

William and Mary Review of Virginia Law

Volume 1 (1949-1953)
Issue 1

Article 2

May 1949

Adoption in Virginia

Donald H. Sandie

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Repository Citation

Donald H. Sandie, *Adoption in Virginia*, 1 Wm. & Mary Rev. Va. L. 2 (1949),
<https://scholarship.law.wm.edu/wmrval/vol1/iss1/2>

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ADOPTION IN VIRGINIA

Adoption is the act by which a person takes the child of another into his family and treats him as his own, or the voluntary acceptance of a child of other parents to be the same as one's own child. Simple adoption of a child extends only to his treatment as a member of the household; legal adoption may confer upon him any or all rights of actual relationship. Legal adoption exists only by statute, and there is no such thing as a common-law legal adoption.¹

The process of adoption is not a formality. The steps in the process must be complied with, at least substantially, and the approval of the court of adoption, evidenced by its decree, is emphatically a judicial, and not a ministerial, act. The new relationship is founded upon the preceding actions of the parties, but it is created by the court's decree alone.²

At the turn of the century, adoption procedure in Virginia was relatively simple. At that time the petitioners merely filed their petition and the consent thereto in the proper court, and if the court was satisfied that the adoption was to the best interest of the child it would enter a final order of adoption immediately.³ Attorneys who practiced under that law say that it was possible to complete the whole adoption in half an hour.

Such hasty procedure is vastly different from our present laws, where in most cases a probationary period of one year must pass before a final order of adoption can be entered. It was not until 1920 that the law was amended to provide for the revocation of the adoption order and the restoration of the child's former name.⁴ In 1940 the law was again amended,⁵ this time to provide for a pre-adoption investigation of the prospective foster parents, and a probationary period of one year with quarterly visits to the foster home by a welfare agent before the final order of adoption could be entered. In 1942 the General Assembly added a new chapter to the Virginia Code and provided for the present adoption laws⁶ which received minor amendments in 1944 and in 1946.⁷

It is the purpose of this paper to discuss the procedure which must be followed in securing a legal adoption of a child in Virginia. The forms presented here have, unless otherwise indicated, come from actual adoption cases in the Circuit Court of Norfolk County, with interchanges in the names of the petitioners and the children.

Adoption proceedings must be brought in a court of record having chancery jurisdiction in the county or city in which the petitioner resides. The petition may be filed by any natural person who is a resident of the State of Virginia, and the name of the child can be changed in the same proceeding. If the petitioners

are married, they must file a joint petition, signed by both, but if the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner only unites in the petition for the purpose of indicating his or her consent to the adoption.⁸

The following petition and the other forms which follow it were taken substantially unchanged from actual cases, except for minor modifications which are indicated. In this case the child was abandoned by its parents, taken in by a social service bureau, and placed in the home of the petitioners some time before the proceedings were instituted. The petitioners now desire to adopt the child and change its name. The following petition was filed:

VIRGINIA: IN THE CIRCUIT COURT OF NORFOLK COUNTY

IN RE:

Adoption of Frank Lewis

TO THE HONORABLE JOHN P. LACHES, JUDGE OF SAID COURT:

Your petitioners respectfully represent:

That they are inhabitants of this State and residents of the County of Norfolk; that they are husband and wife, and desire to adopt Frank Lewis, who is twenty months old, whose mother and father have abandoned it, the child being a ward of the State and having been placed in the home of petitioners by the Social Service Bureau of the City of Portsmouth; and that they desire to change the name of said Frank Lewis to Robert Allen Ostrand; therefore, your petitioners pray for leave to adopt the said Frank Lewis, not theirs by birth, and for change of name of Frank Lewis to Robert Allen Ostrand; and to this end, that all necessary and proper orders be entered.

/s/ Chester A. Ostrand

/s/ Thelma E. Ostrand

**STATE OF VIRGINIA,
County of Norfolk, to-wit:**

I, Tillie D. Toiler, a Notary Public in and for the county aforesaid, State of Virginia, do certify that Chester A. Ostrand and Thelma E. Ostrand, his wife, personally appeared before me in my said county and made oath that the statements in the foregoing petition are true.

Given under my hand this 17th day of July, 1947.

My commission expires January 13, 1950.

/s/ Tillie D. Toiler
Notary Public.

The court cannot grant the above petition for adoption unless written consent, signed and acknowledged by an officer authorized by law to make acknowledgements, be filed at the same time, or, when consent is required to be given by the Commissioner of Public Welfare, it may be filed at any time before the granting of the petition.⁹ Such consent must be given by the child if fourteen years of age or older, and the consent of the following persons must also be obtained and filed with the petition:¹⁰

1. Both parents, if they are both living; or
2. By the living parent, if one of the parents is dead; or
3. By the mother in the case of a child born out of wedlock; or
4. By one parent, if the other has deserted, neglected, or abused the child, or is insane, or if the court finds his consent is unnecessary; or
5. By the child-placing agency having lawful custody of the child; or
6. By the Commissioner of Public Welfare if the consent of the above mentioned persons cannot be obtained.

The following form is the consent which was filed with the above petition in the case under study. The attorney representing the petitioners must prepare this form and secure the signature thereto.

WHEREAS, Chester A. Ostrand and Thelma E. Ostrand, who are inhabitants of this State and residents of the County of Norfolk, and are husband and wife, desire to adopt Frank Lewis, who is twenty months of age;

Now, Therefore, This Instrument Witnesseth: That the Social Service Bureau of the City of Portsmouth, doth hereby consent that the said Frank Lewis may be adopted by Chester A. Ostrand and Thelma E. Ostrand, his wife, and that henceforth the said Chester A. Ostrand and Thelma E. Ostrand, his wife, shall be vested with all the rights, powers, and obligations with reference to the said Frank Lewis as is provided by law.

/s/ Mary K. Jones

**Director, Social Service Bureau
of the City of Portsmouth.**

STATE OF VIRGINIA,

City of Portsmouth, to-wit:

I, Tillie D. Toiler, a Notary Public in and for the city aforesaid, State of Virginia, do certify that Mary K. Jones,

Director of the Social Service Bureau of the City of Portsmouth, whose name is signed to the writing above bearing date on the 17th day of July, 1947, has acknowledged the same before me in my said city.

Given under my hand this 17th day of July, 1947.

My commission expires January 13, 1950.

/s/ Tillie D. Toiler

Notary Public.

There are, however, certain instances in which consent to adoption is not necessary.¹¹ They are as follows:

1. If the custodial rights of one parent have been terminated by a court, or
2. If the child is under the care of a child-placing agency and such parent or agency refuses to give such consent, then the court can grant the petition without such consent if it finds that such consent is withheld contrary to the best interest of the child.

After the petition and consent have been filed, a copy of the petition is forwarded to the Commissioner of Public Welfare by the court. The court also sends the Commissioner an Order of Reference which directs him to investigate the matter and report in writing to the court.¹² This investigation may be made through the Superintendent of Public Welfare, or other welfare agency, of a county or city, or through a child-placing agency. The following form is the order of reference entered in the case under study. It directs the Commissioner to make certain inquiries, and it closely follows the wording of the statute. Note that the petitioner's attorney must prepare this form even though it is the court which forwards it to the Commissioner.

VIRGINIA: IN THE CIRCUIT COURT OF NORFOLK COUNTY

IN RE:

Adoption of Frank Lewis

This day came Chester A. Ostrand and Thelma E. Ostrand, his wife, by their attorney, and jointly filed their petition, praying leave for Chester A. Ostrand and Thelma E. Ostrand to adopt Frank Lewis, who is twenty months old, and for the change of the name of said Frank Lewis to Robert Allen Ostrand. It is hereby directed that the Commissioner of Public Welfare make a careful and thorough investigation of the matter and report thereon in writing to the court within sixty days after a copy of the petition is forwarded to him, as follows:

(1) Whether the petitioners are financially able and morally fit to care for and to train the child.

(2) What the physical and mental condition of the child is.

(3) Why the parents, if living, desire to be relieved of the responsibility for the custody, care and maintenance of the child, and what their attitude is toward the proposed adoption.

(4) Whether the parents have abandoned the child or are morally unfit to have custody of it

(5) The circumstances under which the child came to live, and is living, in the home of the petitioners.

(6) Whether the child is suitable for adoption by the petitioners.

The Commissioner will also include in his report, his recommendation as to the action to be taken by the court on the petition.

Within sixty days after the above order has been forwarded to the Commissioner, he must report thereon in writing to the court.¹³ A copy of the report shall also be furnished counsel for the parties if requested in any pleading filed in the proceedings, but counsel must return it to the Commissioner after the final order of adoption has been entered.¹⁴ In most cases the investigation is conducted by a person delegated that duty by the Commissioner, but the Commissioner must make this report to the court. The following form is what the Commissioner's report in the case under study probably looked like. The actual report has been returned to the Commissioner pursuant to the statute. It would be in the form of a letter to the judge of the court, or in most cases addressed to the clerk of court who, in practice, does most of the paper work delegated by statute to the judge.

To the Honorable John P. Laches:

Pursuant to the order entered in the proceeding for the adoption of Frank Lewis, who is twenty months old, by Chester A. Ostrand and Thelma E. Ostrand, his wife, to investigate the matter of the adoption and change of name of Frank Lewis, I have made thorough inquiries and do now make my report.

(1) The natural parents have abandoned such child and diligent inquiry has failed to locate or identify such parents.

(2) The Social Service Bureau of the City of Portsmouth which placed such child in the home of the petitioners consents to the adoption of the child by Chester A. Ostrand and Thelma E. Ostrand, his wife.

(3) The proposed parents are financially able and morally fit to have the care, supervision and training of such child. They possess excellent reputation in their community as

people of integrity, sobriety, and industry. They are members of the Baptist Church and are able to give the child an excellent education.

(4) The condition of the child, both physically and mentally, is good. I secured the opinion of Dr. John C. Black, a reputable physician in the community.

The parties, the Social Service Bureau, and the foster parents, are satisfied with the provisions the statute makes for the property rights of the child and of the foster parents. I would recommend that the adoption be approved.

Respectfully reported,

/s/ I. M. Honest, Jr.

Commissioner of Public Welfare.

If the Commissioner's report is in order and the court is satisfied that the adoption is to the best interest of the child, it will enter an interlocutory order of adoption.¹⁵ This order is in effect during the one-year probationary period which must occur in the majority of cases. The following interlocutory order was used in the case under study, and it closely follows the language of the statute. An attested copy of this order must be forwarded to the Commissioner of Public Welfare by the clerk of the court.

VIRGINIA: IN THE CIRCUIT COURT OF NORFOLK COUNTY

IN RE:

Adoption of Frank Lewis

This cause was heard on this day on the papers formerly read and on the report of the Commissioner's investigation; and the Court being satisfied that the mother and father of Frank Lewis have abandoned the said Frank Lewis, who is suitable for adoption in a private home; and that such guardianship is for his best interest; it is ordered that the said Frank Lewis shall live in the proposed home of Chester A. Ostrand and Thelma E. Ostrand, his wife, for one year and shall be visited during said period in every three months by an agent of the County Board of Public Welfare or other person designated by the court for that purpose. At the expiration of one year a final order may be entered, and from the date of the final order of adoption in such case, if such final order be afterwards entered, such child to all legal intents and purposes will be the child of the said Chester A. Ostrand and Thelma E. Ostrand, and his name will thereafter be changed from Frank Lewis to Robert Allen Ostrand.

It is further ordered that the said Frank Lewis shall and from the entry of this interlocutory order be to all intents and purposes the child and heir at law of the said Chester A. Ostrand and Thelma E. Ostrand, unless this is subsequently revoked, and shall be entitled to the rights and privileges and subject to all obligations with reference to the

said Chester A. Ostrand and Thelma E. Ostrand as provided by law.

However, the court can revoke its interlocutory order at any time prior to the entry of the final order, for good cause shown, on its own motion, or on the motion of the natural parents, the child, the child-placing agency, or the Commissioner of Public Welfare.¹⁶ The petitioner, however, must have ten days notice in writing and an opportunity to be heard before such order of revocation may be entered. The clerk must forward an attested copy of such order of revocation to the Commissioner of Public Welfare.

It is possible for the above mentioned interlocutory order to be dispensed with and a final order entered immediately upon certain conditions:¹⁷ (1) If the child is legally the child by birth or adoption of one of the petitioners; or (2) If the child has been placed in the home of the petitioners by a child-placing agency and such agency certifies to the court that the child has lived in the home of the petitioners continuously for a period of at least one year next preceding the filing of the petition, and has been visited by a representative of such agency at least once every three months during such year; or (3) If the child has resided in the home of the petitioner continuously for as much as five years immediately prior to the filing of the petition for adoption, and is at least sixteen years of age at the time thereof, and if the court is of the opinion that the entry of an interlocutory order would otherwise be proper, the court may omit the probationary period and enter a final order of adoption.

In the case under study the interlocutory order was not omitted, but if it had been the final order would appear somewhat as follows:

**VIRGINIA: IN THE CIRCUIT COURT OF NORFOLK
COUNTY
IN RE:**

Adoption of Frank Lewis

This cause came on this day to be heard on papers formerly read and decree entered, and the report of the Commissioner's investigation.

And it appearing to the court that Frank Lewis, who is twenty months of age, was placed in the home of petitioners by a child-placing agency, to wit: the Social Service Bureau of the City of Portsmouth; and the child has lived in the home of the petitioners continuously for a period of at least one year next preceding the filing of the petition, and has been visited by a representative of the agency the requisite number of times;

It is, therefore, ordered that from this day the said Frank Lewis to all legal intents and purposes shall be, and is the child of the said Chester A. Ostrand and Thelma E. Os-

trand, his wife; that the living natural parents of the said Frank Lewis shall be, and they hereby are divested of all legal rights and obligations in respect to said child, and the child shall be free from all legal obligations, obedience, and maintenance in respect to them; and that the name of the said Frank Lewis be changed from Frank Lewis to Robert Allen Ostrand.

The court doth further order that by virtue of Section 5333 (e) of the Code of Virginia, the probationary and interlocutory order with respect to this proceeding be omitted.

It is further ordered that the clerk of the court shall notify the Commissioner of the State Board of Public Welfare of the action taken.

From the date of entry of the interlocutory order, the child to all legal intents and purposes is the child of the petitioners, but they are put on probation for a period of one year, during which time the Commissioner of Public Welfare keeps a close check on the child and its foster parents by visiting the home at least once every three months prior to the entry of the final order of adoption. Within fifteen days after the expiration of one year from the date upon which the interlocutory order was entered, the Commissioner must report in writing his findings to the court.¹⁸ A copy of this report shall also be furnished to counsel for the parties if requested in any pleading filed in the proceeding, but it must be returned to the Commissioner upon the entering of the final order.¹⁹ After the probationary period of one year has passed, the court, after considering the report of the Commissioner, may enter a final order of adoption if it feels it is to the best interest of the child.²⁰ An attested copy of this final order must be sent to the Commissioner by the clerk. The final order in the case under study appeared as follows:

**VIRGINIA: IN THE CIRCUIT COURT OF NORFOLK
COUNTY
IN RE:**

Adoption of Frank Lewis

It appearing to the court that in pursuance of an interlocutory order of this court on the 30 day of October, 1947, Frank Lewis, an infant, has lived for more than one year in the home of Chester A. Ostrand and Thelma E. Ostrand, his wife, who filed their petition for the adoption of the said Frank Lewis before this court; that the said Frank Lewis has been visited the number of times required by statute by a representative of the State Department of Public Welfare, and said adoption is recommended by report of the Commissioner of Public Welfare filed herein.

Since the interlocutory order has not been revoked, in pursuance thereof, it is hereby ordered that from this day the said Frank Lewis to all intents and purposes shall be, and is the child of the said Chester A. Ostrand and Thelma

E. Ostrand, his wife; that his name shall be changed from Frank Lewis to Robert Allen Ostrand; and that the natural parents of the said Frank Lewis shall be and are hereby divested of all legal rights and obligations, obedience and maintenance to him.

It is further ordered that the clerk of this court shall notify the Commissioner of the State Board of Public Welfare of the action taken.

After a final order of adoption has been entered the clerk of the court by which it was entered must report the adoption to the Bureau of Vital Statistics.²¹ The clerk must also send all the reports made by the Commissioner back to him. The Commissioner must keep these in a separate file and none other than the adopted child, if twenty-one years of age, and the adoptive parents, except on order of a court of record, shall have access to these records.²²

After the expiration of two years from the date of entry of a final order of adoption, the validity thereof cannot be attacked because of any irregularity in the adoption proceedings.²³ However, a final order can be annulled for any valid reason by the court which entered such order at any time upon petition of the Commissioner of Public Welfare, the child, or the parent by adoption. The parents by adoption must have ten days written notice of such proceeding and if it appears to the best interest of the child the court may vacate the adoption and restore the child's former name.²⁴

A recent addition to the adoption statute provides that all powers, duties, and authority conferred upon the court by the provisions thereof, may also be exercised by the judge of said court in vacation.²⁵ Thus, the court is always available for purposes of adoption.

In practice it is wise for the attorney, who has secured an adoption for his clients, to explain the legal relationships established thereby. The clients for instance, should know what effect the adoption has on their property if they die intestate; such knowledge will also enable them to prepare their wills. These problems are covered by statute, since legal adoption is strictly statutory. The more common are listed below:²⁶

1. The natural parents are divested of all legal rights and obligations in respect to the child, and the child is free from all legal obligations of obedience and maintenance in respect to them.

2. From the time of the entry of the interlocutory order (subject to its revocation) the adopted child is entitled to all the rights and privileges, and subject to all the obligations, of a child of such adopting person or persons born in lawful wedlock.

3. For the purposes of descent and distribution, a legally adopted child inherits according to the statutes of descent and distribution,

from and through both the natural parents and the parents by adoption from the time of the entry of the interlocutory order (subject to its revocation).²⁷

4. If the adopted child dies intestate, without issue surviving him, his property passes according to the statutes of descent and distribution, to those persons who would have taken had he been the natural child of the adopting parents. However, if the adopted child dies possessed of real or personal property, derived by deed, will, gift, or inheritance from the natural parents that property passes according to the statutes of descent and distribution, as if he had not been adopted.

DONALD H. SANDIE

FOOTNOTES

1. *Shepherd v. Sovereign Camp*, 166 Va. 488, 186 S. E. 113 (1936).
2. *Clarkson v. Bailey*, 185 Va. 82, 38 S. E. 2d 22 (1946).
3. VA. CODE 2614 (a) (Pollard, 1904).
4. ACTS OF GENERAL ASSEMBLY, 1920, Chapter 343.
5. ACTS OF GENERAL ASSEMBLY, 1940, Chapter 265.
6. VA. CODE ANN. §5333 (Michie, 1942).
7. VA. CODE ANN. §5333 (Michie, Supp. 1948).
8. VA. CODE ANN. §5333 (b) (Michie, 1942).
9. VA. CODE ANN. §5333 (d) (Michie, Supp. 1948).
10. *Ibid.*
11. *Ibid.*
12. VA CODE ANN. §5333 (c) (Michie, 1942).
13. *Ibid.*
14. VA. CODE ANN. §5333 (c) (Michie, Supp. 1948).
15. VA. CODE ANN. §5333 (e) (a) (Michie, 1942).
16. VA. CODE ANN. §5333 (e) (c) (Michie, 1942).
17. VA. CODE ANN. §5333 (e) (b) (Michie, Supp. 1948).
18. VA. CODE ANN. §5333 (f) (Michie, Supp. 1948).
19. *Ibid.*
20. VA. CODE ANN. §5333 (g) (Michie, 1942).
21. VA. CODE ANN. §5333 (i) (Michie, 1942).
22. VA. CODE ANN. §5333 (j) (Michie, 1942).
23. VA. CODE ANN. §5333 (k) (Michie, 1942).
24. VA. CODE ANN. §5333 (l) (Michie, 1942).
25. VA. CODE ANN. §5333 (m) (Michie, Supp. 1948).
26. VA. CODE ANN. §5333 (h) (Michie, 1942).
27. See *Fletcher v. Flanary*, 185 Va. 409, 414, 38 S. E. 2d 433, 435 (1946); see Annotation, 166 A.L.R. 150.