UKnowledge

Kentucky Law Journal

Volume 55 | Issue 4 Article 6

1967

Inheritance Rights of the Adopted Child in Kentucky

Charles A. Taylor
University of Kentucky

Follow this and additional works at: https://uknowledge.uky.edu/klj

 Part of the Estates and Trusts Commons

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Taylor, Charles A. (1967) "Inheritance Rights of the Adopted Child in Kentucky," *Kentucky Law Journal*: Vol. 55 : Iss. 4 , Article 6.
Available at: https://uknowledge.uky.edu/klj/vol55/iss4/6

This Note is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

INHERITANCE RIGHTS OF THE ADOPTED CHILD IN KENTUCKY

I. INTRODUCTION

Adoption was not known in this country until the middle of the nineteenth century.[1] No foundation had been laid for it in English common law;[2] it is completely statutory in origin. As a result one must, when discussing the scope and effect of adoption on inheritance rights, always look to the statutory scheme in the particular jurisdiction.[3] This Note examines the problems of the adopted child vis-a-vis testate and intestate succession in Kentucky. The subject has been divided into three rather broad categories: (1) the persons from whom the adopted child can take under the laws of descent and distribution, (2) the conflict of laws problems, and (3) the construction of language in wills and trust instruments.

II. FROM WHOM THE ADOPTED CHILD CAN TAKE UNDER THE LAWS OF DESCENT AND DISTRIBUTION

Perhaps the most compelling problem in this area concerns the adopted child's right to inherit from its natural parents. Kentucky accords this issue special treatment. Kentucky Revised Statute 199.-630(2) [hereinafter referred to as KRS] reads:

> Where parental rights have been terminated pursuant to KRS 199.600 to 199.620, all legal relationships between the parents and child shall cease to exist, the same as if the relationship of parent and child had never existed, except that the child shall retain the right to inherit from its parents under the laws of descent and distribution.

This statute was enacted in 1950. KRS 199.520(2), as amended in 1956, reads in part: "From and after the date [of adoption] . . . the child . . . shall have no legal relationship to its birth parents in respect to either personal or property rights." The obvious inconsistency of these two provisions was pointed out in *Kentucky Trust Co. v. Sweeney*,[4] where a federal court reached the necessary conclusion that the 1956 amendment to KRS 199.520 nullified that part of KRS 199.620 with which it was inconsistent.

The clarity of KRS 199.520(2) enabled the Kentucky Court of Appeals, in a recent decision, to conclude that a child adopted by his

---

[1] Halback, *The Rights of Adopted Children Under Class Gifts*, 50 IOWA L. REV. 971 (1965).

[2] POLLOCK & MAITLAND, THE HISTORY OF ENGLISH LAW 399 (2d ed. 1898).

[3] The Adoption Provisions of the Kentucky Revised Statutes are contained in Chapter 199.

[4] 163 F. Supp. 450 (W.D. Ky. 1958).

stepfather could not inherit from his natural father's uncle.[5] In that case, the Court reasoned that "the present adoption law envisions a 'complete breaking off of old ties.'"[6] In a similar vein, the *Sweeney* case held that Kentucky law does not entitle a testator's niece to share in an estate left to "my heirs under Kentucky descent and distribution laws." Because the niece had been adopted by persons not related to the testator, the court said: "Under this statute [KRS 199.520] she [the adopted child] had no legal relationship to her birth parents. . . ."[7]

With the complete reversal in the adoption law brought about by the amendment,[8] Kentucky has joined the majority of states which forbid an adopted child's inheriting from or through his natural parents.[9] Granted that it is a matter of legislative policy, the majority seems to represent the less equitable rule. It is the natural parents (or a court, in some instances) who make the choice to sever the ties; why should the child be penalized for something over which he had no control and to which he gave no consent?[10]

Especially is this rule unfair where the child was not adopted until after the death of the natural parents. Here the only issue is the child's taking through the natural parents. His right to inherit from them vests in him at the parents' deaths and is not affected by a subsequent adoption. In that case there is no express choice to sever the ties between the child and his parents. Adoption in such a case is solely for the purpose of giving the child a new family, whereas adoption when the natural parents are living is partly for the reason of taking him away from his old family. As yet the Court has not decided this question. None of the cases decided after the 1956 amendment mention whether the natural parents were dead or alive at the time of the adoption. If this question comes before the Court, it is suggested that it take the more reasonable view.

---

[5] Arciero v. Hager, 397 S.W.2d 50 (Ky. 1965).

[6] *Id.* at 53.

[7] 163 F. Supp. at 452.

[8] Prior to the 1956 amendment the statute read in part: "Nothing in this section shall prevent an adoptive child from inheriting from its natural parents." KRS § 199.530(5) (1950).

[9] Twenty-three jurisdictions prohibit the adopted child from inheriting from his natural parents, twelve states grant the right, and seventeen do not regulate this aspect of the law. Nine states recognize the adopted child's right to inherit through the natural parents, twenty-five deny it, and seventeen have no regulation. Benavince, *Adoption and the Law of Descent and Distribution: A Comparative Study and a Proposal for Model Legislation*, 51 CORNELL L.Q. 152, 164 n.47 (1966).

[10] See Sorenson v. Churchill, 51 S.D. 113, 212 N.W. 488 (1927) and *In re* Benner's Estate, 109 Utah 172, 166 P.2d 257 (1946) for an argument for allowing inheritance by the adopted child on this ground.

When a child is adopted, he is, by virtue of KRS 199.520, considered to be the natural, legitimate child of the adoptive parents, at least for purposes of inheritance and succession. From the language of that provision the adopted child clearly inherits from the adoptive parents;[11] but does he inherit through them? In 1946, the Kentucky Court, construing the then-existing law, said that the adopted child had the right to "inherit not only from but through the adopting parent."[12] The statute then in effect read in part: "Any child adopted according to this chapter shall be considered for purposes of inheritance and succession and for all other legal consequences the natural legitimate child of the parents adopting it."[13] This language is almost identical to the first part of KRS 199.520(2) as it reads today; thus there is no question, under Kentucky law, of the ability of the adopted child to take through, as well as from, its adoptive parents.

Another troublesome area concerns the rights of others to take from and through the adopted child. There are two important questions here: first, whether the children inherit from and through each other if parents adopt more than one child; second, whether the adoptive or natural parents, or neither, inherit from the adopted child who dies without issue. There are no Kentucky cases on the former question, so we can only look to the statute. It explicitly states that the adopted child is for all legal considerations "the natural, legitimate child of the parents adopting it the same as if born of their bodies."[14] If all adopted children are treated as natural, legitimate children of the parents, it follows that they are, for purposes of inheritance and succession, natural brothers and/or sisters; thus the Court could not but conclude that they would inherit from each other. The second question also must be solved by looking to the statute, for again there are no cases in point. The logical conclusion is that the adoptive parents take to the exclusion of the natural parents. This is, in fact, the majority view of the jurisdictions which deny the right to inherit from and through the natural parents,[15] and also the view which is the more equitable. After all, the natural parents brought about the severance of

---

[11] "Even a casual reading of this Act in its original form will convince one that the legislative intent in the passage of the Act was to place a minor when adopted on the same basis as a child born into the family." Stanfield v. Willoughby, 286 S.W.2d 908, 909 (Ky. 1956).

[12] Kolb v. Ruhl's Adm'r, 303 Ky. 604, 612, 198 S.W.2d 326, 329 (1946).

[13] KRS § 405.200 (1940).

[14] KRS § 199.520(2) (1956).

[15] "[T]he general trend is to construe the modern adoption statutes as conferring upon the adoptive parents of an adopted child the right to inherit the estate of the child to the exclusion of the child's natural parents where the statutory language is reasonably open to such a construction." 2 AM. JUR. 2d *Adoption* § 101 (1962).

ties, and the adoptive parents assumed all the obligations incident to raising legitimate children. Thus, the latter should succeed to the child's estate if any "parents" are to do so.

If, however, the adoptive parents predecease the adopted child, do the natural parents then inherit from him? Prior to 1950, the answer would have been a definite "yes," for then in effect was KRS 391.-080(2), which read in part:

> If the adoptive parents of the adopted child do not survive the adopted child, the property of the deceased adopted child, in the absence of lawful issue, shall go to the natural parents in the line of descent and as provided by KRS 391.010 and 391.030.

This statute was repealed in 1950, and presently it is an open question whether the Kentucky Court would allow the natural parents to take from the adopted child. Considering that before 1950 the adopted child could inherit from the natural parents and that now he cannot, considering the presumption which accompanies the repeal of any statute, and considering the strong language the Court has used in finding the child unable to inherit from the natural parents,[16] one can easily conclude that the natural parents would under no circumstances take from the adopted child. This is the better view and one the Court should adopt when presented with the issue.

Another related question concerns the status of the child who has been adopted twice. Under our statute it seems clear that the child would have inheritance and succession rights from and through the second adoptive parents, but what of the child's relationship with the prior adoptive parents? If the adoption proceeding has the effect of "excising the adopted child from its 'blood' family tree,"[17] causing him to be considered for all purposes the natural, legitimate child of the adoptive parents after the first adoption, then it would seem to follow that upon the second adoption the adopted child loses all legal relationship with the first adoptive parents.[18]

Would the fact that the first adoptive parents were dead at the time of the second adoption alter the rights of the child to inherit

---

[16] In Arciero v. Hager, 397 S.W.2d 50. 52-53 (Ky. 1965), the Court speaks of the adoption as "excising the adopted child from its 'blood' family tree" and "[bringing] . . . to an end all connections, legal and personal, with any natural parent."

[17] Arciero v. Hager, *supra* note 16, at 52.

[18] There are no Kentucky decisions subsequent to the 1956 amendment involving this issue, but of interest may be decisions of jurisdictions which, like Kentucky, deny the adopted child the right to inherit from or through its natural parents. *In re* Zaepfel's Estate, 102 Cal. App. 2d 774, 228 P.2d 600 (1951) held that, under California law, a twice-adopted child could not succeed to the estate of the former foster parent. To the same effect is Killen v. Klebanoff, 17 Conn. Supp. 233 (Super. Ct. 1951).

through his prior adoptive parents? Some believe this would make a difference,[19] but it is not clear what effect this would have in Kentucky. If whether the natural parents are dead or alive at the time of a first adoption makes no difference in the rights of the adopted child to take through them,[20] then it follows that it would make no difference where the twice-adopted child and the prior adoptive parents are concerned. It is submitted, for the same reasons suggested above in the discussion of adoptions which take place after the death of the natural parents,[21] that if the adoption takes place after the death of the prior adoptive parents, the child would not lose his right to inherit through them.

The last problem to be discussed in this area is dual inheritance. There seems to be a feeling that one simply should not be entitled to a double share of an estate.[22] This problem arises when an adopted child is entitled to share in the same estate through both his natural and adoptive parents. Since in Kentucky an adopted child cannot take through his natural parents, the adopted child is never placed in that situation. However, it is interesting to note that if the Court decides, as it should, that the adopted child can take through the natural parents or prior adoptive parents when the adoption takes place after their deaths, Kentucky would be confronted with the problem of dual inheritance. The simple solution would be to allow the double heir to take only one share of the estate, but to permit him to choose which share he will take.[23]

III. CONFLICT OF LAWS PROBLEMS

Perhaps the greatest practical problem in this area deals with the choice of law in litigation involving the adoptee's right to inherit. The problem is really two-fold: (1) what jurisdictional law is to apply and, (2) in the case of prior statutes, which controls? A 1965 Kentucky case, *Arciero v. Hager*,[24] dealt with both aspects of the problem. In that case the appellant had been adopted in New York in 1946 by his stepfather, and his natural father's uncle died intestate in Kentucky in 1959. The Court decided that Kentucky law governed because "the rights of inheritance of the adopted child are generally

[19] Note, 25 BROOKLYN L. REV. 231, 261 (1959).
[20] See text at notes 10-11 *supra*.
[21] *Ibid.*
[22] Annot., 37 A.L.R.2d 333 (1954).
[23] See Billings v. Head, 184 Ind. 361, 111 N.E. 177 (1916); Head v. Leak, 61 Ind. App. 253, 111 N.E. 952 (1916); Morgan v. Reel, 213 Pa. 81, 62 Atl. 253 (1905).
[24] 397 S.W.2d 50.

governed by the law of the state in which the property is situated if real property, or the domicile of the decedent if personal."[25] This is the majority view on the question.[26] Thus it is well settled in Kentucky that the applicable law in adoption cases is the law of the situs, or the law of the decedent's domicile, depending upon whether the property is real or personal.

The second aspect of the conflict problem deals with temporal conflicts, *i.e.*, whether a prior or a present statute is controlling. In the *Arciero* case, the Court held that the law at the time of the death of the uncle governed. This affirmed the decision in *Kolb v. Ruhl's Adm'r*, where the Court stated:

> The heirs and distributees of a person dying intestate are determined by the laws of succession as it exists at the time of death of the owner of the property. We know of no reason why this rule should not apply where the rights of adopted children are involved. According to the great weight of authority the statute of descent and distribution in effect at the time of the death of the property owner governs the right of the adopted child.[27]

The same rule applies in the case of testate succession. When a testator makes a devise or bequest to a class which will be ascertainable only in the future, he is presumed to have contemplated that the laws might change, and unless a contrary expression is made on the face of the instrument, the statute in effect when the gift becomes operative controls.[28]

IV. CONSTRUCTION OF LANGUAGE IN WILLS AND TRUST INSTRUMENTS

The adopted child's right to participate in class gifts under wills and trust instruments is another large problem area. It has been suggested that there is more litigation over the adopted child's participation in class gifts than any other problem concerning inheritance rights of adopted children.[29] The real question which concerns the lawyer is what language is effective to either include adopted children or to avoid the effects of the adoption statutes. A typical will or trust agreement provides, "to X for life, remainder to X's ————." The more commonly used words of purchase are "children," "heirs," "heirs-at-law," "issue," or "legal issue." It is axiomatic that the testator's or settlor's intent should be the determining factor in deciding whether

---

[25] *Id.* at 52.
[26] 2 AM. JUR. 2d *Adoption* § 12 (1965); RESTATEMENT, CONFLICT OF LAWS § 305, comment b (1959).
[27] 303 Ky. 604, 608, 198 S.W.2d 326, 328 (1946).
[28] Major v. Kammer, 258 S.W.2d 506 (Ky. 1953).
[29] Halbach, note 1 *supra.*

the adopted child is a member of the class.[30] The problem is, however, that usually the testator had no intention regarding the adopted child. Thus the "intention" may be what the law will attribute to the testator. All such language as the above has been held by the Kentucky Court to include adopted children.[31] Absent any language to the contrary, the Court assumes the testator meant to include adopted children.[32] This presumption is in keeping with the legislative policy of equal treatment of adoptive and natural children.

However, two recent cases which concerned those who may take under a class gift to "children" were *Wilson v. Johnson*[33] and *Pennington v. Citizens Fid. Bank & Trust Co.*[34] In the first case, Leslie Johnson's mother died, leaving a life estate to him and "the remainder to the children of Leslie." Twenty-five years later he adpoted his two stepsons, who were forty-eight and fifty-two. In the second case a seventy-one year old woman adopted her seventy-four year old husband in order to have the remainder of her life estate go to him as her "child." The *Johnson* case held that the adopted adults were not included in the class of "children," overruling that portion of *Edmands* v. *Tice*[35] which was inconsistent. The *Pennington* case held likewise. The Court based these decisions on the assumption that a testator in specifying "children" does not intend to include adopted adults unless he specifically so states. The testator, in the common usage of the word, is thinking in terms of not just a legal, but also a social, relationship; thus the adopted adult is not included. In examining a similar case, *Bedinger v. Graybill's Ex'r and Trustee,*[36] one can see that it is not the bizarreness of the adoption that defeats the inheritance rights of the adopted adult, but rather the words chosen by the testator. In that case Mrs. Graybill established a testamentary trust for her son for life, remainder to his "heir-at-law under Kentucky law." The testatrix died in 1923, and in 1941, when the son was fifty-eight, he adopted his forty-five year old wife. The son died in 1955 and the Court held that the wife was entitled to the estate as the son's "heir-at-law." The Court thought that the purpose of making the adoptee eligible to inherit the property was a legitimate aim of adoption and that the scheme works

---

[30] Major v. Kammer, 258 S.W.2d 506 (Ky. 1953).

[31] Breckinridge v. Skillman's Trustee, 330 S.W.2d 726 (Ky. 1959) ("son's issue"); Edmands v. Tice, 324 S.W.2d 491 (Ky. 1958) ("children"); Bedinger v. Graybill's Ex'r & Trustee, 302 S.W.2d 594 (Ky. 1957) ("heir"); Major v. Kammer, 258 S.W.2d 506 (Ky. 1953) ("heir-at-law"); Issacs v. Manning, 312 Ky. 326, 227 S.W.2d 418 (1950) ("legal heirs").

[32] Issacs v. Manning, 312 Ky. 326, 227 S.W.2d 418 (1950).

[33] 389 S.W.2d 634 (Ky. 1965).

[34] 390 S.W.2d 671 (Ky. 1965).

[35] 324 S.W.2d 491 (Ky. 1958).

[36] 302 S.W.2d 594 (Ky. 1957).

to make the wife beneficiary, where otherwise she would not be, does not make the adoption invalid. Note that the reasoning in *Johnson* is not applicable when the class is "heirs," "legal heirs," "heirs-at-law," or "issue." Thus, the presumption of inclusion is still in effect, except in the case of the adopted adult and a gift to the "children of X."

To exclude adopted children from taking part of an estate, the testator must make known this intention in the will. With the exception of "children" when the adoptee is an adult, any broad category such as "heirs," "heirs-at-law," or "children" will not exclude adopted children. A good exposition of the law is found in a recent case:

> As we understand the rule an adopted child is not to be excluded from taking under a will merely because the testator had never considered the possibility of an adoption taking place. The language of the will must be such as to show a specific intention to exclude an adopted child. Ordinarily this would require use of such language as "natural children" or some clearly exclusive expression.[37]

Perhaps the best solution, if the testator wants to keep property in the blood line, would be for him to use "to the exclusion of adopted children" or words of similar import.

V. CONCLUSION

In recent cases the Court has settled some of the problems concerning the adopted child's right to inherit. In most instances it has accepted the majority view and the one which is most equitable. In other instances, notably the question of the child's right to take through the natural parent, the Court has failed to meet the demands of justice. Perhaps in the future it will do so. Other questions are not truly settled because there have been no cases in point. For the answers to such questions we will have to wait, but it is hoped that the Court will find the equitable solutions.

Charles A. Taylor

---

[37] Edmands v. Tice, 324 S.W.2d 491, 494 (Ky. 1958).