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Adoption -- Right to Inherit Upon Readoption

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CASES NOTED

ADOPTION—RIGHT TO INHERIT UPON READOPTION

Claimant was adopted by his aunt and uncle in 1918. After living with them for two weeks, he was returned to his natural parents; and in 1920, was readopted by his natural parents. Following the death of his aunt, intestate, the claimant sought to share in her estate. *Held*, where a child was readopted *prior* to the death of the first adoptive parent, he could not share in the estate. *In re Leichtenberg's Estate*, 7 Ill. 2d 545, 131 N.E. 2d 487 (1956).

The right of inheritance is not absolute or natural, but is a creature of statute.[1] Adoption also is a creature of statute.[2] The capacity to inherit is conferred upon natural and adopted children without discrimination.[3] Once the adoption occurs, the child has the same legal status as a natural child. No court order or decree can expunge the rights derived therefrom, just as the rights of a natural child cannot be destroyed by any court order or decree.[4] The courts have uniformly held that a child who is adopted a second time can inherit from the successive parents when the second adoption is *subsequent* to the death of the first adoptive parent.[5] There is, however, a dispute as to whether the adopted child can inherit from the first adoptive parent, when, *prior* to the death of such parent, he is adopted a second time.[6] In this situation a distinction has been made between a natural child and an adopted child upon the rationale that one depends upon blood and the other upon consent and contract.[7] As stated in *In re Klapp's Estate*,[8] the second proceeding ". . . ipso facto had the effect of

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1. *In re* Eggert's Estate, ——Minn.——, 72 N.W.2d 360 (1955).
2. Villier v. Watson's Adm'r. 168 Ky. 631, 182 S.W. 869, 871 (1916), "The right of an adopted child to inherit is, . . . based upon the statute, and not upon any common-law or civil law status."; Holmes v. Curl, 189 Iowa 246, 178 N.W. 406 (1920); Succession of Gambino, 225 La. 674, 73 So.2d 800, 802 (1954), "Adoption . . . is only what the law makes it."; *In re* Monroe's Ex'rs., 132 Misc. 279, 229 N.Y.S. 476 (1928).
3. Note 21 *infra*.
4. Coonradt v. Sailors, 186 Tenn. 294, 209 S.W.2d 859 (1948), "Now conceding that the second proceeding was in effect a second adoption, it does not deprive the appellee of her inheritable right which she acquired by virtue of her first adoption. . . ."
5. Denton v. Miller, 110 Kan. 292, 203 Pac. 693 (1922). The court was here referring to the right of an adopted child to take from the natural children of its adoptive parents.
6. Hawkins v. Hawkins, 218 Ark. 423, 236 S.W.2d 733 (1951); Passmore v. Morrison, 63 So.2d 297 (Fla. 1953); Holmes v. Curl, 189 Iowa 246, 178 N.W. 406 (1920); Dreyer v. Schrick, 105 Kan. 495, 185 Pac. 30 (1919); *In re* Klapp's Estate, 197 Mich. 615, 164 N.W. 381 (1917); *In re* Myres' Estate, 205 Misc. 880, 129 N.Y.S. 2d (1954); *In re* Talley's Estate, 188 Okla. 338, 109 P.2d 495 (1941); *In re* Egley's Estate, 16 Wash. 2d 681, 134 P.2d 943 (1943).
7. *In re* Klapp's Estate, 197 Mich. 615, 164 N.W. 381 (1917).
8. Note 7 *supra*.

revoking or superseding the order made in the first proceeding."[9] Another court recognizes the rule that upon the death of the first adoptive parent, the rights of the adopted child vest; but the court did not extend this to a case where the second adoption occurred prior to the death of the first adoptive parent.[10] The Supreme Court of Florida has stated that where a child had been adopted and subsequently had become incorrigible, and the adoptive parents had relinquished the guardianship and had consented to the child's adoption by a grandparent, that upon *equitable* grounds the child had no claim to the property of the deceased.[11] In *Holmes v. Curl*,[12] a case similar in facts to the instant case, the court declared that the relationship between parent and adopted child shall be the same as that existing between parent and a child born out of wedlock, and a fortiori:

> The adoption was for the benefit of plaintiff, and the right conferred upon her by the articles of adoption and by the statute could not be abrogated or destroyed at the pleasure of the father and the adopting parents.[13]

The fact that the adoptive parents could have had the child readopted is unimportant since this has no effect upon his legal status.[14] Another case of similar facts[15] discusses the question and determines that since the first adoption does not subvert the right to inherit from the *natural* parent, "No reason is advanced, or is apparent, for annihilation by a second adoption of the right to inherit when the first adoption had no such effect, and it has been held that a second adoption is no more destructive of the right than the first."[16] In a case of first impression the Arkansas court stated:

> The reason given in most of the cases appears to be that once the statute invests the child with the right to inherit from an adopting parent his right cannot be later taken away by the *mere* (emphasis added) fact that he is later adopted by other parents.[17]

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9. *Id.* at 381; *Contra,* Dreyer v. Schrick, 105 Kan. 495, 185 Pac. 30 (1919) which specially disapproves of *In re* Klapp's Estate saying, "The defect in this reasoning is that, while a new domestic relation is created, the first proceeding is not affected in any particular by the second."; succession of Gambino, 225 La. 674, 73 So.2d 800 (1954), ". . . the act of adoption creates a status and not a contractual relation."

10. *In re* Talley's Estate, 188 Okla. 338, 109 P.2d 495 (1941), "It is obvious that cases are not in point wherein the second adoption takes place after the death of the first adoptive parent. In such a situation the inheritance occurs at the instant of death, if at all. At the time there is no second adoptive parent. There may never be any. The estate vests. It is immaterial whether later a second adoption occurs. Under such circumstances it has been held, and we think rightly so, that the adopted person inherits from the first adoptive parent." (See cases cited by this court).

11. Passmore v. Morrison, 63 So.2d)97 (Fla. 1953). (See dissenting opinion).

12. 189 Iowa 246, 178 N.W. 406 (1920).

13. Note 12 *supra* at 408.

14. Note 12 *supra.*

15. Dreyer v. Schrick, 105 Kan. 495, 185 Pac. 30 (1919). The child was adopted prior to the death of the first adoptive parents.

16. *Id.* at 33, citing Patterson v. Browning, 146 Md. 160, 44 N.E. 993 (1896). 993 (1896).

17. Hawkins v. Hawkins, 218 Ark. 423, 236 S.W.2d 733, 735 (1951).

The statutes warranting adoption do not say how the status can be destroyed once it is created.[18] "The rights of an adopted child are fixed at the time of the adoption and can no more be taken away than the rights of a child born in lawful wedlock."[19] The adopted child is regarded as the issue of the adoptive parent and his rights are not circumscribed by the rights he will have while both are living.[20]

The majority, in the principal case, state that the right to inherit is statutory, and unless the statute allows the adopted child to inherit from former adoptive parents, the right is absent. In *all* respects, the court says, an adopted child is not the same as a natural child. A child forever remains the child of its natural parents, and historically there is a distinction between the two relationships. The dissenting justice announces that a child does not take by reason of blood but ". . . only as a matter of legislative policy."[21] He argues that the legislature meant to abolish all distinctions and that the public policy of the state does not permit the recognition of two classes of children. The rights of a child to inherit from his natural parents cannot be taken from him unless the legislature so decrees. Therefore, the dissent concludes, unless the legislature states that an adopted child cannot take from his first adoptive parents, he has this right of inheritance.

The decisions present two fundamental concepts. The cases repugnant to the right to inherit make a distinction between a natural child and a child by adoption. These courts indicate that the rights of the adopted child emanate from a contractual or consensual relationship which is subject to the disabling effect of a second adoption *prior* to the death of the first set of adoptive parents. They contend that since the right to inherit is by statutory mandate, then what the statute does not expressly grant will not be implied. This conservative approach does not perceive the merits of the courts reaching the opposite conclusion. These courts, speaking in terms of public policy and of a liberal construction of legislative enactments, allow the adopted child to inherit. The point is made that since the statutes declare that the adopted child is to be the same as the natural child, and whereas the natural child can take from his first set of parents (the natural parents), then the child of successive adoptions must also be permitted to take from his *prior* adoptive parents. Speaking in terms of statutory construction these courts say that where the statute does not deprive the adopted child of the right to take from his former adoptive parents, they will not abrogate this right of inheritance.[22]

LEONARD SELKOWITZ

18. Succession of Gambino, 225 La. 674, 73 So.2d 800 (1954).
19. *In re* Egley's Estate, 16 Wash.2d 681, 134 P.2d 943, 946 (1943).
20. *In re* Esposito's Estate, 57 Cal. App. 859, 135 P.2d 167 (1943).
21. 7 Ill.2d 545, 131 N.E.2d 487, 491 (1956).
22. *In re* Monroes Ex'rs., 132 Misc. 279, 229 N.Y.S. 476, 478 (1928), "As the law of adoption is in derogation of the common law, nothing can be assumed, presumed, or inferred, and what is not found in the statute law is a matter for the Legislature to supply, and not for the courts."