Due Process and the Adoptive Parent

Suzanne Jones Boutin
COMMENTS

DUE PROCESS AND THE ADOPTIVE PARENT

The trend in California adoption law has been toward a fuller recognition of the rights of adoptive parents. When a child is placed for adoption by an adoption agency, the prospective parents devote time to raising their new family member, and soon develop an emotional bond with the child. In most instances, the placement of the child marks the beginning of a close parent-child relationship. A California court recently has held that the prospective parents' interest in continuing this relationship is deserving of judicial protection.

This comment focuses on two cases, Rodriguez v. Superior Court and C.V.C. v. Superior Court, which held that an adoption agency's administrative action, terminating the placement of a child, is subject to judicial review. Consideration is given to the effect of these decisions on California adoption practices. In addition, an analysis is made of the inadequacy of current California law concerning adoption placement.

PLACEMENT PROCEDURES OF THE ADOPTION AGENCY

California's procedure for the adoption of children is governed entirely by statute. Thus, in order to determine what


2. After a child is relinquished to an adoption agency, the agency locates a suitable home for the child and places him or her with prospective adoptive parents. The placement of the child is only the initial step in the adoption procedure. The adoption of the child is not finalized until the prospective parents file a petition for adoption and this petition is granted by the court. The adoption often does not become final until over a year after the child is placed in the home.


powers and duties the adoption agencies of California have, it is necessary to look to the applicable statutory authority.

The adoption placement function is vested exclusively in licensed adoption agencies. The California Civil Code makes it a misdemeanor for anyone other than the natural parent or a licensed agency to place a child for adoption. The California Health and Safety Code provides that no person or agency shall place a child in any home for adoption without first obtaining a license from the State Department of Health. Thus, both public and private adoption agencies must be licensed by the State before they can place children for adoption.

The statutes establishing the procedure for adoption are found in the Civil Code. In addition, the Health and Safety Code directs the State Department of Health to make rules and regulations concerning the placement of children for adoption. Thus, the powers and duties of the adoption agencies with respect to the placement of children for adoption are found not only in the Health and Safety Code and the Civil Code but also in the rules and regulations as promulgated by the Department of Health.

Section 224n of the Civil Code specifies the powers and duties of adoption agencies during placement. This Code section gives the adoption agency total responsibility for the care of a child from the time he or she has been relinquished to the agency for adoption until the time a petition for the child's adoption has been granted. Under section 224n, the agency is responsible for the child even after he or she has been placed with prospective parents. The agency's control over the child continues until the parents' petition to adopt the child is granted by a superior court.

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9. CAL. CIV. CODE § 224q (West Supp. 1974). It should be noted, however, that the statutes do make an exception for the natural parents who are authorized to place their child independently.
10. Id.
14. These regulations are found in CAL. ADM. CODE tit. 22, §§ 30501-855 (1972).
15. CAL. CIV. CODE § 224n (West Supp. 1974) provides in part:
   The agency to which a child has been relinquished for adoption shall be responsible for the care of the child, and shall be entitled to the custody and control of the child at all times until a petition for adoption has been granted. Any placement for temporary care, or for adoption made by the agency, may be terminated at the discretion of the agency at any time prior to the granting of a petition for adoption. In the event of termination of any placement for temporary care or for adoption, the child shall be returned promptly to the physical custody of the agency.
16. Id.
17. The regulations of the Department of Health require an interim period,
More importantly, this section gives the adoption agency the power to terminate a placement for temporary care or adoption at any time prior to the granting of an adoption petition, if, in the judgment of the agency, the home becomes unsuitable. 18

**How The Agency Uses Its Power**

The procedure which an adoption agency is to follow when placing children in suitable homes is set out generally in the California Administrative Code 19 and in the State Department's Manual of Adoption Policies and Procedures. 20 Before a child can be placed, the adoption agency must determine which home among its applicants is most suitable for that child. 21 To aid in the determination of whether a couple would make suitable parents for a child, the State has provided the agencies with certain guiding criteria. 22 This guide, however, is not a mandatory checklist and the criteria are not necessarily determinative. 23

Adoption agencies in most states are given a large degree of freedom in making their selection of parents. The fact that a couple meets the statutory requirements 24 does not assure that they will be accepted as adoptive parents. 25 In determining whether a home is suitable, adoption agencies give consideration to a wide variety of social factors. 26 These factors include the age of the prospective parents, their health, religion, race, financial security and standard of living. 27 Of these criteria, race and religion traditionally have been deemed to be most important. 28

The California Administrative Code states that the child shall be placed with adoptive parents whose religious faith is the same

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21. CAL. ADM. CODE tit. 22, § 30643 (1972) provides in part: "In choosing adoptive parents for a child the agency shall select from its approved applicants the family which is best able to meet [the child's] needs."
23. Id. The Manual notes that "[t]hese criteria are not ... intended to be more than a rough outline of factors believed to be important."
24. For example, CAL. CIV. CODE § 222(a) (West Supp. 1974) merely requires that "the person adopting a child shall be at least 10 years older than the person adopted."
25. S. KATZ, WHEN PARENTS FAIL, 123 (1971) [hereinafter cited as KATZ].
26. Id.
27. TenBroek, California Adoption Law and Programs, 6 HAST. L.J. 261, 312 (1955).
28. KATZ, supra note 25, at 123.
as that of the child, or his or her parents, unless they have expressed a contrary desire. This requirement is often a difficult one to meet. It has been suggested that religious considerations should not be based on the desires of the natural parents and should be relevant only when such considerations further the child's best interests.

Many adoption agencies throughout the United States also believe that racial backgrounds should be considered in the determination of adoptive suitability. However, like the criterion of religion, the racial factor has come under increased criticism. There has been a recent trend in some adoption agencies in large metropolitan areas to encourage interracial adoptions.

Many agencies consider certain factors to be total bars to adoptive parenthood. These factors include disabilities of a prospective parent which seriously affect life expectancy or physical activity, mental illness of a parent, and a standard of living too low for the safety, health and normal development of the child.

In California, once an adoption agency has determined that certain applicants will make suitable adoptive parents, it places the child in their home. Although section 224n of the Civil Code is the guiding statute regarding placement, it really does no more than set out the general rights and obligations of the adoption agency vis-a-vis the child. The procedure which the agency is to follow when placing a child is prescribed more specifically in the Administrative Code and the Manual of Adoption Policies and Procedures. Two principal steps are involved in the placement procedure. First, the regulations require that the agency and the prospective parents enter into an agreement covering the rights and responsibilities of each during the period from the initial placement of the child to the granting of the final adoption decree. Second, the regulations direct that there be an interim

31. KATZ, supra note 25, at 129.
32. Id. at 131.
33. Id.
34. ROWE, supra note 30, at 169.
35. CAL. CIV. CODE § 224n (West Supp. 1974).
38. CAL. ADM. CODE tit. 22, § 30645 (1972). The Manual, supra note 20, § AD-256 states that the placement agreement should include these provisions:

1. The family will assume responsibility for the nurture and care of the child and keep the agency informed of any changes which may occur within the family.
2. The family will keep the child under the medical supervision required by the agency. A final medical report for the child will be obtained prior to the completion of the adoption. The agency will give nec-
period (usually one year) between the placement of the child and the final adoption. During this time the agency is to provide various services to the family. When a child is placed in a home, the prospective parents frequently enter into a contract with the adoption agency, in which they agree not to file a petition for adoption until the child has spent one year with the family.

The purpose of the supervisory period and post-placement services is to effect a successful integration of the child into the family. Despite this commendable purpose, in many instances the effect of the interim period has been to foster confusion regarding the prospective adoptive parents’ legal rights during this time. Placement itself does not give the adoptive parents legal custody of the child. Until a petition for adoption has been granted, custody and control of the child remain in the adoption agency, which retains the right to terminate the placement at its discretion. Because the agency has this right, the prospective parents are placed in an uncertain position. These parents, who are responsible for the day-to-day upbringing of the child placed with them, develop strong emotional ties with the child during this interim period. Prior to the decisions of Rodriguez v. Superior Court and C.V.C. v. Superior Court, however, the parents had no legal means of protecting this emotional interest. But in these two California cases, the courts recognized the need for adoptive parents to be able to protect the parent-child relationship initiated

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3. The family and agency agree regarding the fee.
4. The family will not remove the child from the state, either permanently or temporarily, without the agency's consent.
5. The agency will give immediate consideration to any request by the family to terminate placement.
6. The family will agree to return the child promptly to the physical custody of the agency if the placement is terminated.

40. Id. The Manual, supra note 20, § AD-257.1 notes that

[s]ome of the areas in which the agency may provide help and services are:
1. Questions or concern which the family may have related to the fact that the child was born to other parents.
2. Help in telling the child about his natural family.
3. Family or individual reactions to behavior or responses of child.
4. Anxieties or uncertainties centering around informing the child and others of his adoption.
5. Assistance in completing the adoption.
6. Identification of child with family group and community.

42. Manual, supra note 20, § AD-257.1.
43. CAL. CIV. CODE § 224n (West Supp. 1974).
by the placement of a child for eventual adoption. It was noted in both cases that the statute allowing an agency to terminate placement at its discretion omitted any safeguard against arbitrary agency action.\(^{47}\)

To protect against such arbitrary action, the court in *Rodriguez* held that the prospective parents have the right to petition for a writ of mandate under section 1085 of the California Code of Civil Procedure\(^{48}\) for review of an agency order terminating placement.\(^{49}\) Two years later, the court in *C.V.C.* expanded the prospective parents' right to judicial review of a placement termination, holding that the parents had a status entitling them to procedural due process.\(^{50}\) Thus, the courts in these two cases reduced the power delegated the adoption agencies under Civil Code section 224n by holding that any decision by an agency to terminate placement during the interim period is subject to judicial review.\(^{51}\) As a result of these decisions there may be significant changes in both the pre-placement and post-placement procedures of adoption agencies.

**LIMITING THE POWERS OF THE ADOPTION AGENCY**

*Rodriguez v. Superior Court*\(^{52}\)

*Rodriguez* was the first California case to hold that the administrative action of an agency in a pre-adoption placement should be subject to judicial review.\(^{53}\) With this case the pre-adoption rights of the prospective parents began to receive judicial recognition.

On July 31, 1969, the Adoption Agency of the Stanislaus County Welfare Department placed a child with Mr. and Mrs. Rodriguez for adoption. On February 10, 1971, a caseworker for the agency told the Rodriguez that the placement of the child was being terminated and that the child was to be returned to the agency. A report by the caseworker, which was the basis for the termination, gave no reasons for the action except her doubts and uneasiness concerning the suitability of Mr. and Mrs. Rodriguez as adoptive parents.\(^{54}\) On February 11, 1970, the
Rodriguez, without the approval of the agency, filed a petition for the adoption of the child in the superior court.

The court dismissed the action, claiming that it had no jurisdiction to proceed because the petition for adoption was not filed prior to the notice of termination of the placement. The Rodriguez appealed, and the court of appeal held that the trial court had correctly determined that it lacked jurisdiction to proceed with the adoption petition. However, the appellate court then directed the trial court to permit the Rodriguez to amend their petition to state an action in mandate under section 1085 of the California Code of Civil Procedure for review of the adoption agency's order terminating placement. Noting the importance of an adoption to the prospective parents and to the welfare of the child, the court stated:

Although no provision for such review is found in section 224n and relevant sections of the Civil Code, we hold that an order by an adoption agency to terminate an adoptive parent-child status is a reviewable administrative order within the ambit of section 1084 and 1085 of the Code of Civil Procedure.

Rodriguez, therefore, limited the powers granted to the adoption agencies under section 224n of the Civil Code, and narrowed the discretionary power of the adoption agencies by giving the prospective parents the right to petition for judicial review of a placement termination. The scope of the review authorized in Rodriguez was, however, of a limited nature. Sections 1084 and 1085 of the Code of Civil Procedure provide for the remedy of "traditional mandamus" to correct the actions of agencies. This

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In July, 1970, I began to have doubts as to the suitability of Mr. and Mrs. Rodriguez as adoptive parents. Mr. and Mrs. Rodriguez were unable to relieve the cause of my concern and I became increasingly uneasy about the placement. Finally, I determined that it would be impossible for me to recommend that Mr. and Mrs. Rodriguez adopt the child and that the child should be returned for another placement.

Id. at 512-13, 95 Cal. Rptr. at 924.

55. Id. at 512, 95 Cal. Rptr. at 924. The superior court based its decision regarding jurisdiction on the provisions of section 224n of the Civil Code. See note 15 supra.

56. CAL. CIV. PRO. CODE § 1085 (West 1955) states:

It [the writ of mandate] may be issued by any court, except a municipal or justice court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

57. 18 Cal. App. 3d at 513, 95 Cal. Rptr. at 925.

58. Id. at 513, 95 Cal. Rptr. at 924.


type of review is narrow in scope, and the court's inquiry is confined to whether the administrative agency has abused its discretion.61 Thus, although Rodriguez provided the prospective parents with a new protection against arbitrary agency action, that protection was not sufficiently broad.

C.V.C. v. Superior Court62

C.V.C. v. Superior Court expanded the right to judicial review which had been granted adoptive parents in Rodriguez. The court in C.V.C. found that the fourteenth amendment's guarantee of due process required a much broader judicial review of placement terminations than that available under sections 1084 and 1085 of the Code of Civil Procedure.63

In November, 1971, the Sacramento County Department of Social Welfare, a licensed adoption agency, placed an 18 month-old girl with Mr. and Mrs. C. The prospective parents made an agreement with the adoption agency that no adoption petition would be filed until the child had spent a year with the family.64 In July, 1972, an anonymous telephone call led to the discovery by the agency that Mr. C. had "engaged in drinking" and was attending therapy sessions. Prior to receiving this information, the caseworker had asked Mr. C. if he had a drinking problem and he had replied in the negative. There was no evidence that Mr. C. was habitually intoxicated or intoxicated in the presence of his adoptive child or his three other children. After obtaining this information regarding Mr. C.'s alleged drinking problem, the agency determined that the adoption arrangement should be canceled.65 At the trial, the caseworker testified that since the petitioners had withheld information from her, she no longer trusted them and, for that reason, recommended that the placement be terminated.66

Following its decision to terminate the placement, the agency demanded the child's return and filed a habeas corpus petition to enforce the demand. Mr. and Mrs. C. filed a mandate petition seeking review of the agency's decision. The two actions were consolidated and the superior court, stating that "its function was limited to determining whether the agency had abused its discre-

61. Id. at 918-19, 106 Cal. Rptr. at 130.
63. Id. at 919, 106 Cal. Rptr. at 130.
64. Id. at 913, 106 Cal. Rptr. at 126.
65. Id. at 914, 106 Cal. Rptr. at 126.
66. Id. at 917, 106 Cal. Rptr. at 129.
tion," found no such abuse and directed Mr. and Mrs. C. to return the child. The petitioners filed a notice of appeal.

The court of appeal found that the superior court proceedings had provided judicial review of the adoption agency's action. The court qualified its finding, however, by stating that the petitioners had a status entitling them to *procedural* due process, and the lack of a hearing on the merits at the agency level and the narrowness of the review at the judicial level had not comported with constitutional requirements. The fourteenth amendment guarantee of due process requires notice and an opportunity to be heard before an individual suffers governmental deprivation of a fundamental interest. The court of appeal found that the petitioners had not been given sufficient notice and had not been allowed the requisite opportunity to be heard prior to the agency's decision to terminate the placement.

In making its determination that petitioners had an interest entitling them to the protections of procedural due process, the C.V.C. court noted that,

> [e]ntitlement to procedural protections depends upon the extent to which "grievous loss" is threatened; it requires the court to weigh the individual's interest in avoiding the loss against the governmental interest in summary adjudication.

The court determined that the prospective parents had an interest in continuing the relationship with the child who had been placed with them. It was noted by the court that the placement of the child with the parents "initiates the 'closest conceivable counterpart of the relationship of parent and child.'" Further, the court found that the termination of this relationship obviously would result in a "grievous loss" to the parents.

In ascertaining the exact nature of the government's interest, the court looked to section 224n of the Civil Code. The court recognized that this section clearly expresses the state's interest in terminating a placement whenever the child's welfare is endangered. It was noted by the court, however, that by giving the

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67. *Id.*
68. *Id.* at 912, 106 Cal. Rptr. at 125.
69. The child was taken from the C.'s on October 13, 1972. On that same day the adoption agency placed the child with new prospective parents. *Id.* at 913 n.1, 106 Cal. Rptr. at 125 n.1.
70. *Id.* at 915, 106 Cal. Rptr. at 127.
71. *Id.*
72. *Id.* [footnotes omitted].
73. *Id* at 916, 106 Cal. Rptr. at 128.
74. *Id.*
75. CAL. CIV. CODE § 224n (West Supp. 1974).
76. 29 Cal. App. 3d at 916, 106 Cal. Rptr. at 128.
adoption agency complete discretion as to when a placement will be terminated, the prospective parents are left with inadequate protection against arbitrary action.  

The court weighed the parents’ interest in continuing the parent-child relationship against the government’s interest in summary adjudication and found that “in the absence of imminent danger to the child, the grievous loss threatening the prospective parents outweighs the state’s interest in summary termination [of the placement].” Because the parents’ interest outweighed the state’s, the C.V.C. court held that the parents were entitled to the protections of procedural due process.

The scope of judicial review necessary to meet due process demands was outlined by the C.V.C. court. The court found judicial review of an agency action terminating placement to be governed by section 1094.5 of the Code of Civil Procedure. That section sets forth two standards of judicial review. It provides that in some cases, the court is authorized to review independently the evidence and determine whether the agency findings are supported by the “weight of the evidence.” In all other cases, the section requires that the court determine only whether the administrative decision is supported by “substantial evidence.” In C.V.C. the court found that the superior court should have made an independent review of the evidence regarding the placement termination, since “a constitutionally protected interest [was] at stake.”

The C.V.C. court noted that a superior court, in making such a de novo judicial review, must determine whether the agency’s decision to abrogate placement is justified by the best interest of the child. The court commented that the objective of the in-

77. Id. at 917, 106 Cal. Rptr. at 128.
78. Id.
79. Id. at 917, 106 Cal. Rptr. at 128-29.
80. CAL. CIV. PROC. CODE § 1094.5 (West 1955). This statute governs judicial review after an administrative order “made as the result of a proceeding in which by law a hearing is required to be given.” Id. § 1094.5(a).
81. Id. § 1094.5(c). In Bixby v. Pierno, 4 Cal. 3d 130, 143-44, 481 P.2d 242, 251-52, 93 Cal. Rptr. 234, 243-44 (1971), the California Supreme Court explained that if the decision of an administrative agency substantially affects a fundamental vested right, the trial court not only must examine the administrative record for errors but must exercise its independent judgment on the evidence disclosed in a limited trial de novo, whereas if no fundamental vested right is involved the trial court need not look beyond the administrative record.
82. CAL. CIV. PROC. CODE § 1094.5(c) (West 1955).
83. 29 Cal. App. 3d at 918-19, 106 Cal. Rptr. at 130. For a detailed analysis of the scope of review required under the C.V.C. decision, see Note, C.V.C. v. Superior Court: Court Versus Adoption Agency Control of Agency Adoptions Before A Petition for Adoption is Filed, 26 HAST. L.J. 312, 329-33 (1974) [hereinafter cited as Court Versus Adoption Agency].
84. 29 Cal. App. 3d at 920, 106 Cal. Rptr. at 130-31.
dependent review is not to "supplant the adoption agency," but to "prevent arbitrary judgments" and "insure that the ultimate decision is firmly hinged on the only permissible criterion—the welfare of the child." In making its independent review, a superior court is to receive and consider any competent evidence produced by either side and from that evidence determine what is best for the child. Apparently there are no presumptions in favor of the agency's decision to terminate. The C.V.C. court merely noted that the decisions and expert opinions of agency social workers should be "received with respect." Thus, a court has wide discretion in determining whether an agency's decision to terminate a placement should be upheld.

By giving the judiciary the final authority to determine whether the placement of a child should be terminated, the C.V.C. court has limited the power of adoption agencies. Changes in the policies and practices of these agencies no doubt will follow from such curtailment of their power.

THE EFFECTS OF RODRIGUEZ AND C.V.C. v. SUPERIOR COURT

Agency Adoptions

California adoption agencies place thousands of children with prospective parents each year. Many of these placement ar-

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<th>Independent</th>
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<td>1949</td>
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<td>557</td>
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<td>468</td>
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<td>1,338</td>
<td>534</td>
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<td>1,746</td>
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<td>1,969</td>
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<td>1,216</td>
<td>1,436</td>
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<td>3,266</td>
<td>1,508</td>
<td>1,758</td>
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<td>3,641</td>
<td>1,506</td>
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<td>4,328</td>
<td>1,659</td>
<td>2,669</td>
<td>4,827</td>
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<td>4,738</td>
<td>1,531</td>
<td>3,207</td>
<td>4,890</td>
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<td>1964</td>
<td>5,571</td>
<td>1,739</td>
<td>3,832</td>
<td>4,912</td>
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<td>1965</td>
<td>6,340</td>
<td>1,729</td>
<td>4,611</td>
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<td>7,010</td>
<td>1,951</td>
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rangements are terminated prior to the granting of an adoption petition. These placement terminations may be initiated by

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<th>Independent</th>
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<td>1968</td>
<td>8,392</td>
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<td>1969</td>
<td>8,667</td>
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Department of Social Welfare
Research and Statistics
(State of California, California Statistical Abstract (1970))

TABLE E-33
ADOPTIONS: CHILDREN PLACED FOR ADOPTION
IN CALIFORNIA, 1970
(Note: Data in this table update the series shown in Table E-31 in the 1970 California Statistical Abstract.)

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Department of Social Welfare
Management Information Systems
(State of California, California Statistical Abstract (1971))

TABLE E-21
ADOPTIONS: CHILDREN PLACED FOR ADOPTION
IN CALIFORNIA, 1971
(Note: Data in this table update the series shown in Table E-33 in the 1971 California Statistical Abstract.)

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<td>2,603</td>
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Department of Social Welfare
Management Systems Development
(State of California, California Statistical Abstract (1972))

TABLE E-27
ADOPTIONS: CHILDREN PLACED FOR ADOPTION
IN CALIFORNIA, 1972
(Note: Data in this table update the series shown in Table E-21 in the 1972 California Statistical Abstract.)

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Department of Social Welfare
Program Support Branch
(State of California, California Statistical Abstract (1973))

89. The following figures indicate the percentage of total placements by the Santa Clara County Social Services Department which were terminated before the granting of an adoption petition:

<table>
<thead>
<tr>
<th>Year</th>
<th>Terminated</th>
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<tbody>
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<td>1971</td>
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</tr>
<tr>
<td>1972</td>
<td>8.8%</td>
</tr>
<tr>
<td>1973</td>
<td>16.4%</td>
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</tbody>
</table>

The increase in terminations is due to the fact that a greater number of older children are being placed. Telephone interview with Mr. Shaufler, Placement Coordinator, Santa Clara County Social Services Department, Feb. 26, 1974.
either the adoption agencies or the prospective parents. Since the holdings of Rodriguez and C.V.C. place substantial restrictions on the ability of an adoption agency to terminate placements, it is likely that these cases will have a significant impact on the placement procedures of California adoption agencies.

It is probable that Rodriguez and C.V.C. will affect agency practices in two ways. First, the agencies may find it necessary to conduct a more extensive pre-placement investigation of the suitability of prospective parents. Such a practice, of course, would benefit the agency, the prospective parents and the child. A more thorough pre-placement investigation would mean fewer placement terminations, and a reduction in the number of placement terminations would result in fewer changes in custody of the child. Second, the over-all result of the C.V.C. requirement of judicial review of post-placement terminations may be an increased reluctance on the part of adoption agencies to remove a child once he or she has been placed in a home. Agencies probably will refrain from terminating placements unless there is clear evidence that a termination is necessary to further the best interests of the child. An adoption agency now may be more hesitant to terminate a placement if the only existing grounds for termination are a caseworker's "doubts" or "uneasiness" concerning the prospective parents' suitability. Hopefully, an increased reluctance on the part of the agencies to remove a child from his or her prospective home will result in fewer seemingly arbitrary terminations.

Independent Adoptions

In both Rodriguez and C.V.C, the adoptive child was placed with prospective parents by an adoption agency. It should be noted, however, that a child may be placed for adoption by either a licensed adoption agency or his or her natural parents. An
independent or private adoption is a proceeding in which a child is placed directly with adopting parents by the natural parents without the assistance of an agency.\textsuperscript{94} The parent who makes an "independent adoption" placement must sign a "consent" to adoption in the presence of an agent of the State Department of Health.\textsuperscript{96} When a child is placed directly with adoptive parents, these parents usually file a petition for adoption immediately.\textsuperscript{96} Thus, unlike agency adoptions, there is normally no waiting period between the time of placement and the time of filing a petition for adoption. The State Department of Health is required to make a study of the prospective parents' home to determine whether it is suitable for the child.\textsuperscript{97} This investigation must be completed within 180 days of the filing of the petition to adopt.

Parents who independently place their child may withdraw their consent to the adoption and request a return of the child any time before the court grants the final adoption decree.\textsuperscript{98} However, once the natural parent or parents have signed the consent to adopt they may not demand the return of their child without obtaining court approval.\textsuperscript{99} If the court determines that the withdrawal of consent and return of the child to his or her natural parents is reasonable and in the best interests of the child, the court will grant its approval.\textsuperscript{100}

Prospective parents who obtain a child through an independent adoption placement do not encounter the lengthy placement period or lack of judicial review of a placement termination which were experienced by the petitioners in Rodriguez and C.V.C. The interim period between an independent placement and the final granting of the adoption decree usually is very short. In addition, if the natural parents desire to terminate the independent placement, the prospective parents are assured of a judicial review of that proposed termination. Thus, the decisions of Rodriguez and C.V.C would appear to be inapplicable to independent adoptions and should have no effect on this type of adoption procedure.

The Parents

Adoptive parents. The prospective parents' right to continue in the parent-child relationship which begins when a child

\textsuperscript{94} P. ADAMS, ADOPTION PRACTICE IN CALIFORNIA 1 (1956).
\textsuperscript{95} CAL. CIV. CODE § 226.1 (West Supp. 1974).
\textsuperscript{96} California State Dept. of Social Welfare, Adoptions in California 9-10, June, 1971 [hereinafter cited as Adoptions in California].
\textsuperscript{97} CAL. CIV. CODE § 226.4 (West Supp. 1974).
\textsuperscript{98} Adoptions in California, supra note 96, at 6.
\textsuperscript{99} CAL. CIV. CODE § 226a (West Supp. 1974).
\textsuperscript{100} Id.
is placed in their home clearly deserves judicial protection. The effect of *Rodriguez* and *C.V.C.* on the adoptive parent-child relationship no doubt will be beneficial. The parents will no longer be placed in the uncertain position of having total responsibility for the day-to-day care of the child while enjoying in him or her no legally recognized rights. More importantly, there will be less tension between the agency and the adoptive parents during the one-year supervisory period. Prior to *Rodriguez* and *C.V.C.*, it is likely that many prospective parents saw the adoption agency as a threat. Since the agency could demand the return of the child at any time prior to the granting of the adoption petition, the parents no doubt felt they must constantly be on the defensive. Since judicial review of agency action is now available to prospective parents during the supervisory period, it is probable that the relations between the parents and the agency will be less strained. Improved relations between the parents and the agency will make the integration of the child into the family an easier process.

**Foster parents.** A strong argument can be made for extending the holdings of *Rodriguez* and *C.V.C.* to foster parents. As with adoptive parents, the placement of a child with foster parents is guided by section 224n of the Civil Code. Usually these parents are not interested in adopting the child placed with them but are willing merely to take responsibility for the child's care until the adoption agency finds a suitable home for the child. In addition the child placed with foster parents often is not adoptable. For example, a child who has a severe medical problem usually is deemed to be unsuitable for adoption, yet he or she may be placed in a foster home for temporary care.

Occasionally, however, foster parents will express a desire to adopt the child who has been placed with them for foster care. An adoption agency usually resists any attempt by the foster parents to adopt and often demands a return of the child when it believes that the foster parents have become too emotionally attached to the child. The foster parent is obligated to return the child by the provisions of section 224n and often by the

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101. CAL. CIV. CODE § 224n (West Supp. 1974) provides in part:
Any placement for temporary care . . . made by the agency, may be terminated at the discretion of the agency at any time prior to the granting of a petition for adoption. In the event of termination of any placement for temporary care . . . the child shall be returned promptly to the physical custody of the agency.


103. Id. See also Katz, supra note 25, at 96-100.


105. Katz, supra note 25, at 96-100.
provisions of a foster care contract.\(^{106}\)

In the case of *Adoption of Runyon*\(^{107}\) James Runyon was placed in the home of the Callahans three days after he was born. The Sacramento County Social Welfare Department had placed him in the home as a foster child and not for adoption. Three weeks later the welfare department informed the Callahans that the child had an enlarged heart with a hole in it, and that they could return him if they so desired. The Callahans decided to keep the child and saw him through heart surgery. Eight years after the child had been placed with the Callahans the welfare department removed him and placed him in the home of prospective parents. The Callahans immediately filed a petition to adopt the child. The superior court granted a motion to dismiss the action on the ground that section 224n prevents a court from granting a petition for adoption to anyone other than the prospective parents with whom the child has been placed for adoption by the agency.\(^{108}\) In this case the child had been placed with the Callahans merely for foster care, and that placement had been terminated.

It is unlikely that *Rodriguez* or *C.V.C.* will in any way remedy the foster parents' inability to petition for adoption, since section 224n specifically prohibits such a petition.\(^{109}\) It could be argued, however, that under the holdings of these two cases the foster parent should have a right to judicial review of any agency action causing the removal of the foster child from the home.

Under section 224n, adoptive parents have only a provisional and tentative status until a petition for adoption is granted by the court.\(^{110}\) The prospective parents are made aware of the fact that they must return the child promptly if the placement is terminated.\(^{111}\) Despite the tentative nature of this adoptive parent-child status, it has been held that prospective parents have a right

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106. *Id.* at 94-95. The foster care contract often contains a provision similar to the following:

> We acknowledge that we are accepting the child placed with us for an indeterminate period, depending on the needs of the child and his family situation. We are aware that the legal responsibility for the foster child remains with the Agency, and we will accept and comply with any plans the Agency makes for the child. This includes the right to determine when and how the child leaves us, and we agree to cooperate with the arrangements made toward that end.

*Id.* at 95.


108. *Id.* at 919-20, 74 Cal. Rptr. at 515-16.


111. See note 38 and accompanying text *supra.*
ADOPTIVE PARENT

1. To judicial review of any agency termination of placement. 112

Foster parents also have only a tentative status under section 224n of the Civil Code. They too are made aware of the fact that they will be required to return the child to the agency upon demand. 113 The question then is whether foster parents, like adoptive parents, have a status which, although tentative, entitles them to procedural due process prior to termination of the foster-child placement.

The C.V.C. court found adoptive parents to have a status entitling them to procedural due process, because the adoptive parents' interest in continuing the parent-child relationship outweighed the state's interest in summary termination of placement. 114 Some foster parents also could meet this test.

It might be argued that the emotional investment of foster parents is not comparable to that of adoptive parents because the former usually are informed at the outset that the child will not be available for their adoption. 115 But such an argument does not recognize the realities of many foster parent-child relationships. In C.V.C. the court commented that an adoptive parent's "emotional investment does not await the ultimate decree of adoption." 116 Likewise, the emotional investment of a foster parent is not dependent upon a right to adopt. It is inevitable that a strong emotional bond will develop between a child and his or her foster parents after they have lived together for a period of time. 117

The parents in Adoption of Runyon 118 made a considerable emotional investment in their foster child. It is obvious that, after eight years of having the child in their home, his removal caused a "grievous loss" to the parents. The Callahan's interest in avoiding this "grievous loss" clearly outweighed the adoption agency's interest in terminating the foster placement without prior notice or a hearing.

When a foster parent-child relationship is identical to that which existed in Runyon, the parents should have, under the holding of C.V.C., the right to judicial review of an agency action terminating the foster child placement. Such a review not only

113. See note 106 and accompanying text supra.
115. See note 106 and accompanying text supra.
116. 268 Cal. App. 3d at 916, 106 Cal. Rptr. at 128.
117. Katz, Legal Aspects of Foster Care, 5 Fam. L.Q. 283, 300 (1971) [hereinafter cited as Foster Care].
would protect the interest of the parents but also would help to
insure that the placement termination is in the best interest of the
foster child. It should be noted, however, that the facts of Run-
yon are unusual, and most foster parent-child relationships are not
identical to the relationship which existed between the Callahans
and their foster child. Thus, the determination of whether a
foster parent is entitled to a judicial review of a placement
termination by an adoption agency should depend on the facts of
each case. In any event, however, when a child has lived in a
foster home for a number of years and a close relationship has
developed between the foster parents and the child, the parents
should be entitled to a judicial review of any agency action which
terminates the placement of the child.

The Child

The C.V.C. decision will result in an increase in litigation
during the placement stage of adoption proceedings. It is con-
ceivable that additional litigation will force some adoptive children
to undergo multiple custody changes. The resulting instability
would hinder the healthy development of the child. 119 In C.V.C.
the adoptive child was first placed with Mr. and Mrs. C., then re-
turned to the county adoption agency by order of the superior
court, then placed with a new adoptive couple, and finally re-
turned to the county agency by order of the court of appeal. 120
The court in C.V.C. discussed this problem and noted that it is
common practice for the courts to preserve the status quo and
avoid multiple changes of custody where possible. 121 The court
implied that the proper procedure would be for the child to
remain in the home of the adoptive parents with whom he or
she had been placed until the judicial review of an agency decision
to terminate placement is completed. 122 If the courts did allow
the adoptive parents to care for the child until the final deter-
mination of their rights, the problem of multiple custody would
be lessened.

Such a resolution of the multiple custody issue raises a second
problem. There may be instances where preserving the place-
ment would pose a threat to the child’s well-being. If, for exam-
ple, an adoption agency decides to terminate a placement because
it has received evidence that the adoptive parent has been
abusing the child, must the agency wait to remove the child until

119. Foster Care, supra note 117, at 296. See also Court Versus Adoption
120. 29 Cal. App. 3d at 921, 106 Cal. Rptr. at 131.
121. Id.
122. Id.
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there has been an independent judicial review of its action? The court in *C.V.C. v. Superior Court* answered this question in the negative, saying that courts should preserve the placement only "when it poses no threat to the child."\(^{123}\) Thus, where preserving the status quo would endanger a child's well-being, the agency would be justified in demanding the immediate return of the child and filing a habeas corpus petition to enforce that demand. The Court of Appeal noted that,

> [a]n imminent danger to the child's health or safety would create an exceptional situation, elevating the public interest in summary termination above the interests of the prospective parents, justifying removal first and hearing later.\(^{124}\)

The court indicated, however, that if a situation arose in which the agency was justified in removing the child before a hearing, that agency should not place the child in a new home before the hearing on the removal has taken place, since the court may order the child returned to the original prospective parents.

**THE INADEQUACY OF CURRENT CALIFORNIA ADOPTION LAW: THE NEED FOR AN INTERLOCUTORY DECREE**

In *Rodriguez* and *C.V.C.*, the California courts discussed the prospective parents' right to continue in the parent-child relationship initiated by a placement, and the necessity for judicial protection of that right. They failed to note, however, the adoptive child's converse interests. The child who has been placed in a new home has an interest, similar to that of the adoptive parents, in a stable, continuous parent-child relationship. Numerous placement terminations and multiple custody changes often hinder the development of the child and are usually not in his or her best interest.\(^{125}\) The courts should not hesitate to find that the interest of the adoptive child in a stable placement, like that of the parents, is deserving of judicial protection. The child should be no more subject to arbitrary placement terminations than the parents.

Several states protect the prospective parents' *and* the adoptive child's right to a stable placement by requiring an interlocutory adoption decree.\(^{126}\) In these states, a hearing is held when a child is first placed with adoptive parents and, if the court ap-

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\(^{123}\) *Id.* at 920, 106 Cal. Rptr. at 131.

\(^{124}\) *Id.* at 917, 106 Cal. Rptr. at 129.

\(^{125}\) *Foster Care*, *supra* note 117, at 296. *See also Court Versus Adoption Agency*, *supra* note 83, at 324-26.

\(^{126}\) *See, e.g.*, COLO. REV. STAT. ANN. § 4-1-9 (1963); VA. CODE ANN. § 63.1-226 (1973); WASH. REV. CODE ANN. § 26.32.210 (1961). *See also M. LEAVY, THE LAW OF ADOPTION 57 (1954) [hereinafter cited as LEAVY].
proves the adoption, it will issue a temporary interlocutory order.127 Usually after six months or a year, the court will consider the application again for a final adoption decree.128 During the interlocutory period, the child lives in the home of the prospective parents and the placement is supervised by a licensed adoption agency.129

Statutes establishing this interlocutory procedure generally provide that the decree may be revoked by the court at any time during the supervisory period.130 Revocation usually may be effected on the court's own motion or on the application of the parents or the adoption agency.131 When such an application is made, the court holds a hearing to determine whether to set aside the temporary decree.132 In making this determination, the court considers whether a revocation of the decree is in the best interest of the child. If the interlocutory decree is not revoked during the supervisory period, the court will issue at the end of the period a final order approving the adoption.133 In those states where an interlocutory adoption decree is required, the court maintains control over the placement procedure from the time the child initially is placed with his or her new parents until the final adoption order is granted. In contrast, under California's statutes governing placement, only the adoption agency which places the child in a new home retains complete control of the child until the final decree is granted.134 Under section 224n of the California Civil Code, there is no requirement of judicial review if a placement is terminated.135

The requirement of an interlocutory order and the subsequent court control provide greater protection of the rights of both the child and parents than does the placement procedure of the California Civil Code. Once a child has been placed with prospective parents and an interlocutory decree has been granted, the

128. Leavy, supra note 126, at 57.
131. See Leavy, supra note 126, at 57. Va. Code Ann. § 63.1-227 provides that: [t]he court may ... revoke its interlocutory order ... on its own motion, or on the motion of the natural parents of the child, or of the petitioner, or of the child himself by his next friend, or of the child placing agency ... .
132. Leavy, supra note 126, at 57-58.
135. This lack of judicial review has, of course, been remedied to a certain degree by the holdings of Rodriguez and C.V.C. See text accompanying note 137 infra.
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placement cannot be terminated by any party to the adoption without judicial review.\(^\text{136}\)

The California statutes do not effectively protect the adoptive parents' and child's interest in continuity of placement. Recognizing this shortcoming, California courts in Rodriguez and C.V.C. attempted to remedy the situation by requiring a judicial review of any agency termination of placement. Although the protection given the parents in C.V.C. is similar to that available under statutes requiring interlocutory orders, it is not so extensive. Statutes which require interlocutory adoption decrees usually provide that a court hearing is necessary when any change is made in the placement, whether it be by the court, parents or agency.\(^\text{137}\) In addition, there is no requirement that the aggrieved party petition the court for a hearing. In contrast, C.V.C. v. Superior Court requires judicial review only when the agency has terminated the placement and only if the parents petition the court. The result is that under C.V.C. v. Superior Court, the parents can always protect their rights by petitioning the court for review, but the child's interest in continuity of placement is protected only if the termination is initiated by the agency and the prospective parents file a petition for review. If California were to adopt the requirement of interlocutory adoption decrees, both the prospective parents and the adoptive child would receive the protection of judicial review whenever placement was modified in any way.

CONCLUSION

By extending the constitutional protection of due process to adoptive parents, the court in C.V.C. v. Superior Court has taken a step toward remedying the ambiguous status of prospective parents. The adoptive couple will no longer be required to take responsibility for a child in whom they have no legally protected rights.

In the future, California courts may have to determine how broadly the decision in C.V.C. v. Superior Court is to be applied. The courts may be asked to decide whether the protection of judicial review is to be limited to adoptive parents or whether it should be extended to foster parents. The status or right which entitled the petitioners in C.V.C. to procedural due process is a status or right which is also held by some foster parents. The relationship which develops between a foster parent and child is often as strong as, if not stronger than, the relationship between an

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\(^{136}\) Leavy, supra note 126, at 57.

\(^{137}\) Id.
adoptive parent and child. Thus, under certain circumstances, a foster parent should be entitled to the same due process protections as an adoptive parent.

The judicial review proposed by the court in C.V.C. v. Superior Court is necessary not only to protect the rights of prospective parents but also to further the best interests of the adoptive child. Review by a neutral party of an agency's termination of a placement is the most effective method of determining whether that termination is, in fact, in the child's best interest. However, further protection of the child's right and interest in a stable placement is in order. Greater protection would be available if an interlocutory adoption decree were required in California. The requirement of such a decree would insure judicial protection of the child's rights during the placement period.

Suzanne Jones Boutin

138. See text accompanying note 118 supra.