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Adoption Procedures in Maryland

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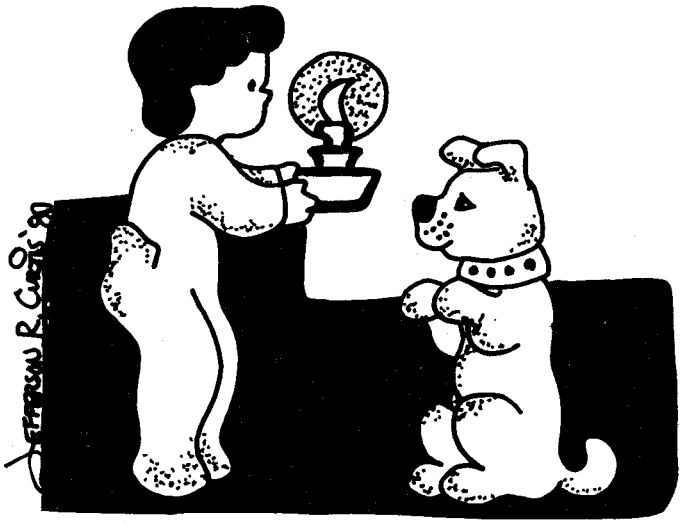
feet be on the top landing before the driver starts for the MTA to escape liability? My neighbor's bouts with hospitals and doctors are a fruitful area for my legal mania. When can I bypass the Arbitration Board? Do I sue the doctor or the manufacturer or both for the defective Pacemaker? Is it a 2-314 (a) or (c)?

And having a party isn't so much fun anymore. Who has standing to sue and for what, if Frank misses the top step or slips on an ice cube I didn't pick up right away? Is Ray too drunk to drive home and will I be liable if he hurts himself or someone else? If Sarah eats my curried chicken casserole and gets sick do I have to pay to have her stomach pumped? Will voluntary intoxication relieve me of responsibility? And how can I relax when seven girls are enjoying themselves at a slumber party and I am thinking about homeowner's coverage if one of them goes through the patio door?

Cars and highways are terrors unto themselves. Add fog or rain and the liabilities occur in my mind exponentially. Writing a check has become a carefully executed performance thanks to Negotiable Instruments. (My liability as indorser is only seven days. 3-503(2)(b)) Every personnel decision at my husband's office takes on Title VII overtones. Every trip to the supermarket brings visions of exploding coke bottles. Every application of cologne reminds me of *Faberge.*

I know my life will never be simple again. I know that as a lawyer it is my duty to see every facet, anticipate every move of my opponent, explore every avenue to help my client. But sometimes, just sometimes, I'd like to be able to hear a dog bark or an early morning bird sing without wondering if it is in violation of the county's Noise Abatement Program. Or whether that dog has had his first bite. Or whether. . .



Adoption Procedures in Maryland

by David Wise III

INTRODUCTION

Adoption, in legal contemplation, is the act by which the parties thereto establish the relationship of parent and child between parties not so related by nature, and it confers rights of inheritance on the adopted child. *Zimmerman v. Thomas,* 152 Md. 263, 136 A. 637 (1927). Although adoption affects the lives of the natural parents, the adopting parents, and the adopted child, no formal adoption procedures existed at common law, and the power to decree an adoption was developed through legislation. *Atkins v. Gose,* 189 Md. 542, 56 A.2d 697 (1948).

In Maryland, the laws governing adoption are codified in the Maryland Annotated Code, Article 16, Sections 67-89, and the rules are set forth in the Maryland Rules of Procedure. Rules D71 to D81. In Maryland, adoption procedures are considered to be socially necessary and desirable. The adopted child is protected from adoption by unfit parents, the natural parents are prevented from making hasty decisions concerning their child's adoption, and the adopting parents are given background information about the child, with the natural parents being prevented from disturbing their new relationship. MD. ANN. CODE art. 16. § 67.

JURISDICTION AND VENUE

In Maryland, the Baltimore City and the county equity courts have jurisdiction over adoption proceedings. Petitions for adoption may be filed in five possible locations:

(1) In the county where the petitioner has his domicile;[1]
(2) Where the petitioner has lived for at least 90 days prior to the filing of the petition;
(3) Where any licensed child placement agency having custody of the adoptive child is located;
(4) Where the person to be adopted is domiciled, if he is an adult or related by marriage to the petitioner;
(5) Where there is an equity court with continuing jurisdiction over the custody of the person to be adopted.

MD. ANN. CODE art. 16, § 68.

However, the petition may not be filed, except in (5),

[1] Domicile is the place where an individual has his true, fixed home, which he does not have any present intention of removing himself from, and to which place he has, whenever he is absent, the intention of returning. Shenton v. Abbott, 178 Md. 526, 15 A.2d 906 (1940).

unless the adoptive child or custodian is physically within the state and subject to the court's jurisdiction.[2]

AGE AND PROCEDURAL REQUIREMENTS FOR ADOPTION

Initially, any single or married person over eighteen years of age may adopt any minor or adult. MD. ANN. CODE art. 16, § 70-71. For example, *Ex parte Libertini,* 244 Md. 542, 224 A.2d 443 (1966), allowed an unmarried adult to adopt another adult, stating that the law does not require that the adopting person be married.

However, if the petitioner is married, the spouse must join in the petition, or state the reasons for nonjoinder. MD. R. P. D71(c). Joinder is not necessary where the spouse is incompetent, separated from the petitioner under circumstances which would give the petitioner legal grounds for divorce, or is the natural parent of the adoptive child. MD. ANN. CODE art. 16 § 70.

Moreover, the spouse who is the natural parent of the adoptive child must consent to the adoption because the natural parent's rights to the adopted child will be terminated by the adoption decree. MD. R. P. D71(c). In *Dawson v. Eversberg,* 257 Md. 308, 262 A.2d 729 (1970), the court denied a step-father's adoption petition, because the natural mother did not consent and the decree would have severed all legal relations between the child and its natural parent. In effect, the court protected the child's best interests by not granting an adoption petition over his natural mother's objection.

CONTENT OF THE PETITION

The Maryland Rules of Procedure set forth the general requirements for an adoption petition in terms of verification and content. MD. R. P. D72(a).

First, the petition must be signed and verified by the petitioner. An oral or written affidavit which acknowledges the truthfulness of statements in the petition can satisfy the verification requirements. MD. R. P. 5(c).

Secondly, the petition should contain:

(1) The names, addresses, and ages of the petitioner and his spouse, the adoptive child, and the other children of the adopting parents;
(2) The race and religious preferences of the petitioner and his spouse (if any), the person to be adopted, and the parents or the mother of the child born out of wedlock;
(3) The reason that the spouse does not consent to the petition (if applicable);
(4) The reason that the spouse does not join in the petition (if applicable);

[2] In Maryland, residents who move to Virginia pending a decision on their adoption petition will not be denied relief, if they are domiciled in Maryland when the petition is filed. Haney v. Knight, 197 Md. 212, 78 A.2d 643 (1951).

(5) The statement that any of the above facts are unknown to the petitioner (if applicable);
(6) The fact that the petitioner wants to change the name of the adoptive child (if applicable).
MD. R. P. D72(a).

CONSENT

Each adoption petition must be accompanied by verified written consent(s). The court can obtain the requisite consent from the person to be adopted (if the adoptee is ten or older) and from one or more natural parents, unless they are unable to consent.
MD. ANN. CODE art. 16, § 74.

If the natural parent(s) are unable to consent, consent may be obtained from:

(1) The mother of a child born out of wedlock, if she's alive and has not lost her parental rights through court action or voluntary relinquishment. (The father must also consent, if the child has been legitimated)[3]; or
(2) The mother of a child born in wedlock, if she is alive and has not lost her parental rights through court action or voluntary relinquishment or abandonment, if the child's illegitimacy has been established; or
(3) The legal guardian of the adoptive child; or
(4) The executive head of any public or private child care or child placement institution who has the care or custody of the child; or

[3] An illegitimate child can be legitimated if:
(1) The father has been judicially determined to the father through paternity proceedings; or
(2) The father has acknowledged himself to be the father in writing; or
(3) The father has openly and notoriously recognized the child; or
(4) The father subsequently married the mother and acknowledged, orally or in writing, that he was the father of the child.
MD. EST. & TRUSTS CODE ANN. § 1-208(b).

(5) The State Department of Social Services or its local unit.

MD. ANN. CODE art. 16 § 74.

However, consent may not be needed under two situations. First, consent is unnecessary where it has been added to the petition before the time set for hearings, but not submitted concurrently with the adoption petition. Secondly, the requirement is waived if a hearing disclosed that consent was withheld contrary to the child's best interests. The factors to be considered in deciding whether consent has been unjustifiably withheld has been the source of considerable litigation. Primarily, the courts have indicated that infrequent visits or telephone calls, unfitness of natural parent, failure to contribute to the child's support, and willful abandonment,[4] coupled with non-consent, indicate an atmosphere not conducive to the child's best interests. *Nutwell v. Prince George's County Department of Social Services,* 21 Md. App. 100, 318 A.2d 563 (1974); *Schwartz v. Hudgins,* 12 Md. App. 419, 278 A.2d 652 (1971).

Additionally, if the child's removal from the foster home would cause him/her severe psychological or emotional damage, the court will not permit the natural parents to keep the adoption from taking place. *Lloyd v. Schutes,* 24 Md. App. 515, 332 A.2d 338 (1975). However, even if there is some evidence of neglect, the natural parent may still rightfully withhold consent. The concern that by consenting the parent will permanently sever all natural and legal rights with the child is recognized by the court and, thus, the court may deny the adoption petition. *Brendoff v. Titus,* 22 Md. App. 412, 323 A.2d 612 (1974).

Finally, unless an attorney is present, a parent under a disability cannot validly consent to an adoption decree. MD. R. P. D75(a); *Palmisano v. Baltimore County Welfare Board,* 249 Md. 94, 238 A.2d 251 (1961).

NOTICE

The Maryland Rules of Procedure state that proper notice is a procedural pre-requisite to adoption. Notice can normally be fulfilled by serving a show cause order or by having all who are entitled to notice join in the petition.

If a natural parent is a minor or under some disability, a show cause order must be served to fulfill the notice requirements. The order must contain the name of the adoptive child, the fact that an adoption petition was filed, the date on or before which service must be made, the date on or before which cause to the contrary must be shown, the name of the court, and the docket number of the proceeding. MD. R. P. D74(a).

[4] Abandonment is any willful or intentional conduct that evinces a settled purpose to forego all parental duties, relinquish all parental claims to the child, and renounce the child entirely. Logan v. Coup, 238 Md. 253, 208 A.2d 694 (1965).

There are three parties who receive notice through service of process:

(1) Notice may go the parents, if the child's born in wedlock;
(2) Notice may go the mother and putative father, if the child's born out of wedlock; or
(3) Notice may go the parent, guardian, or custodian of such natural parent who's under a disability, if such natural parent has not given his or her consent to the adoption.

MD. R. P. D74(c).

SERVICE OF PROCESS

The petitioner must file an affidavit with the court in two ways. First, if the whereabouts of the person entitled to notice in the adoption proceedings are known, service of process can be accomplished by sending a registered letter, return receipt requested. MD. R. P. 104. However, if the whereabouts of the person are unknown, service of process must be through court order or process by publication. MD. R. P. 105(b)(1).

The petitioner must file an affidavit with to the court indicating that a reasonable effort has been made to locate the unknown person. If his name is also unknown, the court may require an affidavit showing a good faith effort to identify the individual, before the process of publication will be ordered.

The actual process of publication involves publishing the show cause order in a local paper where the action has been filed. If the person entitled to notice is unknown, the adopted child should be identified as "the child of the natural mother and (unknown father)."

If the person to be adopted is an adult, a copy of the petition and show cause order should be served on the petitioner's next-of-kin. But, if the person to be adopted is a minor, the show cause order should be served without the petition, to preserve the identity of the adopting parents. MD. R. P. D74(c)(1).

INVESTIGATION

If the parent is under a disability, the court shall appoint an attorney to conduct an investigation of the case, after service of the show cause order. If the parent consented to the adoption, the attorney merely has to report on the parent's legal understanding of that consent. MD. R. P. D75(a).

However, in any case deemed necessary, the court, an attorney, or a designated agency may conduct an investigation and present a written report. The inquiry protects the welfare of the child, the adopting parents, and the natural parents. MD. R. P. D75(b).

PETITION TO INTERVENE

Additional protection is offered through the intervention process. A person having a right to contest a pro-

ceeding for adoption may file a petition to intervene as a defendant in the proceeding. MD. R. P. D76(a).

The intervention process consists of four steps. First, the intervenor files a petition separately from the adoption proceedings. Next, the original petitioner to the adoption proceedings is served with a copy of the petition to intervene and has the opportunity to file an answer. Then, the court will decide in a hearing whether to grant the petition to intervene. Finally, the court will make a decision whether to grant or deny the motion to intervene. If granted, the intervenor can inspect all papers filed in the proceeding. MD. R. P. D76(d). Otherwise, the records are sealed to preserve the confidentiality of the proceedings. MD. R. P. D81(c).

HEARING AND DECREE

If justice requires, a private hearing should be conducted to protect the petitioner's due process rights and to allow him an opportunity to satisfy his burden of establishing the facts justifying the adoption. *White v. Seward,* 187 Md. 43, 48 A.2d 335 (1946).

After the hearing, the court may issue an interlocutory or a final decree of adoption. If an interlocutory decree is issued, the grant of custody cannot exceed one year. During the year, the court can revoke or amend the interlocutory decree, if good cause has been shown, and all interested parties are given notice and a hearing. MD. R. P. 79(b). Also, the court can require a supplemental written report from the investigating officer or agency before a final decree is issued. However, if there is no valid or timely objection, the court will issue a final decree within one year after the interlocutory decree.

The final decree of adoption is generally regarded as having the force and effect of a judgment, and the rule of *res adjudicata* is applicable. *Spencer v. Franks,* 173 Md. 73, 195 A. 306 (1937). However, jurisdictional and procedural defects may be contested, if objection is raised within one year following the final decree of adoption. MD. ANN. CODE art. 16 § 79.

There are two possible legal results depending on which decree is issued. If an interlocutory decree is entered, the child's ties with the natural parents are severed and he becomes the petitioner's child. If a final decree is entered, the legal effects of the interlocutory become permanent, and the final decrees of adoption in other states will be recognized.

Consequently, the final decree is kept in a separate docket with the other pleadings, and it is not open for public inspection, unless there is a court order. MD. R. P. D81. Thus, the adoption process is complete, and "the child is the child of the petitioner or petitioners, and unless or until such order of adoption is revoked, such person shall be entitled to all the rights and privileges of a child born in lawful wedlock to the petitioner or petitioners." MD. ANN. CODE art. 16 § 78.

The Adopted Person's "Right to Know"

by Brad Sures

One of today's most controversial issues in the field of adoption is the adopted person's "right to know" the identity of his/her natural parents. Until recently, the adopted person who searched for a door to his or her past found that door shut and locked, exactly as the records relating to the adoption are closed and sealed. The adoptee has three potential sources from which to secure adoption information: the record of the adoption proceedings, the adoption decree, and the adoptee's original birth certificate. In only two states, Idaho and Louisiana, however, does the adoptee have an absolute right to information concerning his/her adoption.[1] Five other states, Alabama, Kansas, Rhode Island, South Dakota, and Tennessee require that the adoptee reach the age of majority before obtaining an absolute right to adoption information.[2]

Maryland law deprives the adoptee of knowledge concerning biological heritage since all records with regard to

[1] IDAHO CODE §16-1511 (Supp. 1977) (right to see files and records of adoption proceedings); LA. REV. STAT. ANN. §40:81(A) (West 1977) (right to see original birth certificate and adoption decree).

[2] Ala. Code tit. 26, §10-5(a) (1975). KAN. STAT. §59-2279 (1977), and S.D. COMPILED LAWS ANN. §25-6-15 (1976) give the adoptee a right to see the files and records of the adoption proceedings after he reaches the age of majority. ALA. CODE tit. 26, §10-4 (1975), KAN. STAT. §65-2423 (1977), and TENN. CODE ANN. §53-427 (1977) require adoptee to have attained the age of majority before conferring on him an absolute right to see his original birth certificate and adoption decree. R.I. GEN. LAWS §23-3-23(d) (1979) allows a person, if over 18, access to his birth certificate.