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Adoption - Inheritance by Adopted Child - Right of Adopted Children to Take under Class Gift from Other than Adoptive Parents

Richard A. Rahlfs

RECENT CASES

ADOPTION — INHERITANCE BY ADOPTED CHILD — RIGHT OF ADOPTED CHILDREN TO TAKE UNDER CLASS GIFT FROM OTHER THAN ADOPTIVE PARENTS. — Testatrix's will placed a certain fund in trust for a niece for life, remainder to the child or children of the niece. Nineteen years after the death of the testatrix, the niece adopted an adult woman and her two minor daughters. The California Supreme Court *held*, that under statutory law[1] the adopted children were included in the term "children" in the will, and took as members of the class upon the death of their adoptive mother. *In re Stanford's Estate*, 315 P.2d 681 (Cal. 1957).

The weight of authority in this country appears to be that an adopted child inherits *from* but *not through* his adoptive parents.[2] However, a few jurisdictions have allowed the adopted child to inherit both from and through them.[3] The problem in the instant case is not one of inheritance by right of statutory distribution and descent however, but whether the words "child or children" as used in a will include adopted persons.[4]

In determining the right of an adopted child to take under a will the intent of the testator is controlling.[5] Where the testamentary intent is indefinite or obscure, an adopted child may take if his status answers the description of the will. The statutory system supplies the intention.[6] In ascertaining whether a gift to "children" includes an adopted child, it will be presumed that the testator knew and acted in contemplation of the reciprocal rights and duties arising from the existing statutes relating to adoption.[7] Therefore, if the adoption statute can be interpreted to include an adopted child when one other than the adoptive parent uses the term "children" in a will, the adopted child will take under the will, no intention to the contrary being found. In *In re Darling's Estate*,[8] the California Court held, that "the

1. Cal. Gen. Laws Ann. § 228 (1954) "A child, when adopted, may take the family name of the person adopting. After adoption, the two 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."

2. See *In re* Estate of Pierce, 32 Cal.2d 265, 196 P.2d 1 (1948); Hockaday v. Lynn, 200 Mo. 456, 98 S.W. 585 (1906); Grimes v. Grimes, 207 N.C. 778, 178 S.E. 573 (1935); Batcheller-Durkee v. Batcheller, 39 R.I. 45, 97 Atl. 378 (1916); *In re* Harrington's Estate, 96 Utah 252, 85 P.2d 630 (1938); Mott v. National Bank of Commerce, 190 Va. 1006, 59 S.E.2d 97 (1950); *In re* Bradley's Estate, 185 Wis. 393, 201 N.W. 973 (1925). These courts reason, *inter alia*, that statutes in derogation of the common law are to be strictly construed; the legislature should use explicit and unmistabable language to confer such a right; a testator who is not the adoptive parent has no obligation, moral or family, to provide for such children; statutes working a change in canons of descent are to be strictly construed; blood relationship has always been recognized by the common law as a potent factor in testacy and should not be treated lightly; and an adoptive parent has no moral right to impose upon another the status of a relative of an adopted child.

3. See McCune v. Oldham, 213 Iowa 1221, 240 N.W. 678 (1932); Denton v. Miller, 110 Kan. 292, 203 Pac. 693 (1922); Bedinger v. Graybell's Executor and Trustee, 302 S.W.2d 594 (Ky. 1957); *In re* Ballantine's Estate, 81 N.W.2d 259, 262 (N.D. 1957) (dictum).

4. *In re* Stanford's Estate, 315 P.2d 681 (Cal. 1957); Comer v. Comer, 195 Ga. 79, 23 S.E.2d 420 (1942); Wilder v. Wilder, 116 Me. 398, 102 Atl. 110 (1917).

5. *E. g.*, Mooney v. Tolles, 111 Conn. 1, 149 Atl. 515 (1930); Comer v. Comer, *supra* note 4; Wilder v. Wilder, *supra* note 4.

6. Dulfon v. Keasbey, 111 N.J. Eq. 223, 162 Atl. (Ch. 1932).

7. Mooney v. Tolles, 111 Conn. 1, 149 Atl. 515 (1930).

8. 173 Cal. 221, 159 Pac. 606 (1916). In *In re* Kruse's Estate 260 P.2d 969, 120 Cal. App.2d 254 (1953) the court said: "Since this decision [*In re* Darling's Estate] it has been consistently held that an adopted child while he inherits *from* his adopting parents does not inherit *through* them from the relatives of the adopting parents. *In re* Es-

adoption statutes of this state do not purport to affect the relationship of any person other than that of the parent's by blood, the adopting parents, and the child." Other courts with similar statutes have held accordingly.[9] This would seem to indicate that the adoption statutes in the instant case are not applicable in determining the testatrix's intention.

In interpreting a will to find the intention of the testator the following presumptions are found to be in general use by the courts. The presumption that where the testator is the adoptive parent, an adopted child is included in the term "children".[10] Where the testator is not the adoptive parent, the presumption is that he did not intend such inclusion,[11] especially when the adoption takes place after the testator's death.[12] Only where the testator has clearly shown by other words that he intended to use the word "children" in a more extensive sense will this presumption be overcome.[13]

The holding in the instant case would appear to give one taking a life estate with remainder to his children what is in effect a general power of appointment over the property. There seems to be nothing to prevent the holder of the life estate from adopting anyone whom he wishes to take the property upon his death.[14] Such a result does not seem to be in accord with legislative intent as expressed in the adoption statutes, nor with the intent of a testator in circumstances similar to those in the instant case.

RICHARD A. RAHLFS.

CIVIL PROCEDURE — DISCOVERY — LIABILITY INSURANCE COVERAGE LIMITS NOT DISCOVERABLE. — In an action arising out of a motorcycle-automobile collision, plaintiff sought, by discovery proceedings, knowledge of the limits of defendant's automobile liability policy. In reversing the lower court's order requiring defendant to answer questions on this point, the Supreme Court of Florida, one justice dissenting, *held* that limits of liability in insurance policies are not matters subject to discovery under the Florida Rules of Civil Procedure. *Brooks v. Owens*, 97 So. 2d 693 (Fla. 1957).

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tate of Pence, 117 Cal. App. 323, 332-333, 4 P.2d 202; *In re* Estate of Jones, 3 Cal. App.2d 395, 39 P.2d 847; *In re* Estate of Stewart, 30 Cal. App.2d 594, 86 P.2d 1071; *In re* Estate of Pierce, 32 Cal.2d 265, 269, 196 P.2d 1; Probate Code, sec. 257." In *In re* Stewart's Estate, *supra* at 1073 the California District Court of Appeal allowed an estate to escheat to the state, rather than allow the adopted children of a predeceased cousin of the intestate take. The court said that "had the legislature intended to enlarge the right of succession of an adopted child to inherit *through*, and not *from* the adopted parent, it would have so provided."

9. See Batcheller-Durkee v. Batcheller, 39 R.I. 45, 97 Atl. 378 (1916) and cases cited therein.

10. Brunton v. International Trust Co., 114 Colo. 298, 164 P.2d 472, 477 (1945) (dictum); Appeal of Wildman, 111 Conn. 683, 151 Atl. 265, 266 (1930) (dictum); Wilder v. Wilder, 116 Me. 389, 102 Atl. 110, 111 (1917) (dictum).

11. Brunton v. International Trust Co., *supra* note 10; Middletown Trust Co. v. Gaffney, 46 Conn. 61, 112 Atl. 689 (1921); Pierce v. Farmers State Bank, 222 Ind. 116, 51 N.E.2d 480 (1943); Copeland v. State Bank and Trust Co., 300 Ky. 432, 188 S.W.2d 1017 (1945); Wilder v. Wilder, *supra* note 10; *In re* Fisler, 131 N.J.Eq. 310, 25 A.2d 265 (Prerog. Ct. 1942).

12. Appeal of Wildman, 111 Conn. 683, 151 Atl. 265 (1930); Copeland v. State Bank and Trust Co., *supra* note 11.

13. Comer v. Comer, 195 Ga. 79, 23 S.E.2d 420 (1942); Copeland v. State Bank and Trust Co., *supra* note 11; *In re* Fisler's Estate, 131 N.J.Eq. 310, 25 A.2d 265 (Prerog Ct. 1942).

14. See Bedinger v. Graybill's Executor and Trustee, 302 S.W.2d 594 (Ky. 1957) (where testatrix placed a fund in trust for her son for life, remainder to his heirs at law, and upon failure of heirs, to specified charities. Eighteen years after testatrix died the son adopted his wife. The court allowed the adopted wife to take under the will as a "child" of the son.)