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Domestic Relations - Inheritance by Adopted Children - Right of Adopted Child to Inherit from Its Natural Parents

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possible disloyalty of federal employees, but to their probable carelessness,[25] it can reasonably be extended only to employees who have access to information, the improper disclosure of which would adversely affect national security.[26]

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DOMESTIC RELATIONS — INHERITANCE BY ADOPTED CHILDREN — RIGHT OF ADOPTED CHILD TO INHERIT FROM ITS NATURAL PARENTS. — Respondent, an adopted child claimed the right to inherit a one-fourth interest in the estate of his natural father. The administratrix of the deceased's estate contended that respondent's right to inherit from his natural parent was cut off by his adoption into another family. The Supreme Court of North Dakota, affirming the District Court, *held* that the adoption statute did not prevent an adopted child from inheriting from his natural parent. *In re Ballantine's Estate,* 81 N.W.2d 259 (N. D. 1957).

Adoption was unknown at common law therefore all provisions for inheritance by adopted children must be found in statutes and the cases construing them.[1] The North Dakota statutes as quoted in the instant case provide, "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"[2] and "The natural parents of an adopted child shall be deprived by the decree of adoption of all legal rights respecting the child, and the child shall be free from all obligations of maintenance and obedience respecting his natural parents."[3]

The court in reaching its decision examined the history of the adoption statute.[4] The statute of 1891[5] contained the provision that an adopted child should be treated as one born to the adoptive parents in lawful wedlock ". . . except that such adoption shall not itself constitute such child the heir of such parents or parents by adoption." This quoted provision, the court observed, was omitted in the Revised Code of 1895 and said, "the omission . . . would not of itself alter . . ." the legislative intent of not disturbing the child's right to inherit from its natural parents.

The court's construction of the adoption statutes follows the decided weight of authority.[6] From a review of cases from jurisdictions with statutes similar to those in North Dakota, none were found disallowing the adopted child's right to inherit. Those barring the right base the denial upon specific statutory provision. The reason for the rule allowing the right of inheritance

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353; Emerson & Helfeld, *Loyalty Among Government Employees,* 58 Yale L. J. 1, 3-20 (1948).

25. See note 22 *supra.*

26. See note 20 *supra.*

1. See *In re* Jaren's Adoption, 223 Minn. 561, 27 N.W.2d 656 (1947); Young v. Bridges, 86 N. H. 135, 165 Atl. 272 (1933); 4 Vernier, American Family Laws 279 (1936).

2. N. D. Rev. Code § 14-1113 (1943).

3. N. D. Rev. Code § 14-1114 (1943).

4. N. D. Sess. Laws 1891, c. 4, § 6.

5. Rev. Codes of N. D. § 2804 (1895).

6. See *e. g.,* Roberts v. Roberts, 160 Minn. 740, 199 N.W. 581 (1924); Clarkson v. Hatton, 143 Mo. 47, 44 S.W. 761 (1898); *In re* Kay's Estate, 127 Mont. 172, 260 P.2d 391 (1953); *In re* Benner, 109 Utah 172, 166 P.2d 257 (1946).

as quoted in *Sorenson v .Churchill*[7] is, ". . . it may stand assumed as sound law that consanguinity is so fundamental in statutes of descent and distribution that it may only be ignored by construction when courts are forced so to do, either by the terms of express statute or by inexorable implication."[8] An increasing number of jurisdictions are now following the minority view and have enacted statutes expressly denying the right of an adopted child to inherit from his natural parents,[9] thus alleviating any necessity of construction on the part of the courts. Such legislation is based on a recognition of the fact that the adopted child takes on the incidents of a natural relation with its adopted parents and his natural parents are thereby relieved.[10] The importance of allowing the descent and distribution of an estate to follow the blood relationship is overshadowed by the desirable social aspects of adoption. As the adoption carries with it all the responsibilities, rights and duties to the adopted child, it seems proper that the child should be severed from all ties with its natural family, including the right of inheritance.

The problem of whether an adopted child may inherit from its natural parents is only one of the many that may arise when considering the status created by adoption statutes. Some of the others which frequently occur are: whether the adopted child can inherit from its adoptive parents,[11] from the collateral and lineal relatives of the adoptive family,[12] from the collateral and lineal kin of his natural family;[13] whether he can inherit both as an adopted child and as natural kin, as in a situation where it is adopted by a relative of its natural parents;[14] and whether a child of a second adoption can inherit from its parents of the second adoption, the first adoption and/or its natural parents.[15] The same type of problems appear in the reverse of these situations, i. e., which parents and relatives may inherit from the adopted child in the event it predeceases them.[16]

Although there have been few cases in North Dakota concerning the descent and distribution of property to and from an adopted child, it has been the source of much litigation in other jurisdictions and it appears that remedial legislation is desirable.

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7. 51 S. D. 113, 212 N.W. 488 (1927).
8. *Id.* at 489.
9. See *e. g.*, Ariz. Code § 27-207(a) (Supp. 1952); Calif. Ann. Code § 257 (West 1956); Conn. Gen. Stat. § 6869 (1949); N. C. Sess. Laws, c. 813 (1955); N. Mex. Stat. Ann. § 29-1-17 (1953); Pa. Stat. Ann. Title 20 § 1.8 (Purdon 1950); Va. Code § 63-358 (1954 Supp.).
10. Alexander v. Lamar, 188 Ga. 273, 3 S.E.2d 656, 659 (1939) (dictum); *In re* Havsgord's Estate, 34 S. D. 131, 147 N.W. 378, 379 (1914) (dictum).
11. See Hoellinger v. Molzhon, 77 N. D. 108, 41 N.W.2d 217 (1950); *In re* Nelson's Estate, 266 Wis. 617, 64 N.W.2d 407 (1954); *In re* Holcombe's Estate, 259 Wis. 642, 49 N.W.2d 914 (1951).
12. See *In re* Eddin's Estate, 66 S. D. 109, 279 N.W. 244 (1938); *In re* Harrington's Estate,' 95 Utah 252, 85 P.2d 630 (1938); *In re* Rhodes' Estate, 271 Wis. 342, 73 N.W.2d 602 (1955).
13. See *In re* Darling, 173 Cal. 221, 159 Pac. 606 (1916); *In re* Gourlay's Estate, 173 Misc. 930, 19 N. Y. S.2d 122 (Surr. Ct. 1940).
14. See *In re* Wilson, 95 Colo. 359, 33 P.2d 696 (1934); *In re* Benner, 109 Utah 172, 166 P.2d 257 (1946).
15. See *In re* Leichtenberg's Estate, 7 Ill.2d 545, 131 N.E.2d 487 (1956).
16. See *In re* Fitzgerald's Estate, 223 Iowa 141, 272 N.W. 117 (1937); Calhoun v. Bryant, 28 S. D. 266, 133 N.W. 266 (1911).