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Recent Developments: Green v. Sollenberger: Natural Parents May Not Adopt Their Own Legitimate Children

Robyn Scheina Brown

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The Court of Appeals of Maryland recently held that natural parents may not adopt their own legitimate children. *Green v. Sollenberger*, 338 Md. 118, 656 A.2d 773 (1995). Furthermore, any adoption decree allowing parents to adopt their own legitimate children is voidable and, thus, can be nullified more than one year after the entry date of adoption. In so holding, the court stressed the importance of ensuring that children benefit from an adoption and that the best interests of the children take precedence over all other concerns.

Green v. Sollenberger:

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Petitioner Dorothy Mae Green ("Green") was married to David Lenick ("Lenick") for approximately four years, during which time three children were born. The couple divorced in 1983, and Green was awarded custody of their three children, which she has retained continuously with one brief exception. After their divorce, Lenick failed to meet his child support obligations, and, as a result, Green sought state assistance from the Maryland Child Support Enforcement Administration ("CSEA"). Having little success in obtaining the child support, Green petitioned the Circuit Court for Carroll County to adopt her own children in order to relieve Lenick of his parental obligations. Lenick, as well as the children, agreed to the adoption. The decree was entered in September 1991, giving sole parental rights to Green.

Approximately one year after the entry of the adoption decree, Lenick, at the time a Pennsylvania resident, petitioned a Pennsylvania state court to terminate

his child support obligations since he no longer had any legal responsibilities to the children. The Pennsylvania court initially suspended Lenick's obligations, yet it thereafter stayed the suspension of payments when Maryland requested to first determine whether the adoption decree was valid.

In March of 1993 Meg Sollenberger, Executive Director of the CSEA, filed a petition in the Circuit Court for Carroll County seeking rescission of the adoption decree on the grounds that it violated the law as well as public policy. The circuit court held that the adoption was void ab initio since the children would not benefit from the adoption.

Upon appeal, the Court of Special Appeals of Maryland affirmed the trial court, holding that a natural parent could not adopt his or her own legitimate children in order to terminate the rights of the other natural parent. Further, the court considered whether the adoption decree was time-barred, and it held that a decree allowing parents to adopt their own children could be collaterally attacked and invalidated at any time.

Green then sought relief from the court of appeals based on four main arguments. First, Green contended that Maryland's adoption statute should be broadly interpreted to allow natural parents to adopt their own children. In support thereof, Green cited section 5-307(a) of the Family Law Arti-

cle of the Maryland Annotated Code which asserts that “[a]ny individual, whether a minor or an adult, may be adopted” by “[a]ny adult.” *Green*, 338 Md. at 121, 656 A.2d at 774. In relying on *Bridges v. Nicely*, 304 Md. 1, 497 A.2d 142 (1985), *Green* argued that since *Bridges* permitted a natural father to adopt his own children in order to legitimate them, she too should be allowed to adopt her own children. *Green* at 124-25, 656 A.2d at 776. Second, *Green* asserted that her only choice under the circumstances was adoption, since, in Maryland, parental rights may be terminated only through adoption or guardianship. *Id.* at 125, 656 A.2d 776 (citing *Carroll County v. Edelmann*, 320 Md. 150, 577 A.2d 14 (1990)). Third, *Green* claimed that the adoption was in the best interest of her children, since: 1) *Lenick* was likely to disturb *Green*’s relationship with her children; and 2) *Green* did not want her children to be forced to support *Lenick* if he should become destitute at any later time. *Id.* at 126, 656 A.2d at 776-77. Finally, *Green* relied upon section 5-325 of the Family Law Article of the Maryland Annotated Code, which asserts, “[a] court may not receive a petition to invalidate a final decree of adoption because of a procedural or jurisdictional defect unless the petition is filed within 1 year after the entry of the final decree of adoption.” *Id.* *Green* maintained that since more than one year had passed since the

adoption, the decree could no longer be attacked.

Despite *Green*’s efforts, the Court of Appeals of Maryland firmly rejected her arguments. The court clarified that the legislature did not intend for children to be adopted by one natural parent solely to terminate the rights of the other natural parent. The court observed that an adoption under such circumstances would only deprive the children of the benefits of a fatherly relationship. *Id.* at 127, 656 A.2d at 777.

Furthermore, the court recognized that the purpose of adoption is to create certain legal obligations and privileges between the adopting parent and the child, which they otherwise would not have had. In the instant case, the court first stressed that no new obligations or privileges were bestowed upon *Green* as a result of the adoption, since she already had complete parental custody. *Id.* at 128, 656 A.2d at 777-78. More importantly, since the relationship between *Green* and her children remained the same, the children did not receive any benefit from the adoption either. Therefore, since “adoption does not confer upon the adopted child *more* rights and privileges than those possessed by a natural child,” *Green*’s adoption had no effect on bettering her childrens’ lives. *Id.* at 128, 656 A.2d at 778 (emphasis in original)(quoting *Hall v. Vallandigham*, 75 Md. App. 187, 192, 540 A.2d 1162, 1164 (1988)).

The court next pointed out that the adoption by *Green* only served to hinder the children in various ways, since they: 1) were left fatherless because *Lenick* no longer had any obligation to them; 2) lost any right to receive support from *Lenick* in the future; 3) lost any right to his estate in the case of *Lenick*’s intestacy; 4) lost the right to bring a wrongful death suit on behalf of *Lenick*; and 5) lost the emotional and moral ties associated with a parent-child relationship. *Id.* at 128-29, 656 A.2d 778. Accordingly, the court held that an adoption which would only negatively impact upon the children was in violation of public policy. *Id.* at 129, 656 A.2d 778.

Furthermore, an analysis of *Bridges* led the court to distinguish it from the case at bar. Specifically, the natural father in *Bridges* was permitted to adopt his own children in order to legitimate them. Unlike *Green*’s case, therefore, the adoption in *Bridges* conferred upon the children various privileges which they would not have otherwise been privy to. *Id.* at 130, 656 A.2d at 778. Accordingly, as there was no issue of legitimation for *Green*, the children did not stand to reap any similar benefits. *Bridges* was therefore not considered controlling law.

The court of appeals also emphatically condemned the adoption of a child solely to divest a natural parent of his or her duty to support that child. The court emphasized that “the

duty to support one's minor child may not be bargained away or waived." *Id.* at 130, 656 A.2d 779 (quoting *Stambaugh v. Child Support Admin.*, 323 Md. 106, 111, 591 A.2d 501, 504 (1991)). Hence, it was contrary to public policy for Green to adopt her children simply to relieve Lenick of his child support obligations.

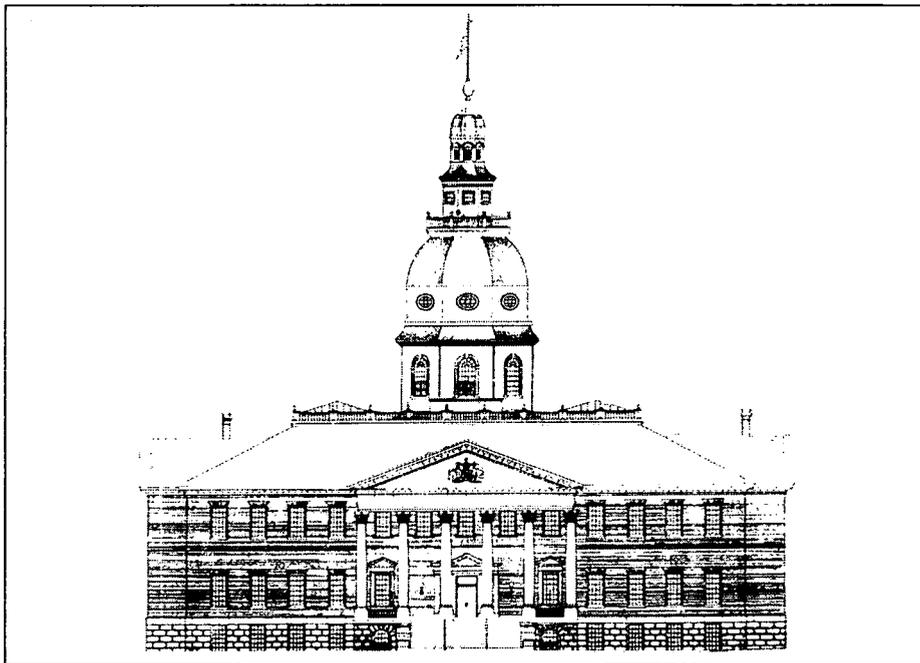
After acknowledging that the majority of other jurisdictions also prohibit natural

parents from adopting their own legitimate children, the court concluded by stating that the final adoption decree could be vacated more than one year after its entry date, thus nullifying Green's adoption of her children. *Id.* at 129, 656 A.2d at 779.

In holding that natural parents may not adopt their own legitimate children, the Court of Appeals of Maryland in *Green v. Sollenberger* empha-

sized the need to protect children and prohibit adoption when children either will receive no benefit or will be adversely affected by the adoption. The court also clarified that parents may not use their children as bargaining chips in order to attain what is best for the parents, rather than what is best for the children. Therefore, *Green* guarantees that the best interests of the children must be served before an adoption will be permitted.

-Robyn Scheina Brown



The Maryland State House is the oldest state capitol in the United States still actively used by a legislature. In February, 1695, the seat of State government was moved from St. Mary's City to Anne Arundel Town, present day Annapolis. The Continental Congress met in the State House when Annapolis was the United States capital, from November 26, 1783, to June 3, 1784. It was in this building that George Washington resigned as commander of the Continental Army on December 23, 1783.