DOMESTIC RELATIONS—THE LEGAL CONSEQUENCES OF ADOPTION IN GEORGIA—INHERITANCE RIGHTS AND WRONGFUL DEATH ACTIONS.

INTRODUCTION

The inheritance rights and the wrongful death rights which result from a decree of adoption are undesirable because they are uncertain in some instances, inequitable in others, and are generally against the best interests of the parties most directly affected by the adoption. These problems are really manifestations of a deeper, underlying problem which has produced these undesirable results. That problem is that the law has not been effectively guided in this development by a comprehensive state policy concerning the *purpose* of adoption, and its pegal effects. Considering the number of adoptions decreed in Georgia each year,[1] it would seem important that there be no uncertainty as to precisely what the policy of the state is towards the legal rights and duties of adopted children, their adoptive parents, and their natural parents. But, instead of being guided by a reasoned policy designed to protect the interests of the parties affected, the law has developed in a piecemeal fashion, drawn from imprecise statutes, and heavily influenced by canons of construction. The result is that the law is neither adequate to protect the interests of the parties, nor consonant with the modern view of adoption.

It is submitted that the proper policy is one of complete integration of the adopted child into the adoptive family, with a corresponding severence of all legal ties between the child and the natural family. The child should become the same as a natural child in every respect, and the inheritance and wrongful death rights resulting from adoption should be consistent with the child's new legal status.

HISTORY[2]

In order to understand the problems inherent in the law as it now exists, and to postulate criticisms of the law and solutions to the prob-

1. The Georgia Department of Family and Children Services indicates that over 3,000 petitions per year have been filed in recent years. Although no statistics are available, it is estimated that only a very small per cent do not become final.

2. The history is chronological, and includes only those cases and statutes deemed significant.

lems, it is necessary to understand what the law is and how it has developed.

Prior to 1941 the Georgia Code provided that an adoption decree made the adopting parent and the adopted child the same as a "parent and child," but with certain reservations.[3] This statute was construed in *Alexander v. Lamar*[4] to accomplish a substitution of the adopting parents in the place of the natural parents, with the result that the natural mother could no longer inherit from the adopted child. The basis for the decision was that the inheritance statutes contemplated that a person have only one mother and father and that the adoption statute placed the adopting parents in that relationship.[5]

A substantial revision of the adoption statutes in 1941 specifically stated that the natural parents of an adopted child were divested of all legal rights or obligations towards the child.[6] This appeared to buttress the theory set forth in *Lamar* of substitution of the adoptive parental relationship in place of the natural one. However, the statute contained certain provisions which were out of harmony with the notion of *total* substitution.[7]

The question of how complete the substitution was arose in *Macon, Dublin & Savannah Railroad v. Porter*.[8] The court held that an adopted child could maintain a wrongful death action for the homicide of his natural father, notwithstanding his adoption. The court did not consider the adoption laws or *Lamar* to be controlling in any way of the right of a "child" to bring an action under the wrongful death statutes[9] for the

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3. GA. CODE § 74-404 (1933) provided:
Thenceforward the relation between such person and the adopted child shall be, as to their legal rights and liabilities, the relation of parent and child, except that the adopting father shall never inherit from the child. To all other persons the adopted child shall stand as if no such act of adoption had been taken.
See Alexander v. Lamar, 188 Ga. 273, 277, 3 S.E.2d 656, 658 (1939) for a history of this code section.

4. 188 Ga. 273, 3 S.E.2d 656 (1939).

5. *Id.* at 277, 3 S.E.2d at 658.

6. Ga. Laws, 1941, p. 300. "[T]he parents of the child shall be divested of all legal rights or obligations from them to the child or from the child to them; and the child shall be free from all obligation of any sort whatsoever to the said natural parents." *Id.* at 305-06.

7. The statute provided that the adopting parents could never inherit from the child. This was a slight expansion of a provision of the prior statute (*see* note 3, *supra*) which prohibited the adopting father from inheriting from the child. Furthermore, the 1941 act continued the provision that the adopted child stood towards all persons other than the natural and adopting parents "as if no such act of adoption had been taken." Ga. Laws, 1941, pp. 305-06. *See* Dye v. Ghann, 216 Ga. 743, 119 S.E.2d 700 (1961) for a construction of this statute which indicates its limited effect.

8. 195 Ga. 40, 22 S.E.2d 818 (1942).

9. GA. CODE § 105-1302 (1933). The Code has not been substantially amended since 1942 with respect to a child's right to sue for the wrongful death of its father. *See* GA. CODE ANN. § 105-1302 (Rev. 1968).

death of his natural father.[10] It was further explained that adoption laws should be construed in favor of the child so as not to deprive him of "any right that [he] may have under other laws" unless there were an unavoidable inference of such intent.[11] Thus, the court was willing to sever the natural parent from the child in *Lamar*, but unwilling to sever the child from the natural parent in *Porter*. Although the analogy seems compelling, the court refused to reason that the wrongful death statutes contemplate that a person have only one mother and father, and that the adoption statute places the adopting parents in this relationship, as it had reasoned in *Lamar* when considering inheritance rights.[12] The decision accorded limited effect to the adoption statutes and retained in the adopted child the wrongful death rights that he had prior to adoption.

Two Justices concurred specially, however, and stated that, in their opinion, the case was limited by its facts.[13] The adoption occurred under statutes no longer in force at the time of the decision,[14] and the child had been adopted by his aunt *only*. The concurring justices reasoned therefore that the parental relationship between the child and his natural father had never been terminated. They departed fundamentally from the opinion of the majority by saying that had the child's uncle also participated in the adoption,[15] the adoption laws would have caused a termination of the natural parental relationship so that there would have been no parental relationship in existence upon which the child could have founded a wrongful death action for his natural father's homicide.[16]

In 1949, a very significant amendment removed a major impediment to the child's integration into the adoptive family. A section providing that the child stood towards all persons other than the two sets of

10. The adoption statutes and decisions construing them in reference to inheritance are not controlling. This action was brought under the statute which confers upon a "child" the right to sue for the tortious homicide of its father. . . . [T]he claimed right of recovery is a matter which is in no wise dealt with in the adoption statutes. 195 Ga. at 43, 22 S.E.2d at 820.

11. 195 Ga. at 42, 22 S.E.2d at 820.

12. In applying the rule of strict construction and holding that the adoption statutes did not *expressly* divest the child of any of his rights, the court apparently believed that it was protecting and benefiting the child.

13. 195 Ga. at 43, 22 S.E.2d at 820. Chief Justice Reid and Justice Jenkins concurred specially.

14. PARK'S ANN. CODE § 3016 (1914).

15. Modern adoption statutes require that both the husband and the wife join in the adoption. *See* GA. CODE ANN. § 74-402 (Rev. 1964).

16. The concurring Justices thought that the case would be controlled by *Lamar* had the child's uncle also participated in the adoption. They viewed adoption as an "absolute substitution" of parental relationships with all legal rights and liabilities being transferred to the adoptive relationship. 195 Ga. at 44, 22 S.E.2d at 821.

parents "as if no such act of adoption had been taken" was struck from the law,[17] and a provision was added which declared the child to be "in all respects as if it were a child of natural bodily issue of . . . [the adopting parents]" and capable of enjoying "every right and privilege of a natural child" of such adopting parents.[18]

The amendment of 1949 could certainly have been construed as setting forth a policy of complete substitution of the child into a new family with a corresponding destruction of the old family relationship for legal purposes. However, in *Sears v. Minchew*,[19] the court declined to so construe the statute. There the court held that an adopted child could nevertheless inherit from his natural father on the theory that, while the natural parents were indeed divested of their rights, the statute did not purport to divest the child of any rights whatsoever.[20] Despite the declaration of the statute (as amended in 1949) that the child was to be considered *in all respects* as if it were a natural child of the adopting parents, the court would not hold that the old parental relationship had been terminated and a new one begun.

> This amendment clarified the rights of the child adopted, but it certainly did not intend to take from that child any rights it already had. . . . The argument is also made that the result is that the adopted child would have two sets of parents. Certainly a child would have under this law, natural parents . . . and adopted parents . . . but the law can not abrogate the actual birth and blood relationship between [the child and the natural parents].[21]

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17. Ga. Laws, 1949, pp. 1157-58.

18. *Id.*

19. 212 Ga. 417, 93 S.E.2d 746 (1956).

20. The language . . . which must be studied for an answer to the other question as to whether an adopted child is divested of his right to inherit from its natural parents, is: "the parents of the child shall be divested of all legal rights or obligations from them to the child or from the child to them . . . ." The language is plain and unambiguous whether or not it expresses the legislative intent at the time this legislation was passed. The subject of the sentence is the word "parents," and it refers to the divesting of their legal rights or obligations to the child or from the child. It does not refer to the rights of the child to divest it of anything whatsoever, and . . . such would be necessary to take from the child any rights of inheritance under the laws of descent and distribution. *Id.* at 419, 93 S.E.2d at 748.

The reasoning of the court is perhaps open to criticism. If the parents have been divested of "all legal rights or obligations from them to the child or from the child to them" it necessarily follows that the child has been divested of certain rights also. It seems clear that the parents are relieved of the duty to support the child. If this is true, it follows that the child has been divested of the right to be supported, even though no express reference was made to him. Removal of obligations from a parent seems to imply a necessary divestment of rights from the child to whom the obligations were owed.

21. 212 Ga. at 420, 93 S.E.2d at 748.

In 1950, another statutory impediment to the child's integration into the new family was relaxed. A strict prohibition against inheritance from the child by the adopting parents was replaced by a provision allowing the adopting parents to inherit anything the child acquired subsequent to adoption, except that which he acquired or inherited from blood relatives.[22]

In 1971, the legislature made it clear that adopted children may inherit any estate inheritable by a natural child of the adopting parents, thus allowing adopted children to inherit not only from their adoptive parents, but also through them.[23]

Most of the amendments and cases mentioned above have dealt with inheritance. The rights of an adopted child under the wrongful death statutes have not been considered since the *Porter* case, which was decided prior to the 1949 amendment giving an adopted chipd "every right and privilege" of a natural child of the adopting parents. Dicta in certain cases indicate that some justices have believed that an adopted child may sue for the wrongful death of an adoptive parent,[24] and two authorities on Georgia law apparently share this opinion,[25] but no case so holds.[26] It should be remembered that the court has held that an adopted child may sue for the death of a natural parent.[27] Furthermore, the court has clearly expressed the opinion that the adoption statutes do not divest the child of "anything whatsoever," nor can they abrogate the "birth and blood" relationships which exist.[28] Therefore, should this question arise under the present statutes, the court would have to either allow a potential double recovery, or ignore the plain language of the statute and deny the right to sue for the death of an adoptive parent, or admit that the adoption statutes do indeed divest the child of certain

22. Ga. Laws, 1957, p. 340. This amendment liberalized the rights of the adopting parents to inherit from the adopted child, and impliedly approved the court's holding in *Sears*, since it recognizes that a child may still inherit from blood relatives after adoption. Nevertheless, the amendment seems at odds with the declaration of the same statute that the adopted child shall be considered "*in all respects* as if it were a child of natural bodily issue of petitioner or petitioner's," since a parent could clearly inherit from such a natural child. (Emphasis added).

23. Ga. Laws, 1971, p. 403.

24. *See* Horton v. Brown, 117 Ga. App. 47, 53, 159 S.E.2d 489, 493 (1967); New Amsterdam Cas. Co. v. Freeland, 101 Ga. App. 754, 756, 115 S.E.2d 443, 447 (1960); Limbaugh v. Woodall, 121 Ga. App. 638, 644, 175 S.E.2d 135, 139 (1970).

25. *See* R. STUBBS, GEORGIA LAW OF CHILDREN § 32 at 80 (1969); 1 E. G. L., *Adoption of Persons* § 30 (1960).

26. Limbaugh v. Woodall, 121 Ga. App. 638, 641, 175 S.E.2d 135, 138 (1970).

27. Macon, D. & S. R.R. v. Porter, 195 Ga. 40, 22 S.E.2d 818 (1942).

28. Sears v. Minchew, 212 Ga. 417, 93 S.E.2d 746 (1956).

rights and deny recovery for the death of a natural parent.[29]

In summary, an adopted child may not only inherit from his adoptive parents,[30] but he may also inherit any estate which a natural child of their bodies could inherit.[31] The child's adoptive parents and their natural or adopted children may inherit from the child that which he acquires subsequent to adoption, except that which he acquires or inherits from blood relatives.[32] The natural parent may not inherit from the adopted child,[33] but the adopted child may still inherit from the natural parent.[34] Whether an adopted child may bring an action for the wrongful death of an adoptive parent has never been decided in Georgia,[35] but it has been held that an adopted child may sue for the death of a natural parent.[36] The practical effect of the law is to allow an adopted child to inherit from *two* sets of parents; and, when the broad language of *Sears* and *Porter* is coupled with the present adoption statutes, the logical conclusion is that the adopted child may sue for the wrongful death of *two* sets of parents.

EVALUATION

The basic problem revealed by the history above is that the law regarding the legal consequences of adoption appears to have developed without the influence of a policy which establishes the ends to be accomplished by adoption, and which would give unity and coherence to the resulting legal rights and duties of the parties. There appears to have been no consideration of whether the adopted child *ought* to have duplicitous rights, or whether there *should* be legal ties between the child and his natural family. The question must be asked, at some point, whether this situation is conducive to, or destructive of, the desired ends, and this means obviously that the desired ends must be defined. Unless this is

29. New Amsterdam Cas. Co. v. Freeland, 216 Ga. 491, 117 S.E.2d 538 (1960) suggests that the supreme court might be adverse to double recovery. However, that case arose under title 114 of the Georgia Code, which is the Workman's Compensation title, and required dependency as a prerequisite to recovery, and therefore would not be decisive of any case brought under section 105-1302 of the Code, which is the applicable wrongful death statute. Substantially the same court that decided *Freeland* did not hesitate to allow double inheritance rights for adopted children in *Sears*.

30. GA. CODE ANN. § 74-414 (Supp. 1971).

31. *Id.*

32. *Id.*

33. Alexander v. Lamar, 188 Ga. 273, 3 S.E.2d 656 (1939).

34. Sears v. Minchew, 212 Ga. 417, 93 S.E.2d 746 (1956).

35. Limbaugh v. Woodall, 121 Ga. App. 638, 641, 175 S.E.2d 135, 138 (1970).

36. Macon, D. & S. R.R. v. Porter, 195 Ga. 40, 22 S.E.2d 818 (1942).

done the law will continue to develop inconsistently as the legislature and the court "patch up" the holes in the law and implement various erratic and incongruous notions of what the law is, or should be. Given the court's refusal to infer any policy from the existing statutes, the burden of *clearly* establishing such a policy rests with the General Assembly.

Factors Influencing the Development of the Law

One writer, describing the law of Georgia, said that "much confusion" exists as to the legal status of the child and his foster and natural parents after adoption.[37] There are several identifiable factors which have influenced (or impaired) the development of this area of the law.

The same writer attributed much of the confusion to the failure of the legislature to clearly define the status of an adopted child.[38] Professor Stubbs says that the adopted child in Georgia has no claim on his natural parents "except insofar as the adoption statutes may have *omitted* some such in the alteration of his status."[39] Certainly the General Assembly has contributed to the confusion by failing to adequately articulate the adoption laws so that the resulting relationships are clear. This failure, however, has not been peculiar to the Georgia legislature. One writer has offered the following explanation:

> Since the early English common law had developed in contemplation of a family status based on blood ties, the legislatures were reluctant to recognize the consequences effected by adoption . . . . Legislatures, steeped in the tradition of the common law, were, for the first time, establishing a statutory parent-child relationship. Confusion . . . resulted.[40]

In behalf of the General Assembly, however, it should be said that it has consistently expanded the rights of the adopted child since 1941, and has apparently been trying to facilitate the integration of the child into its new family.

The court has been very reluctant to accept the consequences of adoption. Given a choice, the court has consistently seized upon the omissions of the statutes in formulating its decisions, rather than attempting to infer any policy from them.[41] However, this has been the tendency

37. 24 GA. B.J. 139 (1961).
38. *Id.* at 141.
39. R. STUBBS, GEORGIA LAW OF CHILDREN § 32 at 78 (1969) (Emphasis added).
40. 20 N.Y.U. INTRA. L. REV. 142 (1964).
41. *See* note 20, *supra*, for an illustration of this tendency.

among most courts which have considered such problems. The reasoning has been that only a statute can take away an inheritance right since such rights are conferred by statutes, and further, any such statute must *expressly* take away that right. It is also often stated that adoption statutes, being unknown at common law,[42] are subject to the rule of strict construction.[43]

Another factor which has influenced both courts and legislatures is the desire to protect the adopted child, who, in most cases, is not capable of protecting himself. It is probably true that, because adoption is intended to promote the welfare of children, legislatures and courts have focused upon the interests of the child, and have not given sufficient consideration to the resulting legal relationships between the child and its natural and adoptive parents.[44]

It is evident then that various factors have shaped the law. There has been little co-ordination between the Georgia General Assembly and the judiciary, and the result has been sporadic development with undesirable and insufficiently considered effects. What is needed is a co-ordinated effort to implement a single, logical, and just policy which is conducive to adoptions, and which adequately protects the parties, particularly the child. Surely the court and the legislature have had these objectives in mind. Their failure to develop such a policy appears to stem from a misconception of the essential nature of adoption. It is a statutory parent-child relationship, and references to birth and blood relationships which the law "cannot abrogate" are regressive. It is essential to recognize that adoption laws can and do abrogate birth and blood relationships for all *legal* purposes.

> Adoption is the process by which a child's rights and obligations with respect to his natural parents are terminated and similar rights and obligations with respect to his adoptive parents are created.[46]

The object of adoption laws is to create a new relationship of parent and child—a new family—where none existed before, and to give it all the

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42. 4 VERNIER, AMERICAN FAMILY LAWS § 254 at 279 (1936).

43. Annot., 37 A.L.R.2d 333 (1954) summarizes the cases dealing with the problem of inheritance by an adopted child from its natural parents. Decisions similar to *Sears* have generally resulted.

44. 20 N.Y.U. INTRA. L. REV. 142 (1964).

45. Sears v. Minchew, 212 Ga. 417, 93 S.E.2d 746 (1956).

46. H. CLARK, LAW OF DOMESTIC RELATIONS § 18.9 at 658 (1968). Professor Clark further states that "although this is the ideal and the general purpose of adoption, there still remain surprisingly large gaps between the ideal and the fact. The adopted child is still not legally integrated into his new family for all purposes." *Id.*

legal characteristics of a natural family.[47] This is the assumption upon which the state's adoption policy should be based.

Legal Ties to the Natural Family

It has been shown that the adopted child seems to enjoy "double" inheritance and wrongful death rights. Admittedly, a factor in reaching this result has been the desire to realize the benevolent purposes of adoption by construing the statutes in favor of adopted children in an effort to protect and benefit them. Clearly, however, this result is inconsistent with the fundamental purpose of adoption set forth above, since that definition contemplates the creation of a new relationship and the legal destruction of the old one, rather than a compounding of relationships and rights, which is the case in Georgia today. However, it is possible to criticize the existence of such "double" rights on other grounds than the fundamental one that they are inconsistent with accepted understanding of the purpose of adoption.

While it is admitted that adoption statutes should be construed "liberally" for the protection and benefit of the child, it is questionable whether the law should leave an adopted child in a *better* position than an unadopted child. Surely an adopted child deserves all of the rights and benefits of an unadopted child, but it is not clear why the adopted child should have *more*. The law should give such a child all of the rights which children in a normal parent-child relationship have, but it is difficult to justify the inequity of awarding an adopted child *twice* the inheritance and wrongful death rights enjoyed by children who have not been adopted.

Furthermore, the existence of legal ties between the natural family and the adopted child is neither in the best interests of the adoptive parents, nor the state, nor the child, for such ties increase the possibility of interference with the new family relationship. The law cannot ultimately shield the child from the truth as to his biological parentage; but, considering the responsibilities and obligations undertaken by the adopting parents, and the affection which almost surely develops between these parents and their adopted children, fairness to them would seem to require that the law *minimize* the possibility of interference with the relationship into which they have put so much. The secrecy surrounding adoption reports and records of proceedings indicates a reali-

47. Bilmes, *The Adoption Committee Report of the Family Law Section*, 40 N.Y.S.B.J. 236, 237 (1968); Infausto, *Annual Review of Decisions and Statutory Revisions Affecting Adoptions*, 3 FAMILY L.Q. 123, 134 (1969).

zation of the need to protect the new relationship.[48] The law should further protect and strengthen this relationship by removing the remaining legal ties between the child and its natural family.

By so minimizing the potential for interference with the new family, the state would protect its own interest in encouraging adoptions. Parents would feel more secure about entering such a relationship if they knew that the child would be the same as theirs, and that the natural parents or relatives could not later influence the child's life. By completely terminating the natural relationship for all legal purposes the state would make adoptions more attractive to potential parents.

Finally, the best interests of the child are served, not by awarding him duplicitious rights, but by providing him with a stable family and allowing him to become an integral part of that family, just as if he were a natural child.[49] The existence of such legal ties to the natural family is *antagonistic* to a policy of facilitation of the child's integration into a new family unit. Such total integration of the child into the adoptive family necessarily means depriving him of rights, but it also means replacing them with new and manifestly more beneficial rights and duties towards the new family. The court has emphasized "birth and blood relationship[s]," but the relationship of "parent and child" is more than a mere biological fact.[50] The child should have but one set of parents before the law, and they should be the adoptive parents, who have accepted the responsibilities of caring for, providing for, and loving the child.

Trends

Generally

The direction of the law is toward strengthening the new family unit. "[T]he legislatures and the courts . . . are not only extending to the

48. GA. CODE ANN. § 74-419 (Rev. 1964). Records of adoption proceedings are sealed and locked and only a party of interest may examine them, and then only by court order, issued only when good cause is shown.

49. *See* Binavince, *Adoption and the Law of Descent and Distribution: A Comparative Study and a Proposal for Model Legislation*, 51 CORN. L.Q. 152 (1966), for an extensive treatment of the effects of adoption. The basic argument presented is that all traces of the artificial nature of adoption should be consistently removed with adoption creating for all purposes a "natural and legitimate filiation." Almost every authority cited has expressed the opinion that the purpose of adoption is to create a new parental relationship with the child fully integrated into the new family. *See* nn. 37, 44, 46 & 47, *supra*. Since it is axiomatic that adoption is intended to promote the welfare of children, it follows that these authorities believe that the complete integration of the child into a new family is best for the child.

50. New Amsterdam Cas. Co. v. Freeland, 216 Ga. 491, 494, 117 S.E.2d 538, 540 (1960).

adoptive family all of the legal incidents of a natural family, but they are also increasingly divesting the natural family of all legal connections with the child."[51] Professor Clark points out that "the statutes of the various states have been changing rather rapidly in recent years, usually in the direction of adding provisions specifically giving broader effect to the adoption, and eliminating legal ties with the natural family."[52] The courts apparently have begun to recognize the purpose of adoption, which in turn has resulted in abandonment of rules of strict construction in favor of a more liberal construction designed to effectuate that purpose.[53]

Inheritance Rights

A "growing number of states" have passed statutes which specifically terminate the child's right to inherit from his natural parents.[54] The trend is towards modernizing the inheritance laws in order to make them consonant with the new family relationship created by adoption.[55] Georgia has been moving in this direction to some extent by expanding the inheritance rights of the adopted child by statute; but *Sears* places Georgia among the states where the law is not in keeping with the modern concept of adoption.

There is also a statutory inheritance provision which impedes the building of a new family unit. The adopting parents are prohibited from inheriting anything from the child which it acquires from blood relatives. The question arises as to who *can* inherit from the child that which the adopting parents cannot. Presumably the natural relatives have lost their right to inherit from the child in light of *Lamar*, and the adoption statute itself, which specifically divests the natural parents of all rights and duties from or towards the child. Furthermore, the provision that the child stands towards all persons other than the parents as if no adoption had occurred has been specifically stricken. This would seem to divest all natural relatives of their inheritance rights, but the inference of the provision prohibiting inheritance by the adopting parents of anything acquired from blood relatives is that these blood relatives can inherit such property from the child. This seems anomalous, at least; but, more importantly, it is another impediment to the integration and

51. Infausto, *Annual Review of Decisions and Statutory Revisions Affecting Adoptions*, 3 FAMILY L.Q. 123, 135 (1969).

52. H. CLARK, LAW OF DOMESTIC RELATIONS § 18.9 at 662 (1968).

53. 20 N.Y.U. INTRA. L. REV. 142, 143 (1964).

54. H. CLARK, LAW OF DOMESTIC RELATIONS § 18.9 at 661 (1968).

55. *Id.* at 658.

stabilization of the child in the adoptive family. Presumably this proviso is to protect the child from exploitation. But considering the nature of modern adoption procedures—investigations, reports, and broad judicial discretion as to the child's best interests—it would seem that the child could be adequately protected from such exploitation.[57] In an earlier day, perhaps such a provision served a purpose,[58] but it has now outlived that purpose. The law should not facilitate the possible disruption of the child's new life by allowing such statutory provisions to exist without good reason.

Wrongful Death

There are few reported cases involving wrongful death actions by adopted children, and the wording of the applicable statutes has perhaps been determinative in most.[59] Five states have allowed or, apparently, will allow, adopted children to bring an action for the wrongful death of an adoptive parent.[60] One state has denied this right.[61]

Until 1970, no case held that adoption cut off a child's right to sue for the tortious homicide of its natural parent. Two states had held that adoption could reduce the recovery, even to nothing; and two states had held that an adopted child could still recover for the homicide of a natural parent.[62] In 1970, an important case involving adoption and wrongful death rights was decided in Florida.[63] The Florida wrongful

56. Ga. Laws, 1957, p. 340.

57. *See* GA. CODE ANN. §§ 74-401 *et seq.* (Rev. 1964).

58. This provision, enacted in 1957 (Ga. Laws, 1957, p. 340) is really a modification of a provision prohibiting the adopting father from ever inheriting from the adopted child. *See* 188 Ga. at 276, 3 S.E.2d at 658, for a history of the original provision, indicating that it first appeared in the code of 1863, section 1739. The safeguards that now exist were not enacted, for the most part, until 1941. *See* Ga. Laws, 1941, p. 303.

59. Annot., 94 A.L.R.2d 1237 (1964).

60. Moon Distrib., Inc. v. White, 245 Ark. 627, 434 S.W.2d 56 (1968); McDavid v. Fiscar, 342 Ill. App. 673, 97 N.E.2d 587 (1951); McKeown v. Argetsinger, 202 Minn. 595, 279 N.W. 402 (1938), *followed in* Martz v. Revier, 284 Minn. 166, 170 N.W.2d 83 (1969); Ransom v. New York, C. & St. L. Ry., 93 Ohio St. 223, 112 N.E. 586 (1915); Omaha Water Co. v. Schamel, 147 F. 502 (8th Cir. 1906). *See* S. SPEISER, RECOVERY FOR WRONGFUL DEATH § 10.6 (1966).

61. Kruse v. Pavlovich, 6 La. App. 103 (1927).

62. Recovery reduced to nothing: Rust v. Holland, 15 Ill. App. 2d 369, 146 N.E.2d 82 (1957); Smelser v. Southern Ry., 148 F. Supp. 891 (D.C. Tenn. 1956). Recovery allowed: Bernard v. Dallas Ry. & Terminal Co., 63 F. Supp. 344 (D.C. Tex. 1945); Macon, D. & S. R.R. v. Porter, 195 Ga. 40, 22 S.E.2d 818 (1942). *See* Annot., 67 A.L.R.2d 745 (1959); *see also* S. SPEISER, RECOVERY FOR WRONGFUL DEATH § 10.7 (1966). Differences in statutes and in the interpretation thereof probably account for the different results.

63. Powell v. Gessner, 231 So.2d 50 (Fla. App. 1970), *cert. denied*, Gessner v. Powell, 238 So.2d 101 (Fla. 1970).

death[64] and adoption statutes[65] were substantially the same as Georgia's, except that Florida retained by statute the right of the adopted child to inherit from its natural parents.[66] The court nevertheless viewed adoption as a complete legal and moral severence of the natural parent-child relationship, except as to inheritance. Thus the adopted child could not bring a wrongful death action for its natural parent. The court held that the adoption statute placed the child in exactly the same position as a natural child, and that the logical corollary was that the former relationship between the child and its natural father was removed. The court discounted any legislative intention to allow recovery for the death of natural *and* adoptive parents. The legislature was said to have intended to give the right of recovery for the death of the person with whom there existed, at the time of death, the relationship of parent and child; and, after an adoption, such relationship was found not to exist between an adopted child and its natural parent. The court further reasoned that since wrongful death statutes are basically compensatory, and, since adoption ends all obligations of the parent towards the child, the child sustains no compensible loss. The Florida court, in considering the Georgia case of *Porter*, approved the concurring opinion,[67] but refused to accept the broad line of reasoning of the majority, which was that the adoption statutes do not take away any rights of an adopted child, but instead add to his rights.

The approach of the Florida court is in contradistinction to the approach to such problems taken by the Georgia court, which has emphasized rules of construction, refused to infer any legislative policy from the adoption statutes, and generally rejected the accepted view of adoption.[68]

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64. FLA. STAT. ANN. § 768.02 (1964).

65. FLA. STAT. ANN. § 63.151 (1969).

66. *Id.* Only thirteen states retain this right in the child by statutory provision. *See* H. CLARK, LAW OF DOMESTIC RELATIONS 661 n.24 (1968). *See also* Binavince, *Adoption and the Law of Descent and Distribution: A Comparative Study and a Proposal for Model Legislation*, 51 CORN. L.Q. 152, 164 n.47 (1966).

67. 195 Ga. at 43, 22 S.E.2d at 820.

68. This criticism of the Georgia Supreme Court is intended to disparage neither judicial restraint nor rules of construction. Fairley, *Inheritance Rights Consequence to Adoption*, 29 N.C. L. REV. 227, 244 (1951) points out that legislatures should determine the extent and manner in which rights should be affected by adoption. However, it seems that the court has been more reluctant than necessary to recognize the purpose and effect of adoption. Of course, the effect of adoption is what the legislature says it is, since adoption is an entirely statutory creation; but, it would not do violence to the Georgia statutes to construe them to accomplish a complete substitution of parental relationships with a corresponding transfer of *all* legal rights and duties, except where the statutes indicate otherwise. *See* 4 VERNIER, AMERICAN FAMILY LAWS § 261 at 406 (1936). This is the construction given very similar statutes by the Florida courts.

CONCLUSION

The adoption laws of Georgia have not been effectively influenced by an adoption policy designed to protect the new family relationship which it is the purpose of adoption to create. The failure to adequately protect and promote the growth of this new relationship is contrary to the best interests of the child, the adopting parents, and the state interest in encouraging adoption. Georgia should clearly commit itself to a policy of complete integration of the adopted child into a new family, with a corresponding termination of all legal ties between the child and its biological family.

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