

SHE LOVED ME LIKE HER OWN CHILD: OVERVIEW AND APPLICATION OF THE EQUITABLE ADOPTION DOCTRINE IN IOWA

Matthew D. Gardner
Sullivan & Ward, P.C.
6601 Westown Parkway, Ste. 200
West Des Moines, IA 50266
(515) 244-3500
www.iowa-lawblog.com
www.iowaestateplan.com

A. Introduction and Overview of Equitable Adoption

Adoption of another individual is a legal process completed strictly pursuant to statute and was unknown to the common law. Adoption of children originated in the Roman and civil law systems and was unknown to English jurisprudence. Adoption in the United States is purely statutory in origin and the right to adopt and the legal consequences of adoption are dependent on applicable statutory provisions. Strict compliance with the statutory requirements is thus necessary to properly effectuate an adoption in the United States. Iowa Code chapter 600 governs adoptions in the State of Iowa.

However, there are areas of jurisprudence that have given legal rights to individuals without a requirement for strict statutory compliance, much like the recognition of common law marriages in situations without satisfying the marriage requirements. Similarly, courts have expanded certain rights of putative adoptees beyond strict compliance of the adoption statute under certain situations. This expanded view of non-statutory adoptions has attempted to provide some relief through inheritance rights to those individuals that were treated as adopted children but who were never formally adopted. This doctrine has been recognized by numerous courts around the country, frequently under the name of “equitable adoption” or “adoption by estoppel” or more recently “virtual adoption”. Thirty-eight jurisdictions have in fact considered the doctrine, and of those, at least twenty-seven have adopted the doctrine. It is the application of this doctrine which may be utilized by a court to fix an equitable remedy for a perceived wrong.

The facts of a particular case may call for application of such an equitable remedy. For example, consider these hypothetical facts:

Husband and Wife were married and had two children together. Shortly after the birth of the second child, Wife dies. Husband soon remarries with Wife #2 while both children are still infants. Children are raised by Husband and Wife #2 from infancy through adulthood and are treated as the children of Wife #2 as her own children despite the lack of a biological relationship. Wife #2 does not have any children of her own. Wife #2 does not proceed with legal formality of adopting the children and all services (schools, churches, physicians) recognize and treat Wife #2 as the mother of the children. Husband dies and all assets pass to Wife #2 as surviving joint tenant. Children continue to treat Wife #2 as their mother and provide and care for her. Wife #2 dies intestate. Children of Husband fail to inherit from Wife #2 and distant cousins inherit through intestate statute as blood relatives.

Under these facts, an argument for permitting the children to inherit from the estate of Wife #2 would seem equitable and desirable, at least from the prospective of the children. It is certainly reasonable for a court to formulate a doctrine that does not take a rigid stance, especially if the circumstances call for a remedy.

The doctrine is an equitable remedy applied to protect the interests of a person who was supposed to be adopted, but the adoptive parents failed to undertake the legal steps necessary to formally accomplish the adoption under the adoption statute. It is typically applied in an intestate estate to give effect to the intent of the decedent to adopt and provide for the inheritance rights of a child.¹ These materials will focus on that particular remedy solely in terms of inheritance rights.

As the number of subsequent marriages continue to increase and continued reluctance of many individuals to execute a will, the number of cases we can expect to see with these basic fact lines will likely increase. Additionally, many parents may be reluctant to complete adoption proceedings due to the expense involved and potential confrontation issues with the biological parents and emotional baggage potentially involved.

There are certain limitations in the application of the doctrine in the realm of inheritance rights. For example, the putative adoptive parents cannot inherit *from* the putative adoptee, effectively making the adoption status a one-way inheritance. The rationale behind this limitation lies in the fact that it is the failure of the putative adoptive parents to complete the formal requirements of an adoption and a court of remedy should not enable one to benefit from their lack of action in completing the legal requirements. Another limitation that the courts have recognized is that while it may enable a child to inherit *from* a putative adoptive parent, they

cannot inherit *through* a putative adoptive parent. While the majority of the cases, including cases in Iowa, have focused on application of the remedy solely in intestate situations, some states have also permitted application of the doctrine in testate situations where there is an omitted or pretermitted child.

Conversely, there is a concern against application of the equitable adoption. The concern has been raised by some that this may infringe on establishment of a relationship between a step-parent and a step-child. The step-parent may fear establishing a close relationship out of concern of the potential impact of a “quasi-adoption” and corresponding duties and obligations as a parent. The supporting evidentiary demands also create concerns over application of the remedy. In many situations you may be dealing with family scenarios where key individuals are deceased and faded memories. Fixing inheritance rights with limited supporting facts is a difficult load for the judiciary.

Nonetheless, there is the potential for application of the remedy and as practitioners we are obligated to be aware of its existence and prepared to address the remedy. Hopefully, this outline will assist the Iowa practitioner in creating the familiarity of the essential elements in order to make the proper diagnosis of a case.

B. Elements of Doctrine

The basis of the doctrine is derived from contractual rights and enforcement of rights under a contract. The doctrine, even if successfully applied by a court, does not equate to a statutory adoption to establish a parent-child but is limited solely to establishment of rights of inheritance. In Iowa, a two-part test has been enumerated by the Iowa Supreme Court for application of the doctrine. That test requires that: (1) there be an unexecuted agreement by the adoptive parents; and (2) performance by the alleged adoptee pursuant to that agreement.ⁱⁱ The children who seek to have the doctrine of equitable estoppel applied carry the burden of proof by clear, satisfactory and convincing evidence, not by a preponderance of evidence. This creates a fairly high hurdle, principally in light of the fact of the evidentiary burdens in cases such as these.

1. Unexecuted Agreement to Adopt

The basic element upon which the doctrine rests is that of an agreement to adopt a child is entered into by the decedent prior to their death. This is frequently the difficult portion and highest hurdle of the two-part test. For most conceivable situations, the parental parties, who fail

to even go to legal counsel to formalize an adoption, will typically not enter into a formal, written agreement to adopt an individual. The courts have acknowledged this reality and, at times, have been liberal in their review in attempting to establish any kind of an agreement by the parties.

It is not unusual for most equitable adoption cases to be tried many years after the alleged agreement to adopt was created. Memories by witnesses over actual discussion of terms and words used in discussing an intended adoption often fade. In addition, the parties to an agreement to adopt a child are typically deceased, as it is the inheritance rights that are being litigated. A 1939 Iowa ruling recognized the difficulty of identification of an agreement to adopt and found that it is not necessary to have direct proof of the making of the contract. Rather, by looking at the statements and conduct of the adopting parents, proof of an agreement can be inferred from that evidence.ⁱⁱⁱ Courts from other states have also recognized this difficulty in proving the existence of an agreement to adopt and also do not necessarily require direct proof of the agreement.

Evidence of indirect proof can take many forms. In some examples of the limited number of Iowa cases^{iv} that have reviewed the application of this doctrine, evidence of the agreements have consisted of: (a) Swedish church records indicating the decedent as the adoptive father, in conjunction with the acts of the decedent towards the adoptive child; (b) statements to a third-party that they were going to adopt the children and public conduct of the adoptive parents; and (c) execution of “Articles of Adoption” which were legally ineffective (failed to be recorded) but the intent and understanding between the parties was consistent.

Through indirect evidence, if not direct evidence, it is critical that some establishment of some agreement or intention to adopt a child be established. A subsequent section of this outline will look at some of the consistent factors that courts in other states have examined in the application of this element of the doctrine. Where there is limited evidence of identifying an agreement to adopt, there has been additional factual evidence which has assisted courts in applying the doctrine.

2. Performance by the Alleged Adoptee

The second part of the test is the performance by the alleged adoptee. Bestowing love and affection from an adoptive child to the adoptive parent satisfies this element. Living in the adoptive parent’s home until marriage during which the demeanor, activities and relationship are

that of an average parent and child which continued after marriage of the adoptive child have also been relied upon as supporting performance by the alleged adoptee. Caring for and visiting with an adoptive parent are also indicative of the full and faithful performance of the adoptee.

The courts have placed limited focus on this particular element of the doctrine. One might suspect that even the worst child without any relationship with a putative adoptive parent will suddenly and fondly recall their memories of their “great” relationship, if the inheritance rights are worthwhile to pursue. However, the courts have not applied the doctrine to situations where an older child, nearing the age of majority, does not create a relationship or has run away from the home and abandoned the putative adopted parent.

3. Question of Termination of Parental Rights of Biological Parent.

A potential issue that an Iowa district court has raised in at least one equitable estoppel review is a concern over the lack of termination of parental rights of the natural parent. The particular situation involved a biological mother that essentially abandoned her young children, without any formal termination of her parental rights despite her lack of financial or emotional support. The failure to terminate those parental rights, as is required under the Iowa adoption statute, would make any alleged agreement not binding, the district court held.

While the issue of termination of parental rights has not been directly addressed by the Iowa appellate courts, other states have addressed this issue and have found that it is not necessary to terminate parental rights as it would be “antithetical to impose such a requirement on a doctrine, the existence of which is based on the noncompliance with other procedures.”^v Furthermore, it should be noted that the equitable adoption remedy is not intended to create a legal relationship of an adopted parent and adopted child with all of the legal effects derived from a statutory adoption. While the adoption statute does require that the parental rights be terminated, the equitable adoption doctrine does not mirror the adoption statute and its requirements. Rather, the doctrine is the enforcement of a contractual right in the absence of the failure to follow the statutory requirements for adoption which was invented by the courts as a means of allowing a child to enjoy part of the adoptive child status by inheritance pursuant to contract and avoidance of unfair results from the application of intestacy statutes.

Some courts have considered the continuing relationship of a child with the natural parent as a factor against application of the doctrine, as discussed *infra*. However, the actual termination of parental rights has yet to be a requirement imposed by the Iowa courts.

C. Relevant Factors Considered by Appellate Courts

As case law in Iowa is fairly limited, and of some vintage, in cases applying equitable adoption doctrine, it is necessary to audit the rulings from other courts in how they have examined the application of the doctrine, and, at times, have modified the elements. A review of the decisions in states that have adopted the doctrine reveals certain factors which indicate certain forms of evidence that courts are relying upon in sustaining the doctrine.^{vi}

1. Unequivocal evidence of intent to adopt

Clear evidence of intent to adopt is significant and one of the basic elements under Iowa law as well. Understandably, there are very few reportable cases which involve written agreements for adoption, which would be the strongest evidence of an adopter's intentions. Typically, in most situations, arrangements for a party to adopt are made through oral arrangements. Evidence of oral arrangements is often supported through indirect or circumstantial evidence, such as church records, orphanage records or other third parties' records. Evidence of partial steps taken towards a statutory adoption has also been considered supportive evidence of the intent to adopt. For example, visiting with an attorney about the statutory process of adoption, or having paperwork drawn up for an adoption have been indicative of the unequivocal intent to adopt.

Performance by the natural parents by not seeking to recover custody of a child and performance by the adoptive parents in caring for the child and treating the child as their own have also served as sufficient evidence of an agreement to adopt.

2. Benefits of love and affection by adopting party

The supporting cases also reveal that the putative adopters are deemed to have received the benefits of love and affection by the adoptee. This parallels the theory of enforcement of a contractual agreement as a result of receipt of the consideration for adoption. Assuming that the adoptive parent is present and is the recipient of beneficial acts of affection, this "receipt of consideration" has been utilized as a factor by the courts.

3. Rearing of child from tender years

Another common thread of facts where the doctrine is applied also resonates when the putative adoptee is reared by the adoptive parents from an early age, or the "tender years". The courts appear to premise the importance of the "tender years" factor on the assumption that an

older child is less likely to assume the relationship is that of a natural child and parent and may simply be engaging in a close relationship.

4. Termination of Relationship between adoptee and natural parent

If a child receives some benefit, whether financial or emotional, from a natural parent, the courts have been reluctant to permit the child to seek benefits from the putative adoptive parents in addition. Typically, the situation involves facts where a young child is abandoned by one or both of the natural parents or both of the natural parents are deceased. With a relationship of some sort with the natural parent, there is no detrimental reliance upon the belief that the putative adopter is their father.

5. Representation to the world

In nearly all of the cases, it is generally recognized by not only the adopter of the status of the child, but also by friends, family, and service providers that the child is that of the adopter. Other examples of representing to the public include usage of the adopter's surname for memberships and enrollments.

6. Stepparent Relationships

Some courts have approached the situation of application of the doctrine in the stepparent situation carefully and with greater caution. Often, a stepparent and stepchild will have a close relationship with each other out of a sense of moral obligation to the spouse of the stepparent. The "slippery slope" argument could potentially create a claim for equitable adoption in every stepparent relationship and potentially taint the relationship out of fear that certain rights could develop out of a close stepchild relationship. In such situations, the courts have sought clear evidence of an intention to adopt.

D. Summary and Current Status in Iowa

In summary, adoption is still strictly a statutory procedure. However, the equitable adoption doctrine can provide an equitable remedy to correct a perceived injustice in determining inheritance rights in an intestate proceeding on behalf of a putative adoptee. The doctrine does not establish a legally recognized parental-child relationship, but rather seeks via specific performance to enforce a contractual agreement to adopt.

Iowa law currently does recognize the doctrine of equitable adoption and has established the necessary requirements for application of the doctrine. However, the last reportable case in Iowa to consider application of this doctrine in the context of an inheritance was over fifty years

ago. There is currently on appeal to the Iowa Supreme Court at least one case seeking a reversal of a district court's failure to apply the doctrine. The district court's ruling in that particular case is principally due to the court's finding that there was not unequivocal evidence supporting an agreement to adopt and that the actions of the putative adopter and adoptee were insufficient to indicate an intention to create an agreement for adoption. Hopefully, the Court will provide additional guidance and framework for application of the doctrine in this state.

ⁱ Gardner v. Hancock, 924 S.W.2d 857 (Mo. App. 1996).

ⁱⁱ In re Painter's Estate, 246 Iowa 307, 3310, 67 N.W.2d 617, 619 (1954).

ⁱⁱⁱ Bergman v. Carson, 226 Iowa 449, 284 N.W. 442 (1939).

^{iv} See, e.g., Bergman, *supra.*, In re Painters Estate, *supra.* Shaw v. Scott, 217 Iowa 1259, 252 N.W. 237 (1934).

^v Johnson v. Johnson, 617 N.W.2d 97, 109 (N.D. 2000).

^{vi} See William G. Reeves, Inheritance by Equitable Adoption: On Overview of Theory and Proof, *Journal of the Missouri Bar*, Vol. 57, No. 3 (May – June 2001).