



DESMOND DOYLE

Ever since the Constitutional Reform of 1936, the Catholic church and Irish state have been linked. Irish family law was, and partly still is, directly based on Catholic doctrine and until 1953, prohibited a single father from bringing up his children without the mother's "consent" thus, in turn, committing every motherless child to church orphanages or industrial schools until they were 16 years old. Ireland was a very different country then - a bleak place with massive emigration, grinding poverty and dire housing conditions. Perhaps ahead of his time, one man stood against the system. His name was Desmond Doyle.

The day after Christmas in 1953, Desmond Doyle's wife, Charlotte, deserted her husband and six children. Desmond was a painter/decorator/drinker and was out of work at the time. He turned the children over to Catholic orphanages with the understanding that he would be able to retrieve them when he got a steady job and was back on his feet.

After about six months, he was employed, sober and had a girlfriend, who he reported would be his housekeeper, and wanted his children back, but was thwarted by an arbitrary provision of the Children's Act of 1941. Under this provision, in cases of death or desertion of a spouse, the custodial parent can transfer custody to an industrial school or orphanage. However, if the Ministry of Education opposes the release of the children, both parents must petition to get them out. Since Charlotte was no where to be found, the Ministry of Education exercised its discretion to keep the children where they were. It seems that they read this provision a little too literally and refused to give them back to Desmond without the mother's signature. There are reports that maybe the reason the Ministry of Education was acting so irrationally was that the girlfriend/housekeeper was from the Church of England, not Roman Catholic, and possibly trying to keep the children away from a non-Catholic "mother."

Three lawyers who heard about Desmond's plight decided to take the case *pro bono*. Desmond was trying not only to regain custody of his children, but to overturn Irish law. Their first attempts were lost and they were told an appeal would be a waste of time and that their right of appeal would be denied. Because they were barred from bringing the same case with the same facts in front of that court, they decided to go a different route and argue that the Children's Act of 1941 contravened the Irish Constitution of parental rights in that Article 41 of the Irish Constitution stated that "a parent and child have a fundamental and God-given right to the enjoyment of each other's mutual society." They also argued Article 42 which states that "a blameless parent shall not be deprived of his or her right to direct the child's education." Against all odds, but with the support and encouragement of his fellow countrymen as well as people around the world, Desmond and

his legal team did what had never been done before - challenged the constitutionality of a law before the Irish Supreme Court.

The Supreme Court heard their argument and declared respective sections of the Children's Act unconstitutional. This was a landmark decision because it was the first time that ties between church and state had been broken and an Irish statute had been declared unconstitutional at all. They said that there was no precedent in Irish law to go by, but that it was their job not only to follow precedent, but to set precedent, so by unanimous decision, the high court found in favor of Desmond Doyle. Finally, after a year of legal wrangling, Desmond Doyle was able to be reunited with his children.

As a result of Desmond's struggle to regain his family, the Children's Act of 1941 was amended enabling the many children in orphanages throughout Ireland to be reunited with their families.



Websites:

www.rte.ie/tv/wouldyoubelieve/31102002/thisweek.html

www.usfca.edu/pj/evelyn_asimow.html

Movie: "Evelyn" - MGM Pictures 2002 - Starring Pierce Brosnan (Evelyn is Desmond Doyle's 8 year old daughter).

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