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The Court of Appeals Clarifies Inheritance Rights Of Adopted-Out Children

By Eric W. Penzer*

Recently, the Court of Appeals decided a case clarifying the rights of adopted-out children, and the issue of such children, with respect to testamentary inheritance. In *Matter of the Estate of Murphy*,[1] the Court was called upon to address the interplay, under the facts before it, between section 3-3.3 of the Estate, Powers and Trusts Law ("EPTL") -- New York's "anti-lapse" statute -- and section 117 of the Domestic Relations Law ("DRL"), which addresses the limited ability of an adopted-out child to inherit from a birth relative.

Before delving into the facts of *Murphy*, a brief discussion of New York's anti-lapse statute and DRL § 117 is in order. As the Court explained in *Murphy*, "[t]he anti-lapse statute was designed 'to abrogate . . . the common-law rule that a devise or legacy to [a predeceased child] lapsed, and to substitute the children of the deceased child for the primary object of the testator's bounty.'"[2] Thus, EPTL 3-3.3 provides that "[w]henever a testamentary disposition is made to the issue or to a brother or sister of the testator, and such beneficiary dies during the lifetime of the testator leaving issue surviving such testator," the disposition does not lapse but vests in the surviving issue.[3] Since a 1986 amendment to the statute, section 3-3.3 defines "issue," for the purpose of triggering the anti-lapse provision, to "include adopted children and their issue to the extent they would be included in a disposition to 'issue'" under DRL § 117(2).[4]

Turning to section 117 then, it is worthy of mention at the outset that that section, like the anti-lapse statute, contains provisions that are in derogation of the common law. Because adoption was unknown to the common law, and exists in New York only by statute, "a legal adoption does not automatically terminate the children's right to inherit from their natural kindred, nor grant them the right to inherit from their adoptive family."[5] "Rather, these inheritance rights are controlled by statute."[6]

The rights of adopted children to inherit from their adoptive and natural parents have evolved over time by virtue of various legislative enactments.[7] The current version of DRL § 117(2) provides, to the extent relevant here, that, except in limited circumstances, adopted children and their issue are deemed to be "strangers" to their birth relatives for the purpose of testamentary inheritance:

> Except as hereinafter stated, after the making of an order of adoption, adopted children and their issue thereafter are strangers to any birth relatives for the purpose of the interpretation or construction of a disposition in any instrument, whether executed before or after the order of adoption, which does not express a contrary intention or does not expressly include the individual by name or by some classification not based on a parent-child or family relationship.

Thus, under section 117(2) as it currently exists, unless one of three conditions is met -- *i.e.*, unless the will expresses a contrary intention, expressly includes the individual by name, or

expressly includes the individual by classification -- an adopted-out child is deemed a stranger to a birth relative for purposes of construing a testamentary instrument.[8]

Before *Murphy*, the Court last had the opportunity to consider the testamentary inheritance rights of an adopted-out child under DRL § 117 in the 1985 case *Matter of Best*.[9] The version of DRL § 117 in effect at the time "terminate[d] all rights of intestate succession" on the part of the adopted-out child, but did not "affect the right of any child to distribution of property under the will of his natural parents or their natural or adopted kindred."[10] The Court was called upon to decide whether, under the prior version of DRL § 117, a child born out of wedlock and adopted out of his biological family at birth was "entitled to a share of a trust estate devised by his biological grandmother to her daughter's issue."[11] The Court answered that question in the negative.

The Court held in *Best* that an adopted-out child may not take in a class gift from a birth relative unless that child is "specifically named in a biological ancestor's will, or the gift is expressly made to issue including those adopted out of the family."[12] Faced with a statute silent on the issue, the Court based its decision in *Best* on three major policy considerations, to wit, the importance of (1) allowing an adopted child to assimilate into the adoptive family, (2) maintaining the confidentiality of adoption records, and (3) preserving the stability of real property titles and other rights passing under Surrogate's Court decrees.[13]

In 1986, the Legislative amended DRL § 117, adopting a modified version of the *Best* rule, *i.e.*, providing that adopted children and their issue are strangers to birth relatives for purposes of interpreting a will unless the will expressly includes the individual by name or by some classification not based on the parent-child or family relationship.[14] *Murphy* involved the interplay between the revised DRL § 117 and the anti-lapse statute. In particular, the case involved the "exception" set forth in DRL § 117 for individuals expressly included by name in the testamentary instrument. The facts in *Murphy* were not complex.

The testator, Mildred B. Murphy, gave birth to a son, Arthur.[15] Arthur went to live with the Manning family and was known throughout his childhood as Clair Willard Manning. He was officially adopted by the Manning family at age 19. However, he and Mildred re-established their relationship some time after World War II. In 1998, Mildred executed a will leaving a lake cottage to Clair, along with $8,000 and half of the residuary estate. In addition, she willed cash gifts to two of his children. Under the will, Mildred's sister-in-law, Evelyn Beckman, was to receive the other half of the residuary estate.

Clair died in 2001, survived by four children.[16] Mildred died 11 months later. After the will was admitted to probate, the executors brought a construction proceeding to determine the applicability of the anti-lapse statute to the bequests to Clair. Beckman contended that the bequests to Clair lapsed and became part of the residuary estate. She argued that, in accordance with DRL § 117(2), adopted-out children must be treated as strangers for the purpose of construing the will of a birth relative and, further, that the bequests were not saved by the anti-lapse statute because Mildred's will did not specifically mention Clair's issue.[17]

The Surrogate's Court, Steuben County, agreed with Beckman's argument, ruling that the gifts to Clair lapsed in their entirety and passed to Beckman with the whole of the residuary estate.[18] The Appellate Division, Fourth Department, affirmed.[19] Central to its holding, the court determined that "[b]ecause the testatrix did not specifically name the Manning respondents as alternative beneficiaries in the event of the death of Manning, they are not entitled, as his issue, to the bequests made to him."[20]

The Court of Appeals reversed. In essence, it held that when Mildred named Clair as a beneficiary of her will, she made him a "nonstranger" -- indeed, he had the status of "issue" -- in accordance with DRL § 117(2), and thus, his children were entitled to the benefit of the anti-lapse statute.[21]

The Court began its analysis by reviewing the history of the anti-lapse statute, noting that it was designed to ameliorate the "harshness" of the common law rule which, "more often than not, defeated the testator's intention."[22] It also reviewed the legislative revision to the statute, defining "issue" as including adopted children and their issue, to the extent they would be included in a disposition to "issue" under DRL 117(2).[23] The Court concluded that, by virtue of section 117(2), adopted-out children who are specifically mentioned in a will -- as Clair was -- are not "strangers" to their birth relatives, but instead are "issue."[24] And, by reason of the anti-lapse statute, children of issue -- Clair's children -- are entitled to the benefit of the anti-lapse statute.[25] It stated as follows:

> We therefore conclude that when Mildred Murphy named her adopted-out son Clair as a beneficiary of her will, she triggered the condition in § 117(2) that made him a nonstranger, and thus her issue, with respect to the relevant bequest. His children, therefore, are entitled to the benefit of the anti-lapse statute.[26]

Crucial to its determination, the Court rejected Beckman's argument -- adopted by the Surrogate, the Appellate Division, and Judge Reade in dissent -- that DRL § 117(2) requires the issue of an adopted-out child to be expressly included in the will in order to inherit.[27] Specifically, Beckman argued that because DRL § 117(2) specifically provides that "adopted children and their issue" are strangers to the will unless included by name, the issue of an adopted child, claiming a right under the will, must also be included by name. She argued that because Clair -- although named in the will -- had died, his children were not entitled to his bequests because they were not individually named in the will.[28]

The Court found, however, that that argument would be plausible only by reading DRL § 117 "in isolation, devoid of its relationship to EPTL 3-3.3."[29] The Court noted that accepting that argument would lead to the result that only those persons expressly named in a will could inherit, a result so obvious that it would have required no legislative enactment to obtain:

> Indeed, as the Manning children argue, if we were to read the section as Beckman and the dissent advocate, the testator's expressed contrary intention or naming of the adopted-out child would have no practical or legal effect other than to allow the named individual to take the bequest. The named adopted-out child would then be in the same position as any other named nonrelative in any will. Surely the Legislature did not enact § 117(2)(a) merely to state the obvious: that someone named in a will may inherit.[30]

Therefore, the Court concluded that, in accordance with DRL § 117, Clair was to be considered Mildred's "issue" because she specifically mentioned him in her will. Accordingly, Clair's children were entitled to the benefit of the anti-lapse statute, EPTL § 3-3.3.[31]

The inheritance rights of adopted children have been the subject of legislative enactments and decisional authority since at least the late 1800's. It would be naïve to conclude that clarity in the law exists by virtue of the Court's most recent pronouncement on the subject. The next chapters on the subject are still waiting to be written, as courts are asked to apply legal concepts -- some new and some well-established -- to novel fact patterns.

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* Eric W. Penzer is an associate in the trusts and estates litigation department at Farrell Fritz, P.C., in Uniondale. He is a graduate of the State University of New York at Stony Brook and received his J.D. from Fordham University School of Law.

[1] --- NE2d ----, 2005 WL 2777565, N.Y. Slip Op. 07864 (Oct. 27, 2005).

[2] *Id.* at *2-3 (quoting *Pimel v. Betjemann*, 183 N.Y. 194, 200 [1905]).

[3] EPTL § 3-3.3(a)(2), (a)(3).

[4] *Id.* § 3-3.3(b).

[5] *Matter of Estate of Seaman*, 78 N.Y.2d 451, 455, 576 N.Y.S.2d 838, 840 (1991).

[6] *Id.*

[7] *See id.* (reviewing legislative history).

[8] DRL § 117(2)

[9] 66 N.Y.2d 151, 495 N.Y.S.2d 345 (1985). In 1991, the Court addressed a "novel question" concerning the intestate distribution rights of the daughter of an adopted-out child in *Seaman*.

[10] *Id.* at 156, 495 N.Y.S.2d at 348 (quoting DRL § 117).

[11] *Id.* at 152-53, 495 N.Y.S.2d at 346.

[12] *Id.* at 156, 495 N.Y.S.2d at 348.

[13] *See id.* at 155-156, 495 N.Y.S.2d at 347-48.

[14] *Murphy*, 2005 WL 2777565, at *4.

[15] *Id.* at *2.

[16] *See id.*

[17] *See id.*

[18] *See id.*

[19] *Matter of Estate of Murphy*, 11 A.D.3d 947, 784 N.Y.S.2d 760 (4th Dept 2004).

[20] *Id.* at 948, 784 N.Y.S.2d at 761.

[21] 2005 WL 2777565, at *5.

[22] *Id.* at *3 (citing *Pimel*, 183 N.Y. at 200)

[23] *See id.*

[24] *See id.* at *6.

[25] *See id*.

[26] *Id.*

[27] *See id.* at *4-5.

[28] *See id*.

[29] *See id.* at *5.

[30] *Id*.

[31] *See id.* at *6.