
NEW MEXICO LAW REVIEW

Volume 13
Issue 1 *Winter 1983*

Winter 1983

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ADOPTION—INTESTATE SUCCESSION—The Denial of a Stepparent Adoptee's Right to Inherit from an Intestate Natural Grandparent: *In Re Estate of Holt*

INTRODUCTION

In *In re Estate of Holt*[1] the New Mexico Supreme Court denied a grandchild, Tammy Brady, the right to inherit from her intestate natural paternal grandmother because Tammy had been adopted by her stepfather prior to her grandmother's death. The court ruled that the fact that the adoption occurred after her natural father's death did not except Tammy from the general rule that adoption severs all inheritance rights between an adopted child and the natural parents.[2]

Provisions in the Uniform Probate Code[3] and the Revised Uniform Adoption Act[4] allow a child to inherit through her deceased parent, despite adoption by her stepparent. New Mexico, however, has adopted neither of these specific provisions. The exceptions proposed in the Uniform Probate Code and the Revised Uniform Adoption Act recognize that policy

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1. 95 N.M. 412, 622 P.2d 1032 (1981) [hereinafter cited as *Holt*].

2. *See* discussion of N.M. Stat. Ann. § 40-7-15(B)(2) (1978) *infra*, at text accompanying note 13.

3. Unif. Probate Code, § 2-109(1), 8 U.L.A. 287 (1975) [hereinafter cited as U.P.C.] provides:

> If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession, by, through, or from a person, . . . an adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and *either* natural parent.

(Emphasis added). Prior to 1975 this section excepted only the natural parent married to the adopting parent. The section concluded "between the child and *that* natural parent" (emphasis added). New Mexico adopted the earlier version of "that natural parent." N.M. Stat. Ann. § 45-2-109(A) (1978).

4. Revised Unif. Adoption Act, § 14, 9 U.L.A. 17 (1971) [hereinafter cited as R.U.A.A.] provides:

> (a)(2) A final decree of adoption [has the effect of creating] the relationship of parent and child between petitioner and the adopted individual, as if the adopted individual were a legitimate blood descendant of the petitioner, for all purposes including inheritance. . . .
>
> (b) Notwithstanding the provisions of subsection (a), if a parent of a child dies without the relationship of parent and child having been previously terminated and a spouse of the living parent thereafter adopts the child, the child's right of inheritance from or through the deceased parent is unaffected by the adoption.

Subsection (b) was not in the original version of the Uniform Adoption Act, but was added in the Revised Act of 1969. Whether a state has enacted this exception often depends upon when the state adopted the Uniform Adoption Act. The New Mexico exception, adopted in 1971, contains ambiguous wording: "[I]f an individual dies before the parent-child relationship between the deceased and any other individual is terminated, no subsequent adoption proceedings affect the right of inheritance, if any, through or from the deceased individual." N.M. Stat. Ann. § 40-7-15(B)(2) (1978).

considerations supporting sealed adoption records and a complete substitution of family relationships are not often applicable to stepparent adoptions. Because the majority of adoptions granted in New Mexico each year are to persons related to the child (parent/stepparent or other relative),[5] the determination of whether adoption always severs intestate inheritance rights is a vital question.

This Note reviews the New Mexico court's analysis of *Holt* and compares that analysis with the model provisions of the uniform adoption and probate codes and with decisions and statutes of other states. The focus is on the historical development of adoption policies and adoptees' inheritance rights, and on the need for statutory change in New Mexico's intestacy laws.

SUMMARY OF THE CASE

The facts of *Holt* were not disputed. In 1971, Tammy Anne Brady's natural father died. In 1975, her natural mother's second husband, Steven Brady, adopted her. In 1979, her paternal grandmother, Ruby Holt, died intestate.[6]

The District Court of Eddy County entered an order of intestacy and a determination of heirship in favor of Ruby Holt's seven surviving children. Tammy Brady, by and through her parent and natural guardian, Ann Holt Brady, petitioned the court to set aside its order and to recover estate assets distributed to these seven heirs. The district court granted her summary judgment. The Commerce Bank and Trust Company, personal representative of Ruby Holt's estate, appealed.[7] The New Mexico Supreme Court reversed, denying Tammy Brady's right to inherit from her intestate natural grandmother.[8]

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5. In 1980, an estimated 55% (600 out of 1085) of the adoptions granted in New Mexico were to natural parent/stepparent families. 1980 N.M. Human Services Dep't, Soc. Services Div. Ann. Rep. The estimated 600 includes stepparent adoptions where one natural parent was deceased as well as where the natural parents had been divorced. By contrast, in 1965, only 39% of all adoptions were by natural parent/stepparent families (379 out of 979). *Adoptions in New Mexico*, 1965 N.M. Dep't Public Welfare, Div. Child Welfare Ann. Rep. This change suggests that when formulating adoption policies, the legislature should consider stepparent adoptions equally as important as adoptions by an entirely "new" set of parents.

The 1965 report shows that in 54 cases of stepparent adoptions, one natural parent was dead. In 260 cases the natural parents were divorced, and the non-custodial parent consented to the adoption. No similar breakdown is available for 1980. The R.U.A.A. exception would permit inheritance only in the relatively small number of cases where a natural parent is deceased prior to the stepparent adoption. Tammy Brady's situation in *Holt* would fall within this exception. *See supra* note 4. The U.P.C. exception would permit inheritance whether the stepparent adoption occurred after either the death of one natural parent or the divorce of the natural parents. *See supra* note 3.

6. 95 N.M. at 413, 622 P.2d at 1033.

7. *Id.*

8. *Id.* at 415, 622 P.2d at 1035.

Brady argued that although N.M. Stat. Ann. §45-2-109(A) (1978) denies the right of a natural parent to inherit from the adopted child, the statute does not expressly deny the right of the adopted child to inherit through her natural father when his death occurs before her adoption.[9] The pertinent language of the statute provides that to establish a relationship of parent and child for intestate inheritance by, through or from a person:

> A. an adopted person is the child of an adopting parent and not of the natural parents, and in the event of the death of the adopted child, his estate shall pass as provided by law for natural born children of the same family, all to the exclusion of the natural parents of such child. . . .[10]

Brady argued that a strict construction of the statute would not bar her from inheriting through her deceased natural father.[11] The court found, however, that it was the "clear meaning" of the statute that without exception all legal rights between natural parent and adopted child are severed when the child is adopted.[12]

Brady further argued that N.M. Stat. Ann. §40-7-15(B)(2) (1978), which establishes the effect of adoption on inheritance rights, preserved her right to inherit through her father. The statute states: "if an *individual* dies before the parent-child relationship between the deceased and any other individual is terminated, no subsequent adoption proceedings affect the right of inheritance, if any, through or from the deceased individual."[13] Brady argued that the statute allowed inheritance through or from a deceased parent when the parent dies before the parent-child relationship is severed by adoption.[14] The court rejected this argument and construed the word "individual" in the statute to refer to the grandmother, not to Brady's deceased natural father. Thus, adoption prior to the grandmother's death severed Brady's inheritance rights through her father.[15] The

9. *Id.* at 413–14, 622 P.2d at 1033–34.

10. N.M. Stat. Ann. §45-2-109(A) (1978).

11. 95 N.M. at 414, 622 P.2d at 1034. A strict construction would require any change from the consanguinal pattern of intestate inheritance to be expressly set out in the descent and distribution statutes. In N.M. Stat. Ann. §45-2-109 (1978), the right of a natural parent to inherit from the adopted child is expressly cut off, but the statute does not state the converse, that an adopted child cannot inherit from or through the natural parents. Thus in a strict construction of the statute, Brady's right to inherit from or through her natural father is not expressly prohibited. A liberal construction would construe the adoption statutes with the intestacy statutes and seek to fulfill the legislative intent to benefit the adopted child. Kuhlmann, *Intestate Succession by and from the Adopted Child*, 28 Wash. U.L.Q. 221, 234–37 (1943) [hereinafter cited as Kuhlmann].

12. 95 N.M. at 414, 622 P.2d at 1034.

13. N.M. Stat. Ann. §40-7-15(B)(2) (1978) (emphasis added).

14. 95 N.M. at 414, 622 P.2d at 1034.

15. *Id.*

court stressed that the estate to be distributed by intestacy was the grandmother's, not the natural father's, and that at the time of the grandmother's death, Brady had already been adopted.[16] A contrary decision, the court noted, would have resulted in a dual inheritance because the child would inherit through both the natural father's bloodline and the adoptive father's bloodline.[17]

In reaching its decision, the court relied on the New Mexico public policies of (1) treating the adopted child as the child of the adopting parents for all purposes and of (2) terminating all legal rights and obligations between the natural parents and the child.[18] The court found that stepparent adoption did not justify an exception to the general treatment of adopted children's inheritance rights.[19]

DISCUSSION

A. Reconciling Adoption Laws with Descent and Distribution Statutes

To understand the court's choices in *Holt*, a survey of the piecemeal development of adoptees' inheritance rights is necessary. Developments in adoption policy and laws prompted changes in the intestacy statutes. Although there appears to be a general trend, the changes have not been consistent from state to state. In addition, legislatures have not always made choices between intestacy policies and evolving adoption policies in the best interests of the adoptee.[20] The underlying conflict, as stated in an early New Mexico case, has not changed: "We are confronted with the task of considering the statutes of descent and distribution and determining how far we may read into that statute the provisions of the statutes of adoption."[21]

Development of adoption law in New Mexico has followed the general national trend.[22] Initially, the adoption statutes reflected the concern that natural parents should not retain any legal control or management of the adopted child.[23] The first statutes did not mention the effects of adoption

16. *Id.*

17. *Id.*

18. The *Holt* court reaffirmed the relevant public policy as first stated in Delaney v. First Nat'l Bank in Albuquerque, 73 N.M. 192, 386 P.2d 711 (1963).

19. 95 N.M. at 414–15, 622 P.2d at 1034–35.

20. For a thorough survey of the development of adoption law in Europe and America, see Binavince, *Adoption & the Law of Descent and Distribution: A Comparative Study & a Proposal for Model Registration*, 51 Cornell L.Q. 152 (1966) [hereinafter cited as Binavince]. Kuhlmann, *supra* note 11, surveys the stages of development in American adoption law.

21. Dodson v. Ward, 31 N.M. 54, 59, 240 P. 991, 993 (1925).

22. *See* Binavince, *supra* note 20, at 158–79; Kuhlmann, *supra* note 11, at 224–32.

23. "The parents and relatives of an adopted child are from the time of its adoption relieved of all parental duties toward and all responsibility for the child so adopted, and shall have no right to or control over it." 1893 N.M. Laws ch. 32, § 13.

on inheritance rights.[24] Early cases and statutes often described adoption as a contract between the state and the adopting parents to support and maintain the child.[25]

Early adoption statutes did not expressly contradict the consanguinity principle of intestate succession. Through the first half of this century, courts generally held that the adopted child inherited from and through the natural bloodline.[26] Gradually, amendments to the adoption statutes severed all of the adoptee's inheritance rights by, from, and through the natural bloodline.[27] By the 1970's in many states, including New Mexico, the legislatures had completely substituted the adopted bloodline for the natural bloodline.

The earliest inheritance provisions for adoptees did not remove the adopted child from the natural bloodline, but granted additional rights.[28] The adopted child could inherit from both the natural and the adopting parents. In later statutes the adopting parents could inherit from the adopted

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24. The only legal effect usually provided for was the changing of the child's name. *See* 1893 N.M. Laws ch. 32, § 12.

25. For the purpose of reducing the number and curtailing the expense of maintenance of orphans now or hereafter in said orphanage, any person found competent by the court may adopt any orphan in said orphanage, by fillng [sic] a petition therefor in the district court . . . . Any time prior to the filing of any such petition, any orphan in said orphanage, with the consent of the governing authority of said orphanage, may be adopted by any competent person, by contracts of adoption entered into between said governing authority and the person desiring to adopt such orphan . . . . No child adopted hereunder shall thereafter be maintained in said orphanage at public expense.

1921 N.M. Laws ch. 192, § 4.

South Dakota is the only state still adhering to this contract theory. *See* Harrell v. McDonald, 90 S.D. 482, 242 N.W.2d 148 (1976).

26. In Dodson v. Ward, 31 N.M. 54, 240 P. 991 (1925), the adopting parent predeceased the adopted child, who died intestate. The father of the adopting parent and the child's natural mother, who had consented to the adoption, both claimed heirship. The New Mexico court held that the child's estate should pass to his natural mother: "[in] our descent and distribution statute . . . the dominant idea of blood relationship is the lodestone of inheritable capacity, except where changed by statute." 31 N.M. at 60, 240 P. at 993.

Some state statutes still do not sever the adopted child from the natural bloodline for purposes of intestate inheritance. *See infra* note 52. The state legislatures of Texas and Utah have been criticized for not following the recent trend of complete substitution of the adoptive line for the natural bloodline. *See,* Note, *Inheritance Rights of Parties to the Adoption of a Child: Conflicts Between the Texas Family Code and the Texas Probate Code,* 28 Baylor L. Rev. 432 (1976); Note, *Intestate Succession and Adoption in Utah: A Need for Legislation,* 1969 Utah L. Rev. 56. Each commentator points out the inequities imposed on the adopted child as a result of out-moded legislative attitudes.

27. Binavince, *supra* note 20, at 173–79; Kuhlmann, *supra* note 11, at 224–27.

28. Kuhlmann, *supra* note 11, at 225–27, 232. *See, e.g.,* Me. Rev. Stat. Ann. tit. 19, § 535 (1964) (repl. 1981):

If the person adopted died intestate, his property acquired by himself or by devise, bequest, gift or otherwise before or after such adoption from his adopting parents or from the kindred of said adopting parents shall be distributed according to title 18, the same as if born to said adopting parents in lawful wedlock; and property received by devise, bequest, gift or otherwise from his natural parents or kindred shall be distributed . . . as if no act of adoption had taken place.

child.[29] In some instances, the adopted child could inherit from the adopting parents but not from the adopted kindred.[30] The natural parents' right to inherit from the adopted child was cut off, but the adopted child retained the right to inherit from and through the natural parents.[31] The most recent major change, the complete substitution of the adoptive line for the natural bloodline, follows the policy of giving the adopted child a completely new start in a new family group.[32] This has become the general rule. Current New Mexico law treats the adopted child as the legitimate blood descendant of the adopting parents for all purposes.[33] All rights from the

29. The New Mexico legislature first mentioned adoptees' inheritance rights in an act providing for adoption of adults: "Upon the granting of the adoption, the adult person shall take the family name of the person adopting and shall be entitled to all the rights, including the right to inherit as now provided by law, of the natural child of such adopting person." 1933 N.M. Laws ch. 62, § 7.

In 1945, the legislature added a provision to the statutes of Descent and Distribution to enable adopted children to inherit: "Whenever a child has been legally adopted, such child shall inherit from the adopting parents, and each of them, to the same extent as if he were a natural child of the adopting parents." 1945 N.M. Laws ch. 16, § 1. In 1951, the legislature amended the 1945 act to include the right of the adopting parents to inherit from the adopted child. 1951 N.M. Laws ch. 62, § 1.

30. In an early case, Hockaday v. Lynn, 200 Mo. 456, 98 S.W. 585 (1906), the judge, after reviewing the history of adoption, concluded that in common law jurisdictions "[i]nheritance flows naturally with the blood" unless expressly denied by statute. The case held that adoption granted inheritance rights from, but not through, the adopted parents. *Id.* at ___, 98 S.W. at 587.

The U.P.C. Committee, recognizing the resistance to full inheritance rights for the adopted child, provided a choice in the 1958 Model Code section on the effect of the final adoption decree:

> (1) After the final decree of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child [and the kindred of the adoptive parents]. From the date of the final decree of adoption, the child shall be entitled to inherit real and personal property from [and through] the adoptive parents in accordance with the statutes of descent and distribution, and the adoptive parents shall be entitled to inherit real and personal property from and through the child in accordance with said statutes.

U.P.C. § 12 (1958). For a detailed discussion of why California changed to a complete substitution of the adopted family line for the natural family line, see *In re* Garey's Estate, 214 Cal. App. 2d 39, 29 Cal. Rptr. 98 (Cal. Dist. Ct. App. 1963). The court in *Garey* denied the right of a grandchild adopted after the death of her father to inherit from her intestate natural paternal grandmother.

31. This question was litigated in New Mexico in *In re* Estate of Shehady, 83 N.M. 311, 491 P.2d 528 (1971). *See infra,* text accompanying notes 35–38.

32. *See* Smith & Fawsett, *Florida Adoption and Intestate Succession Laws: A Legal Paralogism,* 24 U. Fla. L. Rev. 603, 606–608 (1972) [hereinafter cited as Smith & Fawsett]. Florida law has changed since the authors wrote that article. *See infra* note 53.

33. N.M. Stat. Ann. § 40-7-15 (1978) provides:

> A. A judgment of adoption, whether issued by the court of this state or any other place, has the following effect as to the matters within the jurisdiction of or before the court: . . . (2) to create the relationship of parent and child, between the petitioner and the individual to be adopted, as if the individual adopted were a legitimate blood descendant of the petitioner for all purposes, including inheritance and applicability of statutes, documents and instruments, whether executed before or after the adoption is adjudged, which do not expressly exclude an adopted individual from their operation or effect.

natural bloodline are severed. At issue in *Holt* was the meaning and applicability of New Mexico's exception to this general rule.[34]

B. Recent New Mexico Precedent and the Holt Decision

Prior to *Holt*, the New Mexico Supreme Court in *In re Estate of Shehady*,[35] had considered the right of children adopted by their stepfather to inherit from their intestate natural father. In *Shehady* both natural parents had remarried. The stepfather adopted the children nine years after their natural parents were divorced. The natural father died intestate twenty-eight years later, survived by his second wife, but by no other natural or adopted children.[36] The court noted that New Mexico statutes expressly provided that an adopted child was not prohibited from succeeding to the estate of the natural parent.[37] Notwithstanding those statutory provisions, the court held that the adopted children could not inherit from their natural father. The court chose modern adoption policy over consanguinity theory, affirming the complete substitution of the adopted relationship for the natural relationship and the severance of all legal ties between natural parents and adopted child, even where adoption was by a stepparent.[38]

The issues distinguishing *Holt* from *Shehady* were two. The first difference was that the adoption in *Holt* occurred after the natural parent's death. The second was the possible applicability to *Holt* of N.M. Stat. Ann. §40-7-15(B)(2) (1978).[39] The *Holt* court resolved both issues by reasserting that adoption severs all legal rights, including inheritance. Because the paternal grandmother in *Holt* died after Brady's adoption, the court held that Brady could not inherit from that natural bloodline. To decide otherwise, the court said, would have allowed Brady a dual inheritance from and through her stepfather and through her natural father.[40]

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34. N.M. Stat. Ann. §40-7-15(B)(2) (1978), quoted *supra*, text accompanying note 13.

35. 83 N.M. 311, 491 P.2d 528 (1971).

36. *Id.*

37. *Id.* at 313, 419 P.2d at 530. *See* N.M. Stat. Ann. §§ 22-2-10, 22-2-19, 29-1-17 (1953). The current statutes, N.M. Stat. Ann. §§ 40-7-15, 45-2-109 (1978), although substantially different in wording, did not change the treatment of the adopted child as the natural child of the adopting parents for all purposes, including intestate inheritance.

38. 83 N.M. at 311–14, 491 P.2d at 528–31.

39. 95 N.M. at 413–14, 622 P.2d at 1033–34. The legislature enacted N.M. Stat. Ann. § 40-7-15(B)(2) (1978) as part of a comprehensive adoption act which repealed N.M. Stat. Ann. §§ 22-2-2 to -19 (1953). The act became effective July 1, 1971. *Shehady* was decided under the 1953 adoption statutes.

40. The court allowed "a familiar rule of statutory construction that all of the provisions of a statute, together with other statutes in pari materia, must be read together to ascertain the legislative intent." 95 N.M. at 414, 622 P.2d at 1034 (quoting Allen v. McClellan, 75 N.M. 400, 402, 405 P.2d 405, 406 (1967)). The court concluded that the legislative intent of all the adoption statutes was to substitute completely the adopting family for the natural family line. 95 N.M. at 415, 622 P.2d at 1035.

The court's construction of Section 40-7-15(B)(2) (1978) severely limits its applicability as an exception. In pertinent part, the statute provides that "if an individual dies before the parent-child relationship between the deceased and any other individual is terminated, no subsequent adoption proceedings affect the right of inheritance, if any, through or from the deceased individual."[41] According to the *Holt* decision, adoption of a child after one natural parent's death severs intestate inheritance *through* that parent. Thus, only heirship *from* the deceased parent's estate is preserved. The court's interpretation, in effect, rewords the statute to state: "If a parent dies before the parent-child relationship is terminated, no subsequent adoption proceedings affect the right of inheritance, if any, from the deceased parent but inheritance through that parent is severed."

In *Holt,* the court noted that *In re Estate of Topel,*[42] a Wisconsin case cited with approval in *Shehady,* involved a fact pattern identical to Brady's case. In *Topel,* the Wisconsin Supreme Court denied heirship to three grandchildren who were adopted after their natural father's death but prior to the intestate death of their paternal grandfather.[43] The *Holt* court found the Wisconsin statute similar in intent and effect to the New Mexico statute.[44]

The *Topel* case was decided in 1966. In 1969, the Wisconsin legislature revised the probate code and added a specific exception which permitted inheritance by the adopted child in circumstances like those in *Topel.*[45] The legislative commentary following the revised Wisconsin statute justified the change, reasoning that usual adoption policies did not apply to stepparent adoptions: "preserving inheritance rights by the adopted child is not likely to present any difficulties either in proving heirship or in embarrassment to the adoptive parents."[46]

The Wisconsin exception, similar to that of the Revised Uniform Adoption Act provisions,[47] recognizes that adoption by a stepparent is different from adoption by a completely new set of parents. Adoption records are not sealed and secrecy is not necessary to protect the adopting family from interference or custody challenges by the natural parents or kin.[48]

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41. N.M. Stat. Ann. §40-7-15(B)(2) (1978).

42. 32 Wis.2d 223, 145 N.W.2d 162 (1966).

43. *Id.*

44. 95 N.M. at 415, 622 P.2d at 1035.

45. Wis. Stat. Ann. §851.51(2)(b) (West 1971). With this statute, the Wisconsin legislature reversed the *Topel* precedent. The commentary to the statute clarified the legislative intent to treat the stepparent adoptee differently from the child adopted by a new set of parents. *See infra* text accompanying note 46.

46. Wis. Stat. Ann. §851.51 (West 1971), comment (1969).

47. *See supra* note 4.

48. The Ohio legislature has also adopted a statutory exception that reverses previous court decisions. In Frantz v. Florence, 72 Ohio Law Abstract 222, 131 N.E.2d 630 (1954), the Ohio Court of Common Pleas denied the right of an adopted child to take by intestate succession from his natural

The position of other states on whether to except a stepparent adoptee from the general rule on inheritance severance is evenly divided.[49] One-half of the jurisdictions completely sever all inheritance rights between the adopted child and the natural parents and kindred, substituting full inheritance from and through the adopting parents.[50] Adoption does not sever the right of the adopted child to inherit from and through the natural parents in ten states.[51] In fifteen states, a statutory exception permits an adopted child to inherit through or from a natural parent after adoption by the spouse of the other natural parent.[52]

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paternal grandfather where the child had been adopted by his stepfather after the death of his natural father. The court commented that "While [severance of inheritance from and through natural parent] is a harsh rule under the circumstances herein, the social purpose or lack of purpose of the enactment of the statute by the Legislature is not for the consideration of this Court." *Id.* at ___, 131 N.E.2d at 632. In 1977 Ohio amended its adoption statutes, conforming to the U.R.A.A. exception. *See* Ohio Rev. Code Ann. § 3107.15 (Page 1980).

49. *See generally* Annot., 60 A.L.R.3d 631 (1974).

50. The pertinent statutes in these twenty-five jurisdictions are: Ariz. Rev. Stat. Ann. § 8-117 (1975); Cal. Prob. Code § 257 (West 1956); Colo. Rev. Stat. §§ 15-11-109, 19-4-113 (1973); Del. Code Ann. tit. 12, § 508 (Repl. 1979); D.C. Ann. § 16-312 (1981); Hawaii Rev. Stat. § 560:2-109(1) (Supp. 1981); Idaho Code § 16-1509 (1979); Ind. Code Ann. § 29-1-2-8 (Burns 1972); Kan. Stat. Ann. § 59-2103 (1975); Ky. Rev. Stat. Ann. § 199.520(2) (Baldwin 1981); Md. Est. & Trusts Code Ann. § 1-207(a) (1974); Mich. Comp. Laws Ann. § 700.110 (1980); Miss. Code Ann. § 93-17-13 (1972); Mo. Ann. Stat. § 453.090 (Vernon 1977); Mont. Code Ann. § 40-8-125 (1979); Neb. Rev. Stat. § 30-2309 (Supp. 1974); Nev. Rev. Stat. § 127.160 (1979); N.H. Rev. Stat. Ann. § 170-B:20 (1978); N.Y. Dom. Rel. Law § 117 (McKinney 1977); N.C. Gen. Stat. § 29-17 (Repl. 1976); S.C. Code § 15-45-130 (1976); Tenn. Code Ann. § 36-126 (Supp. 1976); Vt. Stat. Ann. tit. 15, § 448 (1974); Wash. Rev. Code § 26.32.140 (1961); W. Va. Code § 48-4-5 (1976).

51. Ala. Code § 43-4-3 (1975); Ill. Ann. Stat. ch. 110½, § 2-4 (Smith-Hurd 1978) (*see In re* Estate Cregar, 30 Ill. App. 3d 798, 333 N.E.2d 540 (1975)); Iowa Code Ann. § 633.223 (West Supp. 1981) (*see* Comment, *The Adopted Child's Inheritance from Intestate Natural Parents,* 55 Iowa L. Rev. 739 (1970)); La. Civ. Code Ann. art. 214 (West supp. 1982); Okla. Stat. tit. 10 § 60.16 (West Supp. 1978) (*See* Meadow Gold Dairies v. Oliver, 535 P.2d 290, 295 (Okla. 1975)); R.I. Gen. Laws § 15-7-17 (1970); S.D. Codified Laws Ann. § 25-6-16 (1976); Tex. Fam. Code Ann. § 15.07 (Vernon 1975) (*see* Go Int'l, Inc. v. Lewis, 601 S.W.2d 495, 498 (Tex. Civ. App. 1980)); Utah Code Ann. § 75-2-109 (Repl. 1977); Wyo. Stat. § 2-4-107(a)(i) (1977).

Although the statutes of Illinois, Iowa, Oklahoma, South Dakota, and Utah do not state that the adopted child retains inheritance rights from and through both natural parents, the respective state courts have held that unless expressly denied by the statute, intestate inheritance rights are not severed by adoption.

52. The states which follow the Revised Uniform Adoption Act allow the adopted child to inherit from and through the deceased natural parent if the adoption occurred after the natural parent's death: Ark. Stat. Ann. § 56-215(2)(b) (Supp. 1981); Fla. Stat. § 63.172(2) (1976); Ga. Code Ann. § 74-413(b) (1981); Minn. Stat. Ann. § 259.29(1a) (West 1982); N.D. Cent. Code § 14-15-14(2) (Repl. 1981); Ohio Rev. Code Ann. § 3107.15(B) (Page 1980); Wis. Stat. Ann. § 851.51(2)(b) (West 1971). A few states qualify the R.U.A.A. provision by specifying that death of a natural parent need occur while the parents are married (thus excluding situations in which the parents are divorced and then one natural parent dies): Conn. Gen. Stat. Ann. § 45-64(8) (West Supp. 1982) (*see* Rauhut v. Short, 26 Conn. 55, 212 A.2d 827 (1965)); Mass. Gen. Laws Ann. ch. 210, § 7 (West Supp. 1981); Ore. Rev. Stat. § 112.175(2)(b) (Repl. 1979).

The U.P.C. exception does not require that one natural parent be deceased, stating that adoption by the spouse of one natural parent does not sever inheritance rights by, from or through either natural parent. Alaska has adopted both the R.U.A.A. exception, Alaska Stat. § 20.15.130(b) (1975), and the U.P.C. exception, Alaska Stat. § 13.11.045 (Supp. 1976). Both Maine, Me. Rev. Stat. Ann.

C. Adoption Policy Considerations

The variations in state law reflect the extent to which state legislatures, prompted by changing attitudes toward adopted children, have modified the descent and distribution statutes. The kind of child to be adopted has changed since adoption laws were first implemented. At first, the adopted child was the orphaned or abandoned child who needed a home.[53] Later the adopted child was an unwanted or illegitimate child who was "given up" for placement in a new family with all rights and advantages of a natural child within the adopted line.[54] Now, the adopted child is, increasingly, the stepchild.[55]

The Revised Uniform Adoption Act and Uniform Probate Code exceptions,[56] enacted in some states, raise the fundamental question of whether the policy of cutting off all inheritance from the natural bloodline is appropriate for the large number of stepparent adoptees.[57] The reasons given for complete severance of all connections with the natural bloodline are: (1) the necessity of sealed records to protect the child and the adopting parents from any interference by the natural kin and to protect the natural parents from public exposure and possible embarrassment; (2) the importance of insuring a new life for the adopted child by replacing all ties to the natural parents with complete integration into the adopted family; and (3) the practical difficulty of settling personal estates if a search must be made for children put up for adoption.[58]

With stepparent adoptions, however, no need for secrecy exists because the child is not being placed in a new family.[59] The child usually is not an infant but is old enough to have established a relationship with the natural parent's relatives. This relationship is often maintained after the

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tit. 18-A, § 2-109(1) (Repl. 1981) and Virginia, Va. Code § 64.1-5-1 (Supp. 1968), follow the U.P.C. Under N.J. Stat. Ann. § 9:3-30(A) (West 1976), adoption by the spouse of a natural parent with consent of the other natural parent does not sever inheritance rights through that parent; the statute is silent regarding adoption after a natural parent's death. Under 20 Pa. Cons. Stat. Ann. § 2108 (Purdon Supp. 1981), if an adoption has occurred after the death or divorce of a parent, a limited exception applies in distributing "the estate of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person."

53. *See supra* note 25.

54. Kuhlmann, *supra* note 11, at 247–48; Binavince, *supra* note 20, at 180–81.

55. See Comment, *Stepparent Custody: An Alternative to Stepparent Adoption*, 12 U.C.D. L. Rev. 604 (1979) [hereinafter cited as *Stepparent Custody*], for a discussion of the impact of serial marriages on stepparent adoptions.

56. *See supra* notes 3 and 4.

57. *See* Uniform Probate Code § 2-109 comment (1975).

58. *See* Smith & Fawsett, *supra* note 32, at 622–23; *In re* Estate of Topel, 32 Wis.2d 223, 226, 145 N.W.2d 162, 165 (1966); Comment, *The Adopted Child: Inheritance from Intestate Natural Parents, supra* note 51, at 743–45.

59. *Stepparent Custody, supra* note 55, suggests the term "re-made" family for remarriages with adoption of stepchildren.

natural parent's death (or after the natural parents' divorce).[60] The special concerns for the stepparent adoptee generally have not been included in broad policy statements supporting total severance with the natural kin, even though commentators have recognized that adoption of the stepchild may also have important psychological effects on that child.[61]

Equitable treatment under the intestacy statutes for natural as well as for adopted children is another factor the courts must consider. In *Holt*, the policy decision to deny Brady a dual inheritance was crucial to the New Mexico court's holding.[62] Dual inheritance occurs when inheritance through the natural bloodline is not severed, and the adopted child inherits from both adopted and natural family lines. Usually the question of dual inheritance arises from one of two fact patterns. The first is where a relative, such as a grandparent, adopts the child of deceased parents, then the relative dies intestate, and the child inherits in the dual capacity of adopted child and natural grandchild.[63] The second is where an adopted child is not expressly denied the right to inherit from both natural and adopted parents by statute.[64]

Prior to *Holt*, the New Mexico Supreme Court in *Shehady* quoted with approval the position of the Missouri Supreme Court on denying dual

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60. For a vigorous policy debate on whether an exception for a stepparent adoptee should be granted under statutes that completely sever the right of the adopted child to inherit from the natural line, see *In re* Estate of Donnelly, 81 Wash. 2d 430, 502 P.2d 1163 (1972). In a 5-to-4 decision, the Washington Supreme Court denied an adopted child the right to inherit from her intestate grandparents when she had been adopted after her natural father's death. The majority opinion, urging liberal construction, chose the broad legislative objective of a fresh start for the adoptee over the importance of consanguinity theory. The dissent, in a strict construction, argued that the statute did not expressly bar the grandchild, and because the fresh start adoption policy did not apply here, criticized the denial of inheritance as inequitable:

> The new family relationship created by the marriage and adoption presented none of the circumstances of an adoption designed in law to cut off all familial and legal relationships with the adopted child's natural mother nor her grandparents either. The grandchild continued to live with her natural mother and adoptive father presumably with the full knowledge of her grandfather, whose lineal descendant she remained. None of the factors upon which the legislature legislated to seal the records of adoption against the grandfather existed here.

81 Wash. 2d at 436, 502 P.2d at 1169. A commentator on *Donnelly* suggested that the grandchild and her grandparents retained a de facto, if not legal, relationship. Note, *An Adopted Grandchild May Not Inherit From Intestate Natural Grandparents*, 8 Gonz. L. Rev. 384 (1973).

61. *Stepparent Custody*, *supra* note 55, at 609–12.

62. The court stated:

> Tammy Brady's adoption cut off the right to inherit from her grandmother. Otherwise, under appellee's construction, Tammy Brady would be allowed a dual inheritance, once from her natural father's bloodline, and again from her adoptive parents' bloodline. . . . It was not intended by the legislature to allow such a situation.

95 N.M. at 414, 611 P.2d at 1034.

63. Annot.,60 A.L.R.3d 631, 643–46 (1974).

64. Binavince, *supra* note 20, at 166–72.

inheritance from both adoptive and natural lines: " 'It is no part of the public policy of the state that adoption should operate as an instrumentality for dual inheritance, with resulting animosity and litigation. . . . [T]he denial of dual inheritance . . . is not opposed to the public policy of promoting the welfare of adopted children.' "[65] The *Holt* opinion reaffirms this position, but does not include any discussion of whether dual inheritance for the stepchild is necessarily inequitable.

Other state courts have upheld dual inheritance by adoptees. The courts have accepted dual inheritance as an inequality created by statute[66] and as a statutory right.[67] Some courts, construing their state's statutes strictly, have held that adoption enlarges the adopted child's inheritance rights without taking away any prior rights.[68] The underlying issue is whether recognition of an adoptee's inheritance from both natural and adopted bloodlines affords the adopted child preferential treatment.[69]

A determination of the adoption policy in the best interest of the stepparent adoptee should recognize that the child usually has family ties with three bloodlines. Adoption, in this instance, does not seal off all contacts between adopted child and the natural lineage. Thus, the compelling reasons under the "new start" adoption policy for denying the consanguineal basis of intestate inheritance are not applicable.

Stepparent adoption should be viewed as bringing a child into another family line and adding intestacy rights. Heirship thus follows real familial

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65. 83 N.M. 311, 314, 491 P.2d 528, 531 (1971) (quoting Wailes v. Curators of Central College, 363 Mo. 932, ___, 254 S.W.2d 645, 649 (1953).

66. *In re* Bartram's Estate, 109 Kan. 87, 198 P. 192 (1921).

67. Wagner v. Varner, 50 Iowa 532 (1879). The Iowa court stated that no natural right to equal inheritance shares existed under the Descent and Distribution statutes.

68. The Illinois Court of Appeals in *In re* Estate of Cregar, 30 Ill. App. 3d 798, 33 N.E.2d 540 (1975), upheld dual inheritance for claimants as natural niece and nephew and as adopted children. The court re-affirmed the earlier decision of *In re* Tilliski's Estate, 390 Ill. 273, 61 N.E.2d 24 (1945), that an adopted child's right to inherit from natural relatives cannot be cut off unless the adoption statute expressly severs that right. Finding no clear legislative policy opposed to unequal shares among nieces and nephews of an intestate, the court rejected the argument that dual inheritance would be inequitable.

69. The acceptance of dual inheritance in *In re* Benner's Estate, 109 Utah 172, 166 P.2d 257 (1946), provoked this dissent:

> If we are concerned primarily with the welfare of the child we must be concerned with the preservation of these relationships. They cannot exist when the adopted child gives evidence of such a covetous nature that he would take a dual inheritance at the expense of these [family relationships].
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> . . . .
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> The desire for more is evidence of greed. Greed is a vicious disease. At first it develops slowly and is often unobserved. When in its obvious stage it becomes as malignant as internal cancer. Its germs may spread like a plague. Blight of the malady is all about us. Surely greed deserves no sustenance from a court of justice.

Id. at 175, 166 P.2d at 260.

ties rather than a paradigm limited to one maternal and one paternal line. Because stepparent adoption usually occurs with the knowledge of the deceased parental line (or with the consent of the divorced, noncustodial natural parent), the basis of intestate inheritance should continue to be consanguinity.

CONCLUSION

The New Mexico Supreme Court in *In re Estate of Holt* denied the right of a child adopted by her stepfather to inherit through her deceased natural father. This decision establishes New Mexico adoption policy as a complete severing of all legal rights, including inheritance rights, between natural parents and the adopted child without any exception for stepparent adoptees.

Several questions raised in *Holt* require legislative discussion and decision. First, the ambiguous language of the statutory exception in Section 40-7-15(B)(2) should be rewritten to follow unmistakably the Revised Uniform Adoption Act model or to identify persons included in the current general reference to "individual." In *Holt*, the court's construction of the statute limits the exception to those few situations where a child is adopted after a parent's death and the question of whether the child is an heir of that deceased parent's estate is still pending.[70]

Second, the legislature and courts must analyze equitable considerations, especially in view of current patterns of marriage, divorce, and remarriage. New Mexico's adoption policy determines that the interests of the adopted child are best served by severance of all inheritance rights from the natural line. This position imposes an unfair result in stepparent adoptions. If the legislature grants an exception for stepparent adoptees, then it should make a choice between the situations covered by the Revised Uniform Adoption Code and those covered by the Uniform Probate Code. Three typical fact patterns are: (1) a natural parent dies while the parents are married to each other, the surviving natural parent remarries, and the new spouse adopts the child; (2) the natural parents are divorced, the natural parent with custody of the child remarries, the other natural parent dies, and then the stepparent adopts the child (the situation in *Holt*); (3) the natural parents are divorced, the parent with custody of the child remarries, the stepparent with the consent of the other natural parent adopts the child, and then the other natural parent dies. The model pro-

70. For example, in those cases where, following the adoption court action, the court declares a partial or complete intestacy, the question arises whether the adopted child is still an heir of the deceased parent's estate. For circumstances in which the adopted child may be entitled to wrongful death benefits, see Annot., 67 A.L.R.2d 745 (1959).

vision in the Revised Uniform Adoption Act would allow inheritance through the natural parent in the first and second situations. The model provision in the Uniform Probate Code would allow inheritance through the natural parent in all three fact patterns.[71]

When the legislature grants an exception, dual inheritance results, and the adopted stepchild inherits through both natural parents and the stepparent. Statutory recognition of dual inheritance can provoke sharply differing opinions. The better policy, however, is to permit such dual inheritance. Although the result in *Holt* can be avoided by a will of the natural relative which includes the adopted child, the decision remains important in counseling a stepparent on the legal effects of adoption.[72]

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71. Connecticut, Massachusetts, and Oregon restrict the stepparent exception to (1). An exception for situations (1) and (2) would permit inheritance through the deceased natural parent. Most generally, the issue is inheritance from intestate natural grandparents. An exception for (3) would permit inheritance from, as well as through, the divorced natural parent.

72. Generally, the adoptee's inheritance rights are determined by the law at the time of the death of the intestate, not at the time of the adoption. Thornberry v. Timmons, 406 S.W.2d 151 (Ky. 1966). New Jersey holds the minority view that the law in effect at the time of adoption governs an adoptee's right of inheritance. *In re* Avery, 1976 N.J. Super. 469, 423 A.2d 994 (1980).

Generally, the status of adoption is governed by the law of the state where the adoption was granted; the inheritance of real property is governed by the law of the state wherein it is situated; and the distribution of personal property is governed by the laws of the state where the intestate was domiciled at death. Annot., 60 A.L.R.3d 631, 634–35 (1974).