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# Recent Developments: Board of Education v. Browning: An Equitably Adopted Child May Not Inherit by Intestate Succession from the Sibling of the Equitably Adoptive Parent

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***Board of Education v. Browning:***

***AN EQUITABLY  
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In *Board of Education v. Browning*, 333 Md. 281, 635 A.2d 373 (1994), the Court of Appeals of Maryland proscribed inheritance by intestate succession from the sister of an equitably adoptive parent. Explaining that equitable adoption is based on a contractual relationship between the equitably adopted child and parent, the court held that inheritance by the child from a party outside of that relationship is precluded.

Lawrence Hutchison legally adopted his natural daughter, Paula Browning, in 1921 prior to his marriage to Marian Gibson in 1922. In 1984, Marian Hutchison specifically told Browning she had adopted her; however, after Marian's death, Browning discovered that formal adoption proceedings had never been instituted. Thus, Browning was raised as an adopted daughter even though Marian Hutchison never formally adopted her. Eleanor Hamilton, the sister of Marian Hutchison, died intestate in 1990 leaving no known living relatives. Without a will or statutory legal heirs, the Board of Education of Montgomery County (the "Board") claimed it was entitled to Hamilton's estate pursuant to the Maryland escheat laws.

Browning filed a complaint seeking a declaratory judgment and a motion for summary judgment in the Circuit Court for Montgomery County, claiming she was a legal heir of Hamilton. She asserted in the complaint that as the equitably adopted daughter of Marian Hutchison, she was entitled to inherit Hamilton's estate. The Board argued that Browning's complaint failed to state facts to show she was an equitably adopted child, and further, even if equitably adopted, Browning could not inherit

from the sister of her equitably adoptive mother as a matter of law.

The circuit court determined Browning to be equitably adopted and that as such, she could inherit Eleanor Hamilton's estate. The trial court therefore denied the Board's motion to dismiss and granted Browning's summary judgment motion. The Board appealed to the Court of Special Appeals of Maryland. Due to the importance of the issue, the court of appeals granted certiorari prior to consideration by the court of special appeals.

On appeal, the Board continued to challenge the lower court's ruling that Browning was indeed equitably adopted. The court of appeals, however, found it unnecessary to address that question. The court held that even if Browning was equitably adopted, she could not inherit by intestate succession from her equitably adoptive mother's sister.

To reach this conclusion, the court first reviewed the principle of equitable adoption. As a general rule, adoption is valid only where statutory requirements are fulfilled. *Browning*, 333 Md. at 286, 635 A.2d at 376. However, Maryland recognizes the doctrine of equitable adoption as a narrow exception to this rule, allowing a court to grant the child the status of a statutorily adopted child for the limited purpose of inheriting property from the parent. *Id.* at 287, 635 A.2d at 376.

Equitable adoption is based on a contractual relationship between a parent and child which is supported by consideration and part performance. *Id.* As a matter of justice, courts enforce this contract to the extent that a child who has never been formally adopted may inherit property from the adoptive

parent. *Id.* (citing *McGarvey v. State*, 311 Md. 233, 533 A.2d 690 (1987)). Maryland upholds the proposition that a child who “has faithfully and fully performed the duties of a natural child to the foster parents” should inherit from the estate of that parent. *McGarvey*, 311 Md. 233, 533 A.2d 690 (1987) (quoting *Besche v. Murphy*, 190 Md. 539, 546, 59 A.2d 499 (1948)).

Turning to the scope of the doctrine of equitable adoption, Browning argued that an equitably adopted child may inherit *through* as well as from an equitably adoptive parent. *Browning*, 333 Md. at 290, 635 A.2d at 378 (emphasis in original). Because this was an issue of first impression in Maryland, the court relied on cases of other jurisdictions to reach its holding.

In *Menees v. Cowgill*, 223 S.W.2d 412 (Mo. 1949), *cert. denied*, 338 U.S. 949 (1950), the Missouri Supreme Court did not permit an equitably adopted daughter to inherit from her adoptive father’s sister. The court reasoned that equitable proceedings are based upon contract and thus, only the parent and child are bound. Therefore, the daughter was not able to inherit from the collateral kin of her father. The Supreme Court of Minnesota reached a similar result in *In re Estate of Olson*, 70 N.W.2d 107 (Minn. 1955). The court did not allow an equitably adopted child to inherit from his father’s brother, holding that no equities existed between them.

In support of her claim, Browning cited *First Nat. Bank in Fairmont v. Phillips*, 344 S.E.2d 201 (W. Va. 1985), where the court held that an equitably adopted child could inherit from another child of an adoptive parent. The court of

appeals refused to follow the *Phillips*’ courts holding and distinguished *Phillips* because its holding was limited to its facts, and thus was inapplicable to Browning’s case. *Browning*, 333 Md. at 293, 635 A.2d at 379. Relying on the position taken by the majority of jurisdictions, the court held that equitably adopted children may only inherit directly *from* rather than *through* an equitably adoptive parent by intestate succession. *Id.* at 293, 635 A.2d at 380.

Browning argued that similar cases from other jurisdictions did not control because in those cases the equitably adoptive child claimed an interest in an estate to which there was a legal heir. Maintaining that there was a crucial difference between these cases and the case at bar, Browning claimed that a party, namely the Board of Education, who was not an heir could not defeat her claim. *Id.* at 294, 635 A.2d at 380. The court rejected this argument and relied on a federal case which allowed the District of Columbia to defeat a claim by the “sister” of an equitably adopted child. *Id.* (citing *In re Estate of McConnell*, 268 F.Supp. 346 (D.C.C. 1967), *aff’d*, 393 F.2d 665 (D.C. Cir. 1968)). Recognizing that escheats are not favored by law, the court nevertheless stated that Maryland law is clear that if no legal heir exists, the decedent’s property escheats to the local Board of Education. *Id.* at 295, 635 A.2d at 380.

Judge Eldridge, in his dissenting opinion, generally contends that an equitably adopted child should not share in the intestate estate of the parents’ siblings where legal heirs are living. *Id.* at 296, 635 A.2d at 380 (Eldridge, J., dissenting). However,

when the state and the equitably adopted child are in dispute, the estate should pass by intestate succession to the child. *Id.* Furthermore, Judge Eldridge insisted that Hutchison would have preferred that Browning inherit her estate rather than an escheatment to the Board of Education. *Id.* at 298, 635 A.2d at 381 (Eldridge, J., dissenting).

The majority, unlike Judge Eldridge, did not assume Hutchison’s intent. The court clearly recognized that it is acceptable for an equitably adopted child to inherit from an equitably adoptive parent, however the child may not inherit through the parent.

*Browning* prevents inheritance by an equitably adopted child from the collateral kin of the adoptive parent. While the law extends an equitable remedy to a child who has not been formally adopted by allowing inheritance from the parent, inheriting from those outside the contractual relationship is not allowed. Where there are no legal heirs, an adopted child’s failure to carefully investigate whether formal adoption requirements have been met may preclude inheritance from the adoptive parents’ siblings. Moreover, this case reinforces the importance of careful estate planning to accurately reflect a testator’s intent.

- Debra Johnson Singleton