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Adopted Child's Right of Inheritance From the Natural Parents

John R. Murphy Jr.*

OHIO'S ADOPTION STATUTES have always been under the close scrutiny of the courts, the legislatures and society. Their main purpose is to promote the welfare of adopted children, as well as to protect them. However, in their zeal to create a close relationship between the child and the adopting parent, the legislatures of several states, including Ohio, have attempted to sever the connection of blood relationship, in favor of the adopting parents. In the process they sometimes have cut off the right of inheritance between the child and the natural parent. A review of several recent cases indicates that this type of legislation leads to questionable results.

When the Ohio legislature amended Revised Code § 3107.13, detailing legal rights after a final decree of adoption, they included the troublesome paragraph that has found so little favor with most courts. It now reads as follows:

"For the purpose of inheritance to, through, and from a legally adopted child, such child shall be treated the same as if he were the natural child of his adopting parents, and shall cease to be treated as the child of his natural parents for the purposes of intestate succession."

The result of this addition to the statute is that the blood line is deemed to be completely severed, as between the natural parents and the adopted child. The statute then not only eliminates the rights and obligations between child and parent, but also cuts off the statutory right of the child to inherit from the natural parent. The courts, in their application of this provision, have been forced to decisions which have resulted in questionable justice.

Two recent Ohio cases illustrate the harshness of the statute. In the *Roseman* case¹ the testator died within one year after the making of a will leaving several bequests to charitable institutions. He was survived by a granddaughter, the child of his deceased son. The child had been adopted by the second husband on the remarriage of his son's widow.

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¹ 72 Ohio Law Abs. 46 (1956).

Under R. C. § 2107.06, the mortmain statute, the testator is required to survive the making of bequests to charitable purposes by one year, if he leaves issue, or such gifts will fail. The question was: Was this natural granddaughter such issue? If she was, the mortmain statute would apply, and the gifts would fail, the granddaughter taking her intestate share of the estate. The court, however, construed R. C. §§ 3107.13 and 2107.06 strictly and together. In doing so they concluded that, though the testator had a living granddaughter, § 3107.13 precluded her from being legally viewed as his issue. Thus he died without issue, as far as § 2107.06 was concerned. The mortmain statute then did not apply. The charitable gifts were good, and the granddaughter did not take a distributive share of the estate.

A similar and perhaps more startling case was that of *Frantz v. Florence*.² Here Dr. Florence had two sons. The elder son predeceased the father, leaving a son who had lived with his grandfather for some time. The son's wife remarried, and her husband adopted the doctor's grandson. Dr. Florence then died intestate. The question presented to the court was: Does the adoption statute affect the grandson's right of inheritance from his grandfather of the blood? Here again § 3107.13 was strictly construed. It was held to spell out a complete severing of the blood line. In effect the decision said that the grandson was no longer the legal grandson of Dr. Florence, and thus could take no part of the estate through his deceased father under the statute of descent and distribution. This result, though startling to laymen and lawyers alike, is now the law in Ohio.

There is no question that either of these cases was correctly decided under the statutes, nor that the legislature was acting within its constitutional powers in changing the course of descent and distribution.³ The laws of descent are mere arbitrary rules for the transmission of property, enacted by the legislature. They may not be modified by the courts by reason of equitable considerations.⁴ Equitable considerations, then, if they are to be considered at all, must be considered by the legislature in framing the law. In the light of the questions raised by the above cases and the opinions of other legislatures and courts in other jurisdictions not bound by this rigid legislation, we should further consider this harsh rule.

² 72 Ohio Law Abs. 222 (1956).

³ *Ostrander v. Preece*, 129 O. S. 625 (1935).

⁴ *McCammom v. Cooper*, 69 O. S. 366 (1904).

Most courts agree that, to be effective, a statute must expressly divest a child of his right under a descent statute to inherit from its natural kin. The Ohio statute clearly alters this right. We have expressly divested the child of a right enjoyed by those persons not affected by § 3107.13.

Although most jurisdictions have felt that it is desirable to alter inheritance rights by allowing the adopted child to inherit from the adopting parents, few have seen any need to deprive him of his right to inherit from the natural parents.⁵ In most jurisdictions, including New York and Illinois, a child may inherit from the natural as well as from the adopting parent.⁶ England did not have clear rules for adoption under the common law. However, in creating their adoption statute⁷ Parliament did not elect to deprive the adopted child of its natural inheritance. The effect of an adoption order under the English statute is not to deprive the child of any right to or interest in property to which he would have been entitled without the adoption.

Where the legislatures have not specifically divested the child of its right to inherit from the natural parents, the tendency of the courts is to consider consanguinity to be of fundamental importance, and to allow the child to inherit.

In a leading Washington case, *In Re Estate of Paul Roderick*,⁸ Roderick died testate, leaving his estate to a daughter, subject to a bequest to his divorced wife. His will did not mention his other daughter, adopted by one Lindquist. The adopted child sought to have her distributive share of the estate on the ground that the father, in failing to name a child in his will, died intestate as to that child.

Although the adoption statute in Washington severed the rights and duties between the child and the natural parent on adoption, the court ruled that an adopted child is in a legal sense the child both of its natural and of its adopting parents. Thus it is not, because of the adoption, deprived of its right of inheritance from its natural parents, unless the statute expressly so provides. A child thus does not lose, by adoption, the right which the statute of descent gave to the child of inheriting from her natural father. The father here was deemed to have died

⁵ Atkinson on Wills, 23 (1937).

⁶ *In re Myer's Estate*, 129 N. Y. Supp. 2d 531 (1954).

⁷ 16 & 17 Geo. V, c. 29.

⁸ *Re Estate of Paul Roderick*, 158 Wash. 377, 291 P. 325 (1930).

intestate as to the child, by reason of his failure to name or otherwise provide for her in his will.

It may stand assumed as sound law that consanguinity is so fundamental in statutes of descent that it may only be ignored by construction when courts are forced so to do, either by the terms of the express statute or by inexorable implication.⁹ Perhaps the legislature was influenced to alter inheritance by blood line because of inequities that occurred under the 1944 statute,¹⁰ which did not contain the controversial paragraph, and which allowed distribution by blood line. Inequities often appeared when, under the same statute, a parent abandoning his child which was later adopted by another could inherit from that child in preference to relatives of the adopting parent. One case¹¹ went so far as to allow blood kin of an adopted child to receive its entire estate, even that portion of the estate left to the child by the adopting parents in preference to their relatives.

It is not unlikely that a statute which provides for disposition of such property of an adopted child to his blood kin, will not only discourage the giving of property to the adopted children, but will also act as a deterrent to persons contemplating adoption of a child.¹²

From the decisions in other jurisdictions, it does not appear that it is necessary to completely sever the natural blood line in order to correct these inequities. In the case of a parent who either abandons the child or allows it to be adopted by another, there is at least a *voluntary* act giving up his rights and duties vis-a-vis the child. He might also be giving up his inheritance from the child. But again this would be part of the voluntary act.

Can we, or must we, apply the same standards to a child of tender years, unable to protect himself, and in fact legally disabled by the laws of society? Can he truly be said to have voluntarily given up a right already conferred on him by statute? It is small wonder that so many legislatures allow these children to inherit from both parents, or at least leave to the courts enough latitude to enable them to administer justice.

A Mississippi court, in construing that State's statute, said:¹³

⁹ Hockaday v. Lynn, 200 Mo. 456, 98 S. W. 585 (1906).

¹⁰ Ibid., n. 9.

¹¹ National Bank of Lima v. Hancock, 85 O. A. 1 (1948).

¹² See, 19 Cinc. L. R. 157 (1950).

¹³ Sledge v. Floyd, 139 Miss. 398, 104 S. 163 (1925).

"We do not think the statute intended to deprive children of their right to inherit from their natural parents and blood relatives. To do so would raise grave questions where a child having expectations would be adopted against its consent or without its power to consent during the tender years of minority and thus be deprived of benefits."

The statutes relating to adoption should be liberally construed in favor of the child, so as not to deprive the child of any right it may have in the absence of express declaration.¹⁴ There was no such express declaration in the Georgia adoption statute, when a court in that jurisdiction allowed a child adopted by its aunt to sue in a wrongful death action on the death of its natural father.

Contrast the freedom of these courts in administering justice with the freedom of our courts under the Ohio adoption statute in the *Frantz v. Florence* case. The Ohio court was forced to cut off the inheritance from the grandfather to his grandson, because of the adoption by a well meaning stepfather. It is no wonder that the court said in its opinion, "While it is a harsh rule under the circumstances found therein, the social purpose or lack of purpose of the enactment of the statute by the legislature is not for the consideration of this court."

It is difficult to see a purpose so compelling as to warrant divesting a child of his blood inheritance. It is no more necessary to the change in his status than it would be necessary to deprive a married woman of her distributive share of her blood kin's property. Her legal status is changed though marriage, obligating her husband to support her. She will also inherit from him, but does all this mean that she can no longer inherit from her relatives? Of course it does not. She may inherit from both.

Finally, does our statute intend to encourage adoption? By destroying the child's rights, it can hardly be said to encourage it. The sole effect of our amended adoption statute is to divest the adopted child of one of its statutory rights. Any well-meaning, prospective adopting parent would certainly be discouraged by this prospect, especially where there is an actual expectancy. The last paragraph of Revised Code § 3107.13 has resulted in a harsh law which should be reconsidered by the Ohio legislature.*

¹⁴ *Macon, D. & S. R. Co. v. Porter*, 195 Ga. 40, 22 S. E. 2d 818 (1942).

* [Editor's Note: Judge Lee E. Skeel of the Ohio Court of Appeals, President of Cleveland-Marshall Law School, already has submitted to the Judicial Counsel a proposed amendment, for legislative action. The text of the amendment follows:

Section 3107.13 R. C. LEGAL RIGHTS AFTER FINAL DECREE OF ADOPTION.

"Except in the case of a natural parent married to the adopting parent, the natural parents, if living, shall be divested of all legal rights and obligations due from them to the child or from the child to them, and the child shall be free from all legal obligations of obedience or otherwise to such parents. The adopting parents of the child shall be invested with every legal right in respect to obedience and maintenance on the part of the child, and the child shall be invested with every legal right, privilege, obligation, and relation in respect to education and maintenance as if such child had been born to them in lawful wedlock. For all purposes under the laws of this state, including without limitation all laws and wills governing inheritance of and succession to real or personal property and the taxation of such inheritance and succession a legally adopted child shall have the same status and rights, and shall bear the same legal relationship to the adopting parents as if born to them in lawful wedlock and not born to the natural parents; provided:

(A) Such adopted child shall not be capable of inheriting or succeeding to property expressly limited to heirs of the body of the adopting parents.

(B) In case of adoption by a stepfather or stepmother, the rights and obligations of the natural parent who is the spouse of the adopting stepparent shall not in any way be affected by such adoption."

* * * * *

This section does not debar a legally adopted child from inheriting, under a will identifying such child by any name by which he has been or is known or other clear identification, as in case of bequest or devise to any other person or class.

For the purposes of inheritance to, through and from a legally adopted child, such child shall be treated the same as if he were the natural child of his adopting parents and, except where he is adopted by a stepfather or stepmother in which case his right of inheritance from or through his natural parents shall not be affected by his adoption, he shall cease to be treated as the child of his natural parents for the purposes of intestate succession.

(Emphasis means new matter.)]