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FAMILY LAW: ADOPTED CHILD ENTITLED
TO INHERIT FROM HIS NATURAL FAMILY
AS A LINEAL DESCENDANT: *ESTATE*
OF ZOOK (CAL. 1965)

In 1955 the California Legislature amended California Probate Code Section 257 to read:

An adopted child shall be deemed a descendant of one who has adopted him, the same as a natural child, for all purposes of succession by, from or through the adopting parent the same as a natural parent. An adopted child does not succeed to the estate of a natural parent when the relationship between them has been severed by adoption, nor does such natural parent succeed to the estate of such adopted child, nor does such adopted child succeed to the estate of a relative of the natural parent, nor does any relative of the natural parent succeed to the estate of an adopted child.

An appellate court subsequently interpreted Section 257 in *Estate of Dillehunt*,¹ stating:

It seems clear . . . that by the amendment of the section it was the intention of the Legislature to provide that the adopted child had rights of inheritance in the estate of his adoptive parents only, [and that] he be granted all of the rights of a natural child with reference thereto, but that by the adoption, his rights of inheritance from or through his natural parents were severed and terminated. There seems to be no room for any other construction in the light of the express language used.²

This interpretation of Section 257 was recently approved in *Estate of Goulart*,³ wherein the court held that there was "a complete severance of the former relationship of the adoptee with his natural, or biological, relatives . . . (such as) to make them no longer 'kindred' in the eyes of the law."⁴

Estate of Dillehunt and *Estate of Goulart* were cases involving the application of the rules of intestate succession and adoption to the particular testamentary problems, *i.e.* the problem of a pre-termitted heir and the problem of an anti-lapse statute. In *Estate of Zook*⁵ the Supreme Court of California had before it the problem of applying California Revenue and Taxation Code Section 13307 to bequests to grandchildren who had been adopted out of the testa-

¹ 175 Cal. App. 2d 464, 346 P.2d 245 (1959).

² *Id.* at 467, 346 P.2d at 246-247.

³ 222 Cal. App. 2d 808, 35 Cal. Rptr. 465 (1963).

⁴ *Id.* at 820, 35 Cal. Rptr. at 473.

⁵ 62 A.C. 511, 399 P.2d 53, 42 Cal. Rptr. 597 (1965).

trix' natural family. The court held that Section 257 does not operate to broadly redefine the concept of lineal issue for inheritance tax purposes, and an adopted child is entitled to inherit from his natural family, not as a stranger, but as a "Class A" transferee. (A "Class A" transferee is a transferee who is the husband, wife, lineal ancestor or lineal issue of the decedent.)

A cursory glance at *Estate of Zook* creates the impression that Section 257 has now been specifically defined and limited to problems involving intestate succession, whether the problem is basically testamentary or *ab intestato* in nature. An examination of the development of the law leading up to Section 257, and the 1955 Amendment, is therefore necessary to determine if *Zook* actually does stand for such a proposition.

The earliest California statute which directly regulated inheritance and the adopted child was enacted in the legislative year 1869-70. The statute provided that:

A child, when adopted, takes the name of the person adopting, and the two thenceforth shall bear towards each other the legal relation of parent and child, and the minor shall enjoy all the legal rights and be subject to all the duties appertaining to that relation; except, however, that if the adopted child leaves descendants, ascendants, brothers or sisters, the party adopting, nor his relatives, shall not inherit the estate of the adopted child, nor any part thereof. . . .⁶

In 1872 the inheritance clause of the 1869-70 Statute was excluded when the Legislature adopted California Civil Code Section 228. Even though the inheritance clause was excluded, Section 228 was interpreted as completely severing the relationship between the adopted child and his natural parents. In *Estate of Jobson*⁷ the court held that:

. . . various rulings seem to establish the doctrine that the effect of an adoption under our Civil Code is to establish the legal relation of parent and child, with all the incidents and consequences of that relation, between the adopting parent and the adopted child. This necessarily implies that the natural relationship between the child and its parents by blood is superseded.⁸

Estate of Jobson, in 1912, clarified the law pertaining to the relationship between the adopted child and his natural parents. Four years later *In Re Darling*⁹ clarified the status of the adopted child with respect to collateral relations:

⁶ STAT. OF CALIF., 1869-70, c. 385, p. 531, § 6.

⁷ 164 Cal. 312, 128 Pac. 938 (1912).

⁸ *Id.* at 316-317, 128 Pac. at 939. See, e.g., *Estate of Pillsbury*, 175 Cal. 454, 166 Pac. 11 (1917); *Estate of Ballou*, 181 Cal. 61, 183 Pac. 440 (1919).

⁹ 173 Cal. 221, 159 Pac. 606 (1916).

The adoption statutes of this state do not purport to affect the relationship of any person other than that of the parents by blood, the adopting parents and the child. It is the person adopting the child who, by the express terms of the Section, after adoption "shall sustain towards each other the legal relation of parent and child and have all the rights and be subject to all the duties of that relation." . . . The adoption simply fixes the status of the child as to its former and adopted parents. To its grandparents by blood it continues to be a grandchild, and the child of its parents by blood. It does not acquire new grandparents in the person of the father and mother of an adopting parent.¹⁰

Estate of Darling was followed until 1931 when it was codified in Probate Code Section 257:

An adopted child succeeds to the estate of one who has adopted him, the same as a natural child; and the person adopting succeeds to the estate of an adopted child, the same as a natural parent. An adopted child does not succeed to the estate of a natural parent when the relationship between them has been severed by the adoption, nor does such natural parent succeed to the estate of such adopted child.

In maintaining the limited severance of the relationship of the adopted child and his natural parents, the court in *Estate of Esposito*¹¹ construed the terms "brother or sister," as found in Probate Code Section 225,¹² holding that "so far as the right of inheritance is concerned, the child does not acquire new brothers and sisters in the persons of the natural children of the adoptive parents . . . nor lose the brothers and sisters of its own blood."¹³

In 1955 the Supreme Court followed *Estate of Esposito* in *Estate of Calhoun*¹⁴ wherein it held that "in no decision has the court determined the status of an adopted child as a 'brother or sister' [as to the children of the adoptive parents] within the meaning of Section 225 of the Probate Code."¹⁵ However, the court went on to state:

When the original adoption statutes were enacted, adoptions were infrequent and most often occurred when the parents consented to the adoption of their child by persons known to them, or as consequence of the assumption of care and custody of an orphan by a blood relative. Under present day conditions it may be the better social policy to substitute the relationship of the adoptive family for that of

¹⁰ *Id.* at 225-226, 159 Pac. at 608.

¹¹ 57 Cal. App. 2d 859, 135 P.2d 167 (1943).

¹² "If the decedent leaves neither issue nor spouse, the estate goes to his parents in equal shares, . . . or if both are dead in equal shares to his brothers and sisters and to the decedents of deceased brothers and sisters by right of representation."

¹³ 57 Cal. App. 2d at 865-866, 135 P.2d at 171.

¹⁴ 44 C.2d 378, 282 P.2d 880 (1955).

¹⁵ *Id.* at 386, 282 P.2d at 885.

the blood relatives. With many children placed for adoption by agencies licensed for that purpose, there has developed a demand for secrecy as to the identity of the blood relatives, and in most cases, for all practical purposes, an adopted child is entirely cut off from his natural family relationships.¹⁶

This case, in part, was a factor contributing substantially to the passage, in April 1955, of Assembly Bill 3734, which amended Probate Code Section 257.

A liberal interpretation of Section 257, as amended, would seem to sever all ties between the adopted child and his natural family. The last two disjunctives of the section (" . . . nor does such adopted child succeed to the estate of a relative of the natural parent, nor does any relative of the natural parent succeed to the estate of an adopted child.") seem to make the severance manifestly clear if the use of the term "relative"¹⁷ by the Legislature was intended to encompass all the kindred of the natural parent. Accordingly, in *Estate of Dolan*¹⁸ a natural sister of the adopted child was not entitled to succeed to any portion of an adopted child's estate, since following his adoption she was no longer related to him for purposes of succession.¹⁹

Section 257 also precludes an adopted child from being a pretermitted heir with respect to his natural family.²⁰ Where the son of a deceased child was adopted by another person before the death of the natural grandparent, whose will made no mention of the son or deceased father, the court held "the law at the time of the death of the testator governs, [1957], and accordingly appellant is not an heir at law and not a pretermitted heir."²¹

In *Estate of Goulart*²² the court held that California Probate Code Section 92 (the anti-lapse statute) could not prevent failure of devises to natural brothers and sisters of an adopted testatrix because under Section 257 the natural brothers and sisters of the testatrix were no longer her kindred. In defining kindred the court stated:

The word "kindred" is not defined in the Probate Code. Although no amendment to section 92 has been made, it appears that the Legislature

¹⁶ *Id.* at 387, 282 P.2d at 886.

¹⁷ BLACK'S LAW DICTIONARY (4th ed. 1951) defines relative as "a kinsman; a person connected with another by blood or affinity."

¹⁸ 169 Cal. App. 2d 628, 337 P.2d 498 (1959).

¹⁹ See, e.g., *Estate of Serventi*, 190 Cal. App. 2d 514, 12 Cal. Rptr. 206 (1961) (which held the petitioner, an adopted child, would not succeed to any portion in the estate of the brother of his predeceased father); *Estate of Garey*, 214 Cal. App. 2d 39, 29 Cal. Rptr. 98 (1963).

²⁰ *Estate of Dillehunt*, 175 Cal. App. 2d 464, 346 P.2d 245 (1959).

²¹ *Id.* at 468, 346 P.2d at 248.

²² 222 Cal. App. 2d 808, 35 Cal. Rptr. 465 (1963).

intended to create new kindred for the adoptee. We believe that this conclusion follows from (1) the new policy of the state in respect of adoptions, as shown by the history of the 1955 amendment to section 257 of the Probate Code, (2) the trend of judicial decisions, and (3) the logical consequence of construing the word "kindred" as applying exclusively to the new, or adoptive familial relationship.²³

CONCLUSION

After examining the development of the law before and after the 1955 amendment to Section 257, there seems to emerge in the statutes and case law a certain consonance of thought and application of a basic social objective. This objective seems to be the protection of the adopted child in those cases where the ties of a family relationship have, for all practical purposes, been severed. This protection is to be afforded by the complete severance of the relationship of the adopted child to his natural family. The statutes, codes and cases preceding *Estate of Zook* dealt specifically with situations where the adoptee and/or the adoptee's natural family were not specifically proclaimed or recognized in the testamentary disposition of the other. And, though a case may have had as a basic issue a particular testamentary disposition, the issue of the adoptee or the adoptee's natural family has arisen under questions involving the application of the rules of intestate succession.

In *Estate of Zook*, there is the distinct difference of a bequest recognizing the testatrix' grandchildren, notwithstanding their adoption out of the family. The court, in recognizing this distinguishing feature, stated:

Usually, or often, an adoption situation involves the severance, in fact as well as in law, of one set of parental bonds and the replacement thereof by another. The law of intestate succession, in section 257, recognizes this usual attitude. But in a situation where, as here, by will, a testatrix has proclaimed her intention to observe the natural bonds, the situation may well demand different treatment. This should be particularly true where the textatrix was not a party to the adoption and thus could not be deemed to have voluntarily or constructively severed her natural family bonds with the child. By continuing to bear toward such child the attitude of affection which generally accompanies a specific bequest, the ties between the child and the testatrix cannot be said to have been severed in fact as they have been in law.²⁴

Thus it appears that the court's narrow construction of Section 257 has resulted, for purposes of taxation, at least, in fulfilling both the legal and social needs of the adopted child and his natural and adopted families and relatives.

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²³ *Id.* at 820, 35 Cal. Rptr. at 473.

²⁴ 62 A.C. 511, 514-515, 399 P.2d 53, 56, 42 Cal. Rptr. 597, 600.