

Memorandum 92-69

Subject: Study L-659.01 - Inheritance Involving Adopted Child (Probate Code Section 6408)

Attached is a staff draft of a recommendation on *Inheritance Involving Adopted Child*. It implements the Commission's decision at the last meeting to clarify subdivision (c) of Section 6408, but not to make substantive revisions in other subdivisions.

The Commission asked the staff to consider whether "wholeblood" as used in subdivision (c) should be defined. According to a California case, "wholeblood" means that the siblings have both natural parents in common. *In re Estate of Belshaw*, 190 Cal. 278, 285, 212 P. 13 (1923). The Comment notes this definition, citing the *Belshaw* case.

There was concern that "wholeblood" might exclude adoptive siblings in the adoptee's family of origin. The attached draft makes clear that an adoptive sibling adopted by both natural parents of the adoptee inherits the same as wholeblood natural siblings.

Respectfully submitted,

Robert J. Murphy
Staff Counsel

#L-659.01

STATE OF CALIFORNIA

California Law Revision Commission

Staff Draft

RECOMMENDATION

INHERITANCE INVOLVING ADOPTED CHILD

October 1992

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

October 29, 1992

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

This recommendation makes technical revisions to the statute on inheritance involving an adopted child. It makes clear (1) that natural siblings of the adoptee do not have a broader right to inherit from the adoptee than the adoptee has to inherit from them, and (2) that adoptive siblings in the adoptee's family of origin may inherit from the adoptee to the same extent as the adoptee's natural siblings.

This recommendation was prepared pursuant to Resolution Chapter 37 of the Statutes of 1980, continued in Resolution Chapter 72 of the Statutes of 1992.

Respectfully submitted,

Arthur K. Marshall
Chairperson

INHERITANCE INVOLVING ADOPTED CHILD

If a person is adopted by someone other than a stepparent, natural relatives of the adoptee may not inherit from or through the adoptee, except that the adoptee's issue, a wholeblood¹ brother or sister of the adoptee, or the issue of that brother or sister, may still inherit from the adoptee.² If the adoption is by a stepparent, natural relatives may inherit from or through the adoptee and the adoptee may inherit from natural relatives only if certain requirements are established to show that the adoptee had been part of the natural family.³ If the adoption is by a nonstepparent, must these familial ties be established for the adoptee's wholeblood siblings or their issue to inherit from or through the adoptee?⁴

Although practitioners have had difficulty with this question, a wholeblood sibling of the adoptee may inherit from or through the

1. "Wholeblood" means that the siblings have both natural parents in common. *In re Estate of Belshaw*, 190 Cal. 278, 285, 212 P. 13 (1923). The exception in subdivision (c) of Section 6408, permitting wholeblood but not halfblood siblings of the adoptee to inherit if the requirements of subdivision (b) are satisfied, was based on the assumed likelihood that a halfblood sibling may be in the custody of another family and not have close family ties with the adoptee.

2. Prob. Code § 6408(c).

3. Prob. Code § 6408(b)(1). The natural parent and adopted person must have lived together at any time as parent and child, or the natural parent must have been married to or cohabiting with the other natural parent at the time the child was conceived and died before the birth of the child. *Id.*

4. The question is whether the provision in subdivision (c) of Probate Code Section 6408 for inheritance by wholeblood brothers or sisters of the adoptee and their issue is independent of the requirements of subdivision (b), or whether subdivision (c) is subject to subdivision (b). If subdivision (c) is subject to subdivision (b), in order for wholeblood siblings of the adoptee to inherit not only must the adoption be by a nonstepparent and the requirements of familial ties be satisfied, but the adoption must be after the death of a natural parent. This the only case in which both subdivisions (b) and (c) can apply.

adoptee only if the requirements of familial ties are satisfied and the adoption was either by a stepparent or after the death of a natural parent.⁵ If this were not true and a wholeblood brother or sister could inherit from or through the adoptee without satisfying the requirements of familial ties, the adoptee's wholeblood siblings would inherit from the adoptee in cases where the adoptee would not inherit from them. This would be anomalous, and cannot be justified on policy grounds.

The Commission recommends the statute be revised to make clear that an adoptee's wholeblood siblings may inherit from or through the adoptee in the same cases the adoptee would inherit from them -- where the adoption is by a stepparent or after the death of a natural parent and the requirements of familial ties for inheritance between an adoptee and natural relatives are satisfied.⁶

Use of the term "wholeblood"⁷ to describe siblings who may inherit from or through the adoptee, notwithstanding the one-way inheritance provision, may prevent children adopted by the adoptee's natural parents from inheriting from or through the adoptee. The Commission recommends that the statute make clear that children adopted by both of the adoptee's parents in the adoptee's family of origin may inherit from or through the adoptee, the same as wholeblood natural siblings.

5. This is because inheritance is based on a "relationship of parent and child." See Prob. Code §§ 6408(a), 6402. The relationship of parent and child does not exist between the adoptee and the natural parent if the adoption is neither by a stepparent nor after the death of a natural parent. Prob. Code § 6408(b). Natural relatives of the adoptee, including a wholeblood brother or sister, may inherit from or through the adoptee only if a parent and child relationship exists with the natural parents, i.e., the adoption is by a stepparent or after the death of a natural parent and the requirements of familial ties for inheritance between an adoptee and natural relatives are satisfied.

6. This revision would be a clarification of existing law, and would not be a substantive change.

7. See *supra* note 1.

RECOMMENDED LEGISLATION

Prob. Code § 6408 (amended). Parent and child relationship

6408. (a) A relationship of parent and child is established for the purpose of determining intestate succession by, through, or from a person in the following circumstances:

(1) Except as provided in subdivisions (b), (c), and (d), the relationship of parent and child exists between a person and ~~his or her~~ the person's natural parents, regardless of the marital status of the natural parents.

(2) The relationship of parent and child exists between an adopted person and ~~his or her~~ the person's adopting parent or parents.

(b) The relationship of parent and child does not exist between an adopted person and the person's natural parent unless both of the following requirements are satisfied:

(1) The natural parent and the adopted person lived together at any time as parent and child, or the natural parent was married to, or was cohabitating with, the other natural parent at the time the ~~child~~ person was conceived and died before the birth of the ~~child~~ person.

(2) The adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.

(c) ~~Neither a~~ Notwithstanding satisfaction of the requirements of paragraphs (1) and (2) of subdivision (b), if the adoption is by a person other than the spouse or surviving spouse of the natural parent, neither the natural parent nor a relative of a the natural parent ~~(except for the issue of the child or a wholeblood brother or sister of the child or the issue of that brother or sister)~~ inherits from or through a ~~child~~ the adopted person on the basis of the relationship of parent and child ~~if the child has been adopted by someone other than the spouse or surviving spouse of that parent.~~ , except for:

(1) The issue of the adopted person.

(2) A wholeblood brother or sister of the adopted person, or the issue of that brother or sister.

(3) An adoptive brother or sister, or the issue of that brother or sister, if the brother or sister was adopted by both natural parents of the adopted person.

(d) If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child or a natural brother or sister of the child or the issue of that brother or sister) inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied:

(1) The parent or a relative of the parent acknowledged the child.

(2) The parent or a relative of the parent contributed to the support or the care of the child.

(e) For the purpose of determining intestate succession by a person or ~~his-or-her~~ the person's descendants from or through a foster parent or stepparent, the relationship of parent and child exists between that person and ~~his-or-her~~ the person's foster parent or stepparent if (1) the relationship began during the person's minority and continued throughout the parties' joint lifetimes and (2) it is established by clear and convincing evidence that the foster parent or stepparent would have adopted the person but for a legal barrier.

(f) For the purpose of determining whether a person is a "natural parent" as that term is used in this section:

(1) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code.

(2) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless either (A) a court order was entered during the father's lifetime declaring paternity or (B) paternity is established by clear and convincing evidence that the father has openly and notoriously held out the child as his own.

(g) Nothing in this section affects or limits application of the judicial doctrine of equitable adoption for the benefit of the child or ~~his-or-her~~ the child's descendants.

Comment. Subdivision (c) of Section 6408 is amended to make clear that, for a wholeblood brother or sister to inherit from or through the adoptee, the requirements of paragraphs (1) and (2) of subdivision (b)

must be satisfied. This is a nonsubstantive, clarifying revision, since that was the prior intent of subdivisions (b) and (c).

Subdivision (c) is also amended to make clear that an adoptive brother or sister of the adoptee, adopted by both of the adoptee's natural parents, may inherit from or through the adoptee the same as a wholeblood brother or sister. This may be a change in prior law.

The amendments also make other technical changes.

As used in paragraph (2) of subdivision (c), "wholeblood" means that the sibling and adopted person have both natural parents in common. *Cf. In re Estate of Belshaw*, 190 Cal. 278, 285, 212 P. 13 (1923).