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Trusts - Statutory Construction of Adoption Laws

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majority of the court was trying in the instant case to avoid its use, being unwilling to take the first step toward the adoption of this doctrine. Although the Supreme Court of Appeals in this case would be giving a much more equitable solution by adopting this theory and not holding Craig liable for the results of Simmons' negligent act of not turning on the lights of his vehicle at a time when they were clearly needed, it could have accomplished the same result by merely refusing to interfere with the jury's findings at the trial. It is thus apparent that the Supreme Court is advising lower courts not to allow juries to compare negligence in reaching their verdicts for fear of reversal on appeal. As a result, Virginia appears to be, at the present time, on the basis of the decision of the instant case, unalterably opposed to any introduction of the doctrine of comparable negligence either directly through court acquiescence in its principles or indirectly by satisfaction of jury action which might be based upon it.

A. O. D.

TRUSTS—STATUTORY CONSTRUCTION OF ADOPTION LAWS

The Court of Appeals of Kentucky was faced with what they termed to be a \$64,000.00 question. Is it lawful for a man to adopt his wife as his *child and heir at law*?¹

Testatrix executed a will, which set up a trust for the life of her son. At the son's death, the trust was "to be distributed to the heirs at law of my said son according to the law of Descent and Distribution" in force in Kentucky at son's death. In 1941, 18 years after testatrix's death, son adopted his wife "as his legal heir at law and child." The Kentucky Court of Appeals held it to be lawful to adopt a wife as a child and heir at law in entering judgment in favor of the wife.

The largest obstacle placed in the court's path was that the adoption was void as against public policy. Contestants argued that this adoption would vitiate common law unity of husband and wife. The majority of the court held that even though

¹ Bendinger et al. v. Graybill's Executor & Trustees et al., — Ky. —, 302 S.W.2d 594 (1957).

married, there remained two distinct personalities. The Kentucky statute states that the adopted person will be considered for inheritance and succession purposes as the natural and legitimate child. The relationship could not be incestuous because these types of statutes have been construed to mean of the same blood line in specified degrees. In interpreting statutory legal problems, public policy and attitudes are inherent barriers that the court must ponder before passing on them. This insures that no exceptions will be created. The court realized this for they said in the instant case that the public policy argument might be invoked in a case of marriage between the parties after adoption. Their main concern here was one solely of statutory adoption.

To make one an heir by adoption is a sanctioned device.² This is so even if the adopted person is an adult and married to another. This gives added protection to the one adopted, when taking under the provisions of a will. It takes away any inducement of those who would otherwise have been his heirs to oppose the will. As adoption was unknown at common law, the right of inheritance by adoption is conferred by statute.³ Where this right is not conferred, the statutory construction argument of strict construction applies.

The dissent took the position that the old statute and its construction should be applicable. This in effect meant the adopted person took *from* the adoptive parent and not through them. In net effect this would keep the property in the blood line. *Major v. Kramer*⁴ interpreted the new statute to mean that the adopted person could inherit from or through⁵ the adoptive parent unless intention to the contrary appear in the will. So the argument propounded by the contestant of shifting the property from the blood line of testatrix is of no avail.

In view of the anomolous problem presented, the decision

² *Green v. Fitzpatrick*, 220 Ky. 590, 295 S.W. 896 (1927). Contra: where adults may not be adopted, *First National Bank v. Mott*, 101 Fla. 1224, 133 Co. 78 (1931). The different results reached in these cases are based on the construction of the particular statute; some specifically state children and adults while others refer only to children.

³ Kentucky Revised Statutes, 199.530 (1953).

⁴ 258 S.W.2d 506 (1953).

⁵ On this general problem of the right of adopted child or person to inherit from kindred of adoptive parent, see 43 A.L.R.2d 1183.

reaches its logical conclusion. Statutory adoption is tending toward a more liberal policy. The major area of conflict revolves around whether the legislature only sanctions inheritance *from* the adoptive parent or will allow the more liberal *through* interpretation. Thus the boundary line is drawn. Since a person is allowed to adopt another for purposes of inheritance, it seems no stretch of legal imagination to sanction this particular one. Once the separability of Husband and Wife are recognized there is no problem. Common law barriers are elastic and not static.

F. P. B.