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Cutting Family Ties: The Inheritance Rights of Adopted-Out Children

An "adopted-out child" is "a child who has been adopted away from his [or her] natural parents" by order of adoption.[1] Until recently, the question of whether an adopted-out child could share in a class gift to a biological parent's issue remained unsettled in the state of New York. *In re Accounting by FleetBank*[2] clarified the inheritance rights of adopted-out children, and this article addresses the development of the law with respect to these rights.

Early Developments

New York law was far more liberal with regard to the inheritance rights of adopted-out children before 1963. Indeed, from 1896 to 1963, the New York Domestic Relations Law permitted adopted-out children to inherit from their biological parents in intestacy.[3] For example, in 1917, in *In re Landers' Estate*, the Surrogate's Court, Oneida County, held that the decedent's biological sister could inherit from his estate, notwithstanding the sister's adoption out of the family.[4] The court premised its decision on the theory that the inheritance rights of the decedent's sister, much like those of all other adopted-out children, remained unaffected by the adoption.[5]

In 1963, however, the New York State Legislature amended N.Y. Domestic Relations Law § 117 (DRL) to reflect the legal theory that an order of adoption changed the status of the adopted-out child's right to inherit from his or her biological family in intestacy.[6] On the one hand, § 117, as amended, ended the legal relationship between the adopted-out child and his or her parents for intestate distribution purposes; on the other, the amended section gave an adopted-out child the right to inherit from his or her adoptive family.[7] In 1966, the Legislature added, among other things, a saving provision to § 117, which authorized a biological parent to provide a bequest to an adopted-out child by last will and testament.[8]

In addition to the saving provision, the 1966 amendments also addressed the inheritance rights of a child who is adopted by a stepparent. Essentially, the amendments extinguished the right of such a child to inherit from his or her non-custodial biological parent in intestacy.[9] A judicially created exception to this statutory principle applies where the child is adopted following the non-custodial parent's death.[10]

In re Best

In *In re Best*, the Surrogate's Court, Westchester County, the Appellate Division, Second Department, and the Court of Appeals addressed whether an adopted-out individual is entitled to receive income as a secondary life beneficiary of a trust.[11] The decedent, Jessie C. Best ("Best"), had died leaving a Last Will and Testament (the "Will") in which she provided for the creation of a residuary trust and designated her daughter, Ardith Reid ("Ardith"), as the income beneficiary.[12] Best's Will directed the trustees of the residuary trust "to divide [the] trust fund into as many shares or parts as there shall be . . . issue . . . and to continue to hold each of such shares or parts in trust during the life of one of said persons" upon Ardith's death.[13]

Although the trustees of the residuary trust initially concluded that Ardith had only one son, Anthony R. Reid ("Anthony"), they later learned that Ardith had given birth to a non-marital child and placed that child for adoption.[14] In an effort to complete jurisdiction in their accounting proceeding, the trustees elected to cite Ardith's then-unknown, non-marital child, and secured Ardith's consent to ascertain that child's identity.[15] After consulting with a caseworker from the agency that oversaw the child's adoption, the child's adoptive parents identified the child as David Lawson McCollum ("David").[16]

Following Ardith's death, the trustees initiated a construction proceeding in order to determine whether to treat David as a secondary income benefi-

ciary.[17] Opining that it had a duty to construe DRL § 117 narrowly, the surrogate's court answered that question in the affirmative, holding that David was entitled to a share of the trust established for the benefit of Ardith and her issue.[18] The court reasoned that § 117 applied to intestate distribution, but not to dispositions made by will or trust, and, therefore, did not preclude David from being included as one of Ardith's issue.[19] As support for that holding, the court noted that the Will did not contain any indication as to an intention on the part of Best to disinherit David or any other adopted-out child of Ardith from the class of beneficiaries of the residuary trust.[20]

Anthony appealed the surrogate's decree to the Appellate Division.[21] Like the surrogate's court, the Appellate Division referenced the fact that § 117 applied to intestacy, but not to inheritance by will.[22] The court also noted that the term "issue" included marital and non-marital children alike, and thus David's status as a non-marital child was not dispositive.[23] Accordingly, the Appellate Division, noting that there was insufficient evidence of Best's intent to exclude David from the class of Ardith's issue, affirmed the decree of the surrogate's court.[24]

The Court of Appeals reversed.[25] In doing so, the Court discussed the public policy considerations that "militate[d] against construing a class gift to include a child adopted out of [a] family."[26] Chief among those considerations were two interrelated rationales: (1) the theory that the Legislature intended to sever the legal relationship between an adopted-out child and his or her biological family when it enacted § 117, and (2) the notion that permitting an adopted-out child to inherit from his or her biological family "would be inconsistent with the child's complete assimilation into the adoptive family."[27]

The Court also referenced other factors, such as the necessity to maintain the confidentiality of adoption records in order to encourage the development of relationships between the adopted-out child and the adoptive family, a goal which would be breached with great haste if the child were to be included as the beneficiary of a class gift from his or her biological family.[28] Another factor was the possibility that surrogate's court decrees would be devalued by the inclusion of the child in the class of permissible beneficiaries.[29] The concern was that decrees would never be final, because there might be an unknown, adopted-out child lurking in the background and waiting to take as a class gift beneficiary.[30]

Post-*Best* Amendments to § 117

In 1986, following the *Best* decision, the Legislature amended § 117 to reflect the Court of Appeals's reasoning that once a child is adopted out of his or her biological family, the child is deemed to be a "stranger" to the biological family for inheritance purposes.[31] Under the 1986 amendments, the general rule applies whether the adopted-out child seeks to inherit as a class gift beneficiary of a will or trust or through intestacy.[32] Of course, an adopted-out child can still inherit from his or her biological family if a biological family member executes an instrument evidencing an intent to include the adopted-out child in the class of beneficiaries provided for in a will or trust.[33]

In 1987, the Legislature once again amended § 117 to create exceptions to the general rule prohibiting an adopted-out child from inheriting from his or her biological family.[34] The 1987 amendments provide that an adopted-out child can inherit from his or her biological family as a class gift beneficiary, if (1) the child's adoptive parent is (a) "married to the child's birth parent," (b) "the child's birth grandparent" or (c) "a descendant of such grandparent"; and (2) "the testator or creator is the child's grandparent or a descendant of such grandparent."[35]

In *In re Seaman*, the Court of Appeals, noting the 1987 amendments, held that § 117 did not preclude the petitioner, the decedent's niece, from securing letters to administer the decedent's estate simply by virtue of the fact that her father, the decedent's half-brother, was adopted by his stepfather after his biological father, the decedent's father, divorced his mother.[36]

In re Accounting by FleetBank

Most recently, in *In re Accounting by FleetBank*, the Surrogate's Court, Monroe County, the Appellate Division, Fourth Department, and the Court of Appeals addressed whether an adopted-out child was entitled to a share of a class gift established in an irrevocable trust for the benefit of the child's biological parent and that parent's issue.[37] In *FleetBank*, Florence Woodward ("Woodward") established irrevocable trusts in 1926 and 1963 for the benefit of her daughter, Barbara W. Piel ("Piel"), and Piel's issue.[38] The 1926 trust instrument directed the trustee to distribute that trust's net income to Piel's descendants, in equal shares, upon Piel's death, while the 1963 trust instrument provided for the distribution of that trust's principal to Piel's living children, in equal shares, at Piel's death.[39]

Although she gave birth to three children, Piel raised only two of her three biological children, having placed her first-born child, Elizabeth McNabb ("McNabb"), for adoption shortly after McNabb's birth in 1955.[40] Piel forfeited

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her parental rights with respect to McNabb, and an Oregon court formalized the adoption in an order later that year.[41] From that point forward, McNabb lived with her adoptive family, as a member of the adoptive family, and had no further contact with Piel.[42]

Piel died in 2003. Following her death, FleetBank commenced proceedings to judicially settle its final accounts for the two irrevocable trusts.[43] The bank declined to include McNabb or her children as interested parties in the proceedings.[44] McNabb objected on the ground that she was entitled to one-third shares of the net income from the 1926 trust and principal from the 1963 trust.[45] Relying on the *Best* decision, the surrogate's court held that McNabb did not qualify as Piel's "descendant" or "child" because she was adopted out of Piel's family; therefore, she was not entitled to a share of either the 1926 or 1963 trust.[46] Accordingly, the surrogate's court approved FleetBank's accounts.[47]

McNabb appealed. The Fourth Department reversed the surrogate's decrees[48] premised on the theory that New York law did not exclude an adopted-out child from the pertinent class of beneficiaries at the time Woodward executed the irrevocable trust instruments – 1926 and 1963.[49] As the court explained, McNabb's "status . . . as an adopted-out child [did] not exclude her from the class of [Piel's] descendants or children."[50]

The Court of Appeals reversed the Appellate Division.[51] At the outset, the Court explained that it is unnecessary to consider extrinsic evidence of a grantor's intent to include a person in a class gift where the terms of a trust instrument are clear.[52] However, where, as in *FleetBank*, the terms of the trust instrument are ambiguous and there is no evidence as to the grantor's intent to include or exclude a person in the class of beneficiaries, a court may create general, but rebuttable, principles of construction on the basis of statutory interpretation and public-policy concerns.[53]

Applying those principles to *FleetBank*, the Court opined that the Domestic Relations Law in effect at the time Woodward executed the 1926 and 1963 irrevocable trust instruments did not establish a right on the part of McNabb, or any other adopted-out child, to take a share of a class gift to Piel, her issue, or the issue of another biological family member by implication.[54] In addition, the Court noted the public-policy considerations discussed in *Best* – especially the necessity to fully assimilate an adopted-out child into the adoptive family and the need for finality in surrogate's court proceedings – and concluded that those considerations required the same result in *FleetBank* as in *Best*.[55]

Conclusion

Since 1963, New York's Legislature and the Court of Appeals have consistently limited the overtures of adopted-out children to inherit from their biological family members, except in certain statutorily prescribed circumstances. This is primarily because of the underlying legislative desire to further the assimilation of adopted-out children into their adoptive families. In keeping with § 117 of the Domestic Relations Law and the policy-based justifications for said section, it logically follows that New York courts will continue to consider most adopted-out children to be "strangers" from their biological families for inheritance purposes. ■

1. Eve Preminger *et al.*, N.Y. Practice: Trusts & Estates Practice in N.Y. § 7:42 (2007).
2. *In re Accounting by FleetBank*, 10 N.Y.3d 163, 167, 855 N.Y.S.2d 41 (2008).
3. *Id.*
4. *In re Landers' Estate*, 100 Misc. 635, 640–42, 166 N.Y.S. 1036 (Sur. Ct., Oneida Co. 1917).
5. *Id.*; *see also FleetBank*, 10 N.Y.3d at 167.
6. Alan D. Scheinkman, Commentary, N.Y. Dom. Rel. Law § 117 (2007).
7. *FleetBank*, 10 N.Y.3d at 167; Alan D. Scheinkman, Commentary, N.Y. Dom. Rel. Law. § 117 (1999).
8. *FleetBank*, 10 N.Y.3d at 167.
9. *Id.*
10. *In re Karron's Will*, 52 Misc. 2d 367, 368–70, 275 N.Y.S.2d 933 (Sur. Ct., Kings Co. 1966).
11. *In re Best*, 116 Misc. 2d 365, 365 (Sur. Ct., Westchester Co. 1982), *aff'd*, 102 A.D.2d 660, 477 N.Y.S.2d 431 (2d Dep't 1984), *rev'd*, 66 N.Y.2d 151, 495 N.Y.S.2d 345 (1985).
12. *In re Best*, 66 N.Y.2d 151, 153–54, 495 N.Y.S.2d 345 (1985).
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.* at 371–75.
19. *Id.* at 373–75.
20. *Id.*
21. *In re Best*, 102 A.D.2d 660, 660, 477 N.Y.S.2d 431 (2d Dep't 1984), *rev'd*, 66 N.Y.2d 151, 495 N.Y.S.2d 345 (1985).
22. *Id.* at 660–61.
23. *Id.*
24. *Id.*
25. *In re Best*, 66 N.Y.2d 151, 155–56, 495 N.Y.S.2d 345 (1985).
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. N.Y. Dom. Rel. Law § 117(2)(a); Scheinkman, *supra* note 6.
32. Scheinkman, *supra* note 6.
33. *Id.*
34. *Id.*
35. N.Y. Dom. Rel. Law § 117(2)(b).
36. *In re Seaman*, 78 N.Y.2d 451, 453–62, 576 N.Y.S.2d 838 (1991).
37. *In re Accounting by FleetBank*, 38 A.D.3d 1235, 1236–38, 831 N.Y.S.2d 609 (4th Dep't 2007), *rev'd*, 10 N.Y.3d 163, 165, 855 N.Y. S.2d 41 (2008).
38. *Best*, 10 N.Y.3d at 165–66.
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.*
47. *Id.*
48. *In re Accounting by FleetBank*, 38 A.D.3d 1235, 1236–38, 831 N.Y.S.2d 609 (4th Dep't 2007), *rev'd*, 10 N.Y.3d 163, 165, 855 N.Y.S.2d 41 (2008).
49. *Id.*
50. *Id.* (citation omitted).
51. *In re Accounting by FleetBank*, 10 N.Y.3d 163, 165, 855 N.Y.S.2d 41 (2008).
52. *Id.* at 166–67.
53. *Id.*
54. *Id.* at 168–69.
55. *Id.*

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