All My Children

August 1, 2000 By Shana Naomi Krochmal

John and Mary just wanted to help. They'd been married for two years and had settled down in middle Pennsylvania with their two adopted kids, AJ, who was born with HIV, and his big brother, MJ. Mary—who had once been named New York State Foster Parents' Association "Mother of the Year" and had adopted eight kids, including AJ and MJ—felt the family was ready to expand. That was in January 1998, before a team of lawyers had to get involved and their real names were soon buried in the bureaucracy as John and Mary Doe v. County of Centre. More than two years later, their application with Pennsylvania's Centre County Center for Youth Services to have foster children placed in their home—which had been all but approved—is still stalled.

From the start, John and Mary had been upfront about their son AJ's status. The boy, now 11, had been healthy since going on HAART, though he still had chronic colitis and needed a feeding tube. He was also mildly autistic. But when they told AJ's school he had HIV, things had gone OK. "They took a deep breath," Mary told *POZ*, "and then they dealt with it. His school has been an oasis."

Youth Services took it all in stride, too—at least at first. John and Mary went through a six-week orientation, and the home-visit official told them that having AJ around proved they could take care of kids with special needs. In a seminar with other applicant families, they were told they would be approved "pretty soon," Mary recalled, contingent on a final walk-through.

Then, in May 1998, a Youth Services employee called Mary and told her that the license wouldn't be approved until the Does agreed to let them notify the biological parents of any new Doe clan members that AJ had AIDS. The parents would also have to sign a waiver saying that Youth Services wasn't liable should the new foster kid somehow become infected. Mary told them they had a week to reconsider those conditions before she sued the agency for discrimination under the Americans with Disabilities Act (ADA). Then she called the AIDS Law Project of Pennsylvania.

Over the next year, the Does' challenges were handled by the AIDS Law Project, the ACLU and finally Ballard Spahr Andrews & Ingersoll, a private firm in Philadelphia. In April 1999, they filed a motion for a preliminary injunction, in effect asking the court to instruct Youth Services to proceed with the placement. In the meantime, the agency had created a new policy—instituted 11 months after the Does' application—requiring that if a prospective foster family member had a "serious infectious disease," only children with the same disease could be placed in the home.

During the hearing, Centre County said its main concern was the safety of the foster child. With at least 36 percent of Youth Service placements having some history of sexual abuse, the county

estimated, there was a possibility that a violent, emotionally disturbed child placed in the Does' home could sexually assault AJ and then become infected himself.

It didn't make a difference that John and Mary used an electronic surveillance system whenever they weren't in the same room as AJ, or that he'd never once had a physical confrontation with a schoolmate. AJ's autism and physical disabilities meant he wouldn't be able to fend off an attacker, the county's lawyers argued, and such assaults could occur in a matter of seconds.

Under the "Arline test"—named for 1987's School Board of Nassau County v. Arline—any time that there is a "direct threat" of harm, an exception can be made to the ADA. But courts have used that test increasingly liberally, said Scott Burris, a law professor at Temple University who consulted on the Doe case. "It's irrational," he said. "But this case is a logical extension of that thinking."

The U.S. District Court agreed with Centre County, ruling in August 1999 that the Does had failed to prove there wasn't a risk—no matter how slight—that a foster child placed in their home could be infected. The appeal is expected to be heard this summer, but even if the court finds for the family, Youth Services now says that all the application materials have expired and must be refiled and reevaluated. The stress of a good deed still left undone wears heavy. "When we started this, we were very alone," Mary said. "Now we can't leave until the case is over."

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