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Adoption--Cutting Off the Right to Succeed to Property Given to Natural Parents' Children

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Recent Cases

ADOPTION—CUTTING OFF THE RIGHT TO SUCCEED TO PROPERTY GIVEN TO NATURAL PARENTS' "CHILDREN"

*Commerce Trust Co. v. Duden*¹

Trustees of an inter vivos trust sought a declaratory judgment determining the meaning of a portion of the trust instrument. The terms of the trust directed payment of income, after the death of the settlor, "to or for the benefit of the natural and adopted children of said Daniel," a son of the settlor.² If no such child survived to the time of distribution, the principal was to pass to a trust for Robert, another son of the settlor. Daniel had a son by a marriage which was terminated by divorce twenty-one years before his mother created the trust in question. Nineteen years before the creation of the trust, Daniel's son, with Daniel's consent, was adopted by the child's mother and her new husband.³ The question raised by the trustees was whether the principal remained in trust for Daniel's natural son or passed to the trust for Robert.⁴ A judgment determining that the principal passed to the trust for Robert, because Daniel's son was not a child of Daniel within the meaning of the trust instrument, was affirmed by the Kansas City District of the Missouri Court of Appeals.

The adoptee's position on appeal was that he was biologically the natural child of the settlor's son. Therefore, he was intended by the settlor to be included in, and did in fact fall within, the class set forth in the trust instrument. The court held that under the provision for "natural and adopted children" of the settlor's son, it was the settlor's intent to include only those children legally considered to be within the son's blood stream. This meant only children biologically in the son's blood stream not adopted out, and biological strangers adopted by the son.⁵ This casenote will ex-

1. 523 S.W.2d 97 (Mo. App., D.K.C. 1975).

2. *Id.* at 98. Settlor also referred to the class as "children, both natural and adopted." *Id.*

3. Section 453.170, RSMo 1969, makes Missouri adoption statutes applicable even though the child was adopted pursuant to Oklahoma law.

4. Adoption statutes were the same when the settlor executed the trust, and when the class closed following the settlor's death. Thus, time of intent, often encountered due to changes in adoption laws, presented no problem. In Missouri, the question of the testator's intent to include an adoptee within the described class is determined by the law in effect at the time of execution of the will. *First National Bank v. Sullivan*, 394 S.W.2d 273, 281 (Mo. 1965). See *Brown & Toney, Eligibility of Adopted Children to Take by Intestate Descent and Under Class Gifts in Missouri*, 34 Mo. L. Rev. 68 (1969).

5. *Commerce Trust Co. v. Duden*, 523 S.W.2d 97, 101 (Mo. App., D.K.C. 1975). This overrules the language of *Mississippi Valley Trust Co. v. Palms*, 360 Mo. 610, 617, 229 S.W.2d 675, 680 (1950), that the Missouri legislature has not said that an adopted child shall not inherit from his natural parents.

amine the impact of adoption on a child's right to succeed to property given to "children" of the child's natural parent.⁶

Whether descendants by adoption are eligible to take under class gifts to "issue," "descendants" or "heirs of the body" has generated frequent litigation. Traditionally these terms contemplated blood relationship. As a result, it was presumed that such terms did not include descendants by adoption.⁷ Unknown to the common law of England,⁸ adoption is a statutory relationship. Adoption statutes established the status of an adopted child, which is a civil or contractual status as opposed to a natural status.⁹ However, early American legislation failed to clarify the status of adoptees.

Adoption legislation typically developed in four successive stages: (1) permitting intestate succession from and by adoptive parents; (2) permitting intestate succession from and by relatives of the adoptive parents; (3) prohibiting intestate succession from and by blood relatives; and (4) creating a presumption that class gifts to "issue" and the like include descendants by adoption.¹⁰ Some legislation also created a presumption excluding from class gifts blood descendants adopted out of the family.¹¹ This legislation reflects a trend toward completely separating an adopted child from his natural family and fully uniting him with his adoptive family. The general result of this legislative trend has been judicial construction of class gifts to "issue" and the like to include descendants by adoption. Although blood descendants may be excluded from such classes because of adoption out of the family, most courts have been reluctant to do so.¹²

Starting in 1917 and culminating in 1947, Missouri statutory law concerning the consequences of adoption has undergone a legal metamorphosis. Under the statute in force prior to 1917, adoption was effected by a deed executed and recorded "as in the conveyance of real estate."¹³ It granted

6. Inheritance of property is not an absolute or natural right; it may be abolished by the lawmakers. *St. Louis Union Trust Co. v. Hill*, 336 Mo. 17, 23, 76 S.W.2d 685, 687 (En Banc 1934).

7. L. SIMES & A. SMITH, *THE LAW OF FUTURE INTERESTS* § 738 (2d ed. 1975 Supp.). See *Papin v. Papin*, 445 S.W.2d 350 (Mo. 1969); *Ratermann v. Ratermann*, 405 S.W.2d 891 (Mo. 1966); *First Nat'l Bank v. Sullivan*, 394 S.W.2d 273 (Mo. 1965).

8. See *Hockaday v. Lynn*, 200 Mo. 456, 98 S.W. 585 (1906), for an often cited, capsulized history of adoption. The first English adoption statute, passed in 1926, provided that the adopted child could inherit from his natural and not his adoptive parents. *Adoption of Children Act*, 16 & 17 Geo. 5, c. 29, § 5 (1926).

9. *Weber v. Griffiths*, 349 Mo. 145, 152, 159 S.W.2d 670, 674 (1942).

10. L. SIMES & A. SMITH, *THE LAW OF FUTURE INTERESTS* § 738 (2d ed. 1975 Supp.).

11. See, e.g., *ORE. REV. STAT.* § 109.041 (1969); *UNIFORM PROBATE CODE* §§ 2-109(1), 2-611 (1972).

12. L. SIMES & A. SMITH, *THE LAW OF FUTURE INTERESTS* § 738 (2d ed. 1975 Supp.). See *In re Estate of Zastrow*, 42 Wis. 2d 390, 166 N.W.2d 151 (1969).

13. The first Missouri adoption statute, *Mo. Laws 1856*, at 59, §§ 1-4 (1857) (repealed 1917), gave adopted children the same right against persons executing the adoption deed as a natural child had against its lawful parents. *Wyeth v. Merchant*, 34 F. Supp. 785, 789 (W.D. Mo. 1940). Prior to this, adoption was

the child only minimal rights of "support and maintenance" and "proper and humane treatment." The statute stated that the relation of parent and child was confined to the parties executing the deed.¹⁴ The statute as enacted was a narrow one, designed only to enable a person so desiring to adopt a child to be his heir and devisee.¹⁵ Thus, collateral kin by adoption were excluded from its provisions,¹⁶ and the inheritance rights between the child and his natural parent remained unaffected.¹⁷ However, the children of a deceased adopted child were heirs of the adoptive parent.¹⁸ Thus, an adopted child did not have the character of a child of the blood;¹⁹ his rights depended entirely upon the adoption contract.²⁰ In a legal sense he became the adoptive parent's child only for the purpose of receiving title.²¹

Early cases indicated judicial reluctance to sever the bonds between a natural parent and his child. *Clarkson v. Hatton*²² stated that it was "impossible to believe" that a testator intended the child of a stranger to be "manufactured into an heir by deed."²³ The hallowed doctrine of consanguinity²⁴ pervaded the *Clarkson* opinion. The court insisted that the statute be strictly construed against the adopted child because it was in derogation of the general rule of "succession according to nature."²⁵ *Clarkson* exemplifies the pre-1917 attitude toward adoption; however, it is of little significance today because of the subsequent enactment of a comprehensive statutory adoption scheme.

consummated by legislative act. The latter method was prohibited by the 1875 Missouri constitution. Mo. CONST. art. IV, § 53 (1875).

14. Mo. Laws 1856, at 59, §§ 1, 3 (1857) (repealed 1917).

15. *Hockaday v. Lynn*, 200 Mo. 456, 98 S.W. 585 (1906), held that an adopted child took nothing as heir of her adoptive uncle. Early cases created a subtle distinction between gifts defined in terms of relationship to the testator and those defined in terms of relationship to a devisee. *Rauch v. Metz*, 212 S.W. 353 (Mo. En Banc 1919), allowed an adopted child to take under a will as an adoptive parent's heir, but not directly from the testator as his heir. See Taub, *Adopted Child's Inheritance Rights Under Missouri Law*, 5 J. Mo. B. 69 (1949).

16. *Rumans v. Lighthizer*, 363 Mo. 125, 129, 249 S.W.2d 397, 399 (1952).

17. *Clarkson v. Hatton*, 143 Mo. 47, 55, 44 S.W. 761, 762 (1898).

18. Where the testatrix's adopted son predeceased her leaving issue, *Bernero v. Goodwin*, 267 Mo. 427, 184 S.W. 74 (1916), held that the adopted son acquired a natural child's rights. Therefore, his issue had sufficient interest to contest the will.

19. *Wyeth v. Merchant*, 34 F. Supp. 785, 789 (W.D. Mo. 1940).

20. *Hockaday v. Lynn*, 200 Mo. 456, 471, 98 S.W. 585, 589 (1906).

21. *State ex rel. Bolshaw v. Montgomery*, 237 Mo. App. 678, 683, 146 S.W.2d 129, 132 (Spr. Ct. App. 1940). Giving a son the right to inherit does not make him a son in fact. He is regarded so in law only to give him the right to inherit. *Hockaday v. Lynn*, 200 Mo. 456, 465, 98 S.W. 585, 587 (1906).

22. 143 Mo. 47, 57, 44 S.W. 761, 763 (1898).

23. *Id. Accord*, *Hockaday v. Lynn*, 200 Mo. 456, 465, 98 S.W. 585, 587 (1906); *Reinders v. Koppelman*, 94 Mo. 333, 345-346, 7 S.W. 288, 291 (1888).

24. The fundamental doctrine of consanguinity may only be ignored by construction when courts are faced with express statute or inexorable implication. *Hockaday v. Lynn*, 200 Mo. 456, 467, 98 S.W. 585, 587 (1906).

25. *Clarkson v. Hatton*, 143 Mo. 47, 59, 44 S.W. 761, 763 (1898). The act of adoption itself, however, should be liberally construed in favor of the adopted child. *Hockaday v. Lynn*, 200 Mo. 456, 464, 98 S.W. 585, 586 (1906).

In 1917 all existing laws relating to adoption were repealed, and an adoption procedure was established in the juvenile division of the circuit court.²⁶ The Adoption Act of 1917²⁷ radically changed the child's relationship to both his adoptive and natural parents.²⁸ Legal rights of the natural parent were abolished by the adoption and vested in the adoptive parent.²⁹ The act provided that "all legal relationship" and "all rights and duties" between the child and his natural parents "shall cease and determine."³⁰ Thereafter, "for every purpose," the child would be deemed to be the child of his adoptive parents "as fully as though born to them in lawful wedlock."³¹ This unqualified language indicated a legislative purpose that the right of succession follow the same channels it would take if the child were a natural child of the adoptive parent.³²

The 1917 Act, except for two changes made in 1947,³³ is still in effect today.³⁴ The construction of this statute was the focus of *Commerce Trust Co. v. Duden*.³⁵

The question in *Duden*³⁶ was whether the settlor's natural grandchild, who had been adopted by a third person, was intended by the settlor to be included in the class "natural and adopted children."³⁷ The resolution of

26. The 1917 Act continued in effect with only minor amendments for thirty years. See Cook & Eppenberger, *The New Adoption Act*, 4 J. Mo. B. 228 (1948).

27. Mo. Laws 1917, at 193, §§ 1, 2, 1671-1679.

28. A principal effect was to broaden the right of inheritance to include ancestors and collaterals. Brock v. Dorman, 339 Mo. 611, 617, 98 S.W.2d 672, 676 (1936). Vreeland v. Vreeland, 296 S.W.2d 55 (1956), ruled that an adopted daughter's son had the right to inherit from collateral kin.

29. Shepherd v. Murphy, 332 Mo. 1176, 1182, 61 S.W.2d 746, 749 (1933), deciding that an adopted child's natural parent could not inherit from the child. St. Louis Union Trust Co. v. Kaltenbach, 353 Mo. 1114, 1123, 186 S.W.2d 578, 583 (1945), pointed out that such parent had a choice in the matter which the child did not have.

30. Mo. Laws 1917, at 194, § 1677. Vreeland v. Vreeland, 296 S.W.2d 55, 59 (1956), declared the legislature had by "express statute" and "inexorable implication" granted adopted children the same inheritance rights as natural children. St. Louis Union Trust Co. v. Kaltenbach, 353 Mo. 1114, 1122, 186 S.W.2d 578, 583 (1945), however, stated that the statute did not say an adopted child was rendered incapable of inheriting from natural parents. This dictum has been criticized as "unfortunate" and "unnecessary" to the court's decision. Cook & Eppenberger, *The New Adoption Act*, 4 J. Mo. B. 228, 231 (1948).

31. Mo. Laws 1917, at 194, § 1677.

32. Shepherd v. Murphy, 332 Mo. 1176, 1182, 61 S.W.2d 746, 749 (1933), stating the artificial relation is given the same effect as the actual relation. *Id.* at 1181, 61 S.W.2d at 748; accord, St. Louis Union Trust Co. v. Hill, 336 Mo. 17, 24, 76 S.W.2d 685, 688 (En Banc 1934). *Shepherd* decided that adoptive parents' property, which on their death vested in the adopted child, on the child's death vested in adoptive parents' heirs to the exclusion of the child's natural mother.

33. Section 453.090, RSMo 1959, enabled a remarried natural parent to join the adoption petition without affecting his legal relation with the child and expressly reversed the 1917 proviso on property limited to "heirs of the body." See Cook & Eppenberger, *The New Adoption Act*, 4 J. Mo. B. 228 (1948).

34. § 453.090, RSMo 1969.

35. 523 S.W.2d 97 (Mo. App., D.K.C. 1975).

36. Query whether the real issue in *Duden* is the right of a beneficiary to inherit or the identity of a beneficiary.

37. Some courts have made an adoptee's right to take under a devise to <http://scholarship.law.missouri.edu/mlr/vol41/iss2/8>

such a question normally requires a determination of the testator's intent as evidenced by the provisions of the trust instrument itself.³⁸ In deciding that the adopted child was not a member of the defined class, the court relied heavily on two cases, *St. Louis Union Trust Co. v. Hill*³⁹ and *Wailes v. Curators of Central College*.⁴⁰ According to the *Duden* court these landmark decisions reflect an evolution of public policy regarding the consequences of adoption in view of statutory changes in Missouri law.⁴¹ *Hill* pointed out the complete break the new adoption law made with past statutes.⁴² The *Duden* court quoted a frequently cited passage from *Hill* stating that the legislature had changed the blood stream of an adopted child by taking the child out of his natural parent's blood stream and placing him, by operation of law, into the adoptive parent's blood stream.⁴³ As the *Wailes* decision interpreted the statute, all ties between the adopted child and his natural relatives are completely severed.⁴⁴ Accordingly, *Wailes* held that children adopted out of the natural parent's blood stream are not pretermitted heirs of their natural grandparents.⁴⁵ The *Duden* court said that the result of *Hill* and *Wailes* is that the adopted child is completely removed from the blood line of his natural parent for all purposes and transplanted by law into that of his adoptive parent.⁴⁶

The *Duden* court proclaimed that the statutory changes beginning in 1917 and these landmark cases constitute a major "break through" regarding the consequences of adoption in Missouri.⁴⁷ Having so proclaimed, the

"children" depend on whether the child was adopted before or after the testator's death. *But see* *Brock v. Dorman*, 339 Mo. 611, 617, 98 S.W.2d 672, 676 (1936), which stated that the only question was who came within the designation; it was wholly immaterial how such persons came to be within the designation.

38. The question faced by the court is to be distinguished from that of eligibility to take by intestate succession. The statute of descent and distribution makes no distinction between an adopted and a natural child, but includes both in the general description "children." *In re Cupples' Estate*, 272 Mo. 465, 471, 199 S.W. 556, 557-58 (1917).

39. 336 Mo. 17, 76 S.W.2d 685 (En Banc 1934).

40. 363 Mo. 932, 254 S.W.2d 645 (En Banc 1953).

41. 523 S.W.2d at 100-01.

42. "The Legislature had a right to and did in strong and emphatic language change the blood stream of an adopted child." *See* *St. Louis Union Trust Co. v. Hill*, 336 Mo. 17, 25, 76 S.W.2d 685, 689 (En Banc 1934), holding an adopted child fell within the class "heirs-at-law" of adoptive parents as contained within a testamentary trust.

43. 523 S.W.2d at 100-01, quoting *St. Louis Union Trust Co. v. Hill*, 336 Mo. 17, 25, 76 S.W.2d 685, 689 (En Banc 1934).

44. 363 Mo. at 936, 254 S.W.2d at 647. However, *Wailes* also stated that the adoption statute did not prohibit a natural parent from devising property to a child whom he had permitted to be adopted by another. *Id.* at 937, 254 S.W.2d at 648.

45. *Wailes v. Curators of Central College*, 363 Mo. 932, 254 S.W.2d 645 (En Banc 1953). However, it should be noted that whether the testator in *Wailes* meant to include totally unmentioned persons is a substantially different question from whether the settlor in *Duden* meant to exclude an adopted-out child by using the phrase "natural and adopted children."

46. 523 S.W.2d at 100-101.

47. *Id.* at 101.

court was reluctant to nullify this "break through." As a result, the court avoided a determination of the settlor's intent as evidenced within the trust instrument, a vital factor in any trust case.⁴⁸ Instead, the court invoked the premise that the maker of a legal instrument is presumed to know the law and employ language in the context of that law.⁴⁹ Relying on this premise, the court ascertained the settlor's intent with respect to the phrase "natural and adopted children" by the statutory construction set forth in *Hill* and *Wailes*, rather than by an analysis of the trust instrument itself.⁵⁰ The court justified its reliance on this premise on the ground that the settlor's inclusion of the word "adopted" in the trust provision "evinced an awareness" of the Missouri adoption laws.⁵¹ Thus, the court's own earlier assertion that it would focus on the trust instrument was a perfunctory statement at best.

The *Duden* court failed to respond explicitly to the argument that the adopted child was biologically a "natural child" and did in fact fall within the class described in the trust instrument.⁵² However, the court maintained that its decision in no way impairs a settlor's fundamental right to designate the person of his choice as the object of his bounty.⁵³ It thus recognized substantial Missouri authority that the adoption statute does not prevent one from giving his property to whomever he pleases.⁵⁴

The current trend in Missouri is to cut off the adoptee completely

48. When a written instrument is involved the question is not whether an adopted child has a right to take but whether the maker intended him to share. *Mississippi Valley Trust Co. v. Palms*, 360 Mo. 610, 618, 229 S.W.2d 675, 680 (1950).

49. 523 S.W.2d at 99-100.

50. Such procedure appears to be contrary to the principle that each will construction case must be determined upon its own particular facts. *Thomas v. Higginbotham*, 318 S.W.2d 234, 239 (Mo. 1958). The cardinal rule in determining the meaning of a trust provision is that the settlor's intent is controlling and must be ascertained primarily from the trust instrument as a whole. *First National Bank v. Hyde*, 363 S.W.2d 647, 652 (Mo. 1962); *Hayes v. St. Louis Union Trust Co.*, 280 S.W.2d 649, 653 (Mo. 1955); *Mississippi Valley Trust Co. v. Palms*, 360 Mo. 610, 614, 229 S.W.2d 675, 678 (1950). The testator's intent must be determined by the words of the will itself. *Thomas v. Higginbotham*, *supra* at 237. A court discovers settlor's intent from the four corners of the instrument, and not from any particular form of words. *Trautz v. Lemp*, 329 Mo. 580, 596, 46 S.W.2d 135, 139 (En Banc 1932).

51. 523 S.W. at 99.

52. On the exclusionary force of the term "children" as employed to create a class gift, see RESTATEMENT OF PROPERTY §§ 287-288, 290 (1940).

53. 523 S.W.2d at 101. This could be accomplished by a "properly drafted instrument" disclosing such to be the settlor's intent. *Id.* This implies that to designate as beneficiary a natural child who has been or may be adopted by another, settlor must identify the child by name or describe him as "my natural child adopted by another."

54. *Knox College v. Jones Store Co.*, 406 S.W.2d 675, 690 (Mo. 1966), where settlor's intent to "exclude" an adopted child from "children" class designation controlled; *accord*, *First National Bank v. Waldron*, 406 S.W.2d 56, 59 (Mo. 1966), stating that when an instrument contains unambiguous language, courts have no authority to disregard it on the ground that such provisions are not in harmony with the present trend.

from his natural relatives.⁵⁵ *Duden* conforms with this trend to the point of excluding an adopted child from a class description that, prima facie, he falls within.⁵⁶ In regard to limitations to "children,"⁵⁷ the doctrine of consanguinity gives rise to the argument that the primary meaning of "children"⁵⁸ connotes blood relationship⁵⁹ and excludes adopted children.⁶⁰ Past decisions have held that the term "children" does not ordinarily include adopted children;⁶¹ however, Missouri's present statutory definition of "child" does include an adopted child.⁶² The point is, the question whether a natural child might not fall within the class "children" has been only recently examined. This delay was due not only to the natural time lag between statutory change and judicial interpretation, but also to the inherent nature of wills. Wills executed under the 1917 Act have only recently begun flooding courts and compelling resolution of new questions.

It is the spirit and purpose of adoption to give the adopted child an equal chance in the world with natural children.⁶³ Yet adoption enactments have been criticized for disabling provisions that diminish this equality of inheritance rights. For example, the Model Probate Code, which influenced the formulation of the Missouri Probate Code, provides that an adopted child shall not be treated as a child of his natural parents for intestate succession purposes.⁶⁴ The Code has been criticized because, al-

55. See Brown & Toney, *Eligibility of Adopted Children to Take by Intestate Descent and Under Class Gifts in Missouri*, 34 MO. L. REV. 68 (1969). The trend is not universal. Despite adoption, a child normally continues to be "issue" of his natural parents. R. POWELL & P. ROHAN, *POWELL ON REAL PROPERTY* ¶ 339 (1968).

56. For a discussion of whether one who would otherwise answer the description of a testamentary beneficiary is excluded because he has been adopted by someone other than the person with respect to whom he has borne the described relationship, see *In re McDonald's Estate*, 20 Wis. 2d 63, 121 N.W.2d 245 (1963); Annot., 96 A.L.R.2d 639 (1964).

57. See also *First National Bank v. Sullivan*, 394 S.W.2d 273 (Mo. 1965); ("heirs of the body"); *Commerce Trust Co. v. Weed*, 318 S.W.2d 289 (Mo. 1958) ("lineal descendants"); *St. Louis Union Trust Co. v. Greenough*, 282 S.W.2d 474 (Mo. 1955) ("descendants"); *Grundmann v. Wilde*, 346 Mo. 327, 141 S.W.2d 778 (1940) ("issue").

58. What about the meaning of "natural"? *Naylor v. McRuer*, 248 Mo. 423, 154 S.W. 772 (1913), gave "natural" its usual and ordinary definition by holding "natural heirs" means those becoming so in the ordinary course of nature as contrasted to heirs by adoption.

59. The common law definition of "child" only included those begotten on the bodies of persons lawfully married. *In re Cupples' Estate*, 272 Mo. 465, 472, 199 S.W. 556, 558 (1917).

60. Oler, *Construction of Private Instruments Where Adopted Children Are Concerned*, 43 MICH. L. REV. 705, 712 (1945).

61. *Leeper v. Leeper*, 347 Mo. 442, 147 S.W.2d 660 (1941), ruled that the law in effect in 1900 did not place an adoptee within the natural born child classification.

62. § 472.010, RSMo 1975 Supp.

63. *Mississippi Valley Trust Co. v. Palms*, 360 Mo. 610, 619, 229 S.W.2d 675, 681 (1950).

64. MODEL PROBATE CODE § 27 (Simes 1946).

though aimed at bringing a child completely within the adoptive family, it does so at the cost of this valuable inheritance right.⁶⁵ Similarly, the Revised Uniform Adoption Act severs the adoptee from his natural family and unites him with his adoptive family. But it does so both for the purpose of inheritance and interpretation of wills and trusts.⁶⁶ The extremity of these provisions may be more than is currently desired in Missouri.⁶⁷

The *Duden* decision is in line with a judicial tendency to prevent dual inheritance by adopted children resulting from inheritance from both natural and adoptive parents.⁶⁸ It is contrary to the public policy of Missouri that adoption should operate as an instrumentality for dual inheritance.⁶⁹ But the meaning of "dual inheritance" needs clarification. It is urged that a statutory distinction be drawn between dual inheritance in an intestate succession situation as contrasted with a testate succession situation.

Where a divorced, natural parent remarries, the new spouse may adopt the child. In such case it is likely that the other natural parent may wish to devise property to his natural child who is now the adopted child of a third party. It is suggested that the statute should provide for this situation. Under the *Duden* construction of the present statutory language, such parent may be thwarted from devising to his natural child who, typically, would be the natural object of his bounty.

In general, for purposes of legislative interpretation, adoptions should be classified into three distinct categories: (1) those effected soon after birth, where natural grandparents usually have not known the child; (2) those effected some years after birth, incident to death or divorce of a parent, where natural grandparents usually have known the child well; and (3) those of adults, sometimes by "parents" younger than themselves, to bring the adoptee within the terms of a class gift. Such categorization recognizes the purpose of adoption by distinguishing genuine from sham

65. Brown & Toney, *Eligibility of Adopted Children to Take by Intestate Descent and Under Class Gifts in Missouri*, 34 Mo. L. REV. 68, 93-94 (1968). The child was completely cut off from his natural parent, thereby depriving him of inheriting from the one person most likely to wish the child to share any inheritance. *Id.*

66. UNIFORM ADOPTION ACT § 14 (1969 rev'd ed.) (amended 1971). This includes construction of documents, statutes, and instruments, which do not expressly name the individual, whether executed before or after the adoption decree.

67. See Krauskopf, *Missouri Adoption Law and the Proposed Uniform Adoption Act*, 26 J. Mo. B. 172, 181 (1970).

68. In *Mississippi Valley Trust Co. v. Palms*, 360 Mo. 610, 229 S.W.2d 675 (1950), the question was whether adoptees were entitled to take as heirs of their natural mother, as well as heirs of their adoptive mother (who was the natural mother's sister). The court held testator intended they should take only as heirs of their natural mother.

69. *Mississippi Valley Trust Co. v. Palms*, 360 Mo. 610, 619, 229 S.W.2d 675, 681 (1950). Jurisdictions denying dual inheritance are not uniform in implications of the denial. For example, all inheritance rights of an adoptee from his natural kin may be cut off; on the other hand, the adoptee might take in whatever capacity gives him most. 19 K.C.L. REV. 115, 116 n.7 (Dec.-Feb., 1951).

adoption. For example, when one parent has died, the other has remarried, and the children aged ten or twelve have been adopted by a stepparent, depriving them of participation in class gifts made by the will of a natural grandparent who knew and loved them is cruel and unfair.⁷⁰ However, when an eighty year old man adopts his eighty-seven year old wife, such adoption should not have the effects prescribed by legislation creating presumptions as to construction of language making class gifts.⁷¹

The *Duden* decision establishes a rule of law regarding the status of an adopted child. In its determination to establish this rule, the *Duden* court minimized the traditional prominence of the settlor's intent by subordinating it to statutory dictate. Such action may have been prompted by the court's awareness of the need for stability in this area.⁷² The spirited and authoritative language of the opinion indicates that the court intended not only to clear and settle the muddied waters of the adopted child's status, but also to cast a guiding beacon over those waters. It appears that in Missouri adoption not only cuts off an adopted child's right to succeed to property given to the "children" of the child's natural parents, but also severs completely the child's legal ties with his natural family and transplants him into his adoptive family's blood stream "for every purpose."⁷³

NORMA J. BEEDLE

70. L. SIMES & A. SMITH, *THE LAW OF FUTURE INTERESTS* § 738 (2d ed. 1975 Supp.). See *In re Estate of Zastrow*, 42 Wis. 2d 390, 166 N.W.2d 251 (1969).

71. Compare *Dedinger v. Graybill's Ex'r & Trustee*, 302 S.W.2d 594 (Ky. 1957), with *Wilson v. Johnson*, 389 S.W.2d 634 (Ky. 1965).

72. In the past the court has chosen the opposite course of action. In *Mississippi Valley Trust Co. v. Walsh*, 360 Mo. 610, 229 S.W.2d 675 (1950), the court chose to rest its decision on the testator's intent rather than establish a principle that an adopted child does not qualify as an "heir" when the adoptive parent is a blood relative.

73. Some cases have allowed adopted children to take as devisees of natural relatives, but the holdings were restricted. *St. Louis Union Trust Co. v. Kaltenbach*, 353 Mo. 1114, 186 S.W.2d 578 (1945), held that an adopted child did not lose his right to inherit from his natural father by an adoption proceeding of which the father had no notice, and in which no guardian *ad litem* was appointed to represent the child. The holding in *Mississippi Valley Trust Co. v. Palms*, 360 Mo. 610, 229 S.W.2d 675 (1950), was based on preventing dual inheritance under the will of a common ancestor where an adoptive parent was a blood relative.