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Adoption - Status of Adopted Person - Adopted Child Not Allowed to Inherit through Adopting Parent as Issue

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RECENT CASES

ADOPTION—STATUS OF ADOPTED PERSON—ADOPTED CHILD NOT ALLOWED TO INHERIT THROUGH ADOPTING PARENT AS ISSUE. A died in Massachusetts possessed of property wholly within that state. She left a legacy to B, her nephew, who had predeceased her. B, while a resident of California, had adopted the respondents, his only heirs. The question presented was whether the respondents were entitled to take the legacy through B. The court *held* that under the applicable Massachusetts law, an adopted child does not become for all purposes the issue of the adopting parents and that the respondents were not entitled to take the legacy. *Arnold v. Helmer,* 100 N.E.2d 886 (Mass. 1951).

A Massachusetts statute provides that a child adopted in another state is entitled to all the rights given to such a child in the state of his adoption "except so far as such rights are in conflict with this chapter." [1] However another provision of the above quoted chapter provides that an adopted child may inherit from his adoptive parents, but from no other kindred of his adopting parents,[2] thus excluding the respondents in the instant case. In addition, the Massachusetts statute on wills provides that, where a legacy is left to one who dies before the testator, the issue of such predeceased legatee shall take the same estate he would have taken had he survived.[3] The word "issue" as used in the latter statute apparently does not include adopted children.

Adoption is a development from early Rome, being unknown to the Common Law. Since it is purely statutory in this country, the rights acquired by the adopted child vary from state to state. Where the laws of two states are in conflict as to the adopted child's right of inheritance, one of two general principles is usually applied.[4]

The first such general principle is that the rights of inheritance are fixed by the state effecting the adoption and cannot later be altered. This rule might well be subdivided into two parts: (a) that the rights granted by the state of adoption cannot be enlarged by the courts of another state, and (b) that the rights given the child by the state of adoption cannot be changed in

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1. Mass. G.L. (Ter.Ed.) c. 210 §9 (1932).
2. Mass. G.L. (Ter.Ed.) c. 210, §7 (1932) provides: "A person adopted in accordance with this chapter shall take the same share of the property which the adopting parent could dispose of by will as he would have taken if born to such parent in lawful wedlock, and he shall stand in regard to the legal descendants, but to no other of the kindred of such adopting parent, in the same position as if so born to him. . . ."
3. Mass. G.L. (Ter.Ed.) c. 191, §22 (1932) provides: "If a devise or legacy is made to a child or other relation of the testator, who dies before the testator, but leaves issue surviving the testator, such issue shall, unless a different disposition is made or required by the will, take the same estate which the person whose issue they are would have taken if he had survived the testator."
4. A third rule formerly applied in a few jurisdictions was that the adopted child had no right of inheritance outside the state of his adoption. This doctrine was laid down in Brown v. Finley, 157 Ala. 424, 47 So. 577 (1908) (Georgia adoption conferred no right of inheritance in Alabama); and followed in Frey v. Nielson, 99 N.J.Eq. 135, 132 Atl. 765 (1926) (child adopted in New York denied right of inheritance in New Jersey); but the latter state overruled the doctrine in Greaves v. Fogel, 12 N.J.Super. 5, 78 A.2d 719 (1951) (child adopted in Pennsylvania inherited New Jersey land). Supported solely by the Alabama decision cited, this rule is of practically no importance today.

any way. Early decisions in Kansas [5] and New Hampshire [6] held that where the adopted child's right of inheritance was limited by the state effecting the adoption it could not later be enlarged by another state. However, both states later reversed these decisions.[7] Iowa [8] and Arkansas [9] decisions still support this proposition. Sub-rule (b) is supported by a Connecticut decision.[10]

The second general principle, and the one followed by the vast majority of American courts, is that the state creating the adoption establishes both the child's status as an adopted child and its right of inheritance, but the right of inheritance is limited by interpretation to accord with the rights of a child adopted in the state of the inheritance.[11] The leading authority for this rule is *Ross v. Ross* [12] which asserted that the "status or condition of a person . . . is fixed by the law of the domicile; and that this status and capacity are to be recognized and upheld in every other state, so far as they are not inconsistent with its own laws and policy." [13] The case has long

13. *Id* at 246.

been considered authority for upholding the law of the deceased's domicile over that of the state of the adoption where the laws of the two are in conflict. A careful reading of the *Ross* case however, discloses that the laws of Pennsylvania and Massachusetts were not in conflict on any material point brought before the court. The same decision would have been reached by applying the laws of either jurisdiction. The quoted proposition is therefore obiter dictum, yet it has become the majority rule in this country.[14] In following the long established precedent of the *Ross* case, the court in the instant case denied the legacy to heirs who would have experienced no legal difficulty in obtaining it had their adoptive parent out-lived the testatrix by as much as one day.

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5. In Boaz v. Swinney, 79 Kan. 539, 99 Pac. 621 (1909), a child adopted in Illinois, where an adopted child could inherit from, but not through, adoptive parents, was denied inheritance through an adoptive parent although Kansas law allowed such inheritance through adoptive parents.

6. Meader v. Archer, 65 N.H. 214, 23 Atl. 521 (1889).

7. *In re* Rieman's Estate, 124 Kan. 539, 262 Pac. 16 (1927); Anderson v. French, 77 N.H. 509, 93 Atl. 1042 (1915).

8. *In re* Sunderland, 60 Iowa 732, 13 N.W. 655 (1882) (child adopted in Louisiana allowed to inherit from, but not through, adoptive parents by following Louisiana rather than Iowa law).

9. Shaver v. Nash, 181 Ark. 1112, 29 S.W.2d 298 (1930).

10. Slattery v. Hartford-Connecticut Trust Company, 115 Conn. 163, 161 Atl. 79 (1932), a child adopted in Michigan, which allowed an adopted child to inherit from both its natural and adoptive parents, was allowed to inherit from its natural father in Connecticut, though such right would not have been accorded one adopted in Connecticut.

11. Restatement, Conflict of Laws §143 (1934): "The status of adoption, created by the law of a state having jurisdiction to create it, will be given the same effect in another state as is given by the latter state to the status of adoption when created by its own law." *Cf.* Restatement, Conflict of Laws §305, Comment b, (1934): "If the law of the state of the decedent's domicil allows an adopted child to take a distributive share, a legally adopted child will take a share although the law of the state of adoption or of the state where a chattel is provides otherwise. If the law of the state of the decedent's domicil does not allow an adopted child to take a distributive share, he cannot do so, although the law of the state of adoption or of the state where a chattel is would allow him to take." See Glanding v. Industrial Trust Co., 46 A.2d 881 (Del. 1946).

12. 129 Mass. 243 (1880).

14. The multitude of cases which quote or reiterate the doctrine of the Ross case include: Keegan v. Geraghty, 101 Ill.26 (1881); *In re* Rieman's Estate, 124 Kan. 539, 262 Pac. 16 (1927); Anderson v. French, 77 N.H. 509, 93 Atl. 1042 (1915) (where the court recognized the proposition laid down by the Ross case as mere dictum); *In re* Finkerzeller's Estate, 105 N.J.Eq. 44, 146 Atl. 656 (1929); *In re* Zoell's Estate, 345 Pa. 413, 29 A.2d 31 (1942).

A more liberal view has been taken by at least one Canadian court which held that a child adopted in Massachusetts could take a legacy which descended through its adoptive parent because Massachusetts law gave the child all rights of a child born in lawful wedlock.[15] This unusual result was reached despite the fact that the common law, at that time, did not even recognize adoption, and the child, as the instant case indicates, could not have taken the legacy in the state of his adoption. The Canadian court stated that the decision in no way conflicted with its own law since the court was merely giving recognition, by reason of comity, to status acquired in another jurisdiction.[16] It would seem that such a court would have little difficulty in holding the children in the present case to have become "issue" by California law and as such entitled to take the legacy.[17]

Most courts hold that a testator who devises to "children" is presumed to include his own adopted children, but not the adopted children of others.[18] This presumption is founded upon the supposition that the law favors blood lines and each person is presumed to intend to keep his estate within such lines unless he specifically provides otherwise. The courts apparently feel that a testator should not be presumed to know or keep an account of children adopted by his heirs, and on this reasoning courts strictly construe the adopted child's rights of inheritance.[19]

Under the present system, the adopted child's rights are uncertain and variable when he seeks to enforce them outside the jurisdiction of his adoption. In fairness to the adopted child, his status and rights when acquired in one jurisdiction should be given full recognition in all others. Since many statutes [20] provide that an adopted child shall be for all legal consequences the same as a natural child, a more liberal view of such child's rights seems essential to execute the obvious legislative intent.

ROBERT H. LUNDBERG

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15. Purcell v. Hendricks, 35 B.C.R. 547, 3 D.L.R. 854 (1925).

16. The court intimated, however, that the result might have been different had the property consisted of realty instead of personalty, since the so-called Statute of Merton did not apply to personalty.

17. *Cf. In re* Esposito's Estate, 57 Cal.App.2d 859, 135 P.2d 167 (1943) (illegitimate children whose father had acknowledged them and taken them into his home allowed to inherit through him); *In re* Newman's Estate, 75 Cal. 213, 16 Pac. 887 (1888) (adopted child held "issue" of adoptive parent).

18. *See, e.g.*, Caspar v. Helvie, 83 Ind.App. 166, 146 N.E. 123 (1925) (the word "children" did not include a legatee's adopted children where legacy was over to legatee's children in case legatee predeceased testator); Virgin v. Marwick, 97 Me. 578, 55 Atl. 520 (1903) (adopted child held "child" and thus beneficiary of insured).

19. See Phillips v. McConica, 59 Ohio St. 1, 51 N.E. 445 (1898) (legacy lapsed because legatee's adopted child was not his "issue").

20. *E.g.*, N.D. Rev. Code §14-1113 (1943) "The child so adopted shall be deemed, as respects all legal consequences and incidents of the natural relation of parent and child, the child of such parent or parents by adoption the same as if he had been born to them in lawful wedlock." A recent North Dakota case, Hoellinger v. Molzhon, 41 N.W.2d 217 (N.D., 1950) held that adopted children come within the term "lineal decendants as used in N. D. Rev. Code §56-0420 (1943). Thus a legacy to the predeceased adoptive parent does not lapse, in North Dakota, but descends to the adopted child.