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THE ADOPTION OF CHILDREN IN COLORADO

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To have the knowledge necessary to handle adoption proceedings in the county and juvenile courts, the practicing attorney must be familiar not only with the Colorado statutory chapter on adoptions,[1] but also with the closely related provisions on relinquishment[2] and the policies and rules of the particular county or juvenile court. It is the purpose of this article to review the various laws and policies relating to the adoption of minors, which include many recent legislative changes, and to discuss some questionable areas in the law.

The juvenile court of Denver and the county courts elsewhere in the state have jurisdiction of all adoptions of minor children.[3] Prior to a 1949 amendment, venue was determined by the residence of either the petitioner or the child. The present statute allows a child to be adopted in any county in which he is located, or in which the licensed agency having his custody is located, as well as in any county in which the petitioner is domiciled.[4] Presumably, a child is "located" in a county if he is physically present there. If this is true, the present venue provision is extremely broad, allowing an adoption proceeding in any county as long as the child is brought within that county.

For several purposes, Colorado law separates adoptions into two categories: (1) adoptions by a relative or stepparent; (2) other adoptions, which this article will refer to as "stranger" adoptions.[5] In the case of a stranger adoption, the child may not be placed for the purpose of adoption unless the rights of the natural parents, or the mother alone in the case of a child born out of wedlock,[6] have been terminated. Termination of parental rights may be affected through a statutory relinquishment proceeding or through a statutory dependency proceeding.[7]

No parent may relinquish a child other than in compliance with the statutory provisions.[8] To illustrate these provisions, take the case of an unwed mother desiring to relinquish her child. The law requires that she be thoroughly counseled before she appears in court.[9] This counseling is usually done by an agency social worker. The mother then appears in court to sign the necessary papers: a petition for relinquishment, a consent to adoption and relinquishment of rights, and, as an additional precaution, a questionnaire pertaining to her desire to relinquish, her understanding of the proceeding, and the adequacy of the counseling she has received. After filling out the papers, she appears before the judge who examines

1 Colo. Rev. Stat., ch. 4 (1953).
2 Colo. Rev. Stat., ch. 4, art. 5 (1953).
3 Colo. Rev. Stat. § 4-1-2 (1953). Adults also may be adopted in Colorado for the purpose of becoming heirs at law, and these proceedings are under the jurisdiction of the county and district courts. Colo. Rev. Stat. § 4-1-13 (1953).
4 Colo. Rev. Stat. § 4-1-2 (1953).
5 See Colo. Sess. Laws 1959, ch. 39, § 1; Colo. Sess. Laws 1959, ch. 71, § 1.
6 Colo. Sess. Laws 1959, ch. 70, § 1.
7 Colo. Sess. Laws 1959, ch. 71 § 1 (2). Dependency proceedings are covered by Colo. Rev. Stat., ch. 22, art. 1 (1953).
8 *Id.*
9 Colo. Rev. Stat. § 22-5-2 (1953); Colo. Sess. Laws 1959, ch. 70, § 2.

her as to her desire to relinquish the child. If the court is satisfied that this is her desire, that she has been fully counseled, and that the relinquishment is for the best interest of the child and all parties, the relinquishment is ordered and the child received by the court. The final order terminates all legal rights and obligations between the parent and child, and the court may place the child with whomsoever it desires.[10] The Denver juvenile court invariably uses the various placing social agencies to select a proper home for the child.

The Supreme Court of Colorado has held an adoption decree to be void on its face in a case of a stranger adoption in which the statutory relinquishment provisions were not followed:

> It is at once apparent that a statutory relinquishment cannot be waived because it is a part of the court process in such matters. It is necessary in order that the parent be under the jurisdiction of the court where the other statu-

10 Colo. Sess. Laws 1959, ch. 70, § 3.

> tory provision of counselling and guidance can be given. An attempt to relinquish a minor child to an individual is without any force or effect. Consent alone adds nothing in the way of giving jurisdiction to the court. None of these statutory requirements were met according to the record in this case. That being true, the county court could not enter a valid adoption decree, and the decree is thereby absolutely void on its face and may be the subject of a collateral attack. . . .[11]

Whether a child who is relinquished in another state may be adopted in Colorado is a question with which the statutes do not deal and which has never been decided by the Colorado Supreme Court. Colorado relinquishment provisions requiring proper counseling and court procedures protect the relinquishing parent and are strictly construed by the courts.[12] In many other states, the relinquishment law is not nearly so strict, sometimes requiring only the signing of a paper by the parent. Would a Colorado adoption based on an out-of-state relinquishment which does not meet the high standards of the Colorado relinquishment law be subject to attack? This question has not been officially answered, but in practice most Colorado courts do give full faith and credit to a relinquishment which would be valid in another state.

If the person desiring to adopt the child is a relative or stepparent of the child, a statutory relinquishment proceeding is not required by law.[13] However, some courts do require a formal relinquishment in relative adoptions as a matter of policy, in order to more fully protect the natural parent from a hurried or coerced decision. Furthermore, many courts will not allow a stepparent to petition for an adoption until the couple has been married for a reasonable length of time, such as six months. The reasons for this rule are obvious.

Once it is determined that the child has been validly relinquished or parental rights terminated in a dependency proceeding, or that court rules regarding relative and stepparent adoptions have been fulfilled, the actual adoption proceeding may be commenced.

Any person over twenty-one years of age may petition the court to adopt a child, and shall petition jointly with a living spouse if the spouse is not the natural or adoptive parent of the child.[14] If the petitioner is not a relative or stepparent and has taken custody of the child for purposes of adoption, the petition shall be filed within thirty days after such placement, unless the court finds there was reasonable cause or excusable neglect for not so filing.[15] The petition shall include the following information: names, birthdates and birthplaces, religions and residences of each petitioner and the child; relationship, if any, of child to petitioner; full name by which child shall be known; description of child's property, if any; names and addresses of child's parents, if known; names and addresses of child's guardians of the person and the estate, if any; name of the agency to which the child has been relinquished or custody given; and length

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11 Fackerell v. District Court, 133 Colo. 370, 374-75, 295 P.2d 682, 684 (1956).
12 *Id.*
13 Colo. Sess. Laws 1959, ch. 71, § 1.
14 Colo. Rev. Stat. § 4-1-3 (1953).
15 Colo. Sess. Laws 1959, ch. 39, § 1.

of time child has been in the care of petitioner.[16] One copy of the petition, which must be verified by affidavit of petitioner, is required for the court records.

Accompanying every petition must be a written and notarized statement of consent.[17] Unless the adoption consent provisions are read in close conjunction with Colo. Sess. Laws 1959, ch. 71 § 1, they do not give a true picture, for they appear to require statements of consent from natural parents in all types of adoptions. However, parental rights of the natural parents must have been terminated by a relinquishment or dependency proceeding in all cases of stranger adoptions,[18] and therefore no consent from natural parents is necessary. In a stranger adoption, therefore, consents must be obtained from the following: (1) the child to be adopted if he is twelve years of age or older; and (2) either (a) the legal guardian of the child if such guardian has parental rights; or (b) the agency or body which has been given custody of the child and the right to consent to an adoption.

In relative or stepparent adoptions, consents must be obtained from a child of twelve or older, from any legal guardian with parental rights, and in addition from the natural parent or parents if they are alive and have not lost their parental rights. For purposes

16 Colo. Rev. Stat. § 4-1-6 (1953).

17 The section reads as follows:

(1) Every petition for adoption shall be accompanied by written statements of consent, subscribed and sworn to by the persons giving such consent before a person authorized by law to administer an oath.

(2) Consent to any proposed adoption shall be obtained from:

(a) The person to be adopted if he is twelve years of age or over; and

(b) Both natural parents, except in case of a child born out of wedlock, if they are alive and have not lost their parental rights through court action or voluntary relinquishment, abandonment, or by reason of having failed without cause to provide reasonable support for such child for a period of one year or more; or

(c) One natural parent, if the other is not alive or has lost his parental rights; or

(d) The mother of a child born out of wedlock, except that if the child has been legitimated according to the laws of any jurisdiction, the consent of the father shall then also be required, if he is alive and has not subsequently lost his parental rights through court action or voluntary relinquishment or abandonment; or

(e) The mother of a child born in wedlock as a result of an extramarital relationship, if the illegitimacy of the child has been established by a court of competent jurisdiction, and notice has been given to the husband of the mother of the child; or

(f) The legal guardian of the person to be adopted, if parental rights have been transferred by court action to such guardian; or

(g) The board of control of the Colorado state children's home or the superintendent of said home or the executive head of any public welfare department or of any licensed private child care or placement institution or agency which through court action or voluntary relinquishment has been given the care, custody and control of the person to be adopted including the right to consent to such adoption.

(3) The minority of a natural parent shall not be a bar to such parent's consent to adoption, and the adoption shall not thereby be invalidated, provided, a court of competent jurisdiction has decreed the relinquishment of said child and affirmed subsequent adoption.

18 Colo. Sess. Laws 1959, ch. 71, § 1 (2). Fackerell v. District Court, 133 Colo. 370, 295 P.2d 682 (1956).

of this provision, parental rights may be lost through court action or voluntary relinquishment, abandonment, or by reason of having failed without cause to provide reasonable support for such child for a period of one year or more.[19] This situation usually arises in a stepparent adoption. The natural parents are divorced and the mother, having custody of the child, is remarried. The new husband desires to adopt the child, but the former husband and natural father refuses to consent to the adoption. No adoption may be granted without his consent unless the natural father has lost his parental rights. If, for example, the natural father has failed to support the child for more than one year or has abandoned the child, such fact may be alleged in the petition and proved at the adoption hearing. Proper notice must be given to the former husband so that he may defend the action.

If a child is born in wedlock but as a result of an extramarital relationship, the mother alone may consent, but only if the illegitimacy of the child has been established by a court and notice has been given to the legal husband.[20] Thus, if the illegitimacy of the child has not been established, the husband of the mother is presumed to be the father and his consent is necessary.

Only the mother's consent is necessary if a child has been born out of wedlock unless the child has been legally legitimated and the father has not lost his parental rights.[21]

Notice to interested parties is required by statute in the case of the adoption of a child not a grandchild or stepchild of the petitioner.[22] Does this mean that a petition may be filed for the adoption of a stepchild or grandchild, alleging the loss of parental rights by the natural parent, without giving notice of the adoption hearing to such natural parent? If this is the meaning, it raises a serious constitutional question as to the natural parent's right to notice. As a matter of practice, most courts do insist upon notice in such cases, even though it is apparently not required by law.

It has earlier been pointed out that notice must be given to the husband of the mother of a child born as a result of an extramarital relationship, even though illegitimacy has been established by a court of competent jurisdiction.[23]

A hearing on a stranger adoption may not be less than thirty days after the filing of the petition.[24] In all of these types of adoptions, a written social investigation must be made and filed with the court at least one week prior to the date fixed for a hearing. Such report may be made by a licensed agency, the court's probation department, or other appropriate officer, and its scope is specifically set forth in the statutes.[25] Many courts hold a preliminary hearing at the time of the filing of the petition for the purpose of setting the hearing date, ordering the social investigation to be made, and approving the placement of the child.

The detailed investigation report is not required to be made in cases of relative or stepparent adoptions. Neither is a waiting period

19 Colo. Rev. Stat. § 4-1-6 (2) (b) (1953).
20 Colo. Rev. Stat. § 4-1-6 (2) (e) (1953).
21 Colo. Rev. Stat. § 4-1-6 (2) (d) (1953).
22 Colo. Rev. Stat. § 4-1-8 (1953).
23 Colo. Rev. Stat. § 4-1-6 (2) (e) (1953).
24 Colo. Sess. Laws 1959, ch. 39, § 1 (2).
25 Colo. Sess. Laws 1959, ch. 39, § 1(2)(a)-(f).

required after filing the petition; the hearing may be held forthwith and the adoption decree granted.[26]

The lack of an investigation report in relative and stepparent adoptions raises a problem. It is required by statute that the judge satisfy himself as to four specific issues of fact at the adoption hearing. These are as follows: (a) The genuineness of consent to such adoption and the legal authority of the person or persons signing such consent; (b) The good moral character, ability to support and educate such child and the suitability of the home of the person or persons adopting such child for said child; (c) The mental and physical condition of the child as a proper subject for adoption in said home; and (d) The fact that the best interests of the child will be served by said adoption.[27]

In stranger adoptions, the court has before it, pursuant to statute, a written report of a social agency or its own probation department covering *inter alia*, these four areas. Since this report is not required in relative and stepparent adoptions, evidence should be presented at the hearing which will give the court a basis for making these findings.

Two certified copies of the final court order are given to the adopting parents, one of which may be taken to the state registrar who will then prepare a birth certificate in the new name of the adopted person, showing the adoptive parents as the father and mother.[28]

26 Colo. Sess. Laws 1959, ch. 39, § 1(1).
27 Colo. Rev. Stat. § 4-1-9 (1) (a)-(d)(1953).
28 Colo. Rev. Stat. § 66-8-14 (1953).

One other statutory requirement should be pointed out. No money or other compensation in connection with an adoption may be offered, given or received except attorneys' fees and other fees approved by the court. The penalty for violation of this provision is a fine of not more than $500 or a prison term of not more than one year, or both.[29]

The reason for this provision is clearly to prevent the "sale" of babies. In most states of the nation, legislative attempts have been made to regulate the placement of children for purposes of adoption, and in a great number of the states, unfortunately, this has not been too effective. There are still a great number of children placed by independent or private placement. The selection of a family for the purpose of adoption and actual placing of the child with the family is the function of a social agency and not the function of a court. The court should handle the legal phases of an adoption, but not the placing of the child. Through a careful medical, emotional and social study, the social agency has the opportunity to choose correctly from among the numerous applicants. Parents wishing to adopt a child are treated fairly; social position, wealth or whom they happen to know do not place them at any advantage or disadvantage. Furthermore, there is complete confidentiality; the natural mother does not know where the child is placed and the adopting parents do not know the mother, as they do in an independent placement.

[29] Colo. Rev. Stat. § 4-1-14 (1953).