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Adoption without Parental Consent, To Better the Children's Welfare

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ADOPTION WITHOUT PARENTAL CONSENT, TO BETTER THE CHILDREN'S WELFARE

In re Adoption of Perkins et al[1] involves the question of the adoption of two children by the second husband of the mother of the children, while the natural father was still living and was contesting the adoption proceedings. The natural parents of the children involved were divorced, and in the divorce proceedings the mother was granted custody of the children with the provision that the natural father pay $60.00 per month for their support until she remarried. The mother subsequently remarried and the evidence showed that the second husband would be able to give the children permanent security and a good home. In addition to the monthly payments made by the natural father for the care of the children prior to the mother's remarriage, he had turned over to the mother an interest in real property, and he had maintained several insurance policies which named the children as beneficiaries. *Held,* three justices dissenting, that the petitioning stepfather had not met the burden of proof showing that it would be to the best interests of the children to allow the adoption.

The Iowa Statute[2] governing adoption states that "the consent of both parents shall be given to such adoption." There are exceptions to the strict wording of this statute, such as the death of one of the parents, hopeless insanity on the part of either party, imprisonment for a felony, being an inmate or keeper of a house of ill fame, or unless the parents are not married to each other. "If not married to each other, the parent having the care and providing for the wants of the child may give the consent" to adoption. The majority of the court did not decide the question with regard to the last mentioned portion of the statute, but rather based their decision upon what, in their opinion, would be for the best interest of the children. In deciding that problem one factor which was considered was the refusal of the natural father to consent to the adoption. The dissenters took the approach that by a strict interpretation of the statute the mother of the children was the person providing for the wants of the children, and as such should be able to give the necessary consent to the adoption. They felt that the support provided by the father had ceased upon the mother's remarriage and that the real property interests and the insurance policies were insufficient to constitute maintenance of the children.

Adoption is purely a creature of statutory action. The question as to whether or not the best interests of the children should be the deciding factor in such a situation has been answered in various ways, based upon

1. In re Adoption of Perkins et al., 49 N.W.2d 248 (Iowa 1951).
2. Iowa Code 1950, Sec. 600.3.

the existing statutes, conditions, and the different interpretations made by the courts of these statutes. A maze of conflicting results has arisen out of the decisions of the various courts. The primary problem that confronted the Iowa Court is: Does the requirement of consent by the natural parent outweigh considerations of the welfare of the children when the parent refuses to give that consent?

The New York Courts have stated that if the natural parent opposes the adoption, it cannot be granted unless abandonment by the parent is shown.[3] North Carolina[4] and New York[5] have stated that in order to obtain *jurisdiction* over the adoption proceeding, the courts must have the consent of the natural parent. The North Carolina Court has stated that the "parents' consent to adoption of a child is necessary except where the child has been abandoned."[6] In line with these New York and North Carolina decisions is one of the Pennsylvania Courts[7] stating "the welfare of a child is weighed in an adoption case only after necessary consents have already been given or forfeited by the parents."

Texas[8] has ruled that where statutory exceptions are not applicable, and the natural parent has not given his or her consent, then *notice* of such a proceeding, given to the parents, is prerequisite to a judgment in an adoption case which would be binding upon such parents. This indicates a possible manner in which to circumvent the strict requirement of the consent of the natural parents.

The Colorado Court has ruled that the welfare of the child is the primary consideration in an adoption proceeding and that the rights of the natural parents are secondary.[9] Missouri follows the same rule.

In the instant case the dissenting judges lean heavily upon the Iowa Statute[10] which states that, if the parents are not married to each other, then the parent having the care and providing for the wants of the child may give the consent for adoption. This controversial point the majority of the court completely avoided. The child support that the divorced father was required to pay was (according to the divorce decree) to terminate upon the remarriage of the mother. Immediately upon her remarriage the father stopped making these payments and thus was not currently contributing anything to the support of the children at the time the court was considering the petition for adoption. The fact that the father had named his sons as beneficiaries of his insurance policies is meaningless, as an immediate change could have been effected in such a situation. It was

3. Caruso v. Caruso, 23 N.Y.S.2d 239 (1940).
4. In re Holder, 218 N.C. 136, 10 S.E.2d 620 (1940).
5. In re Marks Adoption, 287 N.Y.S. 800 (1936).
6. Locke v. Merrick, 223 N.C. 798, 28 S.E.2d 523 (1944).
7. In re Adoption of Oelberman, 167 Pa. S. 407, 74 A.2d 790 (1950).
8. Fitts v. Carpenter, 124 S.W.2d 420 (Tex. Ct. of Cir. App. 1939).
9. Moreau v. Buchholz, 236 P.2d 540 (Colo. 1951).
10. See Note 2, supra.

also pointed out in the dissent that while the divorced husband did deed to his ex-wife some property, this property was subject to a considerable mortgage and after some expense the wife was able to dispose of this property for only a small net profit. The dissenters therefore concluded that the mother was "the parent having the care and providing for the wants of the children" according to the language of the Iowa Statute, and was the only parent whose consent was necessary for adoption. The reasoning and conclusion of the dissenting opinion seem sound.[11]

Thus, there exists a complete split in the result that would be attained if an identical case were to be presented in the various courts. If there is a numerical superiority it would appear to go to the faction advocating the rights of the natural parents to resist adoption unless consent is given.

In Wyoming there is a statute[12] which provides that "the consent of both parties to such adoption is mutual and voluntary." This statute could be interpreted to mean that the consent of the natural parent to the adoption and the consent of the person seeking to adopt are both necessary to the adoption proceeding. Such an interpretation is not necessary, however, since this statute is supplemented by another,[13] which makes adoption expressly conditional upon the appearance and consent of the natural parents. This statute seems to follow closely along the lines of the opinion of the New York Court[14] which insists that, while the promotion of the interests of the child are essential to an adoption, the natural rights of the parents will not be interferred with, even to better the moral and physical welfare of the children. Up to this point the Wyoming Statutes seem to be quite clear and definite with regard to the fact that the consent of the parent is essential.

However, there is a third Wyoming Statute[15] which may put a different light on the problem. Section 58-206 provides that, unless the adoption petition is accompanied with the written consent of the living parent, the judge shall "set such petition for hearing and require the parents who are living to appear on the day set and show cause why such petition should not be granted." This statute is in line with the Texas[16] interpretation, that only *notice* of the adoption proceeding to the natural parents is necessary, rather than their consent.

Leaving the problem of consent, we must then answer the question as to whether the welfare of the child would be bettered to such an extent that the adoption should be allowed in face of the refusal by the natural parents to give their consent. What factors should be considered in determining the welfare of the children? Would mere financial advancement

11. See, for example, in re Wines Adoption, 239 S.W.2d 101 (Miss. 1951).
12. Wyo. Comp. Stat. 1945 Sec. 58-201.
13. Wyo. Comp. Stat. 1945 Sec. 58-202.
14. In re Paden, 43 N.Y.S.2d 305 (1943).
15. Wyo. Comp. Stat. 1945 Sec. 58-206.
16. See Note 8, supra.

be sufficient, or should the court consider the possibility of maladjustment to both the person seeking to adopt and the child, resulting from diametrically opposed personalities? Would the granting of the adoption petition deprive the parent and the children of the natural and normal feelings that should exist between every parent and child? These are all questions that every court should consider prior to making a decision, and each case that comes before the court will present a different factual situation and could conceivably result in a different decision.

Until the Wyoming Statutes dealing with this subject are strictly construed the answer to these questions will remain in doubt. Two of the statutes[17] clearly state that the consent of the parent is an essential part of the adoption proceeding, but another[18] does indicate a manner in which the adoption proceeding could be carried out without the consent of the natural parent.

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WIRE TAPPING AS A DEPRIVATION OF PRIVACY OF COUNSEL

In a prosecution of a government employee for copying, taking, concealing and removing documents filed with the Justice Department relating to espionage activities and the national defense, the defendant charged that Federal Bureau of Investigation agents intercepted telephone conversations between her and her counsel, both before and during her trial in the District of Columbia, and that she was therefore denied the effective assistance of counsel. From the denial of a motion for a new trial made upon this ground defendant appealed. *Held*: the trial court erred in holding that the interception of telephone messages between the defendant and her counsel before and during her trial, if it occurred, was nothing more than a serious breach of ethics, since if the interception taak place the defendant's right to effective aid of counsel was violated and the verdict would have to be set aside. *Coplon v. United States*, 191 F.2d 749 (D.C. Cir. 1951).

The question involved in the *Coplon* case is the right to private consultation with counsel both before trial and during the trial, regardless of whether such interceptions of telephone conversations between the accused and her counsel operated as a means of procuring evidence used to convict. It is well established that an accused does not enjoy the effective aid of counsel if he is denied the right of private consultation with

17. See Notes 9 and 10, supra.
18. See Note 12, supra.