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Notes

What's in a Name? Not Much for Equitable Adoption in Missouri

*Weidner v. American Family Mutual Insurance Co.*¹

I. INTRODUCTION

Equitable adoption is a doctrine which allows a child who was not adopted with the statutory formalities to maintain a claim in equity to at least some of the benefits that come with the status of a biological or legally adopted child.² Before this Note develops the confusing nature of Missouri's equitable adoption law in detail, it is best to understand how the cases arise and what, in general, is confusing about them. Most of the cases in Missouri arise in the following setting: a person other than the natural or legally adoptive parent raises a child; this person passes away, and the child seeks a decree of equitable adoption so that he can share in the estate of the deceased.³ Generally, the heirs of the deceased oppose the child because they stand to inherit a greater amount if the court does not allow the child to receive any of the estate property.⁴ Missouri's law in the area is both confusing and interesting in two ways. First, although the courts reiterate the same language in each case and the evidence appears to be similar from one case to the next, the outcomes of decisions vary.⁵ Secondly, the courts use both contract and estoppel doctrines to arrive at their decisions but apply neither uniformly and sometimes blend the doctrines.⁶ *Weidner v. American Family Mutual Insurance Co.* is one case in a long line of cases that raises the issue of what a party must show to obtain an equitable adoption.

II. FACTS AND HOLDING

Sandra Weidner (Weidner) was born to a single mother, Dorothy Hamblin (Hamblin) in January 1946 in Watertown, New York.⁷ When Hamblin learned that she was pregnant, she left her hometown of Syracuse for Watertown to save

1. 928 S.W.2d 401 (Mo. Ct. App. 1996).

2. Jan Ellen Rein, *Relatives by Blood, Adoption, and Association: Who Should Get What and Why*, 37 VAND. L. REV. 711, 772 (1984).

3. See *infra* notes 29-154 and accompanying text.

4. See *infra* notes 29-154 and accompanying text.

5. See *infra* notes 29-154 and accompanying text.

6. See *infra* notes 29-154 and accompanying text.

7. *Weidner v. American Family Mut. Ins. Co.*, 928 S.W.2d 401, 402 (Mo. Ct. App. 1996).

her family embarrassment.⁸ Hamblin gave Weidner the fictitious surname Carpenter.⁹

Almost two years after Weidner's birth, Hamblin married Lott.¹⁰ Although Lott and Hamblin petitioned to have Weidner's name changed to Lott, they did not petition for adoption.¹¹ Weidner lived with Hamblin and Lott until she married.¹² It was undisputed that Weidner referred to Lott as her father and Lott referred to Weidner as his daughter.¹³ Weidner testified that it was not until she was thirty-four years old that Hamblin told her the true circumstances of her birth.¹⁴ Although Weidner claimed that Hamblin had told her that Lott was her natural father, there was no evidence that prior to Weidner's birth, Lott and Hamblin had any relationship or even lived in the same city.¹⁵

Lott and Weidner's relationship grew more distant in later years.¹⁶ Lott died in a car accident in 1990 and left no will.¹⁷ Weidner sued American Family Mutual Insurance Company (American Family) under its underinsured liability coverage.¹⁸ In that suit, Weidner alleged she was Lott's daughter.¹⁹ American Family discovered Weidner was born nearly two years before Lott and Hamblin married, and thus, alleged that Weidner was not Lott's natural born daughter and that the couple had never adopted her.²⁰ Weidner subsequently filed an action for a declaration of adoptive status to confer standing on Weidner to pursue a

8. *Id.* at 402.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Weidner*, 928 S.W.2d at 402.

15. *Id.*

16. *Id.* "Lott moved to Missouri following his retirement in 1979, and [Weidner] testified that she had seen him only once since then. [Weidner] produced only three letters between them from this period." *Id.*

17. *Id.*

18. *Id.*

19. *Weidner*, 928 S.W.2d at 402.

20. *Id.*

wrongful death action under Missouri Revised Statutes § 537.080.²¹ The trial court found Weidner to be the equitably adopted daughter of Lott.²²

On appeal, American Family asserted that the trial court erred in finding Weidner the equitably adopted daughter of Lott because the evidence was just as consistent with a stepdaughter-stepfather relationship as with an adoptive relationship.²³ The court of appeals recognized that prior Missouri case law included language indicating that, when a person takes a child into his own home, assumes the status of a parent, and by reason thereof obtains from the child affection, companionship, and services which ordinarily accrue to a parent, he and those claiming through him are estopped to assert that he did not adopt the child.²⁴ However, the court also noted that prior Missouri case law indicated that an equitable adoption will be granted only where justice, good faith, and

21. *Id.* Missouri Revised Statutes § 537.080 reads:

1. Whenever the death of a person results from any act, conduct, occurrence, transaction, or circumstance which, if death had not ensued, would have entitled such person to recover damages in respect thereof, the person or party who, or the corporation which, would have been liable if death had not ensued shall be liable in an action for damages, notwithstanding the death of the person injured, which damages may be sued for:

(1) By the spouse or children or the surviving lineal descendants of any deceased children, natural or adopted, legitimate or illegitimate, or by the father or mother of the deceased, natural or adoptive;

(2) If there be no persons in class (1) entitled to bring the action, then by the brother or sister of the deceased, or their descendants, who can establish his or her right to those damages set out in section 537.090 because of the death;

(3) If there be no persons in class (1) or (2) entitled to bring the action, then by a plaintiff ad litem. Such plaintiff ad litem shall be appointed by the court having jurisdiction over the action for damages provided in this section upon application of some person entitled to share in the proceeds of such action. Such plaintiff ad litem shall be some suitable person competent to prosecute such action and whose appointment is requested on behalf of those persons entitled to share in the proceeds of such action. Such court may, in its discretion, require that such plaintiff ad litem give bond for the faithful performance of his duties.

2. Only one action may be brought under this section against any one defendant for the death of any one person.

MO. REV. STAT. § 537.080 (1994).

22. *Weidner v. American Family Mut. Ins. Co.*, 928 S.W.2d 401, 402 (1996). The trial court also imposed Rule 55.03 sanctions on American Family for requesting a jury trial when the request was neither asserted in a timely fashion, nor rooted in existing law. *Id.* at 403.

23. *Id.*

24. *Id.*

equity require it. In cases in which a stepchild is seeking equitable adoption from a stepparent, courts have looked for evidence of more than a stepchild-stepparent relationship, such as indicia of an intent or attempt to adopt.²⁵

After stating the rigorous equitable adoption standard for stepchildren, the court held that Weidner had not satisfied the standard because there was no evidence indicating the relationship constituted anything more than a stepfather-stepdaughter relationship. Also, considerable evidence showed that Lott did not intend to adopt Weidner: such as Lott's failure to represent himself as the child's father in the petition to change Weidner's name, his failure to adopt Weidner, his listing his sister as his closest relative on his application for Veteran's benefits, and his infrequent communication with Weidner after he retired.²⁶ In closing, the court stated that it did not question the closeness of Lott and Weidner's relationship, but it remained unconvinced that the closeness of the relationship distinguished it from a stepdaughter-stepfather relationship.²⁷ Accordingly, the court of appeals reversed the trial court, with instructions to amend the declaratory judgment to be consistent with the court of appeals' decision.²⁸

III. LEGAL BACKGROUND

A. Equitable Adoption in the Late 1800s and Early 1900s

Missouri courts long ago recognized the notion of adoption without meeting the technical requirements of the adoption statutes.²⁹ One of the earliest and most cited cases to recognize this concept was *Lynn v. Hockaday*.³⁰ In *Lynn*, Lillie Hockaday (Hockaday) claimed to be the adopted daughter of the deceased (Mr. Lynn), despite not having complied with the statutory method of adoption.³¹ As the adopted daughter of Mr. Lynn, she sought a child's share in his estate.³² Mr. Lynn's natural son opposed Hockaday, claiming to be Mr. Lynn's only heir.³³

25. *Id.*

26. *Id.* at 404.

27. *Id.*

28. *Id.* The court of appeals also reversed the trial court's decision on the Rule 55.03 sanctions. *Id.*

29. *See, e.g., Sharky v. McDermitt*, 4 S.W. 107, 112 (Mo. 1887).

30. 61 S.W. 885 (Mo. 1901).

31. *Id.* at 885. At the time, the statutory method of adoption was by deed of adoption.

32. *Id.*

33. *Id.* In this case, the standard procedural posture of the case was reversed. The suit was for the admeasurement of dower of the widow of James Lynn, intestate, in which his son James F. Lynn claimed to be the only heir. However, by leave of the court, Lillie Hockaday was made a party. She filed an answer and cross bill showing that she was in

Hockaday's evidence showed that her natural grandmother had given her to the Lynns, and that thereafter, the Lynns gave her their surname, referred to her as their "daughter," reared her in the family as if she were their own child, and consented to her marriage.³⁴ Evidence also existed that Hockaday was a dutiful and loving daughter and referred to the Lynns as "mama" and "papa."³⁵

The parties contested whether Hockaday's grandmother and the Lynns orally agreed that the Lynns were actually adopting Hockaday.³⁶ However, the supreme court mooted the issue by reasoning that the acts of Mr. Lynn were not only consistent with the theory of adoption, but they were inconsistent with any other theory.³⁷ In the court's opinion, "acts spoke louder than words."³⁸ In response, Mr. Lynn's son argued that, even if there were an agreement to adopt, Hockaday's claim must fail because the agreement was within the statute of frauds.³⁹ However, the court reasoned that the statute of frauds was inapplicable because the grandmother, the adopting parents, and the child had fully performed the agreement, except for the execution of a formal deed.⁴⁰ The court refused to fault the child for the absence of a deed.⁴¹

Finally, the court considered whether Hockaday had provided adequate consideration, given that Hockaday enjoyed a wealthier home and more refined rearing than she would have if she had remained with her grandmother. The court stated:

[I]t does not follow as a legal conclusion that the reward was all on her side, or even that it was her gain at all. That she took the place of an only daughter in the lives of Mr. and Mrs. Lynn, and performed her part as such, is the cold fact which the law regards as sufficient consideration to support the contract. How much she added to their happiness the law does not undertake to estimate.⁴²

The court then remanded the case to the circuit court with directions to enter a decree declaring Hockaday to be a duly adopted child and heir at law of Mr. Lynn.⁴³

fact the adopted daughter of the intestate, even though no deed of adoption had been executed. *Id.*

34. *Id.* at 886.

35. *Id.*

36. *Id.* at 886-88.

37. *Id.* at 888.

38. *Id.*

39. *Id.*

40. *Lynn*, 61 S.W. at 889.

41. *Id.*

42. *Id.*

43. *Id.*

There were many cases in the early 1900s in which the deciding court held that the purported equitably adopted child had proved an oral contract by the acts, admissions, and conduct of the parties after the foster parent had taken custody of the child.⁴⁴ *Schelp v. Mercantile Trust*⁴⁵ was an important case from this time period because it was the first case to speak clearly of the theory of adoption by estoppel in which no showing of an oral agreement was necessary.⁴⁶

*Taylor v. Coberly*⁴⁷ is an excellent case to begin the analysis of equitable adoption after *Hockaday* because the court reviewed the facts of the case in great detail, because the facts are similar to those of later cases in Missouri, and because the court based its holding alternatively on the oral contract and estoppel theories of equitable adoption.⁴⁸ *Taylor* represents one of the last cases displaying an antiquated approach to equitable adoption, in which the court was willing to infer a contract to adopt when the evidence merely showed that the foster parents raised the child as their own.⁴⁹

In *Taylor*, the plaintiff sought a decree that she was the adopted daughter of Walter Coberly (Coberly).⁵⁰ The defendants were the collateral heirs of Coberly.⁵¹ The plaintiff's natural mother died when the plaintiff was two weeks old.⁵² The plaintiff produced evidence that her natural father agreed that the Coberlys were to take her and raise her as their own.⁵³ After taking the plaintiff, the Coberlys gave her their own surname, referred to her as "our baby," placed her in school, consented to her marriage, referred to the plaintiff's son as their "grandson," remained in a close relationship with the plaintiff, and, at some points, lived with the plaintiff and her husband until the Coberlys' death. There

44. See, e.g., *Caraddock v. Johnson*, 223 S.W. 924, 930 (Mo. 1920); *Signaigo v. Signaigo*, 205 S.W. 23, 30-31 (Mo. 1918).

45. 15 S.W.2d 818 (Mo. 1929).

46. *Id.* at 824.

47. 38 S.W.2d 1055 (Mo. 1931).

48. See *infra* notes 52-62 and accompanying text.

49. See *infra* notes 52-62 and accompanying text. For a case after *Taylor* displaying the court inferring a contract for adoption based upon evidence which displayed little more than a foster parent raising the child as his own, see *Drake v. Drake*, 43 S.W.2d 556 (Mo. 1931). *Drake* held that a contract for adoption existed based upon evidence that the foster parent treated the child preferentially compared to his other stepchildren, gave the child his surname, and intended to adopt the child. *Id.* at 560.

50. *Taylor*, 38 S.W.2d at 1056.

51. *Id.* at 1055.

52. *Id.* at 1056.

53. *Id.*

was evidence that the plaintiff referred to the Coberlys as “mama” and “papa,” loved and obeyed the Coberlys, and cared for the Coberlys in their elderly years.⁵⁴ The court summarized:

From the hour when as a baby but a few weeks of age [the plaintiff] had been taken into [the Coberlys’] home until their death, her life had been inseparably linked and interwoven in the lives of her foster parents in a relationship marked by all the characteristics of parents and child.⁵⁵

After reciting the evidence, the court reviewed the doctrine of equitable adoption.⁵⁶ After noting that the Coberlys had never formally adopted the plaintiff, the court, relying on *Lynn*, indicated that a court of equity has jurisdiction to enforce a parol contract of adoption and decree the child to be an adopted child and an heir of the adopting parents where the child has fully performed the contract and it would be inequitable to deny the adoption.⁵⁷ The court also held that the parol contract had to be supported by proof so clear, cogent, and convincing as to leave no reasonable doubt in the mind of the chancellor as to its existence.⁵⁸ Applying this test to the facts, the court decided that the Coberlys’ statements indicating that the Coberlys would take the child if the natural father would give the child to them as their very own, combined with the Coberlys’ and the child’s subsequent conduct, could be characterized only as a relationship of parent and child and was strongly indicative of an adoption contract.⁵⁹ The court further stated that there could be no doubt that the plaintiff and the Coberlys fully performed the contract.⁶⁰

After stating the contractual basis for affirming the decree of adoption, the court relied on an estoppel basis for affirming the decree:

“Where one takes a child into his home as his own, thereby voluntarily assuming the status of parent, and by reason thereof obtains from the child the love, affection, companionship, and services which ordinarily accrue to a parent,” he, or those claiming through him will thereafter be “estopped to assert that he did not adopt the child in the manner provided by law.” If that doctrine be applied to the facts in this case, clearly the plaintiff would be entitled to a decree declaring her to be an adopted child of the Coberlys. The judgment and decree of the court nisi is affirmed.⁶¹

54. *Id.* at 1057-60.

55. *Id.* at 1059.

56. *See infra* notes 57-59 and accompanying text.

57. *Taylor*, 38 S.W.2d at 1060.

58. *Id.*

59. *Id.* at 1061.

60. *Id.* at 1060.

61. *Id.* at 1062 (quoting *Shelp v. Mercantile Trust Co.*, 15 S.W.2d 818, 824 (Mo. 1929)).

From *Lynn to Taylor*, the supreme court consistently had entered decrees of equitable adoption when the evidence showed that the foster parents raised the foster child as their own.⁶² After these cases, the court began to deny decrees of equitable adoption even though the evidence displayed that the foster parents raised the child as their own. The court, in making the latter decisions, did not create any new precedent in equitable adoption, but rather found specific evidence persuasive in showing that no contract to adopt existed or found that the claimant of equitable adoption had not met the burden of proof. For example, in *Benjamin v. Cronan*,⁶³ the court was persuaded that the foster parents had not entered a contract to adopt the plaintiff because the foster parents had taken in a second child, whom they adopted using the statutory procedures.⁶⁴ The court expressly refused to consider the theory of adoption by estoppel.⁶⁵

B. The Courts Create Precedent Adverse to Equitable Adoption Claimants

It was not long before the courts, in addition to denying decrees of equitable adoption because the evidence was unconvincing, began to deny decrees of equitable adoption by creating new precedent.

62. See *supra* notes 30-62 and accompanying text.

63. 93 S.W.2d 975 (Mo. 1936).

64. *Id.* at 981. One court reasoned that a plaintiff was not equitably adopted because the purported equitably adoptive parents took a second child into their home at approximately the same time as the plaintiff, and the parents executed a formal deed of adoption for the second child but not for the plaintiff. *Stillman v. Austin*, 148 S.W.2d 573, 575 (Mo. 1941).

Several other courts have refused to order a decree of equitable adoption because they either found no contract to adopt existed or found the claimant of equitable adoption had not satisfied the burden of proof. *Bellinger v. Boatmen's Nat'l Bank*, 779 S.W.2d 647, 650 (Mo. 1989) (evidence that the foster father had testified under oath that the child was his son and evidence that foster father had listed child as his dependent on his tax forms found unpersuasive); *Westlake v. Westlake*, 201 S.W.2d 964, 969 (Mo. 1947) (decree of adoption denied because the foster parent knew the difference between a contract and a formal adoption, yet only entered a contract, because the foster parent did not mention the child as his adopted son in his will, and because foster parent was a man of integrity who would have adopted the child if he so intended); *Keller v. Lewis County*, 134 S.W.2d 48, 49 (Mo. 1941) (finding no adoption by contract or otherwise because the foster parents had taken the plaintiff into custody pursuant to an apprenticeship indenture and because the foster parents did not include the plaintiff in their will); *Taylor v. Hamrick*, 134 S.W.2d 52, 56 (Mo. 1939) (foster father's testimony that the foster mother intended to adopt the child, and the foster mother's life insurance policy referring to the child as daughter were "meager" evidence which failed to measure up to the standard of proof).

65. *Benjamin*, 93 S.W.2d at 981.

In *Thompson v. Moseley*,⁶⁶ the supreme court produced some of the most straightforward precedent it has ever issued on equitable adoption when it held that the doctrine of equitable adoption does not apply to enforce an oral contract to adopt a person who was an adult at the time such oral contract was made.⁶⁷ According to the court, the fundamental basis of equitable adoption is that it would be unjust to allow one to fail to comply with an agreement to be the parent of a child when he has taken the child at such an age that the child had no choice in the matter, and the child thereafter performs everything contemplated in the adoptive relationship.⁶⁸ Thus, the putative adoptive parent and his heirs will be estopped to deny an adoption.⁶⁹ In the court's words, "To depart from this basis and apply the doctrine to an adult, who is capable of caring for himself and contracting for himself, would greatly extend the doctrine and would surely open the door to many fraudulent claims."⁷⁰

In *Niehaus v. Madden*,⁷¹ the court established new precedent that it would use in many future cases to deny decrees of equitable adoption.⁷² In *Niehaus*, a purported equitably adopted child (Niehaus) sought a declaration of adopted status in order to share in the estate of the deceased (Mrs. Brock).⁷³

The evidence in *Niehaus* was atypical.⁷⁴ Niehaus was sixteen years old when the Brocks took custody of her.⁷⁵ She referred to the Brocks as "aunt" and "uncle."⁷⁶ The Brocks never referred to Niehaus as their daughter.⁷⁷ Nine months after being taken by the Brocks, Niehaus left them, moved to Little Rock (the Brocks lived in St. Louis) and married without their consultation.⁷⁸ Evidence existed that the Brocks spoke of adopting Niehaus both before and after they took custody of her, but the court denied the decree of equitable adoption.⁷⁹ The court spoke only of equitable adoption by oral contract and stated:

[B]efore a decree for specific performance may be rendered in such a case plaintiff must prove the existence of a contract to adopt. As in any other case, plaintiff may make such proof by direct evidence of persons who heard the

66. 125 S.W.2d 860 (Mo. 1939).

67. *Id.* at 862.

68. *Id.*

69. *Id.*

70. *Id.*

71. 155 S.W.2d 141 (Mo. 1941).

72. *See infra* note 84 and accompanying text.

73. *Niehaus*, 155 S.W.2d at 142.

74. *See infra* notes 76-79 and accompanying text.

75. *Niehaus*, 155 S.W.2d at 143.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* at 146.

contractual words spoken or saw them written. But plaintiff may also prove the existence of the contract by circumstantial evidence, in which event the circumstances must create a strong and certain inference that the contract was made. *They must be consistent with the fact to be proved and inconsistent with any other reasonable hypothesis.*⁸⁰

The court concluded that in the negotiation to take Niehaus from her legal guardian, only Mr. Brock had agreed to adopt Niehaus.⁸¹ The court held that given the difficult burden of proof that Niehaus had to meet, she had not shown that Mrs. Brock's actions after the Brocks took custody of her amounted to a ratification of the contract.⁸² Accordingly, the court affirmed the lower court's denial of a decree of equitable adoption.⁸³

The court consistently has used the *Niehaus* rubric to deny equitable adoption by contract and by estoppel, particularly when the child is a stepchild of the foster parent.⁸⁴ Furthermore, in 1991, the Missouri Court of Appeals used a derivation of the *Niehaus* reasoning in *Birdwell v. Phillips*.⁸⁵ *Birdwell's* holding could be crippling to equitable adoption claimants if the case's reasoning is extrapolated to different facts. In *Birdwell*, the purported equitably adopted child (Birdwell) argued on appeal that the trial court had erred because the evidence relied upon by the trial court was insufficient to deny the decree.⁸⁶ The court, quoting *Niehaus* and its progeny, stated that the claimant of an equitable adoption who relies solely on circumstantial evidence must produce evidence "consistent only with the existence of equitable adoption and inconsistent with any other reasonable hypothesis leaving nothing to conjecture."⁸⁷ However, the court used this principle in an unprecedented fashion.⁸⁸ Relying on the fact that Birdwell sometimes referred to his purported equitable adoptive parents (the Webbs) as foster parents and the fact that Birdwell received Social Security payments due to the death of his natural father, the court concluded that the evidence was also consistent with the picture

80. *Id.* at 144 (emphasis added).

81. *Id.* at 145.

82. *Niehaus*, 155 S.W.2d at 143.

83. *Id.* at 146.

84. Several cases have denied an equitable adoption at least in part due to a finding that the evidence was not consistent solely with adoption. See *In re Van Cleave's Estate*, 610 S.W.2d 620, 622 (Mo. 1981); *Hogane v. Ottersbach*, 269 S.W.2d 9, 12 (Mo. 1954); *Capps v. Adamson*, 242 S.W.2d 556, 560 (Mo. 1951); *Holland v. Martin*, 198 S.W.2d 16, 18 (Mo. 1941) (first case applying the doctrine to adoption by estoppel); *Birdwell v. Phillips*, 805 S.W.2d 220, 222 (Mo. Ct. App. 1991); *Bellinger v. Boatmen's Nat'l Bank*, 779 S.W.2d 647, 651, 652 (Mo. Ct. App. 1989).

85. 805 S.W.2d 220 (Mo. Ct. App. 1991).

86. *Id.* at 220.

87. *Id.* at 221-22 (quoting *Bellinger v. Boatmen's Nat'l Bank*, 779 S.W.2d 647, 650 (Mo. Ct. App. 1981)).

88. See *infra* notes 90-91 and accompanying text.

of the Webbs as Birdwell's foster parents.⁸⁹ Because the evidence was open to this conjecture, the court denied the decree of equitable adoption.⁹⁰

In addition to *Niehaus* and its progeny, the court has created other precedent detrimental to equitable adoption claimants. In *Rich v. Baer*⁹¹ and *Capps v. Adamson*,⁹² the court produced precedent particularly obstructive to plaintiffs seeking decrees of equitable adoption by estoppel.

In *Rich*, evidence existed that the foster parents had raised the child as their own.⁹³ However, there were some critical differences between *Rich* and previous cases.⁹⁴ First, *Rich* was not a case in which the child sought an equitable adoption decree against the collateral heirs of the deceased (Wyatt). In *Rich*, Wyatt was suing the purported equitably adopted child (Baer) to set aside a conveyance of real estate he had made to her.⁹⁵ The grounds for Wyatt's action were fraud and undue influence.⁹⁶ Baer denied the fraud and undue influence, but also counterclaimed for a decree of equitable adoption, apparently in hopes of inheriting the property even if the conveyance was induced by fraud, as Wyatt had died during the litigation.⁹⁷ Secondly, the Wyatts obtained custody of Baer pursuant to a court order that had found Baer's natural parents grossly immoral and not capable of caring for a child.⁹⁸ Thirdly, Wyatt testified that he never intended to adopt the child or told the child that he adopted her, but Baer disputed this testimony.⁹⁹ Finally, evidence existed that Baer ran away from home, married a second and a third time without her putative parents' consent, and that Baer's third husband cheated Wyatt in a business venture.¹⁰⁰

Despite Baer's testimony at trial that Wyatt had told her he was adopting her, the court began its analysis by stating that Baer was not relying on any such

89. *Birdwell*, 805 S.W.2d at 222.

90. *Id.*

91. 238 S.W.2d 408 (Mo. 1951).

92. 242 S.W.2d 556 (Mo. 1951).

93. *Rich*, 238 S.W.2d at 409-10. The child was taken into the home of the purported equitably adoptive parents, the Wyatts, at a young age. She was given the Wyatts' surname. They referred to her as "our daughter" and the child referred to the Wyatts as "Dad" and "Mother." The child was obedient and dutiful. The child remained with the Wyatts until her first marriage, to which the Wyatts consented, and later returned to care for Wyatts in their elderly years. *Id.*

94. *See infra* notes 96-101 and accompanying text.

95. *Rich*, 238 S.W.2d at 408.

96. *Id.*

97. *Id.* at 408-09.

98. *Id.* at 409.

99. *Id.* at 409. Because this was a case in which Wyatt brought the claim before he died, it was a rare instance in which the testimony of the equitably adoptive parent was on the record.

100. *Id.* at 409.

alleged oral contract.¹⁰¹ Instead the court viewed Baer as relying upon equitable adoption by estoppel.¹⁰² Without citing any previous cases, the court held that the claimant's burden of proof required evidence so clear, cogent, and convincing as to leave no reasonable doubt in the chancellor's mind. This standard applied not only in a case of equitable adoption by oral contract, but also in a case of equitable adoption by estoppel.¹⁰³

After stating the burden of proof, the court added a new element to a claim of equitable adoption by estoppel.¹⁰⁴ According to the court, previous cases, such as *Schelp* and *Taylor*, had not stated the entire rule of equitable adoption by estoppel.¹⁰⁵ *Schelp* and *Taylor* had established that a claimant of equitable adoption by estoppel must show that the purported equitably adoptive parent had taken the child into his own home, voluntarily assumed the status of a parent and obtained from the child love, affection, companionship, and services which ordinarily accrue to a parent. In addition to the above criteria, the *Rich* court held that a court was not to enter a decree of equitable adoption, regardless of whether the claimant sought it on contract or estoppel grounds, unless justice, good faith, and equity require it.¹⁰⁶ The court reasoned that if the *Schelp* rule were the complete rule, equitable adoption would become a rule of law rather than equity, which would leave the door wide open to fraud.¹⁰⁷

In applying its new test to the facts, the court noted that evidence that the Wyatts referred to the child as "daughter," gave the child their surname, and told her that she had been adopted were significant, but not determinative.¹⁰⁸ The court then engaged in the very kind of reciprocal benefit analysis it refused to undertake in *Hockaday*, stating, "The record abundantly establishes . . . [Baer] brought great satisfaction to the Wyatts . . . But, on the other hand, . . . [Baer] profited immeasurably from the relationship . . . She accumulated . . . money and bonds . . . she had support, clothing, and many luxuries . . ." ¹⁰⁹ Finally, the court held, without further explanation, that the most favorable view of all of Baer's evidence was not necessarily consistent with adoption alone, and the

101. *Rich*, 238 S.W.2d at 411.

102. *Id.*

103. *Id.*

104. See *infra* notes 106-07 and accompanying text.

105. *Rich*, 238 S.W.2d at 411. The rule established in *Schelp* and *Taylor* was: Where one takes a child into his home as his own, thereby voluntarily assuming the status of parent, and by reason thereof obtains from the child the love, affection, companionship, and services which ordinarily accrue to a parent, he, or those claiming through him will thereafter be estopped to assert that he did not adopt the child in the manner provided by law.

Id.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Rich*, 238 S.W.2d at 412.

facts did not present a situation where justice, equity, and good faith compelled a decree of equitable adoption.¹¹⁰

Just six months after *Rich*, the court fortified and clarified the position it took in *Rich* when it decided *Capps v. Adamson*.¹¹¹ In *Capps*, the deceased's (Dr. Adamson) heirs sought a judgment that an alleged will of Dr. Adamson was not his last will and testament.¹¹² The heirs joined the purported equitably adopted child (Bradbury) as a defendant.¹¹³ Bradbury was the daughter of Dr. Adamson's wife by a previous marriage.¹¹⁴ Bradbury presented evidence showing that Dr. Adamson referred to Bradbury as his "daughter," gave her his surname, enrolled her in a public school, referred to her children as "grandchildren," and bought a life insurance policy naming the beneficiary as Edna Bradbury, daughter of the insured.¹¹⁵

In its analysis the court did not wander from *Rich*. The court stated that it would look at the evidence with "especial strictness" and would hesitate to rely on testimony of ancient conversations about a contract to adopt in view of the trial chancellor's contrary findings.¹¹⁶ The court held that Bradbury's evidence was significant, but not decisive, and that "while such facts and circumstances [were] in harmony and consistent with the relationship of father and daughter, such facts and circumstances [were] also in harmony and consistent with a stepfather-stepdaughter relationship."¹¹⁷ The court thus rejected the adoption by contract claim and then, unlike in *Rich*, explained why justice, equity, and good faith did not require a decree of equitable adoption by estoppel in this case:

[T]here is no evidence of conduct of or benefit to Dr. Adamson growing out of the relationship which in justice, equity, and good conscience should preclude the denial of an equitable adoption. No doubt Dr. Adamson had great pleasure in having the child [Bradbury] in his home But [Bradbury] was also the recipient of great benefit by virtue of her relationship with Dr. Adamson and as a member of his family the relationship and conduct of Dr. Adamson and [Bradbury] were mutually beneficial. We believe the evidence does not justify a finding of an adoption by estoppel.¹¹⁸

110. *Id.* at 412-13. The court never stated exactly why this was not a case in which justice, equity, and good faith required a decree of equitable adoption, but the court did perform the reciprocal benefits analysis just before making its conclusion.

111. 242 S.W.2d 556 (Mo. 1951).

112. *Id.* at 558.

113. *Id.*

114. *Id.*

115. *Id.* at 560.

116. *Id.* The court stated the special strictness standard is generally the rule where verbal evidence is issued in lieu of a writing required by the Statute of Frauds. *Id.*

117. *Capps*, 242 S.W.2d at 560.

118. *Id.* at 561.

The courts have continued to use evidence of a mutually beneficial relationship to deny decrees of equitable adoption.¹¹⁹

C. Cases in Which the Courts Have Ordered Decrees of Equitable Adoption

Clearly the courts' decisions since the early 1930s have been adverse to the doctrine of equitable adoption; nevertheless, there have been a few appellate orders of equitable adoption in the jurisprudence. The courts have ordered decrees of equitable adoption when there is direct evidence of a contract in which the parties to the contract specifically mentioned "adoption." Courts also have ordered decrees of equitable adoption when the plaintiff has produced evidence of an attempt to comply with the statutory adoption procedures.

*Lukas v. Hays*¹²⁰ is an example of a case in which the court ordered a decree of equitable adoption based on direct testimony that the natural parent and foster parent entered a contract specifically mentioning adoption.¹²¹ In *Lukas*, the purported equitably adopted child (Lukas) sought a decree of equitable adoption and was opposed by the deceased's (Hays) heirs.¹²² In addition to evidence that Hays raised Lukas as his own,¹²³ Lukas presented her natural mother (Haizlip), who testified that while discussing the situation with Mr. and Mrs. Hays on the phone, Mr. and Mrs. Hays specifically said that they would take Lukas for the purpose of adopting her and would make all the arrangements for adoption.¹²⁴ The defendants presented evidence indicating that Mr. Hays did not want to leave any of his estate directly to Lukas because Lukas married without the consent of the Hayses.¹²⁵

119. See *In re Van Cleave's Estate*, 610 S.W.2d 620, 622 (Mo. 1981); *Hegger v. Kausler*, 303 S.W.2d 81, 89-90 (Mo. 1957).

120. 283 S.W.2d 561 (Mo. 1955).

121. There are several cases in which the court ordered a decree of equitable adoption based upon direct evidence of a contract to adopt, either by testimony or a writing. See *Long v. Willey*, 391 S.W.2d 301, 305 (Mo. 1965) (contract to adopt and equitable adoption decree based in part upon evidence that the foster parents stated that they did not want to take the baby unless the natural father consented and signed the adoption papers); *Bland v. Buoy*, 74 S.W.2d 612, 620 (Mo. 1934) (contract to adopt and equitable adoption decree based in part upon orphanage's records which stated that foster parent had taken the child for adoption).

122. *Lukas*, 283 S.W.2d at 563.

123. The court refused to recite the details of the evidence, but did mention that from the day the child arrived in the Hays' home, she was held out as the Hays' daughter, and that she was a dutiful, obedient, and loving child towards Mr. and Mrs. Hays. *Id.* at 564.

124. *Id.* at 563.

125. *Id.* at 564-65.

Without citing previous cases, the court held that the standard of review for the case was *de novo* because it was an equitable action.¹²⁶ The court indicated that although it might ordinarily give some deference to the trial court's findings even given the *de novo* standard, this was a case where the evidence consisted mostly of documents and depositions; therefore, the court would give no substantial deference to the findings of the trial court.¹²⁷ The court stated the burden of proof Lukas had to bear as it had in previous cases, but omitted the language about leaving no reasonable doubt in the mind of the chancellor.¹²⁸ In the court's words, Lukas had the "burden of proving the agreement by clear, cogent, and convincing evidence."¹²⁹ The court held that Haizlip's testimony that Mr. and Mrs. Hays specifically said it was their purpose to adopt Lukas was clear, cogent, and convincing proof that an oral agreement to adopt existed.¹³⁰ Perhaps knowing what it was about to hold was inconsistent with, if not in contradiction to, previous cases on equitable adoption, the court stated, "Each case of this nature must, of necessity, be decided upon the facts and evidence appearing therein. For that reason precedents may not be of much value in determining the sufficiency of the proof."¹³¹ After downplaying the value of precedent, the court reversed the trial court and concluded that given the clear, cogent and convincing evidence of the oral contract to adopt and full performance by Haizlip, Lukas, and Mr. and Mrs. Hays (short of a formal, legal adoption), equity and fairness required a decree of equitable adoption.¹³² The court made this conclusion despite evidence of a mutually beneficial relationship between Lukas and Mr. and Mrs. Hays, much like the relationship between Dr. Adamson and Bradbury in *Capps*, and despite the evidence that Mr. Hays did not want to leave any of his estate directly to Lukas.

In *McCormick v. Johnson*, the Missouri Court of Appeals ordered a decree of equitable adoption when the evidence showed that the foster parents attempted to comply with statutory adoption procedures.¹³³ In *McCormick*, the purported equitably adopted child (Smith) sought a decree that he was the adopted son of the deceased (McCormick).¹³⁴ McCormick's heirs opposed Smith.¹³⁵ In addition to evidence showing that McCormick raised Smith as his

126. *Id.* at 565.

127. *Id.*

128. *See infra* note 130 and accompanying text.

129. *Lukas*, 283 S.W.2d at 566.

130. *Id.*

131. *Id.* at 568.

132. *Id.*

133. 441 S.W.2d 724 (Mo. Ct. App. 1969).

134. *Id.* at 725. *See also* Ahern v. Matthews, 85 S.W.2d 377, 384-85 (Mo. 1934) (finding a deed of adoption and the statutory method of adoption at the time strongly influential, and ordering a decree of equitable adoption).

135. *McCormick*, 441 S.W.2d at 725.

own,¹³⁶ Smith presented the verified petition of McCormick and his wife to adopt Smith and to change his surname to McCormick, which had been filed in the Juvenile Court of the City of St. Louis in the year in which the McCormicks had taken custody of Smith.¹³⁷ Smith, Smith's natural father, and George McCormick had executed the petition, which stated each party's consent to the adoption.¹³⁸ The court could not give the petition the effect of a statutory adoption because the juvenile court had not entered a decree of adoption.¹³⁹ However, the court stated that the petition had strong evidentiary value of a previous parol agreement to adopt.¹⁴⁰ The petition, combined with the other circumstantial evidence, convinced the court that the parties had made an oral agreement of adoption and that the parties had performed such agreement.¹⁴¹ Accordingly, the court affirmed the decree of adoption.¹⁴²

In addition to the cases in which there is direct evidence of an explicit agreement for adoption and cases where evidence exists that the foster parents attempted to comply with the statutory adoption procedures, an anomalous case, *Mize v. Sims*,¹⁴³ offers equitable adoption claimants favorable precedent. The Missouri Court of Appeals had a factually rare case before it when it decided *Mize*. The purported equitably adopted child (Mize) sought a decree that he was the adopted child and heir of the deceased (Petty).¹⁴⁴ Petty's natural heirs opposed Mize.¹⁴⁵ In addition to evidence showing that Petty raised Mize as his own child,¹⁴⁶ there was evidence that Petty was actually Mize's natural father although Petty was not married to Mize's natural mother.¹⁴⁷ Despite the lack of any evidence that at the time custody changed there was any specific mentioning of adoption¹⁴⁸ or evidence of an attempt to comply with statutory adoption

136. *Id.* at 726. George McCormick and his wife gave William their surname, referred to him as their son, and had a warm and close relationship with him. *Id.*

137. *Id.* at 726.

138. *Id.*

139. *Id.*

140. *McCormick*, 441 S.W.2d at 726.

141. *Id.*

142. *Id.* at 727.

143. 516 S.W.2d 561 (Mo. Ct. App. 1974).

144. *Id.* at 562.

145. *Id.*

146. *Id.* at 563. All of Mize's witnesses testified that a father and son relationship existed between Petty and Mize. Petty referred to Mize as "my son" and Mize referred to Petty as "daddy." Petty fulfilled the role of a father to Petty in all respects, providing training, food, clothing, lodging, and education. *Id.*

147. *Id.* Witnesses testified that Mize's natural mother literally thrust Mize onto Petty with the statement, "He is yours." Witnesses also testified that Petty made statements such as "[e]verybody knows that is my boy," and "[I'm] having to raise . . . [my] own blood." *Id.*

148. *Mize*, 516 S.W.2d at 564.

procedures, the court entered a decree of equitable adoption based upon the oral contract rationale. Using reasoning similar to *Taylor* and *Hockaday*'s "actions speak louder than words," the court stated, "[The] conduct and admissions of . . . Petty clearly and cogently delineate an agreement to adopt [Mize]."¹⁴⁹ The conduct of Petty which the court found persuasive included his informality (he was the type of person who would not formally adopt even if he intended to adopt), his belief and statements that Mize was his natural child, his admissions that he intended to adopt Mize, his acceptance of the exclusive responsibility to rear and educate Mize, the exceptional treatment of Mize compared to the treatment of other children Petty sometimes allowed to stay at his house, and his general treatment of Mize as his own child.¹⁵⁰ The court rejected the heirs' argument that Petty needed to communicate to Mize that he had adopted Mize so that Mize would detrimentally rely on Petty's assertions.¹⁵¹ Although the basis of the court's opinion for the most part seemed to be equitable adoption by oral contract, the court made comparisons to equitable adoption by estoppel cases¹⁵² and closed with the following statement indicating equitable adoption by estoppel: "[T]he evidence is sufficiently clear, cogent, and convincing . . . that it would be inequitable to permit it to be asserted that [Mize] was not . . . adopted."¹⁵³

D. Other Equitable Adoption Issues

In addition to precedent regarding what an equitable adoption claimant must show to obtain a decree of equitable adoption, the courts have produced tributary precedent on equitable adoption. The court of appeals has held that the doctrine of equitable adoption is meant to benefit only the child.¹⁵⁴ Thus, for example, the equitably adoptive mother is precluded from intervening in the natural father's wrongful death action for the death of the child,¹⁵⁵ and a third party cannot invoke the doctrine of equitable adoption to bar a child from inheriting from his natural parents after the child already has inherited from his equitably adoptive parent.¹⁵⁶ Also, an equitably adopted child's natural sister and brother will inherit from the estate of the equitably adopted child to the exclusion of the equitably adoptive parents' relatives.¹⁵⁷ Although the court has cautioned against expanding the doctrine of equitable adoption, the court has

149. *Id.* at 565.

150. *Id.*

151. *Id.* at 566.

152. *Id.* at 567.

153. *Id.*

154. *Halterman v. Halterman*, 867 S.W.2d 559, 560 (Mo. Ct. App. 1993).

155. *Id.*

156. *See, e.g., Gardner v. Hancock*, 924 S.W.2d 857, 860 (Mo. Ct. App. 1996).

157. *See, e.g., Rumans v. Lighthizer*, 249 S.W.2d 397, 399-401 (Mo. 1952).

held that an equitably adopted child can state a claim for wrongful death of his adoptive parent.¹⁵⁸ Finally, the court has changed the standard of review in an equitable adoption case. The trial court's denial of an equitable adoption decree is to be sustained "unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law or unless it erroneously applies the law."¹⁵⁹

E. A Synthesis of Missouri Law

Because equitable adoption does not fit the orthodox contract or estoppel analysis,¹⁶⁰ it is difficult to predict the outcome of cases. What makes the outcomes even more difficult to predict is that sometimes it appears that the Missouri courts do not mean what they say.¹⁶¹ For example, in *Lukas* did the child's natural grandmother's testimony that, when the transaction took place, the foster parents said they were taking the child for the purposes of adoption¹⁶² really prove beyond a reasonable doubt that a contract to adopt existed? And, would justice, equity, and good faith require the decree of equitable adoption so that the plaintiff could share in the estate when there was evidence that the foster parents did not want the plaintiff to share in the estate?¹⁶³ These questions are even more curious considering that the standard of review in the case was *de novo*.¹⁶⁴

Nevertheless, a comprehensive synthesis of the law is helpful in analyzing an equitable adoption claim. The following is a series of questions and answers representing a synthesis of Missouri law on equitable adoption claims:

1. Was the plaintiff an adult when the foster parents took him into custody? If so, the plaintiff cannot maintain a claim of equitable adoption.¹⁶⁵ If the plaintiff was not an adult at the time the foster parents took him into custody, the plaintiff has two different theories of equitable adoption he may plead: equitable adoption by contract and equitable adoption by estoppel.¹⁶⁶ Since equitable adoption by contract appears to be the more commonly pleaded theory,¹⁶⁷ and the more successful theory for

158. See, e.g., *Holt v. Burlington N. R.R. Co.*, 685 S.W.2d 851, 856-58 (Mo. Ct. App. 1991).

159. *In re Van Cleave's Estate*, 610 S.W.2d 620, 622 (Mo. 1981) (quoting *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. 1976)).

160. See *infra* notes 202-14 and accompanying text.

161. See *infra* notes 163-65 and accompanying text.

162. *Lukas v. Hayes*, 283 S.W.2d 561, 563 (Mo. 1955).

163. *Id.* at 564-65.

164. *Id.* at 565.

165. See *Thompson v. Moseley*, 125 S.W.2d 860, 862 (Mo. 1939).

166. See *supra* notes 29-154 and accompanying text.

167. See *supra* notes 29-154 and accompanying text.

equitable adoption claimants,¹⁶⁸ the analysis will begin with equitable adoption by contract.

2. Does the plaintiff have either direct evidence or other evidence which the court has usually considered to be so clear, cogent, and convincing as to leave no reasonable doubt¹⁶⁹ that a prior contract to adopt existed? Although the court has stated that the parties to the contract do not need to use the word "adopt,"¹⁷⁰ the court also has consistently ordered decrees of equitable adoption when the plaintiff can offer a witness (or written evidence) who testifies that the natural parents and the foster parents entered an agreement actually mentioning the word "adopt." In *Bland*, the orphanage which released the children to the foster parents documented the transaction with the statement, "Taken by Mr. Bland . . . for adoption."¹⁷¹ In *Lukas*, the child's natural grandmother testified that, while she was discussing the transaction with the foster parents, the foster parents said they were taking the child with the purpose of adopting her and would make all the arrangements for adoption.¹⁷² In *Long*, the natural father's sister-in-law testified that the foster parents took the child on the condition that the natural father would consent and sign the adoption papers.¹⁷³ In all three cases, the court ordered equitable adoptions.¹⁷⁴

The court also has ordered equitable adoption when the plaintiff produces evidence that the foster parents attempted to comply with the statutory procedures for adoption. In both *Ahern* and *McCormick*, the courts granted decrees of equitable adoption when the plaintiff showed the foster parents had attempted to comply with the statutory procedures.¹⁷⁵ The courts in both cases indicated that the attempt at compliance was strongly persuasive that a contract to adopt existed.¹⁷⁶

3. If the plaintiff does not have the kind of evidence referred to in Question 2, can he still succeed on a claim of equitable adoption by contract? Maybe. The court has not expressly overruled any of the equitable adoption cases. Therefore, absent the evidence referred to above, the plaintiff could still rely on older cases like *Thompson* and *Drake* or

168. See *infra* notes 196-200 and accompanying text.

169. Sometimes the court omits the "no reasonable doubt" language, but includes the "clear, cogent, and convincing" language. See, e.g., *Lukas v. Hayes*, 283 S.W.2d 561, 566 (Mo. 1955).

170. *Holland v. Martin*, 198 S.W.2d 16, 18 (Mo. 1946).

171. *Bland v. Buoy*, 74 S.W.2d 612, 614 (Mo. 1934).

172. *Lukas v. Hayes*, 283 S.W.2d 561, 563 (Mo. 1955).

173. *Long v. Willey*, 391 S.W.2d 301, 303 (Mo. 1965).

174. *Long*, 391 S.W.2d at 305-06; *Lukas*, 283 S.W.2d at 568; *Bland*, 74 S.W.2d at 620.

175. *Ahern v. Mathews*, 85 S.W.2d 377, 385 (Mo. 1934); *McCormick v. Johnson*, 441 S.W.2d 724, 727 (Mo. Ct. App. 1969).

176. *Ahern*, 85 S.W.2d at 384-85; *McCormick*, 441 S.W.2d at 726.

anomalous cases such as *Mize*. Although the plaintiffs in these cases did not show any direct evidence of a contract to adopt or any evidence of an attempted compliance with statutory adoption procedures, the court ordered decrees of equitable adoption.¹⁷⁷ *Taylor* and *Drake* appear to be the last of the cases from an era in which the act of the foster parents raising the children as their own, standing by itself, was enough for the court to infer a contract to adopt. However, in both cases there was something more. In *Taylor*, before the foster parents took custody of the child, they represented to some of the natural parents' relatives that they intended to take the child and raise the child as their very own.¹⁷⁸ In *Drake*, the foster parent treated the child preferentially, compared to other children he had taken in at the time.¹⁷⁹

Mize appears to be an anomalous case. *Mize* occurred well after the court had laid down the *Niehaus* precedent¹⁸⁰ that absent direct evidence of a contract to adopt, the plaintiff must show evidence that is only consistent with equitable adoption and inconsistent with any other reasonable hypothesis.¹⁸¹ However, in *Mize*, the court ordered an equitable adoption absent such evidence.¹⁸² The court seemed particularly influenced by the foster parent's preferential treatment of the child compared to other children the foster parent had taken in and the evidence that the foster parent may have actually been the natural parent of the child.¹⁸³

However, the plaintiff should not overestimate his chances of succeeding without direct evidence of a contract to adopt or an attempt to comply with statutory procedures. The modern and well-established approach of the court is to deny orders of equitable adoption when such evidence is absent.¹⁸⁴ The court is particularly harsh on stepchildren. The court often invokes the *Niehaus* rubric in cases where the child could also be considered a stepchild of the foster parent,¹⁸⁵ and the court now

177. *Taylor v. Coberly*, 38 S.W.2d 1055, 1062 (Mo. 1931); *Drake v. Drake*, 43 S.W.2d 556, 561 (Mo. 1931).

178. *Taylor*, 38 S.W.2d at 1061.

179. *Drake*, 43 S.W.2d at 560.

180. *Niehaus v. Madden*, 155 S.W. 2d 141 (Mo. 1941); *Mize v. Sims*, 516 S.W.2d 561 (Mo. Ct. App. 1974).

181. *Niehaus*, 155 S.W.2d at 144.

182. *Mize*, 516 S.W.2d at 568.

183. *Id.* at 565.

184. See *Bellinger v. Boatmen's Nat'l Bank*, 779 S.W.2d 647, 652 (Mo. 1989); *Hogane v. Ottersbach*, 269 S.W.2d 9, 13 (Mo. 1954); *Capps v. Adamson*, 242 S.W.2d 556, 562 (Mo. 1951); *Westlake v. Westlake*, 201 S.W.2d 964, 970 (Mo. 1947); *Niehaus*, 155 S.W.2d at 145; *Holland v. Martin*, 198 S.W.2d 16, 18 (Mo. 1941); *Keller v. Lewis County*, 134 S.W.2d 48, 51 (Mo. 1941); *Benjamin v. Cronan*, 93 S.W.2d 975, 981 (Mo. 1936).

185. See, e.g., *Capps*, 242 S.W.2d at 560.

apparently requires that a stepchild show some indicia of an intent or attempt to adopt to win an equitable adoption by contract claim.¹⁸⁶

A final issue that the plaintiff should be aware of in trying to present evidence of a prior adoption contract is the use of the *Niehaus* reasoning in *Birdwell*. In *Birdwell*, the court never mentioned whether the plaintiff was seeking a decree of equitable adoption based on a contract or based on estoppel. Nevertheless, in denying a decree of equitable adoption the court reasoned that, although the Birdwells raised the child as their own, the evidence was just as consistent with a foster parent-foster child situation.¹⁸⁷ Perhaps the case is merely one whose holding should be limited because there was evidence that the child sometimes referred to the Birdwells as his foster parents and received Social Security benefits due to the death of his natural father.¹⁸⁸ However, if the court's reasoning is extended, it would seem, in every case in which the foster parents do not obtain an actual statutory adoption, the evidence is at least reasonably consistent with a foster parent-foster child relationship.

4. Even if the plaintiff has clear, cogent, and convincing evidence of a prior contract to adopt, what else does he need to show to gain a decree of equitable adoption? The plaintiff has to show that the parties to the contract fully performed the contract, except for the compliance with the statutory procedures.¹⁸⁹ This issue, however, is usually not in dispute because the elements are usually inherent to the filing of an equitable adoption claim. In other words, if the child has not been placed in the custody of foster parents (*i.e.*, the natural parents have not performed), and the foster parents have not raised the child as their own, and the child has not been loyal to the foster parents (*i.e.*, either the foster parents or the child has not performed), then it seems doubtful that a dispute would even arise.

In *Rich*, the court indicated that regardless of whether the claimant sought a decree on contract or estoppel grounds, justice, equity, and good faith must require the order before the court can enter it.¹⁹⁰ Whether or not this is a meaningful element of a contractual claim is difficult to determine. *Rich* was an adoption by estoppel case,¹⁹¹ so the court's statements about the requirements for adoption by contract are dicta. After *Rich*, there has

186. See *Weidner v. American Family Mut. Ins. Co.*, 928 S.W.2d 401, 403 (Mo. Ct. App. 1996). However, in *Weidner* the court never explicitly stated whether *Weidner* was relying on an adoption by contract or an adoption by estoppel theory.

187. *Birdwell v. Phillips*, 805 S.W.2d 220, 222 (Mo. Ct. App. 1991).

188. *Id.*

189. See, e.g., *Lukas v. Hayes*, 283 S.W.2d at 561, 568 (Mo. 1955); *Taylor v. Coberly*, 38 S.W.2d 1055, 1060 (Mo. 1931); *Lynn v. Hockaday*, 61 S.W. 885, 888 (Mo. 1901).

190. *Rich v. Baer*, 238 S.W.2d 408, 411 (Mo. 1951).

191. *Id.*

not been clear precedent on the issue in an adoption by contract case.¹⁹² Perhaps the justice, equity and good-faith element is inherent when the court already has found that the foster parents and natural parents had a contract. If the court already has found that there was a contract that the child fully performed, it would always seem to be unjust to fail to enter the decree of equitable adoption, as it would allow the foster parents to escape the contract while the child and natural parents fulfilled it.

5. Besides arguing that the plaintiff has not met the high standard of proof in an adoption by contract case, what are other promising arguments that the defendant can make? Basically, the defendant should present any kind of evidence he might have which shows that the foster parents did not enter a contractual adoption or did not intend to adopt the plaintiff. In both *Benjamin* and *Stillman*, the court refused to enter a decree of equitable adoption when the foster parents had taken a second child into their home at the same time they took the plaintiff and had adopted the second child using the statutory procedures, but had not done so for the plaintiff.¹⁹³ Also, the court has mentioned the foster parent's failure to adopt the child (when such parent was the type of person who would have done so if he intended) and the foster parent's exclusion of the plaintiff from his will as factors indicating that there was no adoption contract.¹⁹⁴

6. If the plaintiff cannot obtain an equitable adoption decree using a prior contract as his theory, how likely is it that the plaintiff can obtain the decree using equitable adoption by estoppel? In short, very unlikely. There appear to be at least two major problems for the plaintiff. One is the inconsistency in the court's application of the doctrine. To understand the inconsistency, the elements of the claim need to be examined closely. *Schelp* and *Taylor* stated the essence of an adoption by estoppel claim as the following:

Where one takes a child into his home as his own, thereby voluntarily assuming the status of parent, and by reason thereof obtains from the child the love, affection, companionship, and services which ordinarily accrue to a parent, he, or those claiming

192. In *Weidner*, the court never stated whether the plaintiff was using adoption by contract or by estoppel; however, the court seemed to merge the *Niehaus* language with the justice, equity, and good-faith element when it stated, "When such cases [stepchild-stepparent cases] yield evidence of only a close stepchild-stepparent relationship, justice, equity, and good faith do not require a finding of adoption." *Weidner v. American Family Mut. Ins. Co.*, 928 S.W.2d 401, 403 (Mo. Ct. App. 1996).

193. See *Benjamin v. Cronan*, 93 S.W.2d 975, 981 (Mo. 1936); *Stillman v. Austin*, 148 S.W.2d 573, 575 (Mo. 1936).

194. See, e.g., *Westlake v. Westlake*, 201 S.W.2d 964, 969 (Mo. 1947).

through him will thereafter be "estopped to assert that he did not adopt the child in the manner provided by law."¹⁹⁵

Later, in *Rich*, the court added the justice, equity and good-faith requirement.¹⁹⁶ However, the court has applied the element by denying decrees of equitable adoption when there is evidence that the child benefitted from the relationship just as the parent did.¹⁹⁷ For example, in *Capps*, the court, in performing the justice, equity and good-faith analysis, stated:

[T]here is no evidence of conduct of or benefit to Dr. Adamson growing out of the relationship which in justice, equity, and good conscience should preclude the denial of an equitable adoption. No doubt Dr. Adamson had great pleasure in having [Bradbury] in his home But [Bradbury] was also the recipient of great benefit by virtue of her relationship with Dr. Adamson and as a member of his family the relationship and conduct of Dr. Adamson and [Bradbury] were mutually beneficial. We believe the evidence does not justify a finding of an adoption by estoppel.¹⁹⁸

The inconsistency in the application is that the definition of equitable adoption by estoppel seems to require a mutually beneficial relationship. When one assumes the status of a parent, as the definition requires, his conduct will almost certainly benefit the child. The definition also calls for the foster parent to receive benefits from the child in the form of love, companionship, and services. But it is this mutually beneficial relationship which defeats the justice, equity and good-faith element and ultimately defeats the claim of equitable adoption by estoppel.

Secondly, the court has applied the *Niehaus* rubric to adoption by estoppel cases as well. For example, in *Hogane, Van Cleave's Estate* and *Bellinger* the courts denied decrees of equitable adoption because the plaintiff had not shown that the evidence was inconsistent with a stepchild-stepparent relationship.¹⁹⁹ If the plaintiff truly has to show the evidence is not consistent with any other theory, such as a good stepchild-stepparent relationship or foster child-foster parent relationship, then it would seem the plaintiff is going to have to show the kind of evidence the court has

195. *Taylor v. Coberly*, 38 S.W.2d 1055, 1062 (Mo. 1931) (quoting *Shelp v. Mercantile Trust Co.*, 15 S.W.2d 818, 824 (Mo. 1929)).

196. *Rich v. Baer*, 238 S.W.2d 408, 411 (Mo. 1951).

197. *E.g.*, *Hegger v. Kausler*, 303 S.W.2d 81, 90 (Mo. 1957).

198. *Capps v. Adamson*, 242 S.W.2d 556, 561 (Mo. 1951).

199. *In re Van Cleave's Estate*, 610 S.W.2d 620, 622 (Mo. 1981); *Hogane v. Ottersbach*, 269 S.W.2d 9, 12-13 (Mo. 1954); *Bellinger v. Boatmen's Nat'l Bank*, 779 S.W.2d 647, 650 (Mo. Ct. App. 1981).

found persuasive in adoption by contract cases. If this is the case, the plaintiff would be better off pleading an adoption by contract case (of course, only if he truly believed there was such a contract) to avoid the problem with the justice, equity and good-faith element of equitable adoption by estoppel.

Perhaps the best indicator of the plaintiff's chances of winning a claim of equitable adoption by estoppel comes from a pragmatic analysis rather than a doctrinal analysis. Of the sampled appellate cases, none granted an equitable adoption exclusively upon an estoppel claim.

7. If the plaintiff loses upon either theory at trial, how likely is an appeal based upon the insufficiency of the evidence to succeed? Again, not likely. *Van Cleave's Estate* changed the standard of review in equitable adoption cases to conform with *Murphy*: "The trial court's order in denial of the decree of equitable adoption is to be sustained 'unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law or unless it erroneously applies the law.'"²⁰⁰ When this level of appellate review is combined with the plaintiff's burden of showing proof so clear, cogent, and convincing as to leave no reasonable doubt that an adoption occurred, a plaintiff will have to show that his evidence was so overwhelming that finding just a reasonable doubt is against the great weight of the evidence.

F. Criticisms of Equitable Adoption

Scholars have criticized both the contract and estoppel rationales for the doctrine of equitable adoption.²⁰¹ The contract rationale seems particularly suspect.²⁰² One problem with the contract rationale is that the child seems to play inconsistent roles.²⁰³ The child acts as a primary party to the contract by giving at least part of the consideration by performing services for the foster parent. However, the child is also a third party beneficiary to the extent that, in the usual case, the natural parents and the foster parents actually reach the agreement for the benefit of the child, as the child is too young to strike such an agreement himself.²⁰⁴ The notion of a unilateral contract in which the child's living with the foster parents is seen as his acceptance of their offer to adopt also is undermined by the child's being too young to know of any contract or to understand its importance.²⁰⁵

200. *In re Van Cleave's Estate*, 610 S.W.2d at 622 (quoting *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. 1976)).

201. See *infra* notes 203-14 and accompanying text.

202. See Rein, *supra* note 2, at 772.

203. See Rein, *supra* note 2, at 772-73.

204. See Rein, *supra* note 2, at 773.

205. See Rein, *supra* note 2, at 775.

Whether the child is a primary party to the contract or a third party beneficiary, there is a question as to who has the legal authority to enter into such an agreement.²⁰⁶ The courts seem implicitly to assume that the natural parents or persons who are *in loco parentis* have such authority.²⁰⁷ Given that most states have enacted regulations for the screening and approval of prospective adopters, this assumed authority may be questionable.²⁰⁸

Although the estoppel theory may come closer to explaining cases than does the contract analysis, the estoppel rationale also has its short-comings.²⁰⁹ Equitable estoppel's fundamental elements are: "(1) a promise or representation of a fact; (2) actual and reasonable reliance on the promise or representation; and (3) resulting detriment."²¹⁰ The two elements which are often absent in an equitable adoption case are actual reliance and detriment.²¹¹ Cases often do not specify whether the child needs to rely on an actual adoption contract or on the representations that the foster parents are his true parents. However, even if the child knew there was no contract to adopt or knew that his foster parents were not his true parents, he would probably remain with his foster parents because he has no other viable option.²¹² As to actual detriment in an economic sense, it is difficult to show because the foster parents often have given the child a home, an education, and other support that the biological parents could not have provided.²¹³

Given that the contract and estoppel underpinnings have to be stretched to fit an equitable adoption case, courts and commentators have suggested alternative tests.²¹⁴ For example, the California Court of Appeals has held that a plaintiff seeking an equitable adoption by estoppel vis-a-vis the putative father, must show "that (1) the putative father represented to the child that he was his father; (2) the child relied upon the representation by accepting and treating the putative father as his father; (3) the child was ignorant of the true facts; and (4) the representation was of such duration that it frustrated the realistic opportunity to discover the natural father and to reestablish the child-parent relationship between the child and the natural father."²¹⁵

206. See Rein, *supra* note 2, at 773.

207. See Rein, *supra* note 2, at 773.

208. See Rein, *supra* note 2, at 774.

209. See Rein, *supra* note 2, at 775-76.

210. See Rein, *supra* note 2, at 776.

211. See Rein, *supra* note 2, at 776.

212. See Rein, *supra* note 2. Rein notes that the real detrimental reliance in these cases may be psychological. "Any child who grows up with the belief that he is a natural child of the only parents he knows is bound to be distressed when he learns that society views him as a legal stranger to his family." See Rein, *supra* note 2, at 778.

213. See Rein, *supra* note 2, at 778.

214. See *infra* notes 216-18.

215. *In re Marriage of Valle*, 126 Cal. Rptr. 38, 41 (Ct. App. 1975).

The West Virginia Supreme Court of Appeals has adopted a test which focuses on whether the claimant can show his status is identical to that of a formally adopted child.²¹⁶ One scholar, Professor Jan Ellen Rein, noting that the contract requirement is artificial and malleable, has proposed a test which merely asks whether the foster parent led the child to believe that he was the biologically or legally adopted member of his foster family.²¹⁷

Scholars also have criticized the doctrine of equitable adoption on other grounds.²¹⁸ Some indicate that expanding the scope of equitable adoption would detract from the importance of strict compliance with state adoption statutes, and therefore praise cases which have limited the scope of equitable adoption.²¹⁹ Others have cited equitable adoption's particularly poor protection of stepchildren's interests as one reason to incorporate stepchildren into intestacy statutes.²²⁰ Finally, it has been argued that equitable adoption has become a Pandora's box, emitting a plethora of perplexing questions such as: Can the equitably adopted child inherit from the foster parent's blood relatives through the foster parent? Can the equitably adopted child inherit from both his foster and natural parents? And can the equitably adopted child recover workmen's compensation benefits for the death of his foster parent?²²¹

IV. INSTANT DECISION

In *Weidner*, the court faced a situation in which a child's natural mother and the natural mother's husband, who did not sire the child, raised the child.²²² However, the husband did not formally adopt the child.²²³

The court first gave a brief overview of adoption law and its intersection with the doctrine of equitable adoption.²²⁴ The court then reviewed several prior

216. *Wheeler Dollar Sav. & Trust Co. v. Singer*, 250 S.E.2d 369, 373 (W. Va. 1978).

217. *See Rein, supra* note 2, at 786.

218. *See infra* notes 220-22. *But see* Christi Gill Baunach, *The Role of Equitable Adoption in a Mistaken Baby Switch*, 31 U. LOUISVILLE J. FAM. L. 501, 513 (1993) (praising the use of equitable adoption in a case where babies were given to the wrong mothers).

219. Elizabeth A. Gaudio, *Limiting the Scope of Equitable Adoption*, 54 MD. L. REV. 822, 831-33 (1995).

220. Margaret M. Mahoney, *Stepfamilies in the Law of Intestate Succession and Wills*, 22 U.C. DAVIS L. REV. 917, 926-28 (1989).

221. *See Rein, supra* note 2, at 767-68. Rein gives numerous examples of such questions.

222. *Weidner v. American Family Mut. Ins. Co.*, 928 S.W.2d 401, 402 (Mo. Ct. App. 1996).

223. *Id.*

224. *Id.* at 403. The court stated:

Prior to 1917, the only statutory method of adoption in this state was by deed.

Missouri holdings before reaching the merits of the case.²²⁵ The court noted that an equitably adopted child has the right to bring a wrongful death action for the death of an equitably adoptive parent.²²⁶ The court indicated that the judgment of the trial court must be affirmed unless there is no substantial evidence to support it, unless its verdict is against the great weight of the evidence, or unless it erroneously declares or applies the law.²²⁷ As a final preliminary matter regarding the burden of proof, the court stated that a claimant of equitable adoption must show "clear, cogent, and convincing" evidence. In the case where the claimant relies solely on circumstantial evidence, the evidence must be "consistent only with the existence of the equitable adoption and inconsistent with any other reasonable hypothesis leaving nothing to conjecture."²²⁸

Despite the trial court's ruling in favor of Weidner and the deferential standard of review, the appellate court invoked the *Niehaus* doctrine. Weidner produced no direct evidence that an oral contract to adopt existed.²²⁹ As a result, Weidner had to produce evidence "consistent only with the theory of equitable adoption and inconsistent with any other reasonable hypothesis leaving nothing to conjecture."²³⁰ Furthermore, the decree of equitable adoption would be granted only if justice, equity, and good faith required it.²³¹ The court then relied on *Drake* and *Capps* in indicating that, in cases where a stepchild is seeking equitable adoption from the stepparent, justice, equity, and good faith do not require a finding of adoption unless there is evidence of more than a stepchild-stepparent relationship, such as indicia of an intent or an attempt to adopt.²³² While the court admitted that Lott and Weidner were close and that they referred to each other as "father" and "daughter," the court also concluded that there was considerable evidence that Lott did not intend to adopt Weidner, such as Lott's failure to represent himself as Weidner's father in a name changing petition, his failure to formally adopt Weidner, his listing of his sister as his closest relative on his application for Veteran's benefits, his making no provision for Weidner

Menees v. Cowgill, 223 S.W.2d 412, 416 (Mo. 1949). Parents could transfer or contract to adopt children. It was under these circumstances that the doctrine of equitable adoption arose. When a promise to adopt had been made, but the actual adoption had not occurred, a court of equity could specifically enforce the contract or declare the parent estopped from denying the adoption.

Id.

225. See *infra* notes 227-29 and accompanying text.

226. *Weidner*, 928 S.W.2d at 403.

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *Weidner*, 928 S.W.2d at 403.

232. *Id.* This statement by the court combines the *Niehaus* precedent with the justice, equity, and good-faith precedent.

in his estate, and his infrequent communication with Weidner after he retired.²³³ The court held that closeness in a relationship does not distinguish a relationship from that of stepdaughter and stepfather and that there was no evidence indicating that the relationship was anything more than a stepfather-stepdaughter relationship.²³⁴ Accordingly, the appellate court reversed the trial court order finding Weidner to have been equitably adopted by Lott.²³⁵

In summary, *Weidner* is the most recent example of a court invoking the *Niehaus* doctrine and the justice, equity, and good-faith analysis to deny a decree of equitable adoption. What makes *Weidner*'s holding unusual is that it overturned the trial court despite the deferential standard of review.

V. COMMENT

Missouri courts should consider changing their approach to equitable adoption claims. The contract and estoppel rationales are conceptually flawed and have resulted in unfair decisions. For example, the court denied the plaintiff a decree of equitable adoption in *Holland* when the evidence showed that the foster parents raised and treated the child as their own for thirty-four years and told him that they wanted him to inherit their property.²³⁶ Yet, the plaintiff in *Lukas*, whose foster parents raised her as their own, as in *Holland*, received a decree of equitable adoption because of the plaintiff's natural grandmother's testimony that the foster parents had said they were taking the child for adoption.²³⁷ The plaintiff received the decree of equitable adoption despite evidence that her foster parents did not want her to inherit their property.²³⁸ Even assuming that the grandmother in *Lukas* was telling the truth, should a contract to adopt be so crucial to the outcome of the case when clearly the contract rationale is specious?

The more difficult question is what the new standard should be. Should the court have granted the *Holland* plaintiff a decree of equitable adoption or should the court have denied the *Lukas* plaintiff a decree of equitable adoption? The exact test Missouri courts should use in deciding on decrees of equitable adoption is outside the scope of this Note. However, it does seem safe to assume, at least in the context of claims for a share in the foster parent's estate, that if a foster parent raises a child as his own and provides for the child throughout his life, the foster parent's death would not change his intention that the child be treated as his own. Therefore, a test more favorable to foster children whose foster parents raised them as their own, such as West Virginia's

233. *Id.* at 404.

234. *Id.*

235. *Id.*

236. *See Holland v. Martin*, 198 S.W.2d 16, 16-18 (Mo. 1946).

237. *Lukas v. Hayes*, 283 S.W.2d 561, 563 (Mo. 1955).

238. *Id.* at 565.

test, focusing on whether the claimant can show his status is identical to that of a formally adopted child,²³⁹ or *Rein's*, which asks whether the foster parent led the child to believe that he was the biologically or legally adopted member of his foster family,²⁴⁰ should be considered in Missouri.

Moreover, the courts should consider different tests for equitable adoption claims in different settings. The reasons that a foster child should be treated as a natural child under the intestacy statutes are different than the reasons a foster child should be treated as a natural child under a wrongful death statute, as the statutes serve two different purposes.²⁴¹ *Weidner* clearly was decided upon Missouri precedent, but demonstrates a situation in which different tests might be more appropriate. If the trial court's decision had stood, *Weidner*, who had seen Lott only once in eleven years, would have had standing to bring a wrongful death claim to the exclusion of other relatives of Lott.²⁴² It seems unsound that *Weidner's* standing to bring this action would have been based on precedent developed almost exclusively in an intestacy or interpretation of wills context. Perhaps this was an unstated reason for the standard of review not being applied strictly.

Finally, even if the courts are not persuaded by the above observations, they should at least remove the finding of a contract to adopt²⁴³ as the crucial element in an equitable adoption claim, because contractual analysis simply does not suit equitable adoption. After all, the name of the doctrine is "*equitable adoption*."

VI. CONCLUSION

The sturdiness of equitable adoption's theoretical contract and estoppel bases are suspect.²⁴⁴ Thus, as one might expect, the Missouri case law in the area has not been uniform. From the late 1800s to the early 1900s the courts often inferred contracts to adopt from the fact that foster parents had raised children as their own.²⁴⁵ However, since that time, the courts have been much less likely to find that there was a contract of adoption unless the plaintiff shows direct evidence of such a contract or an attempted compliance with statutory procedures.²⁴⁶ If the plaintiff does not have such evidence, his hopes of winning

239. *Wheeler Dollar Sav. & Trust Co. v. Singer*, 250 S.E.2d 369 (W. Va. 1978).

240. *See Rein*, *supra* note 2, at 786.

241. Presumably, the purpose of an intestacy statute is to carry out the intent of the average decedent who does not leave a will. The purpose of a wrongful death statute is to provide standing to a person who can bring a claim against the defendant on behalf of the decedent.

242. *See* MO. REV. STAT. § 537.080 (1994).

243. Adoption by estoppel is nearly extinct, at least at the appellate level. *See supra* notes 196-200.

244. *See supra* notes 202-14 and accompanying text.

245. *See supra* note 63 and accompanying text.

246. *See supra* note 185 and accompanying text.

a case based solely on an estoppel argument almost certainly are in vain. This is because the court has held that when a mutually beneficial relationship exists between the foster parent and foster child, which will almost always be the case in a foster child-foster parent relationship, justice, equity, and good faith do not require a decree of equitable adoption.²⁴⁷ Unfortunately, Missouri's approach has resulted in inequitable decisions. Therefore, Missouri courts should consider changing their approach to equitable adoption.

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247. *See supra* notes 197-99 and accompanying text.