Families in Transition

California Continues to Grapple with the Inheritance Rights of Stepchildren

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"Soon Cinderella's father met with an untimely, tragic death and his new wife's true nature was revealed. She became cold, cruel and bitterly jealous of Cinderella's charm and beauty. Completely at the mercy of her stepmother and spiteful stepsisters, Cinderella was forced to become a servant in her own home." - From "Cinderella," a children's tale

No area of the law presumes, indeed demands, consistency as does inheritance. Purely statutory by right, both the laws of intestacy and the rules of will construction are grounded upon inflexible concepts of the nuclear family. The intestacy laws, which are far more ancient than the 16th century Statute of Wills, incorporate more than a thousand years of suppositions of what constitutes the average family and are resistant to change.

A parent-child relationship between a stepparent decedent and an unadopted stepchild not only gives the child two sets of parents to inherit from, but also imposes upon a decedent a potentially undesired, even unintended, child or grandchild.

Particularly resistant are the intestacy fights of stepchildren. The laws of all jurisdictions have embraced adopted and illegitimate children readily: stepchildren remain statutorily the least protected family member. In California, Probate Code 6402 provides that stepchildren take only after all relatives of the second collateral lines, that being all relatives descended from the grandparents of the deceased stepparent. Some states, including California, have provided additional intestacy rights for stepchildren to property which the deceased stepparent inherited from the stepchild's natural parent, but only where the stepparent dies without surviving spouse or issue. Probate Code 6402.5. But prior to 1985, no jurisdiction in the United States accorded to stepchildren the rights of natural children, and since then only California has experimented with such rights. Estate of Cleveland (1993) Cal. App. 2 Dist. 1993, 22 Cal. Rptr. 2d 590, footnote 6; accord, Uniform Probate Code 1-201(5), (9) and (33); 63 ALR 2d 303; Mahoney, "Stepfamilies in the Law of Intestate Succession and Wills," 22 U.C. Davis Law Rev. 917 (1989). Limited, difficult of proof, and unclear, even these new intestacy rights of stepchildren under California law are being judicially scaled back.

It is fair to conclude that when many years pass without an adoption after the legal impediment ceases to exist, the decedent had other reasons for not effectuating the adoption.

1. The Law in California Prior to 1985

Until 1985, stepchildren of a decedent were simply not included within the definition of children

in California. California State Automobile Association v Jacobson (1972) 24 Cal. App. 3d 853, 10 1 Cal. Rptr. 366; Estate of Davis (1980) 107 Cal. App. 3d 93,165 Cal. Rptr. 543. Because stepchildren could be passed over in favor of more distant, and presumably less desirable, blood kindred, this harsh rule was criticized as inflexible and insensitive. In Estate of Lima (1964) 225 Cal. App. 2d 396, 37 Cal. Rptr. 404, for example, unadopted stepchildren sought the right to inherit on the death of their stepmother, stressing that their stepmother's estate consisted entirely of assets previously belonging to their predeceased father. The court stated:

"Although it may appear unjust that stepchildren, under the facts here present, may not share in the estate of their stepparent who has left issue, especially where the assets of the estate were at one time the property of the natural parent of the stepchildren, the language of the code section, the case law and the historical status of stepchildren permit no other interpretation. Stepchildren simply have not been embraced under the meaning of the word."

The difficulty in cases such as Lima stems from the conflicting interests behind the intestacy laws. While such laws seek to impose a system of property descent which matches the desires of the average decedent, there is an underlying social policy in the intestacy laws which seeks to restrict each person to a single parent-child relationship. With a few statutory exceptions, for inheritance purposes each person is deemed to have only one set of parents. Where children are legally adopted, the adopting parents become the sole parents for inheritance purposes, and the relationship to the natural parents is severed. For stepchildren, that relationship was deemed to exist with the natural parent, not the non-adopting stepparent.

2. The 1985 Amendment to the Probate Code

A 1983 amendment to the California Probate Code, effective for decedents who die on or after January 1, 1985, finally sought to invest unadopted stepchildren who had enjoyed long relationships with deceased stepparents with inheritance rights equivalent to those of natural children. In what now appears as 6454 after January 1, 1994 (previously 6408(b)), the legislature provided:

"For the purpose of determining intestate succession by a person or the person's issue from or through a foster parent or stepparent, the relationship of parent and child exists between that person and the person's foster parent or stepparent if both of the following requirements are satisfied:

(a) The relationship began during the person's minority and continued throughout the joint lifetimes of the person and the person's foster parent or stepparent.

(b) It is established by clear and convincing evidence that the foster parent or stepparent would have adopted the person but for a legal barrier."

In the few years which have followed its enactment, California courts have struggled to understand and apply the new rule. Of its tests, only that requiring that the relationship begin during the unadopted stepchild's minority can be adjudicated with clarity. The remaining two

requirements, those that require that the relationship continues for the parties' joint lives and that the stepparent have adopted the child but for a legal barrier, continue to stymie the courts.

3. The "Relationship" Test

The requirement that the relationship between the decedent stepparent and the unadopted stepchild continues throughout their joint lives is one which courts have tended to resolve conservatively. A parent-child relationship between a stepparent decedent and an unadopted stepchild not only gives the child two sets of parents to inherit from, but also imposes upon a decedent a potentially undesired, even unintended, child or grandchild.

The judicial reluctance was expressed well in Estate of Claffe, (1989) 209 Cal. App. 3d 255, 257 Cal. Rptr. 197, where the court stated:

"[T]he necessary relationship, existing during minority and continuing throughout the parties' lifetime, must encompass something more than an exchange of wedding vows between the natural father and a stranger."

Just as the simple marriage of adults will not automatically create a parent-child relationship between a stepparent and an unadopted stepchild, so the dissolution of the marriage between the parents will not automatically terminate one. In the Estate of Stevenson (1992) 11 Cal. App. 4th 852, 14 Cal. Rptr. 2d 250, the court held the parent-child relationship existed between unadopted stepchildren and a decedent, notwithstanding that the natural father had predeceased the decedent stepparent by many years, and despite a six year period of separation between the natural father and the decedent stepmother during which the stepchildren resided with a different stepmother.

Differing with Claffey, the court stated that while a family relationship is contemplated by the statute, such a relationship is not precluded by the fact that the parties do not reside together. Recognizing that the stability of the parties' living arrangements was relevant, Stevenson concluded that it was not the only factor to be considered.

4. The "Legal Barrier" Test

The California Courts of Appeal are now in direct conflict with one another over the requirement of 6454(b) that the stepchild have been adopted but for a legal barrier, specifically on the issue of whether the statute requires the decedent to have attempted an adult adoption.

The matter was first addressed in Estate of Lind (1989) 209 Cal. App. 3d 1424, 257 Cal. Rptr. 853, where an unadopted stepchild offered evidence of an attempt to adopt in 1942, at which time he was twenty-two years of age. Looking at all of the facts, the Lind court inferred that a legal barrier existed since the attempt at adoption was made after the majority of the stepchild and California law did not permit adult adoptions until 1951. Seeking to clarify the statutory definition, the court stated:

"[T]he phrase is not a term of art and carries no meaning beyond the plain meaning of the words. Therefore, barriers should be interpreted broadly in the spirit of the policy that calls for liberal interpretation of adoption laws in the best interest of the adopted person."

Taken on its face, Lind skirts the issue of whether or not a stepchild needs to be adopted after becoming an adult in order to satisfy the requirements of 6454(b). That issue, however, is now directly addressed by two recent conflicting California cases. In Estate of Stevenson, supra, the unadopted stepchildren of the decedent offered evidence that the decedent would have adopted them during their minority but for the objection by their natural parent. It was clear from the facts presented that no efforts were made to adopt the stepchildren after they became adults, at which time that legal barrier disappeared.

Recognizing that the legal barrier contemplated by 6454(b) would normally be the other natural parent's failure to consent, a supposition expressly cited by the Law Revision Commission's Comments upon enactment in 1985, the court in Stevenson sitting in the Sixth District held that the legal barrier need exist only at the time that the deceased stepparent attempted to adopt, not throughout the lifetime of the deceased stepparent. Carried to its logical extreme, the court reasoned that a contrary rule would mean that 6454(b) applied only to stepchildren who are minors at the death of the decedent stepparent.

Nine months later, the Stevenson case was directly contradicted by the Second District in Estate of Cleveland (1993) Cal. App. 2d Dist. 1993, 22 Cal. Rptr. 2d 590. In Cleveland, the petitioner was the child of the decedent's long-time companion, residing with the decedent for twelve years between the ages of twelve and twenty-four. The decedent had expressed an interest in adoption early on, but the petitioner's natural father had objected. The decedent died years later when the petitioner was thirty-seven years of age, without having attempted adoption after the petitioner's majority. The Cleveland court found inappropriate the espousal in Lind of liberal application of laws in favor of an unadopted child, holding improper the extension in such circumstances of the liberal interpretation of adoption laws normally favored by California courts.

The Cleveland court's condemnation of Stevenson was thorough and complete. The court recited concern that a broad construction of 6454(b) would invite sham or marginal claims inconsistent with the legislature's intent in promoting expediency in the probate process. The court further expressed its reluctance to establish a parent-child relationship following the death of a decedent when that same decedent could have provided the stepchild with inheritance rights either through completing an adult adoption or the drafting of a will or an estate plan, stating:

"Where a decedent takes neither of these actions, it is fair to conclude that when many years pass without an adoption after the legal impediment ceases to exist, the decedent had other reasons for not effectuating the adoption."

Faced with the clear contradiction in interpretation of 6454(b), the California Supreme Court took the surprising step of denying the review sought by the unsuccessful petitioner in Cleveland.

5. Conclusion

Although unenthusiastically argued otherwise in the opinion, the result of Cleveland would seem to be that the parent-child relationship embodied by 6454(b) will not apply to unadopted adult stepchildren. Adopted adult stepchildren inherit under the more favorable rules applicable to adoptions; minor stepchildren might inherit under rigorous rules requiring a blocked attempted adoption; unadopted adult stepchildren would not inherit at all.

The decision in Cleveland is harsh, perhaps needlessly so. The suggestion that a prospective parent pointlessly file adoption papers over the previously expressed objection of the non-custodial natural parent is dangerous dicta where 6454(b) continues to apply in cases of unadopted stepchildren who are minors at the death of a decedent stepparent. Further, the argument that unadopted adult stepchildren remain covered by 6454(b) is lukewarm. In footnote 10 and accompanying text, the court stated that adult stepchildren might still obtain relief where the legal bar consisted of their own failure to consent, or such failure on the part of their spouse, or where state law prohibited a second adoption by the prospective stepparent during a single twelve month period. While such bars are possible, all sources, including the Law Revision Commission, recognize that the legal bar contemplated by the statute was the natural parent's failure to consent during minority of the child.

Stevenson attempts to bring a level of sensitivity to the intestacy rules, but brings with it a lack of certainty and increased potential abuse. In this regard, the court in Cleveland claimed, and rightfully so, that its decision would "inject a strong dose of certainty" into the intestacy laws, and in many respects that is a laudatory goal. And indeed, the decisions in this area have application well beyond intestacy, particularly in the will and trust construction areas of class gifts and anti-lapse. On balance, as harsh as it may seem, that dose of certainty is probably warranted, especially where the resolution for any individual who desires to benefit an adult stepchild is as simple as the preparation of a will.