NEW YORK HOLDS ADOPTED CHILDREN NOT WITHIN MEANING OF "DESCENDANTS"

In re Rick's Trust
10 N.Y.2d 231, 176 N.E.2d 726, 219 N.Y.S.2d 30 (1961)

The natural grandchildren of the settlor of an inter vivos trust which established their father as primary life beneficiary with remainder to his "descendants" brought this action against the adopted children of the father, natural children of his third wife. The New York Court of Appeals in a 4 to 3 decision[1] affirmed the holding of the Appellate Division[2] that these adopted children were not within the meaning of the word "descendants" of the primary life beneficiary despite an affidavit filed by the settlor (who was still living) which stated a definite intent to include such adopted children within the class.[3] The New York Court of Appeals found the language of the trust instrument unambiguous and therefore refused to consider the subsequent affidavit of the settlor explaining her intent to include adopted children within the term "descendants."

The decision rests partly on a New York statute designed to prevent fraud when the provisions of an instrument make the "passing or limitation over of real or personal property dependent . . . on the foster parent dying without heirs."[4] The statute had previously been construed as intended merely to prevent fraud where a contingent remainder could be cut off by an "adoption for the very purpose of cutting out a remainder."[5] Here there was obviously no such fraudulent intent in the adoption of the defendants by the primary life beneficiary.

The right of adoption was unknown to the common law of England and exists in this country only by virtue of statute.[6] However, contrary to most

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1 *In re* Rick's Trust, 10 N.Y.2d 231, 176 N.E.2d 726, 219 N.Y.S.2d 30 (1961).

2 *In re* Rick's Trust, 12 App. Div. 2d 395, 212 N.Y.S.2d 548 (1961).

3 The affidavit of the settlor is quoted by Fuld, J., dissenting at 10 N.Y.2d at 236-7, 176 N.E.2d at 728, 219 N.Y.S.2d at 33-4: "I assumed that an adopted child was considered to be the same as a natural child. . . . [I]f any problem had arisen . . . I would have instructed my attorney to use whatever language was necessary to include adopted children. . . . [I]t was not my intention to exclude adopted children from participation in the trust fund."

4 N.Y. Dom. Rel. Law § 117.

5 *In re* Walter's Estate, 270 N.Y. 201, 206, 200 N.E. 786, 788 (1936). See also *In re* Upjohn's Will, 304 N.Y. 366, 107 N.E.2d 492 (1952); *In re* Leask, 197 N.Y. 193, 90 N.E. 652 (1910); *In re* Horn's Will, 256 N.Y. 294, 176 N.E. 399 (1931); *In re* Charles' Estate, 200 Misc. 452, 102 N.Y.S.2d 497 (Surr. Ct. 1951), *aff'd*, 279 App. Div. 741, 109 N.Y.S.2d 103 (1951), *aff'd*, 304 N.Y. 776, 109 N.E.2d 76 (1952). Moreover, previous decisions had held the section would not defeat the intent of a settlor or testator. See *e.g.*, 2 N.Y. Jur. *Adoption* § 18 (1958); *In re* Ward's Will, 9 App. Div. 2d 950, 195 N.Y.S.2d 933 (1959), *aff'd*, 9 N.Y.2d 722, 174 N.E.2d 326 (1961); *In re* Day's Trust, 10 App. Div. 2d 950, 195 N.Y.S.2d 760 (1960); Pross v. Anson, 273 App. Div. 860, 76 N.Y.S.2d 646 (1948), *aff'd*, 298 N.Y. 718, 83 N.E.2d 16 (1948).

6 1 Am. Jur. *Adoption of Children* § 3 (1936); *In re* Thorne's Estate, 155 N.Y. 140, 49 N.E. 661 (1898); Sommers v. Doersam, 115 Ohio St. 139, 152 N.E. 387 (1926).

statutes in derogation of the common law, adoption statutes are now generally regarded as intended to make a complete change in the common law, and the prevailing tendency is in the direction of a liberal construction.[7] Moreover, the statute law itself has been gradually broadened for the benefit of the adopted child and the protection of his rights. New York law today regards the foster parent and child in "the legal relation of parent and child,"[8] and the legislative history of the act states a purpose "to make it clear that members of the same family are to be treated as in all respects on a parity with each other so far as intra-family property rights are concerned."[9]

Despite this clear announcement of policy, the courts continue to make fine distinctions when the words "child,"[10] "next of kin,"[11] "heir,"[12] "heir at

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[7] Kroff v. Amrhein, 94 Ohio St. 282, 286, 114 N.E. 267, 268 (1916): "The courts should apply the language in the broad and humane spirit in which it was written into the law and policy of the state." See also *In re* Walter's Estate, *supra* note 5; *In re* Hecker's Estate, 178 Misc. 449, 33 N.Y.S.2d 365 (Surr. Ct. 1942); *In re* Foster's Estate, 108 Misc. 604, 177 N.Y. Supp. 827 (Surr. Ct. 1919); Matter of Gregory, 15 Misc. 407, 37 N.Y. Supp. 925 (Surr. Ct. 1896); Flynn v. Bredbeck, 147 Ohio St. 49, 68 N.E.2d 75 (1946); Frame v. Shaffer, 27 Ohio Op. 346, 39 Ohio L. Abs. 617 (C.P. 1943). *But cf.* Adams v. Nadel, 124 N.Y.S.2d 427 (Sup. Ct. 1953); Matter of Bamber, 147 Misc. 712, 265 N.Y. Supp. 798 (Surr. Ct. 1933); *In re* Martin's Will, 133 Misc. 80, 230 N.Y. Supp. 734 (Surr. Ct. 1928); Campbell v. Musart Society, 72 Ohio L. Abs. 46, 131 N.E.2d 279 (P. Ct. 1956); *Re* Wedl, 65 Ohio L. Abs. 231, 114 N.E.2d 311 (P. Ct. 1952).

[8] N.Y. Dom. Rel. Law § 117. See also *In re* Upjohn's Will, *supra* note 5, at 373, 107 N.E.2d at 494: "Embodied in our adoption statute is the fundamental social concept that the relationship of parent and child, with all the personal and property rights incident to it may be established, independently of blood ties, by operation of law, and that has been a part of the public policy of this state since 1887."

[9] Draftsman's Note to N.Y. Dom. Rel. Law § 117.

[10] Matter of Horn, 256 N.Y. 294, 176 N.E. 399 (1931); *In re* Walter's Estate, *supra* note 5; Bell v. Terry & Trench Co., 177 App. Div. 123, 163 N.Y. Supp. 733 (1917); *In re* Charles' Estate, *supra* note 5; *In re* Horvath's Estate, 155 Misc. 734, 279 N.Y. Supp. 189 (Surr. Ct. 1935); *In re* Hulbert's Will, 28 Misc. 2d 160, 213 N.Y.S.2d 385 (Surr. Ct. 1961); Staker v. Industrial Commission, 127 Ohio St. 13, 186 N.E. 616 (1933); Surman v. Surman, 114 Ohio St. 579, 151 N.E. 708 (1926); Ransom v. N.Y.C. & St. L. Ry. Co., 93 Ohio St. 223, 112 N.E. 586 (1915); Tiedtke v. Tiedtke, 91 Ohio App. 442, 108 N.E.2d 578 (1951). *But cf. In re* Leask, *supra* note 5; *In re* Cook's Will, 8 Misc. 2d 103, 165 N.Y.S.2d 806 (Surr. Ct. 1957); *In re* Hall's Will, 127 N.Y.S.2d 445 (Surr. Ct. 1954); *In re* Stecher's Will, 190 Misc. 502, 73 N.Y.S.2d 595 (Surr. Ct. 1947); Central Trust Co. v. Hart, 82 Ohio App. 450, 80 N.E.2d 920 (1948); Rodgers v. Miller, 43 Ohio App. 198, 182 N.E. 654 (1932).

[11] U.S. Trust Co. of N.Y. v. Hoyt, 223 N.Y. 616, 119 N.E. 1083 (1915); Carpenter v. Buffalo General Electric Co., 213 N.Y. 101, 106 N.E. 1026 (1914); *In re* Hecker's Estate, *supra* note 7. *But cf.* Matter of Hall, 141 Misc. 169, 252 N.Y. Supp. 592 (Surr. Ct. 1931, *aff'd*, 234 App. Div. 151, 254 N.Y. Supp. 564 (1931), *aff'd*, 259 N.Y. 637, 182 N.E. 214 (1932).

[12] *In re* Hecker's Estate, *supra* note 7. *But cf. In re* Sandford's Estate, 160 Misc. 898, 290 N.Y. Supp. 959 (Surr. Ct. 1936), *rev'd on other grounds*, 250 App. Div. 310, 293 N.Y. Supp. 991 (1937).

law,"[13] "issue,"[14] or "descendants"[15] are used in wills, trusts or statutes. Whether each of these terms includes adopted children, illegitimate children or after-born children unknown to the testator or settlor are questions often raised in construing instruments. Often the courts turn to the intent of the testator which is usually difficult to determine by extraneous circumstances, subject to distortion by court-made presumptions of questionable merit, and presumably unnecessary since well-worn words of legal significance have been employed.

In Ohio, progressive legislation[16] and liberal court interpretation have

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[13] Gilliam v. Guaranty Trust Co., 111 App. Div. 656, 97 N.Y. Supp. 758 (1906), *aff'd*, 186 N.Y. 127, 78 N.E. 697 (1906); Smith v. Hunter, 86 Ohio St. 106, 99 N.E. 91 (1912); Tiedtke v. Tiedtke, *supra* note 10. *But cf.* Matter of Hall, *supra* note 11.

[14] *In re* Day's Trust, *supra* note 5; *In re* Estate of Lynde, 28 Misc. 2d 174, 211 N.Y.S.2d 493 (Surr. Ct. 1961); Cochrel v. Robinson, 113 Ohio St. 526, 149 N.E. 871 (1925); Miller v. Shepard, 29 Ohio App. 22, 162 N.E. 788 (1928); Campbell v. Musart Society, *supra* note 7. *But cf. In re* Holt's Estate, 206 Misc. 789, 134 N.Y.S.2d 416 (Surr. Ct. 1954); *In re* Price's Estate, 4 Misc. 2d 1026, 156 N.Y.S.2d 901 (Sup. Ct. 1956); *In re* Hosford's Estate, 203 Misc. 146, 116 N.Y.S.2d 138 (Surr. Ct. 1952), *aff'd* 282 App. Div. 1026, 126 N.Y.S.2d 886 (1953); *rev'd on other grounds*, 309 N.Y. 23, 127 N.E.2d 735 (1955); Central Trust Co. v. Hart, *supra* note 10; Rodgers v. Miller, *supra* note 10. See also Annot., 2 A.L.R. 974 (1919); Notes, 19 Ohio Op. 405 (1941), 20 Ohio Op. 250 (1941).

[15] *In re* Cook's Estate, *supra* note 8, at 261, 79 N.E. at 994 (1907): "[T]he words 'lineal descendant' . . . must be read in connection with the statute governing the effect of adoption. . . . A lineal descendant is one who is in the line of descent from a certain person, but, since the Domestic Relations Law went into effect, not necessarily in the line of generation. The line of descent is the course that property takes according to law when the owner dies. By force of the statute, that course is the same in the case of adopted children, that it is in the case of own children. In the eye of the law, therefore, adopted children are lineal descendants of their foster parent. They are in the line of descent from him through the command of the statute, the same as if that line had been established by nature."

In re Fedder's Will, 187 Misc. 207, 214-5, 61 N.Y.S.2d 340, 346-7 (Surr. Ct. 1946): " 'Descendant' is not limited in its meaning to a person who proceeds from the body of another, but also means one on whom the law has cast the property by descent, and in this sense, the term is frequently held to include an adopted child and that such child is as lawfully in the line of descent as if placed there by birth. . . . [A]n adopted daughter is a lineal descendant of a foster parent through the command of statute." *In re* Upjohn's Will, *supra* note 5; *In re* Day's Trust, *supra* note 5; *In re* Weller's Will, 7 Misc. 2d 366, 165 N.Y.S.2d 531 (Sup. Ct. 1957); Application of Chase National Bank of City of New York, 102 N.Y.S.2d 124 (Sup. Ct. 1950). *But cf. In re* Fisk's Trust, 27 Misc. 2d 60, 209 N.Y.S.2d 428 (Sup. Ct. 1960); Guaranty Trust Co. v. Brunton, 74 N.Y.S.2d 254 (Sup. Ct. 1954). See also Annot., 70 A.L.R. 621 (1931); Annot., 133 A.L.R. 597 (1941); Annot., 144 A.L.R. 670 (1943); Annot., 166 A.L.R. 150 (1947).

[16] Ohio Rev. Code § 3107.13 on "Legal Rights After Adoption" reads in part: ". . . For all purposes under the laws of this state, including without limitation all laws and wills governing inheritance of and succession to real or personal property and the taxation of such inheritance and succession, a legally adopted child shall have the same legal status and rights, and shall bear the same legal relation to the adopting parents as if born to them in lawful wedlock and not born to the natural parents; provided: (A) such

gone far toward achieving the goal of eliminating petty legal distinctions in the relation of adopted children to their adopting parents and collateral relatives. As early as 1916, Ohio courts showed a forward-looking approach to the problems of the legal relation and status of adopted children:

> To lawyer and layman, it should be perfectly plain that the legislative intent . . . was to make such adopted child the equivalent of a natural child of the adopting parent. . . . Such simple, sweeping language would seem sufficient per se to invest the adopted child with all the rights and privileges of the natural child. Lest there be any doubts in the minds of the superstrict as to the legal sense and scope . . . the legislators further enacted . . . "such child shall be the child and legal heir . . . entitled to all the rights and privileges and subject to all the obligations of a child of such person begotten in lawful wedlock."[17]

Occasional Ohio cases still limit the rights of adopted children, but these decisions are usually based upon a specific finding of the testator's intent.[18] The more reasonable view is that the adoption statute "was designed to give an adopted child the same rights of inheritance from ancestors and other relatives of the adopting parents as are enjoyed by a consanguineous child. . . ."[19] The only remaining exception to this policy in Ohio is the "heirs of the

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adopted child shall not be capable of inheriting or succeeding to property expressly limited to heirs of the body of the adopting parents. . . ."

Frame v. Shaffer, *supra* note 7, at 346, 39 Ohio L. Abs. at 618: "[T]he legislative acts . . . have had a strong tendency to favor the adopted child—a tendency, it appears, to concede to the adopted child the same rights as though he or she had the blood of the adoptive parents in his or her veins."

[17] Kroff v. Amrhein, *supra* note 7, at 284, 114 N.E. at 267-8. See also *In re* Estate of Friedman, 154 Ohio St. 1, 93 N.E. 273 (1950); Flynn v. Bredbeck, *supra* note 7; White v. Meyer, 66 Ohio App. 549, 37 N.E.2d 546 (1940).

[18] See, *e.g.*, Third National Bank & Trust v. Davidson, 157 Ohio St. 355, 105 N.E.2d 573 (1952). *But cf.* dissent of Chief Justice Weygandt in that case at 157 Ohio St. 367, 105 N.E.2d 579: "If such child would take if it had been a natural born child of the adopting parent, it will take though adopted, it being the purpose of the provision (now Ohio Rev. Code § 3107.13) that such adopted child should not be denied the right of inheritance upon the sole ground that it was adopted and not natural born."

[19] *In re* Friedman, *supra* note 18, at 9, 93 N.E.2d at 277. Ohio and New York law differ fundamentally on this point, since in New York an adopted child may inherit from but not through his adopting parents. 1 N.Y. Jur. *Adoption* § 16 (1958); *In re* Hodges Will, 294 N.Y. 58, 60 N.E.2d 540 (1945); Hopkins v. Hopkins, 202 App. Div. 606, 195 N.Y. Supp. 605 (1922), *aff'd*, 236 N.Y. 545, 142 N.E. 277 (1923); Winkler v. New York Car Wheel Co., 181 App. Div. 239, 168 N.Y. Supp. 826 (1917); *In re* Timpkin's Trust, 142 N.Y.S.2d 706 (Sup. Ct. 1955); *Re* Fodor, 202 Misc. 1100, 117 N.Y.S.2d 331 (Surr. Ct. 1952); *In re* Charles' Estate, *supra* note 5; *Re* Hall's Estate, 141 Misc. 169, 252 N.Y. Supp. 592 (1931), *aff'd*, 234 App. Div. 151, 254 N.Y. Supp. 564 (1931), *aff'd*, 259 N.Y. 637, 182 N.E. 214 (1932); *Re* Brenner's Estate, 149 Misc. 412, 267 N.Y. Supp. 765 (Surr. Ct. 1933); Kettell v. Baxter, 50 Misc. 428, 100 N.Y. Supp. 529 (Sup. Ct. 1906). *But cf.* 1 Ohio Jur. 2d *Adoption of Children* § 24 (1953); Staley v. Honeyman, 157 Ohio St. 61, 105 N.E.2d 573 (1952); Flynn v. Bredbeck, *supra* note 7; White v. Meyer, *supra* note 17; Shearer v. Gasstman, 15 Ohio L. Abs. 103, 31 Ohio N.P. (n.s.) 219 (P. Ct. 1933).

body" limitation.[20] On the specific question of whether an adopted child is a "descendant," Ohio courts have been explicit in including the adopted child within the term. In *Re Estate of Friedman*, the court stated:

> The language of the Code gives a legally adopted child the right to inherit property not only from but through the adopting parent. . . . And it seems apparent that the legislative intent was to give the adopted child every right and privilege of inheritance accorded a natural child, excepting only the inheritance of property "expressly limited to the heirs of the body of the adopting parent or parents." It further puts such child in a direct line of ancestry the same as if it had been born in lawful wedlock. It makes such child a lineal descendant.[21]

As a matter of policy, the still-developing law of adoption has undergone vast statutory revision and rethinking in this century. The trend has been to eliminate the legal distinctions between adopted children and natural children, and most states including New York[22] and Ohio[23] profess to have achieved this goal. However, these broad revisions of the law have been retarded by a hesitancy to depart from the historical common law concepts of property rights and respect for blood lines. As a result, despite the statutes which purport to make the adopted child "for all purposes" the same legally as a natural-born child, some courts—notably in New York—are reluctant to apply these standards to their logical conclusion but have, in fact, developed

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See also Annot., 43 A.L.R.2d 1183 (1955); Note, 7 Ohio St. L.J. 441 (1941); Note, 8 Ohio St. L.J. 113 (1941).

[20] Ohio Rev. Code § 3107.13 (1961).

[21] 86 Ohio App. 97, 103, 88 N.E.2d 230, 233 (1949), *rev'd on other grounds*, 154 Ohio St. 1, 93 N.E.2d 273 (1950). The *Friedman* case is an excellent example of the curious, unpredictable, and unjust results which have been reached when courts approach the problems of adoption with diverse rules of construction which frustrate the liberal policy of the law in the area. The Ohio Supreme Court agreed with the quoted statement as to inheritance and succession since it found the adoption statute and succession statute *in pari materia*; however, it found the adoption statute and the inheritance tax statute not *in pari materia* and because tax statutes must be construed strictly against the taxpayer, would not include the adopted child within the "other lineal descendant of the decedent" class of exemptions. This anomaly seems to have been erased from Ohio law by amended Ohio Rev. Code § 3107.13 (1961). See Taft, "Some Problems Under the Adoption Laws of Ohio," 13 Ohio St. L.J. 48, 65 (1952). See also Blackwell v. Bowman, 150 Ohio St. 34, 80 N.E.2d 493 (1948); Flynn v. Bredbeck, *supra* note 7; White v. Meyer, *supra* note 17; *In re* Griffin, 19 Ohio Op. 377, 33 Ohio L. Abs. 270 (P. Ct. 1935); Annot., 51 A.L.R.2d 854 (1957).

[22] N.Y. Dom. Rel. Law § 117: "Effect of Adoption—The foster parents or parent and the child shall sustain toward each other the legal relation of parent and child and shall have all the rights and be subject to all the duties of that relation including the rights of inheritance from each other."

Draftsman's Note to § 117: "The text of the proposed act specifies that in a family where there are both foster children and natural children there shall be no distinction among the children as to their rights of inheritance from each other. . . ."

[23] Ohio Rev. Code § 3107.13 (1961).

contrary rules of presumptions.[24] This concept is outmoded and illogical in the present context of our society in which the adoption of children is an accepted social institution recognized as beneficial to the child and to the society.[25] American courts, which have been reluctant to apply the adoption statutes as the legislatures have obviously intended that they should operate, would do well to follow the progressive position of Canada where adopted children are presumed to be included in any class gift unless a clear intent not to include them is shown.[26]

Although adoption statutes in the United States are a relatively recent innovation,[27] they are suddenly behind the times. The basis of most states' adoption statutes stems from 1900 and so is "based primarily on an awareness of child welfare as it existed at the turn of the century."[28] Since that

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[24] 1 N.Y. Jur. *Adoption* § 18 (1958): "What the testator meant when he used the words 'issue' and 'descendants' is not to be decided *in vacuo*. The rule in this state . . . is that the limitation will be construed to designate only those related to the named ancestor by blood if there is nothing to the contrary to be found in the context of the instrument, or in extraneous facts proper to be considered. . . . [I]n the absence of any indication of the testator's intent, it will be assumed that the testator did not envisage adopted children taking under the limitation."

But cf. Merrill, "Toward Uniformity in Adoption Law," 40 Iowa L. Rev. 299, 319 (1955): "It seems better social engineering to make those who strongly dislike the idea of property going away from the blood line or who disapprove of a particular individual take the initiative, than to exclude . . . many who, in all but blood, have been as close as, or closer than, the so-called next of kin to the deceased."

See also *In re* Charles' Estate, *supra* note 5; *In re* Cohn's Estate, 184 Misc. 258, 55 N.Y.S.2d 797 (Surr. Ct. 1944), *aff'd*, 271 App. Div. 775, 66 N.Y.S.2d 408 (1946), *aff'd*, 297 N.Y. 536, 74 N.E.2d 471 (1947); *In re* Fisk's Trust, *supra* note 15; *Re* Bergen's Will, 27 Misc. 2d 804, 208 N.Y.S.2d 653 (Surr. Ct. 1960); *Re* Peabody's Will, 17 Misc. 2d 656, 185 N.Y.S.2d 591 (Surr. Ct. 1959); Estate of Tainter, 222 N.Y.S.2d 882 (Surr. Ct. 1961); New York Life Ins. & Trust Co. v. Viele, 161 N.Y. 11, 55 N.E. 311 (1899); *In re* Dudley's Will, 168 Misc. 695, 6 N.Y.S.2d 489 (Surr. Ct. 1938); *In re* Hubbard's Trust, 15 App. Div. 2d 131, 222 N.Y.S.2d 219 (1961); Third National Bank & Trust v. Davidson, *supra* note 18.

[25] 1 Ohio Jur. 2d *Adoption of Children* § 2 (1953): "The sound public policy of this legislation is certainly no longer open to debate. The adoption laws are founded upon broad humanitarian principles which in their operation strengthen the social fabric at points where it was formerly weak indeed."

[26] Kennedy, "Legal Effects of Adoption," 33 Can. B. Rev. 751, 840-1 (1955): ". . . [T]he old rule of construction is reversed for adopted children. . . . The word 'child' or its equivalent in any will, conveyance, or other instrument shall include an adopted child unless the contrary plainly appears by the terms of the instrument. . . . Adopted children would be included in gifts expressed to be to a testator's child, children, sons, daughters, issue, grandchildren, and any other words referring to testator's descendants."

[27] Although the practice dates back to Roman law and beyond, the first American statutes were those of Mississippi in 1846 and Massachusetts in 1851. The first New York adoption statute was enacted in 1873.

[28] Bernknopf, "An Evaluation of the Uniform Adoption Act," 12 N.Y.U. Intra. L. Rev. 57, 59 (1956).

time, the factual setting of these problems has changed enormously and the need to clarify the entire field of law is urgent. The number of adoption petitions filed in recent years has increased phenomenally.[29] The need for unification and reorganization was recognized when the Uniform Commissioners authorized a Uniform Adoption Act in 1951 and approved the work so drawn in 1953. It embodies the concepts that the adopted child should be a full member of his new family for all purposes and be severed completely from knowledge of his natural family. In implementing this policy, it allows the adopted child to inherit both from and through his adopting parents.[30] Both of these basic ideas are now a part of Ohio's statutes on adoption.

The ultimate goal of eradicating the legal distinctions in the status and rights of an adopted child as compared to those of a natural child is hindered when courts resort to the "feudal favoritism accorded to blood relatives under the common law"[31]—especially when it is against the clearly-stated intent of the testator or settlor as in the principal case. The law in this area is out of step with the times, and when courts resort to the anachronism of blood ties in such a setting, they fail to "recognize what is true socially."[32]

The adoption statutes do not stand isolated and alone. They function as an integrated part of our law, and the corresponding laws, especially of property and inheritance, must complement the policies and development of the law of adoption if they are to be effective.[33] This social goal must be

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[29] Merrill, *supra* note 24.

[30] Uniform Adoption Act § 12(1)(2) (1953).

Merrill, *supra* note 24, at 318-9: "[T]he successful adoption brings the adoptee into the clan as completely as does the process of birth. There is full acceptance by the collaterals as well as the immediate family circle. . . . It is a sad fortuity when one who has been regarded as in all respects a member of the family fails to share an inheritance which comes to others who probably were no whit more beloved by the deceased. . . . To the Committee of the Conference which drafted the Uniform Adoption Act, the weight of policy seemed to fall with overwhelming preponderance upon the side of bringing the adoptee fully into the clan. Accordingly they provided for such a result in clear language, specifying that adoption should bring into existence 'all rights, duties, and other legal consequences of the natural relation of child and parent,' not only as between the adoptee and the adoptive parents, but also as between the adoptee and the kindred of the adoptive parents."

[31] Note, "Status of Adopted Children in Ohio Under Devise by Ancestor of Adopting Parent to Issue," 190 Ohio Op. 405, 407 (1940).

[32] Kennedy, *supra* note 26, at 753, 874-5: "[T]he acceptance today of adoption as a desirable social policy . . . is so far ahead of portions of the law in many countries that some strange anomalies appear. . . . The adopted child is treated, if not in law, certainly in practice, in all respects as the child of his new family. . . . Are we willing to let the law catch up to the parties?"

[33] "Essentials of Adoption Law and Procedure," Children's Bureau Publication No. 331, p. 7 (1949): "To afford real safeguards to the children for whose protection the adoption law is designed, the steps necessary to bring related laws into conformity with sound child welfare practice should be taken." See also Cochrel v. Robinson, *supra* note 14; Campbell v. Musart Society, *supra* note 7. *But cf. In re* Friedman, *supra* note 18.

implemented by the courts as well.[34] The narrow construction of instruments so as to exclude adopted children from terms such as "child," "heir" or "descendant" is a definite step backward in the advance of social and legal thinking in the problems of adoption. Such a retreat is deplorable in this era in which so many families have found happiness and so many potential wards of the state have been socially benefitted by the development of adoption as a respected institution in our society.[35] It would be well for the courts to recognize and encourage the benefits that this creature of legislative imagination has bestowed upon us.

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[34] Kennedy, *supra* note 26, at 760, 875: "In the light of today's concept of an adopted child as a full member of an adopting family, a court will not be wrong when, putting aside a technical approach, it gives a larger measure of recognition to the effect of adoption. . . . Our courts can do much to help by so construing existing legislation, as they may easily do, as to place the child in the position of a lawful child of his new parents in as large a number of situations as possible. . . . Making the child the child of his adopting parents 'to all intents and purposes' ought to cover relationship to his adopting parents' kindred."

[35] Ransom v. N.Y.C. & St. L. Ry. Co., *supra* note 10, at 227, 112 N.E. at 587: "These sections of the statutes are so plain and palpable that they need no construction. They are their own interpreters. Thousands of children, who otherwise, through some misfortune, have had denied them proper natural parentage, have been by the law of the land, the adoption statutes, provided with comfortable homes and legal parents. Certainly where statutes are so simple and so certain of their purpose . . . , no court should pervert or divert those terms so as to defeat the sound and wholesome public policy announced in these most humanitarian laws that provide children for childless parents and provide parents for parentless children."