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ADULT ADOPTION AND INHERITANCE BY SANDRA SMITH, CELA

The Supreme Court of Virginia recently decided a case that involved the adoption of an adult and the resulting effect of this adoption on an inheritance from the adoptee's biological sister.

In *Kummer v. Donak* (Record. No. 101232, Sep. 16, 2011), the court considered the case of a Virginia resident ("Critzler") who died intestate in 2006. Nancy Donak ("Donak") was appointed administratrix of Critzler's estate. Critzler was not survived by a spouse, children, parent or sibling. Donak believed the only heirs were distant cousins (possibly numbering fifty-three), but Donak later discovered that three people she believed were cousins ("Kummer children") were children of Critzler's biological sister (Mrs. Kummer). The Kummer children were therefore the biological niece and nephews of Critzler, and Donak believed they were Critzler's heirs at law. Donak administered the estate, selling two properties worth a total of \$677,000 with the approval of the court.

In October 2009, Donak filed a petition for aid and direction along with a motion for rule to show cause against distribution. She had discovered that Mrs. Kummer had been adopted at age 53 in 1981 by her aunt by marriage, Ms. Kaleta. The circuit court scheduled a hearing and appointed a guardian ad litem for the unknown heirs. The circuit court held that under Virginia's intestacy statutes, "the Kummer children were not Critzler's heirs at law because Mrs. Kummer's adoption severed their legal ties to Critzler and her estate." The court further held that "Virginia's statutory scheme does not distinguish between the adoption of an adult and the adoption of a minor." The Kummer children appealed.

The Supreme Court of Virginia reviewed the issues of statutory construction de novo. The Court first reviewed Virginia Code section 64.1.1, which delineates the course of descent for intestate succession. The fourth level of priority under this statute is the decedent's siblings and their descendants. Virginia Code section 64.1-5.1 defines a child for purposes of section 64.1-1,

“If for purposes of this title or for determining rights in and to property pursuant to any deed, will or other instrument, a relationship of parent and child must be established to determine a succession or taking by, through or from a person: 1. An adopted person is a child of the adopting parent and not of the biological parents” The Kummer children asserted that in this case, a person who was adopted, and her descendants should be allowed to inherit through her biological sister. They claimed that a parent-child need not be established, and that intestate succession only required proof of the relationship between the two sisters. They also contended that public policy favored property descending to the closest blood relatives, and “disfavors allowing the adoption of a person to sever the inheritance rights of her descendants.”

The court determined that the establishment of the parent-child relationship was required in order to determine the rights of the Kummer children. The court said that in order for the Kummer children to inherit as descendants of Critzer’s sister, Mrs. Kummer had to be Critzer’s sister for purposes of the intestate succession statutes. A relationship of parent and child had to be established to show a common parent of Critzer and Mrs. Kummer. According to Virginia Code section § 64.1-5.1, “Mrs. Kummer became the child of the adopting parent and was no longer the child of her biological parents.” Although Mrs. Kummer and Critzer were biological sisters, they were not legally sisters pursuant to Virginia Code section § 64.1-1. Therefore, Mrs. Kummer’s biological parents were divested of their legal rights with respect to Mrs. Kummer, and this divestiture “extended to collateral relatives whose interest derives through the parents, which includes Critzer.” The court further stated that because the applicable statutes are unambiguous, the Kummer children’s public policy argument fails because the public policy of the Commonwealth is determined by the legislature.

The court then considered the Kummer children’s argument that the adoption of an adult is not the same as the adoption of a minor. The children claimed that the two were distinguishable because the adoption of an adult is motivated primarily by financial considerations, and therefore Mrs. Kummer’s adoption should not be treated as having the same legal effect as the adoption of a child. The court reviewed Virginia Code section § 63.2-1243, the adult adoption statute, and determined that this statute provides that the “adoption of an adult shall have the same effect as adoption of a child.” “Any interlocutory or final order issued in any case under this section shall have the same effect as other orders under this chapter; and in any such case, the word “child” in any other section of this chapter shall be construed to refer to the person whose adoptions is petitioned for under this section.” The court also stated that Virginia Code section § 64.1-5.1 has the same effect because it refers to any “adopted person” and does not distinguish between minor and adult. The court said that the statute’s plain language “evinces the legislature’s intention to treat minor and adult adoptees the same.” The court affirmed the judgment of the circuit court and held that the circuit court did not err in finding that the Kummer children were not Critzer’s heirs-at-law because Mrs. Kummer’s adult adoption severed their inheritance rights.

The attorneys at Oast & Hook can assist clients with their estate, financial, insurance, long-term care, veterans' benefits, and special needs planning issues.

Sandra Smith is an elder law attorney with Oast & Hook, and she practices in the areas of estate planning, estate and trust administration, special needs planning, asset protection planning, long-term care planning and Veterans' benefits. Ms. Smith is certified as an Elder Law Attorney (CELA) by The National Elder Law Foundation (NELF).

Ask Allie

O&H: Allie, we've heard about a great nonprofit organization in Williamsburg, Virginia. Please tell us about it.

Allie: Sure! Pawsitively Precious Adoptions was founded in 2006 by Brenda Dulski. The small nonprofit organization is dedicated to assisting homeless cats and kittens in the Williamsburg, Virginia, area. The nonprofit is dedicated to making cats healthy, and each one is treated for fleas and ticks, and is wormed, vaccinated against rabies and distemper, spayed or neutered, and tested for feline leukemia and feline infectious virus. Healthy former feral kittens go up for adoptions, while mature feral cats are photographed and returned to their trap location. Ninety percent of the animals are spayed or neutered in a mobile clinic operated by PETA, and the Animal Resource Foundation in Hayes, Virginia, does the other ten percent of the surgeries. Ms. Dulski, with help from the community, has trapped 141 tame cats and kittens that have gone into the adoption program, supported by the PetSmart in James City County, Virginia. Volunteers assist with the adoption center and as foster parents for the animals that have not been adopted. For more information about the program and how to assist, please call 757-229-0578. What a great idea! Thank you, Ms. Dulski and your volunteers, for helping cats and kittens in Williamsburg. Time to look out the window and see if we have any new squirrels visiting today . . . See you next week!

Announcement

Oast & Hook is proud to announce that it has formed a team that will participate in the 2011 Western Tidewater Walk to End Alzheimer's which is taking place at 10:00 a.m., Saturday, October 8th at the Constant's Wharf in Suffolk. Come out and support Oast & Hook's team. For more information, visit Oast & Hook's team website at <http://alz.kintera.org/2011wt/oasthook>.

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