan and Roberta DeBoer complied with a court order and turned Jessica over to her birth parents.

"He was very moved and very saddened by what was obviously a lose-lose situation," said Pamela Nathan, a spokeswoman for Mr. Newton, who started his store with the late Yankee baseball star 13 years ago. "Jessica would lose regardless, because no one was speaking for her."



The New York Times

Cutting the Baby in Half

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The wisdom of Solomon held that the true, biological mother of a disputed child would rather give it up than have it sliced in half in a custody dispute. It hasn't quite worked out that way in modern-day America.

On Monday Jessica DeBoer, who is 2 1/2 years old, will be taken from the only home she has ever known. The people she knows as her mother and father will be replaced with the two strangers who are her biological parents. Jessica's biological mother gave her up for adoption and named the wrong man as her father. Then she changed her mind and informed the real father. Now married to each other, Cara and Daniel Schmidt have fought a two-year legal battle to gain custody of the child they have named Anna.

Also this week Kimberly Mays, 14, will go to court seeking to sever all legal ties to her biological parents, who are trying to gain custody. Kimberly was switched at birth with another child. Kimberly's biological parents, Regina and Ernest Twigg, received a child who died of a congenital heart condition at 9. Blood work on that child showed that she was not theirs by birth. They found Kimberly and want her back. But Kimberly, contending that they have been an invasive presence in her life, says she considers the man who has raised her to be her real father. She wants no part of the Twiggs.

Traditionally, in such disputes, the courts have ruled on the side of biological parents. Children have no strictly defined rights, although some states have laws that ask, to different extents, that the interests of the child be considered.

Last year a boy known as Gregory K. won a "divorce" from his biological mother -- but she had abandoned her son, who was in foster care. Neither Dan Schmidt -- who didn't know he had a daughter when she was given up for adoption -- nor the Twiggs abandoned their child. In the absence of abandonment, there is a strong legal principle that a parent's rights can't be taken away by a court.

Daniel Schmidt didn't do anything wrong. Neither did the Twiggs. In fairness to them, they should not be deprived of their children. But what's fair to the children? Unfortunately, it is unclear whether that question can even be considered.

Through a series of delays, misunderstandings and jurisdictional disputes, Jessica DeBoer's case dragged on for more than two years in courtrooms in two states. She was adopted in Iowa and taken to Michigan, where she has lived ever since. A court in Iowa has ruled she must go to the Schmidts; and the Michigan courts have upheld that ruling. The DeBoers, along with lawyers acting solely on Jessica's behalf, appealed unsuccessfully to the U.S. Supreme Court on the grounds that Jessica's interests had not been considered, only her biological father's.

A growing, vociferous group of people interested in children's rights and adoptive families insists the laws must change. Children are merely chattel before the law, they say, and that's not right. The children's interests, if not made paramount, must at least be considered by courts in these heart-rending disputes.

Others point out that the laws favoring biological parents exist for a reason. Iowa's law, for instance, stems from a dispute in the 60's in which a child was awarded to his respectable grandparents, rather than his somewhat bohemian father -- on the grounds of the child's best interests. Deciding cases on the grounds of what's best for a child can invite a court to award a child to a wealthier family, or to decide on the basis of social class where a child might have a "better life."

The ties between parent and biological child are fundamental, many argue, and are part of our constitutionally guaranteed right to privacy. The state should not -- unless parents are officially deemed unfit -- interfere in people's families. Neither Dan Schmidt nor the Twiggs have been found unfit. If they must surrender any right to their biological children, because of a situation they did not create, where would state intervention end?

Tough question. But not an insurmountable one.

The principle of doing what's best for the child is already fairly well established in custody disputes involving divorce. Parents who have done their children no harm are commonly asked to surrender their custody.

In disputes such as the ones surrounding Jessica DeBoer and Kimberly Mays, it is clear that the most innocent parties are the children. It is also clear that they will suffer injury if they are separated from their psychological -- as opposed to biological -- families. In such cases, laws should be changed to consider what's best for the children -- especially when a child has never lived with the biological parents, has lived in an intact family since infancy and has formed strong family bonds.

Kimberly's and Jessica's biological parents are prepared to put them through undeserved pain. Unlike the true mother in Solomon's court, it seems they are willing to have their children sliced in half. **The courts must protect such children.**