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FREE TO A GOOD HOME: AMERICA'S UNREGULATED ONLINE MARKET FOR ADOPTED CHILDREN

by KATHRYN HUBER

"My husband and I are seeking to find a new, loving home for our daughter, adopted a year and a half ago. She is 8 years old and was adopted from India. She has ADHD and was just diagnosed with RAD and we cannot handle these issues. We have done our best, but it just was not enough. . . please contact me if you would like to discuss the possibility of adopting this child.¹"

— Member of the Yahoo Group Adopting-From-Disruption in 2009

Nora Gateley, now 26, was given up for adoption at birth by her biological parents in Guangdong, China.² Until age 12, Nora lived in an or-

phanage, where she contracted polio that required her to walk with a brace.³ In 1999, just when she had almost given up hope of ever being adopted, a Florida couple arrived at the orphanage with an armful of gifts and Nora was told that they would be her new parents.⁴ “I felt like the luckiest girl in the world,” Nora recalls, “I never felt so special.”⁵ Just one year later, however, Nora’s parents decided they did not wish to continue the adoption.⁶ Telling her only that they were taking a road trip, Nora’s adoptive father took her on a two-day drive from Florida, which ended in Trenton, Tennessee.⁷ With no explanation, Nora was left at an isolated farmhouse with Tom and Debra Schmitz and their nine adopted children.⁸ Alone, confused, and frightened, Nora had no idea that she had been “re-homed,” that she would never see her adoptive parents again, or that life with the Schmitz’s would soon turn into a living nightmare.⁹

A GROWING PROBLEM

Nora’s story is hardly an anomaly.¹⁰ Re-homing, a term commonly used by animal welfare groups when finding new placements for pets, is becoming increasingly used by adoptive parents in the U.S. to transfer custody of their children.¹¹ Thanks to a perfect storm of weak legal protections with even weaker enforcement,¹² the fact that no authority tracks what happens to a child in the U.S. after an international adoption,¹³ the prevalence of online groups devoted to private custody transfers,¹⁴ and the lack of support or resources for overwhelmed adoptive families,¹⁵ parents are increasingly turning to the internet to give their children away to strangers – with no legal repercussions or oversight.¹⁶

It is hard to imagine what could drive a parent to this point. Many describe themselves as so desperate, frustrated, or overwhelmed with providing for the severe physical and mental health needs of a child that they adopted from overseas that they were willing to hand their son or daughter over to virtually any takers – even if the person was a stranger they met in a chat room.¹⁷ “I would have given her away to a serial killer I was so desperate” said one adoptive mother.¹⁸ As in Nora’s case, some parents and interested guardians only meet for the first time as they are handing off the child.¹⁹ There are usually no background checks, no home visits, and no registration with any state or government agency.²⁰

For documentation, parents draft a simple power of attorney transferring guardianship which is not filed with any court or agency, and serves only as record that a child has been given away.²¹ Temporary guardianship has long been an option for parents experiencing a crisis; the process involves designating a trusted person to care for the children without involving child welfare authorities.²² However, when the guardian is a stranger instead of a trusted friend or relative and there is no intention of ever returning the child, the document starts to function alarmingly like a receipt.²³

The lack of oversight places children at significant risk of harm through abuse, neglect, trafficking, and exploitation.²⁴ One couple that *Reuters* investigated, the Easons, had taken in several children through an online group.²⁵ None of the parents of those children knew that Nicole Eason's three biological children had been removed by child welfare authorities due to evidence of serious physical abuse,²⁶ or that Nicole's housemate and partner, Randy Winslow, was a convicted pedophile and self-described "little boy lover" who traded child pornography online.²⁷

Nora knew right away that something was wrong in her new adoptive home²⁸ and she described the next two years she spent there as emotionally and physically abusive.²⁹ At one point, Debra Schmitz handed her a shovel and ordered her outside to dig her own grave, telling Nora, "I don't care if you die. Nobody will find you. You were never here in the first place."³⁰

THE SPECIAL RISKS RE-HOMING POSES TO INTERNATIONALLY ADOPTED CHILDREN

Internationally adopted children are uniquely vulnerable to re-homing.³¹ While parents who adopt through the U.S. child welfare system must undergo an extensive training and approval process and receive access to resources post-adoption, those who adopt internationally through a private agency do not usually have to meet the same requirements or receive the training, or follow-up support.³² Consequently, they are often unprepared for the severe mental health or behavior issues that these children can present as a result of early trauma or inadequate care.³³ "When you have a higher percentage of kids than ten years ago coming into the adoption pipeline with serious problems and a higher percentage of parents unprepared to deal with these issues . . . you have

a recipe for trouble”, says Professor Bruce Boyer, Director of the Civitas Child Law Clinic at Loyola University Chicago School of Law.³⁴

Unlike domestic adoptions, no agency tracks how many international adoptions fail, which is often called an adoption disruption.³⁵ Domestic adoptions generally disrupt about 10-25 percent of the time, meaning that if international disruption rates are similar, about 24,000 children adopted into the U.S. since the mid-1990s are no longer with the parents who adopted them.³⁶ In one internet group, over 70 percent of the children advertised for re-homing were international adoptees.³⁷

HOPE FOR A SOLUTION

Presently, child welfare officials are advocating to strengthen the enforcement of federal laws that protect adopted children, including the Interstate Compact on the Placement of Children, or ICPC.³⁸ This agreement governs the requirements for transferring guardianship of a child between states but it is currently not well understood, weakly enforced, and only carries minimal penalties for violation.³⁹

Stephen Pennypacker, the child welfare official who first spoke out about the danger of unregulated re-homing,⁴⁰ recently testified before a Florida Senate Committee, where he urged lawmakers to consider increasing the penalty for illegal custody transfers.⁴¹ While he is the first to admit that there is no easy answer to the problem, Pennypacker points to several key measures that could make a significant difference: increased enforcement of federal and inter-country adoption laws;⁴² more comprehensive support of children and families post-adoption through partnerships with community based care;⁴³ an obligation for international adoption agencies to check in on children post-adoption and assist with placement in the event of a disruption;⁴⁴ and the creation of law enforcement and prosecution task forces trained to handle this specialized issue, similar to those that now work to combat child pornography and sex trafficking.⁴⁵

According to Professor Boyer, adoption agencies can help in two important ways: first, training for parents before they adopt a child and second, full disclosure of any and all relevant factors that may affect the child in his or her new home.⁴⁶ Both ways acknowledge the difficulties of implementing such

measures, but cite the debate over them as an encouraging step – it means that people are starting to pay attention to the problem and seriously explore possible solutions.⁴⁷

CONCLUSION

While the recent attention to the problem is a positive start, child welfare agencies, law-makers, and private adoption agencies must continue to cooperate to help combat the dangers of re-homing.⁴⁸ By increasing legal protections,⁴⁹ providing more training and support for parents,⁵⁰ and cracking down on internet marketplaces⁵¹ the U.S. will be able to put a stop to this disturbing practice and ensure that children adopted internationally have the same opportunities to grow up in a safe home and a loving environment as do those children adopted domestically.

NOTES

1 Megan Twohey, *The Child Exchange: Inside America's Underground Market for Adopted Children*, REUTERS, Sept. 9, 2013, available at <http://www.reuters.com/investigates/adoption/#article/part1>.

2 Monica Alba, Kate Snow, & Mark Schone, *Adopted Girl Says Mother Forced Her to Dig Her Own Grave*, NBC NEWS, Sept. 9, 2013., available at http://investigations.nbcnews.com/_news/2013/09/09/20389254-adopted-girl-says-mother-forced-her-to-dig-her-own-grave.

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

8 Alba et.al, *supra* note 2.

9 *Id.*

10 *Id.*; Twohey, *supra* note 1.

11 Twohey, *supra* note 1.

12 *Id.*

13 *Id.*

14 *Id.*

15 *Id.*; *Keeping the Promise: The Critical Need for Post-Adoption Services to Enable Children and Families to Succeed*, EVAN B. DONALDSON ADOPTION INSTITUTE, Oct.2010; see generally Darcy H. Merritt & Trudy Festinger, *Post-Adoption Service Need and Access: Differences Between International, Kinship, and Non-Kinship Foster Care*, *Children and Youth Serv. Rev.*, April 2013 at 1900, 1913.

16 Kristen Fost, *Free Hosting Sites and Illegal Child Re-homing*, ANANOVA EXPERT WEB HOSTING COMMUNITY, Sept. 9, 2013, available at <http://www.ananova.com/free-hosting-sites-and-illegal-child-rehoming>; Twohey, *supra* note 1.

17 Megan Twohey, *The Child Exchange: Inside America's Underground Market for Adopted Children Part II, The Dangers*, REUTERS, Sept. 9, 2013, available at <http://www.reuters.com/investigation/adoption/#article/part2>; Twohey, *supra* note 1.

18 Twohey, *supra* note 17.

19 *Id.*; Alba et.al., *supra* note 2; Twohey, *supra* note 1.

20 Twohey, *supra* note 1.

21 *Id.*

22 *Id.*

23 *Id.*

24 Megan Twohey, *The Child Exchange: Inside America's Underground Market for Adopted Children Part IV, The Failures*, REUTERS, Sept. 9, 2013, available at <http://www.reuters.com/investigation/adoption/#article/part4>.

25 Twohey, *supra* note 17.

26 *Id.*

27 *Id.*

28 Alba et. al., *supra* note 2.

29 *Id.*

30 *Id.*

31 Twohey, *supra* note 1.

32 *Id.*; see generally EVAN B. DONALDSON ADOPTION INSTITUTE, *supra* note 15; see generally Meritt, et. al.

33 Twohey, *supra* note 1; see generally EVAN B. DONALDSON ADOPTION INSTITUTE, *supra* note 15; see generally Meritt, et.al.

34 Interview with Bruce Boyer, Director of Civitas Child Law Institute, Loyola University Chicago School of Law (Nov. 13, 2013).

35 Twohey, *supra* note 1.

36 *Id.*

37 *Id.*

38 *Id.*; Rochelle Koff, *Senators Consider Ways to Address Issues of Illegal Adoptions*, Tampa Bay Times, Oct. 8, 2013; *Members of Congress Take Action to Further Investigate Adoption "Re-Homing" Issues*, Legislative and Policy Updates, VOICES FOR ADOPTION, available at http://voice-for-adoption.org/advocacy-and-policy/leg_and_policy; Letter From the Honorable James R. Langevin (October 9, 2013), available at <http://voice-for-adoption.org/sites/default/files/Dear%20Colleage%2C%20Rep%20Langevin%2C%20Re-Homing%20Investigation.pdf>.

39 Recorded interview with Megan Twohey, Reuters Investigative Reporter, on The Voice of Russia radio Program (September 2013); Twohey, *supra* note 1.

40 Twohey, *supra* note 1.

41 Koff, *supra* note 38.

42 Telephone Interview with Stephen Pennypacker, Deputy Director and Training Director, Florida Department of Children and Families (Nov. 15, 2013).

43 *Id.*

44 *Id.*

45 *Id.*

46 Boyer, *supra* note 34.

47 *Id.*; Pennypacker, *supra* note 42.

48 Pennypacker, *supra* note 42; Boyer, *supra* note 34; *CCAI Responds to Reuters "Re-homing" Series: For Reflection and Reform*, CONGRESSIONAL COALITION ON ADOPTION INSTITUTE, Nov. 15, 2013.

49 Pennypacker, *supra* note 42; Boyer, *supra* note 34; CONGRESSIONAL COALITION ON ADOPTION INSTITUTE, *supra* note 48.

50 Pennypacker, *supra* note 42; Boyer, *supra* note 34; CONGRESSIONAL COALITION ON ADOPTION INSTITUTE, *supra* note 48.

51 Pennypacker, *supra* note 42; Boyer, *supra* note 34; CONGRESSIONAL COALITION ON ADOPTION INSTITUTE, *supra* note 48.