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ADOPITION IN MINNESOTA

Creation of the parent-child relation by adoption has been practiced and legally recognized since early times but, curiously enough, was unknown to the common law of England. As a result, the methods and consequences of legal adoption are governed solely by statute in the United States and England.

Minnesota has frequently been referred to as a state that has gone far in solving its child-welfare problems and adoption is no exception. But even though our adoption statutes were basically sound prior to last year, areas did exist which needed strengthening and clarification; so consideration of the adoption laws and techniques in this state was included within the undertaking of a commission created in 1949 to study a large portion of the law of domestic relations. As a consequence, a new adoption act was proposed by the commission in 1951 and enacted into law in substantially the recommended form.

Adoption is not a subject of minimal importance in regard to either volume or social significance. It is estimated that about 50,000 children are adopted annually in the United States and the rate is accelerating. Minnesota’s portion of this total is significant. During the fiscal year 1948-1949, 1,943 new petitions for adoption were filed and 1,994 adoption petitions were heard by the courts of this state. Unquestionably, the combined impact of

1. See In re Adoption of Jaren, 223 Minn. 561, 567, 27 N. W. 2d 656, 660 (1947); Quarles, The Law of Adoption—A Legal Anomaly, 32 Marq. L. Rev. 237 (1949); Brosnan, The Law of Adoption, 22 Col. L. Rev. 332 (1922). However, adoptions de facto were not uncommon in England. See Lockridge, Adopting a Child 3 (1947); 93 Sol. J. 505 (1949).
2. Quarles, supra note 1, at 241. Texas and Louisiana may be regarded as exceptions because they inherited Spanish law and French civil law respectively. Ibid.
3. The first adoption act in England, 16 & 17 Geo. 5, c. 29, was passed in 1926. For a complete discussion and analysis of the adoption law in England today, see Josling, Adoption of Children (2d ed. 1950).
6. For the complete text of the proposed act, see Report of Minnesota Interim Commission on Domestic Relations Problems 36-41 (1951).
8. See United States Children’s Bureau, To Safeguard the Adopted Child, 14 The Child 144 (1950); Lockridge, op. cit. supra note 1, at 1.
9. Lockridge, op. cit. supra note 1, at 1 (based upon the number of adoptions granted in the courts of greater New York).
these adoptions upon the social structure of the community was
substantial and every lawyer has a duty to preserve and improve
this social structure whenever possible. Furthermore, in no field
of law is a more intimate fiduciary relationship established be-
tween attorney and client than when prospective adoptive parents,
in their attempt to acquire a child of their own, seek aid of coun-
sel.\textsuperscript{1} The lawyer can best fulfill these confidences placed in him
by society and his client by insuring that the adoption is both
socially desirable and legally incontestable.

The social aspects of adoption will not be treated in this Note
but, obviously, both the law and child-welfare agencies must do
their part if the various interests of child, natural parents and
adoptive parents are to be fairly balanced and adequately protected
in adoption proceedings. Indeed, the legal framework provided
by the adoption statutes, which is the subject matter to be treated
here, will be a mere shell and of little consequence if the complex
social problems involved are not properly handled.

The adoption statutes of the separate states are diversified and
no comparison of that law is made in this Note\textsuperscript{12} but the case law
of foreign jurisdictions will be resorted to when necessary.

I. PETITION, JURISDICTION AND VENUE

Adoption proceedings are instituted by petition. If the petitioner
is married the spouse must join in the petition\textsuperscript{13} because joinder
will probably insure family harmony and inure to the welfare of
the child by rendering impossible the undesirable situation in
which one party to a marriage does not legally assume parental
obligations toward a child who must live in the same home. How-
ever, joinder may also create problems. While the Minnesota
statutes forestall any possibility that joinder may change the status
of the relationship between the child and natural parent who is the

10. See Annual Report Minnesota Division of Social Welfare 23
(1949). Last year 1,766 new petitions were filed. See Annual Report Minnesota
Division of Social Welfare 22 (1951).

11. See Miller, The Lawyer's Place in Adoptions, 21 Tenn. L. Rev.
630 (1951); Love, How Adoption Proceedings Should be Handled, 21
Okla. B. J. 605 (1950).

12. For a comparison of the adoption laws of the different states, see
Leavy, Adoption Law Simplified (1948). For a complete collection of all the
state statutes with supplements but no comparison, see Huston, Social Wel-
fare Laws of the 48 States (1937).

spouse of the petitioning stepparent, joinder does pose a question whether a person can adopt without the consent of his spouse who is legally separated from him or who is insane. Interestingly enough, there are no Minnesota cases on the point notwithstanding the presence of the word "married" in the adoption statute for over 40 years. However, it would seem that an adoption under such circumstances would be inadvisable.

Allegations regarding the background of the child, marital status of the petitioner, motive for adoption and similar information must be made in the petition and verified by the Director of Social Welfare after filing. The risk that factors extrinsic to the adoption itself, such as a void marriage, will later upset the adoption is thereby reduced. The new act provides that the form and content of the petition are subject to change under the Supreme Court's rule-making power but the Court in promulgating the new Minnesota Rules of Civil Procedure made them inapplicable to adoption proceedings insofar as they are inconsistent with present adoption practice and procedure.

Original jurisdiction in adoption proceedings is vested in the district courts but when this jurisdiction may be exercised and a

14. Minn. Stat. Ann. § 259.29 (Supp. 1951). It has been suggested that a natural parent who is the spouse of the petitioning stepparent need not join in the petition. See Essentials of Adoption Law and Procedure 12 (Fed. Sec. Agency, Children's Bureau 1949). There seems to be little to choose from between this and the Minnesota method of dealing with the problem.

15. The legal separation contemplated here does not include persons who are single because of a former divorce. Persons who have this marital status may apply for the adoption of a child and their request may be granted. See Problems and Procedures in Adoption 15 (U.S. Dep't Labor, Children's Bureau 1941).


20. Minn. Stat. Ann. § 259.23(1) (Supp. 1951). The argument has been made that actions for the purpose of terminating parental rights may involve real legal issues but that once such rights have been terminated, decreeing an adoption is essentially a matter of sound social practice. See Problems and Procedures in Adoption 83 (U.S. Dep't Labor, Children's Bureau 1941). As Minnesota does not require a separate action to determine parental rights prior to the adoption hearing, it would logically follow from the above argument that the courts which should have jurisdiction in adoption cases in this state are the district courts. However, the distinction between "legal" and "social" issues as applied is unsound because all actions to shift custody really involve social issues in the main. This being so, the juvenile courts ordinarily would be best qualified to hear and decide adop-
final decree of adoption entered is questionable. The case law of other states on the point is unsteady\(^1\) and the statutes are inconclusive. Under the statute any person who has resided in the state for a year or more may petition to adopt any child or adult but the length of residence may be waived by the court when in the best interests of the child.\(^2\) This provision does not provide a clear-cut answer as to just who may adopt because the word "resides" is ambiguous and may mean either mere physical presence within the state or domicile.\(^3\) Therefore, in theory at least, the court could exercise its power of waiver and make it possible for anyone within the geographical confines of the state to adopt.\(^4\) Although the statute contains no residency limitation in respect to who may be adopted, it has been urged that jurisdiction in adoption should be conditioned upon the adoptive parents and child having a common domicile in the state of the adoption proceedings.\(^5\) While this condition would be met in most cases, it is readily apparent that it would prove cumbersome and create inequities in other cases. Accordingly, the Minnesota court in In re Adoption of Pratt\(^6\) said that it had jurisdiction to order the adoption of a child who had been physically present within the state for a short time regardless of the child's technical domicile. In fact, a person would still be within the literal scope of the statute if he petitioned to adopt a child not presently within the state but whom he intended to bring or have

\(^1\) See 2 Beale, Conflict of Laws 713-716 (1935); Newbold, Jurisdictional and Social Aspects of Adoption, 11 Minn. L. Rev. 605 (1927).


\(^3\) The word "resides" in other statutes has caused the Minnesota court considerable difficulty. See State v. School Bd., 206 Minn. 63, 287 N. W. 625 (1939) (broad sense of merely being inhabitant); In re Seidel, 204 Minn. 357, 283 N. W. 742 (1939) (physical presence coupled with intent to make home in county).

\(^4\) But see 2 Beale, Conflict of Laws 714 (1935). Because an adequate social investigation, which is required unless waived by the court, would be difficult to attain where the petitioners did not make their home in the state, the probability that the court would exercise its waiver power in such cases is slim.

\(^5\) See 2 Beale, Conflict of Laws 713-714 (1935); Newbold, supra note 21 (this author probably would not require common domicile where the statutes require a social inquiry). A child has the same domicile as that of the person or guardian having his custody. In re Adoption of Pratt, 219 Minn. 414, 18 N. W. 2d 147 (1943); Buckman v. Houghton, 202 Minn. 460, 278 N. W. 908 (1938).

\(^6\) 219 Minn. 414, 18 N. W. 2d 147 (1945).
brought into the state. While it is unlikely that a petition for adoption would be filed before the child has entered the state, a person may want to bring a child into the state for purposes of placing him out or adopting him himself. When these circumstances arise, Minnesota's child importation statute must be noted and carefully followed and a check must be made to ascertain whether the child exportation statute, if any, of the exporting state has been complied with. The best interests of the child will be protected in these situations because Minnesota requires that an adequate social inquiry conducted by a qualified child-welfare agency precede all adoptions unless waived by the court.

The particular district in which an adoption proceeding may be heard is a matter of venue, the proper venue in the first instance being the county of the petitioners' residence. If the petitioners have moved recently and are better known in the county of the former residence, a change of venue is permissible if the court feels that the convenience of the witnesses or the ends of justice will be promoted by a change. Thus a flexibility is provided that may prove highly desirable.

II. Consent in Adoption

Unquestionably the State acting through its legislature may, as parens patriae, regulate the custody of a child during his minority so as to promote the child's welfare. But may a court, through the exercise of a discretion wholly independent from the medium of statutory construction, contribute to the best interests of the child under the same doctrine? The Minnesota court in In re Adoption of Anderson, 50 N. W. 2d 278 (Minn. 1951); In re Adoption of Pratt, 219 Minn. 414, 18 N. W. 2d 147 (1945).
of Jaren, a case involving an issue of consent, appears to have answered this question in the affirmative. Without an attempt to define "State" as including or excluding any of the three traditional branches of government, this approach seems desirable and necessary in "hard" cases where complex social problems face the court. This is especially so in adoption because a body of lawmakers confronted with the many social and economic problems placed before them for prompt action cannot possibly foresee and adequately provide for all contingencies that may come before the court in adoption proceedings. However, the statutes as construed no doubt will be determinative in the vast majority of cases and a discussion of the statutory consent necessary in adoption will be profitable even though the validity of the position apparently taken in the Jaren case is granted.

The consensual aspect of adoption has been controlled by the state legislatures in detail. In Minnesota, consent by the natural parents is required unless the parent is in some way incapacitated under the statutes or the adoptee is an adult. The parent is so incapacitated and his consent may be dispensed with when he (1) is the father of an illegitimate child, (2) is adjudged insane or incompetent by a court of competent jurisdiction, (3) has lost custody of the child through a prior adoption decree or through a final commitment by the juvenile court declaring the child dependent or neglected, or (4) has abandoned the child or lost custody through divorce proceedings but has received notice of the adoption hearing.

32. 223 Minn. 561, 27 N. W. 2d 656 (1947). The court did state that legislative authority furnishes the basis for and provides the methods to be employed for accomplishing the act of adoption. Id. at 567, 27 N. W. 2d at 660. However, the court apparently did not base its decision on the statutes even though it could have done so under the facts by holding that a subsequent modification of a divorce order is part of the main divorce action or that the words "divorce proceedings" of the statute in force at that time embraced modifications of the divorce order that changed custody of the child. See Minn. Stat. § 259.03 (1945).


These statutory provisions abrogating the necessity for consent are clear and concise with the exception of those cases involving abandonment and loss of custody in divorce. Abandonment is a nebulous concept and has caused the courts difficulty in adoption cases. In Minnesota, the only criterion for child abandonment is set out in the criminal abandonment statute which requires an "intent wholly to abandon." This test impliedly elevates the interests of the natural parents while our adoption statutes are to be liberally construed so as to promote the welfare of the child, a consideration to which every other interest must give way in event of conflict. Is it not possible then that the test for criminal abandonment will frustrate the desirable aim of our adoption statutes? The most plausible solution to the problem when it arises will be to treat the adoption statutes as a modifier of the criminal statute in adoption cases where abandonment is in issue. This will allow the trial courts the flexibility necessary if fair decisions are to be reached in such cases.

The loss of custody through divorce provisions may also prove troublesome. The spouse losing custody in a divorce action should be afforded the opportunity to be heard for the purpose of determining his right to custody whenever the spouse awarded custody later consents to the child's adoption. Either consent to or notice of pending adoption proceedings will furnish this safeguard but, as evidenced by a split of opinion in this state, a choice between the two alternatives is not easy.

Although the statute literally dispenses with the need for consent in all cases where custody is lost through divorce, arguments can be made that the wordage is deceiving. The trouble arises because the courts have drawn a distinction between "conditional or

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39. See Note, 60 Yale L. J. 1240 (1951) where the law of abandonment as related to adoption proceedings is fully discussed.


41. In re Adoption of Anderson, 50 N. W. 2d 278 (Minn. 1951); In re Adoption of Jaren, 223 Minn. 561, 569, 27 N. W. 2d 656, 661 (1947).

42. The only reported case on the type of abandonment necessary to dispense with the parent's consent under the Minnesota adoption statutes may provide an insight to the answer of this question. See In re Adoption of Anderson, 189 Minn. 85, 248 N. W. 657 (1933).


temporary" custody and "absolute or permanent" deprivation of custody. At the outset it must be admitted that in theory this last mentioned term is a misnomer because even a final committal order by judgment of a juvenile court does not absolutely, without possible recourse, deprive a parent of custody. Indeed, adoption itself does not necessarily preclude the natural parents from regaining the custody of the child through re-adoption! The judicially adopted terms are even less appropriate in respect to ordinary guardianship and custody orders but, nevertheless, they are useful concepts for purposes of discussion.

Divorce decrees are generally subject to modification and change and when contrasted with other custody orders the frequency and degree of change is comparatively free. Therefore, divorce decrees may provide an area where distinctions based on the degree of permanency break down almost completely. However, the cases do not support this position. The Nevada court in In re Jackson held that when the custody granted in a divorce action is conditional, the consent of the person deprived of custody must be obtained before adoption notwithstanding a statutory provision comparable to that in Minnesota. A similar decision was reached by the Washington court in In re Lease where the statute affirmatively provided for adoption with the consent of the spouse retaining custody as distinguished from statutory language dispensing with the necessity for the consent of the spouse deprived of custody. Both courts indirectly exalted the interests of the natural parents by construing their adoption statutes strictly because in derogation of the common law. However, the Minnesota court has rejected this doctrine of strict construction as applied to adoption statutes and, if presented with the issue, probably would not reach the same result.

Another question may arise when the reasons for which a divorce

45. Minn. Stat. § 260.11 (1949); see In re Adoption of Anderson, 50 N. W. 2d 278, 284 (Minn. 1951).
46. See Minn. Stat. § 518.18 (1949); Spratt v. Spratt, 151 Minn. 458, 187 N. W. 227 (1921); 25 N. D. Bar Briefs 24 (1949).
47. 55 Nev. 174, 28 P. 2d 125 (1935) (statute provided that consent of person divorced because of cruelty, adultery or abandonment not needed).
48. 99 Wash. 413, 169 Pac. 816 (1918). But cf. Hardesty v. Hardesty, 150 Kan. 271, 92 P. 2d 49 (1939) (right of visitation held not custody); In re Beers' Adoption, 78 Wash. 576, 139 Pac. 629 (1914) (although no indication that divorce decree granted absolute custody, distinguished in Lease case on this ground).
49. See note 41 supra.
may be granted are inspected. Suppose $A$ becomes insane and $B$, her spouse, is granted a divorce and awarded custody of their child. $B$ then marries $C$ and both petition to adopt the child but $A$ in the interim has regained her sanity. Should $A$ be entitled to notice under the statute or should her consent be required—in other words, should a fault test be used by the court in construction of the statute? If so, it must be a "no fault" test, for a "comparative fault" test would render the adoption statute meaningless in the many cases where fault for the divorce is equally attributable to both parties. Cases in which recriminatory defenses have been sustained are illustrative.

Notwithstanding the above discussion of anticipated problems, it appears that the Minnesota statute does and should dispense with the necessity for the consent of the spouse losing custody through divorce in all cases. Furthermore, the procedural device of notice is a more feasible choice than the substantive right of consent because it has the advantage of avoiding a separate suit to terminate parental rights when the parent who has lost custody is obviously not worthy of custody and yet arbitrarily refuses to consent to the adoption. Where consent is not required, the present Minnesota practice does not require termination of parental custody rights by judicial decree before an adoption hearing may be held and, apparently the court has no inclination to require consent, which may make a separate suit necessary, unless the statute clearly demands such a decision. It is a fair assumption that notice will prove to be adequate protection of the natural parent's rights whenever he has lost custody in a divorce action.

The statutes may also require the consent of persons other than the natural parents either in a supplementary or substitutionary capacity. Where the adoptee is over 14 years of age his consent is

50. Incurable insanity is a ground for divorce in Minnesota if the insane spouse has been confined to an institution for five years immediately preceding the divorce. Minn. Stat. § 518.06(7) (1949). Although the case posed in the text is not likely to arise under this section, it may arise when the divorce is granted in another state and the adoption petition is subsequently filed in Minnesota.

51. See In re Adoption of Anderson, 189 Minn. 85, 248 N. W. 657 (1933) (the trial court decided an issue of abandonment in the same action in which the adoption decree was entered; reversed on grounds of no abandonment shown).

52. See In re Adoption of Jaren, 223 Minn. 561, 571, 27 N. W. 2d 656, 663 (1947) (child's future too important to permit further delay).

53. But see Note, 60 Yale L. J. 1240, 1248 n. 29 (1951); Problems and Procedures in Adoption 85 (U. S. Dep't Labor, Children's Bureau 1941).
needed and the consent of a guardian, if any, is always required no matter how unreasonably it may be withheld. The consent of the director is desirable and may be given where there is no parent or guardian qualified to consent, but his consent is not essential and cannot be unreasonably withheld so as to bar the adoption. If the mother of an illegitimate child is under 18 years of age, the additional consent of either her parents, guardian or the director, depending upon the facts, is required. Apparently the requirement for supplementing consents in the latter case was imposed to insure compliance with the common law rule that a contract based on the consent of a minor is voidable. Although desirable, it is clear that this bulwark of supporting consents is not necessary, to render the minor mother’s consent valid and binding.

Parental rights and obligations may also be relinquished by written agreement with the director or a certified agency conferring authority to place the child for adoption and the director or agency will thereafter have the exclusive right to consent to the child’s adoption. Although a similar written agreement between a parent and another person conferring upon such person the right to adopt

55. Minn. Stat. Ann. § 259.24(1) (Supp. 1951). Where the consent of a guardian appointed by the probate court is given, a subsequent annulment of the guardianship order by the court will not invalidate the consent ab initio unless the order was absolutely void in the first instance. In re Adoption of Anderson, 50 N.W. 2d 278 (Minn. 1951); In re Adoption of Pratt, 219 Minn. 414, 18 N. W. 2d 147 (1945).
56. In re Adoption of Mair, 184 Minn. 29, 237 N. W. 596 (1931) (proceedings to correct the situation must be brought in probate court to prevent conflict between the probate and district courts).
58. In re Adoption of Kure, 197 Minn. 234, 266 N. W. 746 (1936) (State Board of Control [now Director of Social Welfare, Minn. Stat. § 256.01 (1949)] refused to consent because adoptive parents and child had different religions).
60. See Note, 35 Minn. L. Rev. 47 (1950).
61. In re Adoption of Anderson, 50 N. W. 2d 278 (Minn. 1951) (agreement with agency consenting to child’s placement for adoption held valid although signed only by minor mother of illegitimate child); In re Bush, 47 Kan. 264, 27 Pac. 1003 (1891) (by implication); see 21 Fla. L. J. 102 (1947); Rep. Att’y Gen. Minn. 288, Op. 228 (1940).
63. Minn. Stat. Ann. § 259.24(1) (f) (Supp. 1951); cf. In re Adoption of Anderson, 50 N. W. 2d 278 (Minn. 1951) (in construing the 1947 statutes the court held that when after the signing of the agreement the probate court, sitting as the juvenile court, appointed the agency as guardian the mother’s consent was no longer necessary).
would not create legally binding obligations respecting custody, apparently it would constitute consent when filed if properly executed.

All consents must be in writing and filed prior to the hearing. This procedure and form were formerly followed as a matter of practice but were not necessary to sustain an adoption decree against collateral attacks.

The requirement for consent of the natural parents is primarily for their protection. Once their consent is rendered, the proposed adoptive parents will probably act in reliance upon it by caring for the child in their home and filing a petition for his adoption. After the petition has been filed, the statute provides that the court will grant a request to withdraw consent only when in the best interests of the child. This apparent importance placed by the legislature upon the filing of the petition appears to be unwarranted and becomes significant because the leading Minnesota case of State v. Beardsley indicates that consent can still be arbitrarily withdrawn at any time prior to the filing of the petition. Fortunately, agreements with the director or agency conferring authority to place for adoption were not afforded the same treatment and may be revoked only when in the best interests of the child whether the petition has been filed or not. Revocation is probably possible here even though the agency or director has had the court enter a committal order which is a final adjudication of parental rights.

III. NOTICE IN ADOPTION

The case law dealing with a parent's right to notice in adoption where the necessity for his consent has in some way been obviated

64. Minn. Stat. § 257.02 (1949); State v. Beardsley, 149 Minn. 435, 183 N. W. 956 (1921).
65. See note 66 infra.
66. Minn. Stat. Ann. § 259.24(5) (Supp. 1951). The proposed act, see note 6 supra, recommended that the consents of all natural parents residing in the state be made in the presence of the director or a representative of a certified child-placing agency. This was omitted in the statute but consent must be acknowledged and witnessed by two persons.
67. See Problems and Procedures in Adoption 92 (U. S. Dep't Labor, Children's Bureau 1941).
68. In re Estate of Sutton, 161 Minn. 426, 201 N. W. 925 (1925) (decreed recited consent; all jurisdictional prerequisites are presumed unless the contrary affirmatively appears from the face of the record).
70. 149 Minn. 435, 183 N. W. 956 (1921) semble. But see 32 Minn. L. Rev. 496, 497-498 (1948).
72. See note 45 supra.
is confused. Due regard for the constitutional safeguard which requires an opportunity to be heard would seem to cogently argue that a parent's rights to his child cannot be severed by adoption without notice. When the loss of custody occurs prior to the adoption proceeding, the parent should at least be informed at that time of his rights or disabilities in the event that his child is subsequently made the subject of an adoption. However, the opinion of the United States Children's Bureau and some cases do not support this contention.

Minnesota adoption procedure meets this seemingly minimal standard. If consent has not been given and notice has not been effectively waived in writing, notice of the hearing on the petition to adopt generally must be given the parents and guardian. To this general rule there are two exceptions. Notice to the father of an illegitimate child is discretionary and not mandatory and when a court of competent jurisdiction makes a final commitment and enters judgment declaring a child dependent or neglected only the guardian need be notified of the adoption hearing proper. However, the notification of the dependency and neglect proceedings must also include a statement informing the parent that he

73. For a detailed analysis of the cases dealing with a parent's right to notice in adoption, see Maxwell, Right of Natural Parents to Notice in Adoption Proceedings, 24 N. D. Bar Briefs 192 (1948).

74. A possible exception might be where there have been prior abandonment proceedings to which the parent was given notice but did not appear. Id. at 197; see Note, 60 Yale L. J. 1240, 1248 n. 27 (1951). That such an exception would be advisable is further supported by the fact that publication of notice of the adoption probably would not bring the unknown parent into court. See Problems and Procedures in Adoption 126 (U. S. Dep't Labor, Children's Bureau 1941).

75. The Bureau has advocated that either consent to adoption or the termination of parental rights must take place before an adoption petition can be filed and notice of any kind of subsequent adoption proceedings is contemplated in the latter situation. See Essentials of Adoption Law and Procedure 7, 13 (Fed. Sec. Agency, Children's Bureau 1949).

76. Hardesty v. Hardesty, 150 Kan. 271, 92 P. 2d 49 (1939) (father given custody in divorce action and adoption decreed without notice to mother); In re Beers' Adoption, 78 Wash. 576, 139 Pac. 629 (1914) (mother given custody in divorce action and adoption decreed without notice to father).


78. Minn. Stat. Ann. § 259.25(2) (Supp. 1951). The court may within its discretion require notice to be served upon the admitted or adjudicated father of an illegitimate child or any other person if it believes justice will be promoted thereby.

79. The type of court that is competent to try dependency and neglect cases varies with the population of the county. It may in actuality be either the district court or the probate court. See Minn. Stat. §§ 260.02, 260.03 (1949).

will not be entitled to notice of subsequent adoption proceedings if the court makes a final commitment. This new innovation and additional safeguard in the doctrine of notice in this state appears to be both adequate and desirable here for at least two reasons. First, it informs the parent of the real significance of a final decree of guardianship in neglect and dependency proceedings. Second, notice of the hearing for adoption probably would serve no beneficial purpose but it might destroy the anonymity between adoptive parents and natural parents.

Where notice is required, it may be given in substantially the same way as service of summons in a civil action and, if personal service cannot be had, the court may order service by publication.

IV. THE SOCIAL INQUIRY AND PROBATIONARY RESIDENCE

It is generally agreed by judges and experts in the field of child-welfare that a social inquiry should be conducted by a qualified agency and a report of the findings and recommendations be submitted to the court before formal adoption can take place.

81. Minn. Stat. § 260.08 (1949), as amended, Minn. Laws 1951, c. 224. If a final commitment is subsequently ordered, the parents must again be notified that they will not be entitled to notice of any adoption proceedings. Minn. Stat. § 260.12 (1949), as amended, Minn. Laws 1951, c. 223.

82. Prior to 1951 the parent was not entitled to any notice in addition to the notice of the dependency or neglect hearing. Minn. Stat. § 260.08 (1949); cf. In re Adoption of Anderson, 50 N. W. 2d 278 (Minn. 1951) (child was declared dependent and agency with which parent had signed agreement was adjudged guardian by the court; parent held not entitled to notice of later adoption). As an agency will invariably have the child declared dependent and itself appointed guardian after such an agreement has been made, the new amendments providing for the negative type of notice will govern almost all such cases. But if the agency or director fails to have itself appointed guardian, would the parent signing the agreement then be entitled to notice of the adoption hearing or would the agreement constitute the consent required under § 259.26(1), thereby making notice unnecessary?

83. The Legislature and the commission apparently were of different opinions as to the importance of preserving anonymity where there had not been a prior final committal order in dependency or neglect proceedings. Compare Report of Minnesota Interim Commission on Domestic Relations Problems (1951) (proposed act would not allow natural parents to attend the adoption hearing proper), with Minn. Stat. Ann. § 259.31 (Supp. 1951).

84. Minn. Stat. Ann. § 259.26(2) (Supp. 1951). Notice must be served within or without the state at least 14 days before hearing.

85. See Clark, Proposed Changes in Missouri Laws Affecting Children: Recommendations of the Children's Code Commission, 12 Mo. L. Rev. 310, 312 (1947); Problems and Procedures in Adoption 99 (U. S. Den't Labor, Children's Bureau 1941); Ricks, Legal Aspects of Adoption 7 (1937).

To facilitate and make more meaningful this social inquiry, a probationary period of residence in the proposed adoptive home is also desirable before an adoption is finally adjudged.87 Both of these statutory safeguards have been provided for in Minnesota since 1917 and may be waived by the court only when the petitioner is a stepparent or when upon good cause shown the court is satisfied that the proposed home and child are suited to each other.93 Although it has been argued from the idealistic social standpoint that neither the waiver of the inquiry or residence requirement is desirable in any case, waiver serves a very practical purpose in many instances and nothing is sacrificed because the director must be given ten days notice of the hearings when the waiver power is exercised.91

The county welfare boards may be delegated authority to conduct the home study upon which the director’s report is based but the director is directly responsible for the approval or disapproval of all adoption petitions.93 If the director does not return a report to the court within 90 days after the petition is filed, without fault of the petitioner, the court may hear the petition after five days notice to the director.94 This procedure insures prompt consideration of the prospective parents’ natural desire to have a child adjudged their own as soon as possible. If the director’s report disapproves of the petition, he may make a motion to dismiss.95 Thus the petition for adoption will ultimately be brought

87. See Essentials of Adoption Law and Procedure 18 (Fed. Sec. Agency, Children’s Bureau 1949); Ricks, Legal Aspects of Adoption 10 (1937).
91. Minn. Stat. Ann. § 259.27 (Supp. 1951). The ten-day notice provision is new and evidently was aimed at the undesirable practice followed in the Pratt case. See notes 26 and 28 supra.
92. See Annual Report Minnesota Division of Social Welfare 20-21 (1949); Problems and Procedures in Adoption 55 (U. S. Dep’t Labor, Children’s Bureau 1941).
95. Ibid.
to the court's attention and if the court dismisses or denies it, the child will be replaced with his permanent guardian, if there be one, or subsequent judicial action will be had to determine his custody.\textsuperscript{96} The child is thereby assured that he will not be left in an unsuitable home.

Although the social aspects of adoption are not within the scope of this Note, a cursory discussion of placement in this state may be appropriate at this point. About 50 per cent of the child placements for adoption during 1948-1949 were accomplished with agency assistance.\textsuperscript{97} When an agency is so involved, the nature of the steps taken in placement will be such that both the investigation and probationary residence will have been completed prior to the filing of the petition and a hearing may be had immediately.\textsuperscript{98} This will probably be true even though the placement is made without agency help because anyone placing a child must notify the director of such fact within 30 days after the placement\textsuperscript{99} and the director will thereafter have the right to visit and investigate the home in which the child was placed.\textsuperscript{100} If this notification requirement is not complied with, a proper case for the court's exercise of its waiver power will probably still be presented as most of the independent placements in this state are made with relatives.\textsuperscript{101} In fact, only eleven per cent of the children placed for adoption in Minnesota in 1951 were placed with non-relatives without agency help.\textsuperscript{102} This figure is a tribute to the agencies and indicates that the "grey market" for babies in this area is not large, a condition which is not general throughout the nation.\textsuperscript{103}

V. HEARING AND DECREE

As an adoption is intimate and confidential in nature, the proceedings are held in closed court and the files and records of the

\textsuperscript{96} Minn. Stat. Ann. § 259.28(b) (Supp. 1951).
\textsuperscript{97} See Annual Report Minnesota Division of Social Welfare 23 (1949).
\textsuperscript{98} Child-placing agencies take the following steps in placing a child for adoption. Application to adopt is made by the prospective adoptive parents. The home is then studied and, if found suitable, a child is placed in it. The child and home are then observed to see if they "fit." If the placement "takes," a petition to adopt is filed. \textit{Ibid.} at 20.
\textsuperscript{99} Minn. Stat. § 257.03 (1949), as amended, Minn. Laws 1951, c. 644.
\textsuperscript{100} Minn. Stat. § 257.04 (1949).
\textsuperscript{101} See Note 97 supra. Placements with relatives are arbitrarily categorized as independent placements although they are natural and do not ordinarily have the inherent risks that other independent placements do.
\textsuperscript{102} See Annual Report Minnesota Division of Social Welfare 21 (1951).
\textsuperscript{103} \textit{Ibid.}; Comment, 59 Yale L. J. 715 n. 2 (1950).
proceeding are not open for public inspection. 104 When an adoption is decreed the child becomes the child of the petitioner and his name may be changed to that alleged as desired in the petition. 105 If the petition is dismissed or denied for any reason the child is adequately protected. 106 Any party aggrieved by the decree of the district court may take an appeal in the same manner as appeals in other civil actions. 107

The relationship created between the adoptive parents and child when the child is taken into the home becomes even closer after a formal adoption is decreed and this status must be protected against subsequent attacks to vacate the decree that may unduly disturb it. The finality to be afforded an adoption is prescribed and determined by the Minnesota court through application of the concept of “substantial compliance” with the statutes 108 and all jurisdictional prerequisites are conclusively presumed unless the contrary affirmatively appears from the face of the record. 109

Both the cases and the statutes indicate that setting aside an adoption is no easy matter. The adoptive parents may gain an annulment within certain defined and rigidly controlled statutory grounds 110 but once the child is taken into the home they, as well

105. Minn. Stat. § 259.28(a) (Supp. 1951). Where there is a change of name, the registrar prepares a supplementary birth certificate in the new name of the adopted child and seals the original certificate. Minn. Stat. § 144.176 (1949), as amended, Minn. Laws 1951, c. 175. A change of name may be void if not alleged as desired in the petition but the omission will not void the adoption decree in toto. In re Estate of Youmans, 218 Minn. 172, 177, 15 N. W. 2d 537, 540 (1944).
106. See note 96 supra.
108. See Kenning v. Reichel, 148 Minn. 433, 182 N. W. 517 (1921). What is and what is not substantial compliance rests within the sound discretion of the court. For example, the same omission probably will not amount to a lack of jurisdiction in all cases and determination of the issue may depend entirely upon who brings the action. Cf. Fiske v Lawton, 124 Minn. 85, 88, 144 N. W. 455, 456 (1913) (under contract to adopt, the heir of the “adopting” parent could not avoid the “adoption” on the grounds that the natural father did not consent and even the father would not be heard to object after long delay).
110. Minn. Stat. Ann. § 259.30 (Supp. 1951). If within five years after the adoption the child develops feeble-mindedness, epilepsy, insanity or venereal infection as a result of conditions existing prior to the adoption of which the adopting parents had no knowledge, an annulment is possible. The fact that no appellate case has arisen under this section, which has remained unchanged for over 30 years, probably is tribute to the careful child placement and supervision by agencies in this state. The provision for annulment is probably advisable. See Comment, U. of Det. L. J. 99 (1946). But see Essentials of Adoption law and Procedure 22-23 (Fed. Sec. Agency, Children’s Bureau 1949).
as their heirs and legal representatives, are generally estopped from asserting that the decree is invalid. However, even third persons may win a rehearing on the merits if the trial court has abused its discretion and there seems to be nothing in the statutes that would oust the court of its power in equity to vacate an adoption decree for fraud or other defects.

VI. LEGAL CONSEQUENCES OF ADOPTION

The status of an adopted child logically should be in all respects and with respect to all persons exactly the same as that of a natural child of the adoptive parents and any law that distinguishes between an adopted and natural child should be amended to abrogate the existing differences.

Succinctly stated, the effect of an adoption in Minnesota conforms to this proposed aim. The statutes have long provided that the child should inherit from his adoptive parents and their relatives and they in turn should inherit from him in case of his death intestate. As a result, it has been decided under this section that an adopted child has the same property rights as a natural child and is the next of kin, lawful issue and bodily heir of the adoptive parent. Incidentally, the adoption statutes do not affect the rights of any person to dispose of his property as he wishes by an inter vivos or testamentary act but, if the adoptive parent wishes to negate this benefit conferred upon the child by law, he must do so in no uncertain terms.

At one time the statutes specifically provided that an adopted child should inherit from his natural parents and their kindred.

111. See Kenning v. Reichel, 148 Minn. 433, 182 N. W. 517 (1921).
112. In re Adoption of Fay, 147 Minn. 472, 180 N. W. 533 (1920) (grandparents of orphan had no notice of adoption; decree opened). A similar case is possible under the new act because the court still has an area of discretion in which to require notice. See note 78 supra.
116. McKeown v. Argentsinger, 202 Minn. 595, 279 N. W. 402 (1938), 23 Minn. L. Rev. 83 (adopted child is next of kin and action for wrongful death can be brought for his benefit).
This provision was deleted in subsequent revisions, but nevertheless it was held that the adopted child retained the right to inherit from his natural parents.\textsuperscript{119} However, the new act provides that the natural parents do not inherit from the child and he does not inherit from them,\textsuperscript{120} but an unfortunate use of language in the new statute still leaves open the question of the child's right to inherit from his first adoptive parents when adopted a second time.\textsuperscript{122} Of course, an analogy to the case of natural parents should govern the problem.

The rights of inheritance given to the adopted child and adoptive parents will flow logically so as to affect all third persons. Thus the Minnesota court held in \textit{Fiske v. Lawton}\textsuperscript{122} that the issue of a person informally adopted under a contract made in Ohio inherited through that adopted person according to Minnesota law. The decision follows the general rule that the rights of inheritance of all adopted children, even though adopted in another state, will be governed by the law of the state where the action is brought.\textsuperscript{123}

Adoption statutes apply to all adopted children whether adopted prior or subsequent to the passage of the statutes and because rights of heirship are contingent and not vested, presumptive heirs of the adoptive parents cannot complain that the statutes are retrospective.\textsuperscript{124} However, rights that have become vested but that have

\textsuperscript{119} Roberts v. Roberts, 160 Minn. 140, 199 N. W. 581 (1924).
\textsuperscript{120} Minn. Stat. Ann. § 259.29 (Supp. 1951). This provision also would prevent the child from inheriting in a dual capacity when the adoptive parent is also a blood relative. See 30 Minn. L. Rev. 395, 396 (1946).
\textsuperscript{121} Minn. Stat. Ann. § 259.29 (Supp. 1951). The statute uses the words "natural parents" to negate the adopted child's rights of heirship in relation to his natural parents; more appropriate terminology would be "all preceding parents." The problem has been decided in Minnesota in favor of the adopted child. \textit{In re Estate of Sutton}, 161 Minn. 426, 201 N. W. 925 (1925); see 26 Minn. L. Rev. 114 (1941). Of course, where the first adoptive parent dies before the second adoption the child would inherit directly from his first adoptive parent as distinguished from through him but from that parent's ancestors. The distinction would seem to turn upon the difference between contingent and vested rights. If the ancestor died before the second adoption, the right would also be vested.
\textsuperscript{122} 124 Minn. 85, 144 N. W. 455 (1913).
\textsuperscript{123} Restatement, Conflict of Laws § 143 (1934). However, the Federal Constitution does not require that a child adopted in a sister state be given the same rights of inheritance in such cases. See [1950] U. of III. Law Forum 122.
\textsuperscript{124} Sorenson v. Rasmussen, 114 Minn. 324, 131 N. W. 325 (1911). For the same reason, the heirs cannot complain of the act of adoption itself. Kenning v. Reichel, 148 Minn. 433, 182 N. W. 517 (1921). The Missouri court does not think the adoptive parent should be bound by such legislation unless he gives a new consent. Weber v. Griffiths, 349 Mo. 145, 152, 159 S. W. 2d 670, 674 (1942).
not yet become possessory will not be affected by a subsequent adoption or new legislation passed in the interim.125

VII. Quasi-Adoption

When a child has not been adopted in accordance with the statutory procedure but nevertheless has been adopted in fact, justice often requires that he be given the protection of the law. Accordingly, the courts usually recognize the validity of de facto adoptions and employ the legal theories of "equitable adoption," specific performance of an implied promise and estoppel to enable the child to share in the deceased adoptive parent’s estate.126

The Minnesota court has many times conferred upon the child the same property rights as a natural heir when a contract to adopt was fully executed by him.127 Written contracts that set out the child’s property rights pose no problem but parol contracts to adopt must be established by clear, positive and convincing proof.128 However, once the contract to adopt is proved it is not necessary to show that the parent also expressly or impliedly promised to confer upon the child any property rights. The court will automatically give the child the same rights of heirship that he would have if he were a natural child of the adoptive parent.129 The rationale used by the court to reach this result is not clear.

The parties to a contract to adopt are usually the natural and adoptive parents with the adoptee at most a third-party beneficiary. However, suppose the adoptee is an adult and enters into such a

125. O’Dell v. Hingeveld, 50 N. W. 2d 476 (Minn. 1951) (workmen’s compensation act defined “child” as anyone entitled by law to inherit from the deceased employee; adopted child received share of workmen’s compensation benefits when natural father was killed in 1950 and case not settled until after passage of 1951 adoption statutes).

126. For a discussion of these theories and the cases applying them see Note, 12 U. of Pitt. L. Rev. 253 (1951); Comment, 47 Mich L. Rev. 962 (1949); 9 Ala. Lawyer 206 (1948).

127. In re Estate of Firle, 197 Minn. 1, 265 N. W. 818 (1936); Odenbreit v. Utheim, 131 Minn. 56, 154 N. W. 741 (1915); Fiske v. Lawton, 124 Minn. 85, 144 N. W. 455 (1913) (written agreement entered into in Ohio and subsequently lost); cf. Laird v. Vila, 93 Minn. 45, 100 N. W. 656 (1904).

128. In re Estate of Norman, 209 Minn. 19, 295 N. W. 63 (1940) (the court, relying upon the rather fine distinction between a foster and adopted child, held that evidence was sufficient to support trial court’s finding that there was no contract to adopt); Odenbreit v. Utheim, 131 Minn. 56, 154 N. W. 741 (1915).

129. In re Estate of Firle, 197 Minn. 1, 265 N. W. 818 (1936); Odenbreit v. Utheim, 131 Minn. 56, 154 N. W. 741 (1915); Fiske v. Lawton, 124 Minn. 85, 144 N. W. 455 (1913). If a promise to give the promisee certain property rights can be shown, that promise will control. Laird v. Vila, 93 Minn. 45, 100 N. W. 656 (1904).
contract. Should the court decree a quasi-adoption to aid an adult who is capable of contracting and caring for himself? The Missouri court has expressly refused to do so on the grounds that such an extension of the doctrine would open the door to many fraudulent claims and some of the cases illustrate that this fear may be justified. The adoption of adults even by means of the statutory procedure has been criticized. However, the Minnesota statutes, which authorize the adoption of adults without the safeguard of an independent investigation, are probably not open to the argument set forth by the Missouri court. The court will scrutinize the circumstances surrounding the petition very closely in the first instance, which is not possible when there is a contract to adopt, and in that way rid itself of subsequent harassing litigation involving fraud or undue influence. Although the statutes do not require notice here, it may be wise to notify close relatives of the proposed adoptive parent of the adoption hearing in these cases.

One court has held that it will not bestow rights of heirship upon the person if he is not adopted in strict compliance with the statutes, but abolishing quasi-adoption, while perhaps ultimately desirable, would result in injustice in many cases. Nevertheless, allowing informal adoptions indirectly sanctions possible attendant vices, which the statutory procedure was designed to prevent.

130. Thompson v. Moseley, 344 Mo. 240, 245, 125 S. W. 2d 860, 862 (1939).


133. Minn. Stat. Ann. § 259.27 (Supp. 1951) is not applicable to adults.

134. Carter v. Capshaw, 249 Ky. 483, 60 S. W. 2d 959 (1933).